

Police Brutality in South Africa

by

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In addition to this case study of South Africa the full report 'Police Brutality in Southern Africa – A Human Rights Perspective' contains case studies of Botswana, Malawi, Muaritus, Mozambique, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe. Queries regarding copies of the full report may be directed to Afronet at: afronet@zamnet.zm.

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Abbreviations

| | |
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| ICD | Independent Complaints Directorate |
| ICW | Ixopo Community Watch |
| POP | Public Order Police |
| SAHRC | South African Human Rights Commission |
| SAP | South African Police |
| SAPS | South African Police Service |
| SIRS | Shooting Incident Reports |

1. Introduction

The issue of police brutality has been in the spotlight recently¹ in South Africa particularly following the screening of a video in November 2000 on the TV programme Special Assignment depicting members of the North East Rand Dog Unit setting their dogs on, assaulting and racially abusing three alleged illegal immigrants from Mozambique (the incident is described in more detail in Case 1 in Section 4 below).

More recently a newspaper report quoted Mary Rayner, an [Amnesty International](#) (AI) Researcher, as saying that "there are at least 20 to 30 severe cases of torture a year that are reported" in South Africa "but there are many more incidents than that that are not reported". As recently as September, she said, we received a report that the Brixton Murder and Robbery Squad – which has been involved in systematic torture for years – continues to act with impunity.²

As this report demonstrates however in section 4 the problem of police brutality is not restricted to a problem of torture but also includes other problems of a serious nature including apparent execution type killings in custody and at the point of arrest, deaths apparently linked to torture or other assaults in custody and outside of custody, other deaths related to apparently unjustified, reckless or accidental shootings including killings during demonstrations, killings relating to arguments and domestic disputes, off duty killings of criminal suspects involved in petty offences, other deaths linked to assaults of persons not in custody and other non-fatal assaults of persons at the point of arrest or otherwise outside of custody, cases of rape and other assaults on persons in custody and even on persons reporting cases to the police.

This report is therefore an attempt to understand the phenomenon of police brutality in South Africa. As such it forms one of a series of reports commissioned by the Southern African Human Rights NGO Network (SAHRINGON). These reports are intended to document information in the 11 SADC countries on the factors contributing to police brutality, on the form or nature and extent of police brutality, and on the institutional responses to the problem. The reports are intended to enable SAHRINGON to do the following:

In the light of the history of brutality by the South African Police during apartheid there would appear to be considerable justification for the exploration of questions to do with police brutality in contemporary South Africa. This report attempts to provide an overview of the issue in South African focusing on the period subsequent to the transition to democracy in 1994. In doing so it also points to some of the difficulties in coming to a definitive understanding of the nature of the problem.

2. Defining police brutality

a. Police in South Africa

Discussions of "the police" in the post-apartheid (post 1994) period in South Africa are usually focused on the [South African Police Service](#) (SAPS) and its key predecessor the South African Police (SAP).³ There are however a diverse range of police agencies in South Africa. These include traffic police, metropolitan police services and municipal security guards which mainly fall under the jurisdiction of local government. There is also an extensive private security industry – which in fact far outnumbers the members of the SAPS. Recently government has established the Directorate Special Operations ("the Scorpions") one of a number of special investigating units which falls under the Office of the Director of Public Prosecutions. Particularly in rural, but also in urban areas both Permanent Force as well as Commando units of the SANDF, are also in varying ways involved in policing activities.

State agencies which are involved in policing functions make provision for the involvement of members of the public in varying ways. These include the above mentioned SANDF Commando system, as well as the "Police Reservist" system of the SAPS. Outside of these formal structures forms of vigilantism which have received significant public attention in recent years, such as the organisation Mapogo a Mathamaga, may also be seen to represent forms of (extra-legal) policing by the public.

Whilst acknowledging the diversity of "policing" in South Africa, this report will focus on the SAPS. However a few of the cases of alleged brutality which are documented in section 4(a) below do involve members of the organizations, other than the SAPS, which are involved in policing functions. This issue will also be discussed again briefly in the discussion of these cases in section 4(b).

b. Defining police brutality

According to Bittner the central thread that runs through police work is that it frequently "consists of coping with problems in which force may have to be used".⁴ While wherever

possible police should avoid unnecessary force, force inevitably has to be used in some situations. In situations where members of the police use force this is therefore necessary for them to carry out their responsibilities and is not unlawful.

Police brutality however occurs when members of a police service use force unlawfully. *Essentially therefore brutality is the (unlawful) abuse of the capacity to use force.* By implication, police brutality is generally deliberate unlawful violence but actions which amount to criminally negligent uses of force should also be considered as acts of police brutality.

Some issues which are raised by this definition of police brutality include the following:

- **Popular usages of the term** – the term police brutality is used more loosely on a popular level, sometimes referring to uses of force by the police without a concern to establish whether they are lawful or not, while sometimes it is used to refer to any apparently objectionable behaviour by the police. In the sense in which it is used in this report the term police brutality is therefore used more narrowly.
- **Abuses of other powers** – police have a range of powers including the power of arrest, powers of search and seizure, and others. All of these powers may be abused.⁵ Effectively therefore as brutality, as defined in this report, involves abuse of the capacity to use force, abuse of other policing powers are not dealt with here.
- **The distinction between brutality and corruption** - in recent years particularly there has been widespread evidence of corrupt activities involving the police in South Africa.⁶ It should be noted that police corruption can be defined as the abuse of police powers for gain.⁷ While in some instances police brutality is linked to other corrupt behaviour, brutality and corruption to a significant extent represent different forms of police abuse of power⁸ particularly in that corruption is primarily motivated by greed (or personal or other gain) while brutality has diverse motivations including a desire to assert authority, sadism, as well as frequently a type of over zealotry in pursuing the "crime-fighting" goals of the police organisation. This report is therefore focused on "police brutality" and not on "police corruption" and therefore deals with corruption only in so far as it is related to brutality.
- **Unlawful violent acts outside of the police role** – one area of difficulty in applying the concept "police brutality" concerns violence by members of a police service outside of the police occupational role. There is some evidence for instance that male members of police services may be prone to involvement in domestic violence.⁹ However while there may be an element of abuse of power involved (for instance police members may use their position in the police service to prevent any action being taken against them), in terms of the approach taken here, unlawful violence by police members outside of the police role is not strictly "police brutality". Nevertheless a propensity to unlawful violence outside of the police role may be seen as part of the same problem as that of police brutality in that factors which contribute to the one may contribute to the other, members who are prone to the one may be prone to the other (though the latter is not necessarily the case), and finally

it may be argued that both problems need to be identified as related phenomena by police managers and need to be dealt with as part of an overall problem of "police violence".¹⁰ For the purposes of this paper therefore non occupational violence by members of the police service is regarded as part of the problem of police brutality.

- **Unnecessary force** – a further important distinction concerns that between "brutality" and "unnecessary force" where the latter occurs when "well meaning officers prove incapable of dealing with the situations they encounter without needless or too hasty resort to force".¹¹ It should be noted that the distinction between "brutality" and "unnecessary force" is not watertight. Thus for instance the question may arise whether a police officer who has used force "too hastily" may be judged to have been criminally negligent in his or her use of force and thus to have been involved in police brutality. Despite the fact that the distinction between the two problems is not watertight they can in many ways be regarded as separate problems attached to the use of force by police. However while they are in some ways separate, measures by police management to address the problem of unnecessary force are arguably a key measure in addressing police brutality.

3. Problems with the use of statistics and press reports as indicators of the extent and nature of police brutality

a. Statistics as measures of police brutality

There are numerous problems associated with measuring police brutality:

- Police action often takes place in situations of low visibility in terms of the presence of witnesses other than the persons who are targets of police action. It is believed that the presence of third party witnesses tends to discourage unlawful behaviour on the part of the police. In so far as police brutality is a problem it is therefore likely to occur in circumstances where there are no (particularly non-police) uninvolved third parties present.
- Most obviously this means that particularly in fatal incidents of police brutality the only surviving witnesses are likely to be members of the police. However where it happens that people who have been victims of police action make allegations of police brutality (i.e. that the police acted unlawfully), it is frequently difficult to ascertain whether their allegations should be treated as credible or not. Thus in many cases where an arrested person has bruises or injuries it is common for the police to assert that these were sustained as a result of the person having resisted arrest, and as a result of the police having to forcibly restrain him or her. In such cases it is frequently not possible to ascertain who is actually telling the truth with a reasonable degree of certainty. The problem is aggravated, not only because there are frequently two competing accounts of what happened, but because the people making the allegations are often of low social status, and might in general have difficulty in presenting their version of events in a manner which is more credible than that presented by the police.
- Systems for the lodging and investigation of complaints are usually controlled by

the police. There is potentially a wide degree of variation in how such systems function in different localities. In some police stations for instance the practise may be that those wishing to lodge complaints of police brutality are discouraged by one or other means (e.g. threats, having to wait a long time) from doing so. The fact that larger numbers of such complaints are recorded in a specific place may therefore be more of a reflection of the relative willingness of such an agency to record such complaints. Even if complaints are recorded the investigation may not be very effective. However, at the end of the day, as indicated above, even an effective investigation may simply end up with two competing versions of events and may not be able to make a conclusive finding.

- Reporting systems may also for instance record the complaints as complaints under specific crime categories. Thus for instance if one understands brutality as unlawful violence by the police in the occupational role should one include charges of rape against members of a police service within the category? The problem is aggravated by the fact that most reporting systems do not distinguish between cases which were alleged to have occurred in occupational and non-occupational capacities. Particularly if one defines police brutality as it is defined here it is difficult therefore to know which recorded cases should be regarded as allegations of police brutality.
- More specifically a specific form of police brutality which is of particular concern is that of torture. However there is no particular offence of torture in South Africa (and many other countries) and torture can only be prosecuted under offence categories such as assault or assault GBH or sometimes murder or attempted murder. As a result it becomes difficult to evaluate the extent of a particularly serious problems of police brutality such as torture.¹²
- In so far as incidents where the police are involved in using force/violence are recorded in one form or another, a major question still arises as to what criteria to apply in deciding whether action amounts to police brutality. Thus whether the incident is recorded in police shooting incident data (whether as legal or not) or whether the case is recorded as an alleged criminal offence by a member of a police service the basic question still remains as to whether this should be regarded as a case of police brutality or not. Thus civilian witnesses to an incident may judge the police to have been brutal but if the incident is evaluated according to legal or professional criteria the same conclusion may not be reached. Similarly a court may come to the conclusion that the use of force in a certain situation was justified but this does not necessarily imply that a professional police officer would come to the same conclusion. Particularly if one is looking at cases against police officers which have gone to court it must be emphasised that the issues here concern not only the *criteria* applied by the courts in deciding whether actions are legally justified or not but the issue of *standards of proof*. What is important to bear in mind is that the courts apply such criteria in terms of the standard of proof of "beyond a reasonable doubt" in criminal cases. On the other hand in civil cases where the standard of proof is somewhat lower, it is standard practise in many police agencies to settle, out of court, cases where they believe there is likely to be a finding against them, (whether they believe the police action was unlawful or not). However even in such cases part of the settlement involves an agreement that settlement of the matter does

not amount to an admission of any of the facts in question.¹³ Even if actions of alleged brutality are recorded in one way or another (which may not occur in many cases) a fundamental question arises as to the procedures and criteria to apply in deciding whether such actions amount to brutality or not.

Effectively therefore there is unlikely to be any single source of statistical information which directly records police brutality in a reliable way and all statistics may at best be used as "indicators" of police brutality. In addition however there may be basic questions about the reliability of the systems which are used to record the above types of incidents. In using official statistics therefore one primary question always relates to the basic reliability of the system in question. While it appears that ICD statistics are a reasonably reliable indicator as to the number of police action and custody deaths, there are major problems with other systems, particularly those for recording shooting incidents, and those which record criminal charges against SAPS members.¹⁴

b. Comparing rates between different countries and localities

If statistics on uses of force by the police, and particularly of police brutality, have such great limitations it would appear obvious that attempts at comparison between different jurisdictions and countries should be approached with enormous caution. Perhaps most significantly any jurisdiction with a more reliable system for recording information relating to the use of force by the police, and which records such information more consistently, will be prone to registering much higher "rates" of the particular behaviour being recorded.

Thus while it appears likely that the number of deaths as a result of police action and in police custody recorded in South Africa is relatively high by world standards it should also be borne in mind that the system for reporting such deaths to the ICD and the ICD's system for recording such deaths is relatively unique particularly in the developing world but even in relation to the United States where there is no centralised national system for recording deaths at the hands of the police.

What also needs to be borne in mind is that meaningful comparisons of differences in rates, for instance in the use of lethal force by police, may become more meaningful if they take into account other variables which may impact on the frequency with which such force is used. For instance in calculating rates of "deaths as a result of police action" it might be appropriate to calculate these relative to any one or more of the following on which data is available:¹⁵

- Number of police (possibly excluding those having primarily administrative or managerial responsibilities);
- Crime rates or calls for service;
- Rates of police-civilian encounters;
- Arrests;
- Potentially violent police-civilian encounters;
- Attacks on or killings of police;
- Characteristic suspect behaviour – it is arguable that if suspects perceive police to be constrained in their use of force they may be more likely to offer resistance thereby increasing the need for police to use greater force (however the converse

may also apply in that if suspects expect the police to use force even where they offer no resistance, suspects may be inclined to see force as a necessary form of self-defence);

- Population (entire, adult, "police client");¹⁶
- Presence of firearms or other weapons in the community.

However it should be borne in mind that even quantifiable variables such as the above might only give a partial representation of the true story. Thus one factor which may be likely to have a particularly strong impact on the number of incidents of use of force, and potentially incidents of alleged brutality which a particular police grouping is involved in is the units "workstyle". Thus an "active" police member, unit, or organisation who/which is involved in frequent encounters with suspects and other citizens might generate a far higher number of incidents of the use of force and potentially incidents of police brutality than one which is relatively inactive. However the latter member, unit or department might in fact use brutality more systematically. The question might therefore be asked as to which of the two departments, for instance, should be said to have a greater brutality problem?

Finally in using statistics to calculate the extent of a problem it should be borne in mind that different systems may effectively be measuring different aspects of the problems. Thus statistics may record the number of victims, events, charges or alleged perpetrators. However what might actually be most meaningful is to identify those police members who are involved in the use of force most frequently. Many police theorists consider this as potentially the most productive place to focus in identifying members who are prone to police brutality.¹⁷

c. Press reports as a source of information on police brutality

Finally it should be borne in mind that not only statistics but also the degree to which alleged incidents of brutality are reported on in the press or other media, and the degree to which the press may be regarded as a reliable source of information on such incidents, may depend not only on the relative prevalence of police brutality but also on a wide range of other factors including:

- The degree of censorship;
- Relationships between the media and the police – in particular journalists who cover "crime" related stories often depend on the police in order to be effective and thus may be reluctant to give too much attention to incidents of police brutality;
- News values in the media – whether a case is regarded as "newsworthy" may impact on whether it is reported or not. Thus police practises which are regarded as common-place or not cause for serious concern are unlikely to receive media attention.
- Public attitudes - where there is large scale public anger about crime, extensive press coverage of police brutality may lead to public anger against the press, and potentially to declining newspaper sales;
- The social class or status of the victim, as well as other factors such as race and gender or sexual orientation may also impact on whether particular types of incidents receive coverage or not;
- The degree to which the allegation is regarded as credible by the newspaper

concerned and the degree to which the newspaper is concerned to, and is able to, obtain verification of the incident or has another reason for regarding the report as reliable.

In particular it must always be borne in mind that press reports will be likely to focus on incidents which are regarded as the most shocking and thus sensational and thus focus on those incidents which are more serious in nature. While press reports are therefore not necessarily meaningful as an indicator of trends they may nevertheless provide accounts of particular incidents which in one way or another give meaningful incite as to the nature of police brutality.

4. Indicators and evidence regarding the extent and nature of police brutality in South Africa

a. Statistical indicators relating to the use of force and unlawful violent actions by the police.

Some the statistical indicators which are currently available relating to uses of force and unlawful violent actions by members of the SAPS are the following:

- During the three year period April 1997 – March 2000, 2174 people died as a result of police action or in police custody in South Africa. The number of people who died as a result of police action was 1548 while 626 people died in police custody.¹⁸ It should be noted that roughly 70% of the deaths (95% of the deaths as a result of police action and 12-16% of deaths in custody) are the result of the use of force by the police. However there is no clear evidence as to what proportion of these deaths may be the result of unlawful actions by the police and therefore what proportion may be said to be the result of police brutality.
- According to police statistics derived from shooting incidents reports (SIRs) covering incidents involving members of the SAPS over the three year period 1996 to 1998 in three South African provinces (the Western Cape, Eastern Cape and Free State) 358 people were killed by members of the SAPS while a further 1002 were wounded in shooting incidents.¹⁹ Using these figures it is possible to estimate that for every 10 people killed by the police in shooting incidents, roughly 28 are wounded (a ratio of 1:2.8). Applying this ratio to the figure of 1548 deaths as a result of police action (most of which are deaths in shooting incidents) it is possible to estimate that roughly 4332 people were injured in shooting incidents involving members of the SAPS during the three year period April 1997 – March 2000.
- Police Standing Order 251 indicates that the SIR must indicate whether, in the supervisor's opinion, the police action (shooting) was legal or not.²⁰ SAPS data on SIRs from the Western Cape, Eastern Cape and Free State between 1996 and 1998 indicate the following:²¹
 - Of 4754 shootings, 14% were evaluated as not legal in the SIRs.
 - Among fatal shootings, the proportion deemed to be not lawful increases dramatically to 41% (127 of 311 fatal incidents).
 - While 16% of on-duty fatal shootings (28 out of 178) were evaluated to be

not lawful, 74% of off-duty fatal shootings (99 out of 133) were deemed not lawful. This suggests that the problem of unlawful shootings is much greater where police use firearms off- duty and also potentially that off duty shootings tend to be evaluated more critically (perhaps because they are often not "occupational" in nature) than is the case with on duty-shootings.

- During the two year period April 1998 – March 1999 the ICD recorded 1051 cases of deaths as a result of police action, 468 cases of attempted murder and assault with intent to do grievous bodily harm, 128 cases of torture, and 736 cases of common assault. On the other hand according to statistics provided by the Minister of Safety and Security, during the four year period 1994- 1997, members of the SAPS faced 256 charges of murder, 125 charges of culpable homicide, 630 charges of attempted murder, 1119 charges of assault with intent to do grievous bodily harm, 3564 charges of common assault and 660 charges of point a firearm.
- For the four year period 1995 to 1998 the SAPS paid out roughly R50 316 000 in relation to approximately 1489 civil claims apparently relating to the use of force by SAPS members.²² This constituted more than 50% of the total of R97 372 paid out by the SAPS in civil claims and *ex gratia* payments during the period in question. Perhaps most telling in relation to these statistics is the fact that:

As soon as a civil claim is settled and the compensation paid out the state attorney has to determine whether the SAPS members whose actions were the subject of the claim should enjoy state protection (ESP) or forfeit it (FSP). The guidelines are set out in treasury instructions and address issues such as whether the person acted within his or her duties and acted in good faith (*bona fide*). If it is decided that the member acted outside of these standards he or she forfeits state protection and the state may exercise its right to recover the amount paid out from him or her. As is indicated ... in 96% of the cases of common assault and 98% of the shooting incidents for which the SAPS was held liable it was decided that the SAPS members concerned should enjoy state protection (ESP).²³

Taking into account the points made in section 3(a) above about the use of statistics as measures of police brutality it is also important to note, in relation to the statistics quoted here, that:

- ICD statistics on deaths as a result of police action and in custody do not measure police brutality. Many of these deaths are not the result of unlawful actions by the police. While these deaths are investigated by the ICD and not the SAPS there are very few convictions of police members in relation to these deaths. This is partly because many of the actions are lawful but also due to other factors of the kind outlined above. Even where there is evidence of unlawful police action there is unlikely to be a prosecution, and even less likely to be a conviction.
- Sources of statistical information on criminal charges against the police usually do not distinguish between cases of an occupational and those of a non-occupational nature. Furthermore most of these cases do not result in convictions either.

- Even where members of the SAPS indicate that a shooting may have been unlawful in a shooting incident report it is rare for such incidents to lead to the conviction of the police member involved.
- Sources of statistical information on civil claims against the police are also of limited use as an indicator of trends or patterns in police behaviour partly because of the potential variations in time between the incident and settlement of the claim. They are however in some ways interesting as an indicator regarding the response of police management to alleged brutality by police members, particularly in that, the indication appears to be that in the vast majority of cases the SAPS pays the claim on the individuals behalf, rather than holding the individual responsible, despite the implicit admission that there has been some wrong-doing.

Finally it should be noted that the existing systems only record information on four types of incidents (deaths as a result of police action and in police custody; shooting incidents; alleged criminal acts; civil claims) which relate to the use of force, and possible cases of brutality, involving SAPS members.

However it can be assumed that the bulk of uses of force by members of the SAPS do not result in deaths, criminal charges, or civil claims and do not involve the use of firearms and therefore are not recorded in existing systems of statistics.²⁴ Of these uses of force many (though not necessarily the majority) may be unlawful. Existing data systems therefore ultimately cannot be regarded as providing a reliable indication as to the extent of either the use of force by police, or of police brutality.

b. Some reported cases of alleged police brutality

While many cases of alleged or possible police brutality are recorded by the ICD and the SAPS the details of most of these incidents do not necessarily become public information. However some cases are reported on in reports produced by the ICD, or by other organisations such as Amnesty International or in reports in the press. A selection of cases of this kind (an exhaustive list, even of the relatively small number, of cases which have entered the public domain would be much longer) is presented in this section. These cases have been selected in order to attempt to illustrate some of the diverse forms that police brutality takes in South Africa.

As noted in section 3 it is often difficult to find conclusive evidence about whether a particular incident should be regarded as a case of police brutality or not, partly because there are often conflicting versions of events. While in some of the cases reported below people have been convicted or the evidence (such as video evidence) is conclusive, in many of the cases, even where the evidence of unlawful police violence is quite strong it is not conclusive. Many of the cases below therefore need to be recognised as alleged or possible cases of police brutality and cannot be taken to have been proven.

Case 1

On the 7th of November this year a video was shown on the South African television programme Special Assignment which horrified most of those who watched it. The video depicts an incident, which took place in January 1998 and which contains roughly 14

minutes of coverage of an incident which is believed to have taken place over as much as an hour. The video showed members of the North East Rand Dog Unit involved in setting their dogs on three Mozambican illegal immigrants in what was characterized as a type of "training" exercise. The savaging by the dogs is combined with racial abuse of and physical assaults on the three immigrants by the dog unit members. In the words of the Star the video showed scenes of

six policemen setting their dogs on three suspected illegal immigrants, and assaulting their hapless, screaming victims on a mine dump near Springs on the East Rand. .. The victims pleaded for their lives with the policemen, who hurled racial abuse at the men as they punched, kicked and slapped them. The officers stamped on the men's necks and faces as the animals tore into their flesh. In one piece it appeared that a piece of a dog's tooth had come loose and was embedded in the flesh of one of the victims. Two Alsatians, which were joined by another large dog, which appeared to be a cross breed, attacked the men with such ferocity and strength that they were able to lift one of the men up in their jaws from his crouching position in the veld. The dogs were also able to drag the men along the ground. When the animals were finally called off, the police officers lined up the three injured men and assaulted them further. One of the officers asked a victim: "Is jy 'n kaffir? Is jy 'n kaffir" (Are you a kaffir? Are you a kaffir?). The man was then hit across the side of his head [and] then punched to to the ground and stamped on the face. Other officers were heard laughing in the background. Before the men were kicked again and then bundled into a minibus with the dogs that had mauled them, one of the policemen threw stones at the men, and another pulled his weapon from his holster [and pointed it at the men]; but did not fire.²⁵

Prior to the screening of the video six white members of the North East Rand Dog unit, Inspectors Christo Koch (32) and Eugene Truter (28) and Sergeants Kobus Smith (31), Dino Guitto (27), Robert Henzen (32) and Nicolaas Laubser (27) were arrested. Special Assignment identified the two police who led the assault as Sergeant Smith and Inspector Koch.²⁶ The policemen, who have been suspended without pay, appeared in court on November 10 and were finally released on bail of R2000 each on 22 November.²⁷

The three victims Gilbert and Alexander Ntimane and Sylvester Khosa contacted police in the week in which the video was shown and were placed in a witness protection programme.²⁸ Against a background of widespread public anger and condemnation of the incident by the Cabinet,²⁹ the National Commissioner of the SAPS, The minister of Safety and Security, various political parties,³⁰ newspaper editorials, NGOs and the Mozambican government the [Independent Complaints Directorate](#) (ICD) also announced that it was investigating a total of 22 other allegations of incidents of police brutality involving the use of police dogs.³¹

Case 2

Hout Bay police officer, Andre Ferreira, was arrested after he allegedly shot dead suspected robber Dumisane Zwane on 11 May 1999 while he was lying injured on the ground. Ferreira was one of four policemen who responded to a call to apprehend the heist suspects

who had stolen R1million in pension payouts. Testifying at the bail hearing, ICD investigator Gavin Meyer said that a statement alleged Ferreira had shot Zwane six times after he had fallen on his back. It is alleged that Ferreira fired several shots at Zwane as he lay on the ground. After returning to his vehicle, he went back to Zwane and fired more shots at him. Two of the suspects were apprehended by the police while Zwane attempted to flee.

The DPP ordered the officer, who had been released on bail of R1000 to be prosecuted for murder and defeating the ends of justice. Two other officer police members, Christopher Wesso and Stephen Vermeulen were also charged as accessories with an alternative charge of defeating the ends of justice or obstructing the course of justice. In August 2000 Ferreira failed to attend court for trial as he allegedly was "under psychiatric treatment for stress and depressive illness".³²

Case 3

Andries Ndou was shot and killed by two white police officers, aged 33 and 34, in the Messina area in Northern Province on 27 April 2000.³³ According to a press report a post mortem revealed that Ndou had a bullet wound in the back of his head and two bullet wounds in his shoulders after he was allegedly shot at close range by the police officers. ICD Northern Province director Thobeka Jozi said the two accused officers had told investigators they had fired a warning shot before shooting and killing Ndou, who was handcuffed at the time of his death. Jozi said a lack of witnesses had severely hampered the investigation Some black police officers had however alleged that their colleagues had killed the suspect to avenge the recent murder of a white farmer, Hannes Aldem, and the wounding of his wife. The white officers had allegedly prevented black colleagues from accompanying the suspect. Ndou had expressed a willingness to lead the police investigators to the crime scene, if he was accompanied by black officers, but his request was turned down. According to one of the sources quoted Ndou was taken by the two white policemen to point out where the murder weapon was hidden while according to another source Ndou was taken to the scene by six white officers from the local murder and robbery unit, dog unit and crime prevention unit.³⁴

The ICD has been involved in investigating the case and it is expected that a formal inquest will be held.³⁵

Case 4

On the 16 May 2000, a second year student Michael Makhabane, was shot dead by the Durban Public Order Police Unit on the campus of the University of Durban Westville during protest action regarding the deregistration of 540 students who had not paid university registration fees. The bullet that killed the student was fired by a member of the Durban Public Order Police unit who was using live ammunition. According to a report in a Durban newspaper "UDW staff members said that police had fired on students as they were running away, that students had pleaded with the police not to shoot".³⁶

Case 5

On Sunday 30 July 2000, Bheki Mkhize (40), an ANC Member of Parliament was shot dead by members of the Ulundi Public Order Policing (POP) unit. Mkhize was shot in the head with an R5 rifle during a police search for illegal weapons in the area. Thirteen members of the unit were busy searching for weapons in the area when they allegedly received a tip-off that there were weapons at Mkhize's home.³⁷

According to the police inspector who allegedly fired the fatal shot, Mkhize tried to grab his firearm during a scuffle.³⁸ According to Prince Zebon Zulu, Mkhize's wife said that the police had demanded to see Mkhize. When he emerged from his bedroom, he pleaded with the police to talk instead of being violent, but they didn't listen and instead dragged him outside. Mkhize fell on the stairway as he was being dragged outside by the police. They then beat him although he had his hands high indicating that he was not fighting with them.³⁹ According to ICD executive director Karen McKenzie, Mkhize was kicked and was on the ground in a semi-seated position and was being held by two police members. He managed to free his right hand, and was protecting his face with his hand from a rifle that was being placed in his face. This was when he was shot with a single shot which entered his right hand and went through his left nostril lodged at the base of his skull.⁴⁰

The investigation was conducted by the ICD assisted by a senior SAPS detective and forensic expert.⁴¹ The investigation revealed that the POP members had tampered with the crime scene.

Those who have been charged include Inspector Samson Buthelezi who allegedly fired the fatal shot, and Bafana Magwaza who allegedly held Mkhize while he was shot. Capt Zebon Dlamini, charged with defeating the ends of justice, had tried to plant an AK-47, confiscated from another home during the police search, at Mkhize's house. Dlamini also removed Mkhize's hand-gun from the scene and returned it later with an empty cartridge. Buthelezi was granted bail of R2000 while his two co-accused were given bail of R1000 each.⁴² A fourth suspect, reported to have gone into hiding,⁴³ has also been arrested and charged and is out on bail.⁴⁴ The killing gave rise to accusations of "police assassinations" and "hit squad activities" but KwaZulu-Natal provincial safety and security MEC warned that these statements were reckless and could increase tension in an area where political violence had already claimed many lives.⁴⁵

Case 6

Thami Zulu was killed by members of the SAPS on 2 April 1998 in Tsakane in Gauteng province. According to a friend of his, Simon Tshowa, Zulu was watching football with him on television. Zulu left his house between 9.30 and 10 in a Cressida. Eddie Maseko who lives nearby had also briefly visited Simon Tshowa at about 8 and saw Zulu arriving there. Eddie Maseko then went to his home in Khumalo St which is the next parallel street to where Simon Tshowa lives.

Some time after returning home Eddie Maseko saw a minibus dropping some passengers across the road in Khumalo st. Two hijackers appeared and some shots were fired (one

person was injured). The hijackers then sped off in the mini-bus. A number of people gathered in the street. Efforts were made to call an ambulance and the police. No ambulance arrived but after a while a police van arrived accompanied by a Brakpan taxi association patrol car.

Some of the people gathered in the street mentioned that a Cressida had been connected to the hijacking. The block in Khumalo st where the hijacking occurred is bordered by Matse st on the one end and Madonsela st on the other. According to Eddie Maseko, Zulu (who had apparently just left Simon Tshowa's home) came driving down Matse st and then about 5 minutes later down Madonsela St.

At the prompting of some of the people gathered on Khumalo st the police then chased after Thami Zulu in the Cressida. Soon after there were gunshots. Eddie Maseko ran through some houses towards the shooting, Thami Zulu staggered out the car shouting to the police "What have I done my brother?". He died soon thereafter.

According to an ICD investigator the police version is that Zulu sped away in his car. An attorney representing the family also says that the police claim that Zulu was accompanied by another person in the car and that this person fired a number of shots at the police and then fled from the car. However according to Eddie Maseko TZ was not driving quickly. Furthermore no firearm was found in the car with Zulu.⁴⁶

The ICD states that it had been monitoring the investigation conducted by the SAPS.⁴⁷ A formal inquest is to be held and is currently scheduled for February 2001.

Case 7

The ICD is investigating the death of Nkhagweni Mundalamo (15) who was allegedly shot by police in Khuhvi in the Northern Province on 15 June 2000. The incident occurred at a shebeen in Khuhvi in Thohoyandou, where police were responding to an armed robbery complaint from a taxi owner who indicated that suspects were seen at Benjie's shebeen. A young boy who was not a suspect was shot dead, allegedly by the police. One suspect was also arrested in the process. The investigation is continuing.⁴⁸

Case 8

In this incident, 2 members of the Pretoria Dog Unit were charged with murder after the fatal shooting of Mr BJ Booysen when they responded to a housebreaking call. It subsequently turned out that it was Mr Booysen who had in fact summoned the police to the scene. The ICD took charge of the investigation, and after finalisation thereof handed the case docket to the DPP. The DPP agreed with the findings of the ICD investigation and ordered the prosecution of the 2 members on charges of murder in the Pretoria High Court. On 4 September 2000 one of the accused was acquitted, but the other was found guilty of culpable homicide.⁴⁹

Case 9

On 27 June 2000 Sgt. C.C. Martin was found guilty of murder and sentenced to 18 months'

correctional supervision with a further 18 months suspended for five years in the Cape Town Regional Court. On 23 August 1997 Sgt Martin was with his wife, when the deceased grabbed Mrs Martin's handbag and ran away. Sgt Martin shot at the fleeing suspect. The deceased was fatally wounded on the back of his head.⁵⁰

Case 10

On 24 February 2000, Sgt. Neo Christopher Athibeng was sentenced to life imprisonment in the Mmabatho High Court after being found guilty of the murder of Julias Modise in a trial before Mr Justice Nkabinde. The incident occurred at the Motimalenyora High Tavern in Ganyesa in the North West Province on 3 February 1999, where the two started a quarrel which ended with Sgt. Athibeng fatally shooting Modise twice with his service firearm.⁵¹

Case 11

Moses Ngubeni (21) and three of his friends were arrested by Soweto police officers and taken into custody at the Jabulani police station in July 1998. According to police representative Superintendent Govindsamy Mariemuthoo the four youths tried to escape from their cells at the station. The youths grabbed a police officer's revolver. In the ensuing struggle two policemen were critically wounded and Moses Ngubeni killed. However according to Matthews Ngubeni, the father of the deceased, who along with his wife identified the body. Moses Ngubeni had been shot five times, including shots in the forehead, chin and leg. His fingers and toes were severely cut and bruised Matthews Ngubeni believed are signs of torture.⁵²

Case 12

In this incident, the deceased, Gert Baardman, was arrested for trespassing and stock-theft on 15 July 2000 and detained at Fraserburg Police Station in the Northern Cape. On 16 July 2000 he was found hanging in his cell. A post-mortem conducted on 21 July 2000 revealed that the deceased had sustained multiple injuries prior to his death, but according to the doctor, who conducted the post-mortem, those injuries were not the cause of death. The investigation into the death of Mr Baardman by the ICD is still continuing.⁵³

According to a press report one of the problems which has faced the ICD during the course of their investigation has been that the police involved in Baardman's arrest have refused to give statements to ICD investigators. Apparently when the family were informed about the death and went to the police station to inquire about a death certificate they were allegedly told that they had to bury their son immediately. Baardman's parents said they believed they were forced to rush the burial in a bid to destroy evidence. They claim they saw a gash at the back of his head, which was allegedly not revealed by the post mortem. The family said they were threatened with arrest if they did not go through with the burial.⁵⁴

Case 13

According to an ICD report "the incident occurred on 2 July 1999 at Steelpoort Diesel Garage, Burgersfort in Mpumalanga Province. A SAPS Inspector, together with 5 civilians, allegedly handcuffed the deceased, Mr Benjamin Mabelane, to a steel door and tortured

him with a welding machine on his genitals. Mr Mabelane died of his injuries. Another victim, who managed to survive, was also allegedly tortured and assaulted. The ICD took over the investigation of this matter and arrested all 6 suspects. After finalisation of the investigation, the docket was handed over to the Director of Public Prosecutions (DPP) with a recommendation that 3 of the suspects be charged with murder and attempted murder and the remaining 3 with defeating the ends of justice. The DPP accepted our recommendation and instituted criminal proceedings against all accused. The case was recently finalised in Lydenburg Magistrates court. The SAPS member involved, as well as 3 other accused were found not guilty and acquitted. The remaining 2 accused were sentenced to 4 and 5 years imprisonment respectively. The ICD has further recommended that disciplinary proceedings be instituted against the SAPS member."⁵⁵

Case 14

This incident occurred in Barkly East, Eastern Cape, on 10 April 2000, when SAPS members arrested 6 youths who had allegedly committed a burglary and culminated in the death of one of the boys Sipiwe Zide (16). According to ICD Eastern Cape Director, Alfredeen Jenneker, the one sergeant involved saw a boy suspected of housebreaking and arrested him. "The sergeant and two colleagues then arrested two more boys and assaulted them. They then arrested a further two boys and took all five to a dam, pointed a gun at them and forced them to hold their heads underwater. They then threw stones at the boys while they were in the water. After taking them out, they arrested a sixth youth, and took all six to a farmhouse and allegedly forced them to break in After the break-in, the policemen allegedly bundled four of the boys into the back of the van. The one driving the van tied Sipiwe's arm to the driver's side with rope while another one tied the second boy to the passenger's side, and forced them to run alongside the moving bakkie. While they were running, Sipiwe's rope broke and the driver stopped the van. He then held the boy's arm as he ran alongside the moving vehicle. The boy eventually got tired and fell, and the bakkie ran over Sipiwe's head. The vehicle also ran over the second 15 year old boy's leg, fracturing it."⁵⁶

Following investigation by the ICD, the DPP accepted the recommendation of the ICD and decided that all the members be prosecuted on charges of culpable homicide, assault with intent to do grievous bodily harm, theft and attempting to defeat the ends of justice. The members appeared in the Barkly East Regional Court on 7 September 2000⁵⁷ and again at the the Elliot Regional Court on 17 October 2000⁵⁸ and have been suspended without pay.⁵⁹ The members involved have not been named but are identified as a white sergeant and two black constables in one report.⁶⁰

Case 15

In August 1999 police at Bayview station in Durban arrested and severely assaulted four teenage boys in connection with a robbery. One died within 24 hours of his arrest. The police allegedly hit them with broom handles and kicked and punched them in the station parking lot, before transferring them to Chatsworth police station where they were locked in a freezing, filthy cell. Although the detainees pleaded for medical treatment, the police allegedly refused.⁶¹

Case 16

The case of Zweli Kenneth Ndlozi is detailed in a report by Amnesty International. According to the SAPS Zweli Kenneth Ndlozi was found hanging in a cell at Germiston police station on 7 September 1998. Prior to his death 22-year-old Ndlozi had been a member of the SANDF from Dunnotar military base, Benoni.

On the night of 5-6 September SANDF Military Police officers came to Ndlozi's home in Meadowlands Soweto and assaulted him severely in the presence of eye-witnesses. They accused him of involvement in the theft of firearms. They searched the house and also dug up the yard, apparently looking for weapons, but found nothing. They then left, taking Ndlozi with them. His family went to police stations and prisons looking for him but could not find him. On 8 September his family received a call from a member of the SAPS who told them that Ndlozi had been found dead in a cell at Germiston police station, hanging by a nylon cord around his neck. According to the information provided to the pathologists by the police, he was found dead at 16h49 on 7 September 1998.

According to the family they were asked to go to the station to identify the body. At that stage the family realized that a post-mortem examination had already been conducted but refused to take the body for burial until an independent examination was done. Prompted by a request from Amnesty International and with the family's permission, the Independent Medico-Legal Unit (IMLU) based in Durban arranged for an independent forensic pathologist to conduct a second post-mortem.

This examination took place on 16 September. The resulting report documented numerous abrasions on Zweli Kenneth Ndlozi's legs, feet, ankles, arms, hands, shoulders, back, chest and head, as well as lesions due to thermal injury, probably caused by cigarette burns. Forensic tests indicated that these injuries were recent and possibly inflicted close to the time of death. The report also noted a deep bruise on the front of the scalp accompanied by haemorrhaging of the brain tissue, though the skull was not fractured. The forensic pathologist found the cause of death to be "Consistent with hanging -torture not excluded." Although the first post-mortem report noted that a red and white nylon cord was around the neck of the deceased, this cord was not with the body when the second post-mortem was performed.

There are indications that the Military Police may have handed over Zweli Kenneth Ndlozi to a specialist SAPS unit, the East Rand Firearms Unit and that members of this unit eventually took him to Germiston police station. When he was booked in at the police station no record appears to have been made of his physical or mental condition and no record appears to exist that he was medically examined. Under the police regulations then in force, this responsibility lay at the discretion of the officer in charge at the time when the prisoner was booked in to the police station.

According to a press report, Zweli Kenneth Ndlozi was taken to Germiston magistrate's court on Monday 7 September but enquiries made by Amnesty International revealed no information about any charges which may have been laid against him in court before he was returned to his cell.

Until early April 1999, the detective branch of Germiston police station were in charge of

the inquiry into the prisoner's death. By early April 1999 no-one had been charged in connection with his death nor had an inquest been held into the surrounding circumstances and cause of his death. However, in mid-April the ICD took over responsibility for the investigation from the Germiston police.⁶²

Case 17

In October [1999] government lawyers conceded that Brixton Murder and Robbery Unit members had tortured 54-year-old Lucy Themba and 24-year-old Charlotte Pharamela in June 1996. Both women, who were being interrogated about the whereabouts of Lucy Themba's son, had been assaulted during arrest and subjected to electric shocks and suffocation torture while tied by their arms and legs to chairs.⁶³

Case 18

Shaheed Cajee was arrested in October [1999] in connection with possession of stolen goods and was allegedly subjected to electric shocks and smothered with a wet bag while tied naked and blindfolded to a chair at Brixton Murder and Robbery Unit headquarters. He signed a statement under duress and was transferred to Diepkloof prison pending his trial.⁶⁴

Case 19

At least 16 cases of assault are now being investigated against the police and soldiers in the Ixopo area (and the surrounding areas of Creighton, Donnybrook and Highflats) in the KwaZulu-Ntal midlands. Some of these cases are documented in a report provided to the author by Cheryl Goodenough. Members of the Ixopo Community Watch (ICW) are implicated in many of the cases.⁶⁵ Some of the incidents allegedly involve ICW as well as SANDF commando members. These include:

- An incident on 30 May 2000 where men claiming to be police and army members searched the home of the Zulu family at eHlani. According to violence monitor Mary de Haas other houses were also searched that night, and some men were beaten and have opened cases at the local station.
- During a three week operation an SADF unit beat and terrorised locals in a number of different incidents. In one early morning incident they demanded of one of the local residents that he hand over an AK47. They then dragged him outside, beat him and kicked him, and put a rubber tyre tube over his face. The soldiers subsequently assaulted the same individual on two other occasions. On the third occasion they tied his hands behind his back and put his head into a bag filled with water.
- The case of Basil Jaca who died on July 2 2000, the day after he was allegedly assaulted during a raid. The assault included having a rifle inserted in his anus. After the assault Jaca's wife, who was kept outside the house during the assault, found him bleeding from his motuh and anus. Six members of the SANDF and Ixopo resident John Arkley, a police reservist and ICW employee were arrested after the attack.
- The case of Gqomoza Mbhele who died on September 5 2000 after allegedly being assaulted by a police reservist employed by the ICW. Police claimed that Mbhele and others had intervened in an attempt to prevent the arrest of a housebreaking

suspect who was being put into a police vehicle and that Mbhele had a fit, fell and hit his head.⁶⁶

Case 20

This case relates to two incidents which were captured on a video which was first shown on the BBC's *Newsnight* on the 19th of April 1999. The video was filmed by a BBC camera crew in early 1999 and showed two incidents, which allegedly occurred on January 15 and 24 in which members of the Johannesburg Flying Squad were involved in brutality against alleged hijackers following vehicle chases. In the first incident, after the alleged hijackers are arrested and are lying handcuffed on the ground they are punched and kicked and a police dog is set on one of them. One of them is also taken into some thick grass and a lighted cigarette is stubbed out on his head. In the second incident the vehicle in which two hijackers were fleeing had crashed. After pulling the semi conscious hijackers from the car, one of the alleged hijackers is hit in the stomach and on the head with a rifle butt. According to the BBC camera crew the two hijackers were left on the roadside for several hours before an ambulance arrived to fetch them.⁶⁷ One of the hijackers, Sebastian Lewis died in hospital a few days after the incident as a result of head injuries sustained in the crash. The other suspect arrested in the latter incident, Frans Mudau, was sentenced to 15 years imprisonment for his involvement in the vehicle hijacking.⁶⁸ However the persons assaulted in the first incident were not charged.⁶⁹

Press reports immediately after the incident announced that six members of the Johannesburg SAPS Flying Squad had been suspended without pay.⁷⁰ After an investigation conducted by the ICD, the Director of Public Prosecutions (DPP) eventually decided to prosecute two Flying Squad members Inspector Johannes Rautenbach (29) and Sgt. Daniel Liebenberg (26). Rautenbach was found guilty on 2 counts of common assault and was fined R2 000.00 on each count or 6 months' imprisonment with a further 6 months suspended for 5 years. Liebenberg was convicted on one count of assault with intent to cause grievous bodily harm and was sentenced to a fine of R6 000.00 or 12 months imprisonment with a further 18 months suspended for 5 years. Following on from recommendations made to the ICD, SAPS have agreed to institute disciplinary proceedings against the members concerned.⁷¹

Case 21

A senior police officer in Northern Province was arrested in December 1999 for allegedly raping a female prisoner awaiting trial at Phalaborwa Police Station at the weekend. The 36-year old inspector was arrested after an identification parade took place at the station. According to the Provincial police spokesperson Motlafela Mojapelo the officer is alleged to have come to the station at the break of day and offered to help the woman make a crucial telephone call to her home. When the woman was to return to the cell, the police inspector allegedly grabbed and dragged her into a kitchen where he allegedly raped her. He said the woman had been arrested for shoplifting in Phalaborwa. According to the report another police inspector attached to another Northern Province Police station was arrested in October 1999 for allegedly taking part in a robbery that culminated in the murder of three people and rape of a woman who was later killed. A police sergeant was also suspended from duty for allegedly raping a woman who had come to lay charges at

Sekgosese Police Station, while another sergeant was dismissed at the same station for raping the wife of a suspect.⁷²

Case 22

The case concerns journalist Thabo Mabaso, who lost the sight in his left eye as a result of an assault on him by SAPS members at the Gugulethu Police Station. The incident occurred after Mabaso, two friends, a taxi driver and a witness went to report a minor car accident on 27 June 1998. Mabaso was allegedly assaulted by the police after an argument.⁷³ He was allegedly carried to the parking lot at the back of the police station where he was kicked and beaten by several policemen. After the attack Mabaso spent the night in police cells, bleeding and without medical attention. Doctors were eventually forced to remove his left eye.⁷⁴

The DPP accepted the recommendation of the ICD and decided to prosecute nine police members on charges of assault with intent to do grievous bodily harm and defeating the ends of justice. On 30 August 2000 three police officers were found guilty of assault with intent to do grievous bodily harm while the other six were acquitted. Sergeant M A Duda and Sergeant L Mlondleni were both sentenced to five years' imprisonment with two years suspended for five years while Sergeant T Ginyigazi was sentenced to three years' imprisonment with 18 months suspended for five years.⁷⁵

Case 23

A police officer from Brixton police station verbally abused, assaulted and unlawfully detained Dr Frank Nyame, a Ghanaian research scientist, claiming that he was an "illegal immigrant". On 18 April [1999] Dr Nyame was accosted in the street by two white men in plain clothes, one of whom demanded to see his immigration papers and attempted to force him into a nearby police vehicle. When he later complained at Brixton police station, one of the two men, now in police uniform, told him he was under arrest and knocked him unconscious. After he had recovered consciousness he was locked in a cell and, despite repeated requests to see a doctor, was given no medical treatment. He was released after some hours.⁷⁶

Case 24

A report in the Star of September 8 1999 documented a number of alleged acts of brutality by the police against illegal immigrants. These included:

- Paulina Cossa (24), a Mozambican citizen granted permanent residence in South Africa, said she and her brother Sergio Cossa (20) went to fetch water in Bekkersdal on August 8 when police approached them. Pauline said "my brother ran because he was illegal. Three policemen caught him and beat him until he fell down and died on the spot".
- Illegal immigrant Sergio Machava (22) was arrested by police, held at Lindela Repatriation Camp outside Krugerdorp and loaded onto a train for deportation on August 25. He said "We were hit by belts by the policemen. They then asked if those with money did not want to be taken to the border. Some agreed and paid over

R100 and they were released". Machava said that police on the train started searching the people, robbing those who had money. He said those who were robbed were then told to jump from the train which was moving at speed, and those who were reluctant or scared were simply thrown off. "I had R250 hidden in my collar. They took it and pushed me off the train. I hit my head and face and I was coughing blood" he said.⁷⁷

Case 25

An Angolan Rastafarian "Zion" (he asked the journalist to withhold his real name) said that he was selling tickets at a restaurant in Rosettenville, one of the southern suburbs of Johannesburg, when a fight broke out. The police arrived and sorted out the problem and left but then two other police vehicles arrived. According to Zion "I was talking to someone when one of the policemen asked me where my documents were. Someone else was talking to me, so I turned my back on the policeman when then jumped from his car and grabbed me by my shirt and threw me in their car. Zion said the uniformed policemen drove him to a secluded place and a white policeman started to punch and kick him. "I was afraid to move. I knew I was innocent, so it would be unwise to run away. But the white policeman kept telling me he was going to kill me". Zion said he sat in the car as they drove around, stopping twice to beat up people in cars. .. Eventually one policeman asked Zion if he wanted to get out of the car alive or dead. Zion said "it depends on you" but also asked the police to please leave him in peace. They told me not to beg, but to give them money. All I had was R40 and I gave it to them, he said. They eventually dropped him off at the restaurant, where he managed to take down the car's registration number. He then went home to fetch his girlfriend. They went to report the incident to the police. According to his girlfriend, "we went to the Booyens police station, where we got a chilly reception. They looked at us in horror as if to say how dare we report such a thing. They gave us medical papers and said they would not talk to us until we had been to the doctor. We went to the nearby hospital but, after waiting a while, we decided it was not worth waiting because the police would not do anything anyway".⁷⁸

Case 26

In February [1999], in the Johannesburg area of Townsvlew, members of a security firm, BBR, beat and kicked 19-year-old Archie Ngubalane, whom they had handcuffed to a railing and accused of an attempted stabbing. They threatened to shoot a relative who tried to intervene. Police failed to arrest the BBR members for assault, but arrested Archie Ngubalane and detained him at Booyens police station, where he was denied proper medical care. He was subsequently charged with attempted murder, denied bail and transferred to Diepkloof Prison, where he was again denied proper medical care, including for epilepsy. He was released on bail in August and acquitted of the charge in September. No progress had been made in the police investigation of his complaint against BBR for assault.⁷⁹

Case 27

A policeman, Mr Thabo Khobotlo, was arrested on the weekend of December 9/10 2000 after he allegedly killed four people as well as wounding an 18 month old baby. He is alleged to have shot dead his pregnant former wife, Hazel, and the parents and sister of her

new lover, Samuel, Rebecca and Ingrid Mgangane. Neighbours told the Sowetan that Khobotlo and his wife were no longer involved. Apparently Khobotlo was told that her proposed future in-laws were going to open negotiations about marriage plans and "went to their house and found her with her future in-laws".⁸⁰

Case 28

The Sowetan of 20 December 2000 reported three separate incidents, all of which apparently happened on December 19, of policemen who committed suicide after shooting their lovers. One of the women died while the other two were taken to hospital in a critical condition with head injuries. The incidents were:

- Inspector Johnson Buys (28), who was stationed at Galeshewe near Kimberly in the Northern Cape, killed his girlfriend Milicent Matobe before killing himself.
- Inspector Edmund Sekatane (33) of the Protea Crime Intelligence unit in Soweto wounded his lover Nthabiseng Sekhute and later shot himself in the head. The couple were apparently experiencing problems after Sekhute opened an assault case against her lover earlier in December.
- In Secunda in Mpumalana province Sergeant MC Mfusi shot and injured a colleague, Constable CN Sukazi, before committing suicide.⁸¹

Case 29

A police commander at Jericho in North West has been arrested and suspended without pay for allegedly raping a female awaiting-trial prisoner who was held at the local police cells last week. Police spokeswoman Inspector Erica Roos said yesterday the 44-year old inspector was arrested on December 13 for allegedly repeatedly raping the prisoner at the storeroom at Jericho police station. She was being held for alleged theft. The inspector, a community service centre commander, who was in charge of the overall shift on December 12, allegedly fetched the 30-year-old prisoner from the police cells. He allegedly raped her at the storeroom and later took her back to her cell," Roos said. She said he allegedly went back to fetch the prisoner in the early hours and again raped her before returning her to her cell. The prisoner reported the incident to policemen who reported for their shift the next morning, Roos said. The inspector, who has been in the police force for 15 years, was then arrested. He is expected to appear in the Garankuwa Magistrate's court soon".⁸²

c. Some aspects of police brutality in South Africa

Of the cases listed, 12 took place in 2000, 9 took place in 1999, 6 took place in 1998 and 1 took place in 1996.⁸³

The roughly 2 dozen deaths referred to in the above list of cases represent roughly 1 percent of the total number of recorded deaths as a result of police action and in police custody in the last four years in South Africa.⁸⁴ While we may assume that many (even the majority) of the overall number of deaths are not caused by unlawful actions by the police it is nevertheless possible that the number of deaths caused by police brutality in South Africa in the recent period includes many which are not listed here. Amongst the deaths listed in the cases above are:

- Apparent execution type killings in custody (Case 3) and at the point of arrest (Case 2) – in these cases criminal suspects appear to have been killed as a form of "punishment" in circumstances where they posed no threat to life and where the use of force appears no longer to have been necessary to secure their arrest,⁸⁵
- Deaths apparently linked to torture or other assaults in custody (cases 11, 12, 13, 14, 15, 16) and outside of custody (case 24)
- Other deaths related to apparently unjustified, reckless or accidental shootings (Cases 6, 7, 8, 9) including killings during demonstrations (case 4)
- Killings relating to arguments and domestic disputes (Cases 10, 27 and 28).
- Off duty killings of criminal suspects involved in petty offences (Case 9).
- Other deaths linked to assaults of persons not in custody (Case 19).

Amongst the incidents which are non-fatal in nature are:

- Other instances of torture (Cases 17 and 18) including the use of police dogs for this purpose (Case 1)
- Non-fatal assaults of persons at point of arrest or otherwise outside of custody (Case 20)
- Case of rape⁸⁶ (Case 21 and 29) and other assaults of persons in custody (Case 23, Case 24, Case 25, Case 26) and reporting cases to the police (Case 22).

It should be noted that the cases include some which occurred off-duty and which are not related to the performance of a policing function (Cases 10, 27 and 28)⁸⁷ which in terms of our definition do not strictly qualify as cases of police brutality but which nevertheless have been included here due to the fact that such "non-occupational violence" appears to constitute an important part of the problem of violence by members of police services in South Africa.

It should also be noted that the cases listed are in some ways fairly unique in that, in a relatively high proportion of the cases listed, some form of action in the form of arrest, prosecution and even conviction, has been taken. In this respect the cases break down as follows

- In four cases (19, 21, 27, 29) there is at least an indication that the SAPS (or other organisations) members allegedly involved have been arrested.
- In another four cases (1,2,5, 4) the information provided indicates that prosecutions have been instituted.
- In five cases (8, 9, 10, 20, 22) it is indicated that convictions were obtained against SAPS members.⁸⁸
- In two cases (3,6) involving the deaths of a person formal inquests are being held.
- In three cases (7, 12, 16) it is stated that the investigation is continuing while in one case (26) it is stated that "no progress" has been made with the investigation;
- In a number of cases (4, 11, 15, 17, 18, 23, 24) it is not clear what steps have or are being taken while in one cases (25) it is specifically stated that nothing is being done partly as the victim was discouraged from reporting the case by the attitude of the police and obstructed from doing so by being told that he first had to obtain a medical certificate.
- In one case (28) the three different perpetrators all committed suicide and therefore

it is not possible to hold them responsible.

In relation to the five cases where it is stated that convictions were obtained the police members were sentenced to jail sentence in two (10, 22) and to non-custodial sentences in two cases (9, 20) while in one case (8) it is not stated what form the sentence actually took. In one other case (17) it is stated that government lawyers conceded that torture had occurred and therefore presumably this case has resulted in a successful civil claim though it is not clear whether it has also led to any type of criminal prosecution or, as with all the other cases listed where the members have not been sentenced to terms of imprisonment, (SAPS members face automatic dismissal when they are sentenced to a term of imprisonment), whether any disciplinary proceedings have been instituted against the members involved, and the outcome of such disciplinary proceedings.

It must be emphasised therefore that these cases, while they may suggest something about the nature of police brutality in South Africa are not representative of police brutality cases, particularly in that, in a relatively high proportion of the cases listed arrests have been made, prosecutions have been instituted, or convictions have even been obtained.

As shown "police brutality" in South Africa is not restricted to the main formal police agency, the [South African Police Service](#), but also involves other agencies involved in performing a policing function including, the SANDF, private security agencies and community based structures such as the Creighton Community Watch. However, even where it is other structures that are involved in brutality it often appears that these structures operate in cooperation with the SAPS and that SAPS members may be unlikely to intervene or take appropriate investigative action (as is the case in terms of case 26) when such brutality comes to their attention.

It should also be noted that, considering the degree to which the police in South Africa were used in the past for political purposes the cases listed in particular do not provide much evidence of the police being used for political purposes or that the police are politically motivated in terms of their actions. One aspect of this is that there have been what seems to be a relatively small number of killings during demonstrations in South Africa in the period since 1994 and particularly in the last few years reflecting positively on the measures taken to improve public order policing in South Africa.⁸⁹

One case which many assumed to be politically motivated was the killing of Bheki Mkhize, an ANC member of parliament by the Ulundi Public Order Police (POP) Unit.⁹⁰ However the facts that have emerged thus far have not clearly indicated what the motive for the killing was and whether this was in any way political in nature.

In the case involving the Ixopo Community Watch, on the other hand there is some evidence that those who have been targeted have been people who, at least at one point, have been linked to the ANC. However it appears that in some ways the major motivation for the actions of the ICW has been the killings of farmers which occurred in the area, and the targeting of persons who are supposedly ANC aligned may reflect a perception that they are behind the farm killings partly based on a suspicion that those conducting the killings are using weapons which they acquired in the times of political conflict. Thus in these cases perceptions relating to particular political groupings appear to influence the form of

brutality but this is different from saying that brutality forms part of police conduct which is essentially politically motivated.⁹¹

This is not to say that members of the SAPS are no longer ever involved in brutality which is politically motivated. It is likely that some elements within the police service continue to strongly identify with particular political parties or concerns. However it appears that the primary motives for police brutality resemble those which motivate police brutality in other countries where the police are not primarily engaged in suppressing political opponents.⁹²

d. The profile of victims and perpetrators in terms of race and other factors.

South Africa is a society which only very recently has emerged from apartheid rule which itself was predated by many centuries of racial-colonial domination of black people by whites. Within South African society therefore race and racism continue to be powerful influences. Thus it is not surprising that six of the incidents listed (1, 2, 3, 4, 20 and 25) point to the involvement of white police officers in acts of brutality against black persons.⁹³

However this statement itself points to some of the complexities involved in analysing issues of race or racism and brutality in South Africa. Thus while in so far as there are clues to the racial identity of the victims, these appear to be virtually exclusively black (in case 8 the victim's name is apparently that of a white person. It is assumed that the victim in case 12 is a coloured person while the victim in case 18 appears to be an "Indian" person),⁹⁴ in a further five cases (5,6, 10, 22, 27) it appears that the police members involved in these acts of brutality are black while in two cases (14, 19) the persons involved in these acts of brutality appear to include both black and white persons.⁹⁵

Thus the selection of cases provided here suggests that while black people are the victims of a high proportion of police brutality cases, in a significant number of cases where brutality occurs this is as a result of the actions of black police, or even groups of police which include both black and white persons.⁹⁶ However at the same time it should be noted that even in relation to those incidents where white police were involved in alleged brutality against black persons it is not clear in most of these incidents to what degree they were specifically acting out racist attitudes, or engaged in explicitly racist behaviour, while carrying out these acts of brutality.

The one incident which represents an exception to this is that involving the North East Rand Dog Unit (Case 1) where the video recording clearly captures the police involved directing explicitly racist abuse at their victims. This incident, which was strongly reminiscent of police behaviour during the apartheid period has served as a strong reminder of the racist origins of the SAPS and suggests that intensely racist attitudes persist amongst certain members. However as is the case with police brutality itself, racism is mostly disguised and hidden and therefore it is not clear quite how prevalent it actually is.

However what also appears to be a disturbing trend (reflected in cases 1, 23, 24, and 25) is the apparent high level of victimization of black foreigners by the police. While in the two cases presented here where evidence of the race of the police involved is provided (Cases 1 and 23)⁹⁷ the police members are both white, many cases of abuse against foreigners

involve black police. At the same time the police in Case 1 used abusive language which was typically directed against black South Africans by racist whites during the apartheid period. Thus racist and xenophobic attitudes and practices, though to some extent distinct, may also be intertwined, and both feed into brutality.

While the victims of police brutality are generally male adults it should also be noted that in addition to the rape cases (Cases 21 and 29) and killings in domestic circumstances (Case 28) where women are the victims, cases of torture and other acts of brutality by the police also include amongst their number cases where women (Case 17) and children (Cases 7, 14, 15) are the victim.

Furthermore the victims of police brutality include not only persons suspected of being involved in criminal activity but also immigrants both legal (Cases 23 and 25) and illegal (Cases 1 and 24), members of the public involved in demonstrations (Case 4), persons who are apparently wrongly identified as suspects (Case 6), innocent bystanders (Case 7), victims of crime (Case 8) or other persons reporting matters to the police (case 22), persons believed to be able to provide information relating to the whereabouts of criminal suspects (Case 17) and others who were victimised by reason of personal relationships or other circumstances (Case 10, 27 and 28).

5. Variables impacting on occurrence of police brutality

a. Root causes

Several factors may be seen as root causes of police brutality in South Africa some of which are specific to the South African context but some of which are characteristic of policing itself:

- **Nature of policing** - policing, as pointed out, is intimately involved with the use of force Thus brutality is in some ways an inevitable by product of policing, the special powers accorded to members of police services, and the arming of police service members, and will inevitably proliferate unless concerted steps are taken to discourage it.
- **Historical factors** – the [South African Police Service](#) was formed by integrating the South African Police Service and 10 other police organisations all of which had a reputation for brutality.⁹⁸ Thus in South Africa policing can be said to reflect a "habit of brutality" and transformation of the police requires that police be taught (or assisted to learn) how to carry out their role effectively without relying on brutality.
- **High levels of violent crime** – it is clear that the high levels of crime, which is often of a particularly violent nature, is itself a major contributing factor to brutality. One aspect of this is the widespread proliferation of firearms which in some ways necessitates and legitimates the arming of the police. Furthermore the high levels of attacks against the police appear to necessitate that they are also armed off duty. More broadly however major exposure to violent crime and high levels of fear contribute to desensitising and dehumanising members of the police service. Finally

the high crime environment also contributes to legitimating police brutality such that public pressure is towards increasing "toughness" from government and the police in dealing with crime and there is little public pressure or support for measures intended to discourage brutality.

- **Declines in CJS effectiveness** – in an environment of proliferating violent crime there have been major declines in the effectiveness of the Criminal Justice System in South Africa during the 1990s. This has two consequences. On the one hand these declines contribute to a perception that relying on the mechanisms of the criminal justice system is likely to be ineffective and therefore that "self-help" measures are called for. Thus it is likely that the apparent growth of vigilantism in South African society generally has been paralleled by a growth within the police of "police vigilantism". On the other hand this decline is also manifested in the breakdown of internal systems of control within police organizations. Thus it may be expected that internal systems which are intended to discourage brutality have had limited impact within the SAPS.
- **Proliferation of agencies involved in policing** – one further by-product of the major crime wave affecting South Africa has been the proliferation of the private security industry and of the involvement of other agencies in policing. As suggested by the cases presented above the problem of brutality is not restricted to the SAPS but extends to other agencies involved in policing. However in so far as measures are implemented to discourage or prevent brutality these tend to be focused on the SAPS with the consequence that there is limited scrutiny of, for instance, the private security industry.

b. Legal frameworks regulating policing

Components of the legal and regulatory framework which are relevant to the use of force and to preventing or sanctioning police brutality include the following:

- **The common law** -The core provisions of law which justify the use of force are provisions of the common law which in combination define the circumstances in which the use of force in "private defence"⁹⁹ (commonly known as 'self defence') may be justified. The law on private defence applies generally to everyone in South Africa including members of the police service.
- **The Constitution of the Republic of South Africa, Act 108 of 1996** - The use of force by the police is not addressed directly anywhere in the Constitution. The section of the Constitution which has profound and wide ranging, though not necessarily straightforward implications in terms of the use of force is Chapter 2, the Bill of Rights. Provisions which may be seen as relevant to the use of force include provisions regarding: human dignity; life; freedom and security of the person; privacy; assembly, demonstration, picket and petition; freedom of movement and residence; labour relations; property; children; just administrative action; access to courts; arrested, detained and accused persons, limitations of rights; states of emergency. Provisions which also impacts on the investigation of incidents involving the use of force are those which provide, or support, a right to remain silent to persons including persons "arrested for allegedly committing an offence".

¹⁰⁰ It would appear that Section 36(1) of the Bill of Rights, which provides for rights to be limited by a "law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom" is also relevant to the interpreting provisions of the Constitution and legislation which impact on the use of force.¹⁰¹

- **The Arms and Ammunition Act, 75 of 1969 and associated regulations** - The Act *inter alia* defines the circumstances in which a person may be disqualified from owning a firearm.
- **The Criminal Procedure Act, 51 of 1977** - Provisions of the Criminal Procedure Act which relate directly to the use of force include sections 27 and section 49. Section 27(1) empowers a police official who is legally entitled to search any person or any premises to use "such force as is reasonably necessary to overcome any resistance against such search or against entry of the premises, including the breaking of any door or window of such premises". Section 27(2) requires that the police official first audibly demand admission except in particular circumstances which are outlined.¹⁰² Issues concerning arrest, including when arrest is authorised, are dealt with in the Criminal Procedure Act primarily in section 39 -52. According to Section 39(1) "Unless the arrestee submits to custody, an arrest is effected by actually touching his person or, if the circumstances so require, by forcibly confining him".¹⁰³

The prevailing position in South African, with respect to Section 49, the provision governing the use of force in effecting arrest is one of uncertainty. Early in 1997 the SAPS issued a Special Service Order which in some ways effectively modified the fairly permissive provisions of Section 49 particularly by restricting the categories of offences in relation to which lethal force was authorised. An amendment to section 49 was passed late in 1998.¹⁰⁴ Subsequently however the Minister of Safety and Security refused to allow the provision to come into operation.¹⁰⁵

- **The Regulation of Gatherings Act, No. 205 of 1993** - Most notably in sub-section 9(2) the Act provides a framework for the use of force by the police in situations, *inter alia*, where a gathering poses a "danger to persons or property" which cannot be averted by other steps (detailed at 9(1)), or where the gathering is prohibited.
- **The South African Police Services Act, 68 of 1995** - The powers of members of the police service are to some extent defined by section 13 of the SAPS Act. The issue of the use of force is referred to explicitly in subsection 13(3)(b) which provides that "Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances".
- **Policy on the prevention of Torture and the Treatment of Persons in Custody of the South African Police Service** - Known as "the Anti-torture policy" at Section 2 it makes it explicit that "No member may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone". Torture is prohibited by the South African Constitution (at 12(1)) and, particularly where it involves physical

force, constitutes a criminal offence. It is also, as the policy indicates contrary to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. The provisions of the policy finally came fully into effect on July 1st 1999.

- **SAPS Standing Order as amended from time to time** - Many of the standing orders of the South African Police Service are of relevance in one way or another to the use of force. Most notable is Standing Order 251 which is discussed below in the section on Accountability and Review Mechanisms. Also of particular relevance is Standing Order 108 in terms of which members are issued with firearms as part of their personal issue (discussed in the section on systems for issuing firearms and other weapons to police officers). Other relevant standing orders would include, for instance, those relating to the operation of the disciplinary system.
- **SAPS Discipline Regulations** - The regulations outline how disciplinary procedures are to be dealt with. In section 18 the regulations define the different forms of misconduct. In terms of the misuse of force 18(3) which indicates that an employee commits misconduct when she or he "performs an act or fails to perform an act which constitutes an offence" may be the most relevant.

c. International Human Rights Standards

South Africa has ratified many of the international Human Rights Standards including:

- The International Covenant on Civil and Political Rights which South Africa ratified on 10 December 1998.
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which South Africa ratified on the same date.
- The African Charter on Human and People's Rights which South Africa acceded to on 9 July 1996)
- The Convention on the Rights of the Child which South Africa ratified on 16 June 1995.

d. Case law

In *Raloso v Wilson & others* 1998 (1) BCLR 26 (NC), 1998 (2) SACR 313 (C) an application to refer the constitutionality of s49(2) to the Constitutional Court was refused in the light of the intended amendment of the section. The court therefore did not address questions to do with the constitutionality of lethal force in any detail. Apparently however the court did recognise "that there was a reasonable possibility that the section was unconstitutional" (Fedler, 1999, 15-8, note 1) and in some ways endorse counsel's contention that 'a manifestly unconstitutional statute remain[ed] on the statute books purporting to give legal authority for the killing of persons in circumstances which [could] not be countenanced by the Constitution' by terming it 'indeed a sorry state of affairs' (at 35J-36A) (Snyckers, 27-24A at note 1).¹⁰⁶

e. Existing institutions regulating policing

- **The judiciary** – The period subsequent to the transition to democracy has seen

Increased emphasis being placed on judicial independence. Thus there may be an increasing willingness on the part of the judiciary to condemn brutality by the police. At the same time in rural areas particularly problems still persist of close relating to the "small town" phenomenon of close personal relationships between members of the police and prosecution service and the magistracy. Furthermore there may be a reluctance on the part of magistrates particularly to treat instances of police brutality, and particularly torture, with the appropriate severity. Furthermore the ability of the judiciary to deal with cases appropriately depends ultimately on the quality of investigations by the ICD or SAPS as well as the effectiveness of the prosecution service, and there are a number of problems relating to all three of the above, and their capacities and motivation to investigate and prosecute cases of police misconduct effectively. Finally it must be emphasized that an approach which relies on the judiciary as a mechanism for preventing police brutality is ultimately likely to be deeply limited for a number of reasons, some of which have been outlined above, to do with the difficulties of proving cases of police brutality, as well as other reasons which have been outlined in major texts on the matter.¹⁰⁷

- **The executive** – There has been a fairly substantial contrast between the role played by the executive during the first democratic government (May 1994 – June 1999) and the second (June 1999 to the present). During the first period the executive appeared to observe a fairly consistent commitment to human rights though the commitment, and their vision of the role of the police, was never articulated particularly effectively or with much commitment. As a result the impression was created within the public domain that the country suffered from a lack of leadership in tackling the crime problem, an impression which appears to have contributed to the growth of vigilantism as public and police disillusionment with government particularly in relation to its willingness to tackle the crime problem, grew. The appointment of Steve Tshwete as Minister of Safety and Security under the Mbeki government in mid-1999 was initially marked by a totally contrasting approach. One of his first steps in office was to obstruct the implementation of legislation intended to restrict the use of lethal force by the police (and members of the public) to circumstances of threat to life or threat of serious injury. Tshwete was not only keen to boost police morale and demonstrate governments commitment to fighting crime but also made a number of public statements which amounted to an incitement of police brutality.¹⁰⁸ His period in office has also been associated with the downscaling of the National Secretariat for Safety and Security. Since the beginning of this year Tshwete has become more restrained in his public pronouncements though there continues to be little sign of a real commitment to opposing police brutality. Overall the first six years of democratic government in South Africa have been marked by a lack of insight and sophistication on the part of government in understanding how to combine opposition to brutality with promoting police safety and effectiveness.
- **Independent Complaints Directorate** – while it was first provided for in the 1993 interim constitution, the ICD only became fully operational in April 1997. While some observers have expressed a degree of frustration with the body others have been inclined to, at least until quite recently, give it the benefit of the acknowledgement that it had been set up only relatively recently and thus that it

might be premature to criticise it. However whether inclined to criticise or defend the body all commentators suffer from a lack of information as no full evaluation has been conducted relating to the relative effectiveness of the ICD in appropriately finalising cases which it is involved in. Its overall role requires that the ICD combine a tenacious investigative approach with promotion of improvements in practise within the SAPS in dealing with misconduct. In addition to issues of the resources (budget) provided to the ICD, the powers afforded to its members, and the effective management of the organisation one aspect which has been the subject of some concern relates to the issue of the "independence" of the ICD and the fact that the ICD falls under the Minister of Safety and Security. One final aspect which is a definite weakness of the ICD relates to its ability to communicate effectively in order to enable the issues which it is engaging with to be understood and to be clearly addressed.

- **The South African Human Rights Commission and other Chapter 9 institutions** - Chapter 9 of the South African constitution provides for the existence of six "state institutions" intended to strengthen Constitutional Democracy. Of these the South African Human Rights Commission has played the most prominent role in raising issues of police brutality (the Public Protector also deals with complaints against the SAPS but these relate to problems with "service delivery"). Thus during the latter part of 1999 the head of the SAHRC, Barney Pitso, was one of the few high profile personalities to publicly challenge The Minister of Safety and Security in relation to his efforts to obstruct the implementation of the amendment to section 49 of the Criminal Procedure Act. The SAHRC has also engaged with issues relating to the treatment by the police of immigrants, racism in the SAPS, and conducted a brief tour of police custody facilities in relation to the reports of the high number of deaths in custody. However the primary external agency which is responsible for engaging with issues is the ICD and the SAHRC, whilst it has engaged with these issues seeks to avoid an overlap with and the duplication of functions which are performed by the ICD. Their position as a Chapter 9 body therefore allows them greater independence and they have used this position at times, though not necessarily with much effect.

f. Initiatives intended to address brutality

Subsequent to the introduction of democratic government in South Africa various measures have been implemented which are intended to prevent and discourage brutality. These measures have included both "external" measures in the form of oversight mechanisms as well as measures "internal" to the police.

In the transition period the emphasis can be seen to have been primarily placed on "external" mechanisms. In addition to being accountable to parliament and potentially answerable to the relevant parliamentary committee provision was also made for:

- A national ministry or "Secretariat" of Safety and Security as well as similar secretariats in each of the nine provinces;
- The Independent Complaints Directorate which, in terms of the Interim Constitution (Act 200 of 1993) was intended to be "an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and

misconduct allegedly committed by members of the [SAPS] are investigated in an effective and efficient manner;

- Community Police Forums which were intended to promote the accountability of the police service to local communities and "improve transparency in the service" (South African Police Service Act, section 18(1)(f)).

While emphasis was placed on the creation of these external mechanisms, some initiatives have been taken which can be described as more "internal" in nature. These have included:

- The introduction of a rigorous selection systems as part of recruitment procedures for new members;
- Revision of the entire basic training curriculum;
- The development and introduction of a human rights training curriculum for existing members of the service;
- The introduction of a code of conduct;
- The implementation of a Special Service Order on the use of force in affecting arrest, intended to bring the regulatory framework relating to the use of lethal force more in line with the Constitution;
- The development and introduction of an anti-torture policy;
- The reorganization and retraining of public order police;
- The introduction of the Tonfa baton as an intermediate weapon;
- The introduction of a programme of "critical incident debriefing" as a means of providing support to police officers suffering the consequences of stress and exposure to traumatic incidents.¹⁰⁹

6. Limitations of current measures

As noted above the primary focus of approaches taken to the transformation of the SAPS during the transition period was on the creation of a number of "external" mechanisms of control. Some of the limitations of the measures implemented relate to these mechanisms. Thus for instance neither the powers, nor the resources provided to the Independent Complaints Directorate would appear to be adequate to the task which it has to fulfill. Similarly it appears that the National Secretariat for Safety and Security has also been downgraded thereby reducing its ability to play a significant oversight function. Finally it would appear that community liaison bodies such as the CPF's are inherently unlikely to play a significant role in addressing the issue of police brutality.

The more "internally" focused measures have also been in many ways limited in their impact. While no formal evaluation has been conducted it would appear that the anti-torture policy might have had a generally beneficial impact. At the same time the primary impact of the policy is likely to be on the treatment of arrested persons after they have been taken to the police station to be placed in custody. As is perhaps suggested by the incidents reflected in the BBC (Case 20) and Dog Unit (Case 1) videos, the introduction of measures which are focused on preventing torture in custody may be associated with a "displacement" of brutality to the period immediately after arrest and to localities other than the actual police station and custody facilities.

More generally the measures which appear to be most rigorous are those, such as the

selection system and basic training, which impact on new recruits (as well as those focused on the public order policing units). However new recruits are only being introduced into the SAPS relatively slowly and thus the new selection and recruitment systems are only likely to have an impact on the SAPS in the long term.

In terms of training more generally it is in relation to the measures which are focused on members already in the service that there are the most problems. Apart from human rights training, none of the measures implemented would appear to have any real potential to contribute to behaviour change in relation to the problem of brutality. However the human rights training is not sufficiently integrated with functional aspects, and with other measures intended to support changes in police practise, with the consequence that members are inclined to denigrate or otherwise dismiss it. Similarly the introduction of the Tonfa has been obstructed due to the need for members to have a certain standard of proficiency in the use of the weapon in order to use it effectively. However the realities in relation to the provision of in-service training mitigate against such training being implemented.

Further measures which are intended to address the values of members of the service are entirely insubstantial. The code of conduct is loaded with jargon but does not provide a clear framework of values and in particular says nothing about the use of force. Thus, effectively there is no single guiding document which speaks clearly to members of the SAPS in relation to issues of the use of force and brutality. Without any clear guidance in terms of policy it is not surprising that commanders are often inconsistent or even entirely neglectful in addressing issues of the values of the service with the consequence that issues to do with police conduct, particularly in relation to questions of the use of force and discouraging brutality, are rarely properly addressed.

Other problems, particularly those relating to the functioning of the internal disciplinary system, have the consequence that key internal control mechanism play an exceptionally limited role within the SAPS in general. Within a context of a general breakdown of discipline it is unlikely that the problem of brutality will be addressed.

Within this context it is perhaps not surprising that the Minister and National Commissioner have opposed, on the grounds of a concern for police safety, the amendment of section 49 of the Criminal Procedure Act intended to introduce a more restrictive framework for the use of lethal force.¹¹⁰ Effectively therefore, almost six years after the April 1994, the South African government has not as yet implemented an amendment to this notorious provisions of the Criminal Procedure Act. The current position regarding the use of lethal force in affecting arrest can therefore only be deduced from an informed reading of the Constitution, the Criminal Procedure Act and the SAPS Special Service Order, and a number of court judgements relating to the issue.

Overall the current approach taken to issues of brutality may be summarized as one of non-engagement. Thus what we have is a situation where issues of the use of force, and thus of police brutality are addressed primarily by default. In relation to the dog unit video for instance the response of the Minister and the police has been to see the incident as a dog unit problem without acknowledging the broader problem of brutality.

But what the police need is not that issues relating to the use of force are ignored (supposedly in the interests of police safety) but that there is an active engagement with the difficult issues which face them in engaging with issues of the use of force in our violent democracy.

7. Recommendations on the way forward

Due to the high levels of crime in South African currently the situation is not highly conducive to public or government support or attention being given to measures to combat crime. Efforts to tackle the problem of brutality therefore need to engage with the need for improvement in police effectiveness in tackling crime and be formulated in such a way as to support the police in meeting this objective. Furthermore efforts to engage with the problem of brutality need also to be combined and integrated with, measures to address the widespread problem of police corruption. Some of the types of measures which would be appropriate would include:

- An active engagement with issues relating to the use of force. Such an approach should combine and integrated measures to discourage excessive and unnecessary force with measures to improve police safety, and effectiveness in using force where such force is required.
- Improved powers and resourcing for the Independent Complaints Directorate. It is clear that the ICD is severely under-funded and is lacking the necessary powers it needs to enable it to fulfil its mandate adequately.
- The development of effective internal SAPS systems for the lodging of complaints against police members and improvements in the functioning and effectiveness of the internal investigative and disciplinary systems within the SAPS.
- Measures to clearly articulate the basic values of the SAPS and address the responsibilities of the leadership of the SAPS in promoting these values and in addressing issues of police integrity.
- Any attempt to clarify the values of the SAPS in relation to the use of force is however likely to be in vain unless this is combined with an attempt to resolve the current conundrum relating to the legislative framework regarding Section 49 of the Criminal Procedure Act and the use of lethal force in affecting arrest.
- Furthermore measures to tackle brutality also need to be combined with efforts to address problems of racism and xenophobia within the SAPS.

Overall however what is most clearly needed is a demonstration of greater commitment on the part of government and police leadership to addressing issues of brutality, whilst combining this with efforts to promote police morale and effectiveness.

8. Notes:

¹ Note that this report was completed at the end of 2000. While the larger report on Police

Brutality in Southern Africa of which it is part was published by Afronet in 2002 this specific report is only up-to-date as at the end of 2000.

² The Star, 9 December 2000. Another two incident of alleged torture involving members of the Brixton Murder and Robbery Squad are recorded below (see Case 17 and 18 in Section 4).

³ The SAPS was in fact formed (in terms of the South African Police Service Act, 58 of 1995) by amalgamating 11 police agencies which included the SAP and the police agencies of the four "independent homelands" and six "self governing homelands".

⁴ Bittner, E. (1974) Florence Nightingale in Pursuit of Willie Sutton. In Bittner, E. (1990) Aspects of Police Work. (pp. 233-268) Boston: Northeastern University Press. p. 256.

⁵ One example concerns the power to arrest in relation to which the requirement is that a person may be held for a maximum of 48 hours before being brought to court (section 35.1(d)(i) of the South African Constitution). However if the period of 48 hours expires over a weekend, or other day "which is not a court day" the provision is that that arrested persons must be brought to court not later than "the end of the first court day after the expiry of the 48 hours. Police members may therefore deliberately postpone arrests to, for instance, Thursdays, so that they can make use of the additional time over the weekend to question a person. This is arguably an abuse of power.

⁶ See for example Syed, T. & Bruce, D. (1998). [Inside and Outside the Boundaries of Police Corruption](#), in African Security Review, Vol. 7, No. 2 and Newham, G. (2000). [Towards Understanding and Combating Police Corruption](#). In Crime and Conflict, No. 19, Autumn.

⁷ See further Syed, T. & Bruce, D. (1998). [Police Corruption: Towards A Working Definition](#). In African Security Review, Vol. 7, No. 1.

⁸ Centre for the Study of Violence and Reconciliation. (1999). [A New Day? Controlling Police Violence and Corruption](#). In Crime and Conflict, No. 18, Summer.

⁹ See for instance Nix, J. (1998). [To Protect and Abuse: An exploratory study discussing intimate partners of police as victims of domestic abuse](#). Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 4, 4 June.

¹⁰ Bruce, D. (2000) The Management of the Use of Force in the South African Police Service. Unpublished research report submitted to the Faculty of Management, University of the Witwatersrand.

¹¹ Alpert, G.P. & Smith, W.C. (1994) How Reasonable is the Reasonable Man?: Police and Excessive Force. Journal of Criminal Law & Criminology, Vol. 85, No. 2, pp. 481-501 at 489.

¹² In South Africa the ICD has provision for complaints to be classified either as complaints

of assault, assault GBH, attempted murder (all criminal offence categories) or torture. However it is not clear what criteria are applied in distinguishing e.g. cases of torture from cases of assault GBH or whether such criteria are consistently applied by the ICD in its different regions.

¹³ A further problem with civil claims is that these often take a number of years before they are finally settled. A claim settled in any particular year may therefore relate to an incident which occurred two or three years previously.

¹⁴ Bruce, D. and G. O'Malley (1999) [In the Line of Duty? Shooting incident reports and other indicators of the use and abuse of force by members of the SAPS.](#) Unpublished draft report for the Independent Complaints Directorate. Centre for the Study of Violence and Reconciliation.

¹⁵ The points listed here are based extensively on those made in Adams, K. (1996) Measuring the Prevalence of Police Abuse of Force. In Geller, W.A. & Toch, H. (Eds.) Police Violence: Understanding and Controlling Police Abuse of Force. (pp. 52-93) New Haven: Yale University Press.

¹⁶ See Adams (footnote 14), at p. 59;

¹⁷ See for instance Adams 1996 (see note 14) and Toch, H. (1996) The Violence-Prone Police Officer. In Geller, W.A. & Toch, H. (Eds.) Police Violence: Understanding and Controlling Police Abuse of Force. (pp. 94-112) New Haven: Yale University Press.

¹⁸ Bruce, D (2000) [The Prevention of Police Action and Custody Deaths.](#) Briefing document prepared for the workshop on the prevention of police action and custody deaths. Centre for the Study of Violence and Reconciliation.

¹⁹ Bruce and O'Malley (op cit, note 13).

²⁰ The evaluation contained in a SIR is the initial opinion of the investigating officer and does not have the status of a court judgement.

²¹ Bruce and O'Malley (op cit, note 13).

²² The claims cover categories designated as "Common assault" (427 claims paid out), assault (unrest related) (29 claims paid out), shooting incidents (378 claims paid out), shooting incidents (unrest related) (9 claims paid out), injuries bystanders (19 claims paid out), loss of support: deaths and disabilities (24 claims paid out), damage to property (603 claims paid out).

²³ Bruce and O'Malley (note 13 above), 1999, p. 49–50.

²⁴ This was confirmed by a recent American study (Garner, G. and C. Maxwell (1999) Measuring the amount of force used by and against the police in Six Jurisdictions. In U.S.

Department of Justice (1999) Use of Force By Police: Overview of National and Local Data. Publication No. NCJ 176330.) but there appears little reason to doubt that the generalisation also applies in South Africa.

²⁵ The Star, November 8, 2000

²⁶ The Star, November 8, 2000

²⁷ Beeld, 23 November 2000.

²⁸ The Star, November 10, 2000

²⁹ The Citizen, 9 November 2000.

³⁰ The Citizen 10 November 2000.

³¹ Sunday World 19 November 2000. See also City Press, November 12.

³² Cape Times, 26 May 1999 and Citizen, 15 August 2000. (The Amnesty International Annual Report 2000 says that three officers were charged in addition to Ferreira).

³³ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000 and Star, 8 May 2000.

³⁴ Star, 8 May 2000.

³⁵ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.

³⁶ Press reports and other information on the incidents summarised in Marks, M "Transforming Robocops? A Case Study of Police Organisation Change". Paper presented at SASA Annual Congress, July 2000, Cape Town.

³⁷ The Sowetan, 2 August 2000.

³⁸ The Star, 31 July 2000.

³⁹ City Press, 6 August 2000.

⁴⁰ The Star, 12 August 2000.

⁴¹ The Star, 1 August 2000.

⁴² Business Day, 15 August 2000.

⁴³ Star, 12 August 2000.

- ⁴⁴ ICD Presentation to the Parliamentary Portfolio Committee for Safety and Security, 11 October 2000.
- ⁴⁵ The Star, 1 August 2000.
- ⁴⁶ Compiled from statements by Simon Tshowa and Eddie Maseko and conversations with ICD investigator Robbie Raburapu and Wits Law Clinic attorney Sebastian McKay.
- ⁴⁷ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.
- ⁴⁸ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.
- ⁴⁹ ICD Presentation to the Parliamentary Portfolio Committee for Safety and Security, 11 October 2000.
- ⁵⁰ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.
- ⁵¹ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.
- ⁵² Aaron Nicodemus, "Another Dry White Season" in Mail and Guardian, August 6 1999.
- ⁵³ ICD Presentation to the Parliamentary Portfolio Committee for Safety and Security, 11 October 2000.
- ⁵⁴ Business Day, 18 August 2000. Note that the latter report indicates that Baartman was both arrested and died on July 16.
- ⁵⁵ ICD Presentation to the Parliamentary Portfolio Committee for Safety and Security, 11 October 2000.
- ⁵⁶ The Star, 18 April 2000, Mail and Guardian 20 April 2000.
- ⁵⁷ ICD Presentation to the Parliamentary Portfolio Committee for Safety and Security, 11 October 2000
- ⁵⁸ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.
- ⁵⁹ Mail and Guardian, 11 August 2000.
- ⁶⁰ Mail and Guardian, 20 April 2000.
- ⁶¹ AI annual report 2000.
- ⁶² Amnesty International SOUTH AFRICA: Establishing a culture of accountability for human rights violations. CASE STUDY: The "disappearance" and death of Zweli Kenneth

Ndlozi, September 1998, 12/05/1999

⁶³ AI annual report 2000.

⁶⁴ AI annual report 2000.

⁶⁵ According to Goodenough's report the Ixopo Community Watch (ICW) is a section 21 (non-profit making) company whose employees include police officers and ex-policemen. All of the civilian employees of the ICW are police reservists which gives them full powers as policemen. The ICW was previously known as the Ixopo Farm Watch but the name change is largely cosmetic. Despite its change of name the ICW operates from fees paid by farmers and is not inclusive of community structures. The ICW is effectively a private police force. Ensuring that its members are registered as police reservists enables it to both be a private security force and exercise the full powers of members of the police. On operations with members of the SANDF, these police reservists have therefore replaced full-time police officers who would usually accompany soldiers on policing type operations.

⁶⁶ Cheryl Goodenough, Report on Assaults in the Greater Ixopo Area.

⁶⁷ The Star, 20 April 1999.

⁶⁸ The Star, 11 July 2000, Sowetan 22 April 1999, Star, 22 April 1999.

⁶⁹ Beeld, 22 April 1999.

⁷⁰ Sowetan, 21 April 2000. (Later reports indicated that the SAPS was considering the suspension of a further 8 members. - Sunday Times, 25 April 1999; Rapport, 25 April 1999.)

⁷¹ ICD Presentation to the Parliamentary Portfolio Committee for Safety and Security, 11 October 2000.

⁷² The Sowetan, 2 December 1999.

⁷³ The Sowetan, 3 August 2000.

⁷⁴ The Star, 8 August 2000.

⁷⁵ ICD Report on Outcomes or progress of some ICD cases, 14 September 2000.

⁷⁶ Amnesty International Report 2000 – Country Reports (South Africa)

⁷⁷ The Star, September 8, 1999

⁷⁸ Saturday Star, 19 December 1998.

⁷⁹ AI Annual Report 2000.

⁸⁰ Sowetan, 11 and 12 December 2000.

⁸¹ Sowetan, 20 December 2000.

⁸² Sowetan, 21 December 2000.

⁸³ There is no date for incident 12.

⁸⁴ Since the ICD started operating nearly four years ago in April 1997 it has recorded in the region of 2 700 deaths. However the deaths recorded in the cases listed would not necessarily be recorded in ICD statistics. Thus in particular deaths which are linked to "police reservists" (e.g. Case 19), or some of the alleged deaths of illegal immigrants who were thrown from trains (case 24) might not have been reported to the ICD or recorded by them.

⁸⁵ The attempts to classify these deaths and other incidents needs to be treated with caution. Some of the deaths are to some extent unexplained. Thus the full facts of the Bheki Mkhize case (case 5) are not as yet known to this writer and it may possibly be an execution type killing or an accidental killing related to reckless firearm use.

⁸⁶ It should be noted that the rape of a suspect may arguably be regarded as a form of corruption (if sexual gratification is seen as a form of "personal gain") as much as it represents a form of brutality or other form of "abuse of power". The fact that it is not amenable to easy categorisation points to the difficulties and limitations of attempts to define and categorise forms of police criminality or misconduct.

⁸⁷ It is debatable as to whether or not Case 9 should be included here.

⁸⁸ Note that in case 13 the persons convicted were not SAPs members.

⁸⁹ In addition to the incident listed in case 4 there are only a few other incidents which are known to the author of this report in which people have been killed in demonstrations. One of these happened on 8 January 1999. Twenty-two-year-old Yusuf Jacobs was shot by police who were attempting to disperse a demonstration by the Muslim organisation PAGAD against a visit to Cape Town by the British Prime Minister. A number of others were injured, including a journalist. Yusuf Jacobs, who was dragged from the scene by the police, died in hospital four days later. The ICD had not concluded its investigation by the end of 1999. (AI Annual Report 2000) In the second incident on 30 May 2000 in Abel Phetla (17), a student at Realogile High School, Alexandra, was shot and killed by members of the SAPS who were attempting to disperse a group of angry students. The students were marching in protest against the death of another student Andrew Radebe, who was allegedly shot and killed the previous day by a relative of a local shop owner. The students were angry that the police had not arrested the suspect in that matter. The ICD conducted a full investigation into the matter, and after finalisation thereof handed the docket to the DPP for his decision. The DPP is still to decide. (ICD Presentation to the Parliamentary Portfolio

Committee for Safety and Security, 11 October 2000) The latter incident is, as far as is known to this author, incorrectly attributed to the Public Order Police in the ICD report quoted.

⁹⁰ While there has been a major improvement in the quality of policing in relation to demonstrations this does not necessarily mean that there are not other problems with public order policing units, particularly where they are involved in other policing functions. In addition to the Bheki Mkhize killing POP members have been linked to acts of brutality in Umtata in the Eastern Cape as well for example (Mail and Guardian, 20 April 2000).

⁹¹ These observations are based on this author's interpretation of the Goodenough report.

⁹² Brutality against immigrants (discussed further in the next section) may be seen by many as political in nature, depending in part on how the word "political" is used or defined. However while brutality here may in some ways be related to the objective of discouraging immigration to South Africa there is not evidence that police who are involved in abuses against immigrants tend to see themselves as promoting the cause of a particular political party or movement.

⁹³ In a couple of cases (4 and 6) the information about race is not contained in the specific case study but is known from other information received by the author. Unless specific reference is made to the race of the person, the persons surname is used as a guide to their "race". While this needs to be acknowledged as a fairly risky approach to dealing with these issues the approach is used here (as well as in Bruce, 1998) in an attempt to shed some light on issues to do with race and policing in South Africa. At the same time it is acknowledged that the method is problematic firstly because of the type of stereotyping which it uses (persons with certain names are identified as belonging to certain race groups) but also because of its use of racial categories which are themselves problematic.

⁹⁴ In five cases (15, 21, 23, 24, 29) there is no information which suggests the possible racial identity of either the police member or the victim and in two other cases there are no clues to the racial identity of either the victim (9) or the police member (8).

⁹⁵ In case 28 it would appear that one of the police (Buys) involved might have been a coloured person while the other two police involved are apparently black. In case 14 the available information suggests that it was the white Sergeant who was in some ways "directing" the brutality but it is not at all clear to what extent the black constables were active or passive accomplices.

⁹⁶ Similar findings emerged in a 1998 study of deaths as a result of police action and in police custody (Bruce, D. (1998) [Towards a Strategy for Prevention: the occurrence of deaths in custody or as a result of police action in Gauteng, April - December 1997](#). Report for the Independent Complaints Directorate. Centre for the Study of Violence and Reconciliation).

⁹⁷ In cases 24 and 25 the racial identity of the police is not apparent.

⁹⁸ Rauch, J. (1998). [Police Reform and South Africa's Transition](#). Case study written for the Northern Ireland Programme at the Kennedy School of Government, Harvard University, USA. p. 2. The others were the police agencies of the four "independent homelands" and six "self-governing" homelands. The process of amalgamation was consolidated with the passing of the South African Police Service Act in late 1995.

⁹⁹ Snyman, C (1995) Criminal Law (3rd ed.) Durban, Butterworths. p 97.

¹⁰⁰ Bruce, D, Savage, K and De Waal, J (2000) A Duty to Answer Questions? The Police, The Independent Complaints Directorate and the Right to Remain Silent. SAJHR, Vol 16, Part 1.

¹⁰¹ Chapter 11 of the Constitution deals with security services. In so far as it deals with the SAPS it largely deals with issues relating to the distribution of national and provincial powers in relation to political and executive control over the police service. One of the general provisions relating to security services which may be seen as of direct relevance to the use of force is section 199(6) which provides that "no member of any security service may obey a manifestly illegal order".

¹⁰² Joubert, J. J. (Ed) (1998) Criminal Procedure Handbook, 3rd ed. Republic of South Africa: Juta & Co. Ltd. p. 123.

¹⁰³ Op cit, p. 87.

¹⁰⁴ Section 7 of the Judicial Matters Second Amendment Act, No 122 of 1998.

¹⁰⁵ In relation to the amendment of section 49 see Proudlock, P. (1999) [License to Kill: Police Use of Force](#). Crime and Conflict, No.15, pp.28-32 as well as Bruce, D (1999) [Why we can't give police more firepower](#). Sunday Times, 19 September.

¹⁰⁶ Some of the other case law relating to the use of force is discussed in Burchell, J (2000) Deadly force and fugitive justice in the balance: The old and new face of section 49 of the Criminal Procedure Act. In SACJ, 13, 200 – 213 as well as in Joubert (see footnote 102 above).

¹⁰⁷ See for instance, Skolnick, J. and Fyfe, J. (1993) Above the Law: Police and the Excessive Use of Force. New York: The Free Press. and Klockars, C.B. (1996) A Theory of Excessive Force and Its Control. In Geller, W.A. & Toch, H. (Eds.) Police Violence: Understanding and Controlling Police Abuse of Force. New Haven: Yale University Press.

¹⁰⁸ See for instance the Mail and Guardian, 10 November 2000.

¹⁰⁹ Some of the other "human rights culture" orientated policies introduced include the "anti- discrimination drive, sexual harassment policy, diversity programme and new change management focus" (Mail and Guardian, 10-16 November 2000).

¹¹⁰ It should be noted that the evidence from the US is that restrictions similar to that proposed in terms of the amendment to section 49 have not had a negative impact on police safety and may even have contributed to an improvement in such safety (see Geller, W. & Scott, S. (1992) *Deadly Force: What We Know*. Washington DC: Police Executive Research Forum).

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