

NUMBERS THAT COUNT

National monitoring of police conduct

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Publicly available data on police misconduct and the use of force has been found to be unreliable and inconsistent. Such information is important for public accountability, but also for police managers to monitor their staff and thereby improve performance and service delivery. Indicators of police use of lethal and non-lethal force, torture, public complaints and corruption must be developed and monitored by the police, and reported to the public via the SAPS annual report.

An important aspect of police accountability that the South African Police Service (SAPS) needs to address relates to systems for recording information about the conduct of police officials. The police are the most public manifestation of government authority and have legal power to use lethal force when necessary. They also represent the front-line in combating crime and enforcing the law, which makes holding them accountable even more important.

All government departments are required by law to present their annual report to parliament. The SAPS' 2000/01 annual report was criticised by the Public Service Commission for its lack of information on important aspects of what the police do, such as administrative or human resources practices.¹ Although the 2002/03 annual report shows improvements in these areas, similar concerns have been raised about SAPS reporting systems on police misconduct and the use of force.

In 2002, the Independent Complaints Directorate (ICD) indicated to parliament that "it had found that cases of misconduct were grossly under-reported by the South African Police Service and Municipal

Police Services (MPS)...probably because there is no obligation on them to do so".² The ICD does not, however, have a mandate to tackle structural issues in the police or any authority to enforce its recommendations.

Data on misconduct is important for transparency and public accountability, but also for police managers who need to exercise internal control and monitor their staff. If internal systems on police conduct are neglected, other efforts to produce an efficient and professional police force will be undermined.

Use of lethal force

It has long been recognised that because police carry lethal weapons – in the form of guns – the force they may use could have lethal consequences. Adams points out that "the capacity of the police to use coercive and deadly force is so central to understanding their functions, one could say that it characterises a key element of their role".³ The ICD has noted that for the transformation of the SAPS to be successful, a thorough understanding of the extent of police use of force is necessary.⁴

Given that the ability to effectively use firearms is an important component of police work, their use and abuse should be of key concern to police management. Furthermore, abuse of firearms can undermine civil liberties, human rights and ultimately, democracy.

This means that the police service should have systems to record and analyse all usage of firearms by their members. This would enable problematic trends to be identified and addressed through focused interventions such as training or increased supervision. The success of such interventions could easily be demonstrated by changes in key indicators such as those relating to civil claims or police safety. The benefit would be that over time, all police members would become competent and therefore confident in the use of their firearms.

The only publicly available data on police use of lethal force is published by the ICD. However, the ICD data on police shootings is largely limited to those that result in deaths "caused, or reasonably believed to have been caused, by a member of the SAPS while [on duty] or in his or her capacity as a member of the Service...". The ICD has discretionary powers to investigate shooting incidents that do not end in death, but this has to be as a result of a formal request, and only a relatively small number are investigated.

The ICD's 2002/03 annual report shows that of the 311 deaths as a result of police action, 294 were caused by shootings. The report does not, however, indicate how many of those shootings were illegal and how many were legitimate.

Questions have been raised about the capacity of SAPS systems to provide a coherent picture of members' use of their firearms and of lethal force. Research published in 2001 indicated a lack of credible systems or the non-existence of such systems in many provinces in South Africa.⁵ Incidents of shooting were not always entered on the centralised database, and six of the nine provinces did not have the relevant records. This was despite the existence of SAPS Standing Order 251, which requires a "full factual report" to be recorded immediately in the centralised system

following any incident in which a member "fires a weapon, allows a weapon to be fired or orders the firing of a weapon".⁶

The police still face challenges in the administration of this data. While some improvements have been made, in general, problems remain around ensuring that the data is collected and managed properly. Part of the problem is that there are no serious consequences for not recording the relevant information.

The responsibility for monitoring shooting incidents and improving the use of firearms is that of the SAPS. Parliament, via the Minister of Safety and Security, should insist that effective systems are in place and are properly managed. The results should be published in the SAPS annual report.

Use of non-lethal force

The use of a firearm constitutes 'lethal force' while the use of weapons such as batons, pepper spray, dogs and flashlights is regarded as non-lethal force, although in some cases there can be fatal consequences. Non-lethal force is the most common type of force used by police in the course of their duties. And without adequate monitoring mechanisms, the opportunities are many for this type of force to be used for purposes other than fighting crime. When this happens, police brutality is the result.

The SAPS is obliged, through the commitments of the South African government, to ensure that police brutality does not occur. South Africa acknowledged the obligation to prevent and protect its people against police brutality or torture with the signing in 1994 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By signing the Convention, the government undertook to work towards its ratification, thus binding the state to the Convention. The right not to be tortured is also entrenched in the constitution of the country.⁷

Despite these commitments there are no known credible data sources on the use of non-lethal force by the police. As a result, the extent of the problem is not known.⁸ ICD records, for example, do not

distinguish between police use of non-lethal force during an arrest, and police criminality. In 2002/03, the ICD recorded 1,002 allegations of criminal offences against the police which included cases of assault with intent to cause grievous bodily harm, common assault and attempted murder.⁹ It is unclear whether these acts took place while members were on duty (presumably during the course of an arrest) or while they were off duty.

It is crucial that the types of force used when arresting a suspect are documented, especially considering that most fatalities at the hands of the police (58%) happen during arrests.¹⁰ The ICD cannot, however, be expected to be the main source for this kind of information. Given that it depends on the public to lodge complaints about police use of non-lethal force, ICD records can only ever reflect part of the problem.

Sources other than the ICD on non-lethal force have proved equally limited. Research has shown that inquest reports – given the lack of detail in the J56 form – do not provide much insight on the nature and type of force used by police either.¹¹

Torture

How torture is defined will obviously have a direct bearing on how levels of torture are determined. The SAPS Prevention of Torture Policy includes an even more expansive definition of torture than that contained in the United Nations Convention Against Torture (CAT).¹² However, SAPS complaints records do not distinguish complaints of torture from any other complaints, making it difficult to identify and monitor this practice within police.

Once again, the ICD provides figures on only those cases that are reported to them. Although it adopted the SAPS definition of torture, “[the ICD] does not have, by its own admittance an accurate picture of torture, and available statistics provide little insight into rates of prevalence”.¹³ Indeed, the Directorate has thus far utilised a very narrow definition of torture in which certain methods (such as electric shocks, suffocation, and suspension) govern whether an act is regarded as torture or not.¹⁴ As such, ICD data does not necessarily correspond with either the CAT or SAPS definitions of torture,

which means many cases falling within these definitions would be excluded.

ICD statistics are further limited by the fact that, like cases of non-lethal violence, there is no legal obligation on the police to refer cases of torture or assault to the ICD. The Directorate thus relies on the public to bring such abuses to its attention. Many more cases of assault are reported to the SAPS itself every year, some of which are likely to fall into the category of torture, as defined by the SAPS policy. However, because no distinction is made between torture and other kinds of assault, the extent of the problem is not known.

Deaths in police custody

Deaths in police custody have been a major human rights issue in South Africa since the days of apartheid. It is not surprising then that the treatment of people in police custody is regulated in terms of the constitution, the SAPS Act, and numerous SAPS regulations that govern the handling of suspects from the time of their arrest to when they are handed over to the Department of Correctional Services.¹⁵

The SAPS Act imposes a statutory obligation on the police to notify the ICD in all cases of deaths in police custody. This is done to ensure that deaths are accounted for and investigated by an external oversight body. The ICD distinguishes between deaths in police custody and ‘police-action’ related deaths. Deaths in custody are limited to those that occur inside the police holding cells, while deaths as a result of police action refers to fatalities that result from the actions (or non-actions) of the police.¹⁶ This distinction is not, however, reflected in the ICD’s published data, making it difficult to establish the numbers of either type.

Nevertheless, a study on custody-related deaths found that some deaths could have been avoided if the police had acted, by for example, providing immediate medical attention.¹⁷ Similar issues are raised by the fact that 50% of deaths in police custody during 2002/03 were as a result of natural causes, implying that “the deceased either became ill or was already ill when they were taken to police custody”.¹⁸ The ICD needs to establish whether

these deaths could have been prevented and whether appropriate steps were taken to ensure the well-being of inmates.

Although the ICD investigates all incidents brought to its attention, it should be the SAPS that examines the incidents and trends with a view to preventing further deaths. Stringent action should be taken against police officials when deaths in custody occur, if it is found that procedures were not followed. Police management must send a clear message that contraventions of regulations and guidelines that lead to deaths in custody will be severely dealt with.

Civilian complaints

The SAPS policy on civilian complaints is contained in Standing Order 101, which obligates members to register complaints immediately in the Occurrence Book and to issue a reference number to the complainant. The Standing Order also obliges the station commissioner or senior officers at the station to immediately investigate any reported civilian complaint and report the results to the relevant Area level office.

Research has, however, shown that these procedures are not always followed. A study conducted by the ICD in 2001 highlighted that the SAPS system for handling complaints was not being implemented uniformly.¹⁹ The study revealed that complaints – both verbal and telephonic – were handled in a haphazard manner. Police stations had their own unique ways of handling civilian complaints, and some did not even have a complaints registry.

The ICD is mandated to investigate public complaints of police misconduct or alleged criminal offences by the police. It can receive complaints directly from individuals or from the police, although the SAPS is not obliged to report such complaints to the ICD. The Directorate has recommended that all complaints be registered, in line with the relevant Standing Order.

To this end, stations need to establish a user-friendly system that formally records all complaints whether they are written, verbal or anonymous. These should be analysed, and the trends reported on. The

2002/03 SAPS annual report only covers the numbers of complaints received through the National Complaints line.²⁰ No analysis of these complaints is included in the report.

Complaints data from stations, as well as the area and provincial offices, will enable police managers to analyse trends of civilian complaints and deal with them. Apart from keeping managers informed about public dissatisfaction with particular members, units or stations, it also offers a real possibility of improving police–community relations and service delivery to the public.

Police corruption

The United Nations Office on Drugs and Crime's recent Country Assessment Report concludes that in terms of public perception, the SAPS is regarded as the most corrupt public service in the country.²¹ While this is a perception, it is backed by the fact that the SAPS recognises the impact of corruption within its ranks:

...corruption among police members severely compromises the functioning and credibility of the SAPS. Internal corruption is detrimental to the morale of police members and causes the public to perceive the police as being unable to provide an effective policing service.²²

Although the problem has been acknowledged by the SAPS,²³ the closure of the Anti-Corruption Unit in 2002 undermined public confidence in the police's commitment to fighting corruption. Between 1996 and 2001 the SAPS' Anti-Corruption Unit (ACU) handled 20,779 allegations of police corruption, 3,045 of which resulted in arrests, followed by 576 convictions.²⁴

While the 2002/03 SAPS annual report provides data related to corruption, the information is unclear and does not indicate whether efforts to deal with the problem are succeeding or not. The report states that for the years 2001 and 2002 combined, there were 2,370 cases of corruption investigated, of which 1,332 resulted in criminal prosecution and 641 in internal disciplinary hearings.²⁵ The report does not say what happened

to the remaining 397 cases. In the text, it states that 872 police members were suspended as a result of their involvement in corruption, but the accompanying graph shows that only 188 were suspended under the category 'corruption'.²⁶

Furthermore, the SAPS annual report does not define what constitutes corruption. It separates a range of categories such as "assisting escapes", "defeating the ends of justice", "bribery" and "fraud" from the category "corruption".²⁷ Given the confusing categorisation, the report is not entirely clear on the number of members convicted or dismissed as a result of their involvement in corruption. What is worrying is that the available data reflecting the outcomes of disciplinary hearings into corruption shows that only 18 members were dismissed out of the 143 that were found guilty.²⁸

While the SAPS annual report has improved with regard to the amount of information provided, the way it is presented is unclear. This makes it difficult to assess whether or not the initiatives to tackle corruption in the SAPS are working.

Better oversight of police conduct

The SAPS annual report is an important document for parliament in particular and the public in general. It presents the key priorities and activities of the police, and during a period of organisational reform, should demonstrate improvements on preceding years.

While the latest annual report is a significant improvement on previous years, there are still shortcomings. When it comes to key indicators and information on police conduct and abuse of power as discussed in this article, substantial improvements are still necessary.

It seems logical that departments will generally want to report on their good performance rather than on issues that might cause embarrassment. However, the SAPS' ability to report adequately on these indicators will promote public confidence in the police. It will demonstrate that police management takes these issues seriously and is able to effectively tackle them. Moreover, ensuring that police members are able to use appropriate force when

necessary, and that abuse of power can be quickly identified and effectively dealt with, will improve the performance of, and public support for, the police.

Parliament, as the representative body of all South African citizens, has the duty to ensure that the SAPS improve their internal systems of recording, monitoring, managing and reporting on aspects of policing that are fundamental to the constitutional democracy.

Endnotes

- 1 Public Service Commission, Annual reports as an accountability mechanism, in *Review of Department's Annual Reports as an Accountability mechanism*, 2002.
- 2 SAPS misconduct 'under-reported', statement made by ICD to Parliament's Safety and Security Portfolio Committee, *Dispatch Online*, 25 April 2002.
- 3 K Adams, What we know about police use of force, in *Use of force by police: Overview of national and local data*, research report jointly published with the Bureau of Justice Statistics, National Institute of Justice, Washington DC, 1999.
- 4 See D Mistry, A Minnaar, J Redpath and Dlamini, *The use of force by members of the SAPS: A case study of seven policing areas in Gauteng*, Institute for Human Rights and Criminal Justice Studies, Technikon SA, compiled for the ICD, 2001.
- 5 See D Bruce and O'Malley, *In the line of duty? Shooting incidents reports and other indicators of the police use of force and abuse of force by members of the SAPS*, compiled for the ICD, 2001.
- 6 Ibid.
- 7 Chapter 2 of the Constitution of South Africa, 1996.
- 8 Bruce and O'Malley, op cit.
- 9 See 2002/2003 ICD Annual Report, pp 49–50.
- 10 Ibid.
- 11 See D Mistry et al, op cit.
- 12 The SAPS anti-torture policy states that "No member may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. No exception, such as a state of war or a threat of war, state of emergency, internal political instability or any other public emergency will serve as justification for torture".
- 13 P Pigou, Monitoring police violence and torture in South Africa, paper presented at the International Seminar on Indicators and Diagnosis of Human Rights, April 2002 or visit <<http://www.csvr.org.za/papers/papigou1.htm>>
- 14 ICD annual report, 2002/2003, <<http://www.icd.gov.za/reports/torture.htm>>

- 15 South African Police Service Act 68 of 1995, Section 50; Section 10 of the Constitution of the Republic of South Africa Act 108 of 1996; Standing Orders (G) 341, 349, 350, 361, 362.
- 16 Visit <<http://www.icd.gov.za/about/brochure.htm>> for ICD categorisation of cases.
- 17 BD Bhana, Custody related deaths in Durban, South Africa (1998-2000), *American Journal of Forensic Medicine and Pathology*, 24(2), June 2003.
- 18 ICD 2002/2003 Annual Report, p 44.
- 19 ICD, Recommendations pertaining to complaints registry, 2001, <www.icd.gov.za/reports/registry.htm>
- 20 See 2002/2003 SAPS Annual Report p 121.
- 21 Country Corruption Assessment Report South Africa, United Nations Office on Drugs and Crime Regional Office for Southern Africa, Department of Public Service and Administration, April 2003.
- 22 SAPS Annual Report 2002/2003, p 8.
- 23 The SAPS has introduced several reporting systems for its members and the public. Corruption can be reported via the SAPS Complaints Line (0860 11 12 13), Community Service Line (0860 13 0860), Emergency Line (10111), through SAPS management structures (National, Provincial and Area Commissioners), or in the case of SAPS members, via the Crime Intelligence Corruption Information Management System.
- 24 SAPS Annual Report 2001/2002.
- 25 SAPS Annual Report 2002/2003, p 10.
- 26 Ibid.
- 27 Ibid.
- 28 Ibid, p 11, see graph 5 "Outcome of departmental hearings".