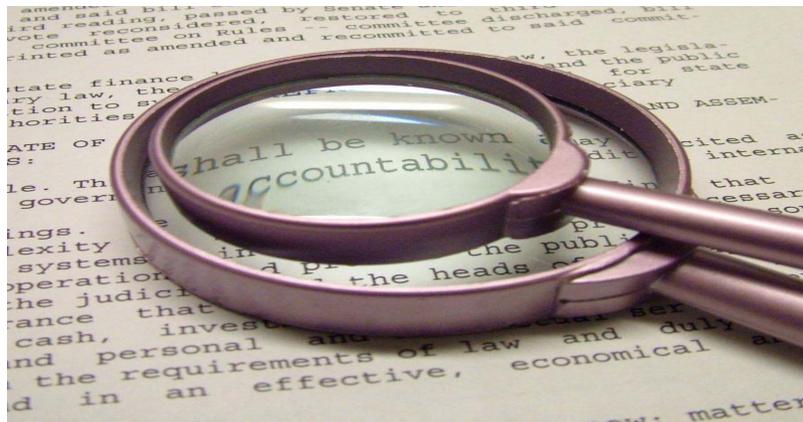


Policing the Police: Democracy and Effective Methods of Accountability in Post-Apartheid South Africa



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ABSTRACT

This study seeks to explore the extent and effectiveness of systems of criminal accountability of the police force in South Africa. More specifically, it explores the pros and cons of existing organizations mandated to deter police from acting criminally and punish them when they do, and the need to strengthen them. The study first takes a look at such organizations as the Independent Complaints Directorate (ICD)—which is an independent civilian oversight body—and the South African Police Service’s (SAPS) internal disciplinary system and assesses their strengths and limitations in providing a culture of accountability. The study then focuses on police culture and attitudes toward accountability, and finishes by analyzing the importance of creating effective systems of accountability in a democracy.

Most research was conducted by interviewing researchers, scholars, ICD officials, and police officials. Questions asked ranged from opinions about the ICD to observations of police culture. A disciplinary hearing was also attended, in addition to a union meeting watched, and statements were cross-checked for veracity and legitimacy. Comparisons to apartheid literature were consistently made.

Two major conclusions were reached: the first was that systems of criminal accountability for police officers in South Africa are ineffective and inefficient. The second was that systems of criminal accountability should be strengthened and reformed because an accountable police force is one of the pillars of democracy. There are several debates regarding this, including police culture and opinion and a high crime rate, but the end result is that for a country still recovering from the wounds of apartheid, a just police force accountable for its actions is a necessity.

INTRODUCTION

“I don’t arrest people. I kill or assassinate them,” Almond Nofemela, a former askari once said when asked why he only had one arrest in his eight year police record (Cawthra 1993 p. 124). After the fall of apartheid and with the advent of democracy, one of the primary focuses for reform was the South African Police (SAP), now the South African Police Service (SAPS). For years during the apartheid era, the SAPS had consistently tortured, murdered, and brutalized its opponents and protesters. Scores of activists went missing, their bodies only sometimes found, and thousands of people were tortured or assaulted in the name of combating communism and “terrorism.” It wasn’t until the Truth and Reconciliation Commission (TRC) was established and the promise of amnesty was offered that former perpetrators came forward to tell their stories and to provide details about the SAP’s activities. There were virtually no efforts at statistically monitoring such abuses as police-related deaths and allegations of torture, and certainly no accountability for violations. When commissions of inquiry were actually created, members of the force would successfully still escape punishment for their actions. “We lied,” says Eugene de Kock, and they succeeded (de Kock 87).

With such a cruel and violent past, it was natural that when the ANC came to power in 1994 one of its main focuses on reform lay with overseeing the use of force within the police. Since the police had held such a crucial part in upholding the apartheid regime, it would therefore be just as necessary in ensuring a smooth change to democracy: Themba Masuku writes that accountable police forces in democratic societies are critical to instituting the rule of law and sustaining stability, and they are expected to do so in a manner that also upholds these values (Masuku 2005). To this effect, the

government established an internal monitoring and disciplinary system in the SAPS with a new set of guidelines for human rights, in addition to setting up an external Independent Complaints Directorate (ICD) charged with investigating all police-related deaths and complainants' claims of torture and abuse and making recommendations for punitive action to the SAPS. But though technically there are currently systems in place to monitor abuse within the SAPS, statistics, policies of investigation, and disciplinary measures taken in regards to police-related deaths and physical abuse such as torture, they still remain ineffective at providing an accurate portrayal of legality and accountability for brutal actions within the police force.

There has been research done on both mechanisms of accountability post-apartheid and police culture, but not much has been done in terms of exploring the two and how they relate to issues of effective monitoring and accountability in a democracy. The study was carried out by interviewing several researchers, ICD members, and SAPS members in an open-ended way to highlight what these individuals themselves believe are the most pressing problems and successes in South Africa today.

To be clear, the overarching purpose of the study is not to claim that the current SAPS is anything like the old SAP, although there may still be similarities. What *is* the purpose is to fill the research gap by exploring the effectiveness of current systems of accountability and their relation to police culture. After describing the methodology and background literature to the study, the findings and analysis will be presented in sections along these lines.

The first and second sections are brief case studies of the ICD and the SAPS internal disciplinary system, respectively. The third section is a general analysis of police

culture when it comes to force and subsequently accountability for the use of that force and how that affects South Africa's mechanisms of accountability. The fourth section explores the need for criminal accountability within the police and assesses whether a) accountability for the overuse of force diminishes police effectiveness in fighting crime or b) is crucial to a stable democracy.

The paper will illustrate that structural inadequacies within the ICD and the SAPS internal disciplinary system coupled with police attitudes toward human rights discourse hinder the effectiveness of these systems put in place post-apartheid. If everything is done to improve these processes, however, South Africa can move into a more stable and mature democracy. As Captain Andre Laurens says, "You must first clean your own house before you can clean someone else's" (Laurens 27/11/07).

METHODOLOGY

My research into police accountability first began at the start of the semester. Having always been interested in police brutality and the impunity with which the South African Police and other agents of apartheid acted pre-1994, I was curious to see what was going on today. I began by reading all kinds of literature on apartheid-era policing, including Eugene de Kock's autobiography, Jacques Pauw's books, several articles on the subject, the autobiographies and biographies of Nelson and Winnie Mandela and Archbishop Desmond Tutu, and TRC transcripts and testimonies.

The actual body of the paper involved incorporating a number of secondary and primary sources. Through several conversations with Professor John Daniel, who was to become my advisor, I decided to investigate what elements of apartheid still exist today within police structures, which led me to accountability. As I started my research, I began

to read literature from the Center for the Study of Violence and Reconciliation (CSVVR) website, which chronicles the research and work of several academics who have done work on police accountability, including David Bruce, Themba Masuku, and Gareth Newham. In addition to that, I began to read articles on African accountability and policing in Southern Africa from an online database.

Several books also gave me insight and an introduction to the issues that plague South Africa today. The work of Monique Marks, which chronicles the transformation of one particular unit in Durban from apartheid to democracy, provided a valuable introduction to police culture, while several works by Antony Albekker provided a good grasp of police attitudes and issues of crime in South Africa. Newspapers were informative as well.

I began my primary research by contacting some of these authors, and quickly set up interviews with David Bruce, Themba Masuku, and Monique Marks. David Bruce is a leading researcher in the fields of police brutality and police accountability and works with CSVVR. Themba Masuku, too, works with CSVVR and does research on the same subjects, focusing on the importance of police accountability for democracy. Although both have written articles on the subjects researched, I felt it was important to elicit the exact information I needed, in addition to obtaining possible anecdotal evidence or personal experiences and clarifying the most important issues from their papers. Bilkis Omar of the Institute for Security Studies (ISS) also had similar themes to discuss with her organization's work.

With Professor Marks, her book did not focus on police accountability, but it did outline several events in which she observed some questionable police activity during her

time following and observing the unit. As such, I wished to interview her about police culture and attitudes toward accountability and probe her further about such incidents and about her experiences with the police.

I then wished to speak to people who were involved closely with ICD. I first spoke to Cyril Adonis, who is a researcher in the National Office in Pretoria, about his work, the ICD's strengths and weaknesses, and his experiences with the police to get a feel for how work is on the ground. In addition, I spoke to Johan Burger of the Institute for Security Studies, a man who worked in the police for over fifty years and now occasionally partners with ICD researchers to produce reports. The final ICD employee I interviewed was Len John, the Provincial Head of the Provincial ICD Office in KwaZulu-Natal (KZN), who I believed was able to provide me with an analysis of at least how his office runs, in addition to giving me insight into the police, of which he was also a part before joining the ICD.

I then went to speak to some officers at the Provincial Police Station of KwaZulu-Natal in Durban. I first spoke with A.S.M. Haniff, a full-time shop steward who defends employees accused of criminality or misconduct in internal disciplinary systems. With him, I observed a disciplinary hearing regarding a man who has been accused of stealing evidence from the scene of a crime: however, I was asked not to disclose much more than that and the structure of the hearing. Also with him, I attended a union meeting to see how unions work in the police and general police fervor toward unions.

I also interviewed Superintendent Joe Saker, who is in charge of the disciplinary department in KZN, to see his views on how effective his own system is, his opinion toward the conduct of the SAPS as a whole, and his relations with ICD. Later I was also

able to interview Captain Andre Laurens, the prosecutor in the aforementioned disciplinary hearing and a man who has worked in discipline for over ten years. I asked him many of the same questions as I did to Superintendent Saker.

All interviews were done formally, and all persons interviewed were informed of their right to stop the interview and their right to anonymity. All signed Informed Consent Forms, and anything I was asked not to repeat will be found nowhere in this paper. I also participated in a lot of informal discussions with workers at the police station and several of the interviewees. My observations of the hearing and the union meeting are also described within. In addition to interviews, primary sources such as reports, newsletters, and strategic plans were consulted.

The interviews with Bruce, Masuku, and Adonis were done in Johannesburg, while interviews with Burger and Omar were done in Pretoria. The rest—Marks, John, Haniff, Saker, and Laurens—were completed in Durban.

LIMITATIONS OF THE STUDY

The primary limitation to the study was time and sample. With only a month to research, I obviously could not achieve the breadth and depth required to fully understand and appreciate the complex culture of the police and their relationships to oversight bodies. Although a good sample of outside researchers, ICD employees, and SAPS employees were sought and interviewed, the sheer size of these organizations frankly meant that I was relying on a few people's perceptions and opinions to represent an entire group. The ICD, for example, has a few hundred employees, and the SAPS has around 150,000. This is one of the primary reasons why research on the police is so difficult and time-consuming: Professor Marks, for example, spent years following just one unit

around, and claims to still not fully understand them (Marks 22/11/07). Police accountability also appears to be a very sensitive and loaded subject for all involved.

The other major issue when it comes to such a study is that of bias and experience. Although the researchers did not have any significant bias ingrained in the information they were telling me, none of them—David Bruce, Themba Masuku, and Bilkis Omar—have hands-on experience being a police officer and dealing with the troubles of the job. This may sway their opinions toward a harsher sentiment of accountability.

Although Marks does have direct police experience, even she admits she does not have a full grasp. She also may feel a lot of sentiment towards officers she grew to know and befriend. This is the same sort of bias that may be experienced by A.S.M. Haniff, who is ardently pro-union and has very set viewpoints. Superintendent Saker and Captain Laurens may be biased toward discipline because that is what their jobs mandate them to do, but at the same time they admit the shortcomings of the department and both have served in the lower ranks for a number of years.

Lastly, Johan Burger has been called a “jilted lover” of the police by a newspaper, and may be very strict with them. Cyril Adonis and Len John, too, may be more in favor of the ICD since they work there but also more aware of the frustrations involved with the work. Len John especially may be concerned with making his ICD office look good in light of research, but he also has the added validity of having a background in the police to be able to tell many sides of a story.

Further limitation includes the lack of statistical evidence regarding the effectiveness of these institutions. For example, there is no way to empirically prove that

the ICD has affected criminality within the police since its inception in 1997 or what will improve its efficacy: all there is to go on are the experiences and observations of those involved. Similarly, there is no way to directly correlate discipline within the SAPS with reduced misconduct. Theories on the importance of accountability to democracy are largely scholar-oriented and have no basis in on-the-ground experience.

Despite these limitations, the information I obtained was fruitful and helpful. I believe I was able to weed out bias and experience and to keep an open mind, and the information contained in this paper is reliable and factual.

LITERATURE REVIEW

Having been interested in this topic since before I even arrived in South Africa, I began to read literature on apartheid-era police violence. Eugene de Kock's autobiography, *A Long Night's Damage*, is an in-depth look at de Kock's own life as a security policeman during apartheid. He details tremendous levels of murder and torture and talks about an intense culture of impunity. Although he himself is in prison today, the majority of his cohorts are not. Jacques Pauw's book *Into the Heart of Darkness* also outlines the stories of perpetrators during apartheid, how they were never accountable for their crimes, and how South Africa's premier organization for stability and control operated with lawlessness, racism, and brutality. From there I found books on apartheid-era figures, reports on the Truth Commission, dozens of articles on amnesties and crimes, and human rights articles on the importance of police forces in democracies.

Gavin Cawthra passionately deals with issues of transition before the advent of democracy in *Policing South Africa*. Citing available data on deaths and brutality, he outlines his hopes for a new South Africa, stating that the police service is integral to the

change because of its importance to the apartheid regime. Frightened that the police could undermine a successful transition, he is still optimistic that the force can form the pinnacle of South African democracy. With the thought that a stable police force is significant to democracy, I began to read about the SAPS since 1994.

Themba Masuku writes about the differences between police forces in autocratic and democratic states: levels of accountability in the three areas of internal police systems, state structures, and civil society. He states that though levels of accountability have risen since 1994, the SAPS still has a long way to go toward completing the role it should have in fighting crime lawfully and ensuring South Africa's stability. He goes on to state in other articles that even data compiled on the misuse of force and torture is unreliable and that further provisions need to be made to ensure that all police activity is monitored and chronicled to improve service delivery and performance: he suggests documentation to put into the SAPS annual report.

Janine Rauch of CSVR confirms that the new South Africa has taken a visionary human rights approach to legislation but that this does not necessarily apply to grassroots actions, particularly with political pressure to fight crime. In another article she goes on to say that unfortunately, crime has forced public opinion down about the police force, despite a new human rights discourse, the depoliticisation of the force, and new efforts at monitoring (such as the ICD). In yet another article written with Elrena van der Spuy, she examines police reform in post-conflict Africa: this article contains a case study of South Africa, its focus on accountability post-apartheid, and its complex reliance on multiple systems. She emphasizes corruption with the police force as a current problem.

While reading these more specific and narrowed pieces of work I came across David Bruce, a leading researcher at the Center for the Study of Violence and Reconciliation who has written several articles and works of suggestion on different aspects of the new police force of South Africa. His work takes the reader from plans for a new force in 1994 to a more current analysis of deaths post-apartheid. He concludes that though apartheid statistics are questionable with the level of cover-up that existed and though the police force now is certainly not as brutal as it used to be, there is still cause for concern within the SAPS. In addition, methods of oversight in South Africa are severely lacking: he discusses the failures of ICD policies and their effect on police discipline and how ICD statistics cannot give a truly accurate reflection of the goings-on of a police force. He analyzes the reasons for deaths as a result of police action or deaths in police custody and has written an entire book on the future of the SAPS. In 1999, he wrote that the South African Police Service carries with it the legacy of apartheid: in particular, brutality and lawlessness. Rachel Neild has also co-written an article with Bruce that speaks about democratic policing and the type of police force that is most effective and attractive to the general public.

Joel Miller's "Civilian Oversight of Policing: Lessons from the Literature" discusses debates regarding the ability of civilian oversight to promote public confidence and to create democratic significance. He describes the difficulties and considerations needed in creating these bodies, including political support, resources, effective management and leadership, public attitudes, and police cooperation. Oversight mechanisms must have integrity, legitimacy, and be able to adapt. He next gives suggestions on how to promote oversight, suggesting one must stress legitimacy and

democracy and ends by outlining ways to identify opportunities to create oversight mechanisms and monitoring success.

So what was really the objective difference between the pre and post-democratic worlds of South Africa? In 1994, new documents such as an entrenched South African Bill of Rights seemed to make the police force a more fit body for public safety, but is that the case? I began to read more current literature and was provided with objective work on what is happening today in the SAPS and its transformation as a police force in a more democratic country.

The work of Monique Marks, *Transforming the Robocops: Changing Police in South Africa*, offers a more positive and in-depth view on how police forces can change over time. She pinpoints Durban as a case study, remarking that the hierarchical structure of the police helps immensely in instituting reform, but to truly come into its potential as a democracy, grassroots policies, values, and attitudes need to change. She ends the book on a positive view of South Africa's policing future. Marks also has an article she co-wrote with a colleague entitled "Police as Workers: Police Labour Rights in Southern Africa and Beyond." This article explores how South Africa is one of the only countries in southern Africa that is allowing labour rights and unions to be created within the police force. She argues that these unions, such as POPCRU, are growing in influence and strength and they contribute to improvement within the organization and bolster rank and file morale. This article began my exploration of the importance of police unions to police culture and attitude.

Antony Albeker, too, conducted his work in partnership with the SAPS. His book the *Dirty Work of Democracy*—though it does not discuss management of the police,

police policy, or certain statistics—tells the stories of ordinary policemen assigned to work the streets arresting drug lords, car hijackers, and murderers. It promotes a more personal view of policemen, ending with the assertion that policemen are human beings and should be expected to act like them. Thus he ends with a pessimistic note about reform in the SAPS but does it in an understanding way, providing material for further knowledge about what makes the average policemen act and what attitudes he or she may have or have had over the course of his or her career. This has prodded me to consider human nature in police work. Reading his second book, *A Country At War With Itself*, opened up even more dilemmas. Altbeker argues that the “primary aim and object of policing is the prevention of crime” is part of the constitutional mandate of the SAPS as well as the focus of the National Crime Prevention Strategy (Altbeker 131). In the book, Altbeker stresses the importance South Africa puts on preventing crime and the attitude some policemen have of being society’s best chance at safety. Crime is a very complex and very touchy subject.

The work of Piers Pigou moves into the monitoring of police torture and abuse during apartheid and after. He indicates that although torture and abuse were effectively outlawed in South Africa during apartheid, it is unknown if the apartheid state ever monitored its many abuses. Both domestic and international NGO’s did, however, attempt to compile reports of maltreatment. Since then, legislation has been introduced to move South Africa at least into the framework of more monitoring and accountability of police activity, particularly with the introduction of the ICD in 1997. He uses some of Bruce’s work to then indicate some of the problems with ICD, notably: lack of knowledge of ICD on the part of the general public, ICD locations, not too many

resources, the fact that the SAPS is only obligated to report deaths rather than all assaults or torture, and lack of evidential support. Amanda Dissel, head of the Criminal Justice Programme at CSVR, writes about the conditions of police holding cells and how not only police abuse, but also police negligence in terms of medical treatments, suicide prevention, and restraints contribute to the number of deaths every year in holding cells.

Beyond these, a number of individual articles and reports benefited me. Robert Mattes of the University of Cape Town explores issues of the public perception of crime in South Africa in his article “How Does South Africa Compare?” He argues that it is hard to compare the crime rate in South Africa with those of other African countries, but that public perception of crime in South Africa is quite fearful, which puts a lot of pressure on the police. He also claims that the public looks at the police in a displeasing way and believes that the police in South Africa are considered to a large extent not as effective as their counterparts in other countries.

Gareth Newham is another researcher who sometimes collaborates with David Bruce and Masuku, and also examines effectiveness. In one of his solo articles, *Strengthening Democratic Policing in South Africa Through Internal Systems for Officer Control*, he addresses the failures of external methods of monitoring and control and the rampant abuse of power by the SAPS, suggesting methods of internal control to help combat this abuse. Newham and Masuku provided a deeper understanding of the levels of accountability in South African society today.

Melanie Lue-Dugmore’s “Police Accountability and Oversight Mechanisms in South Africa” gave a thorough overview of the systems of accountability, including non-criminal systems in Parliament and through Community Policing Forums (CPF’s), and

provided a lot of contact information and basic facts. It provided a reliable source to check up on certain institutions and regulations. She also helped to write a paper for the Institute of Criminology at the University of Cape Town where she assesses the problems with the various oversight bodies in South Africa, with police culture, and with public opinion. She stresses problems with overlapping mandates, little independence, insufficient powers to act on recommendations, and organizational structure.

Finally, Amnesty International's 1997-2002 survey of human rights violations of the police in Southern African Development Community (SADC) countries outlines a number of ways that effective oversight can be accomplished, the primary goals being to investigate based on promptness, impartiality, thoroughness, independence, and the protection of witness and complainants. Although their summary of accountability in South Africa is rather brief and shallow, they do describe several ways in which southern African countries can hold their police accountable, including: judicial commissions of inquiry into patterns of abuse and deaths, internal investigations by the police, investigations by prosecuting authorities, investigations by national human rights commissions aimed at redress for victims, and specialized complaints investigation bodies. South Africa follows some of these recommendations.

All of this research and written work, particularly on objective similarities and differences to apartheid, will help to form a background for my investigation into underlying themes of impunity and will supplement the statistics and reports listed in the primary resources section.

FINDINGS AND ANALYSIS

The Independent Complaints Directorate (ICD)

Structure and Mandate

“To Promote Proper Police Conduct: 10 years of Policing Oversight.”-2006/2007 Annual Report

One of the first things the new government did post-apartheid was create a method of civilian oversight over the previously brutal police force. Established in 1997 as that method of civilian oversight over the police services of South Africa, the Independent Complaints Directorate is now ten years old. With the fall of apartheid and the advent of democracy in 1994, ICD was created to investigate cases of criminality and misconduct within the police, particularly in relation to the police-related deaths that had been such a widespread and horrific problem.

ICD has a mandate in the Police Act that allows it to oversee the SAPS and the Metropolitan Police Service (MPS) (www.icd.gov.za). Since the SAPS is the body known for its brutal actions during apartheid, this is the organization that will be focused on in this paper. Criminal misconduct regarding the use of force will also be explored. ICD’s mandate allows it to investigate all deaths as a result of police action or deaths in police custody, and the SAPS is required to report all such deaths to the ICD in a timely manner. Other than deaths, however, the SAPS is not obligated to report any incidents that occur or complaints that come into the office: other incidences of criminality or misconduct that the ICD investigates thus either arises from voluntary information given by the SAPS or from independent reports made by civilians.

The ICD is made up of 152 personnel and investigators, and is responsible to the Minister of Safety and Security, Charles Nqakula, who is also responsible for the SAPS.

Each of South Africa's nine provinces have one ICD office plus a national office in Pretoria. There is a Provincial Head in each province plus the Acting Executive Director, Patrick Mongwe (www.icd.gov.za).

When the ICD gets a case it is added to their electronic files. If it involves a death, an investigator is immediately dispatched to the scene of the event and assigned the case. It varies as to how long it takes ICD to respond to other cases. The investigator in charge of a given case is responsible for collecting statements about what happened, possible evidence, and for making a conclusion as to whether or not an officer acted in a criminal or delinquent way. If need be, criminal cases are then handed off to the Director of Public Prosecutions (DPP) under the National Prosecuting Authority (NPA) for prosecution and referred back to the SAPS disciplinary system for punitive measures. Cases of misconduct and serious misconduct are simply referred back to the SAPS with recommendations for disciplinary action.

Difficulties and Challenges

"The ICD has been set up to fail."-Leslie Xinwa, ICD employee

There seems to be no disagreement among those interviewed that the creation of an independent oversight body was the right move toward creating an accountable police force in South Africa. There is plenty of disagreement, however, about the effectiveness of ICD's structure, the limitations of its mandate, the use of its resources, and its overall usefulness in a successful transition to democratic policing.

The first problem that ICD faces is a lack of resources that ultimately renders it unable to properly investigate all of the cases it receives. The ICD is understaffed by 50%, and its couple of hundred employees pale in comparison with the numbers of the

SAPS, which is close to 150,000 police officers (John 23/11/07). Simply by sheer numbers, the ICD is at a disadvantage, as far more complaints are generated by the SAPS than can possibly be investigated by the far smaller ICD. Although the ICD was originally supposed to have 500 employees and requests have been made to hire more people, there simply is not the funding to do so. In addition, many of the investigators are inexperienced, and there is no capacity to train them (John 23/11/07).

Limited employees and limited resources then result in fewer reports being completed and lead to more ineffective investigations. There are far fewer ICD offices than police stations in South Africa, which means that they are more spread out and that incidents often occur in stations far from the nearest ICD office. This leads to two problems: the first is that victims of abuse in remote areas may not have access to ICD offices to make complaints. Since the SAPS is not obligated to report non-fatal incidents, this becomes a major dilemma. These same people are also more likely not to know that they can make a complaint to ICD. In addition, difficulties in access to ICD and no knowledge of it can increase apathy toward reporting abuse. In all of these ways, ICD does not receive all of the reports it should be getting, diminishing its effectiveness in holding the SAPS accountable for its actions and rendering its databases inaccurate when trying to research levels of police brutality and the use of excessive force (Bruce 2006a).

Other issues with the ICD involve structural imbalances. Police forces all over the world are manifestations of the will of the governments who rule them, so naturally their interests supercede those of the ICD. Since the Minister of Safety and Security heads both organizations in South Africa, conflicts of interest can come into play, as the Minister will often favor the police over a civilian oversight body. Cyril Adonis, a

researcher at ICD, says that ICD personnel are sometimes even instructed to keep certain pieces of information out of reports because it would make the police force look bad (Adonis 15/11/07). On the next lower level—the national heads of the SAPS and the ICD respectively—more issues arise. The SAPS' National Commissioner is actually higher up in rank and status than the Executive Director of the ICD, making it difficult for ICD officials to obtain respect and to make their recommendations heard: there are, in fact, a number of conflicts between the two bodies over recommendations that the ICD makes to the SAPS arising from this (Burger 14/11/07).

Perhaps the biggest problem when it comes to the effectiveness of the ICD, however, is the way they conduct their investigations and what their findings actually mean. Many of the investigators are not properly trained, and ICD does not have the capacity to fully train all of its employees. Len John, the Provincial Head of the KwaZulu-Natal Provincial Office, estimates that about 90% of ICD investigators come from a police background for that reason, but that not all are as educated as they should be (John 23/11/07). It is unclear what percentage of investigators come from a police background in other provinces.

Problems investigating are rife. Perhaps the foremost problem is that of timing, especially when dealing with police-related deaths, which is what the ICD focuses on. The SAPS is obligated to report all deaths directly to ICD, but the timing is not always consistent, sometimes taking hours (ICD Research 42). This means that by the time ICD hears of an incident, sometimes evidence has been—either voluntarily or accidentally—tampered with, key witnesses may have left the scene, and some policemen have had a chance to think through their stories. In addition, since there is only one ICD office in

each province, it sometimes takes an investigator many hours to arrive at a scene. In addition, Len John says that sometimes the information provided to an investigator by the police is close to nothing. Some of the dockets the ICD receives from the SAPS contain nothing more than a name with no station number or identifying characteristics about the officer in question or the case to be examined (John 23/11/07). The following quote from a recent ICD report on the investigations of police-related deaths sums it up:

“Investigators at the ICD complained...that...there is nothing to compel the police to give statements. Thus when they give statements, they either lie or give a complicated statement that does not make sense. This is done with the deliberate aim to protect colleagues and sometimes to not assist ICD officials. It makes it difficult for ICD officials to shed light on the circumstances surrounding the incident and is thus to the detriment of the case” (ICD Research 42).

The fact that ICD investigators have the power to hand a case over to a prosecuting authority or the SAPS internal disciplinary system also makes especially the policemen at a scene wary of what is going on. Since they have the right to remain silent, often an investigator cannot properly ascertain the goings-on of the day.

Len John and Cyril Adonis both agree that because of problems in investigating, many cases slip through the cracks, especially incidents that happen on-duty. Often, cases the ICD receives have to do with incidents that happen off-duty: for example, if a police officer shoots his wife with his firearm. Such cases are easier to investigate, easier to solve, and are much clearer than cases that occur when an officer is on-duty and the line between legality and illegality is smudged (John 23/11/07). John believes, however, that if an ICD investigator recommends a case for prosecution and a suspected officer is found not guilty, it is not the quality of the investigation to blame but rather the high

standards of the court system or because there simply was not enough evidence (23/11/07). However, the lack of evidence could arise from any of the scenarios above.

ICD's statistics are generally not reliable either, particularly when they relate to police brutality. As stated before, it is unclear from the number of reports made how many incidents actually happen, and they have admitted themselves that they do not have a good grasp on the prevalence of the overuse of non-lethal force in South Africa (Masuku 2004). So given all these challenges, how important is it really to have the ICD around?

Improving the Effectiveness of the ICD

"The presence of ICD means something."-Themba Masuku

How crucial has ICD been to criminal accountability within the police since the end of apartheid, what internal structures could improve its effectiveness, and should those internal structures be utilized? Themba Masuku says that it would be downright "naïve" not to give the ICD credit because it has done wonders for accountability given the resources it has been allotted by the government, and Cyril Adonis would agree (20/11/07 and 15/11/07). It must be stated that the institution of the ICD has vastly increased accountability in South Africa since the days of apartheid, and that an independent civilian oversight body was seen by many to be a necessity for the fledgling democracy. David Bruce, Themba Masuku, Len John, and Cyril Adonis, all leading researchers and scholars in the area of police accountability, all say that the existence of an ICD has probably brought certain statistics such as police-related deaths down, as the mere presence of an oversight body can have a small deterrent effect. In addition, the ICD has helped to give the police if not legitimacy, at least more of a legitimate image.

They have succeeded in prosecuting numerous cases, and their investigators seem to work hard (Adonis 15/11/07). Len John insists that the number of unjustifiable shootings has decreased to 5-10% largely because of ICD, although David Bruce might argue that at least 60% are unlawful in some way (John 23/11/07 and Bruce 2001).

There are several, however, who contest ICD's even small effect. Bilkis Omar of the Institute for Security Studies (ISS) thinks the ICD has had little to no effect at all, while Johan Burger says the ICD lacks respect from government and the police. For example, some representatives recently went before the Portfolio Committee in Parliament—a non-criminal method of accountability—and were asked about a recent brutality case: none had even heard of it (Burger 14/11/07). Incidents like this tend to turn governments away. There needs to be a certain amount of political will to change the resources, staff, mandate, and perception of the ICD, but this political will does not seem to be there (Saker 27/11/07).

Common consensus on how to improve ICD seemed to be primarily in terms of resources. Although the police force gets more and more funding every year largely on the basis of the need to fight crime, the ICD gets barely anything to fight criminality within the police force (Adonis 15/11/07). First and foremost, the ICD needs more money to hire more people, obtain more vehicles, perhaps institute more offices around the country, and acquire more technology for the acquisition of data and a potential link to the SAPS' systems.

Secondly, the ICD needs to be given a stronger mandate. Len John believes the ICD should have the power to observe the SAPS' disciplinary system's goings-on and be able to make suggestions (John 23/11/07). In addition, it may make the organization more

effective if the SAPS is obligated to follow their recommendations made about certain cases. Masuku and Bruce believe that because the police are in such positions of power, they should not have the right to remain silent when it comes to investigating possible wrong-doings and should be forced to speak, or at least be faced with sanctions (20/11/07 and Bruce 2000). Some even believe the ICD should have the power to punish.

There will always be transgressions with police forces, but the presence of effective, strongly-mandated disciplinary systems deters them (Burger 14/11/07). Although the link between decreased stats is tenuous, Burger argues that many in the police see a need for an independent oversight body and actually welcome it (Burger 14/11/07). Bruce might argue, however, that this leads to a shunting of the work and a mentality that “this is the ICD’s job” (Bruce 2006). Whatever the case, the ICD isn’t able to effectively operate currently, and drastic improvements such as the ones just mentioned need to be made.

The SAPS Internal Disciplinary System

Structure and Mandate

“I know this guy who once stole 30,000 rand from the police. If you are guilty and you win, you’re lucky. If you don’t, run fast.”-A.S.M. Haniff

The ICD is not the only body that deals with potential criminality within the police force. The SAPS has its own internal disciplinary system as well designed to root out dishonest or criminal officers and punish them or remove them from the service. During apartheid such a system was lacking to the point of non-existence, thus contributing heavily to the widespread impunity in the South African Police. With the change to democracy, the addition of a heavier human rights discourse, and the attempt to

create a more transparent and accountable police force, how effective has the SAPS been in achieving these goals?

The goal of this section is to argue “not very.” Several interviews with police personnel, SAPS regulations and guidelines, and secondary sources have all concurred. To begin with, there was not a very heavy emphasis on reforming the disciplinary system within the police post-apartheid, and the idea of accountability is still quite new to a lot of officers (Masuku 20/11/07). But how does the internal disciplinary system actually work?

Any officer can be charged by his or her station commissioner and reported by any officer for misconduct or serious misconduct, which includes anything from “mismanaging the finances of the State” to “conducting herself or himself in an...unacceptable manner” to serious misconduct such as “torture” or other “serious infringements on human rights” (SAPS Discipline Regulation 20). In addition to that, every criminal charge laid against an SAPS officer in court must also have a docket opened within the disciplinary system, which deals with relations between employer and employee and can distribute discipline solely in terms of jobs: for example, suspension, written warnings, and dismissal from the service. It is important to note that in terms of criminal charges in court, whether the officer is found guilty or innocent he or she may still be brought up on charges for misconduct within the working environment (SAPS Discipline Regulations p. 3). The SAPS also takes recommendations from the ICD for investigations completed. A number of problems that will be delved into with more detail have been cited having to do with the SAPS disciplinary system, including: a reluctance by supervisors to take disciplinary steps against members, disciplinary procedures taking

too long to finalize, inconsistent or inappropriate application of disciplinary procedures, and inadequate experience of station based presiding officers (Masuku 2005).

I spent time observing the trial of one man who faced possible dismissal from the police on a charge of removing evidence from the scene of the crime. Although I was asked not to speak about the exact details of the affair, I am able to comment on the procedures involved and on certain aspects of the trial. Following this commentary will be a detailed description of the interviews conducted with members of the SAPS regarding the trial and the disciplinary system as a whole.

When a matter actually comes to a disciplinary hearing, a sort of “presiding judge” and a “prosecutor” are picked from a group of normal police officers to act as officials. Any witnesses can be subpoenaed to testify, and the accused is entitled to a representative as well, a sort of “defense lawyer.” This can be a professional lawyer or a shop steward, who represents one of the two police unions, usually the Police and Prisons Civil Rights Union (POPCRU). The matter I observed was a high-profile one, and Ahmed S.M. Haniff, a full-time shop steward for POPCRU, was defending the accused while Captain Andre Laurens, who actually does these sorts of cases on a daily basis, was playing the role of “prosecutor.” Afterwards I talked with Haniff, Laurens, and the Head of Behavioral Management, Joe Saker, about the proceedings and the disciplinary system as a whole.

Difficulties and Challenges

“It is a laughingstock.”-Superintendent Joe Saker on the SAPS disciplinary system

Superintendent Saker started off by saying that about 200 cases were on the books at the moment in KwaZulu-Natal (Saker 27/11/07). Considering, though, that SAPS rules

mandate that for every criminal case begun against an SAPS officer a departmental case must be opened as well and that the sheer numbers of KwaZulu-Natal with over 22,000 officers should be generating more reports, more departmental cases need to be opened to ensure accountability for wrong actions.

But to Haniff, departmental hearings are nothing but trouble, considering it a waste of time to hold them for every matter, especially when there are over 2,300 cases awaiting trial in KwaZulu-Natal alone for anything from murder, robbery, corruption, and fraud to insubordination and abuse of power (Haniff 27/11/07). Since all cases are supposed to be resolved within 60 days, often officers are left wondering over the status of their cases, and often procedures are not followed. In November, Haniff finished a case that had been open since 2003, and he once dealt with a matter that was over eight years old.

Such experiences lead Haniff to believe that proper procedures are followed and a fair trial given only about 50% of the time (Haniff 27/11/07). He concedes that if a just, experienced presiding officer is in charge an individual will get a fair trial. According to Saker, the disciplinary system of the SAPS is considered a “laughingstock” by many in the force, largely because it is so ineffective in punishing offenders and so inconsistent in who it actually punishes (Saker 27/11/07). He perceives that the main problems lie in structural imbalances, which include the improper training of workers, the ever-present potential for bias, the lack of will to prosecute, the lack of investigators who are able to uncover events, and the ease with which guilty employees manage to get off.

Of these issues, the number one reason Haniff thinks departmental hearings are not that effective are the close relationships between officers (Haniff 27/11/07). This

leads to bias within the hearings and conflicts of interest, and although each case is different, generally people involved may know each other and have their own agendas, either biased for or against the accused officer. He goes on to mention that he fears for the officer he has just defended in the trial I watched because rumor has it around the provincial station that some senior management has it out for him, implying that that was the only reason he would be punished at all. Since the standards of proof in the departmental hearings rest on a balance of probabilities rather than proof beyond a reasonable doubt, he figures that would be the only reason anyway. And if a senior officer is ever accused of anything, nothing seems to come of it—it is swept under the carpet (Haniff 27/11/07).

Saker's first issue with the system is how almost anyone in the service can be appointed to be a presiding officer or a prosecutor. This becomes an added responsibility to an officer's already full schedule, and it is a responsibility that many cannot be passionate about because it involves disciplining those that may be their colleagues and with whom they may feel a bond.

In addition, when officers take on these roles the extent of their training is a week of workshops being told how to do the job. Employees are allowed to use full-time shop stewards and any lawyer they would like to argue their case if they are brought to a hearing: when put up against this, one week of training does not afford these officers a chance to effectively fight a case, especially when coupled with the issues stated above. The departmental hearings are governed by the SAPS Discipline Regulations, which, like any legal document, is open to the interpretation of those reading it. Thus experienced

defense lawyers will outdo the “prosecuting” officer every time, and if the presiding officer is also inexperienced, he is easily convinced in the defense’s favor.

Laurens expanded on Saker’s explanations of why the current system is not the best. He first concurs that since the “prosecutors” only have one week of training and it is an added responsibility to their work, they are no match for whoever POPCRU puts up to defend employees, which means that more cases are being lost and more employees are getting off for crimes and misconduct they should be getting punished for.

His second issue is with the presiding officer, who may be inexperienced but who also is only one person and thus subject to bias and a lack of understanding. He cites the example of the American jury system and mentions that in the independent structure he has created in his mind a variety of people will make decisions rather than just one.

His third issue with the disciplinary system has to do with labor law. Since participating in these hearings is generally an added responsibility, police officers must go from the criminal law that they study, practice, and hopefully follow in the streets to labor law in these hearings, which is an entirely different field and has entirely different rules and uses entirely different regulations to deal with its cases. It is hard, so thus it requires specialization.

The general information all three gave was that the system did not operate as efficiently as it should or could, stating that many people get off for criminal acts or acts of misconduct that they have committed. At the same time, however, Haniff is proud to announce how good he is at defending his clients. After all, POPCRU’s first allegiance is to the members (Haniff 27/11/07). He currently has 187 cases pending for him to try alone. He has done over 500 in his life, and has lost only two of those 500 (he expects the

current case to be the third), a testament to how often officers are actually disciplined for their actions. Haniff proudly states his record, and goes on to say that he has defended officers accused of murder, theft, assault, corruption, and countless other crimes, and none of them got even so much as a written warning (Haniff 27/11/07). The two he lost happened when a member shot someone excessively eleven times and when another was caught in the act of taking a 500 rand bribe, both “pretty serious offenses” (Haniff 27/11/07).

Additionally, it is hard to know how many incidents of criminality or misconduct are going unreported with this sort of structure. What Saker does know is that more serious allegations of crime are being reported now, so he suspects that discipline among SAPS members has gone down in the past 10 years, or is “sliding backwards” (Saker 27/11/07). To make it worse, many members of the public do not know how to lodge complaints, and many complaints are ignored: even when cases make it to a disciplinary hearing, many are thrown out and almost 50% result in no sanction toward the offending officer (Newham 2005). A famous case in Gauteng records an officer actually found guilty of torture: he paid a fine and then came back to work in the same unit.

Saker believes that when members are out in the field, they often will do whatever they want because they know they will not be punished, which leads especially to higher incidences of assault than may actually be reported and other transgressions. “The purpose of a disciplinary system is to redress wrongs, but if an officer knows he is not going to be fired, he is going to take a chance” (Saker 27/11/07).

Improving the Effectiveness of Internal Accountability

“Captain Laurens and I are the two most hated men in the building. Management hates me and the officers hate him.”-A.S.M. Haniff

The way to rectify these problems, as Saker and later Captain Laurens said, is to have a more structured body, in effect a system within the SAPS different than the current disciplinary system that operates more like Internal Affairs does in many United States police stations. They believe that a body within the SAPS but entirely independent from rank and file officers needs to be instituted, a sort of “core experienced body” (27/11/07). Such a body would be more free from bias, would be hired on a permanent basis so as to combat inexperience, and would have more authority to investigate reports and try to figure out which incidents are not being reported. With such a system, hopefully no more loopholes would exist.

Laurens, too, cites Internal Affairs in U.S. police stations as a good example: one core body as opposed to a different system in each station, like the ICD but more legitimate because it is in the police station and it would have the power over people’s jobs. If this independence is achieved, Laurens believes that the disciplinary system will be more consistent and more effective, and he joined Saker in writing the recent proposal for a core body. Whether or not they will be granted approval is questionable.

Saker says that since the police are still militarized, they respond to fear, and a core task team would, if not cause some fear, at least make some think before acting. Consistency would be more absolute, as there would be a set way of doing things with a set staff and a stronger mandate, increasing the legitimacy of discipline within the SAPS and thus the legitimacy of the SAPS as a whole. Saker and Laurens have recently put in a proposal advocating for such a change, and though there are of course concerns, they

think it will immensely improve accountability within the force. This sort of structure, however, does not eliminate bias and does not provide for the sort of democratic oversight mechanisms necessary to democracy (27/11/07 and 27/11/07).

Another change that may increase the effectiveness of the SAPS disciplinary system is its relationship with the ICD (ICD Strategic Plan 19). In the ICD's Strategic Plan 2007-2010, it indicates that co-operation between the two systems and strengthening the relationship between the two through effective communication are two challenges that could aid accountability in South Africa immensely (ICD Strategic Plan 19).

A report done by the ICD on the issue of compliance with ICD recommendations by the SAPS helped to make several findings in the ICD's most recent annual report. In terms of the caseload that the SAPS has begun to shunt off onto the ICD, regulations need to be set forward because a higher caseload on the part of the SAPS—which has exponentially more resources—could serve to make the whole system more effective (ICD Annual Report 2006/2007 51). In addition, it has been considered to provide for regular inspections of police offices by ICD to analyze the impact and outcome of ICD recommendations to the SAPS: this does not mean the recommendation would be mandatory, but it would mean that the SAPS would have to account for its actions (ICD Annual Report 2006/2007 51). This could serve to make the SAPS disciplinary system more consistent and less prone to error or bias. How would a general member of the SAPS, however, react to improvements within these two bodies, given their own behavior and attitude?

Police Culture and Accountability

The Continued Overuse of Force

“To some, if you can be the thin blue line, it (excessive force) is justifiable.”-Monique Marks

It is true that to an extent the police cannot be overly violent now. Past a certain point, the public, the media, and the government will get riled up: take the instance of a group of white policemen letting dogs loose on black immigrants, which let out an international and domestic outcry (SABC 2000). As David Bruce wryly notes, “They (certain officers) never had to deal with it (human rights) before, so they don’t know how” (Bruce 13/11/07). Out of the media spotlight, however, there are still officers who are permissive in their attitudes and approach to the use of force in everyday activities—the issue of human rights has never been stressed before, and has actually declined in rhetoric since the human rights fervor immediately following the end of apartheid.

“I hated the police, I saw them as brutes, I saw them behaving as brutes,” Bruce goes on when asked to describe his views of the police during apartheid (Bruce 13/11/07). Bruce, like many others, does not believe the SAPS is nearly as brutal as it used to be. However, the SAPS is still largely old generation, and even if issues with police-related deaths have subsided somewhat, there is still quite a lot of abuse. Although every police officer and every station is different, certain stations generate more reports and incidents: part of this problem may be discourse within local police leadership. Despite the above statement, Bruce believes that in the SAPS in general and in these stations in particular, human rights discourse is “not on the radar, really” (Bruce 13/11/07). At least, he says, officers have learned to at the minimum say the right thing.

“All police have their own dynamics,” Professor Monique Marks starts off. She spent years following around members of the Durban Public Order Policing (POP) Unit to research the methods and successes of converting to a democratic and just police force post-apartheid. Durban POP generally deals with crowds and protests, but also has standard patrols. And though one police unit is by no means indicative of general police culture—there are over 1,000 police stations in South Africa—it does make for an interesting case study.

Marks is quick to point out that every police station is different and that there are different kinds of police officers (Marks 22/11/07). It is important to note who is being recruited now and what their ideas are toward police force: those who come in with a philosophy of community policing and accountability usually do not go far, get discouraged, and change. Some others are quite disciplined and take complaints seriously, but there are still many units that act with a sense of impunity. In Marks’ book *Transforming the Robocops*, she describes instances of brutality where members of particular units would enter townships and beat people both inside and outside their homes searching for information on the whereabouts of such items as guns and drugs (Marks 2005). In some units, the ends justify the means. This can mean using force to extract confessions, acting murderously to people, and not respecting the constitutional rights of human beings. When asked if, in her experience, such officers are worried about being disciplined or brought up on criminal charges, she indicates that she never once heard mention of the ICD or the SAPS’ internal disciplinary system (Marks 22/11/07). Many officers, she says, do not see such actions as problematic, but rather as justifiable because the people involved are often suspected criminals.

Len John insists that though many of ICD's complainants are crooks, they should still be treated with dignity and not like animals, and that often the method in which the police arrest people is not in accordance with human rights (John 23/11/07). As opposed to apartheid, now there is a greater attention to accountability and human rights, but there are still pockets of policemen who may be frustrated with crime and may take a hard line because of its escalation. In this view, such officers also view their actions as morally correct.

A.S.M. Haniff is the first to admit that members of the police force can be very undisciplined and can commit large amounts of infractions, but he adamantly continues to profess that the accountability systems in place are unfair and unjust toward police officers, a view that probably has a lot to do with his union affiliations. He also compares the actions of police officers now with actions during apartheid: as a recruit, he was taught "how to physically beat people," and although human rights training is beginning to be instituted now, it is still "physically not practiced" (Haniff 27/11/07). He states that over 16,000 grievances are lodged every year against the SAPS and that the force has to shell out millions of rand annually in settlements. Despite these claims of ill discipline, however, he thinks that Section 49 of the Police Act, which governs the SAPS' use of force out in the field, should be expanded to give the police more power and that remedial steps within the disciplinary system should be taken—such as verbal warnings or corrective counseling—before such strides as departmental hearings take place (Haniff 27/11/07).

If one is to take Haniff's conflicting views as any indicator, Marks suspects that the police themselves have "no clue" about the answers to what should be deemed

appropriate behavior themselves (Marks 22/11/07). There is rampant role confusion between stamping out crime in whatever way they see possible and upholding human rights. There is no clear answer. All that anyone knows is that whatever the SAPS is doing now to fight crime may not be working.

Leadership, Training, and Public Opinion

“Be like a bulldog.”-former Minister of Safety and Security Steve Tshwete

This, of course, is not entirely the fault of rank and file officers. Policies are constantly being reformed, but most police are not even aware of when new ones are made. Higher members must change the way through example and through instruction, but people in higher ranks are unable to model. The National Commissioner, for example, is under investigation for relations with a suspected crime lord. These events are certainly not inspiring for rank and file officers.

Part of the problem, Bruce concurs, is confusing remarks and examples made by police leaders and politicians. The police are expected to behave in a manner respecting suspects' rights, but are also subjected to news briefings and training sessions where phrases such as “be rough, tough, take no shit” in reference to criminals are used or the head of the KZN Executive Council indicates that the SAPS needs to “aim for the head” (Bruce 13/11/07). The police are nationally criticized by their management for being unengaged with crime, but then when they act too harshly are criticized for acting like apartheid-era brutes. In one ICD report, one officer made it clear that he thinks a large reason for the number of deaths every year is the Minister of Safety and Security's pleas to shoot to kill suspects: “...One other thing that I think is the reason for the cause of the

shootings, you know these public speeches by the minister with firearm, I think that encourages the police officers to shoot and to kill...” (ICD Research 47).

Though the force has drastically changed since the end of apartheid, police leaders are not doing all they can to promote proper human rights discourse. Trainers are letting new, inexperienced cops handle rough beats, and there is not a great valuing of human life. In Bruce’s opinion, police leadership needs to be receptive: right now it is emotionally not conducive to achieving things. In addition, he believes a protection of life policy should be created, but that such initiatives will probably not be taken because the SAPS “does not really have an initiative-oriented leadership” (Bruce 13/11/07). The SAPS barely keeps its own records on any complaints received or reported incidents of police criminality or misconduct. Besides accusations against him, Selebi is dealing with so many things having to do with the SAPS that it is not really registering with him that he needs to address human rights discourse.

But should police leadership even be focusing on human rights when they have other things to think about? The media likes to sensationalize the idea of a “war on crime” that the police force is fighting. In such a “war on crime” context, human rights discourse can be overshadowed by crime and can make it difficult for the police to know how to work. The dilemma is worsened when taking into account the public’s reactions to police violence: often public opinion simply is not interested in the problems of police brutality precisely because of such a high crime rate. There is a general consensus that the police’s business is the police’s business. For example, even when I was driving with Haniff past a scene where police had shot two robbers dead, Haniff muttered, “Good, they got ‘em” (Haniff 29/11/07)

Research indicated that if the public is not interested, the police may not care. In the past, police brutality was fought by pro-democracy activists, the veritable “good guys”; in a modern context, however, the people being assaulted are not freedom fighters, but mostly criminals, which makes the argument “morally ambiguous” (Bruce 13/11/07). During apartheid, the emotions and the sentiments of many of the public were aroused, which on some level held the police accountable. But today, things are different: apartheid no longer exists and these are criminals, not the criminalized. As Bruce says, “Even people who claim to be humanitarian can’t get up a sort of rage toward it” (Bruce 13/11/07). During apartheid, civil society at least tried to monitor and fight against such abuse, but Piers Pigou acknowledges that now even civil society monitoring has “all but disappeared” (Pigou 12). So how are the men and women who face criminals and fight them every day supposed to want to change if the faraway public can’t even muster up enough energy to protest? After all, often the most effective police officer receives the most reports. Bruce indicates that, “While they (certain officers) generate a high number of complaints and allegations of abuse they may also be amongst the police who generate the most arrests, and are sometimes regarded with respect, and even a type of awe, by some of their colleagues” (Bruce 2006b). Thus many feel that if the police spend less time dealing with issues of human rights, they can deal with other problems (Adonis 15/11/07).

Although an ICD investigator who deals with the frustrations of the police often, Adonis respects the SAPS for what it does because “it takes a lot to work like that” (Adonis 13/11/07). Marks, too, states that it is easy to blame the police without pausing to understand their points of view, and Altbeker agrees as well in one chapter regarding the

use of torture on people considered detestable by the police (Altbeker 2005 141). Often police officers are disillusioned or have joined the force for the wrong reasons. They don't see clear career paths, feel promotions are subjective, and their incentives for operating are not very high. They don't feel cared for, so why should they want to behave in particular ways? It is not an enviable career path, Marks argues, especially when most feel they have no impact on the criminal environment (Marks 22/11/07). Fighting crime is hard and being an officer is hard, so many feel that civilians have no idea what the job means. This can lead to an automatic defensiveness in terms of accountability and a negative reaction to the subject.

Part of the issue is that police do “shit work for shit pay and no thanks” (Altbeker 2005 99). The advent of police unions has perhaps made them feel more cared for. Just about everyone in the police force is unionized, and unions such as POPCRU go far to protect their members. Themba Masuku recounts one story where a journalist took pictures of police officers beating illegal immigrants: POPCRU somehow managed to sway the story to make it look like the journalist was not being truthful, and the charges were dropped (Masuku 20/11/07). So do these organizations serve to strengthen or weaken the internal systems of the SAPS?

Unions can improve brutality stats and misconduct stats, but even though they profess not to approve of criminal activity—the chairperson was adamant about this at the meeting—they usually protect their members when they are brought up on criminal charges, and have been hesitant to challenge police behavior. Even Haniff, who condemns undisciplined actions, would be the first to find some loophole in an officer's case.

Considering the extent to which unions such as POPCRU protect the lower rank and file members, it is also odd that they have not done much to condemn the police commissioner's actions, although this may help explain why they haven't played a critical role in strengthening respect for and fear of the ICD and civilian oversight bodies in general. Unions seem to understand rank and file officers and can claim that civilians simply do not. And although there is human rights discourse, it is only in combination with a desire to stamp out crime in any way possible. Most literature actually suggests that the police are more worried about crime than anything else, and human rights discourse and thus methods of accountability are actually seen as weakening the police. Many, Masuku argues, are bitter and fear that the culture of South Africa has "banned the stick" to the point where criminals have more rights than they do and do not fear the justice system in the least (20/11/07).

POPCRU is self-admittedly a "very very vigorous organization." Their general attitude is to fight police management and actively engage in the rights of their workers. At meetings, one of which I observed, members are involved and shout slogans such as "Vive POPCRU!" and, since POPCRU is ANC and COSATU affiliated, "Vive ANC!", "Vive COSATU!" As such, they are actively involved in the legal activities of their members. Their full-time shop stewards, like Haniff, are energetic, and they are effective in hindering a lot of disciplinary action. Many of POPCRU's 122,000 members are extremely enthusiastic and can see their roles as fighting for their rights, one of which is the right not to be unjustly punished or oppressed (Haniff 29/11/07).

Attitude and Accountability

“What the fuck do you know about accountability?”-Monique Marks in relation to police views on outsiders

Such a bonding and enthusiastic environment can almost be construed that the training and the nature of police work is like “signing an allegiance” and that always turning a blind eye to acts of misconduct is expected, so just how amenable is the force to mechanisms of accountability?

The argument for accountability within the police is still a current debate and not just a given. Should accountability be based in the police or should it be outside, and to what extent should it involve rank and file members? Many officers, Marks argues, would resent the presence of an external and independent oversight body such as the ICD. After all: “What the fuck do you (the ICD and civilians as a whole) know about accountability?”

“Outsiders don’t know,” is a common view, leading to a total disregard of outsiders’ abilities, particularly having to do with civilian oversight bodies and the ICD. Faced with similar situations, the police, especially in the lower ranks that deal one on one with the public, are more likely to want to give an officer a chance rather than punish him or her. In a recent ICD report on police-related deaths, ICD attitudes seemed to indicate that they get more cooperation from management, who generally are not the ones being investigated (ICD Research 44).

When discipline is involved in general, Marks finds that the attitudes officers take toward events depends on the loyalties they have toward each other, but that the literature suggests that police, especially in the lower levels, tend to protect each other (Marks 22/11/07). The SAPS did go through a stage of being accountable, because theoretically

the officers that stayed in the force were willing to change. They are also often instructed by local government, such as in the case with squatter organizations such as Abahlali and the Joe Slovo Task Force, which to the police, makes their actions justifiable, as they are agents of the government at the end of the day. So why should they be disciplined?

In relation to discipline, John agrees that the police “close ranks” to protect each other often, particularly the lower ranks. He is glad that the ICD is in theory independent, because he believes that police culture dictates that one is supposed to keep quiet, even during SAPS disciplinary procedures. After all, if “you investigate someone one day, you must rely on him or her the next in the field, and is that really possible then?” In addition, if one investigates a senior officer, one “must count his days in the police” (John 23/11/07).

Johan Burger was in the police for over fifty years, long enough to be able to confidently say that police are resistant to being investigated as well. Why? They are generally suspicious of people outside, distrust the capabilities of anyone else, and prefer to have confidence in their own structures, perhaps because nothing will happen to them there (Burger 14/11/07).

Masuku agrees that the police are a very closed organization and resistant to outside pressure: they like to maintain independence and tend to bond during the harsh fieldwork they endure, leading them to want to protect one another, especially since police killings are so high (Masuku 20/11/07). This, he argues, actually has very little to do with South Africa and democracy, as even in the U.S. and the U.K. police protect each other and even go to high levels to protect one another.

Marks does believe, however, that the police could act in a more accountable and just way if a disciplinary system was in place that could consistently catch and eradicate criminal behavior and misconduct. Such a change would stem out of fear, and so could not be permanent or inborn into police culture. However, the police are a rank-based organization, and as such respond to authority and instruction at least to some degree. Internal disciplinary processes, after all, operate through ranking systems—if an officer acts out of line, it is most likely reported to a more senior officer first (Marks 22/11/07).

Within the SAPS, the ICD was condemned as ineffective from the beginning, being understaffed, ill-equipped, and selective about which cases to investigate. In Marks' view, even the officers she observed committing acts of brutality did not fear reprimand. When the officers did go out, accountability for their actions was not in their consciousness (Marks 22/11/07). Even Marks, a civilian, could see that they still used force unnecessarily. She is not sure of the culture in other stations.

The apathy extends even higher sometimes. "The National Commissioner of Police makes it clear that if his way, ICD would not exist," Cyril Adonis says somewhat bitterly (15/11/07). He, too, agrees that there have been problems faced by investigators including a lack of cooperation within the SAPS and evidence of tampering. ICD is also sorely under funded. One of the main things that bothers Adonis, however, is that many in the SAPS feel that the ICD is conducting a sort of witch hunt, especially directed toward lower rank and file members. This leads to the tendency lower-down not to give information, particularly since there are still officers who do not know what the ICD is. Adonis, too, believes that the mere existence of an oversight body keeps the body count down, even though human rights discourse is still a small role; there is no way to prove

this, however, because there is a lack of statistics comparing misconduct before and after the creation of the ICD. On the positive side, it is difficult for even the most stubborn of SAPS members not to comply with the findings of a criminal case (Adonis). At the same time, however, many within the SAPS welcome the existence of an independent structure, which relieves much of their work and leaves them free from peer and rank pressures.

Len John is the first to admit that when the ICD was first instituted, most officers, including him, had absolutely no respect for it. "Police are involved in day to day activities fighting crime, arresting people, and their lives are in danger all the time. They feel that investigators don't know the position they were in when an event happened, so many said 'To hell with it: we can blindfold ICD'" (John 23/11/07).

He admits that many still have that view, and will alter their stories or tell different stories from each other, and the ICD must deal with the backlash. Many fear disciplinary systems or do not understand how they work, and are bitter that when one becomes the subject of an investigation any chance for promotion is put on hold, and cases can take years. He thinks some use this fear and it hampers the way they work: officers deal with dangerous criminals all the time and if they are in fear of punishment or will get arrested all the time they may not act correctly. He insists, however, that if an officer is above-board then he will not hesitate to shoot or use force and his work will not be hampered, and this type of officer characterizes the majority (John 23/11/07).

John believes steps have been made, however. Due to ICD's close involvement with the police, there is now a greater respect for the organization. Most, he argues, have realized that the ICD is not there to punish them, which has increased ICD's credibility

(John 23/11/07). Usually the police now realize that investigations are nothing “personal.” For example, if an officer is suspected of being drunk on the job and is forced to take a BAC test, he or she will probably understand it is no grievance against him or her. The police are now aware that ICD does a good job, particularly since 90% of investigators come from a police background (John 23/11/07). Now, the only one who is not accommodating is the person being investigated or who has done wrong, and that is when cover-ups occur. The police respond to fear, and some fear the ICD, but the “bite” is not good enough (John 23/11/07).

To be short, the ICD is still new. Civilian oversight is a relatively modern concept, and simply a baby in Africa. Like others, Bruce believes that the ICD has had a small deterrent effect, and that if its mandate is larger numbers will go down. Many officers, however, know a number of things about the ICD: they know they will not investigate all cases, that many ICD investigators do not fully understand the law, and that others within the police will not cooperate with them. Sometimes there is a view that criminal cases are “their business, not ours” (Bruce 2006a). Bilkis Omar concurs that the police have a flippant attitude because there has been no historical proof that an ICD investigation will actually result in criminal charges laid or in disciplinary action on the part of the SAPS (Omar 14/11/07).

The level of cooperation between the two leaves a lot to be desired. There is often conflict over recommendations and a lack of compliance on the part of the SAPS, prompting Burger to sarcastically comment on how personalities can do nothing and strict regulations need to be implemented. Since the SAPS is not legally obligated to report back on the implementation of recommendations, it often does not take the

initiative to do so, and there is at least a 60% miscommunication rate. Part of this disconnect has to do with a view that ICD investigators are not very skilled (they aren't "real detectives") and can walk in with an attitude that an officer is already guilty or are rude and impolite, leading to protection of colleagues (Burger 14/11/07). The opposite, however, can happen as well.

Thus when the SAPS delivers a case to the ICD it most often is not in a "righteous" way. Conversely, however, the ICD's presence and the SAPS' internal disciplinary process does mean something to an officer: people are getting fired and organizations, such as the CPF's, are asking questions.

Once again, one aspect of police life that has more to do with accountability than meets the eye is the presence of police unions, which often come in defense of officers accused of wrongdoing and propagate a culture of rights for officers first and foremost. International police unions are generally viewed as conservative organizations and are defensive in their approaches. They are designed to protect members from internal and especially outside criticism. Often, the view is that police are in a difficult situation because they are blamed for high crime rates but when they act too severely they are condemned. Unions are there to protect members from "arbitrary" accusations: as long as they are paid fees, they will provide defense. Although their documentation takes a hard line against the abuse of force and they often claim that they will not defend perpetrators, they also have traditionally opposed civilian oversight bodies that are deemed important to democracies and campaigned against them and their employees (Marks 22/11/07). Given that a majority of the SAPS' 150,000 employees belong to either POPCRU or SAPS—with 122,000 in the vigorous POPCRU alone—unions can be a formidable force.

Since unions and police organizations are also split, often along rank lines, they often have competing interests. Thus since ICD works more closely with management than rank and file officers—who largely belong to POPCRU, are far greater in number, and are the actually officers dealing with the public—it is to their own detriment in terms of respect by the police (Marks 22/11/07). To them, top-down change may not be as effective or wanted.

The Importance of Effective Mechanisms of Accountability to Democracy

A South African Dilemma: the Transition from Apartheid vs. Combating Crime

“I just can’t analytically justify the view that the SAPS are murderers anymore.”-David Bruce

Now comes the issue of why we focus on criminal accountability within the police, especially when the general police consensus seems to be against top-down change. Several debates range around this dilemma, especially in the context of a high crime rate in South Africa. Should the police be focused on their actions or on fighting crime? Will methods of using less force hinder an officer’s effectiveness? Where does South Africa stand in terms of mature democracies? The end conclusion that will be reached in this section is that an accountable police force is crucial to democracy and makes the force more effective. In addition, though South Africa is considered to be a political and economic leader in Africa, it lags behind on issues of community relations, transparency, public trust, and legitimacy in the police force, issues which need to be resolved (Mattes 2006).

Post-1994, a critical move was made for Mandela’s government to build a basic relationship of trust between citizens and the police—which had been intensely

associated with apartheid brutality—trying to provide them with legitimacy and building a personal relationship with the community (Rauch and Van der Spuy 21). Given these goals, how far should South Africa push the accountability issue? Have these goals been achieved, and just how brutal is the force now compared to apartheid?

Is South Africa's police force really that deadly, and if not, why should the government focus on an accountable police force? Sometimes it is hard to compare South Africa to the rest of the continent, since accurate information is not always available, and it is just as difficult to compare it to more developed countries. If one compares the rates of police killings in South Africa to the United States, however, they are seemingly comparable when taking into account murder rates and numbers of policemen; the police arrest a lot of people, so "that some die is not that remarkable" (Bruce 13/11/07). The disturbing thing about South Africa, however, is that death rates have gone up by 33% in the past year, and it is still living in the legacy of apartheid (Bruce 13/11/07). Although the police are allowed to use force in self-defense or to prevent a known criminal from fleeing, this increase in number is still problematic, seeing as the crime rate did not go up nearly as high.

But it is true that the crime rate is increasing and that particularly violent crime is incredibly prevalent. The SAPS annual report for 2007 indicates that "South Africa should reduce its contact crimes by 7-10% per annum...for ten years...to...compare...to those recorded by the majority of INTERPOL member countries" (SAPS Annual Report 220). In addition, crimes such as murder increased by 2.4% this year. When dealing with such offenses, it is to be expected that violent incidences will occur between officer and criminal.

During apartheid, brutality was part of a white culture of repression and was considered acceptable. Now, too, much of the violence police utilize is considered acceptable: after all, there is no stigma against fighting criminals. Often the most effective police officer attracts the most reports and most politicians would emphasize fighting crime over holding the police accountable. Bruce, however, would argue that there is a “strange continuity in the use of force” (Bruce 13/11/07).

As stated in the previous section, public opinion is not entirely against these methods, and a lot of change has occurred. “The police was very militarized, and still is, but a lot has been done to introduce human rights discourse” (Adonis 15/11/07). They have, however, in effect been given a blank check to come up with ways to fight crime, and their ways currently involve a lot of force. Is that wrong, considering what some criminals are capable of?

Police officers are under a lot of pressure both within and from the public to improve their arrest rates, crack down on crime, and get dangerous criminals off the streets. Their leaders and politicians stress it and to many in the public, the end justifies the means, and most behavior is deemed acceptable. The police are faced with an intense role confusion and different messages from everyone: should they strongly enforce the law or work with the community? What is the most effective way to police? “The police,” Marks says, “are not in an enviable position” (Marks 22/11/07). Many are confused: do they uphold a human rights discourse and accountability at the risk of hindering what they perceive as their most effective methods of fighting crime or do they do what they can to fight it?

The Correlation Between Increased Accountability and a More Effective Police Force

“The law cannot become the lawbreaker.”-Captain Andre Laurens

There are many, however, who do not buy into the argument that the police should be able to fight crime however they would like, even if they have made drastic improvements since the end of apartheid and they are faced with an intense crime wave. Themba Masuku’s argument rests on the idea that the crime reported during apartheid was only that which affected white lives. Now black lives are considered, too, so the media is able to express the true crime rate. Crime, he argues, was no less during apartheid, and the way the police dealt with it then was wrong, so why should the police not be held accountable for acting that way today (Masuku 20/11/07)?

A.S.M. Haniff, too, does not buy that crime is an excuse for violations of human rights. “Crime was worse during apartheid, the media just controlled it to focus only on what was happening in white areas. When I was in training I learned how to physically beat people, and it wasn’t right then” (Haniff 27/11/07). He concludes that more human rights discourse needs to be implemented now. Even POPCRU has stated in its most recent newsletter that if crime were really that big of an excuse, “this country would already have been up in flames” (POPCRU News 18).

When asked if a crime rate meant that the police should be able to act with more impunity toward those they were fighting, Captain Laurens got a disgusted look on his face and boldly stated, “The law cannot become the lawbreaker. You must first clean your own house before you clean someone else’s place.” In effect, a police force cannot be behaving similarly to those they are arresting or they become like them. The mark of an effective, democratic, and just police force is one that operates within the law, within

police regulations, and within a certain boundary or they cannot operate with the public's full trust. Even POPCRU has stated that "...some in our communities still treat the police with suspicion and distrust just like during the Apartheid Era...we need to pulverize this mindset..." (POPCRU News 18).

Marks indicates that the debate is heading to a re-thinking of the police's place in society: in the different models of policing used around the world, right now there is no confirmed South African place. And though Altbeker is easy on the police and does not necessarily think they are the key to the high crime rate, he would still argue for due process, because an unaccountable police force can do no one any good (Altbeker 2007).

Many of those interviewed seemed to think it is important to highlight the idea that the ICD is not there to punish the SAPS. "They aren't there to expose the SAPS," says Bilkis Omar, "but rather to increase its effectiveness" (Omar 14/11/07). Where the line is drawn between punishment and aid, however, is unclear. Officers under investigation have many of their working rights taken away, even the ability to be promoted, before they have even been condemned of wrongdoing. So how does this make for a more effective police force? Len John agrees that sometimes accountability both from the ICD and the SAPS can hamper the way an officer works: if they are afraid that every time they use force they will be arrested and brought to court, of course they will shy away from doing their jobs. He then goes on to say, however, that the only officers who are fearful of that are those who are doing wrong: officers are allowed to use force in many situations because they are dealing with dangerous criminals all the time, so if an officer knows he did not do any wrong, he will not be charged (John 23/11/07)..

Using excessive force can actually exacerbate situations as well. Burger argues that the police should not be able to act with as much force as they desire because of the vicious circle that can happen (Burger 14/11/07). Altbeker agrees: as criminals and suspects are treated violently they come to expect that treatment. This leads them to respond just as violently, which in turn leads to the police responding even more violently, and effectively does not end but perpetuates a circle of violence that accomplishes nothing (Altbeker 2005 156). Such speculation is supported by indicators from the SAPS Annual Report for 2007 which states that crimes “heavily dependent on police action for detection all increased significantly...indicating that the SAPS and other policing agencies are doing their utmost to combat these crimes, which are also strong generators of other crimes”: and later, “The number of murdered police members increased by 13.7% since last year” (SAPS Annual Report 221).

John also believes that because of oversight bodies, unjustifiable shootings have gone down. Even though many of the complainants that come to make a case against an officer are crooks or criminals themselves, John believes that if people are treated in a civilized way, they will have more respect for the police and their behavior will improve, however slightly. Being treated “like an animal,” however, can have no good outcome for society (John 23/11/07).

Effective accountability systems, Masuku says, in part need to be instituted precisely *because* of the temptations police have to use force and treat people like animals (Masuku 20/11/07). This will not hurt effectiveness, because “accountability is not a bad thing” (Masuku 20/11/07). It protects people that work in a dignified and just way and it weeds out people with problematic behavior. In a police force, there is no

room for such people. Accountability improves the image and integrity of the force and improves the relationship of the SAPS with other systems in a democracy (Masuku 20/11/07). He and Altbeker would both agree that if accountability impacted on performance, no one would advocate for its strengthening.

This leads Masuku to an issue he feels passionately about. The police have a large amount of authority: they have the power to arrest, detain, kill, and take control over people's lives. To him, this means that the force must be more accountable than anyone else in government (Masuku 20/11/07). Joel Miller concurs, insinuating that oversight is especially valuable because of police power (Miller 6). The police also, like any other citizen, have the right to remain silent when they are being investigated. Because of the power differential, Masuku believes that they should not have the right to remain silent, and that if that right did not exist the entire accountability system would be strengthened (Masuku 20/11/07). And, in truth, many cases are halted or drawn out because officers will refuse to talk to ICD or disciplinary investigators. Of course, the lack of this power would mean officers may incriminate themselves, but when an official is involved, he or she needs to give statements and be called into account. The power and authority issue is just too strong, and this has become an important argument in the history of police accountability (Masuku 20/11/07). David Bruce agrees, however, that sanctions should at least be instituted against those who refuse to talk (Bruce 2000).

Systems of Accountability or Systems of Democracy?

“Strengthen these mechanisms, and you have strengthened democracy.”-C. Stone and H. Ward

Thus if there are no effective systems of accountability and if officers are not obliged to talk, Laurens argues, a police force does not do justice to its own organization

and may use that power and authority for criminal activity. In his opinion, accountability *will* do justice to both the SAPS and the community because people will start trusting the SAPS again, a trust that was lost long before the fall of apartheid and that hasn't quite been reinstated yet (Laurens 27/11/07). Trust and cooperation with communities is key to more effective policing, so entertaining a human rights discourse through accountability will in no way hamper a policeman's work.

If the SAPS is accountable, it will become more legitimate: more people will report crime, the public will begin to trust in the police, and collaborative work, which is a cornerstone of democratic policing, will be enhanced. Accountability, in short, may make the police more effective. Saker goes on to say that less accountability means that more criminal activities will happen on the job and even extend to off the job when men and women go home to their families and their own communities, undermining the work and the examples the SAPS is supposed to be setting. "If you know you're not going to be fired, you're going to take a chance" (Saker 27/11/07).

There have to be effective oversight mechanisms, or such cycles perpetuate themselves. It happened during apartheid, and people learned not to even go to the police with their problems, but the same thing should not be happening now (Burger 14/11/07). Indicators, however, are that the public still doesn't trust the SAPS (Mattes 2006). This sort of relationship is crucial to a democracy, and South Africa needs to establish it to entrench itself as a stable democratic system.

"The presence of these systems and relationships is important," remarks Themba Masuku (Masuku 20/11/07). During apartheid, the police could act at will, and now they can't just go "fire on and kill people in the townships" (Masuku 20/11/07). Post-

apartheid, there was a slow emergence of holding police accountable for deaths, which is why such organizations as the ICD were put in place. With the advent of democracy, the South African environment became more politically stable, which made its creation possible in the first place. It was the right move because of the lack of internal systems within the SAP and the transparency needed to create a democratic police force (Masuku 20/11/07). In a democracy, civilian liberties are highly protected: because democratic institutions in South Africa haven't matured, the issue of accountability has not been accepted and there are ways of beating the system. The failure of accountability mechanisms to work weakens all democratic systems.

“The systems we have in place are comparable with others in developed democracies,” he says, “but if the systems are working is another story” (Masuku 20/11/07). It is still early in the democracy, and effective systems are a benchmark of a stable democracy. Accountability systems that work without fail offer protection to citizens and strengthen the mandate of the Constitution which, among other things, upholds the right to life (Masuku 20/11/07). In one of his articles, Masuku argues that for a legitimate police force, the three areas of external accountability, internal systems of control, and civil society need to be in place (Masuku 2005). Although civil society is weak in this regard now, external and internal systems can more easily be improved.

C. Stone and H. Ward argue, “Strengthen these mechanisms, and you have strengthened democracy” (Stone and Ward 2001). Masuku ends by indicating the broad improvements that could be made to promote democracy in South Africa: improving relations between the SAPS and the ICD, a greater focus on the functioning of the SAPS disciplinary system, reviews of both the disciplinary system and the complaints system,

and enhancing the coordination of oversight bodies (Masuku 2005). In addition, it may be important to use oversight bodies to institute changes in training and values within the police (Miller 2002).

CONCLUSIONS AND RECOMMENDATIONS

Gareth Newham writes that although serious efforts have been made to instill an adequate civilian oversight body and disciplinary methods since the end of apartheid, "...current systems of control are inadequate for holding sufficient numbers of individual police officials accountable for poor service and abuses of power..." (Newham 2005). Although there have been strides made, there is much improvement to be had.

This study examined methods of criminal accountability for the police in South Africa, the need for such institutions, and their relation to police culture. The overall results indicated a general distrust toward the ICD among especially lower rank and file police officers and a general urge to protect fellow officers from disciplinary charges. Such a culture fuels impunity and provides for the ineffective workings of methods of accountability. Ways to change this may include training and leadership by example.

Results also indicated that there are plenty of policemen who are still permissive in their attitudes toward the use of force and that the abuse of force is common in many stations. Research suggests that since officers respond to authority and fear in some capacity, effective disciplinary methods can actually bring these numbers down, much as many suspect the mere presence of the ICD has already done. However, many in the police force still do not respect the ICD and may view the disciplinary system as a "laughingstock," and evidence indicates that many times their presence has no bearing on actions in the field.

As to how effective these mechanisms are right now, this project has shown that the ICD suffers from an inadequate mandate, insufficient resources, and a lack of respect from many in both government and the SAPS. If the SAPS were obliged to give all reports to the ICD, the ICD had the power to observe the SAPS' actions more thoroughly, and the ICD were given more resources with which to more effectively conduct investigations, the ICD's already deterrent power could be strengthened. On the other hand, the SAPS internal disciplinary system suffers from an incredible amount of bias, inconsistency, and inability to properly "prosecute." Such a system could be improved by, as Superintendent Saker and Captain Laurens advocated, setting up an internal department with full-time staff to properly eliminate some of these problems, although issues with bias will be hard to erase.

The overall results indicated a consensus that stable democracies need such methods of accountability for their police forces to promote legitimacy and trust. In addition, disciplinary measures hinder or hamper the effectiveness police have on fighting crime only a small bit in terms of officers fearing retribution for doing their job. Interviews actually seemed to show that many believe accountability actually increases police effectiveness by ensuring that only just and fair officers remain on the force to work well with communities, increase trust, promote the reporting of crime, and eliminate cycles of violence that may arise between officers and suspects.

Unfortunately, it may be impossible to truly reform such an institution if the police still have a culture of impunity. This contributes to a continuing lack of respect for human life within the SAPS ranks and a continuing culture of excessive force, especially when the only real external body investigating its actions refers its findings either to them

or to an unsympathetic court system. Though there has certainly been progress made since the days of apartheid—many sources confirm that over 1200 officers are disciplined for serious offenses every year—there is still a huge gap between charges laid and resulting convictions (Pigou 2002).

This study was unable to properly grasp the extent to which human rights training, leadership by example, unions, and a change in police attitudes toward the accountability would help not only in shifting away from the overuse of force but also to help hold officers accountable for their actions as well. Further research could center on the relationship between training, attitudes, and action in the field to decipher exactly what sort of training should be instituted in the police. Another study could examine the effect of leadership and the ranking system on the attitudes and actions of a rank and file officer, and still others could examine the relationship between unions and accountability. In addition, research on police attitudes toward discipline or on changing public opinion could be very helpful to this field as well. Overall, more needs to be done to understand more about how to shift police culture and attitude toward a desire for accountability or systems may continue to be ineffective.

Whatever the range of opinions may be, it is fairly safe to say that nobody believes the police should have no accountability. In a maturing democracy still dealing with the legacy of apartheid, South Africa needs to focus on increasing accountability to provide for a legitimate and trustworthy force. Although resources are scarce, it is clear what improvements need to be made within the ICD and the SAPS internal disciplinary system, and such moves may actually help to decrease the crime rate and move the

country toward being a safer, more democratic, more legitimate society. Finally, apartheid-era policing's inheritance of brutality and impunity can be shed.

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APPENDICES

Appendix A: Sample Interview Questions

What is the nature of your background?

What is your experience with criminal accountability within the police?

What is your experience with the ICD?

In your opinion, is the ICD operating effectively?

What, if anything, could be made more effective?

Should the ICD be made more effective?

What is your experience with the SAPS disciplinary system?

In your opinion, is the SAPS disciplinary system operating effectively?

What, if anything, could be made more effective?

Should the SAPS disciplinary system be made more effective?

In your experience, what are general police attitudes toward the use of force?

In your experience, how have these attitudes changed since apartheid?

In your experience, what are general police attitudes toward accountability and discipline?

In your experience, do the police view internal discipline and external civilian accountability in different ways?

In your experience, how do lower ranked officers respond to the ICD?

In your experience, how does management respond to the ICD?

In your experience, how do lower ranked officers respond to the SAPS disciplinary system?

In your experience, how does management respond to the SAPS disciplinary system?

In your opinion, what is the relationship between criminal accountability within a police force and democracy?

In your opinion, given the crime wave in South Africa, will increased accountability and discipline affect an officer's ability to work?

How important is it to have working mechanisms of accountability in a country like South Africa?