INTRODUCTION

As a nascent democracy, South Africa is emerging from an apartheid rule where the police were expected to actively enforce heinous laws relating to racial segregation and state security. The human rights violations that characterised the apartheid era, of which police brutality was an integral feature, are still remembered by a majority of the people. Evidence before bodies such as the Truth and Reconciliation Commission bear testimony to the atrocities that were committed in the name of law and order. The police used their extensive powers to force compliance and submission, especially when dealing with the disenfranchised black majority. In most South African communities these conditions created a reluctance to recognise the police and participate in their activities. The democratic government of 1994 inherited the South African Police Service (now generally known by the acronym SAPS) as a largely intact organisation. One of their first tasks thus was to begin the effort of legitimising the policing and law enforcement agencies.

INITIATIVES OF THE NEW DEMOCRATIC ORDER

Fundamental to democratic policing is acknowledgement of the fact that effective policing is based on respectful policing. To promote the democratic agenda the new government introduced many initiatives, which fall into two broad categories namely (i) legislative and policy reform; and (ii) the promotion of accountability as well as community acceptance of the police.

In its report of 1997, Policing and Human Rights in the Southern African Development Community, Amnesty International found that human rights violations were facilitated or encouraged by (1) poorly framed laws, (2) inadequate or inappropriate training for the police and (3) the absence of effective oversight and accountability (Amnesty International 2002:2). In South Africa one could argue that in committing to the demilitarisation of the police, issues (1) and (3) have been placed very high on the national agenda for attention and action.

The interim Constitution of 1993 and the Republic of South Africa Constitution Act 108 of 1996, especially the Bill of Rights, set a firm standard for the protection of all human rights within the new democracy. All the new laws as well as policy reforms are based on the fundamental principles which are entrenched in the Constitution. Specifically, the following practices bear mentioning:

- Arguably, as far as the police are concerned, the power of arrest is one of the most potentially contentious authorities in that if improperly applied, it can constitute a gross
invasion of personal liberty and an infringement of dignity. Section 35 of the Constitution allows an arrested person to question the lawfulness of his/her detention before a court of law. This right with regard to detention is predicated upon the fundamental right to freedom and the presumption of innocence. The Constitution further provides for a suspect to be released as soon as reasonably possible but also to be held in custody for a maximum period of detention of 48 hours without being brought before a court of law and charged. If there is a need for a longer period of incarceration, the detained person has a right to be informed of the reasons for such further detention.

Another development in respect of evidence and criminal proceedings has been the introduction of section 32 of the 1996 Constitution. In terms of this section, every person now has the right of access to any information held by the state, as well as any information held by another person and that is required for the exercise or protection of any rights. This provision has been developed further into South African law by the Promotion of Access to Information Act 2 of 2000.

The provisions of the Access to Information Act as well as the Constitutional guarantee of personal freedom and security have far-reaching implications for the methods employed and the manner in which crime investigations are now conducted by the police. Practices of torture or any action constituting cruel and degrading treatment will not be countenanced by law and evidence obtained in such manner will be inadmissible in a court of law.

In November 1998, the amended section 49 of the Criminal Procedure Act of 1997 came into effect. The challenge to the parameters of section 49 came when an unarmed 10-year-old boy was killed in the Northern Cape. According to his mother, the deceased had been hunting doves in a factory. After a short chase, the police shot him in the head when he peeped out of the factory window. At the inquest the magistrate ruled that the shooting was justified in terms of section 49(2) which allowed police officers to use force to prevent a suspect from leaving the scene of a crime. The amended section 49 permits the use of force by a police officer only to prevent the death of or bodily harm to an officer or a private citizen. It prohibits the use of deadly force merely to stop a suspect from running away. It does not, however, prevent the police from using force to make an arrest if the suspect is armed.

In an article in the Mail and Guardian the police expressed the view that the amended section 49(2) would render them powerless when facing criminals who were generally ‘better armed, run faster, and drive better cars.’ (21-27 May 1999:2) Similarly, (in referring to the amendment), the then Minister of Defence, the late Steve Tshwete, said, ‘Legislation hampering police from effectively carrying out their duties may need to be revisited.’ (Sowetan 12 July 1999:6) However, in commenting on the old provision, the Human Rights Commission noted that it had been ‘notorious for granting largely unlimited powers to the police to use deadly force when effecting arrests and was widely used as an instrument of oppression by the police and private citizens under apartheid’.
• The Police Service Act 68 of 1995 provides for the establishment, organisation and regulation of the Police Service. To ensure effective fulfilment of the prescribed obligations, the Act allows the Minister to further establish a Secretariat for Safety and Security, with one of its specific functions being to promote democratic accountability and transparency in the Service.

At the level of government structure, therefore, the police service falls under the Department of Safety and Security. This Department is completely civilian in nature from the management authorities to the lower-level functionaries. As Rwelamira notes, ‘By bringing the Police Service directly under civilian responsibility, it has [now] been subjected to the normal processes of political and constitutional accountability.’

• A major challenge confronting the democratic government was the urgent need to change the police from a militaristic weapon of force and oppression to an instrument of protection and community value. The interim Constitution and the Police Service Act both prioritise the establishment of police-community partnerships through the establishment of community policing forums. The purpose of the community forums is to bring the police and the communities closer together and promote acceptability of the Service, build structures for accountability and prove to the community that the police is responsive to its needs.

• In 1998 in recognition of the need for a specialist investigation unit to deal with the more serious offences relating to corruption and organised crime, the government introduced the Directorate of Special Operations and the Scorpions in terms of the National Prosecuting Authority Act 32 of 1998. The mandate for the Scorpions is to operate along multi-disciplinary lines that includes intelligence, investigation and prosecution.

• Shortly thereafter (and as part of its commitment to eliminating organised crime), the government’s asset seizure legislation broke with legal tradition when it allowed for action against alleged criminals in advance of them being convicted of any crime. (The Prevention of Organised Crime Act 121 of 1998.)

• In a further attempt to resurrect the credibility of the police service, Chapter 10 of the Police Service Act provides for the establishment of the Independent Complaints Directorate, a monitoring and oversight body – separate from the police structures – which is charged with the responsibility of receiving complaints and investigating alleged misconduct by police officers.

Having done all of the above, the question that must now be answered is whether the realities of policing in South Africa reflect these standards? And the short answer will be ‘no’.

THE REALITIES OF POLICING IN SOUTH AFRICA

Use of force by the police

As law enforcement agents, the police have the right to use force, including deadly force. However, the accepted principle is that if the use of force is unavoidable, law enforcement officials must exercise restraint in such use and act in proportion to the
seriousness of the offence and the legitimate objective to be achieved.6

• In South Africa Zakhele Mabhida was fatally shot by the police in the offices of the Durban Murder and Robbery Unit on 23 April 2001. Evidence indicated that the deceased had earlier handed himself over to the police, unarmed, in connection with an investigation into the killing of two police officers. Forensic medical findings were that the deceased had multiple gunshot wounds in the chest inflicted at close range. (Amnesty International 2002:20)

• In another incident in Barkly East, three policemen were suspended without pay after the death of a 16-year-old boy who was allegedly dragged alongside a police van and had his head crushed under the wheel of the vehicle when he collapsed. He had been arrested on a suspicion of housebreaking. One policeman tied the deceased’s arm to the driver’s side of the van with rope while another tied a second boy to the passenger side of the vehicle and forced the boys to run alongside the van. The deceased eventually got tired and fell and the vehicle ran over his head. The second youth was also run over and his leg was fractured. (Mail and Guardian 20 April 2000)

During the period April 1997 to December 1998, the Independent Complaints Directorate investigated 48 cases involving white police officers accused of assaulting and killing suspects in their custody. Most of the crimes involved violence by white policemen on black civilians who were attacked for apparently simply being ‘at the wrong place at the wrong time’ (Sowetan 4 December 1998).7 More recent statistics of the ICD reveal a steadily worsening picture. According to the report of the ICD presented to the parliamentary Safety and Security Committee, there was a 31.3 percent increase in deaths of suspects in police custody (309 in number) and as a result of police action (384 in number) between the periods 1 April 2003 and 31 March 2004, compared to the same period during 2002 to 2003.8 Looking at the racial breakdown of the perpetrators, the report showed that 67% were African, 18% white, 9% coloured, and 6% Indian police officers. Ninety-five percent of the victims were male. The report further revealed that about 47 percent of the deaths occurred at the scene of the crime or where the arrest took place, 29 percent of the victims died either in hospital or at a clinic, 20 percent died in the police cell, one percent in an ambulance, and one percent in court cells whilst in police custody. In describing the increase in the number of deaths at the hands of the police as ‘unacceptable’, the ICD attributed it to the continued excessive use of force by police officers and to the fact that police officers were ignoring their standing orders and national instructions.9

Police misconduct10

One does not mean to imply that the entire SAPS is guilty of misconduct. However, because of the nature of the work, any incident of justice not seen to be done taints the entire Service. Most perturbing, however, were the factual revelations made by the ICD to the parliamentary Safety and Security Committee indicating that from the period April 2002-March 2003 to the same period in 2003-2004, misconduct by police officers rose by 27.6 percent from 2 913 cases to 3 716 cases. Reports of serious criminal offences allegedly committed by members of the SAPS rose by a substantial 47 percent from 1002 cases in 2002-2003 to 1473 cases in 2003-2004.11 And verbal reports indicate that incidents of misconduct are greatly exacerbated in the rural areas. Set out hereafter are three anecdotal examples of police misconduct.
Two ESKOM employees in a clearly marked ESKOM vehicle were examining electricity lines on a Free State farm. The farmer drove up to them shouting ‘Kaffirs, kaffirs, kaffirs – I’m going to kill you like dogs today.’ The farmer fired a shot and one of the men ran. The farmer chased him, trussed him up with a rope and dragged him around for a few minutes. He then shot up their car. Other ESKOM employees arrived on the scene followed by the police. The farmer would not allow the police on to his property. Despite claims by the ESKOM staff that a violent crime was being committed, the local police superintendent said that he had no right to enter the farm. It was some five hours later when officers attached to the local farm watch self-protection scheme arrived that the ESKOM men were finally freed. The police decided that the farmer had no case to answer as he was well-respected in the area. (Mail and Guardian 30 July 1999)

In Qwaqwa in the eastern Free State three SAPS members shot three community members outside a drinking tavern. It is alleged that the three officers who were on duty, left the police station in a state vehicle. They stopped at the tavern to check a soccer score. Two of the officers went into the tavern whilst the third waited in the vehicle. When the two men did not return, the third officer allegedly went in to look for his colleagues. As he approached the entrance, he was confronted by three men who allegedly attacked him with knives. The officer fired five shots with his service pistol in the direction of the men, fatally wounding one of them. He has been arrested on one charge of murder and two charges of attempted murder. His two colleagues were arrested for performing their duties while being under the influence of liquor. The reason for the alleged attack is not known. (Sapa 10 May 2004)

In 1999 Thabani Ndlodlo, a Zimbabwean citizen, was awarded damages against the Minister of Safety and Security after the state conceded that two police officers had unlawfully assaulted him and shot him in the legs following an attempt to extract a bribe from him as a suspected illegal immigrant. It was also admitted that the police had maliciously prosecuted him on criminal charges and wrongfully detained him for 446 days. (Amnesty International 2002:11)

Most critical were the findings made by the Wits Law Clinic regarding police torture and the fact that they concluded that in nearly all of the cases reviewed, the police stood accused of employing the ‘tried and trusted’ apartheid-era methods of torture. (Mail and Guardian 10 November 2000) South Africa has signed most of the international Conventions against torture and the SAPS has a specific non-torture policy, defining torture as ‘any cruel, inhuman or degrading treatment or punishment, or any act by which severe pain, suffering or humiliation, whether physical or
mental, is intentionally inflicted on a person for the purposes of obtaining from him or her or a third person information or a confession.’ Despite this, not only are police officers engaging in various acts of torture of suspects but they appear to have resurrected the methods used by their colleagues prior to 1994. Inflicting cigarette burns, electric shocks and suffocation torture on suspects are still practices embraced by policemen. (Mail and Guardian 10 November 2000) Amnesty International supported the claims that police torture was rife in South Africa. In its 2002 Report, dealing with South Africa and police brutality, Amnesty International concluded that the authorities showed ‘a lack of seriousness in dealing with the matter.’ (Sunday Independent 10 December 2000) These allegations were refuted by the National Commissioner who, however, admitted the possibility of there being isolated incidents of assault and brutality. (Sunday Independent 10 December 2000)

Tackling police corruption, identified as central to undermining the SAPS crime-combating strategies is also crucial. Police officers have variously laid the blame for corruption and other criminal activities by police members ‘on the system’, maintaining that the police see easy success because they – better than anyone – know how lax the system is. Neither justifying nor excusing corruption, the National Commissioner is reported as having stated, ‘We have 127 000 policemen with the responsibility of providing policing for 43 million people. The high number of police officers being killed on duty had led to policemen taking out many life insurance policies. This led to a situation in which certain policemen take home R46 after deductions. If such a policeman is then offered a bribe, he will have to be a pope to reject the offer.’ (Sowetan 13 July 2000)

Community policing

Although the principles, aims and objectives of community policing are laudable, community policing and community policing forums have not been a success in South Africa. In response to the question why community policing forums failed, many answers are provided. They include inadequate police responses, continued lack of trust between the community and the police, politicisation of the forums, community representatives not approved by the local communities and a power struggle within the community policing forums.

As a result, many communities began to take their own initiatives against crime, most notable being private security interventions and/or the emergence of street committees, where members of the public agree to patrol their own streets at night. However, in some cases, the street committees have given rise to the emergence of vigilante groups. The members patrol the specific area and mete out summary justice to identified wrongdoers. One of the identified problems concomitant with the emergence of vigilantism is that the vigilante groups take the law into their own hands, openly flouting the rule of law and undermining the police and law enforcement agents. Also, the punishment often exceeds the crime committed.12

The police support the establishment of street committees but they stress that it is the role of the criminal justice system to mete out punishments – the identified criminals must be handed over to the criminal justice system. However, in many communities where police interventions (or lack thereof) have resulted in a complete loss of respect for the law enforcement agencies, the people voice a different view.13 The police recognise that this frontier of justice is growing beyond their control with the support of the communities and they caution that vigilantism can only shift us closer to anarchy. Yet, the police appear to be unable to stop the tide of vigilantism.

An Editorial in the Mail and Guardian succinctly summed up this dilemma:
The fundamental premise of the modern state is that the government must retain a monopoly on violence, and that once this monopoly is ceded the disintegration of the fabric that holds society together is inevitable. The breakdown of the criminal justice system in South Africa has brought with it an increasing tendency for people to take the law into their own hands.

There is an apparent resurgence of vigilante activity in some of the country’s poorest, most crime-ravaged areas. The brutality of some of this activity is rarely appreciated outside the areas where it flourishes.

... The tacit acceptance of this street justice on the part of authorities is as disturbing as the nature of the punishment being meted out. The failure of the police to do anything about it can be attributed either to an awareness of their own shortcomings, or to the fact that people’s justice – however repellent – does appear to work. *(Mail and Guardian 14-20 May 1999)*

Again, the problems are greatly exacerbated in the rural areas of the country. Most of the rural environment is not properly policed due to a number of reasons, including the traditional demarcations that were done along ethnic lines, and underresourcing with regard to human capital and physical and operational resources. Also, the rural villages are often spatially distanced with one police station being expected to service up to or more than ten villages. Neither community policing nor sector policing on its own will resolve the problems. However, a model worth considering is the Japanese Chuzaishos – a vast network of tiny local police posts.¹⁴ The way it functions is for the police officer (*chuzai-san*) to live in the village. His home then serves the dual purpose of being a residence and also the local police station. The family of the *chuzai-san* also become involved in the running of the office. His primary role is patrolling and visiting residents of the village, dealing with emergencies and conducting the administrative duties of his office.¹⁵

In the South African context, one could consider stationing a police officer within each village or to have control over a few villages depending on their size and location. By doing so, the police stations in the rural areas can then become the meeting point where the various ‘*chuzai-san*’ meet on a regular basis to share experiences and submit their reports on the crimes reported in their specific areas. This also has the very practical advantage of saving victims from having to travel long distances to report crime and then having to wait at the station until the complaint is registered and/or the charge finalised.

One of the identified problems of the Chuzaisho system, however, is the possibility of corruption. To avoid this becoming endemic, the Japanese Police Service makes sure that the *chuzai-san* is transferred to a new post every three years. In this way, he has time to become acquainted with his community but not to abuse his office by granting special favours and accepting more than the customary ceremonial gifts.¹⁶

**Inadequate resourcing of the SAPS and poor skills and training within the SAPS**

The popular press often reports on in escapes of prisoners. Even more disconcerting are the figures for escapes from police stations. According to a
researcher from the Institute of Security Studies, the problem is unlikely to be reduced – let alone eliminated – until it is ensured that all police stations are upgraded and enclosed with barbed wire fencing to prevent escapes and the smuggling in of weapons used in these escapes.

It is trite that the task of the police officer is not just to protect and serve but to assist in building a positive socio-economic environment within the community he/she serves. Policing, thus, starts with the basic concepts of image and on understanding of what is expected of a police officer and as the dynamics of societies change so, too, must learning be on-going.

The SAPS do not deny the fact that there is a skills transfer and training backlog within the organisation, both in the areas of proactive and reactive policing. The real impact of the lack of trained officers is felt not only on the quality of investigations, but also on the speed with which cases are passed through the criminal justice system and the small likelihood of successful convictions.

Morale within the SAPS

Policing activity often comprises the triad made up of the victim, the wrongdoer, and the police. The victim is ‘offended’ and deserving of sympathy, the wrongdoer deserves no sympathy, and the police are merely the facilitators to bring about justice. During his period of authority, National Commissioner Fivaz attributed the high rates of suicide amongst the police to their having to work under extremely difficult, dangerous and stressful conditions. There are few other occupations where employees face death, human misery and violence on a daily basis. As Alderson notes, ‘Police at the service of human rights will develop a demeanour which embodies an instinct or a perception for human dignity. [However, b]eing witness to human beings, as they sometimes are, in degrading and degraded situations, police are exposed to the influence of cynicism. They have to avoid becoming indifferent, however difficult that may be, if they are to develop and retain proper judgement of and appreciation for the rights and dignities of all.’ (Alderson 1992:26)

Given the difficult working conditions, the poor remuneration, and perceived discrimination of officers, the morale within the policing service is not entirely positive. This has resulted in high numbers of specialist investigators leaving the service for employment within the private sector.

Currently, members of the South African Police Service are regulated by the provisions pertaining to the typical public servant. However, government has finally realised the marked difference in the roles of the traditional public servant and the work done by the police, and talks were underway to consider a special dispensation for members of the SAPS that could result in the overdue changes to their remuneration and other benefits. According to the Chairperson of the Portfolio Committee on Safety and Security (and now Deputy Minister of Safety and Security), Muleleki George, the Police Act of 1995 would be replaced by new legislation in 2004. (News24 25 May 2004)

Murder of police officers

The police officer has an unenviable job. Not only does he/she have to work long hours of unpaid overtime, and take on a wide variety of duties ranging from riot control to petty bureaucratic tasks, but he/she is often disliked by a large proportion of the population. (Cawthra 1993:3) In 2003 alone, a total of 114 members of the South African Police Service were murdered – 59 on duty and 55 off-duty. It was acknowledged that this figure was a reduction on the 2002 statistics but, said the National Commissioner, ‘114 lives lost were 114 too many’. (The Pretoria News 10 May 2004) In his research presented in
2000, Minnaar noted that in South Africa more than 200 police officers are killed every year, the highest global rate for such deaths. Such a high level of killings must have a profound impact on morale and on feelings of safety and security amongst police officers. (Minnaar 2000:4-7)

In attempting to provide an explanation for attacks against police officers, some experts have attributed it to an apartheid legacy when police were viewed by most people in the country as the enemy. However, more recent evidence indicates that while there may be a residue of political motive, the police officers killed are often attacked for their weapons. It may reasonably be suggested that since 1994 the motive for killing members of the police has shifted conspicuously away from political crimes to that of a social nature - characterised by high levels of violent crime, the increasing numbers of illegal weapons in circulation and a general breakdown of respect for the law and its servants. This view was reiterated by the National Commissioner. In his address at the annual police commemoration day, the Commissioner said that police should be given ‘as much protection as possible’ but the problem was with the mindset of communities. ‘We need people to respect the law because if we had more respect for our officers there would be fewer killings.’ (The Pretoria News 10 May 2004)

An example that demonstrates the reality of the police as victims was the killing of Detective-Sergeant Tembela Gabayi whilst he was taking a statement from two witnesses in his office at the police station. A friend of the two witnesses, who had accompanied the men, allegedly argued with the deceased and interfered with his taking of the statement. Gabayi asked him to leave the office. The accused returned a short while later and without warning, fired shots. Gabayi was hit in the chest and stomach and died at the scene.

Cognisant of the heinous nature of police murders, large rewards are being offered to encourage the community to provide the police with information that could lead to the arrest of the murderers. SAPS have also identified the need for their members working in flashpoint areas to be issued with bulletproof vests and for the security of police facilities in high risk areas to be evaluated: However, this (laudable) plan has not been completed. The then Minister of Safety and Security, Steve Tshwete, further identified the problem of courts not applying the maximum sentence to persons convicted of the murder of a police officer. ‘There is a problem of reluctance by the courts to apply the maximum sentence provided in legislation, because they think their discretionary powers [are being] eroded,’ said the Minister. The Minister was adamant that the murder of a police officer should not be regarded as just another murder case. (Mercury 22 July 2000)

CONCLUSION

There is no gainsaying the fact that there have been many reforms in the area of policing since 1994. Legislative reforms and government policies were vital to confront the apartheid era legacies of brutal, corrupt and militarised policing. Yet, despite the progressive standards and policies promulgated by the authorities, there are still many South Africans, both black and white, who continue to regard the police with hostility and suspicion.

Reports on the 1998 survey conducted by the Human Sciences Research Council, claim crime prevention to be at the top of the list priorities that South Africans have set for the government to tackle during the next ten years. The survey also revealed that people’s feelings of personal safety had declined substantially since the post-election euphoria of 1994 with white South Africans being most likely to believe that that policing standards and service delivery had definitely deteriorated since 1994. (Mercury 1 March 1998;
In a subsequent crime research survey conducted in 2003 by the Institute for Security Studies, it was indicated that there was a 2 percent decline in crime statistics since the previous year. Yet, the survey revealed that most South Africans still believed that things had become worse in the country. The attitude expressed was particularly prevalent amongst people in the urban areas and specifically amongst members of the Indian and White population groups. (Makwela 2004:7)

Alderson writes, ‘Where the police are seen to be at the service of human rights in particular and humanitarian acts in general, it might be expected that public support will be forthcoming to a greater or lesser degree. It is important therefore that police officials under training should be enabled to address their minds to this phenomenon.’ (Alderson 1992:22) SAPS members need to act in a manner that will ensure that they gain the confidence of the population. However, it is also trite that they, in turn, need to feel wanted and valued by the communities they serve. To quote the National Commissioner (Selebi): More than any other thing, the SAPS needs a partnership with the people. It must always be remembered that policing is a community activity. The police will never have sufficient resources, while criminals will always have more. ‘We have to work harder and closer together,’ says Dave Bruce of Interpol. (Sowetan 17 December 1998)

After a decade of democracy, South Africa is certainly on the path of democratic policing. However, legislative reform alone will not assure the democratic conduct of the police, for one cannot legislate people’s beliefs. Attitudes are based on prior experiences and interactions. Until the police service is able to prove itself beyond reproach and in synergy with the spirit of the Constitution, the idea of the community-police partnership will remain no more than a distant vision.

BIBLIOGRAPHY


Statutes


During the workshop on Human Rights and the Police in Transitional Counties (held in Denmark on 6-10 March 2001) the characteristics of a country in transition were set out as follows:

- A generally unstable and unpredictable political, economic and normative situation.
- Parliamentarians and government leaders possess little or no experience or interest in creating transparent and democratic decision-making procedures.
- Power politics and stakeholders’ interests change and impact on all aspects of government.
- Public administration is inherited from former undemocratic, non-transparent regimes, i.e. it conflicts with the requirements of good governance.
- Institutions i.e. police services, have been subjected to little or no change.
- A lack of accountability mechanisms.
- Little or no separation of powers (in practice, if not formally).
- The police force is (ab)used by those in power to promote their own interests.

If one accepts the foregoing as the defining characteristics, it is submitted that South Africa cannot be described as a transitional democracy.

The shootings at Sharpeville in 1960, when the police gunned down unarmed Africans demonstrating against the pass laws, led to the State of Emergency, the banning of the ANC and the PAC, and the launch of the armed struggle. The State of Emergency gave the police immunity from any civil or criminal prosecution for acts of violence: Provided they were carried out in good faith. The Soweto uprisings, which left 1 000 people dead in 1976-7, were triggered by police shooting at demonstrating children. Most of those killed were hit by police rifle fire. Police shootings in townships around Johannesburg at the end of 1984 and a massacre at Langa in the Eastern Cape signalled another cycle of bloodletting that plunged South Africa into virtual civil war. For six years the police and army occupied townships with sweeping powers, enforcing the State of Emergency. The escalating

END NOTES

1 During the workshop on Human Rights and the Police in Transitional Counties (held in Denmark on 6-10 March 2001) the characteristics of a country in transition were set out as follows:
- A generally unstable and unpredictable political, economic and normative situation.
- Parliamentarians and government leaders possess little or no experience or interest in creating transparent and democratic decision-making procedures.
- Power politics and stakeholders’ interests change and impact on all aspects of government.
- Public administration is inherited from former undemocratic, non-transparent regimes, i.e. it conflicts with the requirements of good governance.
- Institutions i.e. police services, have been subjected to little or no change.
- A lack of accountability mechanisms.
- Little or no separation of powers (in practice, if not formally).
- The police force is (ab)used by those in power to promote their own interests.

If one accepts the foregoing as the defining characteristics, it is submitted that South Africa cannot be described as a transitional democracy.

2 The shootings at Sharpeville in 1960, when the police gunned down unarmed Africans demonstrating against the pass laws, led to the State of Emergency, the banning of the ANC and the PAC, and the launch of the armed struggle. The State of Emergency gave the police immunity from any civil or criminal prosecution for acts of violence: Provided they were carried out in good faith. The Soweto uprisings, which left 1 000 people dead in 1976-7, were triggered by police shooting at demonstrating children. Most of those killed were hit by police rifle fire. Police shootings in townships around Johannesburg at the end of 1984 and a massacre at Langa in the Eastern Cape signalled another cycle of bloodletting that plunged South Africa into virtual civil war. For six years the police and army occupied townships with sweeping powers, enforcing the State of Emergency. The escalating
violence was eventually broken by the beginning of negotiations between the ANC and the government in 1990. But in June 1992, the talks were stalled ‘when the police again covered themselves in infamy by carrying out a massacre of ANC supporters at Boipatong. (Cawthra 1993:1)

3 Rwelamira notes that under the old order there were certainly no mechanisms to exact accountability and investigate misconduct. When complaints were made, it was always the police themselves to carried out the enquiries ‘with the predictable result that culprits were seldom identified or punished. The situation was even worse when the complainants were black people since, in some cases, they were unlikely to attract sympathy of white police officers. The latter were generally reluctant to investigate their fellow white officers. This mutual support and what has sometimes been described as institutional cohesion made it difficult, if not impossible, to subject police conduct to accountability to local communities or community structures’. (Rwelamira M ‘Democracy and Policing’ in Nel F & Bezuidenhout J (eds.). 2000: 60-61)

4 In terms of criminal procedure, an arrested person has the right to be released from detention unless the interests of justice dictate otherwise.

5 Prior to 1994 and the Constitutional enactment, evidence in police dockets was not available to the accused for discovery purposes as it enjoyed special legal privilege.

6 Yet, the 2002 Report of Amnesty International Policing to Protect Human Rights makes the relevant comment that ‘with the possible exception of the South African Police Service, few police forces in the region provide either the type of equipment which enables the police to operate on the basis of minimum force or adequate training in public order policing techniques. (Amnesty International 2002:17)

7 In commenting, the ICD Director noted that at least 99% of the cases were racially motivated with white or Indian policemen usually abusing blacks and sometimes even their colleagues.

8 The exact figure for 2003-2004 was 693 compared to 2002-2003 when the figure was 528.


10 In 2000 the Independent Complaints Directorate took the bold step of firmly recommending that the National Commissioner of Police be required to face prosecution under the Intimidation Act, 1982. The ICD found prima facie evidence that the Commissioner had threatened a police officer, issuing the officer with a yellow card and ordering the officer to apologise to the Commissioner’s uncle whom the officer had accused of taking his mealie cobs. However, the Director of Public Prosecutions decided against prosecution on a charge of crimen iniuria saying that such a move would not be in the public interest. (Sowetan. 03/02/2000)


12 Mercury. 13 July 1999.: Two carloads of young men spilled out into the night and silently took up their positions around the house, one holding a whip at the ready. Their leader pushed the door open. No luck – the suspected thief was not in the house but his brother was hauled out of bed for questioning. It was a nightly round by the Mapogo a Mathamaga, a vigilante group operating in the farming provinces north and east of Johannesburg. The police acknowledge that they are very effective but that the actions are ‘not taken in the right way’. Communities, however, welcome the actions of groups like Mapogo, seeing them as their only protection in the face of ineffectual, corrupt or outgunned cops. Speaking the language of the people, Mapogo’s founder states that ‘criminals should get a whip on the buttocks because they are not listening. They kill people so that they can go to jail for twenty years and get free meals. They are not people. They should not enjoy human rights.’

13 In an interview with BBC television President Thabo Mbeki stated that many crimes were concentrated in poor black areas. It was his view that the level of criminality was linked to a long-standing lack of faith in the criminal justice system. (Sowetan. 05/07/1999). For the present, vigilantism thus appears to be the main recourse for poor black communities.

14 Information on the structure of the Japanese model received from M Montesh, senior lecturer, Department of Police Practice, Unisa.

15 Frühling notes a similar development in Central and South America where not only the institution but every single police officer becomes accountable to the neighbourhood that he or she serves. ‘Since the radius of police action is reduced to a specific neighbourhood, a group of police officers works in the area on an ongoing basis, patrolling on foot to gain familiarity with the neighbours, the existing security situation, and the risks that the residents face. The police, then, very frequently meet face-to-face with the members of the community that they protect. (Lindholt 2003:108)

16 The reality is that the Japanese police are very proud of their culture of community relations which they regard as a pivotal contributor to their low crime rates.

17 Apartheid had a devastating effect on black families. With schooling in disarray the youth, fleeing the pain of disintegrating families, frequently found an alternative home in political organisations dominant from the 1970s and 1980s. With the political transition, these organisations dissolved or were absorbed into the political mainstream. Unemployed and with poor education and prospects, black youths often found themselves marginalised in a society characterised by extreme inequalities. Gangs, in which violent activity was often a rite of passage, absorbed many youth who were previously accommodated in political structures. For young men in particular, crime provided instant gratification, a means to acquire the material symbols that represented the dominant culture, and a way of reasserting strong masculine identity. Among these young people there is a real understanding that their involvement in crime and the extent to which they generate income is approved by their
families because it is the only way that they can survive. (Sunday Independent. 20/08/2000)

18 Discussions with SAPS psychological and religious services indicates that many police officers suffer from severe depression. They view the whole world as being a terrible place. The police are in a particularly unenviable position in that they have little public support and the job they do is constantly belittled.

19 News24 (SA). 21 May 2004. To supplement their poor income, many police officers freelance (illegally) on their days off doing security work and investigations for private sector companies. Figures cited for such activity are up to 80% of the members of the Service. This was, however, denied by the Minister of Safety and Security, who did however admit that the majority of the police officials who were ‘foot soldiers’ – constables, sergeants and inspectors – were badly paid.

20 As far as the previously disenfranchised communities are concerned, the scepticism has a historic basis; whilst amongst the white population there is the expressed belief that the new dispensation (with the increasing number of black police officers) has seen a decline in service delivery and skills on the part of the police.

21 53% of the 4862 people surveyed between September and October 2003 believe that crime had actually increased over the past three years.

22 An interesting question with regard to the perceived increase in crime is whether or not it may be attributed to the ‘displacement factor’ – can the increase in crime be predominantly the result of a displacement of criminal activity previously contained in the townships and which has now spread to the suburban areas? (Shaw 2002:10) Taking the example of rape, Shaw asks whether levels of rape have not always been consistently high but due to under-reporting in the past and the current obvious concern of government and citizenry, it now appears that the transition has brought with it heightened levels of sexual violence. Similarly, with regard to intimate abuse, the focus on domestic violence and its priority position on the national agenda (rather than being viewed in a positive light) have resulted in many (incorrect) comments that family abuse has become more rife since the 1994 democracy. The point that is missed is that intimate abuse has always been a silent pandemic in the country – the new order has simply brought it out into the open and publicly proscribed such conduct.