

# **New Wine from an Old Cask? The South African Police Service and the Process of Transformation**

by

**David Bruce**



Paper presented at John Jay College of Criminal Justice, New York, 9 May 2002.

[David Bruce](#) is a Senior Researcher in the [Criminal Justice Programme](#) at the Centre for the Study of Violence and Reconciliation.

## **The brutality of the South African Police (SAP)**

Prior to South Africa's transition to democracy, the South African Police (SAP)<sup>1</sup> had a reputation for a heavy reliance on the use of force and high levels of brutality. This brutality was most visibly illustrated in massacres such as that at Sharpeville in 1960,<sup>2</sup> and Uitenhague in 1985<sup>3</sup> and in the police response to the Soweto school student protests on June 16 1976.<sup>4</sup>

But more broadly brutality appears to have been routine to the conduct of SAPS members particularly in dealing with black people. As Gavin Cawthra has said, the SAP was characterised by a 'readiness to revert to the power of the gun'. 'Periodic political massacres' were 'but one reflection of this', with the SAP being 'equally trigger-happy in their day-to-day operations' (1993:22). According to Brogden and Shearing, during the years of apartheid the policing of the SAP 'ensured that sustained brutality' was a central feature of the 'black South African experience' (1993: 16).

Fernandez and Scharf describe how the victimisation of black people by the police has characterised policing in South Africa throughout the 20th century. For instance, by the 1920s,

the scale of police abuse of Africans in particular had reached such alarming proportions that a large scale civic conference, the National European-Bantu Conference, was convened in Cape Town in 1929 to address this problem (1992: 431).

However physical brutality, harassment and abuse were only one feature of black experience of the policing system. More broadly, the quality of police services provided in white areas and to whites was very different from that provided to blacks. As with the general provision of state services, black people were provided with a wholly inferior set of services which failed to meet their needs for safety and protection.

When the National Party came to power in 1948, racial discrimination in the form of apartheid became the key point of departure of government policy. While discriminatory laws had long predated the introduction of apartheid as a formal policy the National Party institutionalised and entrenched racial discrimination through a wide range of such laws.

The apartheid laws served two primary purposes: First, they aimed to 'exclude blacks from the political, social and economic world of whites whilst retaining their labour'. Second, laws were passed which aimed to repress black opposition to apartheid by making it illegal (Steytler 1987: 68-9).

As the enforcers of discriminatory and repressive laws the police were central to the creation and operation of the apartheid system. But it was not merely that the laws which were enforced discriminated against black people. Many SAP members saw the enforcement of these laws as an excuse for the physical and verbal abuse of black people. While the enforcement of discriminatory and oppressive laws was sufficient cause for injury, continual racial slights and slurs added to the antipathy and resentment of black people to the police and the apartheid system, and fuelled political resistance to it.

As political violence in South Africa intensified (initially in the 1960s, again after the June 1976 uprising, and most notably in the period 1983-1989) sections of the SAP were increasingly drawn into forms of 'counter-insurgency warfare, as developed by the US in the arenas of Korea and Vietnam'. This involved extensive use of covert methods including assassinations and 'dirty tricks' ([Rauch & Marais 1992](#): 2-3) by the police and other components of the security system.

In this period the conflict in South Africa between pro- and anti-democracy forces became deeply intertwined with the politics of the Cold War. Rather than fighting crime the South African government and thus SAP members saw themselves as being involved in fighting against a 'communist threat', and used this to provide a blanket justification for the various extreme and cruel measures they applied.

A particularly sinister aspect of this period was the police's systematic use of torture against political detainees (See for example Foster et al, 1987; Truth and Reconciliation, 1998) as well as non-political criminal suspects (See Fernandez, 1991). The Security Branch of the SAP became notorious for its torture of persons in detention as a means of extracting information on both armed and political opposition to the government. In particular, Section 29 of the Internal Security Act allowed for detention for the purposes of interrogation over an indefinite period, thereby placing detainees at the mercy of the police. But while political detainees were a particular target for torture, the use of these methods permeated the entire system, with criminal suspects also widely subjected to it.

Government and those in charge of the police made little effort to discourage violence by the police. Such violence was also in many ways encouraged by a lenient legal framework while the courts were generally precluded from reviewing any actions taken in terms of various laws which provided the police with the power to detain and interrogate people (Steytler 1987: 73).<sup>5</sup> Besides the limited restrictions on brutality by SAP members, some police officers who had ill-treated detainees, or otherwise been involved in brutality 'not only escaped punishment, but were promoted in spite of their records' (Foster & Luyt, 1986: 311).

The formal value system of the SAP was in part based on Calvinist religious doctrine which, among other things, emphasised 'a high standard of moral behaviour' (Rauch op cit: 5) and placed a particularly strong emphasis on rules and on the law. While factors such as

ensorship, and the use of institutions such as the education system, the church and the mass media to inculcate official views and standpoints ensured that SAP members, amongst others, were not likely to be exposed to contrasting points of view, the Calvinist morality which was one facet of Afrikaner nationalism, may have served as a restraining or inhibiting influence on the conduct of at least some members of the SAP.

Cawthra implies there was an initial respect for the rule of law and suggests the SAP only really abandoned the concept in the 1970s and 1980s 'as decades of counter-insurgency war progressively undermined the civil rights of South Africans' (1993: 2).

But while there were some SAP members who aspired to slightly higher standards of conduct, the SAP in general came to be seen as synonymous with abusive behaviour and a generalised reliance on intimidation, bullying and undue violence, particularly in their treatment of black people.

The intensification of conflict in South Africa also contributed to a blurring of the distinction between the roles of the police and of the South African Defence Force (SADF). During the 1960s, writes Cawthra (1993:17), it had been members of the SAP who had been sent to perform military type duties in Namibia (then South West Africa) and Zimbabwe (then Rhodesia). However, during the 1980s the roles were partially reversed. While the police continued to be involved in the war in Namibia, the SADF was also increasingly used to try to maintain government control of the black townships.<sup>6</sup>

By the mid-1980s both the SAP and SADF were involved not only in fighting a war in Namibia, but also in serving as the frontline in government efforts to suppress resistance to the apartheid system within South Africa. In this context the police and members of the military were not only distrusted because of their racist and bullying behaviour, but were widely seen as enemies of the people.

To a greater or lesser degree this status was also shared by the 10 police agencies in the ethnic 'self-governing' or 'independent' homelands established, from the late 1970s on, in terms of apartheid policy.<sup>7</sup> In so far as there were differences between these agencies and the SAP, these may have been merely that, with recruitment and training standards even lower than those of the SAP, what they lacked in terms of ideological and political zealotry was compensated for in the form of incompetence, callousness and corruption.

### **The transition to democracy and establishment of the SAPS**

On 2 February 1990 the then National Party leader and South African President F.W. de Klerk took the historic step of announcing the unbanning of the African National Congress (ANC), the South African Communist Party (SACP) and the Pan-Africanist Congress (PAC). He also announced the government's intention to release ANC leader Nelson Mandela, who had then spent more than 27 years in prison. By unbanning the organisations representing the majority of South Africans, and releasing Mandela, De Klerk made it possible for South Africa's major political parties to enter into a process of negotiation over South Africa's future.<sup>8</sup>

The negotiations period which followed from 1990 to 1994 was accompanied by an

intensification of violence in South Africa. Despite official government instructions to the police to disentangle themselves from political activities (Cawthra 1993:38-39) there was continued involvement by security force—both police and military—in perpetrating and fomenting political violence. A pattern also emerged of police failing to intervene in, and properly investigate, acts of political violence, in a manner which appeared to favour political parties aligned to the National Party (TRC Report, Vol 2: 605). Police brutality was manifested in the continued use of torture, unrestrained use of lethal force and deaths in custody in suspicious circumstances in dealing with criminal suspects and other members of the public (Network of Independent Monitors, et al, 1995; also see TRC Report, vol 2, p. 590).

Finally on 27 April 1994 millions of South Africans went to the polls to vote in South Africa's first democratic election. On 10 May 1994 Nelson Mandela was inaugurated as the first democratically elected president of South Africa. South Africa's first democratic constitution (generally referred to as the Interim Constitution) also came into operation on 27 April 1994.<sup>9</sup> At this juncture, the SAP and 10 other 'homeland' police agencies were formally amalgamated into the [South African Police Service](#) (SAPS).<sup>10</sup>

### **The transformation process**

In the years leading up to the 1994 election the police service had already been one of the key subjects of negotiation and the process of transformation needs to be seen as having begun prior to 1994. The election, adoption of a new Constitution and Bill of Rights, and establishment of the SAPS were however fundamental steps in clearing the way towards the creation of a police service intended to serve all of South Africa's people.

The new democratic government faced major challenges in managing the process of change in the police. Some of the difficulties included:

- ***Community hostility to police.*** One result of the long history of police brutality and the role of the police in upholding apartheid and suppressing political opposition, was high levels of community hostility to, and distrust of, the police.
- ***The complexities of integrating the different police services.*** These included addressing questions to do with the command system, which had to be restructured in terms of the newly defined provinces and policing areas.
- ***The racial and gender profile of the police service and of police leadership.*** Although prior to integration with the 'homeland' police services the majority of SAP members were not white, after integration had been completed whites were still over-represented relative to their numbers in the population. White personnel entirely dominated the higher ranks of the police.<sup>11</sup> Women were even more poorly represented, constituting less than one-fifth of the total personnel strength of the police.<sup>12</sup>
- ***The conduct of policing.*** All the police agencies which were integrated had a reputation for brutality (Rauch 1998: 2). One of the challenges facing those responsible for police transformation was ensuring that members conducted themselves and performed their duties in a manner consistent with the human rights framework of South Africa's new democratic constitution.
- ***Unequal distribution of police services.*** In areas outside the 'homelands' the

provision of policing was heavily biased towards areas previously reserved for white occupation. Facilities and police services in black areas were poorly funded and of a far lower quality.

These issues and others are discussed in what follows:

#### **Relationships with community members**

What many regarded as the key area of intervention were efforts to address the rift between the police and black communities. This initiative involved implementing the concept of community policing as the operational philosophy of the SAPS. The idea of community policing did not originate in South Africa, but the way in which the concept was implemented in this country was unique, since the law required that a Community Police Forum (CPF), for police to meet with community representatives, be established at each police station. CPFs were intended to promote the accountability of the police service to local communities and 'improve transparency in the service' (SAPS Service Act, Section 18(1)(f)).

There were other initiatives which formed part of the transformation process and intended, at least in part, to improve the image of the SAPS in the eyes of the community and signify a break with the past. These involved changing police symbols, including the rank system, uniforms, insignia and the colour of police vehicles (See inter alia Rauch, op cit).

#### **Integration, restructuring and representivity**

The SAPS which initially consisted of 140 848 members (Rauch, 1998, appendix), was created out of 11 different police services. The SAP with 112 057 members contributed 80% of the membership of the SAPS, followed by the police agencies of Bophuthatswana (6 932), the Transkei (5 377) and KwaZulu (5 264) (Rauch, op cit). The process of integration involved placing these different police bodies under a single command structure, linking up their information and communication and other management systems, and introducing a unified system of internal regulations. One of the key measures to achieve these objectives was the promulgation of the South African Police Service Act in late 1995.

An aspect of the integration process that proved fairly disruptive and partly paralysed the SAPS was the rationalisation of middle management positions. In the new SAPS structure there were more members than posts for middle managers. Between 8 000 and 9 000 members at this level had to reapply for their positions. This process was only completed in 1998 (Newham 2000: 9).

Another key aspect of organisational transformation was the efforts made to improve the representation of black people and women within the service and particularly at management level. After initial integration of the 11 police agencies blacks constituted roughly 64% of the members of the SAPS and whites constituted the remaining 36% (Rauch 1998, appendix) whilst constituting respectively 91% and 9% of the population of South Africa as a whole (SAIRR 1999: 8). Women by comparison constituted 18% of the total personnel strength whilst representing 53% of South Africa's population (Rauch 1998: 8).

By August 2001 the number of SAPS members had dropped to 121 042 of which black people constituted 86 749 (72%) and women 27 073 (22%) though whites have higher representation in the officer ranks. Particularly significant was the appointment for the first time of a black South African, Jacki Selebi, as National Commissioner of the SAPS at the beginning of 2000.

#### **A new system of labour relations**

One important change was in the sphere of labour relations. In November 1993 labour regulations were promulgated which, for the first time, allowed police members to join organised representative formations. The regulations also made provision for a Negotiating Forum in the police service at a national level (Marks & Ali 1995: 24). This was further formalised in the Labour Relations Act of 1995. As a result of being included in the provisions of the Act, organisations representing SAPS members were able to represent police members in a national bargaining council as well as in local workplace forums.<sup>13</sup> Particularly significant here was the fact that a new approach to labour relations was required from police management who previously had been able to deal with labour issues in a highly autocratic manner (op cit: 23). While police rights remain limited, particularly in relation to the right to strike,<sup>14</sup> this is consistent with the approach taken in other countries.

#### **Mechanisms of accountability and the regulation of police conduct**

Initial efforts to impose greater control and accountability on the police included steps taken in terms of the National Peace Accord, an agreement signed in the early 1990s which bound political parties to a code of conduct aimed at developing a 'climate of tolerance and free political association' (Cawthra 1993: 172). The Peace Accord also established a code of conduct for the police and provided for the appointment of independent Police Reporting Officers (PROs) to oversee investigations by the police into allegations of police misconduct (Rauch 1998: 3; Cawthra 1993:175). However the PROs were hamstrung by a range of factors, including a lack of co-operation by the police and an absence of powers and resources (Munnik, 1995).

The 'interim' and then the 'final' Constitution<sup>15</sup> substantially strengthened mechanisms of accountability. In terms of the Constitution the SAPS is accountable to Parliament (potentially through the relevant parliamentary committees) and the Cabinet.<sup>16</sup> Provision was also made for the creation of a civilian secretariat (Section 208) as well as for the provincial executive committees to have a range of powers in relation to the functioning of the police in their provinces (Section 206). These were intended as mechanisms for ensuring police accountability to democratically elected national and provincial governments.

One of the crucial measures implemented involved greater scrutiny of the police to ensure that criminality and abuses by the police were discouraged and properly dealt with. Thus section 222 of the Interim Constitution provided for the creation of 'an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the [SAPS] are investigated in an effective and efficient manner'. These provisions were carried forward into the SAPS Act which, in Chapter 10, provided the framework for the Independent Complaints

Directorate (ICD). The ICD finally started operating in April 1997.

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

- the introduction of a rigorous selection system for new members;
- revision of the entire basic training curriculum;
- the development and introduction of a human rights training curriculum for current members of the service;
- the introduction, in 1997, of a code of conduct for the police;
- the implementation of a Special Service Order on the use of force in affecting arrest, intended to bring the regulatory framework relating to the use of lethal force more in line with the Constitution;
- the development and introduction of an anti-torture policy;
- the reorganisation and retraining of public order police; and
- the introduction of new, less than lethal weaponry in the form of the tonfa baton, intended partly to assist police in reducing reliance on lethal force.

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

#### **Access to and delivery of police services**

The provision of policing services during the apartheid period had been dramatically skewed in favour of 'white' areas. Another major issue was therefore ensuring a more equitable distribution of policing resources between different areas. Attention was given to introducing a more standardised system for allocating personnel and other resources to stations and policing areas, as well as to upgrading facilities at stations in black areas.

However, the issues which confronted the new government in improving service did not only relate to ensuring a fairer distribution of policing services between different areas—they were far more complex than this. Provision of policing services in a democratic country needs to be based on a recognition of the different crime problems and security needs of different sectors of the population. The SAPS had to develop its capacity not only to provide effective policing services in cities, in informal settlements and in rural areas, but also to meet the needs of different constituencies within these areas.

Core to the South African change process has been a growing recognition of the specific problems which women face as victims of crime, particularly as a result of sexual and domestic violence from men. One of the challenging aspects of police transformation since 1994 has been in relation to improving the capacity of the police to deal with cases of rape and domestic violence. However, change involves not only developing the capacity or skills of the police but also addressing police attitudes to these problems—many members of the police service (especially male staff) may view these problems from a perspective which partly excuses the perpetrators or primarily blames female victims.

While efforts were being made to transform the police, South African society found itself relying on the very same police service as its primary vehicle of intervention in combating



an exceptionally violent upsurge in criminality. While these rises in crime levels have not necessarily continued during the latter part of the 1990s, this has merely meant that serious crime has 'stabilised' at disturbingly high levels.<sup>17</sup> At the same time it also became apparent that the SAPS and other components of the criminal justice system were experiencing major problems in performing their basic functions.<sup>18</sup>

In the period following 1994 the focus has therefore shifted away from aspects of the transformation process (such as improving the accountability and conduct of the police) to improving the capacity and effectiveness of the SAPS in delivering policing services. On an internal level this has included the introduction of the Service Delivery Improvement Programme (SDIP), intended to improve the provision of police services at station level in relation to identified targets, and measures to improve human resource and budgeting, and resource management ([Pelser & Rauch, 2001](#): 13).

Other measures have taken shape following the appointment of Jackie Selebi as National Commissioner of the SAPS at the beginning of 2000. These have included the restructuring of specialised detective units into units focusing on 'organised crime' and 'serious and violent crime', a high-profile crime-combating strategy involving large-scale crime 'crackdown' operations, and efforts to improve performance at priority stations in high crime areas.<sup>19</sup>

### **The ones who remained – SAPS personnel**

While some countries have taken major steps to reconstitute their police services during the process of transition to democracy and to ensure that those selected do not have a history of human rights abuse this has not been a characteristic of the South African transition.<sup>20</sup> During the multi-party talks which preceded the 1994 elections negotiators representing the ANC had been particularly concerned about the possibility of a white backlash against democracy led by the security forces (see Laufer 2000:14). They thus emphasised the need to maintain the loyalty of the military and police service during this period. As a result a high level of emphasis was placed on re-assuring existing members of the various police organisations (and particularly the SAP) about their future job security. Apart from a very small number of former members of Umkhonto we Sizwe (MK) and Apla, the new police service was constituted entirely by members of the former South African and 'homeland' police services. With the exception of the retrenchment packages targeted at senior members with problematic histories, no re-selection or vetting process was followed.

Not only was the police service almost exclusively composed of members of the 11 former 'apartheid era' police agencies, but the period immediately following 1994 was followed by a moratorium on new recruitment into the SAPS which was only lifted in late 1996 when the SAPS announced its intention to recruit an additional 1 200 members into the service. In the period from April 1994 to the end of February 2002, 5 714 new recruits have been introduced into the SAPS. Of these 1766 were recruited in the period immediately after the transition to democracy, and 3948 were admitted in terms of the new system for selection and training that came into operation in 1998.<sup>21</sup>

With the exception of the small number of police who accepted voluntary retrenchment packages, members of the existing police agencies were recruited en masse into the SAPS



when it was formed in 1994. While the retrenchment packages were partly designed to force out several senior police officers who were believed to be associated with abuses, there is not much clarity about how many and which police officers actually left the service.

Furthermore there has been little effort to understand who the police are who have remained in the SAPS, where they come from, what their reasons were for joining the police, why they remained. Thus there is little knowledge or understanding about the histories of current serving members of the SAPS.

One of the assumptions that people have made is that many of those who left were those who had greater confidence about their abilities to make a living for themselves outside of the police, while many of those who stayed have been those for whom a career in the police is a form of sheltered employment. Thus one of the statistics that has received extensive coverage is of the high number of SAPS members who are functionally illiterate or who have no drivers license.<sup>22</sup> At the same time some of those who have remained have also been skilled and dedicated police members who have remained in the police service partly because of their commitment to policing as a vocation.

In terms of personnel therefore the South African Police Service's inheritance was a decidedly mixed bag. In the period following 1994 these members of the SAPS, along with other South Africans, found themselves in a period of social and organisational upheaval and change, which was accompanied by increases in the rate of violent crime. As can be imagined, while some wholeheartedly embraced the process of change others, in various ways, resisted it.

### **From Repression to Crime Control?**

Against the backdrop of the upheavals of organisational restructuring members of the SAPS faced a new reality on the ground in the form of a major crime problem. Furthermore with the transition to democracy also came the public expectation that they would respond to it in the manner of the police agencies, in the US and other first world countries, to which South Africans were exposed through innumerable film and television dramas.

One issue which presents itself is that of the relationship between what the police were doing during the apartheid period and the role of crime fighters imposed on them by democracy and particularly the context of high crime in South Africa. During the apartheid period, in fact, the police performed several roles. These included: a role as enforcers of discriminatory legislation such as the pass laws, involving the fairly undifferentiated harassment and victimisation of black people; a role, performed by the riot units, in suppressing protests against government policies; and a role, to a significant degree performed by the security police, in tracking down and interrogating persons associated with the political and military extra-parliamentary opposition. But beyond this the SAP itself played a significant role as a crime fighting force, though, as is also the case with the homeland police agencies, there are no detailed analyses of how effectively it performed this function.

The question which flows from this is to what extent police who joined the SAPS were already familiar with ordinary policing responsibilities. In so far as they possessed such

capabilities what would appear to be a logical to assume is that these were most compatible with 'crime control' orientated policing, a style of policing which is fairly indiscriminate in labelling people as suspects, and which gives limited attention to concerns about the rights to 'due process'.<sup>23</sup> But it is probably wrong to assume that police in South Africa would have been able to glide seamlessly into a crime control type role. While sections of the SAP operated as a sophisticated though brutal mechanism of repression, more broadly policing in South Africa was often characterised by incompetence, and police personnel were frequently only capable of performing the most rudimentary type of policing activities.

The most pressing crisis facing South Africa during the immediate post apartheid period was the inability of the SAPS to come to terms with the crime crisis. The dominant impression created during this period was one of a police body overwhelmed, daunted and helpless. Part of the explanation for this lies in the restrictions imposed on police by the human rights principles contained in the Constitution. But it is also the case that South Africa inherited a police service with significant other limitations in terms of its capacity to perform a policing role.

### **The continuation of brutality**

While there is some evidence which appears to contradict this it appears clear that the process of transition and transformation has contributed to improvements in the conduct of the police. The most striking example here is the dramatic decline in the number of people killed in public demonstrations and gatherings.<sup>24</sup> But at a broader level there has been a more subtle shift with the presence of police no longer so strongly associated with arrogant and belligerent attitudes and an implied threat of confrontation.

Few people who remember the attitude and approach of the SAP during the apartheid period will dispute the substantial change in police behaviour. While incidents of police bullying and racism continue to occur SAPS members can no longer engage in such behaviour with such confidence of impunity. In the past it often seemed as if the police felt they were expected, by their commanders and colleagues, to behave in a manner which was antagonistic, insulting, provocative and confrontational, and that the police felt that they had absolute authority to behave as they wished.

While there have been improvements, the propensity to violence of some members of the police did not simply evaporate. The problem of police brutality has continued in South Africa, albeit at a lower level than in the past. Two video recordings—one filmed in 1999 showing members of the Johannesburg Flying Squad assaulting hijacking suspects, another in 2000 showing members of the North East Rand Dog Unit using their dogs to repeatedly savage three Mozambican men—starkly illustrated this problem. Statistics provided by the ICD on people killed by the police also paint a worrying picture of high levels of the use of lethal force by the police.

Factors which have contributed to the continuation of brutality clearly include the increase in violent crime, along with a decline in the effectiveness of the criminal justice system.<sup>25</sup> This has contributed to a perception that relying on the mechanisms of the justice system is likely to be ineffective and, therefore, that 'self-help' measures are called for. In this regard it is likely that the apparent growth of vigilantism in South African society generally<sup>26</sup> has

been paralleled by a growth of 'police vigilantism'.

A police force which, in the recent past, had distinguished itself by its penchant for violence, has now been called upon to serve as the agent of a newly democratised society in fighting a wave of exceptionally violent crime. While the motivation has changed from 'fighting communism' to 'fighting crime' the style of policing has not necessarily changed all that much while in cases of abuse black people, and particularly marginalised black groups most notably foreigners, have continued to be the primary victims.

High levels of crime also contribute to police brutality in other ways. One aspect of this is the widespread proliferation of firearms and high levels of attack on police which appear to necessitate that police are armed, even while off duty. More broadly, frequent exposure to violent crime and high levels of fear contribute to desensitising and dehumanising members of the police service. The high crime environment also contributes to legitimating police brutality, so that public pressure is for increasing 'toughness' from government and the police in dealing with crime, and there is little public pressure or support for measures intended to discourage brutality.

Finally while it appears fair to say there has been a general change in the direction of greater civility and improved conduct on the part of the police in dealings with members of the public, this has not translated into an improvement in policing services. Furthermore whereas police brutality may be seen as compatible with the crime control orientation of the police, this cannot be said of police corruption.

### **The proliferation of corruption**

The personnel who became part of the SAPS came from a range of policing agencies most of which did not have a reputation for particular commitment to performing their police responsibilities. Added to this the challenges posed by the new environment may have fed into further declines in morale, a sense of disempowerment, and a collapse in whatever systems of internal control had existed in the pre-1994 period. These factors may be seen as contributing towards an apparent growth, most apparent in the immediate post-1994 period, in levels of police corruption.

The question of whether corruption has increased is inherently complex and not uncontroversial. Like police brutality, corruption is not strictly measurable, and pronouncements on trends relating to these phenomena are necessarily partly subjective.<sup>27</sup>

One indicator would be the large number of reports of police corruption which have appeared in the press in the post-1994 period. By contrast few analyses of policing in South Africa in the pre-1994 period make much reference to the problem of corruption, other than in relation to the homeland police forces.<sup>28</sup>

Whilst reflecting internal factors within the police service, declining but persistent brutality and the apparent increase in corruption, may also be seen as linked to changes in the broad environment associated with transition and democratisation in South Africa.

## Key Dimensions of Transformation

### The Constitution and Democratisation

Subsequent to the April 1994 election, the basic framework for the transformation and development of South African society, including the police, can be seen as having been provided by the Constitution (initially the interim Constitution) and the Bill of Rights. In its preamble the Constitution states that it is adopted by the people of South Africa as the supreme law of the Republic so as to:

- heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- improve the quality of life of all citizens and free the potential of each person; and
- build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

The adoption of the Constitution and Bill of Rights fundamentally altered the political and legal landscape of South Africa. Prior to the passing of the Constitution, and particularly subsequent to the removal of coloured people from the voters' roll during the 1950s and the introduction of a republican constitution in 1961, the South Africa legal system was based on the principle of parliamentary sovereignty (Klug, 1996: 2-3). South Africa's racially exclusive parliament could thus 'make any encroachment which it [chose] upon the life, liberty, or property of any individual subject to its sway' (op cit<sup>29</sup>). Within this system it was the function of the courts to enforce the will of the minority parliament and government. The transition in South Africa has therefore not only involved the introduction of a democratically elected parliament but also the implementation of a legal and political system in terms of which all South Africans, including government, are subject to the Constitution.

The introduction of the Constitution has other profound implications for South Africa because it changes the values on which South African society is based. The Constitution amounts to a statement of the intention to create a society entirely different from that which had previously existed in South Africa. The apartheid system was a social, political and economic system based on a semi-theocratic (religiously based) set of values combined with a political and criminal justice system which promoted the interests of a minority of people in an authoritarian manner. In terms of the new Constitution, South Africa now has a social and political system based on human rights values which seeks to support a social system based on equality. The political system and the criminal justice system are intended to promote the well-being, safety and freedom of all South Africans.

This profound change in the political and legal systems and in the social values on which the country is based has been difficult for many people to comprehend and come to terms with. The Constitution has far reaching implications for all sections of government and the public service, especially the police. This is partly because it requires that state officials learn new ways of working - how to deliver services, to manage systems of control, to conduct themselves in a manner consistent with the new set of values put forward in the Constitution.

Not only must policing services now be provided to all communities, and in a manner which meets the varying needs of the different sectors of South Africa's diverse population but the Bill of Rights, has major implications for the manner and standards, in terms of which the police perform their duties.<sup>30</sup> Effectively the police are now required to perform a *different* job. This involved delivering policing services to all South Africans including the provision of police services in all geographical areas, to all sectors of the population, and with crimes such as violence against women regarded as priorities in a way in which they had not been previously.

Adaptation to this new social and political environment requires of the police that they be much more skilled in their work. They must apply higher levels of professionalism to the technical aspects of their work and also on an 'inter-personal level' in understanding and working with other people. In this new environment core interpersonal skills, such as those of communication, dealing constructively with aggression and criticism from other people, and managing interpersonal conflict, have become fundamental to the police occupation. This is not to say that the use of force, and related to this issues of physical fitness and agility, are no longer important to police work, but simply that these skills need to be complemented by other skills, including skills of an interpersonal nature.

While the political environment has changed and the police are better accepted in communities, policing has also therefore become more difficult. For many police members who learnt their policing during the apartheid period these skills are not necessarily easy to learn. More positive public attitudes towards the police have not meant that policing has become a significantly safer job, with attacks on and murders of police officials continuing at a high level.

While some police members have responded positively and tried to develop new skills and knowledge in response to changing circumstances others continue to see the changes which have taken place in a very negative light. They complain that their hands are now tied, that they feel demoralised and demotivated, or they become focused on personal enrichment rather than on their work.

These negative responses appear to be partly related to the fact that many police have experienced the changes which have taken place as simply limiting and weakening their scope and authority to act, and thus in some ways reducing their power and status in society. Whereas in the past, police were an instrument of power and domination over (black) people now they are merely an institution intended to assist members of the public. Whilst some may have chosen the path of adaptation to this new status, others responded by helplessness, or defiance.

Whilst in the pre-1990 period the issue of subjecting the police to restraint was neglected, there were other factors which served to promote a certain level of focus and internal cohesion. These included the emphasis given to the authority of those in command, the religiously-based value system which many members of the police strongly identified with, and the perception of an outside enemy which served not only to unify police members, but also to strengthen internal control.

In the post-1990 period, however, these 'informal controls' on police behaviour have fallen

away. The new framework of values, based on the ideals of universal human rights contained in the Constitution, has remained in many ways obscure to members of the police. In so far as members of the SAPS are individuals whose world view is linked to a value framework, many appear to regard the Constitution as based on an alien set of values which, while they are expected to conform to it, is not necessarily meaningful to them. Whether members understand it or not, it has also often been regarded in a negative light. As a result, there is not necessarily a unifying framework of values with which police identify. In addition to the decline in the level of authority of the command system and the loss of a unifying sense of mission (which had previously been provided by the sense that the SAP was engaged in a war against an identifiable external enemy), other important changes have also taken place which, in the absence of a strong focus on internal mechanisms of control within the police, may have translated into an increasing lack of control over police behaviour.

Whereas in the past the police were outcasts from many communities, democratisation saw a collapse of the barriers between the police and these communities. These increasing opportunities for contact with members of the public have also resulted in a growth in opportunities for corruption. The crime environment also changed as crime syndicates grew in size and number, and criminals became more affluent as a result of crime's having become increasingly lucrative. While the mining and agricultural sectors had made some use of migrant labour from other African countries, South Africa had not previously been a more general destination for African migrants and refugees. The post-1994 period saw an increasing number of African immigrants and migrants coming to the country, including a large number who entered the country illegally. Foreigners generally, and illegal immigrants in particular, have been a section of the community particularly susceptible to corrupt exploitation by the police.

### **The impact of the Truth and Reconciliation Commission<sup>31</sup>**

One of the characteristics of this early period of change was a certain level of contestation between the 'old guard' political and police elite and those associated with the emerging democratic political leadership, as well as by resistance to change from sections of the rank and file.<sup>32</sup> One arena for such contestation was the whole issue of the Truth and Reconciliation Commission and efforts to motivate SAPS members to participate in the commission. However despite direct efforts by senior ANC leadership to encourage police participation in the TRC, eventual participation was minimal. Of a total of 140 000 police, there were 310 SAP applicants who applied for amnesty for 827 "incidents" (Email message from Carnita Ernest, CSV, 30 April 2002). Amongst those who applied it appears that the primary factor in generating amnesty applications was the threat of prosecutions, and not a general change of heart, or desire to reconcile with former victims of apartheid oppression, though motivations probably differed in some cases, perhaps most significantly amongst the very small number of black police who applied. In addition the fact that fairly limited resources were put into the process of investigation and prosecution also meant that the direct threat of prosecution was limited to a relatively small number of former or present police members. The threat of prosecution itself therefore only generated a relatively limited number of applications.

Two additional factors which clearly limited the role and scope of engagement of the TRC



were firstly that its focus was on 'gross violations of human rights' and secondly the 'political' terms of reference relating to the granting of amnesty. This firstly meant that the day to day insults and abuses which black people were exposed to at the hands of the police were not engaged with by the TRC, but also that even 'gross human rights violations' which were not political in nature were not regarded as relevant material either in relation to human rights violation hearings at which victims testified, or to the amnesty process, or the badly neglected issue of reparations.

It is clear that many who were involved in human rights violations of a political nature, including members of the security police, riot, and ordinary policing units, and the bulk of the police service, many of whom would have participated in acts of torture and other violations against ordinary criminal suspects, had no engagement with the TRC. Furthermore, the major trials that have taken place have highlighted the fact that those involved in abuses of human rights in political context did not necessarily draw the line here and were likely to have been involved in abuses in other contexts with these incorporating not only forms of brutality but also extending to corruption ([Newham, 2002](#)).

Overall the TRC process therefore directly touched only a very small minority of police who were mainly more senior members of the SAP associated with the Security Branch. However those who applied included a small number at lower ranks, and in this way at least, the TRC may be seen to have supported the idea that both the 'generals' and the 'foot soldiers' could be held accountable, though it failed to hold any of the politicians answerable in the same way.

While there is not much clarity about who it was who stayed in the SAPS, and who it was that left, impressions are that most of those who applied for amnesty, particularly at the more senior levels, are no longer in the SAPS. However other factors, such as the scrutiny which senior members were subjected to during the senior appointments process, and the offer of generous retrenchment packages, rather than the TRC process itself, may have been what 'pushed' them out of the SAPS.

It is therefore not clear that the TRC made a significant contribution to promoting accountability, and the argument may be made that it did more to promote impunity through the amnesty process, and the associated de-emphasis on prosecutions. Nevertheless on a fairly diffuse level the TRC, and the publicity provided to it by the media, may be said to have had a moral impact and contributed to respect for human rights, in the sense of labeling certain types of conduct as beyond the boundaries of acceptability, and giving legitimacy to the work of other bodies, such as the ICD, whose task it is to ensure that conduct of this kind is sanctioned, under the new dispensation. This impact may have been quite uneven however, particularly within the SAPS itself, and was possibly most significant at more senior levels of the service.

More generally the actual recommendations of the TRC relating to the police were not necessarily linked to empirical analysis of the evidence presented to it, but were thrown together at the last moment in the report writing process, and the TRC can not be seen to have contributed anything in terms of a forward looking strategy around transformation of the police.<sup>33</sup>



Another possible impact of the TRC was in the key period immediately post 1994 where police efforts to build community relationships may have been in some way undermined by the abuses then being exposed, and receiving major media publicity, through the TRC process. More recently however the public environment has become one less receptive to a focus on past police conduct, with the emphasis on building police morale, and police brutality once again, at least tacitly, condoned by much of South African society.

Despite these extensive reservations the TRC was not insignificant unimportant for the police. South African society has changed from one where police abuse went primarily unsanctioned to one where the potential for that sanction is far greater. The TRC existed at a particular watershed moment, a moment where it was important to demarcate what had happened in the past from what was to come. In so far as the new society is willing to, and has the means to sanction police abuses, the TRC is an important part of what makes such sanction legitimate. The question is whether South African society has the means and the will to impose such sanction on police who engage in abuses.

#### **The limitations of reform measures**

Clearly there have been both successes and failures in the process of police transformation in South Africa and a balanced view of the process would need to give some acknowledgement to both. The biggest breakthrough has been the overall improvement in police-community relations, reflecting the fact that the focus on community policing and the introduction of CPFs has had a positive impact.

The apparent deterioration in control over the police and an increase in corruption in democratic South Africa can be seen as by-products of the process of transition, but can also be understood as linked to the weakness and neglect of internal systems of control prior to and during the transitional process.

While emphasis was placed on the creation of external checks on the conduct of the police, inadequate attention was paid to the internal machinery of the service and to internal mechanisms of control. The existing militaristic ethos and system of discipline within the service was rejected but little emphasis was given to developing the skills of managers in relation to the new framework for internal regulation of the organisation. While these systems of control did not operate effectively prior to the transition to democracy, and underwent a breakdown in terms of effectiveness in the 1990-1994 period, at the very least it can be said that problems of internal control of an already ill-disciplined police service were not adequately addressed in the period after 1994.

The absence of effective internal control systems limited the capacity of external mechanisms, which included the Independent Complaints Directorate, the national and provincial secretariats and the CPFs, to have a meaningful impact on police conduct. In practice, the large number of such bodies also meant that they acted as scattered centres of power, limiting the potential for a unified approach to tackling issues of accountability and control. All of the bodies concerned had to learn the ropes before they could begin to have a significant impact. The National Secretariat was downgraded by government in 1999 at exactly the point where it might have begun to find its feet and play a more significant role. The ICD, on the other hand, only came into operation in April 1997. Furthermore neither the powers, nor the resources provided to it, would appear to be adequate to enable it

properly to fulfil its mandate. Finally it would appear that community liaison bodies such as the CPFs are neither equipped nor generally disposed to play a role in addressing issues of police abuse of power and particularly brutality.

Other 'internally' focused measures have also been in many ways limited in their impact. While no formal evaluation has been conducted it would appear that the anti-torture policy may have had a generally beneficial impact. At the same time the primary impact of the policy is likely to be on the treatment of arrested persons after they have been taken to a police station to be placed in custody. Acts of brutality are however not restricted to custodial facilities. The introduction of measures focused on preventing torture in custody may even be associated with a 'displacement' of brutality to the period immediately after arrest and to localities other than actual police station and custody facilities.

More generally, the measures which appear to be most rigorous are those, such as the selection system and basic training curriculum, which impact on new recruits (as well as those focused on the public order policing units). However an improved curriculum doesn't necessarily translate into an improved quality of training. In addition as indicated above, up to 2002, new recruits have only been introduced into the SAPS relatively slowly and thus the new recruitment and training systems may only be likely to have an impact on the SAPS in the long term.<sup>34</sup>

While there are obstacles to the impact of basic training, the problems facing the in service training system are even more substantial. Apart from human rights training, none of the measures implemented would appear to have any real potential to contribute to behaviour change in relation to the problem of brutality. Also human rights training is not integrated with functional aspects in a sustained manner, with the consequence that it may not lead to sustained changes in police conduct.

Whilst it does reflect the ideology of the new dispensation, it is also not clear that the code of conduct speaks in a clear and practical way to members of the SAPS in relation to issues of values. Thus the inconsistency and negligence of commanders in addressing 'the values' of the service are unsurprising.

Nor have issues of providing appropriate equipment to members been prioritised in a manner necessary to support change in an organisation historically heavily reliant on firearms. Thus the introduction of the Tonfa baton has been obstructed by the need for members to have a certain standard of proficiency in the use of the weapon in order to use it effectively. However, the realities in relation to the provision of in-service training mitigate against members' being trained to meet these standards.

Cases of obstruction by key role players of the process of reform have also not assisted the process of change. Perhaps the most telling example of this was the failure by government to clearly address the issue of the use of lethal force through a binding regulatory framework in the period from 1994 to the Constitutional Court judgment on the issue in May 2002.

## **The politics of policing in a new and violent democracy**

Crucial to understanding the environment within which change has taken place is the incidence of high crime. On the one hand this has increased the need to improve the crime fighting performance and capacity of the police, and thus the urgency of certain selected aspects of police reform. On the other, it has simultaneously limited the scope for change as well as enhancing opportunities for corruption.

Since 1994 crime has emerged as a key political issue in South Africa. Public pressure and public anxieties have focused on the issue of the effectiveness of the police. Government has come slowly to the realisation that it needs to demonstrate seriousness about tackling the problem in order to retain credibility and popular support.

The first term of office of democratic government (1994–mid-1999) was characterised by deteriorating public and police morale and by a general denial by government of the seriousness of the crime problem. While some of the key policy measures relating to the police were formulated during this period, government appeared reluctant to acknowledge crime as a problem, or lacked the know how to provide convincing leadership to the country in tackling it.

Thereafter in the period 1999 - 2002, government has been more sensitive to public concerns about crime, emphasising visible measures, including high-profile 'crime crackdowns' and more generally demonstrating a greater seriousness about tackling the crime problem. In this period government has placed strong emphasis on restoring morale among members of the police and public. Perhaps with the intention of persuading police members that government was sympathetic to their plight, as well as create a sense that government was providing leadership to the country in tackling the crime problem, Tshwete made a number of statements which virtually amounted to exhortations to brutality. At the same time Tshwete opposed changes to the law intended to restrict the use of lethal force for purposes of arrest on the grounds that these ostensibly represented a threat to police safety.<sup>35</sup>

The brief post-1994 period highlights the risks and difficulties of political leadership on the crime issue in a democracy. While government needs to be convincing and to show it is serious about tackling the problem, it is easier to do this through rhetoric than through purposeful and effective action. What appears to have emerged is a certain ambivalence about the process of police transformation, underpinned by a perception that human rights orientated reform is counter-productive as it undermines the effectiveness of the police. Perhaps it is too much to expect a newly elected government within a transitional context to have an appreciation of the type of reform that is compatible with improvements in police effectiveness. This reluctance to move forward with reforms may also be exacerbated by the context of managerial ineffectiveness, with difficulties being experienced on a widespread level in the public sector in implementing basic organisational processes.

It is in this context that problems of ongoing corruption and brutality can be understood. Corruption is an important factor which undermines efforts to improve police performance, the good work of some members of the SAPS, and the morale of police more generally. It has become common to hear police and others complain that they cannot do their work effectively as their 'hands are now tied' by the Constitution, suggesting that this is the

primary problem obstructing the effectiveness of the police. But while the Constitution is the basic law of the land, and police need to learn how to work in a manner consistent with its provisions, there is extensive scope to improve the efforts to discourage and prevent corruption, and thereby contribute to overall improvements in the effectiveness of the police.

While anti-corruption rhetoric needs to still be translated into a clearer program of action there appears to be some level of willingness on the part of police management, to tackle the problem of corruption. But this apparent willingness is not combined with a willingness to tackle the significant problems which also exist in relation to the issue of the use of force and police brutality.

Overall the current approach taken to issues of brutality may be summarised as one of non-engagement, which reflects society-wide doubts about whether crime can be fought within the constraints of human rights, and displays a lack of understanding about how to tackle the crime problem and maintain social order other than through a 'tough-on-crime' approach.

When police resort to brutality they are not simply acting out their own instincts but in many ways reflecting the 'gut level' beliefs of ordinary members of society about how best to deal with the social problems that confront them. This was illustrated with the screening on national television of the BBC video of police dog assaults on suspected hijackers, following which it appeared that the dominant public response was one of support for the police involved.<sup>36</sup>

The police may win public sympathy in many instances when they resort to brutality, but the continuation of these problems reflects a lack of insight on the part of police management. It suggests a persistence of the belief that crime can only be dealt with through the type of methods relied on in the past, and a perception that efforts to prevent unnecessary uses of force may negatively impact on police safety.

But while there are real risks to the police and the issue of police safety deserves to be prioritised this does not need to be done to the exclusion of a focus on police brutality. In fact a focus on the use of force which firmly discourages brutality is entirely compatible with a focus on safety and on improving police effectiveness.

Ultimately the SAPS will only be able to build a sense of self-worth among its members and true public respect through setting far higher standards for itself than are demanded from it by many members of the public. But there are not many SAPS managers who recognise this. In the absence of public pressure, there is thus little motivation for them to deal more firmly with brutality.

The events of the past few years in South Africa have shown that neither public nor political pressure can necessarily discourage police abuses. While the process of transition to democracy provided a powerful impetus towards transformation of the police into an institution based on respect for human rights, it is not clear that this impetus will be sustained. This ultimately raises the question as to where the impetus for change will come from.

Leadership of the police under a system of human rights, particularly in an environment of high crime, is highly demanding. Police and political leaders need to learn difficult lessons in order for the police organisation to be used most effectively. This includes learning the lessons of how to tackle key problems of abuse, including both corruption and brutality.

## **Conclusion**

One definitive fact of police transformation in countries in transition appears to be that, inevitably, the new police service is constituted primarily, if not entirely, by members of the old security and policing apparatus.

In South Africa the new police service is constituted almost exclusively by members of the former police agencies with recruits from the former liberation movements possibly constituting less than 0.5% of total numbers and new recruits to the SAPS still constituting less than 5% of the total number of SAP personnel.

The establishment of democracy in South Africa has therefore not involved the establishment of a police service from a clean slate. This is a reality which has both negative and positive dimensions to it. On the one hand it means that one brings into the new police service many who are ill-equipped to serve as police officers in a democratic system. On the other hand many of those who are carried into the new dispensation, and who hold out the promise of serving it well and effectively, bring with them skills which are invaluable to the new order.

Nevertheless it may be worthwhile to engage in more depth with the relevance of this inheritance. One implication may be in terms of developing more modest expectations for processes of police transformation, and framing them in a way that is better adapted to the actual human resources present within the police service. A second implication may be that many will persist in their brutal behaviour, or if not involved in corrupt practises already, see the more laissez faire police environment which emerges as an invitation to become so involved. Even where some effort has been made to 'weed out' persons deemed inappropriate to the new police, the development of effective systems for the lodging of complaints, investigation, discipline, oversight, and monitoring of the behaviour of individual police officers will be of central importance to the more long term project of building a police service which is based on principles of integrity.

The ultimate truth however may be that one is unlikely to get truly new wine from an old cask, and that a new police service can only really emerge through the process of opening the organisation to new recruits by means of an improved process of selection and training. However excessive haste in this process will itself undermine its quality and negatively impact on the long-term project of building a new police service.

## **Postscript - the proliferation of policing agencies**

One further by-product of the major crime wave affecting South Africa has been the growth of the private security industry and the involvement of other agencies in policing demonstrated most visibly by the trend towards creation of metropolitan police services in a number of South African cities. But while the private security industry is likely to

demonstrate a high degree of variability in relation to whom it employs, the metropolitan police agencies have also followed the path of 'recycling' former members of traffic and city security agencies, with the consequence that there is also relatively little in the way of 'new blood' within these structures.

**Notes:**

<sup>1</sup> Discussions of 'the police' in the post-apartheid (post-1994) period in South Africa are usually focused on the [South African Police Service](#) (SAPS) and its key predecessor, the South African Police (SAP). There are, however, a diverse range of police agencies in South Africa. These include traffic police, metropolitan police services and municipal security guards who mainly fall under the jurisdiction of local government. There is also an extensive private security industry – whose members in fact far outnumber the members of the SAPS. Recently government has established the Directorate Special Operations ('the Scorpions'), one of a number of special investigating units which fall under the Office of the Director of Public Prosecutions. Particularly in rural, but also in urban areas both Permanent Force and commando units of the South African National Defence Force (SANDF) are also in varying ways involved in policing activities. State agencies which are involved in policing functions make provision for the involvement of members of the public in varying ways. These include the above-mentioned SANDF commando system, as well as the 'police reservist' system of the SAPS. Outside of these formal structures forms of vigilantism which have received significant public attention in recent years, such as the organisation Mapogo a Mathamaga, may also be seen to represent forms of (extra-legal) policing by the public. Whilst acknowledging the diversity of 'policing' in South Africa, this paper focuses on the SAPS. See further the endnote.

<sup>2</sup> The Commission finds that the police deliberately opened fire on an unarmed crowd that had gathered peacefully at Sharpeville on 21 March 1960 to protest against the pass laws. The Commission finds further that the SAP failed to give the crowd an order to disperse before they began firing and that they continued to fire upon the fleeing crowd, resulting in hundreds of people being shot in the back. As a result of the excessive force used, 69 people were killed and more than 300 injured. The Commission finds further that the police failed to facilitate access to medical and/or other assistance to those who were wounded immediately after the march (TRC Report, Vol 3: 537).

<sup>3</sup> On 21 March 1985, a large group of people from Langa township assembled at Maduna Square and began to march to KwaNobuhle to attend a funeral. The police blocked the road in the centre of Uitenhage with two armoured vehicles and ordered the crowd to disperse. When the crowd failed to comply immediately, police opened fire on the crowd, fatally shooting 20. The incident became known as the Langa massacre ... . Twenty people were shot dead and at least 27 wounded (Op cit: 85–86).

<sup>4</sup> On June 16 [1976], organisers planned to march from school to school gathering more students as they went along ... . Hundreds of pupils gathered at the appointed assembly points and at 07h00 the first group of singing, chanting students began marching towards Orlando. The first reported clash with the police took place at 08h00, when police opened fire on two schoolboys running to catch up with the marchers. By 09h00, approximately 10 000 pupils had converged on Orlando West High School. Moments after an appeal by

student leaders for calm, a contingent of police arrived and formed an arc in front of the crowd of marchers. A teargas canister was thrown into the midst of marchers, who responded by throwing stones. The police opened fire. Two pupils were fatally wounded. The first of these was 13-year-old Hector Zolile Peterson. It was Petersen's death that fundamentally transformed the nature of the student protest from a peaceful march into a violent confrontation with the government's security forces (Op cit: 559). On page 569 the TRC report indicates that the government-appointed Cillie Commission, whose terms of reference included the time period between 16 June 1976 and 28 February 1977, found that 575 people had died and that 2 389 people were injured during the course of the riots. However, it is not clear to what extent these figures reflect the full number of people killed and injured during the period in question and what proportion of this number were killed and injured by the police.

<sup>5</sup> In the words of Steytler official violence was facilitated by 'an abundance of permissive rules and a protective legal system which produced a penal system of immunity' (see Steytler 1990).

<sup>6</sup> Cawthra, however, notes that most of the different forces which were brought together in the SAP when it was formed through the Act of Union of 1910 'were essentially military units' (1993, p. 8). The involvement of military-type formations in policing activities also continues to this day, with commando units continuing to perform a policing role in rural areas.

<sup>7</sup> By 1990 there four 'independent' and six 'self-governing' homelands.

<sup>8</sup> The announcement on 2 February 1990 was predated by a number of events, including the legalisation of a political demonstration in Cape Town in September 1989 shortly after De Klerk became President, the release of other long-term political prisoners in October and a series of behind-the-scenes talks with Mandela in prison and with ANC leaders in exile which went as far back as 1985 (Waldmeier, 1997). More broadly, the political and military landscape both regionally and on a global level changed dramatically at the end of the 1990s with the end of the war in Namibia, agreement reached on the granting of Namibian independence and the withdrawal of Cuban troops from Angola, as well as the 'Cold War' coming to an end with the collapse of the Soviet Union, symbolised most poignantly with the destruction of the Berlin Wall in November 1989. Nelson Mandela was released from prison on 11 February 1990.

<sup>9</sup> The current Constitution of the Republic of South Africa (Act 108 of 1996) came into operation on 10 December 1996. Prior to this South Africa was governed by the Constitution of the Republic of South Africa (Act 200 of 1993), sometimes referred to as the interim Constitution, which came into operation on 27 April 1994.

<sup>10</sup> The process of amalgamation lasted over an extended period but was to some extent consolidated by the time of the passing of the South African Police Service Act in late 1995.

<sup>11</sup> Cawthra quotes figures on the SAP provided in 1991 which indicated that, of a total of



108 000 police members, 49 000 (45%) were classified as African, 47 000 (44%) as white, 8 500 (8%) as coloured and 3 500 as Indian (3%) (1993, p. 75).

<sup>12</sup> In 1991 women constituted about 5% of SAP members (Cawthra, 1993, p. 75).

<sup>13</sup> There are two major police unions, the South African Police Union (SAPU) and the Police and Prisons Civil Rights Union (POPCRU), currently representing SAPS members in the Safety and Security Sectoral Bargaining Council.

<sup>14</sup> The prohibition against strikes by members of the SAPS is contained both in the SAPS Act (Section 41) and the Labour Relations Act, 66 of 1995.

<sup>15</sup> See footnote 5.

<sup>16</sup> In terms of section 55(2) the National Assembly must provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it and maintain oversight of these organs of state. Section 198(d), which deals with the principles governing the Defence Force, the police service and intelligence services, also states that 'National security is subject to the authority of Parliament and the national executive'.

<sup>17</sup> Statistics released by the SAPS at the end of May 2001, for instance, indicated that recorded violent crime (including murder and attempted murder, rape and attempted rape, assault and assault with intent to commit grievous bodily harm, robbery and robbery with aggravating circumstances) had increased from 1 600 incidents per 100 000 members of the population during 1994 to 1876 per 100 000 in the year 2000 (SAPS, 2001).

<sup>18</sup> The strongest indicator of the declining effectiveness of the criminal justice system is to be found in the declining number of prosecutions and convictions against a background of rising crime. According to Schonteich: 'In 1985/86, some 480 600 prosecutions and 373 980 convictions took place. This decreased to 291 840 prosecutions and 218 390 convictions in 1995/96 and 257 390 prosecutions and 202 590 convictions in 1999' (2001, p. 101). During 1999 203 000 cases (or 9% of the 2 381 000 reported cases) resulted in convictions while 55 000 (2%) resulted in acquittals (p. 91). The proportion of recorded cases relative to convictions was 17% for murder, 8% for rape and 3% for aggravated robbery (p.98). As might be expected there is no information on innocent persons convicted or whether the proportion of innocent persons who are convicted has changed in any way during the period in question.

<sup>19</sup> Interestingly however, early police enthusiasm for 'zero tolerance' as a general policing strategy dissipated quite quickly in the latter 1990s partly due to the inability of the courts and holding facilities to deal with the increased load of people and cases generated.

<sup>20</sup> Neild notes, for instance that in El Salvador the decision was made to select 60% of the new police force from the civilian population while members selected from the former security forces were subjected to background checks (2000, p. 25).

<sup>21</sup> Letter from SAPS Personnel Services, 23 May 2002.

<sup>22</sup> According to an article in the newspaper Business Day approximately one third of police were functionally illiterate, 30 000 policemen did not have drivers licenses and 20 000 policemen possessed criminal records (Ernest Mabuza, 'Good Economy can help fight crime' in Business Day, August 27 2001).

<sup>23</sup> The distinction between 'crime control' and 'due process' was originally made by Herbert Packer in a book published in 1968. In terms of the 'crime control' approach 'the repression of criminal conduct is viewed as by far the most important function to be performed' by the criminal justice system (Sanders and Young, 2000: 22) while a 'due process' approach is concerned with the risk of innocent people being victimized by the criminal justice system, as well as the risks of abuse and unduly harsh treatment by the criminal justice system. 'Packer developed his model in order to illuminate what he saw as the two conflicting value systems that competed for priority in the operation of the criminal [justice] process. Neither corresponded to reality, and neither was to be taken as the ideal. Rather, at each successive stage of the criminal process they represented extremes on a spectrum of possible ways of doing criminal justice (ibid).

<sup>24</sup> Exact numbers are not clear but deaths in demonstrations at the hands of public order police appear quite rare. As a result of changes in the political environment, the relationship between the police and the public is far less confrontational than it used to be. The legislative framework is one which supports the holding of peaceful demonstrations. The dramatic decline in the numbers of persons killed also reflects significant changes in the framework for control and conduct of the police in dealing with protests and other public gatherings. Note that these figures do not include the deaths of persons involved in demonstrations at the hands of SAPS units other than the Public Order Police (POP). Also this improvement in conduct in the policing of public gatherings and demonstrations has however not necessarily carried over into other actions involving the POP. Thus in a number of cases where police brutality, including unlawful killings, has been alleged, this has involved POP members.

<sup>25</sup> See footnote 18.

<sup>26</sup> See for instance Harris, 2002.

<sup>27</sup> Lodge, for instance, notes that "pre-1994 police corruption is especially difficult to estimate" (1997, p. 9) and the remark applies no less to post-1994 police corruption.

<sup>28</sup> This may also be partly because, in a context where the police were responsible for enforcing unjust laws such as the pass laws, a willingness on the part of the police to 'turn a blind eye' to persons breaking these laws in exchange for a financial reward, might not have been seen by many critics of the police as providing substantial cause for complaint.

<sup>29</sup> *Sachs v Minister of Justice* 1934 AD 11 at 37, quoted in Klug.

<sup>30</sup> Note that the South African Police Service Act (No 68 of 1995) was drafted in terms of

the provisions of the interim Constitution. Some of the provisions of the Police Act, such as the provisions relating to the Independent Complaints Directorate and to Community Police Forums were expressly provided for by the interim constitution but are not directly provided for in the 1996 Constitution. (See note 5.)

<sup>31</sup> The contents of this section are based almost entirely on an informal discussion held at CSVR on 18 April 2002 on the subject of the impact of the TRC on policing in South Africa. Particular acknowledgement must be made to Piers Pigou, Janine Rauch, Carnita Ernest, Graeme Simpson and Bronwyn Harris for their insights which provide the substance of this section.

<sup>32</sup> It was not always the case that the police resisted change. One important development, as early as 1989, was the bold stand by an SAP member, Gregory Rockman, to expose the brutal behaviour of some members of the Riot Squad who had attacked a group of schoolchildren engaged in a peaceful demonstration. Rockman's actions pointed to the presence of pro-democracy members of the SAP and set a precedent in terms of which members would no longer be able to assume their colleagues would turn a blind eye to anything they did. They also led to the formation of the Police and Prison Civil Rights Union (POPCRU) in November 1989.

<sup>33</sup> See further Simpson, G. ["Uncivil society' Challenges for Reconciliation and Justice in South Africa After the Truth and Reconciliation Commission](#). Centre for the Study of Violence and Reconciliation. Unpublished paper 2002; as well as Rauch, J. unnamed forthcoming paper to be published in 2004. Centre for the Study of Violence and Reconciliation, Race and Citizenship in Transition Series.

<sup>34</sup> However the most recent indications are that this may change dramatically over the next few years. In February 2002 government announced its intention to devote, over the next three years, an additional R5 billion (then just under \$500 million) to the recruitment of 16 000 more police, to be deployed at crime 'hot spots'. (Business Day, 21 February, 2002).

<sup>35</sup> Safety and Security Minister Steve Tshwete passed away in hospital on 26 April 2002.

<sup>36</sup> While there was widespread public outrage in response to the Dog Unit video it appears that this was directly related to the overtly racist nature of the police behaviour, as well as the fact that the victims in this incident were not readily identifiable as criminals.

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