A report on the workshop
DEVELOPING A USE OF FORCE POLICY
FOR THE SOUTH AFRICAN POLICE SERVICE

Emoyeni Conference Centre, Johannesburg, 21–22 July 2011

Hosted by

APCOF

CSVR
The Centre for the Study of
Violence and Reconciliation

INSTITUTE FOR SECURITY STUDIES
INSTITUT D'ETUDES DE SÉCURITÉ

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ACRONYMS AND ABBREVIATIONS

APCOF	African Policing Civilian Oversight Forum
CPF	community police forum
CSVR	Centre for the Study of Violence and Reconciliation
ICD	Independent Complaints Directorate
IPID	Independent Police Investigative Directorate
ISS	Institute for Security Studies
JMPD	Johannesburg Metropolitan Police Department
LAPD	Los Angeles Police Department
LASD	Los Angeles Sheriff's Department
RGA	Regulation of Gatherings Act, 205 of 1993
SA	South Africa
SAPS	South African Police Service
SAPU	South African Police Union
US	United States of America

Important note: The following is a detailed report on the workshop proceedings. While the report is not comprehensive, we have tried to provide a sense not only of the presentations but of many of the contributions made from the floor. We have tried to confirm with speakers who were part of the formal workshop programme that we have accurately represented their inputs. However, we have not been able to do so in respect of contributions from the floor. Likewise, coverage of contributions made in breakaway sessions may not be completely accurate. We apologise if we have misrepresented any of these.

The report was compiled by Duduzile Ndlovu (duduzile.ndlovu@gmail.com) and David Bruce (dbruce@csvr.org.za). Thanks to Julio Thompson and other participants who provided detailed notes on their inputs. These were helpful in compiling this report.

Image design on cover: Chenette Swanepoel
Layout: Lomin Saayman

INTRODUCTION

This report summarises the presentations and discussions held on 21 and 22 July 2011 at a workshop entitled "Developing a use of force policy for the SAPS". The workshop was held at the Emoyeni Conference Centre in Parktown, Johannesburg, and was hosted jointly by the Centre for the Study of Violence and Reconciliation (CSVR), the African Policing Civilian Oversight Forum (APCOF) and the Institute for Security Studies (ISS). The workshop was facilitated by Nomfundo Mogapi (CSVR), Gareth Newham (ISS) and Sean Tait (APCOF).

DAY ONE

WELCOME

Nomfundo Mogapi, Acting Executive Director, Centre For The Study Of Violence And Reconciliation

The workshop was officially opened by CSVR acting executive director Nomfundo Mogapi. She explained that the workshop was the result of the CSVR's concern with both violence that police are subjected to as well as violence perpetrated by the police. The workshop, therefore, sought to look at ways to approach the issues of police and community safety holistically and separately. Nomfundo welcomed all participants to the workshop with specific reference to representatives and members of the South African Police Service, the Independent Complaints Directorate (ICD), the Johannesburg City Safety Department and Metropolitan Police, the Durban City Police, the South African Police Union (SAPU), the Policing and Prisons Civil Rights Union (POPCRU) and civil society organisations. A special welcome was given to Julio Thompson, an assistant attorney-general in Vermont in the US and the key resource person and speaker at the workshop. She also thanked the CSVR's partners in hosting the workshop: the Institute for Security Studies (ISS) and the African Policing Civilian Oversight Forum (APCOF). Special thanks were given to the workshop funders, the Open Society Foundation for South Africa (OSFSA), which had provided ongoing support for the work of civil society organisations on policing. Nomfundo expressed the hope that the meeting would come up with new and innovative ways to deal with the issues building on what is currently happening.

OPENING REMARKS

David Bruce, Centre For The Study Of Violence And Reconciliation,

David gave a brief background to the workshop and its aims. He highlighted that, related to the high levels of violence in South Africa, policing in the country was very challenging. Police faced challenges in terms of

their safety, with a high number being killed each year, but there were also problems with abuses of force by police. There were clearly many justifiable uses of force by police, but a substantial problem of misuse of force existed. The example of police officers who shot dead an innocent woman under the pretext that they were shooting hijackers was given, highlighting the need for a way to regulate how police used force in order to improve professionalism to enhance their safety as well as the safety of civilians — that is, both suspected criminals and general members of the public.

David said the workshop's key aim was to explore the idea of developing a policy on the use of force. Such a policy could be a tool police leaders could use to provide guidance to members of the SAPS and to ensure that the public saw that police were committed to upholding high standards. He referred to policies developed by police departments in the US. Many of these foreground protecting human life, including the lives of civilians as well as police.

The first day of the workshop would therefore focus on use of force policies, while the second would focus on administrative review. Adopting policies was not in itself enough to bring about change. There had to be a way of ensuring that such policies were implemented. Various forms of administrative review had been used in the US. Administrative review provided a mechanism for engaging with the use of force, thereby ensuring that the policies became "living" documents rather than documents which lived in files and which no one knew existed. He highlighted how training colleges focused on the use of force on shooting ranges, through tactical training and an emphasis on the law regarding the use of force. However, once training ended the issue of dealing with incidents in which force might have to be used was no longer addressed, other than by means of legally orientated investigations into shooting incidents. Administrative review could enable more open discussion of the use of force that was not shadowed by fears of being on the wrong side of the law.

David also clarified that while the workshop intended to accommodate interest in and concerns about public-order policing, its main focus was on "general policing". Partly as a result of the Andries Tatane incident in April 2011, there had been a lot of focus on public-order policing in recent months. Nevertheless, the vast majority of uses of force, and the vast majority of people killed, were in the context of "general policing" and did not involve people participating in demonstrations or public-order police. In addition, it had been decided to focus the workshop on the SAPS, although use of force policies could also benefit metropolitan police departments.

David then introduced Julio Thompson who had been invited to South Africa to talk about US experiences in dealing with issues of the use of force by police. The workshop organisers had thought that useful insights could be obtained from the American experience, and that these could inform the South African approach to addressing the use of force. The relevance of the US experience to South Africa partly related to the fact that, like South Africa, the US was a democracy. Democracy created new dynamics which impacted on how police organisations needed to understand and deal with the use of force. Policing in a democracy relied on winning the support of the public as it depended on public cooperation. How the police used force impacted on how police were perceived by the public. In addition, the US, like South Africa, experienced high levels of serious violent crime in which firearms were prevalent. Related to this the police were involved extensively in the use of force, including lethal force. Although the US figures were not quite as high as South Africa's, a significant number of police were killed in the US each year. One major

difference was that the US had much more diverse police departments and, within some of these departments, there had been different types of experiments on controlling the use of force. A lot of ground had been covered on what was involved in improving the professionalism of the police with regards to the use of force — what worked and what did not work. Julio had been immersed in that experience. He became involved in dealing with questions about the use of force in the early 1990s in the aftermath of the Rodney King incident in Los Angeles. Julio was appointed to the Kolts Commission, which was established in 1991 to look into the Los Angeles Sherriff's Department (LASD).[1] The LASD was comparable in size to the Los Angeles Police Department (LAPD) and also had a reputation for irregular use of force. As a result of its engagement with the LASD, significant improvements had been achieved, including reductions in the deaths of LASD members and the public but without a reduction in arrests. Since the Kolts Commission, Julio had been involved in engaging with questions about the use of force in a number of major US cities, and was therefore very well positioned to provide an overview of experience in the US on dealing with the use of force.

POLICING IN A VIOLENT DEMOCRATIC SOCIETY: LESSONS IN THE USE OF FORCE FROM THE UNITED STATES

Julio Thompson, Assistant Attorney-General, Vermont

Julio started his presentation by acknowledging that policing in the US was governed very differently than in South Africa — largely at the state and local, as opposed to the national, level. The outcry following the beating of Rodney King by members of the LAPD on 3 March 1991 led the US to take a closer look at policing and brought on changes in policing in the US. He reflected on lessons learnt in the US since the Rodney King incident.

Julio discussed the impact of two commissions that reflected on issues concerning the use of force after the Rodney King incident. The Christopher Commission into the LAPD found that a significant number of officers had been involved in excessive use of force. This commission led to the resignation of Chief Daryl Gates, head of the LAPD at the time. However, there had been no action other than his resignation to follow up the commission's recommendations, and no significant changes occurred in the LAPD. One of the first lessons, therefore, was that a change in leadership might be necessary but might not be enough to bring about change.

Not long after the appointment of the Christopher Commission, another commission, the Kolts Commission, was appointed to look into the LASD, which had also been linked to allegations of excessive force. The Kolts Commission identified systemic problems with the LASD — problems which had probably developed before the current head of the LASD came into office and which would likely continue after he had left. The LASD was required to respond to the Kolts Commission's recommendations. Also, the Board of Supervisors, responsible for oversight of the LASD, appointed a civilian to monitor the implementa-

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[1] Another commission, the Christopher Commission, had already been appointed to look into the LAPD, which was the department involved in the Rodney King beating.

tion of the recommendations. The LASD began implementing the Kolts Commission's recommendations and positive results were achieved very quickly, including reductions in killings by and of members of the LASD without reductions in effectiveness. These reductions were sustained over a number of years. The LAPD, meanwhile, had not experienced significant changes. Along with the developments in the LAPD there were other developments in the US. Most importantly, the Department of Justice began intervening in a systematic way to ensure that police departments that were linked to patterns of rights violations took steps to address these problems.

Some of the major lessons learnt in the two decades since the Rodney King incident included:

- A criminal assessment of high-risk uses of force was not sufficient. For example, an officer might have escalated the situation unnecessarily, leading to a shooting sometimes described as "lawful but awful". Therefore, it was important not just to look at the decision to use force but to assess the decisions made prior to that point: those decisions had to compare to an officer's training and it must be asked whether officers had followed their training.
- Civilian input was important but knowledgeable civilian input was more important. The civilian monitor model, which involved personnel who spent a great deal of time learning how the agency worked on a day-to-day basis, had been the model that had had the biggest impact in the US.
- Risk had to be identified: the need to monitor the use of force. At the time of the Rodney King incident many police departments in the US had had good information on crime rates, arrests and prosecutions, but no information on the use of force. However, in order to manage the use of force police departments needed to know what was happening on the streets. Once they had this information they could take steps to identify why specific officers were linked to high levels of use of force. This information always needed to be reviewed in an objective way. High levels of use of force might not necessarily indicate that police were deliberately abusing their powers, and might highlight other problems. These interventions might not only protect civilians from abuse but police as well: an officer who unnecessarily escalated situations might push other police officers into high-risk confrontations.

The information on the use of force was not only important in identifying officers that might be at higher risk of using force unnecessarily, but also in identifying gaps in the training. This enabled problems to be addressed at an individual, department or city-wide scale. Early detection and non-punitive measures were highlighted as one significant way to improve the police's use of force. Julio gave several examples of how major departments had developed various forms of early-intervention systems, all designed to identify potential problems at the earliest opportunity. Such systems had become part of the culture, and well-managed early-intervention systems had led to safer, more respectful policing and had saved many law-enforcement careers.

Another lesson had been that it was important to look not just at cases where people were killed but also at cases where people were injured or narrowly escaped injury. From the point of view of ensuring high standards in the use of force, an incident where a police officer had shot at someone and missed was just as important to investigate as one where a person had been hit. Many major departments now also consistently did not only focus on shooting incidents but also on other types of uses of force. They not only assessed the actual use of force but considered whether officers' decisions leading up to the use of force had been consistent with policy, training and best practice.

If not, there might be a variety of responses, including counselling, refresher training, discipline or revision of existing policies, procedures and training. One goal was to hold the officer accountable for his conduct, even if there had been no serious harm to him or the public. Officers should follow policy and training and be called to account when they did not.

Sometimes, rather than highlighting problems with individual police officers the review of uses of force might highlight problems with training. Another key lesson that had been adopted by many departments was an emphasis on ensuring that lessons from the review of training incidents were incorporated into the training curriculum.

PANEL DISCUSSION: DOES THE SOUTH AFRICAN POLICE SERVICE NEED A USE OF FORCE POLICY? WHICH ISSUES SHOULD IT ADDRESS?

Presentation by Don Gold, Minimum Force Institute

A consolidated use of force policy for the SAPS was long overdue. The current high level of complaints regarding the use of force by police officers was cause for concern and would indicate that a more structured approach is necessary to apply force in a disciplined manner. A use of force policy would ensure ethical practices, higher levels of accountability, effective monitoring, issuing of appropriate equipment, proper training and improved community relations.

A use of force policy was a set of guidelines designed to regulate the use of force by law enforcement officers, in a lawful and ethical manner, acceptable to the community while ensuring the safety of officers and members of the public. Better use of force by police would improve their safety in the communities. However, he also identified a risk in formulating a use of force policy: the policy could be too complicated, confusing and unrealistic, which, in the heat of the moment, could cause hesitation, thereby endangering the lives of officers and citizens alike.

The issues that needed to be addressed in a use of force policy were:

- Ethics.
- Observation of the golden rule: do unto others as you would have them do unto you, under similar circumstances.
- The dignity of a citizen versus the safety of an officer.
- Generate voluntary compliance/come home safe.
- Data collection/tracking.
- Ongoing training.
- Mayebabo response ("Mayebabo!" is an isiZulu exclamation of shock or panic). In other words, the policy should be uncomplicated enough to be applied correctly by officers in extremely stressful circumstances.

These rules are universal to all law enforcement departments in the country.

Presentation by Tommy Tshabalala, Independent Complaints Directorate

The ICD was due to become the Independent Police Investigative Directorate (IPID) when legislation that had been passed by parliament came into effect. This change included the added mandate of mandatory investigation of complaints relating to the discharge of firearms by police officers. The ICD faced a challenge because it appeared that no data existed on the use of firearms by the police as this data was requested and not supplied by the police. A particular cause for concern were cases in which death occurred during interrogation, indicating that problematic uses of force were not restricted to those involving firearms. An example of a case in Mpumalanga was given. These instances needed to be looked at strictly. Tommy shared the need to sympathise with the loss of life of police persons, but also the loss of life of civilians because of the negligence of some police officers.

The ICD had identified a challenge where the police passed responsibility onto the ICD, for example, where the ICD was involved in investigating a case where a person had been shot and killed. The ICD had to take over the investigation; the police, however, did not internalise the process to reflect on the incident and find interventions as a police force. The existence of the ICD had therefore resulted in the police neglecting to properly attend to the regulation of the conduct of their own members. Another example given was that of public-order policing where police used rubber bullets to quell the mob but in the process members of the public were injured. The police then withdrew from the situation and left it all up to the ICD. There was a need for the police to take responsibility for their actions and this applied particularly to commanders, including the commanders of public-order policing units, who needed to take responsibility for ensuring that a full account was given of their actions.

Presentation by Joel Bregman, Social Justice Coalition

The Social Justice Coalition (SJC) focused on access to water and sanitation services, and access to the criminal justice system. They dealt with a number of the results and aftereffects of the absence of an adequate use of force policy. Joel told the story of an elderly resident of Khayelitsha as an example of the way the SJC encountered the effects of a lack of a clear use of force policy for the police. Adelaide Ngongwana was accidentally shot by police while they were pursuing suspects who had opened fire on them. The decision to open fire in a crowded, public space resulted in Adelaide being shot in the leg. Once she had been injured, the police showed little respect; they forced her to walk to a police vehicle and then left her at a hospital without ensuring she would be taken care of. This resulted in her having to walk home after she was helped at the hospital. The SJC then lodged a complaint with the ICD, which only responded after more than seven months and dozens of phone calls and e-mails. The response was that the police had been fully within their right to open fire. The fact that they had done so in a crowded, public space was not mentioned, and neither was their insensitive treatment. Sadly, Adelaide had passed away (her death was not directly connected to the incident) without seeing justice done. Joel said he told this story to illustrate the type of events that could damage relations and cause mistrust between communities and police, and necessitated that consideration be given to the type of tactics used by the police.

A use of force policy that explicitly directed police to what they could and could not do was vital and needed to be developed and implemented because it was indispensable to any modern police service. Despite a tough image, police also needed to be sensitive towards the public and its needs. He highlighted that today South Africa had a police service, not a police force. The police should no longer be used to crush resistance and silence voices; they were tasked with fighting crime, ensuring that neighbourhoods were safe, and upholding and promoting democratic values, non-discrimination and human rights. Therefore, any use of force policy should be developed with the Constitution and the rule of law as a guide. Joel acknowledged that police were put in positions where they had to make difficult, split-second decisions. They had a high-stress job, fraught with danger, and did not always receive the appreciation and thanks they deserved. It is also understood that the police, at times, would need to employ force — to apprehend and to protect themselves and the public — that would result in injury or death. Joel highlighted that it was because of these tough requirements and responsibilities that the police needed such policies, both for their own operational success and for people's rights to be upheld and respected. As representatives of government the police needed to be seen to be highly disciplined and to operate impartially and without favour. Such policies instilled public confidence and trust in the police, which, in turn, helped the police as the public felt more comfortable coming forward with information and assisting them. When there was a lack of trust it was detrimental to law and order being maintained and justice served. It also allowed police to use adequate measures when dealing with particularly difficult or dangerous situations, without fearing reprisals that they had overstepped the mark and had violated the law. A use of force policy should empower officers to protect themselves and the public from potential threats. It also kept officers in check by ensuring that they were aware of the rights of others — be it an innocent member of the public or a potential suspect.

However, the potential of a use of force policy would be circumscribed if it did not exist in conjunction with other initiatives. He identified the need for greater engagement between the police and communities as very vital and beneficial for both the community and the police. While a use of force policy might be an internal directive, the public needed to know what actions the police were allowed to employ — this transparency would also improve their own perceptions. Police training also needed to be developed to provide officers with the necessary skills to handle these high-pressure, dangerous situations. Apart from being able to handle a firearm and employ a number of non-lethal tactics to subdue a suspect, police needed to be sensitive to the fact that force should only be used when absolutely necessary. They also needed to operate in a manner that facilitated good relationships with the public. Joel acknowledged that most officers did their best, and that it was a minority that did not serve in the spirit that was expected of them. The problemm was that the misguided actions of one officer had far-reaching implications for the way the public perceived the police. The police needed to be inscrutable — the misdeeds of one could make it difficult to place trust in police in general. We were constantly told of it being a case of a few bad apples in the police force — the problem with this observation was that it took just a few incidents like this for the trust and respect between the SAPS and the community to break down.

Presentation by Lisa Vetten, Tshwaranang Legal Advocacy Centre

Lisa's presentation centred on the gender dimensions of victimisation, and perpetrations and the use of force by police. Statistics indicated that 95%–96% of those killed by police were men. Imprisonment rates were the same: 96% male and 3% female. The use of force predominantly affected men. However, there were other ways in which police might victimise women. Lisa identified rape and domestic violence as the way in which women were affected. It was difficult to obtain information on rape by police officers, and the ICD also did not have detailed information on this. It appeared that 25% of cases of rape by police officers occurred in police custody. As with rape in general, women who were raped by police could include people they were acquainted with. However, groups that were also particularly vulnerable included women who were detained, stopped at road blocks or were given lifts by police. Sex workers, in particular, were routinely abused.

A second gendered experience of the use of force by police was identified as domestic violence. There was no clear divide between the work and private lives of police as they brought their work problems — and their firearms — home with them. This, she said, applied to all men who worked in the security industry — the police, army, security guards — and their overrepresentation in the group that killed female partners. Their jobs, therefore, had a big effect on their personal relationships. There existed a need for a policy on domestic violence in the SAPS and other police agencies in South Africa to be developed and implemented.

Julio Thompson: Response To Presentations

A use of force policy was an indispensable asset that any police agency needed. It was important to involve the public in the process of developing a use of force policy so that they could discuss what should form part of the policy. It would clarify what the public expected of the police and what the police expected from the public. There were predictable aspects of what a police officer should or should not do in a given situation, and police needed to be trained to deal with these. There should be accountability when these procedures were not followed. He referred to the example of Detroit, which had put in place response mechanisms for supervisors to help officers with their personal lives and provided counselling services to address violence against women. He further pointed out that scenario-based training, including video simulations, had been key in the US. He referred to examples of officers practising how to enter a building safely, or how to approach a suspect. Departments in the US also looked at other countries' successful or positive experiences, such as physical-control and verbal techniques from the UK and Ireland, or dealing with crowds and community protests in France.

QUESTIONS AND DISCUSSION

The presentations by members of the panel were followed by discussions in plenary. Some of the contributions are summarised below:

- Discussions were viewing the use of force issue in a fragmented way, when the problem was systemic. The different incidents were indicators of an institutional culture, and there was a need for a systemic analysis of the problem, followed by a systemic response.

- There were misconceptions in the discussions. There were policies on the use of force, for example, in training modules. The issue is that these were not consolidated in a coherent fashion. A need to define what was meant by a policy existed: is it a guideline or an output? Research on the use of force by a master's-degree student at Unisa[2] showed that there was a major problem with practical training on section 49 of the Criminal Procedure Act, which did not prepare the police to react correctly. In addition to a National Instruction concerning lethal force, there was a training guideline on the use of force, a module on human rights and training on street survival. Although there were guidelines for the use of force, these had not been rolled out to officers on the ground. In addition, changes to the training had been made to include 12 months of theoretical training and 12 months' practical training.

- A key issue was that everything related to a top-down approach: unless policies came from the top, in a serious manner, there was no point to them. With reference to civilian input, there was no point in having a "bulldog without teeth" and, therefore, civilian monitoring might not have the desired effect.

- A question was asked about what influence other countries had on the US. What lessons had been learnt from other democracies in dealing with the challenges in the US? In the UK there was a poll on whether police should use firearms and there was a resounding vote against this. South Africa was a violent nation. One could not simply talk about a policy that would be used by police because there was a question that had not been dealt with in SA: a healing process was required, and the broad South African community had to be "trained" with regards to violence.

- The discussions only focused on what the police had to do and not what South African society as a whole needed to do. There were policies in the police that dealt with the use of force. There was a legislative mandate that each officer should follow. The workshop should be realistic and not see the police as the cause of the problem. South Africa was different from the US; for example, when one approached a crowd in South Africa, its members were fully armed.

- Policy on crowd management existed, but there was a need to consider whether those policies were still relevant. A discussant shared that there was a gap between the ICD and the SAPS with regards to the investigation of crime scenes that involved shooting by the police. There was a protocol problem about who should do what when an ICD investigator and the police attended the scene. At times the police were unable to approach a witness because ICD cases were still pending. The number of police that had been sent to jail by other police for committing crimes was huge, but it was not clear that the ICD had had the same effectiveness.

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[2] See Rajmoney Moodley (2009), "An evaluation of the training of South African Police Service officials on the use of lethal force after the amendment to section 49 of the Criminal Procedure Act (51 of 1977). Online at http://uir.unisa.ac.za/handle/10500/3126.

- A police officer told a story about a domestic-violence situation he had encountered early in his career. He found that the perpetrator had no respect for the police and was physically much bigger than himself. This led to him adopting a non-confrontational approach, calmly speaking to the alleged offender, who accompanied the officer to the station where he was arrested. He indicated that it was sometimes difficult to recognise one's own faults, and that a review of use of force policies was an excellent idea.

- South Africans needed to be very mindful of where they had come from, and should not be too hard on themselves. They should acknowledge the good that had been achieved. A discussant urged the meeting to acknowledge that South Africans faced a problem and that they should collectively find a solution. A consolidated use of force policy was required, but it should be complemented by community engagement so that the community would accept the police's use of force.

REPORTS FROM GROUP DISCUSSIONS

For the afternoon session on the first day of the workshop, participants divided into four groups according to interest and held in-depth discussions on the identified thematic areas. These were:

- General issues: the purpose of a use of force policy, the status of policy, the values of the police regarding the use of force, the purpose and use of lethal force, and the safety of police.
- Off-duty firearm use.
- Pursuits: on foot and in vehicles.
- Public-order policing.

General Issues

The breakaway group that discussed the general issues pertaining to a use of force policy noted that there were various existing policies and, therefore, "policy" might not be the right title for what the meeting was aiming to achieve. Other descriptions such as "framework", "standards" or "guidelines" were suggested as alternatives. The purpose of these descriptions would be to consolidate the various instruments that currently existed. To set a standard for police members would be communicated among communities and other stakeholders so that they knew what to expect of police. It would also clarify what kind of force to use, and when it was appropriate or necessary to use such force. It would help to promote safety and garner support from others for the police. The breakaway group's presentation also highlighted that a use of force policy was imperative at this time because gaps had been identified in training and legislation, and such a policy would be used to both strengthen accountability and as a training tool.

Off-Duty Firearm Use

The discussions on off-duty firearm use by officers related to questions about the use of force and the use by police of service weapons while off duty. This was connected to a number of different issues, including:

- Police safety — a high proportion of police who had been killed were killed off-duty.

- Domestic violence — most domestic violence by police was non-fatal, but killings of intimate partners or rivals in love triangles (as well as other killings linked to non-domestic disputes in which police officers were involved) often involved the use of service weapons.

- Service weapons were also implicated in police suicides.

- An administrative issue also existed — any policy relating to possession of weapons by police had administrative implications. One issue here was that, if large numbers of weapons were stored at a police station, there might be an increased risk of the station being targeted by criminals who wanted access to these weapons. The general principle that was followed was that stations held firearms 5% in excess of the needs of individual members. Requiring members to hand in their firearms meant there would be many more firearms in storage at each station.

Domestic violence, suicide, mental health and firearm possession

- Provisions relating to the possession and use of firearms by police officials were governed partly by section 98 of the Firearms Control Act. In practice some weapons, such as shotguns, were signed for on a daily basis, but ordinary police firearms were usually taken home.

- There were various circumstances in which a police officer's firearm should be taken away, for example, if a report of domestic violence was received, or a doctor found that the member was depressed, or the member was gambling or drinking heavily. In some circumstances where a member was required to attend debriefing and declined to do so, a firearm might also be removed. Removing an officer's firearm had serious implications as the person in question could no longer perform operational duties and also, for instance, could no longer work overtime. At the same time such removal might not only protect other people but might also reduce the risk of suicide by the officer. There was a difference between temporarily taking an officer's firearm away for reasons of safety and declaring that person unfit to possess a firearm (in terms of section 102 of the Firearm Controls Act), which meant that the officer might not be provided with a firearm for police duties.

- When an ICD investigation was pending, a police official's firearm might be withdrawn, meaning that he or she could not be posted operationally. However, in some police agencies the approach was that they performed their own internal investigation into the incident and, if satisfied that the member had operated legally, the member was reissued with a firearm.

- The issue of debriefing police officers who had been involved in shooting incidents: police were supposed to be subjected to an initial debriefing and/or referred to a police health and wellness section.

- One of the issues discussed was the situation of police who lived in informal settlements. Due to the relative fragility of informal housing, it might be difficult for them to ensure that they had a safe which was secure and could not be removed. As a result it might not be appropriate for them to take firearms home with them as they did not have a secure safe as required by the Firearms Control Act.

- There was support for one of the suggestions made earlier in the day about the need for a specific policy on domestic violence.

Police Safety

- A further issue discussed was the relationship between possession of service weapons when off duty and police safety. Information indicated that a high proportion of police were killed while off duty and that while there were fewer attacks off duty a higher proportion of these led to police deaths. Killings might be in: (1) attacks in which individual police officers were deliberately targeted, perhaps because of a specific case they were investigating; (2) robberies, including incidents in which they were attacked to steal their firearms; (3) incidents in which police intervened in crimes in progress — various people and the SAPS annual report had stated that these accounted for the majority of killings off duty; (4) personal disputes, including incidents of intimate-partner violence and love triangles. (The list is not exhaustive.) Each of these potentially had different implications for questions about whether it was to the advantage of the police to have firearms with them when on duty.

- A recent examination of statistics also seemed to indicate that quite a large number of police seemed to be deliberately targeted or victims of robberies (illustrated by their being shot in the head), and that there possibly was an increase in domestic violence/love triangle-type killings.

- There was a need for better information on the circumstances in which police were killed and which differentiated between off-duty and on-duty killings. One issue discussed was the differences between "on duty" and "off duty", and "in the line of duty" or "not in the line of duty". Some killings off duty were in the line of duty. Likewise, some killings "on duty" were not "in the line of duty" (such as where a killing related to domestic violence took place while the police officer was on duty). Better information on the circumstances of killings of police should also acknowledge these issues. Sometimes there was an unclear distinction, such as when a police officer in uniform was killed when off duty and the motive was unclear. The issue was also relevant to questions about entitlement to worker's compensation.

- The issue of police interventions in crimes in progress when they were off duty was discussed. Police were understood to have an obligation to act when they encountered a crime in progress while off duty (it is said that a police official is "on duty 24 hours" or "never off duty"). This is generally understood to mean that, where possible, police should intervene in these situations. However, they were at a disadvantage as a result of the fact that they were often on their own, not identifiable as police officers, without protective equipment or police radios, etc. For these reasons many police departments in the US cautioned police officers against (though they did not prohibit) such interventions, and encouraged them to see their key responsibilities in these situations as observing and calling in on-duty police unless they were in a good position to deal with the situation successfully. This was one of the issues that should potentially be addressed in a use of force policy in South Africa. It, of course, also made little sense for police to try and intervene in situations when they had been drinking alcohol.

- In engaging with these issues one would also have to clarify questions to do with legal obligations. In situations where a police officer did not act, the Minister of Police could be exposed to civil claims.

Pursuits

Julio Thompson introduced this theme by saying it would include discussions of shots fired at or from moving vehicles; use of force that might be used at the end of a pursuit; issues relating to the ethics, abilities and tactics of officers; and whether to engage while travelling at high speed or not.

He said that pursuits presented risks and scenarios which were specific to pursuits. In the US they kept track of use of force relating to foot pursuits, vehicle pursuits, building entry, traffic stops and so forth, in order to analyse the actions of officers in different scenarios. In the US there was also a move away from partner splitting during a chase because the officer on foot was getting injured or put in a shoot-or-not scenario much of the time. This put unnecessary pressure on the officer, or put him/her in unnecessary danger.

An SAPS flying squad member explained the step-by-step procedures that SAPS officials should follow when pulling over a vehicle. These included first calling for backup, then using lights and a siren to flag the chased vehicle down, then using the speakerphone to instruct the occupants of a car to remain in the vehicle while police officials disembarked. They should radio to control to inform them that they were leaving their vehicle, and so forth.

Julio asked whether there were any sanctions against officers who deviated from these procedures to which police in the group could not give a satisfactory answer. Points were made to the effect that while there were very good policies and instructions about how to do things, this was very often not how things happened on the ground. One official noted there was not compliance with policy, and there was never punitive action against members unless there was a complaint. He said members did not have the ethics to report incidents where they used force if they were wrong in how they had used it. The only thing that would change this is if a commanding officer with ethics witnessed the abuse of force and reported it. Basically the official was admitting that very few instances of mistreatment/abuse reached superiors or were acted upon. An official said the SAPS needed to put systems in place to monitor the abuses and allow for them to be exposed.

Other points made in this group:

- A police official said that operational police did not want to have their authority challenged, and that this would lead to mistreatment by police.
- A participant said the SAPS had looked into implementing dashboard cameras in the past and that this should be revisited. Julio Thompson said more than two-thirds of departments in the US had "dash cams" and these usually showed that police acted professionally; the cameras, therefore, served to protect police from false accusations.
- Julio asked about shooting at a moving vehicle. SAPS officials said section 49 of the Criminal Procedure Act stipulated that one could not shoot at a moving vehicle but that police claimed that suspects used vehicles as weapons, pushing them off the road, and that this required them to shoot.
- An official talked about the discipline in the SAPS being too punitive, and how one was charged with murder as soon as one discharged a firearm.

- The core of the problem did not lie with the police (but with community fractures). "We have to manage something that has nothing to do with us," he said, referring to unemployment and drugs. "We are bombarded every day with the negative. It needs to be exposed but there must be a balance." There needed to be more education in the community about what officers were required to do, etc., in terms of use of force. Unreasonable expectations on police led to police feeling isolated and underappreciated.

Public-Order Policing

These discussion points from the public-order policing breakaway group are presented in relation to the representatives of organisations who made them.

ICD: One of the first big encounters for the ICD with complaints against the police in relation to public violence was the Harrismith incident in August 2004. This had provided insights into the challenges of dealing with complaints of this nature, and had led to a number of recommended policy changes for the SAPS. However, these recommendations were not followed up and implemented. The ICD was very clear then that how the police acted could either aggravate a situation or calm it down. In particular, it was important for police commanders to have negotiation skills and to be able to identify the mindsets of communities that were protesting. They also needed to know how to deal with unruly members in a crowd in a manner that would not aggravate a situation. The main problem was with unplanned protests. There needed to be a policy on how to deal with such as situation.

The current policy and training for public-order policing in South Africa was very good and was based on the Regulation of Gatherings Act. When people asked for permission and the process outlined in the Act was followed, there were rarely, if ever, problems. The problems occurred when police had to respond to unplanned gatherings where people held spontaneous public protests, or where they had not sought permission as required by the Act. There was no policy to guide police to handle unplanned gatherings.

Another problem had to do with the role of the metropolitan police departments. Most of the training provided to these departments by the SAPS followed the "train the trainer" approach. These trainers in turn trained metropolitan police, but they did not have practical experience. When these members faced public protests, they were not always able to cope with a situation.

From the ICD's point of view, when investigating complaints of police brutality that took place at protests, there were typically a number of problems. These included:

- The difficulties of knowing which police members were on duty and at the protest.
- Poor command and control — identifying who was in charge.
- Poor control of the police armoury — unable to say who received what weapons and ammunition.
- Police wore helmets so it was difficult to identify them.

These systems needed to be improved and properly managed to prevent abuses. At the current time, police members knew it was difficult to hold them accountable, and this promoted poor behaviour. There were also relatively simple ways to improve the systems. For example, each police helmet should be

clearly marked with a number. Community members could say "a policeman with the number 9 fired the shots" and it would be easy to find out who had been issued that helmet.

SAPS: In 2002 the SAPS did a study of 4 336 people killed by police members and found that public-order policing units were responsible for only 36 of those deaths. So, the problem of police killings was not one of public-order police service. These members were properly trained and equipped. They were supposed to receive monthly training and the cluster commanders were supposed to ensure this took place. The SAPS had a big problem with the closing down of many of the public-order policing units during the restructuring phase. This led to a shortage of trained members and it was still trying to deal with this problem. It was not just training but experience that was important for members engaging in public-order policing. The SAPS must also review the policies that were in place. These had not changed in years and it should be determined if they were adequately addressing the kinds of public protests occurring nowadays. The problem with metropolitan police departments is that there was no structured or regular communication with the SAPS over public-order policing. Their equipment was also outdated, having been last issued in 2000, and they did not have the latest equipment available to the SAPS. Sometimes other units got involved, like the tactical response teams or the National Intervention Unit, and these were not trained in public-order policing. This could lead to problems as they were trained to fight like soldiers.

There were also many young people in the SAPS who were inexperienced and who thought they had to always use force. This applied even to older members who had been trained during the apartheid years. They had been trained to be soldiers, not police officials. The pubic-order policing information systems were good and SAPS members knew where their equipment was and who was issued with what. There was a power struggle in the SAPS which was undermining morale and communication. It also meant that there was little compliance with the law by police members. There were not enough public-order policing units to deal with all protests. In some areas like Free State, the public-order policing units were far from many communities, and station-based police were the first to arrive on a scene. These police were not trained to deal with public protests, but had to act if they saw the law being broken. In densely built places like Johannesburg, a different problem existed. When a call came through about a violent public protest, everybody rushed to the scene. Suddenly there were SAPS members from three different stations: the flying squad, the tactical-response team and the public-order police. The JMPD would arrive and various security companies would enter the fray, too. Not everyone knew the protocol, which was that the public-order policing member, no matter how junior, took precedence at a public protest because he/she would have been trained. This meant that a public-order policing captain would be in charge even if a station commander who is a general appeared on the scene. However, this was not always known and could cause problems of command and control. There was a vacuum between the SAPS and the ICD at the lower levels. There was a sense in the police that the ICD was "out to get them". This meant that the police closed ranks and did not cooperate with ICD investigators who needed to identify SAPS members who were being investigated. Police members were subject to a lot of stress, especially those involved in public-order policing. Each and every day they attended a public protest and became immune to acting violently against community members who were breaking the law. In some places public-order policing units covered 33 policing precincts with only 200 members. If one attended protests every day and people swore at one and insulted one every day, it would affect how one responded to people. There was a need for SAPS members to learn how to understand mob psychology.

JMPD: Most of the public-order policing problems happened in the run-up to the local government elections because of the increase in public protests. The JMPD could not cope with the number of incidents. It had a specially trained unit but its members could not be everywhere and untrained members had to be sent to deal with protests. The JMPD had to determine how to improve its response while it waited for public-order police. It was difficult because if there was an illegal protest and people started burning buildings, looting shops and breaking the law, the JMPD could not just be bystanders. If it did not intervene it would be criticised by the community for not acting. However, when it acted it was criticised for doing so too harshly. All metropolitan police members should receive this kind of training, which would be a starting point to solving the problem. There was also a strong culture of the "JMPD versus the SAPS". The SAPS did not regard the JMPD members as real policemen. There was also a strong culture of violence in the SAPS.

Civil society: The police did not seem to realise that communities had a right to protest. They seemed to treat all protest as a crime and disorder. This made them too quick to shoot and act violently. How could they say that the [Andries] Tatane incident had been just unlucky? Members of the Ficksburg community has seen him [Tatane] being beaten up and shot twice. This was a murder and it had nothing to do with bad luck. This was a watershed as the whole country started saying: "Enough is enough." How do we trust police when they used violence as a matter of course against people who were protesting against legitimate grievances? The public-order policing unit could not say that there had been only 36 deaths and therefore everything was OK. The problem was not just when people died; it was also a serious problem when people got beaten up and injured. Training did not change culture. The main problem in the SAPS was the culture that led to the police being too violent too quickly. Training was not going to change that on its own. It was about leadership. Maybe saying things like "shoot to kill" was a figure of speech, but not everybody would see it that way.

DAY TWO

OVERVIEW OF DAY ONE

Sean Tait, African Policing Civilian Oversight Forum

The second day of the workshop began with a summary of the previous day's proceedings. Points highlighted from the first day were as follows:

• The criminal assessment of use of force was not sufficient when looking at use of force but that actions might be lawful but not the best action in that situation. Therefore, there was a need to look at the different points of decision making.

• In order to be able to manage the risks, these needed to be identified. Without this identification they could not be managed and properly dealt with.

• It was important to identify officers that might be particularly at risk of using force unnecessarily. Inter-

vention needed not necessarily be orientated towards discipline but to help them find ways to do things differently.

- It was important not only to look at where suspects were killed but also at the misses when considering the use of firearms.

- There was general consensus that a consolidated policy was needed to identify where gaps existed as well and linkages, useful not only for the police force but also for the public.

- The policy was needed to:

  - Ensure ethical practice.

  - Increase accountability.

  - Improve deployment.

  - Improve relations between the police and community.

- The review of police conduct should not only be left to external agencies but the police also needed to continually review their use of force that might endanger their own lives. This needed to be supplemented by greater communication, basic civic education to citizens on rights and responsibilities and police education, positioned so that it facilitated good relations between police and the communities they served.

- Men and women experienced the use of force differently, and policy should be cognisant of this fact.

- The nature of South African society needed to be considered; therefore, interventions targeted at both police and communities were vital. If one looked at the violent nature of SA society and considered that police were products of that society, one would recognise the need for healing in SA society. Civil society was urged to undertake to train communities just as the police were going to be trained on the rights of people. If this commitment did not exist, problems would continue to persist. The police would have to work with civil society in training the public on the use of force. In this way the police would be committing to the communities about how they were supposed to act.

- A suggestion was made that the workshop be covered in the media. The media was identified as central in driving perceptions. It was felt, therefore, that coverage of the workshop would help to highlight the positive steps that police took and not only the focus on the negative issues that had been seen.

The overview of the first day of the workshop was followed by a presentation by Julio Thompson on administrative review systems.

ADMINISTRATIVE REVIEW SYSTEMS

Julio Thompson

Julio shared the lessons learnt in the US with regards to administrative review of the use of force. He highlighted that one of the first lessons learnt was that even if conduct was not a crime it might have been out of line with policy on the use of force. As identified earlier, police had become aware that even when uses of force were within the law, they sometimes reflected inexperience and bad judgement, resulting in incidents of the use of force that were "lawful but awful". These incidents often put people, including police officers,

unnecessarily at risk. As a result, non-criminal administrative review was implemented. Administrative review was not only non-criminal but often non-punitive in orientation, focusing on how to improve police responses to situations that might require the use of force. Such review operated alongside but separately from investigations orientated towards assessment of possible violations of the law. But if officers were deliberately ignoring their training, there was an accountability issue as well.

In the LASD, if a shooting incident occurred, a prosecutor, criminal investigator, internal affairs sergeant or lieutenant, and a firearms trainer attended the shooting assessment. The different people had different interests in the shooting incident. Some were there to evaluate whether a crime had been committed. The training officer's report would look at the tactics used to identify areas of improvement. The latter assessment was not necessarily specific to the individual officer; for example, it might look at the role played by radio control or commanders, or whether equipment had been appropriate.

Review was often linked to training responses. Once a review had become routine it removed the stigma of an officer's use of force being reviewed. There had been success in officers engaging in a self-review process without demoralising the officers. The point of the exercise was for the department to look at what had happened and identify areas for improvement. A criminal investigation would not address this. Officers who used force knew that they would be under criminal review. However, where administrative review was attached, officers accepted it more. Such review might focus both on responses that were excellent/ positive as well as ones that needed to be changed.

In some departments, after a shooting incident, whether there had been a hit or not, whether it had been a problematic shooting or not, the officers were sent back to training on the use of firearms. They might go through a simulated video training scenario.

Data collection on the use of force was used by many departments to support forms of review. Such data might identify officers who were linked to what appeared to be an unusually high number of incidents of the use of force, and enable early interventions if it was identified that they lacked sufficient training or experienced problems of some kind. The focus was non-punitive and the goal was to find out what was going on, for example, perhaps an officer was having personal problems, suffered from fatigue, etc.

Plenary Discussion: Is Administrative Review Viable In South Africa? How Could It Work? What Should A Use Of Force Policy Say About Administrative Review?

Questions existed about whether there was any resistance to administrative review in the US as well as what were the reasons cited for the resistance. The discussions also focused on whether the SAPS would have the capacity to implement administrative review and how this could be done. The discussions also highlighted a broad consensus that it would be useful to implement administrative review in the SAPS. This was, however, met with the challenge that an administrative review would only be possible to implement where there was a clear policy on the use of force in the first place.

It was indicated that public-order policing had been tasked to establish an in-house task team to look at all shooting incidents and use of force. This unit would be best positioned to take up administrative review.

Currently every shooting incident involving the police was investigated. However, the challenge came in ensuring that subsequent recommendations were implemented.

Response By Julio Thompson

Some of the resistance to review in the US was that it would take up time and resources that needed to be dedicated to other activities. However, changes were tried out in a pilot before being rolled out to all stations. The pilot, therefore, served as an example to show that administrative review could be undertaken without significantly affecting time available for other duties. This resulted in better uptake.

There were a number of programmes to track information, including one called "IA Pro" (Internal Affairs). However, there was no need for state-of-the-art software to track data on the use of force. A widely available tool such as MS Excel spreadsheets could be used.

• Resistance was broken down by identifying leaders. These might not be people who were in positions of formal leadership but people who were seen as role models. One might start with getting their ideas and introduce the programme by starting with their ideas. They had also found officers in the department who were unquestioned leaders and involved them so that people who had experience were introducing the concepts.

• When doing work with police departments as civilian monitors they had as much contact as possible with the officers. The fact that they were seen as willing to experience the police officers' worlds added credibility to what they were introducing. They identified and praised publicly what officers did to minimise risk to the public and to themselves. They also challenged the police to accept that change was possible by getting stories of places that had had success and linking people to learn from them.

Administrative review further helped in identifying cases that the police needed to be trained to respond more effectively to, such as, for example, dealing with mentally ill people. The Internet made it very easy to learn from other places. The NYPD published an annual firearm-discharge report[3] with details of each case. In this way Julio showed that the public had access to information that was not only received from the media. If the media was the only source of information, it would not focus on all the details.

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3 See, for example, the 2009 NYPD Annual Firearm Discharge Report online at http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/AFDR200920101101.pdf. Review Report on LA Sheriff's Department can be found online at www.parc.info.

PRIORITIES AND WAY FORWARD

The last session of the meeting focused on the priorities and way forward. Presentations were made by or on the following:

- SAPU (Mpho Kwinika)
- Public-order policing (Brigadier Frans Gibson, SAPS)
- Building police and community relations (Andrew Faull, ISS)
- David Bruce (CSVR)
- Julio Thompson

South African Police Union (Mpho Kwinika)

Mpho thanked the organisers for inviting SAPU to the meeting. He traced the history of South African policing from before 1994, when policing was a closed system, to after 1994 when it became open and communities had to work together with the police. Post-1994 policing, he said, called for responsibility, accountability and transparency. He said a priority was to address the "us and them" issue, where police and communities regarded each other as separate. Mpho indicated that there were various policing priorities that he felt needed to be addressed in South Africa, such as:

- The provision of improved training to the police. Among the issues here was that police reservists were trained for only seven days.
- There was a need to keep data of police officials who had been trained in the use of firearms. There were three types of firearms and not everyone was able to handle them all. As a result, problems arose because people were issued with firearms they were unable to handle.
- There were also issues with bulletproof vests. He pointed out that the current ceramic vests were too heavy.
- Refresher courses needed to be included in the budget, and training in crowd control should be compulsory for every police officer because the public had a right to demonstrate and protest.
- There was a need to create awareness among communities. The police could not work alone. Community police forums needed to ensure that communities understand the role of police; they needed to know when police officers were going to act in certain environments and they had to avoid such situations. This could only be done if we continued to interact with communities through the current community police forum structures.

Public-Order Policing (Brigadier Frans Gibson, SAPS, Western Cape)

The mandate for public-order policing came from section 205(3) of the Constitution (Act 108 of 1996), as well as section 17(1) and (2) of the SAPS Act (68 of 1995), in terms of which the national commissioner had to establish and maintain a national public-order policing capacity to maintain public order.

The principles of public-order policing were:

- Upholding the constitutional rights of the individual.

- Being firm and impartial.

- Being predictable and tolerant.

- To accomplish the following ideals for crowd-management situations: no loss of life, no damage to property, no injuries, all citizens satisfied; and all citizens felt safe.

Brigadier Gibson identified a number of challenges faced in public-order policing, including the following:

- Prosecution in terms of the Regulation of Gatherings Act.

- Ongoing violent demonstrations and service-delivery protests.

- No statements from communities against the violent behaviour of protestors.

- The role of local authorities in planning and authorising protests and demonstrations.

- Lack of general public education with regard to constitutional rights and limitations.

- Direct provocation and incitement to violence.

- Some institutions and departments refused to receive memorandums and petitions.

- Lack of action, feedback or response to the received memorandums and petitions by institutions and departments.

- No standard for operational vehicles.

- Lack of command and control.

- Lack of sufficient operational members according to the Regulation of Gatherings Act.

- No clear career path.

Brigadier Gibson concluded his presentation by acknowledging that the right to demonstrate (non-violently and non-destructively) was a fundamental right of democratic citizenship, and that it was the central responsibility of the police to facilitate the right to demonstrate.

Building Police And Community Relations (Andrew Faull, Institute for Security Studies)

Andrew focused on the issue of police and community relations which had been raised by many participants in the workshop. He referred to a book by Julia Hornberger in which she highlighted how the SAPS treated immigrants in inner-city Johannesburg. She argued that South Africa created a façade that the country and the SAPS respected human rights, but that marginalised minorities regarded the police as a symbol of state violence. There were good policies on paper to entrench human rights in state policing, but the challenge lay in their implementation where internal systems were the problem. Research around the world supported the view that if people were treated courteously and fairly by police, the police would more likely be perceived as a legitimate authority to be obeyed. Training was a vital starting point in inculcating such a culture, but training alone was not sufficient. There was a culture in the police which, unless aligned

with training principles and codes, socialised new recruits into alternate and informal ways of doing the job of policing.

Along with the many problems there was also hope and there were possibilities for change. One of the police officers who Andrew had spoken to said that although there might not be much money in the police service, getting someone to say thank you made a huge difference to her morale. The ISS was launching a project called Promote Professional Policing where the community would be encouraged to send letters of thanks, engage in social media and ignite community gratitude whenever they had encountered great police work. This, he envisaged, would build morale in the police service by giving honest, dedicated police the sense that communities appreciated their hard work. The public had to also report every incident of poor service or criminality by police. Currently the police did not have a formal system for receiving positive feedback from the community. Good police needed to be supported in order to strengthen their position in relation to police who were corrupt and abusive. People needed to support police and had to report complaints. Such a system, he envisioned, could fit together with the administrative review system as examples of good police work were made public.

Andrew concluded by saying that there was a need to address the us (police) versus them (community) paradigm, and to empower communities to support fair policing. By shifting civilian engagement with police we could ultimately shift police culture to one that was proud and professional.

David Bruce, Centre For The Study of Violence And Reconciliation

One question which was raised by participants was whether or not the SAPS already had a use of force policy. Referring to the use of force policy of the Washington, DC Metropolitan Police Department (this policy was one of several provided to participants in a resource pack and can be found as Appendix C to this report), David indicated that this could be seen as a model of what the organisers had in mind in motivating for the development of a use of force policy for the SAPS. There would clearly be benefits if a document of this kind was put together for the SAPS and other police agencies in SA. Part of the process of putting together such a document would involve consolidating existing documents such as relevant standing orders and aspects of the training. Consolidating existing documents would, however, be likely to highlight that there were a number of areas that could benefit from greater clarification. Some of these included:

- Expectations of police in cases where they encountered crimes in progress while off duty. This is in order to enhance police safety.
- Public-order policing of unauthorised gatherings.
- The directions provided to people in relation to the use of force during vehicle and other pursuits.

David referred to the Washington, DC Metropolitan Police Department policy, which stated that (see page 2 of the attached policy document):

The policy of the Metropolitan Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the cir-

cumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.

As with the Washington policy, a use of force policy for the SAPS should also speak to issues of values relating to the use of force. Providing clarity to the police about the values underpinning the use of force would provide moral reassurance to police officers who were involved in the use of deadly force, as well as feeding into feelings of pride in the policing profession and esprit de corps. A use of force policy also needed to be a living document that helped to articulate to SAPS members who they were and what they were about. It would not help if this was just another document that was buried in police files. With regards to the administrative review, a practical step would have to be taken as a pilot to explore possibilities. This could be built around improving police safety to win support for it from police on the ground. Administrative review could begin to shift the culture in the SAPS in terms of use of force towards one that emphasised mutual support and learning around the use of force in the SAPS, and thereby improving the professionalism of the SAPS in using force.

Julio Thompson

Julio encouraged participants in the meeting to keep the momentum built up by the workshop, to keep in touch and follow up on discussions. He encouraged the different organisations involved to identify what commitments they were willing to make and memorialise this with a concrete outline of their commitment and the steps that would be taken to meet it, outline a time schedule as well as identifying individuals to take responsibility. He urged that the focus had to include leadership and supervisors and not just the officers on the ground. He shared that South African had an advantage over the US because there was civilian review in the form of the ICD and that this was very useful.

PLENARY DISCUSSION

• It was suggested that current structures such as community police forums be utilised. For example, campaigns could be run on issues such as the rights and responsibilities of the police as well as the rights and responsibilities of the community. Community police forums needed to be used as bridges between communities and police.

• A representative of the SAPS public-order policing indicated that they had adopted a new form of public-order policing which was intended to be non-lethal and departed from previous methodology. They had invested in new equipment and were well equipped by international standards in terms of resources which would not result in fatalities.

• It was appropriate that the media had not been invited to the meeting as this was a closed discussion. However, it would be useful if a press statement was issued to all media organisations to give a brief overview of the meeting to counter the negative reporting in the media.

• A request was made that officials representing the police at the workshop commit to acting as contact people with regards to this process to ensure continuity.

- Steps to take forward the issues discussed at the workshop needed to be undertaken as a pilot project that would begin on a small scale and escalate from there.

- The amendments to section 49 were identified as critical to the second phase of the process incepted during the meeting. However, as a parliamentary process it was difficult to project when it would be completed.

- It was further suggested that traffic law enforcement be included in future discussions.

STEPS TO BE TAKEN AFTER THE WORKSHOP

The meeting ended with consensus that a consolidated document that set out the values and principles of use of force across the SAPS was required. A report of the workshop would be compiled and circulated to all participants. The workshop's organisers would contact the principals of the different police organisations represented to take the matter forward, and would ensure continuity of representatives. There would be communication of the outcomes of the meeting to the media in consultation with the principals of the police.

VOTE OF THANKS

The meeting ended with a vote of thanks to the SAPS national commissioner, General Bheki Cele, who had given his blessing to participation by SAPS members in the meeting. Other members of the SAPS, including Lieutenant-General E. Mawela, the divisional commissioner: operational response services, and Major-General N.S. Mkhwanazi, directly assisted in coordinating SAPS participation.

Julio Thompson was thanked for his extensive inputs and for supporting the process. Maimuna Suliman at the CSVR provided extensive assistance with the administration of the workshop, while Millicent Mlaba from the ISS had helped with registration and Asanda Conjwa from APCOF also assisted with the process. The CSVR's partners in hosting the workshop included APCOF, represented by Sean Tait, and the ISS, represented by Gareth Newham, had also assisted the CSVR to conceptualise the workshop as well as with securing the participation of various organisations and speakers.

The workshop organisers also noted again the support provided by the Open Society Foundation for South Africa for its financial support to the workshop, and the work the CSVR had been doing on the use of force. Finally, all participants in the workshop were also thanked for their participation and contributions.

Workshop programme

Developing a use of force policy for the SAPS

Day One

08h30 - 09h30	1.	Registration
09h30 - 09h45	2.	Welcome – Nomfundo Mogapi, Executive Director (Acting), CSVR
09h45 - 10h05	3.	Opening remarks – David Bruce, CSVR
10h05 -10h45	4.	Policing in a violent and democratic society – lessons learnt in the US on the use of force – Julio Thompson, Assistant Attorney General, Vermont, USA
10h45 - 11h00	*Tea*	

A use of force policy

11h00 - 12h00	5.	Do we need a use of force policy? What issues should it address? (Panel discussion)

1. Tommy Tshabalala – Independent Complaints Directorate
2. Joel Bregman – Social Justice Coalition
3. Don Gold – Minimum Force Coalition
4. Lisa Vetten – Tshwaranang Legal Advocacy Centre
5. POPCRU (TBC)

12h00-12h20	6.	Response to panel participants – Julio Thompson
12h20 - 13h00	7.	Questions and discussion
13h00 -13h50	*Lunch (Day 1)*	

13h50 - 14h40	8. Small groups on 'What should the policy say about':

     1. General issues (The purpose of the policy; Status of policy; Values of the police regarding the use of force; The purpose of the use of lethal force; safety of police)
     2. Off-duty firearm use?
     3. Pursuits – foot pursuits, vehicle pursuits etc.
     4. Verbal warnings and warning shots.
     5. Public order policing.

14h40 - 15h20	9. Report backs
15h20 - 15h40	10. Response from Julio Thompson
15h40 -16h00	11. Plenary discussion

DAY 2 (NOTE – STARTING TIME IS 9AM)

Internal investigations on the use of force – potential for administrative review

09h00 - 09h15	12. Overview of yesterday's discussion – Sean Tait
09h15 - 09h45	13. Motivation for and implementation of administrative review systems – Julio Thompson
09h45 - 10h45	14. Discussion in plenary group – is administrative review viable in South Africa? How could it work? What should a use of force policy say about administrative review?
10h45 - 11h00	15. Response to plenary discussion – Julio Thompson
11h00 - 11h20	*Tea*
11h20 - 12h00	16. Priorities and the way forward (1 hour)

     1. Mr Mpho Kwinika, SAPU
     2. Brigadier Gibson, SAPS
     3. Andrew Faull, Institute for Security Studies

12h00 - 12h40	17. Questions and discussion
12h40 - 13h00	18. Concluding remarks, thanks and closure
13h00 …	*Lunch*

GENERAL ORDER

Title **Use of Force**	
Series / Number **GO – RAR – 901.07**	
Effective Date **October 7, 2002**	**Distribution** **B**

Replaces / Rescinds
General Order 901.7 (Use of Force)
Related to
General Order RAR-901.08
    (Use of Force Investigations)
General Order RAR-901.09
    (Use of Force Review Board)	

DISTRICT OF COLUMBIA

I.   BACKGROUND

The legal limitations on the use of force by District of Columbia law enforcement officers are expressed in D.C. Code § 4-176 (Use of Wanton or Unnecessary Force) and in District of Columbia Municipal Regulations (DCMR), Title 6A, Section 207 (Use of Firearms and Other Weapons).

6A DCMR Section 207.1 provides, among other things, that a member is allowed to "use only the minimum amount of force, which is consistent with the accomplishment of his or her mission, and shall exhaust every other reasonable means of apprehension or defense before resorting to the use of firearms."

6A DCMR Section 207.2, provides, among other things, that no member shall discharge a firearm in the performance of police duties except to "defend himself or herself or herself or another from an attack which the officer has reasonable cause to believe could result in death or serious bodily injury"; or to "effect the arrest or to prevent the escape, when every other means of effecting the arrest or preventing the escape has been exhausted, of a person who has committed a felony or has attempted to commit a felony . . . Provided, that the felony for which the arrest is sought involved an actual or threatened attack which the officer has reasonable cause to believe could result in death or serious bodily injury; and provided further, that the lives of innocent persons will not be endangered if the officer uses his or her firearm; . . . ."

The Fourth Amendment of the U.S. Constitution guarantees citizens the right "to be secure in their persons . . . against unreasonable . . . seizures" of the person. The Supreme Court has stated that the Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or

motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. (Graham v. Connor, 490 U.S. 386, 396-397 [1989]).

With respect to the use of deadly force, the Supreme Court in *Tennessee v. Garner,* 471 U.S. 1, 11-12, held that "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens an officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given." (CALEA 1.3.2)

II.   POLICY

The policy of the Metropolitan Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others. (CALEA 1.3.1)

III.   DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

A.   **Deadly Force** – any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.

B.   **Non-Deadly Force** – any use of force that is neither likely nor intended to cause death or serious physical injury.

C.   **Serious Use of Force** – lethal and less-than-lethal actions by MPD officers including:

1.   all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals;

2.   all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization;

3.   all head strikes with an impact weapon;

4.   all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;

5.   all other uses of force by an MPD officer resulting in a death; and

6.   all incidents where a person receives a bite from an MPD canine.

D.   **Use of Force** – any physical contact used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing or hand control procedures that do not result in injury.

E.   **Use of Force Indicating Potential Criminal Conduct by a Member** – includes, but is not limited to, all strikes, blows, kicks or other similar uses of force against a handcuffed subject and all accusations or complaints of excessive force made against the member.

F.   **Serious Physical Injury** – any injury that results in hospitalization and that creates a substantial risk of death, serious disfigurement, disability or protracted loss or impairment of the functioning of any body part or organ.

G.   **Less-Than-Lethal Weapons** – any object or device deployed with the intent or purpose of eliminating a threat without causing death. These include, but are not limited to, a 37 mm gas gun containing a cloth bag filled with small lead shot pellets, rubber bullets, batons, OC Spray, A.S.P. (Armament System Procedures) tactical batons.

H.   **Use of Force Continuum** – a training model/philosophy that supports the progressive and reasonable escalation and de-escalation of member-applied force in proportional response to the actions and level of resistance offered by a subject. The level of response is based upon the situation encountered at the scene and the actions of the subject in response to the member's commands. Such response may progress from the member's actual physical presence at the scene to the application of deadly force.

I.   **Objective Reasonableness** – Reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene in light of the facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation.

IV.   RULES

    A.   No member of the Metropolitan Police Department shall discharge his/her firearm under the following circumstances:

        1.   As a warning. (CALEA 1.3.3)

        2.   Into a crowd.

        3.   At or from a moving vehicle, unless deadly force is being used or threatened against the member or another; situations where a moving vehicle itself constitutes the use of deadly force, such as when a subject intentionally tries to run an officer down with his or her vehicle. In those instances, an officer's use of deadly force may be reasonable and justifiable. However, members shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them. (CALEA 1.3.4)

        4.   In a felony case which does not involve an actual attack, but involves a threatened attack, unless the member has reasonable cause to believe the threatened attack is imminent and could result in death or serious bodily injury. (CALEA 1.3.2)

        5.   In any misdemeanor offense, unless under exceptional circumstances.

        6.   Solely to protect property interests.

        7.   To stop an individual on mere suspicion of a crime simply because the individual runs away.

    B.   No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.

    C.   When feasible, members shall identify themselves as a police officer and issue a warning before discharging a firearm.

    D.   No member of the Metropolitan Police Department, in the normal exercise of his or her responsibilities, shall carry, use or discharge any firearm or other weapon, except those issued or approved for use by the Metropolitan Police Department under direction of the Chief of Police. (CALEA 1.3.9)

    E.   No member of the Metropolitan Police Department shall carry, use, or discharge any unauthorized ammunition in their issued service weapons. Members are prohibited from obtaining service ammunition from any source except through official departmental channels. Members are further required to carry only the requisite amount of service ammunition as applicable to the authorized service weapon they are utilizing. (CALEA 1.3.9)

F.   Any excessive force by a member will subject him or her to disciplinary action and possible criminal prosecution or civil liability.

G.   Any violation of these rules will subject members to disciplinary action.

V.   REGULATIONS

When force is necessary, District of Columbia regulations require members to use the minimum level of force that is necessary to accomplish a police mission. (CALEA 1.3.1) Members are not required to start at the lowest level of the options listed in the Use of Force Continuum. Members should select the appropriate level of force based on what a reasonable member and the circumstances require (See attached Use of Force Continuum chart).

A.   Prompt Medical Attention

When any level of force is used, there shall be a visual and verbal check of the subject to ascertain whether the subject is in need of medical care. Medical assistance shall be summoned immediately if a person is physically injured in any way, complains of pain, or demonstrates life-threatening symptoms. (CALEA 1.3.5)

B.   Use of Force Continuum (CALEA 1.2.7)

In determining what level of force to use, it is important to consider the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, and the suspect's mental capacity. Only the minimum level of force needed to obtain control that the objectively reasonable officer would use in light of the circumstances shall be used.

All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present should, if possible, defuse the situation through advice, warning and verbal persuasion.

In the event that a situation escalates beyond the effective use of verbal diffusion techniques, members are authorized to employ Department-approved compliance techniques and Department-issued defensive weapons.

1.   The Department recognizes and employs the Use of Force Continuum. Members in response to resistant or dangerous individuals may apply escalating options of force (see Use of Force Continuum Chart attached). The options include:

a.   Cooperative Controls, such as verbal persuasion;

b.   Contact Controls, such as hand control procedures, firm grip, escort and control holds;

       c.   <u>Compliance Techniques</u>, such as Oleoresin Capsicum (OC) Spray (non-deadly);

       d.   <u>Defensive Tactics</u>, such as less-than-lethal weapons, including impact weapons, such as a baton, or ASP, and including less-than lethal projectiles used by the Emergency Response Team and during times of civil disobedience (e.g., 12 gauge shotgun, 37mm gas guns, and rubber bullets), and canines.

       e.   <u>Deadly Force</u> (including deadly applications of less-than-lethal weapons).

2.   The patrol supervisor, if present where there is a violent or resisting subject, shall direct and control all activity.

3.   Members shall modify their level of force in relation to the amount of resistance offered by a subject. As the subject offers less resistance, the member shall lower the amount or type of force used. Conversely, if resistance escalates, members are authorized to respond in an objectively reasonable manner. (CALEA 1.3.1)

4.   Issued defensive weapons may be employed in response to the threat level recognized by an objectively reasonable police member in the circumstances as necessary to protect himself/herself or another from physical harm, to restrain or subdue a resistant individual, and to bring an unlawful situation safely and effectively under control.

C.   Authorized Use of Non-Deadly Force (CALEA 1.3.4)

1.   When using force, members must be able to articulate the facts and circumstances surrounding the force used in any given situation.

2.   Only objectively reasonable force may be used to respond to threats or resistance in every situation.

3.   A member's decision to use non-deadly force must involve one or more of the following:

       a.   To protect life or property.

       b.   To make a lawful arrest.

       c.   To prevent the escape of a person in custody.

       d.   To control a situation and/or subdue and restrain a resisting individual.

4.   A member shall use only that option of force on the Department's Use of Force Continuum that is reasonably necessary to bring the situation under control. If de-escalation does not work, the member may use an increasing level of force to overcome the level of resistance. As soon as the incident is under control, the member's use of force should diminish proportionally. (CALEA 1.3.1)

D.   Authorized Use of Deadly Force (CALEA 1.3.2)

1.   Defense of Life

a.   Members of the Metropolitan Police Department may use deadly force in the performance of police duties:

(1)   When it is necessary and objectively reasonable **AND,**

(2)   To defend himself/herself or another from an actual or threatened attack that is imminent and could result in death or serious bodily injury.

b.   Members shall not draw and point a firearm at or in the direction of a person unless the officer has an objectively reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or re-holstered.

2.   Fleeing Felon

Members may use deadly force to apprehend a fleeing felon **ONLY** when every other reasonable means of affecting the arrest or preventing the escape has been exhausted **AND,**

a.   The suspect fleeing poses an immediate threat of death or serious bodily harm to the member or others; **OR** (CALEA 1.3.2)

b.   There is probable cause to believe the crime committed or attempted was a felony, which involved an actual or threatened attack which could result in death or serious bodily harm; **AND**

(1)   There is probable cause to believe the person fleeing committed or attempted to commit the crime, **AND**

(2)   Failure to immediately apprehend the person places **a** member or the public in immediate danger of death or serious bodily injury; **AND**

(3)   The lives of innocent persons will not be endangered if deadly force is used.

3. Warning to Subject

When feasible, members shall identify themselves as police officers and issue a warning before discharging a firearm.

E. **Less-Than-Lethal Projectiles** (CALEA 1.3.4)

1. The objective of less-than-lethal projectiles is to save human life.

2. Consistent with the Department's philosophy of using only the minimum amount of force necessary to control or subdue potentially violent subjects, less-than-lethal projectiles may be used only by authorized members with appropriate specialized training.

3. During instances of civil disobedience, less-than-lethal weapons may only be used to subdue or incapacitate a subject to prevent imminent physical harm to the officer or another person and shall be used only at the direction of the official in charge of the scene. All other use, by any other member, is strictly prohibited.

F. **Prohibitions**

1. No member shall carry any Department-issued weapon prior to successfully completing Department-approved training courses directed by the Chief of Police. (CALEA 1.3.10)

2. Under no circumstances shall a member carry or use blackjacks, saps, nunchakus, kempo sticks, brass knuckles, or weighted gloves or other unauthorized weapons.

3. Members shall not employ any form of neck restraint except when an imminent threat of death or serious physical injury exists, and no other option is available.

4. Whenever it becomes necessary to take a violent or resisting subject into custody, the responding member shall utilize appropriate tactics in a coordinated effort to overcome resistance.

5. Members shall avoid the use of flashlights, radios or any items not issued specifically as a defensive weapon as a means of force, except when an imminent threat of death or serious physical injury exists, and no other option is available.

G. **Positional Asphyxia Precautions**

When necessary to restrain subjects, members shall:

1. Make every effort (whenever possible) to avoid tactics, which may impede a subject's ability to breathe, which may result in chest or throat compressions, or airway blockage.

2.   Position the individual in a manner to allow free breathing, once he or she has been controlled and placed under custodial restraint using handcuffs and other authorized methods. The subject shall not be maintained or transported in a face down position.

3.   Seek medical assistance immediately if a person appears to be having difficulty breathing or is otherwise demonstrating life-threatening symptoms (such as positional asphyxia). The patrol supervisor shall direct that alternative means to maintain custody be utilized, if appropriate.

4.   The unauthorized use of restraints and the transportation of subjects in a face down position within any vehicle are prohibited.

VI.   PROCEDURAL GUIDELINES

Notification and Reporting of a Use of Force Incident

1.   **Incidents To Be Reported**

The Use of Force Incident Report (PD Form 901-e) shall be completed in all of the following situations: (CALEA 1.3.6)

a.   all Use of Force incidents (except Cooperative or Contact Controls, e.g., mere presence, verbal commands or submissive handcuffing, unless there has been a resulting injury or the subject complains of pain following the use of Cooperative or Contact Controls);

b.   any time when an officer is in receipt of an allegation of excessive use of force; or

c.   whenever a member draws and points a firearm at or in the direction of another person.

2.   **Member Responsibilities**

Members shall notify their supervisor and complete a PD Form 901-e (Use of Force Incident Report) immediately following any use of force, receipt of an allegation of excessive force, or immediately following the drawing of and pointing a firearm at or in the direction of another person.

3.   **Supervisor Responsibilities**

When a member has declined to complete the Use of Force Incident Report immediately following an incident, the supervisor shall compel the member to complete the report following a declination by the U. S. Attorney's Office and/or issuance of an authorized Reverse-Garrity warning.

VII.   CROSS REFERENCES

   A.   Related Directives

   1.   GO OPS-301.03 (Operation of Emergency Vehicles, Fresh Pursuit and Vehicular Pursuit)
   2.   GO OPS-304.10 (Police-Citizen Contacts, Stops and Frisks)
   3.   GO RAR-306.01 (Canine Teams)
   4.   GO RAR-901.01 (Handling of Service Weapons)
   5.   GO RAR-901.04 (Oleoresin Capsicum Spray Dispensers)
   6.   GO-RAR-901.08 (Use of Force Investigations)
   7.   GO RAR-901.09 (Use of Force Review Board)

   B.   Court Opinions

   1.   Tennessee v. Garner, 471 U.S. 1, 11-12 (1985)
   2.   Graham v. Connor, 490 U.S. 386 (1989), 104 L. Ed 2d 443, 447
   3.   Saucier v. Katz, 533 U.S. 194 (June 18, 2001)

   C.   Laws and Regulations

   1.   D.C. Code §4-176 (Use of Wanton or Unnecessary Force)
   2.   D.C. Municipal Regulations, Title 6A, Section 207 (Use of Firearms and Other Weapons)

   D.   Other

   1.   CALEA Standards Section 1.3 (Use of Force)
   2.   IACP Model Policy (Use of Force)

   E.   Related Form

   1.   PD Form 901-e (Use of Force Incident Report) [electronic version]
   2.   PD Form 901-hc (Use of Force Incident Report) [interim hard-copy version]

                              Charles H. Ramsey
                              Chief of Police

Attachment: Use of Force Continuum Chart
             PD Form 901-hc (Use of Force Incident Report) [interim hard-copy version]

CHR:NMJ:JAE:MAR:AFA:afa