

**AN EXPLORATION OF THE USE OF EXCESSIVE FORCE BY MEMBERS OF  
THE SOUTH AFRICAN POLICE SERVICE**

**by**

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## ABSTRACT

The manner in which the police apply force is regulated by section 49 of the Criminal Procedure Act (CPA), 51 of 1977 (South Africa, 1997). According to Van der Walt (2010: 2), the introduction of the constitutional rules and regulations brought an improvement to the regulatory framework against police brutality. The section, which deals with the application of force by the police, was thoroughly analysed by the highest courts of the land in 2001 and in 2002 (Van der Walt, 2010: 2). The two court judgements which indicated that the section be declared unconstitutional, are the following: the *Govender v Minister of Safety and Security* 2001 2 SACR 197 (SCA) (henceforth, Govender), in which the Supreme Court of Appeal (SCA) ruled section 49(1) was in conflict with the constitution but gave a recommendation that the section to be clearly explained in such a way that it is satisfactory. In the *Walters* case, Section 49 of the CPA was again regarded as unconstitutional in 2002 (Van der Walt, 2010:2).

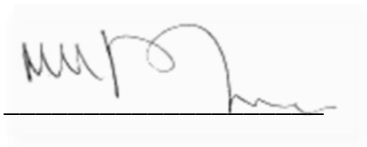
This thesis conducted an in-depth analysis of relevant literature to provide a background for the discussion on the use of excessive force by members of the South African Police Service (SAPS). The study also endeavoured to establish a frame of reference for considering different legal models for dealing with the use of force and identify policies and best practices from the international policing agencies to identify different approaches. It was envisaged that the knowledge generated in this study will enhance the existing knowledge on the use of force by members of SAPS, and will serve to educate the police, criminal justice institutions and the community about the nature and extent of the problems that policing agencies experience when executing their duties.

### **Key terms:**

Excessive force; the abuse of powers police brutality; murder; criminal justice.

## DECLARATION

I, Mackenzie Prince Mkansi, declare that this thesis: '**AN EXPLORATION OF THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE**', is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references. This research has not yet submitted for any degree or examination at any other university.

A handwritten signature in black ink, appearing to read 'MMP', is written over a horizontal line. The signature is enclosed in a light gray rectangular box.

Mackenzie Prince Mkansi

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## LIST OF ACRONYMS

AMCU	Association of Mineworkers and Construction Union
ANC	African National Congress
BJS	Bureau of Justice Statistics
BPD	Boston Police Department
CCA	Citizen Complaint Authority
CED	Conducted Energy Device
CCCDAO	Contra Costa County District Attorney's Office
CASAC	Council for the Advancement of the South African Constitution
CORMSA	Constitution for Refugees and Migrants in South Africa
CSPRI	Civil Society Prison Reform Initiative
CPA	Criminal Procedure Act, Act 51 of 1977
CPF	Community Policing Forum
CPD	Cincinnati Police Department
CSC	Community Service Centre
CSVR	Study of Violence and Reconciliation
DA	Democratic Alliance
DCS	Department of Correctional Services
DJCD	Department of Justice and Constitutional Development

DOJ	Department of Justice
DPSC	Detainee Parents Support Committee
EMM	Ekurhuleni Metropolitan Municipality
ECW	Electronic Control Weapon
FBI	Federal Bureau of Investigation
GBH	Grievous Bodily Harm
HURIDOCS	Human Rights Documentation Programme
IACP	International Association of Chiefs of Police
ICD	Independent Complaints Directorate
IPID	Independent Police Investigative Directorate
ISS	Institute for Security Studies
IACP	Institutional Association of Chiefs of Police
IFP	Inkatha Freedom Party
ICCPR	International Covenant on Civil and Political Rights
IBI	Independent Board of Inquiry
JICS	Judicial Inspectorate for Correctional Services
MEC	Member of Executive Council
MPS	Municipal Police Services
NGO	Non-Government Organisations
NCPS	National Crime Prevention Strategy



NICOC	National Intelligence Coordinating Committee
NIJ	National Institute of Justice
NOPD	New Orleans Police Department
NSF	National Science Foundation
NYPD	New York Police Department
OC	Oleoresin Capsium
OPD	Oakland Police Department
OPOTC	Ohio Peace Officer Training Commission
PERF	Police Executive Research Forum
POP	Public Order Policing
SA	South Africa
SABC	South African Broadcasting Cooperation
SADF	South African Defence Force
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAP	South African Police
SAPA	South African Press Association
SAPS	South African Police Service
SCA	Supreme Court of Appeal
SIR	Shooting Incident Report

TNS	Transparent Network Substrate
TRC	Truth and Reconciliation Commission
UN	United Nations
UNICAT	United Nations Convention Against Torture
UNHCHR	United Nations High Commission for Human Rights
US	United States
USA	United States of America

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# **CHAPTER 1:**

## **GENERAL ORIENTATION**

### **1.1 INTRODUCTION**

This chapter presents the methodological framework within which this research was conducted. It provides the basis of the study, the study's substantive focus, its purpose and the research problem within an established arena of ideas. The chapter further frames the theoretical and practical domains of the study and outline the significance of study and the research questions. The chapter also presents a design section, which describes how the study was conducted within the identified methodological perimeters. The chapter concludes by presenting strategies that followed by the researcher to ensure the authenticity of the study within the confines of identified ethical considerations.

### **1.2 BACKGROUND TO THE STUDY**

According to the Independent Police Investigative Directorate (IPID) Annual Report (2015: 1), the application of excessive force is a huge challenge to the entire world and South Africa is no exception. According to Mistry, Minnaar, Redpath and Dhlamini (2008:11), organisations such as the United Nations High Commission for Human Rights (UNHCHR), non-governmental organisations (NGOs) like Amnesty International and Human Rights Watch, countries, police forces as well as communities at large are unhappy with the way in which the police conduct themselves when performing their daily duties. Mistry et al. (2008:11) further assert that police officials often violate and act against the rules and regulations listed in the United Nations human principles.

According to the IPID Annual Report (2015:1), the application of excessive force by members of the SAPS has negatively affected the Criminal Justice System and brought

about pain and sufferings to the citizens of the Republic of South Africa. According to the *Green Paper* (South Africa, 2013 (a) 4), policing prior to the dawn of democracy was like a strong military force which was not credible, not transparent and not accountable for their unlawful behaviour. According to Mistry et al. (2008:11), the manner in which the police conducted their duties were more similar to a military style where the police violated people's rights. Furthermore, Mistry et al., (2008:1) further indicate that politics had a negative impact on the use of excessive force by the police. The apartheid government strongly contributed to the police use of excessive force as they relied on the police to achieve its goals. The then police force, therefore, were brutal when arresting criminals and they offensively raided the black locations, detaining people and not affording them the opportunity for a fair trial (Pigou, 2008:1). According to Pigou (ibid), the police also conducted interrogations when they wanted to obtain information from arrested criminals, torturing them by using extreme measures. This use of excessive force by the police portrayed the South African government as an oppressive state with a gross violation of human rights (ibid).

According to Saferspaces (2023:1), there is an increase of police criminal offences in South Africa currently where more than 5500 cases are reported annually. Pigou (2002:8) opines that in cases where factual evidence was given where the police were brutal in their use of force, such evidence was not considered. Furthermore, Pigou indicates that the evidence presented by the Truth and Reconciliation Commission (TRC) confirmed that the former government used the police force that was engaged in violent activities. In addition, Pigou (2008:2) maintains that the ushering of the new dispensation led to the implementation of the new policies that were in line with the human rights charter propounded by the United Nations. According to Pigou (2002:8), these new changes brought in to assist the members of the police force to deal with brutality in the SAPS. A new course had to be created that would ensure that the police are in line with what is in the new Constitution as stipulated in the Bill of Rights. In terms of chapter 2 of the South African Constitution, the fundamental rights of persons laid down and as such, the State should protect and promote the fulfilment of those rights. Section 205 of the Constitution of the Republic of South Africa of 1996 empowers police officials to prevent, combat and investigate crime. According to the

South African Constitution (1996), the police should maintain public order, protect and secure all inhabitants of the Republic of South as well as their property.

According to Green Paper on Policing (South Africa, 2013 (a) 4), the biggest challenge faced by the newly elected government was to create an environment that ensured that all members of society are well protected and safe by reforming the policing apparatus. While ensuring that the new policies were adhered to, there was a challenge of the escalating rate of crime that needed to be addressed (Green Paper on Policing 2013:4). The latter shows that the merging of the 11 policing agencies, which were formed under apartheid, was to form the bases of the newly established police service to make it to be legitimate and trusted in the communities it seeks to serve (Green Paper on Policing 2013:4). Furthermore the Green Paper on Policing (South Africa, 2013:4) explains that accountability has to be of utmost importance as a way of addressing past tendencies of brutality and lack of liability.

Botha and Visser (2012:346) assert that the constitutional mandate to members of SAPS is that of maintaining law and order, prevention, investigation and fighting crime in terms of section 205 of the Constitution, 1996. According to section 205, law and order must be maintained at all times. It is of paramount importance that the SAPS must be driven by the Constitution as well as the legal framework in their scope of operation as is the case in a democratic societies (Green Paper on Policing, South Africa, 2013:18). According to the Green Paper (South Africa, 2013:18), the police must execute their duties effectively, and this depends on their understanding of what is expected of them in society. The Green Paper on Policing further indicates that every action of the police must be motivated by a comprehensive knowledge of police purpose and the involvement of persistent solicitation of the law. The Green Paper on Policing stipulates that the sole mandate of the police is to fight crime and to protect the rights of the citizens. Therefore, the powers of the police falls within the ambit of the law.

The Green Paper on Policing (South Africa, 2013:18) also maintains that the SAPS has the legal authority to use force in executing its duties, but this should be regulated. According to the Green Paper on Policing, the use of force should have clear policy

guidelines and regulations. The Green Paper on Policing further indicates that the rights of the citizens as enshrined in the Bill of Rights must be considered when the police are executing their duties. Furthermore the Green Paper on Policing indicates that front-line officers are always confronted with situations where they have to make quick decisions with sound judgements in their execution of their duties. Green Paper Policing asserts that such decisions of the use of force should be reasonable and proportional to the level of resistance to which they come across.

According to the Green Paper on Policing (South Africa, 2013:18), it is essential to create a framework that would address the need for efficiency, competence and accountable policing in South Africa. According to the Green Paper, there should be solid checks and balances in all the sectors of government where all members are held accountable for their actions and constantly monitored to reinforce the framework. The Green Paper on Policing also explains that high standards of competence, impartiality and accountability that all South Africans aspire should be in accordance with the rules of the law. Furthermore, Botha and Visser (2012: 346) argue that though it is important for the police to have power to arrest a suspect, he or she has the right to dignity, life and freedom and security as enshrined in the Bill of Rights. Botha and Visser (2012: 346) maintain that the police can legally use force when arresting a suspect, but that should be within the ambits of the law. Bruce, Newham and Tait (2011:1) mentioned in a media release that the former Minister of Police Nathi Mthethwa and the former National Commissioner, General Bheki Cele, have been calling that the members of the police to use more force when policing.

According to Bruce, et al. (ibid), the use of excessive force was ill advised and was damaging to the police who still sought trust from the public in South Africa. Bruce et al. (ibid), further indicate that the police, however, still aspire to reach that standard of professionalism in the execution of their duties. Bruce et al. (ibid) further point out that the use of force by the SAPS members is likely to lead to innocent members of the public becoming victims of brutality, therefore discrediting the police. The harsh approach by the SAPS will not heighten its efficiency; but will undermine the

envisaged support needed to acquire community backing which is of paramount importance in policing (Bruce, 2011:1).

It is lamentable that tactics that were used in the colonial era, of investigating by torturing as a method of digging out information from suspects, are still used by some members of the SAPS (Pigou 2002:1). The formation of the Independent Complaints Directorate (ICD), according to Botha and Visser (2012:346), was to address instances of police misconduct. The ICD has since changed its name to IPID. This is an independent body that investigates criminal offences committed by members of SAPS, thereby, conducting independent and unbiased investigations of acts of criminality offences and make proper recommendations. Mistry, *et al* (2008:11) accentuate that the IPID pursues offences such as the misuse of power and brutality in the police force. Although the establishment IPID is a just and a noble course, it has its own weaknesses. In its investigative role in the ten offices in the country (nine regional and one national), accessibility to these offices remains a huge challenge (Pigou, 2002:5). Pigou (*ibid*) maintains that members of the public and the Minister of Police, for example, bring cases investigated by IPID to their attention, deaths in custody because of the misuse of power by the police. According to Pigou (2002), the IPID's assessment of abuse allegedly committed by the police depends on what matters that have been brought to their attention. Pigou (2002) maintains that the cases that come to the attention of the IPID are brought from various sources, including among other members of the public and the Minister of Police. Moreover, the weaknesses of this board (IPID) are the damning reports that it has failed to give statistics of the allegations levelled against the police, and that should be the main mandate of the IPID (Pigou 2002).

According to Mistry, *et al.* (2008:11), it is beyond reasonable doubt that the answer to these challenges is through intervening by a way of empowerment, whereby the SAPS will be furnished with sufficient knowledge about the rules and regulations that will serve as guidelines, as they execute their duties. Bruce, Newham and Tait (2011:1) argue that they should be developed and be orientated towards meeting the envisaged professional standards to their use of force. According to Mistry *et al.* (2008:11), appropriate systems must be established to assist the police when dealing with

situations that are violent. Mistry et al, (2008:11) further state that in order for the conundrum to be resolved, a full understanding of what police brutality is must be central in every member of the police force. This understanding would ease the transition from the old brutal methodology to the one that is in line with the new constitution (Mistry, et al., 2008:11). The expected operations are enthralled in the Criminal Procedure Act (CPA), Act 51 of 1977 and the Criminal Procedure Amendment Bill (The 2010 Bill). What is entailed in these two regulations are as follows:

### **1.2.1 The Criminal Procedure Act (Act 51 of 1977)**

Section 49 of the CPA 51 of 1977 (South Africa, 1977) governs the use of force in South Africa. The view of the late Mr Steve Tshwete was that the police were permitted to shoot at criminals when they had to defend themselves, which undoubtedly put them in danger as well as being at risk from criminals (Van der Walt, 2010: 3). Minister Tshwete reiterated that according to the 1998 amendment, police officials, in their call of duty, were not allowed to discharge fire arms in effecting arrest not unless when criminals shot at them first. It was only after a year of Walters case that the 1998 amended *Section 49* finally came into operation on 18 July 2003 (Van der Walt, 2010: 3).

*Section 49* of the CPA provides that (with the 1998 amendment incorporated):

49(1) for the purposes of this section-

Any person who is authorised to arrest or assist in arresting a suspect is called an arrestor while the word suspect means any person whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an unlawful activity. In the event of the resistance to arrest by the suspect or when he attempts to evade arrest by running away, the arrestor may justifiably in terms of this section use force that could be fatal or lead to the suspect's bodily injuries. The use of force is only obligatory in the event where the arrestor protects himself or the person who is assisting in the arrest or in case the suspect could kill or harm others when arrest is



delayed. *Section 49* also applies to instances where crime is in progress and is life threatening or can lead to serious injuries.

According to Van der Walt (2010: 2) the new Constitution of the Republic of South Africa 108 of 1996 (South Africa, 1996) came with significant changes to *Section 49*. The Supreme Court of Appeal and the Constitutional Court which are highest courts in land scrutinised constitutionality of *Section 49* in 2001 and again in 2002. In *Govender v Minister of Safety and Security* 2001 2 SACR 197 (SCA) (hereafter Govender), the SCA did not declare *Section 49(1)* unconstitutional but found it had to be interpreted restrictively to survive constitutional scrutiny.

There is a correlation between the high death rate resulting from shootings by members of the SAPS in 2003/2004, which had increased by 23% according to the IPID statistics of the escalation level of violent crime for the same period (Independent Police Investigative Directorate Annual Report 2003/2004 (South Africa, 2004)). This, according to Bruce (2002:156), is not as a result of the application of the law allowing the use of force that could lead to loss of human life. Therefore, if a phrase that has been used was taken from Section 25 of the Canadian Criminal Code (Van der Walt, 2010:5) referred to as the “future danger principle”, that provides for the use of force when a suspect has to be arrested. Subsection (4) provides that a peace officer in our South African context would mean a member of SAPS and or his assistant is permitted by this code to force that can cause death or grievous bodily harm (GBH) to a person to be arrested, regardless of whether he has a warrant of arrest or not. The suspect may also be arrested when he runs away to evade arrest or the officer’s lives are under threat.

According to Bruce (2002: 141), the “future danger” provision could put the officers in dicey and dubious situations when executing their duties as the framework under which they had to operate is not well defined and a quick judgement has to be made. This poses a huge challenge to the officers as there is no provision of guidelines that underpins their judgment, therefore, becoming exposed and vulnerable to criminal elements. Bruce argues that it is not easy to apply “the future danger” by the oversight bodies (for example the IPID) responsible to ensure accountability in relation to the

use of excessive force and shootings under *Section 49*, as it compels them to evaluate the shootings in terms of a speculative abstraction (Van der Walt, 2010: 6). Van der Walt (2010) maintains that in countries like Canada where the future danger principle is part of the law, there is less use of force by the police (and lower violent crime rates). These countries are also better able to maintain administrative mechanisms, which can impose accountability in relation to such a standard (ibid).

According to Van der Walt (2010: 6), the 1998 Amendment was thought to have been a step towards the right direction, but this was opposed by the then Minister of Safety and Security (the late Minister Tshwete), before it was even put into action because it was not easy to apply and did not have legal clarity. The amendment further obstructed the police from fighting crime as they had to meet this new “higher standard” afforded by *Section 49*. The assessment used by the courts is an objective *ex post facto* test and it is not relevant whether the officer subjectively believed that the suspect posed a “future danger” (Van der Walt, 2010: 6). The precise way in which *Section 49* had to be interpreted and applied as amended hinged on whether police officers are trained appropriately. Van der Walt reiterates that the amendment creates a situation perpetrators are protected and seem to have the “right to flee” while the law-abiding citizens are at risk. The Department of Justice and Constitutional Development had to reconsider the objections levelled against provisions of *Section 49*, bearing in mind the Constitutional Court’s approach in the Walters case. This resulted in the drafting of the *Criminal Procedure Amendment Bill* at the beginning of 2010, which proposed to amend the provisions regarding the use of force, including deadly force, in effecting arrest in South Africa (Van der Walt, 2010: 6).

### **1.2.2 The Criminal Procedure Amendment Bill (The 2010 Bill)**

The argument about the use of excessive force by members of the SAPS continues unabatedly in South Africa. Section 49 of the CPA, 51 of 1977 is used as a regulatory framework for the use of excessive force by SAPS members when effecting arrest in South Africa. Some authors indicate that the powers vested upon SAPS members in this respect should be limited in the circumstances. This Bill is very much important

for this study as the researcher explores other international regulatory frameworks on the use of force, including deadly force by police officers in South Africa.

The Department of Justice and Constitutional Development (DoJ&CD) as stated by Van der Walt (2010:7) issued a working draft of the 2010 Bill and distributed it for comments. This was subsequently followed by a reviewed version of the working draft which was also distributed after the public had commented on the first version that had been circulated. A memorandum was attached to the Bill the DoJ&CD alluded that the police could be unclear about their rights under *Section 49* of the CPA. According to Van der Walt (2010:9), the 2010 Bill intends bringing the provisions relating to the use of force when arrest is effected into line with a judgment of the Constitutional Court and to ensure more legal clarity regarding the conditions and situations in which the use of deadly force to effect an arrest can be made. The “future danger” principle, which was entrenched in Section 49 after the 1998 amendment, has not been clearly included in the Bill.

Judge Kriegler stated “threat of danger” which was established by the court in Walters case led to the following based on effect of the two judgments (Govender and Walters). Lethal weapons may be used when the officer has firm grounds for the suspect to be arrested poses a threat to injure the officer attempting to arrest him or has committed crime involving injuring or harming the members of the public (Van der Walt, 2010: 9).

Van der Walt (2010: 9) points out that based on the judgement in the Walters case, officers are allowed to use deadly force to effect arrest on a fleeing suspect, if, he/she has committed a crime which involved the infliction, or threatened infliction of serious bodily harm, regardless of whether or not the suspect threatened a severe bodily harm to others at the time of the arrest. It is worth noting that the State is given the right to make sure that dangerous criminals are arrested and face the full might of the law (Van der Walt, 2010: 9). Van der Walt (ibid) maintains that the Bill allows for the use of force, including deadly weapons, in arrests where the escapee offers a “threat of danger” either to the officer or the members of the community, or where the suspect is reasonably suspected

of having committed a crime involving the infliction or threatened infliction of serious bodily harm irrespective of whether the suspect poses an immediate threat of serious violence to the arrestor or another person at the stage of arrest.

Van der Walt (2010:9) asserts that there is provision in the Bill that before a deadly force can be used, the arrestor must have made a very good assessment that the suspect poses threat of violence that is of a very serious nature ('serious violence'). However, the threat offered by the suspect to cause GBH to the arrestor or members of the public must be an 'immediate' threat as against the court in Walters is not included in the Bill. By implication, deadly force may be used in circumstances where the arrestor undoubtedly believes the suspect poses a serious threat of danger to him or members of the community at large at any time, and only during the time of arrest. It is against this background that an assumption made that the "future danger principle" be given provision and applied (Van der Walt, 2010:10).

Van der Walt (2010:10) reiterates that the SAPS is gravely concerned about the limits given by the 1998 Amendment that the police are enabled to shoot at the suspect when they had to only defend themselves and that was the main objection put to the 1998 Amendment. Based on the judgement in Walters case, the court emphasised that the limitations that were placed by *Section 49* had no bearing on the circumstances where the suspect has put the life or safety of the officer who is about to arrest him or if someone else is being threatened (Van der Walt, 2010:10). According to Van der Walt, the right and duty of police officers is to protect themselves as well as ensuring that their lives are safeguarded and that the safety of others were endorsed and accentuated. The decision that came out in Walters was the given right to use force, including the deadly force to stop a suspect who is running from arrest. What the Bill provides is the use of force (including deadly force) when an officer has to effect an arrest of a suspect and not only when he has to use the deadly force in self-defence. The only requirements to be met are that the suspect must offer a serious threat of danger to the arrestor or others or must have committed a crime involving the infliction or threatened infliction of serious bodily harm and there is no other way (without using force) to arrest the suspect. The Bill clearly allows for deadly force even in circumstances where the arrestor's life or bodily integrity is not at stake. The provisions of the Bill, therefore,

negate the police's main objection to and fear of the 1998 Amendment (Van der Walt, 2010:10).

### **1.3 PROBLEM STATEMENT**

According to the *Country Reports on Human Rights Practices* (2011:1), principal human rights problems in South Africa include, among other, the police's use of lethal and excessive force, including torture against suspects and detainees, which may result in deaths and injuries. Bruce (2002:1) observes that the issue of police brutality has been in the spotlight in South Africa particularly following the screening of video footage in November 2000 of a South African Broadcasting Corporation (SABC) television programme depicting members of the SAPS East Rand Dog Unit setting their dogs on, assaulting and racially abusing three illegal immigrants from Mozambique. Bruce (2002) argues that making appropriate decisions regarding the use of excessive force is the most critical challenge confronting law enforcement officers.

According to Pigou (2002:5), an average of 13 954 complaints or charges per annum was laid against SAPS members between 1994 and 1997. In 1997, 17 526 charges were laid, including several thousand complaints of assault laid against police officials. Statistics for 1998 and 1999 were not available. On average, 1 200 officers were convicted of criminal offences every year between 1995 and 1999. In 2000, over 14 600 charges were laid against police officials, including several thousand allegations of assault. Almost a quarter (23%) of all convictions related to cases of assault with the intention to do GBH, and common assault, and a further 13% of cases for violations of The Firearms and Ammunition Act, Act 60 of 2000 (South Africa, 2000) and for pointing of firearms. According to Botha and Visser (2012:348), during 2008/2009 and 2009/2010, at least 1 092 people lost their lives as a result of the use of force by the police. This is the highest number since the late 1990s. This is peculiar as there were no legislative or policy amendments regarding the use of force by police during this time. During the same period, only 170 SAPS members have been convicted for murder, and a further 220 for attempted murder.

The number of deaths in police custody has remained unprecedentedly high, with few arrests made against the perpetrators. According to the *Independent Police Investigative Directorate Annual Report 2012/2013* (South Africa, 2013(b):2), there were 257 deaths in police custody and 540 deaths as a result of police action from April 2010 to March 2011. The total of 797 reported deaths in police custody was a 7 per cent decrease from the 860 reported deaths in police custody for the same period in 2010. According to the IPID, of the 257 deaths in police custody, 48 were considered deaths from unnatural causes, and police officials were implicated in eight of those cases. Assault charges by police increased from 1 313 cases in 2011/12 to 4 131 cases in 2012/13. This report further indicates that 706 persons died in police custody or owing to police action during the 12 month period ending 31 March 2013. From the total of 706 deaths in police custody, only nine SAPS members were charged and found guilty. Suspects in several cases were interrogated and assaulted while being detained by police, without any record made of their arrest. Fifty cases of police torture were recorded by the IPID for this period. Lack of action on this brutality leaves much to be desired.

In the face of high deaths in police custody, the number of complaints against police has been similarly high and a few arrests have been effected as a result. The *Independent Police Investigative Directorate Annual Report 2012/13* (South Africa, 2013(b):15) reports that during 2012/2013, IPID received 6 728 complaints against the police (165 complaints involved the members of the various Municipal Police Services (MPS)). In 6 563 of these cases, members of the SAPS were suspects compared to 5 869 complaints in 2011/2012, including allegations of killings, assaults and other misconduct. Out of these cases, the IPID investigated 1 088 cases, of which 545 were found to warrant criminal charges and were recommended for prosecution. The police arrested 125 SAPS members, leading to 57 criminal convictions and 21 acquittals. The *World Report 2013* (2013:159) indicates that the killing of 34 miners at the Lonmin Platinum Mine in the North West Province shocked the world and highlighted increasing concerns over police brutality. These statistics could be a reflection that perhaps the police force has a poor understanding on the rights to use force when effecting arrests and when interrogating suspects.

It has also been reported that the IPID has made investigations following complaints from the public but still few arrests have been affected. The *Campaign for Safe Communities* (2013:2) reports that in 2011/2012, there were 720 deaths in police custody. The IPID completed investigations into more than 800 such matters in the same year. According to the *Campaign for Safe Communities* (2013:2), only 13 convictions and approximately 23 acquittals secured. The *Campaign for Safe Communities* (2013:2) indicates that in 2009 the head of the South African Police, Bheki Cele, urged the police to adopt a shoot-to-kill policy, stressing that the police should do so without fear of happens after that. The *Campaign for Safe Communities* (2013:2) further maintains that this came in more than a year before the notorious killing of an activist Andries Tatane during a service delivery protest in 2011. More importantly, *The Campaign for Safe Communities* (2013:2) indicates that in Limpopo Province in 2011, cell phone footage revealed that a man was beaten unconscious by a police officer, with onlookers urging him on. According to *The Campaign for Safe Communities* (2013:2) and Amnesty International note that in 2011, the police allegedly used excessive force during mass arrests of suspected illegal foreign nationals in Nyanga Township in Cape Town. Therefore, despite the assumed lack of knowledge about when to use force when effecting arrests, there is clear evidence that the intervention mechanisms to monitor adherence to the legal framework requires has been ineffective.

Some of the brutal acts have been performed and witnessed by the public. For example, *The Campaign for Safe Communities* (2013:2) indicates that on 26 February 2013 onlookers filmed Mozambican taxi driver Mido Macia as police handcuffed him to the back door of a police vehicle and dragged him to a police station in Daveyton, Ekurhuleni, where he subsequently died of internal bleeding. *The Campaign for Safe Communities* (2013:2) also states that South Africa's newspaper, *Daily Sun*, broke the story on Thursday. According to *The Campaign for Safe Communities* (2013:2), witnesses told the paper that Macia had parked on the wrong side of the road and was assaulted when he argued with police. *The Campaign for Safe Communities* (2013:2) indicates that a source who saw him in the police cells told the newspaper not to be fooled by comments from the police: "these cops must not try to speak nicely to you ... they killed him; they beat him so badly here."

A report released by IPID found that Macia died in police detention from head injuries and witness on the street filmed the incident and gave the footage to *Daily Sun*. It has since been seen around the world after being posted. After Macia's death, Amnesty International said that the IPID had received 720 new cases for investigation of suspicious deaths in custody between April 2011 and March 2012. Amnesty International urged the South African government to make a public commitment to ensure that the police stop the use of excessive force and deliberate targeted killings. President Zuma called the incident "horrific" and "unacceptable". The Democratic Alliance (DA) called for a judicial commission of inquiry into police brutality. On 29 February 2013, authorities arrested nine police officers involved in the incident on charges of murder. However, despite these offences being committed in the public eye and in the knowledge of high profile figures, the situation remains untenable.

#### **1.4 DELIMITATION OF THE STUDY**

The first delimitation of this study relates to geographical location. Daveyton is situated in Gauteng, under the jurisdiction of Ekurhuleni Metropolitan Municipality (EMM). The EMM borders the metropolitan areas of Tshwane to the north and Johannesburg to the west. It stretches from Bedfordview in Eastern Johannesburg to the border of Mpumalanga Province. It consists of the following towns: Alberton, Edenvale, Springs, Nigel, Boksburg, Kempton Park, Brakpan, Benoni and Germiston. It has a large geographic area of 1 923 square kilometres. Ekurhuleni has a population of 2 480 278, almost a quarter of Gauteng's total population (Dhlamini & Dissel, 2005:2). Daveyton SAPS resorts under the Benoni cluster police stations. The Benoni cluster police stations include Daveyton SAPS, Etwatwa SAPS, Crystal Park SAPS, Putfontein SAPS, Actonville and Benoni SAPS. Daveyton SAPS is responsible for servicing the following areas: Basotho Section, Tsonga Section, Swazi Section, Sgodiphola, Chris Hani 1, Chris Hani 2, Chris Hani 3, Chris Hani 4 and Gabon.

The second delimitation relates to the period. This study focused on incidents of the use of excessive force by SAPS members in the Benoni cluster stations, including the Daveyton policing area from 2009 to 2023.



## **1.5 RESEARCH AIM AND OBJECTIVES**

Kumar (2011:50) explains the aims of a research as the aims that a research paper will achieve. These goals remind a reader what you want to accomplish in the report. Therefore, wording them in a simple and explicit manner is critical. To this end, the researcher argues that this area of research, especially in a South African context, is neglected. As a result, the void in knowledge needs to be filled. As a result, the main aim of this study was to explore the dynamics of the use of excessive force by members of the Daveyton SAPS as personally described and operationally experienced by these members. To achieve the purpose of the study, the following two specific objectives will be addressed:

- To explore and identify the causative factors of the use of excessive force as experienced by members of the SAPS.
- If the causative factors of the use of excessive force, as experienced by members of the SAPS, is identified and described then the knowledge base of such factors of this phenomenon can be increased.
- To develop a framework for acceptable levels of the use of force to empower police officials with new knowledge leading to good practice in the application of the use of force during the execution of their duties.

If new information acquired from the findings of this study is applied and further developed, police officials at the Daveyton SAPS and elsewhere in South Africa would be empowered with new knowledge leading to more acceptable practices in the application of the use of force during the execution of their duties.

## **1.6 RESEARCH QUESTIONS**

The question of science is the key question to be answered by the researchers through their research project. To formulate clear research questions, the research issue must be adequately oriented and defined. Qualitative inquiry allows one rather than the prevalence of phenomena to answer questions regarding the kinds of social phenomena under study. It is, therefore, important to analyse and explain all aspects

of a phenomenon and probably try to understand the way the phenomenon is built up, the relationships between the various components, and what effect is made of the absence and presence of those components (Hodkinson, 2009:24). Therefore, based on the research objectives stated earlier, the following research questions were posed for this study:

- What are the causative factors and to what extent do they contribute towards the use of excessive force by members of the SAPS?
- What framework can be adopted that provides for acceptable levels of the use of force to empower police officials in the application of the use of force during the execution of their duties?

## **1.7 VALUE OF THE RESEARCH**

According to the Institute for Security Studies (2018:1), South Africa is the focus of the research study by policy makers, criminal justice practitioners, civil society researchers and analysts, including academics on violence prevention as well as police brutality and torture in colonialism as well as in the post-colonial period. Research in these areas has been used to inform or advocate for required changes in South African policing. Building from this, the knowledge generated in this study will benefit the SAPS whose members are currently embroiled in incidents of the use of excessive force. The management of the SAPS will receive anecdotal evidence on the dynamics of excessive use of force. In this regard, the results could act as a management tool to support and further develop strategies to effectively manage the excessive use of force by members in the SAPS.

This study results could serve to educate the police, criminal justice institutions and the community about the nature and extent of the challenges experienced by members of the SAPS related to the use of force in the execution of their duties. The results from this research could also serve as a guideline on how police organisations could promote and protect human rights. From academic point of view, practitioners in this field of

research could be enlightened on the dilemmas experienced by the SAPS. Overall, this new information generated from the current study could help to enhance the collaborative efforts of law enforcement and social services to create better solutions for dealing with the excessive use of force by members of the SAPS in Daveyton and elsewhere in the South Africa.

## **1.8 LIMITATIONS OF THE STUDY**

Several factors act as limitations for the current study. These include lack of finance to conduct and transcribe in-depth interviews and to make use of highly experienced interviewers. This, however, did not have a significant bearing on the study. The large geographical area to be covered suggests that more time and money was required for travelling for data collection. The study was also limited in the sense that some of the key participants were not willing to participate in the study, with some cancelling appointments on the last minute, postponing or rescheduling, which had a bearing on the timelines set by the researcher. As a result, the data collection process took considerably longer than initially anticipated. Despite these challenges, the researcher managed to secure enough participants to participate in this study.

## **1.9 KEY THEORETICAL TERMS**

The following key terms are central to this study and warrant clarification:

### **1.9.1 Police use of excessive force**

According to Root (2015:1), police brutality involves the use of unnecessary and/or excessive violence by members of the SAPS. Saferspaces (2018:1) further indicates that offenders are brutalised even when they are not resisting arrest and the level of force applied by the police is extreme and unnecessary. Saferspaces (2018:1) further highlights that offenders are being subjected to beating, punched, kicked and slapped

with open hands. Emesowun and Benedict (2016:21) state that police brutality is the application of extreme and unnecessary violence by members of the police against a person or members of the community. Excessive force may, therefore, be defined by policy as the use of disproportionate power in a way that takes away the rights and dignity of people. Bruce (2002:4) points out that police brutality is caused by unlawful use of force by SAPS members. Police brutality is, therefore, the (illegal) misuse of the right to use force; policing brutality is usually intentional illegal violence but actions which amount to criminally neglectful use of force should also be treated as acts of police brutality. Some problems arising from this definition of police brutality, according to Bruce (2002: 4), include:

- The popular use of the term 'policing brutality' is applied in a wider public sphere, referring sometimes to the use of police force without being concerned with establishing whether it is legitimate or not, while sometimes it is used to refer to any seemingly objectionable behaviour by the police.
- Abuses of other powers – police have various powers including arrest authority, search and seizure powers and other powers. It could misuse all these powers.

The foregoing suggests that police brutality is a deliberate act by the police to act outside the ambit of the law to perform acts of violence purely based on the position they hold in the society. For the purpose of this study, “police brutality” and “use of excessive force” are used interchangeably throughout this study. Non-occupational violence by off-duty members of the police service will not be included as part of this study. This study will only focus on unlawful violent acts constituting police brutality or police use of excessive force pertaining to on-duty officials in the execution of their duties. Bruce (2002:4) highlights that excessive power entails a further significant dividing point between 'brutality' and 'unnecessary force' in which 'well-intentioned officers are unable to cope with circumstances without disproportionate or too hasty use of force' is later. The distinction between "brutality" and "unnecessary strength" is not waterproof. It should be noted. For example, a police officer who used force "too quickly" could become involved in police brutality. The question arises: For example, despite the fact that two

problems linked to the police's use of force are differentiated. However, though different, for the purpose of this study, 'excessive force' denotes the use of unnecessary force by the law enforcement officers in a manner that takes away citizens' freedom and dignity. This could also be viewed as a deliberate act by law enforcement officers to act outside the ambit of the law to perform acts of violence purely based on the position they hold in the society and therefore violate their legislated mandate.

## **1.10 PHILOSOPHICAL WORLDVIEW OF THE STUDY**

Creswell (2014:6) understands an ideology as a basic philosophical approach to things and the objectives of this research being carried out by a research team. According to Creswell (2014), the researchers utilised a social constructionist viewpoint with this elaboration. Creswell further maintains that building is usually regarded as a qualitative analysis approach. Community builders claim that people are attempting to explain the environment in which they reside and operate. Creswell cites that people create abstract definitions for their experiences – definitions that are aimed at other events. According to Creswell (2014), such significances are numerous and encourage the analyst to search for the variety of perspectives instead of restricting importance to just classes or concepts. The goal of research is to draw on the experiences of the respondents on the scenario to be researched as often as feasible. To this end, constructivist researchers focus on the specific contexts in which people live and work to understand the historical and cultural settings of the participants. Therefore, the researcher's intent is to make sense of (or interpret) the meanings others have about the world. In this particular study, the researcher sought to gain an understanding from participants about the use of excessive force in the execution of their duties. The researcher specifically focused on the operational context in which police officials work to have an improved understanding of their lived work settings.

## **1.11 RESEARCH METHODOLOGY**

The methodological and philosophy case for selecting the research method, architecture and technology including methods of data processing as well as methods to collect data is explained by Denicolo and Becker (2012:127). The following research methodology principles were followed in this study:

### **1.11.1 Research approach and design**

The current study adopted a qualitative research approach. Qualitative research has primarily as its goal the nature of human behaviour and actions (Schrurink 1998:240). The researcher employed a qualitative approach in an endeavour to gain a deeper understanding of the meaning people have constructed around police brutality, i.e. how people make sense of their world and the experience they have in the world as postulated by Merriam (2009:13). This was done in line with Denzin and Lincoln (2000:3) who assert that qualitative researchers study phenomena in their natural settings, attempting to make sense of or interpret phenomena in terms of the meanings people attach to them. A qualitative approach is one where the investigator frequently makes claims of knowledge based primarily on constructivist perspectives (for instance, the significance of individual experiences, meanings that are socially and historically built to build a theory or pattern) or advocacy / participative perspectives (for instance political, issues-based, collaborative or changes oriented). The qualitative model is primarily directed at the interpretation of social life and the nature of daily life (McRoy 1995:200). McRoy maintains that in its broadest sense, the qualitative research paradigm refers to research that generates accounts of meaning, experience or perceptions for participants. The qualitative investigator is, according to Babbie and Mouton (2001:53), worried with exploring and analysing instead of clarifying or anticipating the social behaviour; with field observation instead of regulated quantification; and with an inward-looking contextual discovery of the actuality, in comparison with the external point of view widespread in the quantitative paradigm. Therefore, the eventuality of the interviews conducted in the study is that the meaning derived is consolidated and synthesised to come out with a proposed empirical framework that will inform how the police can work within the confines of the law while discharging their duties.

### **1.11.2 Phenomenological research design**

The research designs are research styles that provide a clear path for research processes in qualitative, quantitative and mixed method approaches (Creswell, 2014:12). In this respect, the scientist defines a phenomenological design as best suited for the research. In phenomenological research (as cited in Creswell, 2014:14), Giorgi (2009) and Moustakas (1994) describe the observations of individuals about the phenomenon, in the form of a philosophic and psychological concept, described by participants. The whole explanation is based on the observations of many people who all witnessed the occurrence. The scientist chose this approach because it has clear conceptual bases and usually requires in-depth unstructured interviews. Therefore, Gray (2014:165) explains the need for researchers to interpret and understand their actions to gain access to common sense thinking. Phenomenology, in other words, attempts to explain the universe from the point of view of the individual. This can be done only if the investigator "brackets" his own ideas.

### **11.1.3 Bracketing or transcendental phenomenology**

Moustakas (1994:34) (as cited in Creswell, 2013:80) focuses on one of Husserl's concepts i.e. *epoche* (or bracketing), in which researchers set aside their experiences, as much as possible, to take a fresh perspective towards the phenomenon under examination. To adhere to Moustaka's theory, the researcher clearly described the exposure to and experience of incidents of the use of excessive force by police officials in *paragraph 1.3.1*. Hence, *transcendental* means, "in which everything is perceived freshly, as if for the first time." Besides bracketing, empirical transcendental phenomenology draws on procedures illustrated by Moustakas (1994) that consist of identifying a phenomenon to study, bracketing out one's experience and collecting data from several persons who have experienced the phenomenon.

Similarly, Usher and Jackson (in Mills & Birks, 2014:183) explain that Husserlian phenomenology is understood as *eidetic* description or determining the essential nature

and acts of consciousness. To achieve the required level of reflection necessitates the process of *eidetic reduction*, also known as bracketing or *epoche*. Here the researcher puts aside the taken-for granted world to focus instead on the perception of the world. Accordingly, the researcher has further set aside his previous experience of the phenomenon under examination and entirely focused on the perceptions of the participants as they experience their lived world.

The researcher joined the police in 1983, where he served in the Community Service Centre (CSC), Crime Prevention and Visible Policing. In 1984, the researcher was sent to the South African Police (SAP) Training Academy where he underwent basic police training. The researcher was involved in several police operations that were conducted in the greater BaPhalaborwa area. While conducting those operations, the researcher witnessed a large number of incidents where the police used excessive force than were necessary under the circumstances. Civilians were arrested and some tortured who subsequently died in police custody. In 1985, the researcher was transferred to the SAP Dog School in Atteridgeville, Pretoria where he underwent training in the mechanics and handling of military assault rifles including AK47 rifles, Light Machine Guns (LMGs), hand grenades and other different types of assault rifles as well as motor bombs.

Shortly after the Mamelodi Massacre in 1985, where 13 protesters were shot and killed by the police and many more injured, when people marched to the then Mamelodi Town Council to protest against high rents, the researcher decided to resign from the police. The researcher later re-joined the police in 1994 after the release of political prisoners and the unbanning of political parties. The researcher then served as an investigating officer tasked to investigate serious cases including cases reported against SAPS members. The majority of cases investigated against SAPS members included assault GBH and common assault. In 2004, the researcher was recruited by the SAPS Division Training and since then provided training to detectives at the SAPS Academy in Hammanskraal. The researcher was then appointed as the co-ordinator of specialised courses which include the following: Organised Crime Course, Motor Vehicle Theft Course/VIS, Commercial Crime Course, Firearm Investigators course, and Counter Terrorism Course. The researcher coordinated the arrangement of venues,



transport, stationery and special guests in all mentioned courses, and gave presentations in those courses.

The researcher also was tasked to go and give lessons in other institutions at Mafikeng NIA Academy where he was educating members the National Intelligence Agency. The researcher also went to Graaf-Reinet Academy where he trained facilitators in different subjects. The researcher was also responsible for the investigative courses, and they included the following: ROC (Resolving of Crime), Stock Theft Course, and Family violence Child protection and Sexual offences (FCS). The researcher also gave lectures in all these courses. Eventually, the researcher was later appointed as the Head of Assessments.

## 1.12 POPULATION AND SAMPLING PROCEDURES

Mouton (2002:134) defines the public as "a group or group of people who are interested in studying some characteristics." De Vos (2002:198) defines the population as persons with certain characteristics in the universe. The population is defined by Collins and Hussey (2003:59) as a group of people or collections of items that are considered. In this view, the target population in this study comprised police officials attached to the divisions in the Benoni Cluster, which comprises Visible Policing, Public Order Policing (POP) units, Detective Service and Crime Intelligence at the Daveyton Police Station who have been exposed to or have experience of the use of excessive force during the execution of their duties. In addition, departments and organisations that ensure independent oversight over the SAPS monitor and independently investigate human rights issues and conduct research in the management of the use of force by police also formed part of the target population. These organisations included the South African Human Rights Commission (SAHRC), The Centre for the Study of Violence and Reconciliation (CSVR), the Independent Police Investigative Directorate (IPID) and the Institute for Security Studies (ISS).

The ideal population for this research would have been all police officials in the SAPS who have experience of or have been exposed to the use of excessive force during the execution of their duties. However, this wide population rendered it impractical to include in the research; therefore, the researcher consulted a target population. The individual units of analysis that were chosen represents the total study population that generates the research problem and towards the final results will be generalised.

A purposeful sample was used for this research for the purpose of obtaining respondents (Lincoln & Guba, 1985:316). Furthermore, McMillan and Schumacher (2001:401) clarify the utility of small samples for the usefulness of information. The researcher looked for information-rich informants, groups or places to study on the research topic. Nevertheless, the researcher did not foresee a large sample that would participate in this study owing to the sensitivity and nature of police use of excessive force. As a result, the researcher purposively selected the participants who provided

in-depth information. Silverman (2000:104) says a specific case is chosen for purposeful sampling because it shows a feature or process of interest to a specific study. In qualitative research where typical cases are sought and chosen for study, this spectrogram is a typical case of qualitative research (Marlouw 2005:143). The researcher based the motivation for using purposive sampling on own judgement that the selected sample would have the specific characteristics and adhered to the selection criteria i.e. exposure to or experience in the use of excessive force.

Snowball sampling was used in obtaining respondents. The "snowballing" strategy includes asking someone interviewed to recommend another person who fits the requirements of the selection and agrees to be interviewed (Snell 1995:35). This technique is also called informant chain knowledge collection system (Waldorf & Murphy, 1990:113).

### **1.13 SAMPLE SIZE**

Data were collected until saturation. Hagan (2000:146) asserts that in qualitative studies, there is no simple answer to appropriate sample sizes. In addition, De Vos (2002:334) avers that enough data is often derived from one or two cases when such situations are not randomly selected. In terms of the number of participants, rather than selecting a large number of people or sites, the qualitative researcher identifies and recruits a smaller number that will provide in-depth information about the central phenomenon or concept being explored in the study. Therefore, in qualitative research, the idea is not to generalise from the sample (as in quantitative research) but to develop an in-depth understanding of the meaning that a few people attach to the phenomenon.

Many qualitative researchers do not like to limit research by providing sample sizes, but, as in the narrative study, numbers may range from one to two persons to 20 or 30 in a theoretical project based on basic knowledge (Creswell & Clark 2011:174). The sample size should be notified to primarily address the research objective, answer the research questions, and, subsequently, the research design (Onwuegbuzie & Collins

2007:288). As noted by Onwuegbuzie and Collins (2007:271), sampling designs comprise two major components: the sampling scheme and the sampling size. According to Onwuegbuzie and Collins (2007:271), the sampling scheme denotes the explicit strategies used to select units (for example: people, groups, settings and events) whereas the sample size indicates the number of units selected for the study. The interview with these participants continued until saturation was reached. For the current study, 30 individuals were interviewed and these were broken down as follows: 22 from SAPS, three from IPID, three from CSV, one from ISS and SARHC, respectively.

### **1.13 METHOD OF DATA COLLECTION**

The data collection was conducted through in-depth, phenomenological unstructured interviews. Phenomenological interviews are described by Marshall and Rossman (2011:148) as a particular type of in-depth interview, based on the philosophical tradition of phenomenology, which is to study the experiences and the ways in which we understand the lived experiences. Marshall and Rossman (2011) explain that the aim of the interview is to clarify the meaning of an idea or phenomenon discussed by many people. In view of the key benefit of phenomenological interviewing, Marshall and Rossman require a specific emphasis on the personal experience of the researcher in accordance with those of the partners. Marshall and Rossman maintain that it concentrates on the deep, lived meanings of events for people, assuming they guide actions and interactions. This method, according to Marshall and Rossman, is an exploration and explanation approach that emphasises meaning and comprehension in the study of individuals' experiences.

The quality of unstructured interviews is explained by Kumar (2011:145) as their near complete freedom in subject matter and in framework. According to Kumar (2011), someone has absolute flexibility with regard to the language you use and how one addresses questions. Moreover, Kumar indicates that one should ask questions and answer questions in conjunction with what is happening during the debate. In qualitative research, Kumar further describes that the responses are mostly used for

descriptive purposes and can be incorporated into the statements, the writing flow and the reasoning series.

The participants were requested, as explained by Hollway and Jefferson (2000:31), to present their own encounters. All data obtained during phenomenologically unstructured in-depth interviews with participants is held with detailed field notes. However, the researcher tried to document such a statement correctly when the participant made a statement that was seen as important by the researcher. The wording was mirrored in the respondent's comments to ensure that the researcher correctly reported this. The researcher transcribed the interviews responses electronically, in addition to the field notes.

#### **1.14 DATA ANALYSIS**

Gray (2014:602) considers qualitative analysis as a systematic and logical method by which data have meaning. According to Gray, by research one can see how they link up to new ideas and provide the basis for a fresh definition by presenting the data in the initial description, and by splitting it into smaller sections. Grey (2014:607) adds that descriptions can lay the foundation for interpretation, but one must go beyond description: one has to understand, interpret and clarify.

For the purpose of this study, a qualitative computer program Atlas.ti was used to analyse the data. Creswell (2013:203) explained that this programme, together with its coding, memos and findings, enables the researcher to organise text, graphic, audio and visual files to project. Creswell also explains Atlas.ti which allows the researcher to code, annotate and compare knowledge fragments.

## **1.15 TRUSTWORTHINESS AND AUTHENTICITY OF THE STUDY**

Guba and Lincoln (1985: 290) (as stated in Kumar, 2011: 184) proposed a system of four criteria as part of a build-up model of 'validity' and 'reliability' in quality testing. The validity of the study relates to the notion of conducting high quality studies (Tashakkori & Teddlie 2003:299). A "trustworthy, credible, credible and therefore defensible investigation" is valid (Johnson & Christensen 2007:207). Furthermore, Lincoln and Guba (1985:290) note that the fundamentals of trustworthy stuff are simple: How can an inquirer persuade his audience (including himself) that the findings of an inquiry should be taken into consideration? What claims, what requirements have been invoked, what questions have been asked which are compelling in this area? There are two sets of parameters for 'judging the goodness or efficiency of a survey by constructionism model' according to Guba and Lincoln (as cited in Kumar, 2011-184).

Seale and Silverman (199:266) clarify the legitimacy of the research report as validity and reliability, therefore, creating a study of high quality by reliability and validity in qualitative analysis, which is generally discussed as a matter of course; and they are 'confidence' and 'authenticity.' The authors conclude that four factors decide trust in a qualitative study: *credibility*, *transferability*, *dependability* and *confirmability*. These four factors reflect validity and reliability in qualitative research. The 'trustworthiness' criteria of credibility (paralleling internal validity), transferability (paralleling external validity), dependability (paralleling reliability), and confirmability (paralleling objectivity), according to Guba and Lincoln (as cited in Denzin & Lincoln (1994:114) closely relates to the concepts of validity and reliability.

### **1.15.1 Credibility**

A few researchers' primary objectives were to ensure the credibility of the results of the study. To do this, the investigator is effective in ensuring that its findings are reliable by ensuring that the participants represent authentic reflections (Trochim and Donnelly, as cited in Kumar, 2011:185). It is believed that the respondents are the best

judge to determine whether or not the research findings have been able to reflect their opinions and feelings accurately. As a result, findings were taken back to respondents for confirmation, validation and approval. The higher the quality, the more accurate the analysis would be. The researcher also used the following validation methods, as laid down by Creswell (2014:200), to ensure the reliability of the study: *Prolonged time in the field*: The researcher spent prolonged time in the field to develop a comprehensive understanding of the phenomenon under study with the objective of conveying detail about the respondents that lent credibility to the narrative account of events.

- *Member checking*: The researcher used member checking to regulate the accuracy of the findings by taking the findings and emerging themes back to respondents to provide them with the opportunity to validate the findings for accuracy.
- *Researcher bias*: The researcher had, from the onset, clarified the bias brought to the study by explaining and commenting on past experiences, biases, assumptions, prejudices, and orientations that have likely shaped the interpretation and approach to the study (Creswell, 2013:251).
- *Triangulation*: The researcher triangulated different sources of data by examining evidence from the sources and used it to build a coherent justification for emerging themes. The unifying of various sources and perspectives of respondents added value to the credibility of the study.

### **1.15.2 Transferability**

Transferability refers to the degree of generalisation or transfer to the same environment of the findings of qualitative study. Transferability can be accomplished by defining the mechanism that others follow to replicate the research thoroughly and extensively. The investigator used a lengthy and accurate synopsis to connect the findings of research, by providing verbal quotations for the respondents to reply to the interview questions. Detailed understanding connected audiences to the environment

and led to a collective encounter dimension. This detailed account helps readers to agree on the transferability of the findings. Furthermore, the researcher provided a full description of the study setting and parameters to provide the reader with an idea of what other settings the findings can be transferred.

### **1.15.3 Dependability**

During the course of the study, the researcher was also concerned about the issue of dependability. Dependability in quantity research is analogous to the principle of reliability in quantitative research and entails how one can achieve the same results if one performs the same thing twice (Trochim & Donnelly, as cited in Kumar (2011:185). To ascertain the level of dependability, the researcher kept an extensive and detailed record of the process for others to replicate. Furthermore, a process (for example, a questionnaire) that provides reliable results on repeated applications, according to Lanier and Briggs (2014:83), calculates reliabilities. To ensure this, the researcher made sure that the research questions were worded correctly so that they met validity and reliability criteria. Therefore, the questionnaires were designed in a manner that will ensure that the respondent will give the same response today as next week. This was to ensure precision and confidence in consistency of the study results. Respondents' replies were also recorded and transcribed to ensure detailed account of events. These transcripts were verified to ensure that they correctly mirror participants' responses.

### **1.15.4 Confirmability**

The extent to which the findings can be validated or verified by others is known as confirmability and is related to the reliability of quantitative analysis (Trochim & Donnelly (as cited in Kumar (2011:185). Only if all researchers pursue the procedure in the same way will consistency be done to compare the findings. According to Lanier and Briggs (2014:83), reliability may be considered to be a metric or study's "consistency" or "repeatability." In other words, researchers want to ensure that the



instrument is capable of producing the same correct responses with repeated applications to different study respondents or to the same respondent over time. To ensure confirmability in this study, the researcher retained meticulous record of the research process to ascertain whether the interpretation of the findings, the recommendations and conclusions made can be linked to their sources and that they are supported by the analysis. The researcher also protected the data electronically retrieved during the interviews. Records of the transcribed interviews were stored for review by other researchers to validate or corroborate the results of the study.

## **1.6 ETHICAL CONSIDERATIONS**

The researcher was guided throughout the research process by the *Policy on Research Ethics of the University of South Africa* (Unisa, 2007:7). The policy specifies that researchers should respect and protect the dignity, privacy and confidentiality of participants. Furthermore, the researcher also conformed to the following ethical principles:

### **1.16.1 Informed consent**

The researcher informed prospective participants from the outset what the study entails and allowed them the opportunity to withdraw. It is in keeping with Lanier and Briggs' (2014:52-53) assertion, who said that human subjects have, at an early stage, the right to fully disclose the research goals and to have questions about the intent and use of the research answered. Therefore, the researcher informed the research participants about aspects of the research that might affect their willingness to participate, such as physical risks, discomfort and/or unpleasant emotional experiences. Participation in this study was voluntary and did not entitle participants to any form of compensation, reimbursement, gifts or services.

### **1.16.2 Anonymity and confidentiality**

In this study, the researcher explained the topic and purpose of the research and assured all respondents that they would remain anonymous. They had the right as individuals not to be identified in the research. Anonymity means no one, including the researcher, can identify any specific research study participants. All data collected from respondents were handled in a confidential manner and was only used for the purpose of this study. Furthermore, to ensure the anonymity of the participants, the interview transcripts were allocated with pseudo names so that their respective responses cannot be traced back to the actual participants. The responses were also reported in an aggregated manner to achieve the same objective.

### **1.16.3 Right to privacy**

Participants' right to privacy were ensured with regard to what they reveal during the course of the study. The approach to participants can, according to Benton and Cormack (2000:136), significantly affect whether or not they actually participate. A quiet, polite, unhurried and assertive approach is often the most successful. Sufficient time was also set aside to ensure that the potential participant has adequate opportunity to ask questions. The researcher showed prospective participants that they would be more likely to engage in the study and also to comply with frustration standards (McHaffie, 2000:56).

## **1.7 SUMMARY**

This chapter presented the methodological framework within which the research was conducted. A comprehensive narrative of this study's focus and purpose positioned the identified research problem within an established arena of ideas. The methodological perimeters lay the foundation regarding how the study was conducted by clearly describing data collection instruments implemented, the selection of

participants and how the data analysis was conducted. This chapter concluded with strategies that were followed to ensure that the study was conducted within the confines of the ethical principles adapted.

**CHAPTER 2:**  
**REGULATORY FRAMEWORK GOVERNING THE USE OF FORCE BY**  
**THE SOUTH AFRICAN POLICE SERVICE**

**2.1 INTRODUCTION**

This chapter presents an overview of legislation and policy governing the use of force by members of the SAPS in South Africa. In this regard, related legislation, policies and directives provide the basis of this chapter. Applicable court judgements pertaining to the use of force by members of the SAPS further augment the regulatory overview. These court judgements provide insight into how the use of force by SAPS has been interpreted by the court. The focus of this regulatory overview has been limited to the use of force by members of the SAPS when effecting arrest. It is important to emphasise the provisions of each Act, policy and directive to classify the applicable legislation that governs the use of force by SAPS members when effecting arrest and to draw attention to directives as prescribed by legislation. The provisions on the use of police powers and the protection of the rights of citizens as set out in the Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996) follows for discussion.

**2.1.1 The Constitution of the Republic of South Africa, Act 108 of 1996**

SAPS Strategic Plan (2010:1) asserts that in its history, the SAPS has undergone difficult times, with massive changes. The SAPS Strategic Plan reiterates that SAPS is the main organisation that affects all aspects of our society through the Constitution of the Republic of South Africa, 1996. The duty bestowed on it, according to the SAPS strategy plan, is not easy to fulfil because our democracy is still young and still needs to resolve past issues, current experiences and challenges. The SAPS Strategic Plan also cites changes within SAPS as leading to undermining the way the organisation will work and making it impossible for SAPS members to perform their most important job which is to serve and protect all communities in the Republic of South

Africa. At the demise of segregation, the Constitution (South Africa, 1996:205) in line with Act 108 of 1996 came into effect on 4 February 1997. South Africa, as a "sovereign, democratic state founded on human dignity, ensuring equal justice for all in view of the law, and upholding human rights and equality, has the Constitution (South Africa, 1996:205). The supreme law the Constitution (South Africa, 1996:205), encapsulates the Bill of Rights that covers, among others, the right to freedom and the civil and political rights and the legal, economic and cultural rights. Equal trial in the courts of law is also guaranteed in the Constitution. The Bill of Rights is, in accordance with the Constitution, a binding act of the legislature, the administration of power the judiciary and all state bodies. The Constitution is, therefore, binding on both natural and legal persons and takes the essence of the rights or duties placed on them into account (South Africa 1996:205)

SAPS needs to serve in the regional, provincial and governmental organisations, as provided by Section 205 of the Constitution (South Africa, 1996:205). It is the task of national law to develop the duties and responsibilities of police forces in accordance with the Constitution and to allow the police to successfully carry out their obligations. Local laws also consider the conditions of provinces. Therefore, the Constitution stipulates that the aim of the police service is to deter, fight and investigate crime, preserve public order, protect citizens of the country as well as their properties and, inter alia, safeguard and apply the rules. According to the Constitution, the responsibility of a member of the Cabinet should remain, after deliberation with the provincial governments, the determination of national police policy and considering the needs of the laws of the police and what was calculated as absolutely vital by provincial executive law. According to the Constitution, national police policy may, after considering policing requirements and priorities in the laws of these provinces, lay down different policies for different provinces. Under the Constitution (South Africa 1996:205), each country has the right to track its police force's conduct, monitor its effectiveness and efficiency, and receive police reports. The Constitution also entitles the provinces to ensure the promotion and continued visibility of good relations between the police and the community. Coordination with the member of the police officer responsible for crime and police is also important.

In societies guided by the democratic law enforcement, the Green Paper on Policing (South Africa, 2013:18) guides the constitutional and the legal framework outlining the execution of officials' duties. The Green Paper (South Africa, 2013:18) notes that it can ensure an efficient service by recognising one's position and mission as a social officer. The police officers must have enough information to continue enforcing the legislation (South Africa, 2013(a): 18). The Green Paper (South Africa, 2013:18) says that police powers are provided within the Constitution to allow them to protect citizens' rights, and this is not stopping police from combating crime aggressively. The Green Paper notes that police operate under confines of the Constitution. According to the Green Paper (South Africa, 2013:18), when its mandate is legally to be met, the SAPS has legal authority to use power. The Green Paper on Policing force (South Africa, 2013:18) also stipulates that force application must not, however, be left to the unauthorised but to the police officers, but there must be clear policy guidelines and rules. The Green Paper on Policing (South Africa, 2013:18) declares that the use of force should be balanced with the rights of citizens protected in the Bill of Rights. According to the Green Paper (ibid), policies and guidelines on the use of force have to be grasped quickly by frontline officers when making split decisions of second interest. They must also be prepared to have the necessary force and to be proportionate to the level of resistance encountered (The Green Paper, South Africa 2013:18).

The Constitution provides for the establishment of a national police department to better coordinate law enforcement according to the Green Paper. Section 199(1) of the Constitution provides, according to the Green Paper, for all security services within a country to be uniform, which is to say that a single defence force, a single police service, as well as the constitutional intelligence services must be in place in the Republic. The Constitution requires a national police station to function in the national, provincial and local government spheres in accordance with the Green Paper. The SAPS is regulated and supervised by national laws; however, this is not the case for the metropolitan police systems developed since 1994 (South Africa, 2013:18). The Green Paper stipulates that the National Police Policy and the Minister of Police must be the guiding principle of the SAPS, and the Parliament must have oversight responsibility. The Green Paper also indicates that with the incorporation of IPID and

the Civilian Police Secretariat to track their operations, SAPS has been improved under the civil monitoring frameworks. The Green Paper (South Africa, 2013(a):19) also indicates that the SAPS must also work together with the CPF which has taken part in these structures at the local level. In accordance with the Green Paper, structures are essentially designed to achieve a particular goal of a society in which the members of the public are participants and have a say in the decisions on security and security matters. This is also true in places where law enforcement authorities are not accountable (Green Paper, South Africa, 2013:18).

The Green Paper on Policing (South Africa, 2013(a):19) also warns that the Metropolitan Police is at risk of democracy as there is no good measure of transparency within such systems. According to the Green Paper (South Africa, 2013(a) 19, where the police are not liable, circumstances may occur that allow the national government to interfere directly. The Green Paper (South Africa, 2013(a):19 also notes that the transparency of police is important for all democratic countries and that all police forces must be accountable based on our past, including the Metro Police. This applies to all democratic countries. Moreover, the Green Paper (South Africa, 2013(a):19 emphasises that the way police are directed and trained needs to be standardised, as they are often decentralised so as not to centralise the command structure, but to work at national and local level. The Green Paper (South Africa, 2013(a):19 further maintains that the potential for efficiency and transparency of the police would be optimal if there is a 'single police service.' Moreover, the Green Paper (South Africa, 2013(a):19) on police matters mainly concerns the effective functioning of police in the region. According to the Green Paper (South Africa, 2013(a):19, this is possible only once the police command and control is streamlined so that discipline and uniform standards lead to better police forces are ensured.

These are the main principles, according to the Green Paper (South Africa, 2013 (a) 19, which should guide the country's police in the medium to longer term. In terms of police service, the rates of liability will be increased. It further indicates that the policy paper further states that clear, uniform standards on discipline and training, for example, will strengthen this. In fact, the Green Paper (South Africa, 2013 (a) 19) notes that the unified solution will further enhance all institutions' responsibility for systems like Parliament. The prevailing issues about the lack of transparency of the

Metro Police should be resolved; the Green Paper (South Africa, 2013(a):19 supports this declaration.

The Green Paper on Policing (South Africa, 2013 (a): 19) asserts that it is crucial that a framework be established leading to an efficient, competent and accountable policing force in South Africa. The Green Paper also notes that clear and intimate oversight must be given at all levels of government to facilitate this; that it will allow for the necessary processes for their proper assessment and accountability. Furthermore, The Green Paper policies require the establishment of high standards of professionalism, impartiality and accountability for the actions that all South African officials wish to take. In this context, the possibility of applying the policy resolutions directed at a single police force in the country is necessary to be explored in compliance with the policy of the Green Paper. The policy of the Green Paper recognises that it is not an easy and rapid process to achieve a single police system.

### **2.1.2 The CPA, 51 of 1977, Act 51 of 1977**

According to Bruce (2011:4), regulation often is at the core of attempts to regulate the use of the lethal force by police, particularly laws specifically defined when lethal force may be used or cannot be applied. Bruce maintains that in South Africa the key laws of this nature are Section 49 of the Law on Criminal Procedure, which is concerned with the use of lethal force for detention. The Act of 1977 (Act No. 51 of 1977) provides, as well as the rules of force, for the situations in which the force may be used by an arrestor in the attempt to arrest a suspect. Section 49 and its predecessors are included in books of legislation from South Africa for over 165 years (Botha and Visser 2012:349). It has been amended four times and has been one of the most amended paragraphs in South Africa, with a fifth amendment in progress at present. Both Visser and Botha argue that it has always been criticised because of its nature and extent before the Constitution came into existence.



### 2.1.3 The 'old' section 49 of the Criminal Procedure Act, 51 of 1977

Botha and Visser (2012:349) cites the two main decisions concerning changing the former Section 49 as *Govender v Security Minister and Ex parte Security Minister: in re v. Walters*. Section 49 of Law 51 of the Criminal Procedural Procedure Act, 1977 31, as such cases were resolved read as follows:

- (1) If any individual authorised to arrest or assist another under this Law, attempts to arrest that individual or that person; (1)
  - (a) resists the tentative and is unable to be arrested without force;
  - (b) the person who has been so allowed may use the force that is reasonably appropriate to overcome the resistance or prevent the person concerned from fleeing in the event that it is obvious that the attempt to arrest him is being made, or that he resists such an attempt and fleeing;
- (2) The killing shall be considered to have been justifiable for the purpose of arresting the person concerned for an offense under Schedule 1 or for being arrested on the basis of reasonable suspected suspicion of committing such an offense, and for the person entitled to be arrested or to aid him in his arrest not to arrest him or her or prevent him from fleeing other than to kill him.

Botha and Visser (2012:350) aver that it is clear from the foregoing, that Section 49(1) provided the framework for the application of force only whereas Section 49(2) establishes the framework for justifying the use of fatal force. Section 49(1) has been developed by *Govender v Minister of Security and of Security and Security*; in *re S v Walters* it has led to the declaration of unconstitutionality in Section 49(2). In this regard, the Minister of Security and Security has contributed. Bruce (2003:5) says the government did not enter into force by failing to declare when the reform was to come into effect while the Parliament passed the amendment of Section 49 in 1998 – the new Section 49. Bruce points out that, while the 'old' Section 49 of the 1977 Criminal Procedure Law was generally regarded as unconstitutional; the judgments by the

supreme courts in South Africa remained unchanged on record books until June 2001 and May 2002.

Bruce (2003:4) highlights that Section 49(1) regulates all situations, except in cases in which a person is killed when force is employed for the purposes of arrest. These included circumstances according to Bruce where a person has been hurt or disabled by using a weapon or other deadly force. Bruce also maintains that, as section 49(2) specifically refers to cases in which people have been killed, these situations were, by consequence, excluded from the scope of Section 49(1). Section 49(2) of the Law on Criminal Procedure, 51 of 1977 stipulates that when an individual was trying to arrest a person for an offence listed in Schedule 1 and the person authorised to arrest or assist him in the arrest of him cannot arrest him or prevent him from fleeing in other ways, and he or she has reasonable grounds for suspicion of having committed such an offense.

In this regard, the following is stated in Bruce (2003:5): Schedule 1 provides a list of offenses, including serious violent offenses, break-up and intention to commit an offense, robbery, stolen property known to be stolen, fraud, fake crimes, coinage offenses, and all offenses which could be imprisoned for more than six months without being punished.

#### **2.1.4 The new section 49 of the Criminal Procedure Act, 51 of 1977 – the 1998 amendment**

Section 49 of the Second Amendment Act 122 of 1998 has now been amended in Section 7 of the Judicial Matters. The following is written:

- a) If the arrester attempts to arrest the suspect and the suspect objects to the attempt or the attempt to escape, or if the suspect refuses the attempt and the attempt is made, and the suspect cannot be arrested without force, he or she may use, for the purpose of arrest, the force that is fairly necessary and proportionate, in the

circumstances to be surmounted to carry out the arrest. If, according to this section, the arrester is justified by use of a deadly force intended or likely to cause a suspect's death or serious physical damage, only if he or she is of reasonable opinion-

- b) For the safety of the arrester, any legal aid person or other person from imminent or future death or serious bodily harm, force immediately is necessary; (a) the force;
- c) There is a substantial risk that, if arrest is delayed, a suspect may cause imminent death and or potential severe physical harm;
- d) The offense in respect of which the arrest is sought is in progress, involves the application of life threatening violence or a high chance of serious harm to the body.

In 1977, under the Judicial Matters Second Amendment Act 1998 (Act No 122 of 1998) (the 1998 Act, the present language of section 49 (the latest text) was adopted, as the provisions of "old" section 49 were at the time expected not to be passed on a constitutional basis. However, only in 2003, which was five years after the passage of the 1998 Statute, the current text came into effect. In the meantime, in the case of *Ex parte: Minister of Security and Security and Others: In the state v. Walters and Anther (Walter)*, "the old" Article 49(2) has been declared unconstitutional and invalid by the Constitutional Court in 2002. SCA 105(CC), par [77] The Court held further that, in the case of the *Govender v Ministry of Safety and Security 2001 (4) SA 273 (SCA)*, (former) Section 49(1) was to be interpreted by the Supreme Court of Appeal (SCA). The Court tabled the main points in order to "learn fully" what the law refers to this topic:

- a) The aim of the arrest is to bring people suspected of committed crimes before the court.
- b) Detention is not, nor is it always the safest way to do that.
- c) The arrest of a suspect may never be used.
- d) If an arrest is requested, force may only be used for the purpose of the arrest, if it is necessary.
- e) Only the minimum degree of force reasonably needed to perform the arrest can be used where force is necessary.

- f) All circumstances, including the threat of violence which the suspect poses to the arrester or other parties, and the nature and circumstance of the offense which the suspect is suspected of having committed, must be considered in deciding what degree of force is both reasonable and necessary; the force is proportionate in all these cases.
- g) Only in very limited circumstances it is permissible to shoot a suspect for the sole purpose of arrest.
- h) Such shootings are generally forbidden even if the suspect presents a threat or is accused of having committed a crime involving severe bodily harm or violence and if no appropriate alternative means of carrying out that arrest, either at that time or later, remains.
- i) The suspect is not considered to have committed any crimes.
- j) These limitations do not induce a deprivation of a person arresting the suspect in self-defence or in defence of any other person, attempting to carry out an arrest.

According to Bruce (2003: 6), in its substantive context, the amendment does not seem to be straightforward but seems to be able to extend it to a lethal force, first of all to protect citizens from immediate life threats and severe physical damage (that is, private defence), and secondly, in cases where the perpetrator fleeing is seriously endangered. Bruce avers that while it was enacted in November 1998 by the Parliament, this reform was not enforced in part because of disagreements about the implications of the new legislation. It seems that the Minister of Health and Security and the SAPS have opposed the amendment. Bruce supports this statement.

Bruce (2011:4) points out that the key reason to reject the Minister and National Commissioner's amendment was to jeopardise police officers' protection in the news media. Bruce points out that the amendment was not implemented in one report, following a request by the police for clarity regarding clearly confusing provisions. Lawyer Tertius Geldenhuys, police officer Tshwete, Maduna and her former predecessors, have all pointed out that this condition has been resolved because of these uncertainties. Bruce says the amendment was sufficient to delay these issues for over four years.

Bruce (2011:4) points out that, because of its difficulty in reading it in its current form, there was sound ground for amending Section 49. In addition to calling for the lethal force by the police (and the members of the public), Bruce (2011:4) also allows for the flight of a person with a potential risk of such an injury to protect himself or others who face immediate death or serious bodily damage. While this theory can be moral in its context, in reality, it is understood by them. Bruce also argues that if you acknowledge the need for a more explicitly specified Section 49 and for more precise principles to be laid down, other choices are missing. Bruce (2011:4) said that the only alternative is to withdraw completely from South African legislation the legal clause on the lethal force for arrest. Bruce notes that this would mean lethal force should only be allowed in cases where protection as is allowed in any situation in terms of the principles of common law, is required immediately.

Canada is not, according to Bruce (2011:5), an extremely violent society as is South Africa but only authorises the use of lethal force against a fleeing suspect, in the light of only one case. Bruce argues that even though the concept of potential hazard in Canadian law is close to that of current South African law, this shows that police powers in circumstances outside their protection or "imminent danger" are deemed necessary even in Canada. In fact, Bruce notes that there is some uncertainty in the International Human Rights Act. Therefore, Bruce (2011:5) suggests that while statements on the UN code of behaviour on law enforcement officers suggest a lethal force is being limited to defensive circumstances, law enforcement officials support the UN Basic Principles on the Use of Force and Arms for the Use of Arms. According to Bruce (2011:5), the other big solution appears to be the theory found in the Bill before Parliament. According to Bruce (2011:5), aside from the possibility of limiting the use of lethal force to defence situations, if the suspect is accused of causing or risking severe bodily injury, the arrester is permitted to use lethal force when there is no other appropriate way to perform the arrest or afterwards.

According to Bruce (2010:8), the Constitution makes provision for a restriction of this right that could allow the police (or, in some situations, a private person) to run or

drive faster than the suspect and capture him, or to fire the suspect on him if the police believe that the suspect cannot be apprehended. Bruce says that the use of force is involved, and the person can be killed. Bruce (2010:8) asks whether in a democratic society, in any situation and in what situations it would be justifiable for a fleeing suspect to be shot at. Secondly, he asked whether there would be an impact on the response to these questions on the rates of violent crime. Bruce highlights that four approaches were typical worldwide to the legal restrictions on the use of lethal force:

- In general, most jurisdictions accept the self-defence principle where an individual can use lethal force only in self-defence circumstances, and where an imminent or impending danger exists.
- If this is the only theory, a fleeing suspect cannot be subjected to lethal force because it no longer poses an imminent danger.
- The future threat principle, which is set out in the present paragraph 49, allows the use of lethal force for the self-defence of an individual or where there is fair certainty or fear of the potential danger of death or serious harm by an individual.
- The third approach includes the idea that lethal force is used to protect oneself or with a reasonable belief or assumption that someone in the past committed a serious violent crime (related to death or severe physical damage).
- The third approach is in the cases of the Govender (Supreme Court of Appeal) and in the Constitutional Court of Walters; this principle is upheld.
- The escaping felon law expressed in ancient Article 49 permits the use of lethal force in believing or suspecting that the person committed some crime for which the person may receive a six-month prison sentence or greater.

The new text of Section 49, in the Walters case, provided little value to the legislative body in terms of the use of force to render an arrest, considering the authoritative guidelines of the Constitutional Court (Rule on Criminal Procedure, Rule little. 122 of 1998). It is also accepted that the SAPS raised critical concerns about the interpretation and compliance of the new law, in particular in connection with the appropriate training of police officers (CPA, 122 of 1998). (To date, the constitutionality of the

existing text has not been addressed (the concerns led to the five-year delay of the launch of new Section 49). Nevertheless, criticism has been made, among other things, against the new document, by legal scholars, that the arrest of the existing common law principles of self-defence, including the defence of others, is difficult to understand and equated with force (Criminal Proceedings Rule, Act 122 of 1998). Some scholars say that if a "most acceptable" legal situation in Walters' case existed, it would have been easier to avoid the new text (CPA, 122 of 1998). It would have been easier to implement the existing regulations. One source notes that the suspect was given "the right to flee" (Snyman, 2008:136) in the latest file. The view was that in order to ensure greater legal certainty in the circumstances under which force, especially deadly force may be used to effect an arrest should be more closely aligned with the criteria set out by the Constitutional Court in the case of Walters (CPA, 122 of 1998).

Sibanda and Kibene (2012:1) highlight that the two parts have parallels. In South Africa, the current Section 49(2) does, despite a range of obvious differences, constitute a ground-breaking change to encourage justifiable homicide. In what appears as a single Section 49(2), the new Section 49(2) retains two separate laws with respect to the use of force: the unification of subsections (1 ) and (2) of old Article 49: Firstly, it requires fairly appropriate and reasonable force for a legitimate use of force to deter resistance or the perpetrator from fleeing. A modern concept in the current Section 49 of the CPA is the measure of proportionality. The proportionality in the old Section 49 of the CPA was not specified, but that it was still there, the check was fair (Prince V Minister van Wet en Orde supra). Furthermore, the clause of Section 49(2) allows the arrester to "reasonably believe" in the fact that the circumstances authorise the arrester to be engaged in private protection or in crime prevention, for the application of mortal force intended to cause death or serious body damage. The legislature promulgated a redefined Section 49 in 2003, following the constitutional invalidation of Article 49(2).

Sibanda and Kibene (2012:1) indicate that some controversy has arisen over the amendments to Section 49. Sibanda and Kibene claim that some scholars saw this decision as a legal guaranteed right to escape, while others said that in 2003, Section 49 redefined arresters forced split-second decisions in threatening conditions, leading

one to question that Section 49 only allowed the use of force when detained in private defence situations. Botha and Visser (2012:347) indicate that Section 49 of Law 51 of 1977 provides for police officers to use force in arresting and includes provisions relating to degree of force and circumstances in which such force can operate, in particular the law of Section 49 of the CPA 51 of 1977. Botha and Visser also caution that if a police officer's aggressive conduct goes beyond the reach of such laws, the police officer may be liable to criminal responsibility. The SAPS has been subject to extreme legal and media investigation for convictions in recent years.

### **2.1.5 The Criminal Procedure Act, Amendment Bill of 2010**

In 2003, the enforcement functions of executive force were investigated and consequently restricted by a ruling of the Constitutional Court in the *ex-Party Ministers for Defence, in re S.C. Walters* (Botha & Visser, 2012: 347) were unconstitutional and subsection 49(2) of the CPA 51 of 1977 was found to be void. The legislature promulgated a redefined Section 49 in 2003 after the legislative invalidation of Section 49(2). Both Visser and Botha also assert that any ambiguity has been settled in the changes to Section 49. Some scholars considered this ruling as a constitutional buffer for a reasonable person's freedom to escape, while others argued that the 2003 redefinition of Article 49 enabled arresters to render divorce second judgments in overwhelming circumstances.

Botha and Visser (2012: 347) maintain that at the time of the 2003 redefinition of Article 49, this worry was expressed by the Minister of Defence and Protection. Botha and Visser (*ibid*) aver that the senior government officials made public comments in 2009, who were evidently supporting the concept of utilising military violence in fighting terrorism, following publications with overwhelming figures regarding the number with police agents killed on duty. Botha and Visser claimed that this was accompanied by the usage of deadly force in notable instances of misuse of authority. In reality, there was proof that at least 1 092 people died from the usage of police force between 2008/2009 and 2009/2010. Both Visser and Botha also point out that it was unusual, as no regulatory or administrative reforms were introduced in regard to police



usage of violence during this era. Bruce concludes that the mishandling of force by police can contribute to societal unrest, and consequently decreased confidence in the performance of police officers' duties, despite the basic purpose of policing to protect human life. Both Visser and Botha note that misuse of force accounts can, therefore, conveniently justify the series of the police officers assassinated over the last few years.

The National Assembly's amending Article 49 has been proposed in the form of a Criminal Procedure Amendment Act of 2010, which is accepted by the National Assembly, in the light of recent contentious problems about use of force and police shootings, as well as serious questions about the difficulties of correctly reading Section 49 of 2003, redefined. Botha and Visser indicate that was the intention of the 2010 Criminal Practice Reform Bill. The Bill amends Section 49(1), according to Botha and Visser, by specifying the word "deadly power." The other points raised by Botha and Visser is that this was connected with a withdrawal from paragraph (2), which is aimed at improving the intelligibility of subparagraph (2), of 'that is expected or likely to trigger a suspect death and significant corporeal harm.' Botha and Visser further propose that this Bill amends Section 49(2); by aligning strictly with the proviso, which stipulates the requirements for the use of physical power to apprehend a defendant, with the conditions given for in Walters by the Constitutional Court, but with the added condition that the danger of aggression presented by a defendant to the arrester or others must be fair.

### **2.1.6 The South African Police Service Act, 68 of 1995**

Throughout this respect, this provision stipulates that when an individual serving an official duty is allowed by statute to use force, the minimum force that is only appropriate in the circumstances must be used "(South African Police Services Act 68 of 1995). The member may exercise these powers and perform the duties and functions that are given to a police officer by law or delegated to them, according to the Constitution and with due respect for the basic rights of any citizen. In the clause, the participants are often expected to inform their commanding officer as early as possible

whether a participant learns that substantive crime has occurred. Where a member is required to undertake an official duty, the member shall conduct the obligation in a manner appropriate under the circumstances with due respect to his or her jurisdiction, duties and functions. The SAPS Act, 1995 (Law no. 68 of 1995), revised in 2008 (law no. 57 of 2008) notes that the requirement to have a regional policing service is as follows:

- to ensure the protection and security of the national territory of all persons and property;
- protect and safeguard, as provided for in Chapter 2 of the Constitution, the constitutional rights of every person;
- promote cooperation in the battle against crime between the programme and the people it serves; and
- Demonstrate empathy and appreciation of victims of crime and maintain successful civil service oversight.

### **2.1.7 The Prevention of Combating and Torture of Persons Act, 13 of 2013**

The Combating and Torture of Personal Protection Act, 13 of 2013 (South Africa 2012:1) reveals that a Southern African Development Countries (SADC) comprise 15 countries, located in southern Africa, as the name suggests. Torture, barbaric, inhumane, abusive care or discipline was banned in the Constitution of these nations. The African Charter on Human and Peoples' Rights which forbids torture was also ratified in compliance with the Prevention of Combating and Torture of Persons Act, 13 of 2013. The latter Act states that most of these countries, too, ratified and all have acceded to the UN Convention Against Torture, including the Convention on the Rights of the Child, which expressly prohibits the use of torture and ratifies or adheres to other international treaties, such as the International Convention against Civil and Policy Rights.

This article aims to discuss the case law of various SADC courts on the steps taken to protect the right to freedom from slavery to prevent the battle against and abuse of persons Act, 13 of 2013. The Act on Protection of Combating and Abuse of Persons,

13 of 2013 ends with the focus on the prohibitions and the freedom to torture in the constitutions of various SADC countries. The distinction between abuse versus barbaric, inhumane versus abusive care and retribution, and the freedom to abuse are conditions that are deemed by courts to establish a suitable torture setting. The question of expulsion or deportation to a country in which a person may be subjected to torture, evidence of torture allegations, actions taken or recommended by courts to be carried out against torture officials, certain forms of punishment declared to be torture, and the acceptability of torture evidence, etc.

In July 2013, the Prevention and Combating Abuse of Persons Act came into force despite fighting the criminalisation of torture for more than ten years. It criminalises torture, as required by South Africa's UN Convention Against Torture. The Bill also makes it possible to prosecute people who have been known to be abused and therefore, represents an important development in the battle against injustice, notably in police departments. The Act describes abuse as both physical and psychological punishment carried out by State authorities or others operating officially. Importantly, the term includes all State officials' acts and omissions. In other words, state officials should not only refrain from performing torture abuse but should also prohibit it from happening (South Africa, 2012:1). For several years, the Civil Society Prison Reform Initiative (CSPRI) and numerous certain non-governmental organisations (NGOs), with others to, have been campaigning for reforms, and in the verbal or written and oral presentation to the Committee on Justice and Constitutional Development (South Africa 2012:1), participated actively in the legislative proposals ratified in the national assembly.

Section 12(1) (d) of the Constitution of the Republic of South Africa 1996 provides for the right of all, including the right not to be abused in any manner, to independence and protection of the individual. The avoidance and combating of violence against persons Bill shows that the Republic of South Africa has a shameful history of breaching basic human rights, including torturing people, abusing and humiliating many of its citizens in a brutal, inhuman and degrading manner. However, South Africa has become an important and recognised member of the community of nations since 1994 and it is dedicated, among other things, by taking people who commit acts of torture to justice, as needed by international law, to avoid and fight the torture of

human beings. As a consequence, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is dedicated to compliance with South Africa 's obligations in this region. EACC States Parties shall take appropriate legislative, administrative, procedural and other actions to prevent acts of torture in any area of its competence (Bill, 2012:1) in any State Party to the United Nations Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment.

### **2.1.8 The South African Police Service Special Service Order**

Bruce (2003:5) reports that at the beginning of 1997, SAPS released a Special Service Order, with a specific restriction on the crime categories relating to which lethal force was allowed modified the relatively permissive provisions of Article 49. Bruce indicates that, in its introduction to the Special Service Order, it was anticipated that Section 49 would be amended in the Constitution, which requires all members to comply strictly with [in the Special Service Order] until the Parliament has been given the opportunity to pronounce itself on an amendment to Section 49. Bruce suggests that although the Special Service Order also included a number of nearly 18 crimes for which the use of lethal force should be permitted, the provision omitted all property crimes which had been listed under Section 1 of the CPA, and that it provided for the use of lethal force for ‘theft of a motor vehicle’ and ‘theft of animals (excluding poultry).’ Bruce points out that an internal police law is the Special Service Order. Bruce further notes that while the Constitution's laws were meant to be enforced, there was lack of legal power.

SAPS members who were acting in violation, however, within the limits of ancient Section 49 of the CPA, were in breach of the law as defined in the statute (Bruce 2003:5). Bruce indicates that SAPS members, if brought before court, could still base their defence, instead of the Special Service Order, on Section 49 of the CPA. Bruce argues that how seriously the Special Service Order has been made inside the SAPS is not evident. Bruce indicates that steps were initiated to notify SAPS leaders of the Special Service Order, but the 1998 report showed that certain SAPS officers fired

shots in conditions that were not approved by the Order despite a guideline provided by the SAPS National Commission. Bruce also indicates that, by the end of 1999, some legal offices in the SAPS had failed to obtain copies of the Special Service Order, indicating that it had been lost. In fact, Bruce suggests that it was also uncertain whether the ICD applied to the Special Service Order or the CPA when reviewing deadly shootings by police and whether representatives of SAPS were actively prosecuted over breaches of the Special Service Order. The Special Service Order itself, according to Bruce, may not have had any impact on those allowed to use deadly force under Section 49, including private security guards and other civil and non-SAPS 'special officers.'

### **2.1.9 Code of Conduct: South African Police Service**

Throughout the preservation of our democratic culture, the police play a significant role (Barry, 1999:1). That position requires police officers to uphold strict professional levels of conduct. The police must protect citizens' rights, but they are still charged with limiting suspects' rights to the advancement of the good of society. Barry notes that, where circumstances warrant, the police regularly apprehend, seize, convict people and legally employ physical force (including death power). In addition, Barry (1999:1) indicates that an officer's testimony is heavily influenced by a judge's deliberations when a court judges whether the defendant is guilty or innocent. According to Barry, preserving public confidence requires an ethical approach to police misconduct. Police officers must take an oath of service before entering the profession and adhere to an ethics code. The police are committed to maintaining high ethical standards and protecting society as an employment condition.

Policing misconduct undermines this mutual relationship (SAPS Strategic Plan 2015:1). Each employee of this organisation, regardless of whether he or she is in service or not, will conduct according to the SAPS Code of Ethics. In keeping with the Strategic Plan, the Code of Conduct provides a norm of police conduct that will not authorise the participants to be lenient in the provision of poor services or corrupt activities and, therefore, must be followed by all members on their daily tasks.

The Code of Ethics is as follows:

- **Integrity** – The SAPS workers find that the reality is of the utmost importance and that, as workers of the SAPS, the mission, beliefs, ethical ethics and ethical norms of the SAPS will always be followed. We will act in a way that matches these values. In all situations, we will be honest and accountable. In the community we serve, we will always say the truth, perform our tasks with noble motives and set an example.
- **Respect for diversity** – The SAPS employees recognise the diversity of our country's people and treat each individual equally. They always have to respect the cultural and other diversities in the community when fulfilling their duties. Citizens of South Africa should be regarded with fair dignity and honour. We will not discriminate against anyone unfairly.
- **Obedience to the law** – SAPS workers should always support and respect the law. Their roles are mainly to uphold the law and will, therefore, reside within the rules and Constitution of our nation in compliance with rule. Throughout all times, they will stop any action that will render them law violators. The people of South Africa should be safe from unlawful acts.
- **Service excellence** – SAPS workers strive towards consistency in service. At any time, they should carry out their tasks in the best way possible. They will be ethical in their actions. Their actions and presentation reflect their high level of commitment in service.
- **Public approval** – SAPS workers are also operating for and with public support. They will support the community's best interests, finding the large community's acceptance in all our practices.

There is a list of commitments made to SAPS leaders under the Strategic Plan (2015:1). All SAPS members undertake to create a safe and secure climate in South Africa for all by:

- Participating in all attempts to address the root causes of crime;
- Prohibiting all actions, which could jeopardise the health or protection of a community; and

- Investigate criminal activity which jeopardises community health or protection, and bring the perpetrators to justice.

The Strategic Plan (2015:1) indicates that in carrying out this commitment, members shall at all times:

- Support and defend the Constitution and the rule of law;
- Taking the wishes of the society into account;
- Recognise as my employer the needs of the South African Police Department; and
- Collaborate at all rates with all partners of society and the administration.

The Strategic Plan (2015:1) indicates that to achieve a safe and secure environment for all the people of South Africa, members of the SAPS undertake to:

- The Act with dignity to provide a high quality efficient service,
- That is accessible to all and constantly strives to enhance this service;
- To allow effective, productive and cost efficient usage of all resources available;
- To improve my own expertise and to support my peers grow and provide fair access for everyone;
- Utilises everyone's available resources;
- Contribute to the restoration and growth of our nation and unity in it;
- Uphold and secure the human rights of each person;
- Behave impartially, courteously, frankly, politely, transparently and responsibly;
- Exercise responsibly and control the powers that have been given to me; and
- Try to deter and put the victims to the courts in some sort of abuse.

The actions or actions of the SAPS police which are prohibited in compliance with standing orders and the rules of the police involve neglecting duties and not following

the SAPS Code of Conduct (South Africa Yearbook, 2010:380). Chapter 10 of the SAPS Act of 1995 regulates it. The following details will be discussed.

### **2.1.10 The South African Police Service Standing Order (Standing Order 251)**

According to the South African Yearbook (2010:380), SAPS Standing Order 251 provides that:

- A shooter will notify instantly his immediate supervisor of the shooting incident.
- The supervisor would alert a member of the rank of officers instantly if that person was not present during the event, in order to inspect the scene for the intent of inquiring into the conditions of the shooting.
- The submission of a complete detailed Shooting Incident Report (SIR) with information in 32 headings specified.
- If a ranking officer is not available, the commander may carry out the investigation. The officer still has to visit the scene and verify the report in certain serious circumstances.

Standing Order 251 suggests, in its interpretation, that SIR would show whether or not acts by police officers have been lawful (CSVR, 2000:2; Standing Order 251). CSVR indicates that from 1996-1998 SAPS data on Western Cape, Eastern Cape and the Free State SIRs show that 14% were assessed as not legal in the SIRs of 4,754 shootings. — The percentage of deadly shootings deemed not to be legal, increases sharply to 41% (127 of 311 fatal shootings). Although 16% (28 out of 178) of the fatal fire on duty were considered illegal, 74% (99 out of 133) of the fatal firefighting on duty was considered illegal.

The CSVR (2000:2) notes that the original judgment of the investigating officer is the SIR assessment which has not been evaluated by the trial. When the official decides whether firing was unlawful, a court investigation must be launched. External



corrective proceedings may, according to the CSV, even be implemented and the Member must provide a warning of the envisaged suspension. The CSV further notes that the member's service arms may be confiscated under such situations and that the individual will not be allowed under compliance with the Firearms and Ammunition Act to have a firearm.

## **2.2 SELECTED SOUTH AFRICAN COURT JUDGEMENTS ON THE USE OF FORCE BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE**

The following court judgements provide insight into how the use of force by SAPS members has been interpreted by South African courts. These court rulings act as useful references in the explanation of how the use of force by such members is understood by the court. They also gave an indication for the amendment of Section 49 of the CPA 51 of 1977.

### **2.2.1 Matlou v Makhubedu 1978 (1) SA 946 (A)**

In this scenario, an investigator attempted to apprehend a perpetrator who had escaped. The presumption of the officer of the police emerged from the suspect's disappearance from a supposed missing property (SALR, 1978:947). The perpetrator was from behind but recovered afterwards. No alarm fire was detected (SALR, 1978:947); no alert fire. The case of Matlou v Makhubedu dealt with the rationality of the behaviour of the arrester. On the background of the following considerations, the legal precedent ordered the detention of the accused:

- The use of deadly force must be measured against the "scale of the alleged crime."
- Any other method of effecting arrest might, for example, have been utilised in the capture of the defendant by no other slight force.
- A verbal warning (oral) should be provided.

- A warning shot can, based on conditions, be fired into the soil or air.
- The arrester may target an offender in the legs, if the perpetrator does still not comply with the arrest (SALR 1978:947).

In fact, in this situation, the decision stressed that even if an arrest notice is issued when a defendant fails to apply an arrest notice could a gun (firearm) be allowed for usage. Under this scenario, the arrester would instead fire an alarm. In fact, it also established that a weapon cannot be fired without an alert shot. In either case, the Matlou case persuaded us that any situation needs to be evaluated for its own sake. In the present sense of South Africa, though, the researcher finds that such recommendations were not appropriate. First, the firing of a criminal fleeing is counter to the Constitution, which guarantees the right to life (Section 11). Furthermore, clauses in amended S49 do not allow for the use of deadly force when there is immediate threat of life from the life of the arrester or from the safety of another citizen.

In fact, the revised Section 49 now requires deadly force to be employed where, in extended detention or in the current and severe crime, the perpetrator may inflict (possibly assumed to) potential death or significant bodily damage. The principle of proportionality is also set out in Section 49 amended. That indicates the sum of energy to be deployed; a police officer chooses to use to be evaluated against the degree of aggression. There is also an unnecessary usage of force in such conditions while killing an escaping accused that they are in possession of alleged stolen goods. Under the new judicial climate in South Africa, the application of deadly force in the Matlou case could not be acceptable.

### **2.2.2 Government of the Republic of South Africa v Basdeo and Another 1996 (1) S.A. 355 (5)**

A roadblock was created in the Basdeo case (South African Law Reports, 1996:450) at the South African-Transkei boundary, which is one of formerly so-called autonomous homelands. The search for vehicles from Transkei (2009:98) was done by Moodley. Moodley claims the inhabitants of a Ford Sierra headed into the Transkei

in the reverse direction. Moodley also reveals that they have crossed the "roadblock forward" photo and taken a U-turn to drive across the border to have some fun at the detriment of the soldiers. Moodley reports that the soldiers heard the pneumatic shouting and the southern stoppers assumed that the vehicle and its passengers had reached South Africa from the Transkei. Furthermore, Moodley reveals that two soldiers refused to avoid the car as the driver went straight to cause them to fall off the lane. One soldier fired his gun at the left tail light. Moodley says the balloon reached the tarred wall, entered the car, ricocheted it and reached the rider on the left front side. A week later, he passed on. Trial court held that the soldier had been negligent and had caused the death of the deceased.

Moodley (2009:98) reports that the court held that the soldier ought reasonably to have foreseen the possibility of a passenger in the vehicle that might be injured if fired. The trial court held that he had been injured. Moodley also maintains that the vehicle driver was considered negligent by the driver. Moodley describes that Judge Hefer in this matter, in his judgment, claimed that "Section 49(2) invests officers in arrest with the authority, even with a pure (although reasonable) presumption, to take human lives. Such a marvellous ability must obviously be exercised with considerable caution and strictly within the defined limits. Section 49(2) cannot be regarded as a certificate of the killing evil (SALR, 1996: 469). Each suspect / accused, according to Moodley, is innocent unless proved capable. How would a criminal be murdered (willingly) before fair measures are taken to apprehend, prosecute and convict him adequately in a court of law? When a perpetrator does not present an imminent danger to the safety of others and flees, he does not expect deadly energy.

Moodley argues that the decision adopted the point that the soldier would have known that someone could be hurt by firing on the vehicle leaving, and so would have behaved in compliance with that perception (not knowing that there was a rider, for instance on the lefthand side of the vehicles he shot). The Constitution was then now two years old and Moodley suggests that the Basdeo decision was issued in 1996. In the test report (2001:49) (five years after Basdeo's verdict), a flying leader of the squad

questioned in the analysis was reported that "we should use a weapon to shoot the rucks when suspicious criminals do not avoid pursuing the police whilst driving a car."

Mistry et al. (2008:11) reveal very clearly that operational police officers, even with five years of pause, remain mostly ignorant of such issues and wrongly (or sometimes unlawfully) understanding or using their authority, i.e. some officers still feel that they can launch a flight while their lives are not endangered. This decision notes that when the police officers exert their powers under Section 49, they will show strict vigilance and closely consider the implications of their practice. It is evident here that the Constitution is applicable to all laws. Moodley also says these laws will be changed to conform to the Constitution if they are inconsistently (such as old s49). It is evident that the conduct of the appellant in Basdeo's case (South African Law Review, 1996/450) was found to be unconstitutional in accordance with the case law of Govender. However, in a case of the US Supreme Court, namely, *Tennessee v Garner* 471 US (1), 1985, a major influence was initially made on South African courts.

### **2.2.3 Govender v Minister of Security 2001 (4) SA 273 (SCA)**

Bruce (2003:6) asserts that the existing Section 49 was not enforced and that the legal situation in South Africa was retained as a consequence of the non-implementation of the current Section 49. In 2001 and 2002, Bruce made that claim with two major court judgements that improved drastically. Bruce notes that the SCA's first judgment of 1 June 2001 involved Justin Govender, a 17 year-old matric student at the point, having been shot, on 16 June 1995. Bruce (2003:6) notes that the night in point was spent on the police car in the Durban area by Inspector Cox and Sergeant Hillcoat, patrolling. Bruce (2003:6) claims they radiated the control room when they observed a BMW driving incredibly carelessly and were told the vehicle was robbed earlier that evening. Bruce also notes that there was a highspeed pursuit, in which the automobile driver and another male fled the car and began running away. After a warning and a brief search on foot, Bruce (2003:6) claimed Cox could not catch the suspect and had to shoot his legs, striking Govender in his back. Bruce (2003:6) reports that Govender has survived shooting but has become paraplegic owing to shooting injuries. Bruce

also states that, after an initial verdict in the Durban High Court, Govender's father put the case before the SCA, rejecting his application for damages on behalf of his family.

Bruce (2003:6) claims that the original ruling was overturned by the SCA, which ordered the Durban Court to appeal the lawsuit in order to measure losses. In finding in favour of the Govender, Bruce (1990:7) avers that the court determined that in two types of cases in which the lethal force may be legally employed, Section 49(1) of the Act must generally be interpreted as excluding the use of an arms firearms or similar weapons except where the person authorised to arrest or to assist in the arrest has reasonable grounds for the suspect being fled. (1) that the suspect poses immediate threat to the suspect of serious bodily harm or threats to members of the public; or (2) a crime involving serious bodily harm caused by the suspect. Bruce (2003:6) references the impact of the ruling on the use of deadly force to limit Section 49(1). Bruce (2003:7) asserts that the Court was concerned only with Section 49(1) because Govender has not been killed and that the SCA has not discussed issues related to Section 49(2) definition or constitutionality.

Botha and Visser (2012:352) assert that on behalf of the appellant it was argued that Section 49(1) violated the following rights contained in the Interim Constitution of the Republic of South Africa 200 of 1993: the right to life; the right to physical integrity; the right to protection of dignity; the right to be presumed innocent until convicted by a court of law; and the right to equality before the law and to equal protection from the law. According to Botha and Visser (*ibid*), the problem emerged as to whether such limits meet the requirements laid down in Article 34(1) of the Interim Constitution whether they were "fair" and "justifiable." In addressing this question, the court ruled that Section 49(1) was properly formulated Section 49 specifically seeks to protect the health and welfare of all persons.

#### **2.2.4 Tennessee v Garner 471 US (1) 1985**

In the case of *Tennessee v Garner* 471 US (1) 1985, the procedure of the South African courts in respect to certain proceedings are determined by the Court (the *Govender* and the *Walters* case). A Statute for Tennessee called for the capture of a criminal and involuntary flees, when a police agent told the defendant, "The officer can use all the means necessary to carry out the arrest." Although he had been told to leave, a police officer from Memphis shot and killed Garner's friend.

He was accused of burglaries and fled at night through a gate. The police officer was "reasonably confident" that the attacker was unarmed and 17 years old. The plaintiff demanded liability as the Civil Rights of his son have been abused. The District Court held that the acts of the police officer were lawful while Tennessee law is illegal as the Appeal Court found this authorised an intoxicated person to use a lethal weapon. The opinion was, therefore, made that this deadly action should only be used to deter escape if the police officer fairly suspects the perpetrator reported suicide or the police officer or someone with serious physical harm. In the decision, Judge White claimed that: "We are not reassured by the usage of lethal force as a sufficiently effective method for the prosecution of those persons as to warrant the assassination of unarmed criminals" (*Tennessee c. Garner* 1985). The Tennessee Law, because it provides for the usage of the lethal weapon against (non-violent) criminals escaping, was subsequently considered unlawful. It is the opinion of Barak (2000:24 4) and ultimately notes that a criminal should excuse the use of force:

- resists capture and attacks an employee of the police or someone else;
- performs "forcible offences" (such as armed robberies);
- or runs away from "forcible violent actions" and carries a knife, assaulting the police officer or others.

The US Supreme Court decision played a very important role in the legislation, therefore, defining the application of lethal force. Another essential condition for the usage of deadly force is discussed in the following report.

### **2.2.5 The Minister of Safety and Security v Walters and Another 2002 (2)105 (CC)**

Parallel to the situation by the Govender Court, the Ministers of Security: in re S v Walters, Section 49(2) of the CPA of 1977, had to determine the constitutionality of the Tribunal. The case emerged as a consequence of the explosion at the bakery of Accused 1 and 2 (father and son), which culminated in the death of the burglar. The alleged activity happened after the accident. The suspects were tried for homicide and were prosecuted by Section 49(2). The judge of the court considered this provision inconsistent with the 1996 Constitution of the Republic of South Africa, in particular over the alleged rights to life, personal independence and physical integrity. In terms of Section 36 of the Constitution, the Court ruled that this limitation on fundamental freedom cannot be explained. Section 49(2) has been drafted and forwarded to the Constitutional Court for ratification in compliance with Section 172(2)(a) of the Constitution.

Bruce (2003:7) mentions the case of the Walters represented in a baker's owner and wife, who had been shot and killed by an individual who had broken into his bakery and fled from the scene, directed by the Transkei High Court to the Constitutional Court. The Constitutional Court eventually hit Section 49(2) with a majority judgment on 21 May 2002 but dismissed its proposal to find Section 49(1) unconstitutional. Bruce maintains that the Constitutional Court, keeping Section 49(1) unchanged adopted a system established by the Govender judgment in relation to the use of lethal force for arrest. Consequently, the usage of fatal arrest force as a consequence of the strike-down of Section 49(2), as defined by Govender, was completely controlled by Section 49(1), including all cases of death or damage to an individual.

### **2.2.6 The final demise of the old Section 49 – implementation of the 1998 Amendment**

The SAPS released a circular to remind the leaders of the SAPS of the verdict of the Constitutional Court in the aftermath of the Walters case (2003:7). Nevertheless, although the rulings of Govender and Walters had a profound impact on the problem of utilising lethal arrest power, no government or the SAPS officially replied to rulings for a number of months. The topic was also debated in May 2003, when the Minister of Justice sharply criticised the police for rejecting the 1998 reform (Bruce, 2003:7). The 1998 Amendment was introduced on 18 July 2003 following further debate by the government on this issue (Bruce, 2003:7). The old Section 49 was completely redefined and included in the boundaries of the Constitution because of the decisions of Govender and Walters cases. Nevertheless, the old structure was made redundant by introducing the 1998 reform, despite the redefinition at least in its legislative nature. Therefore, the statutory authority regarding the usage of deadly force has reached a new age for South Africa. As long as the 1998 amendment clarifies, it may be stated at least that there was a clarification on the issue of the legal process on the usage of lethal force for detention.

### **2.2.7 The Makwanyane judgment – Killing and the Constitution**

Bruce (2003:8) argues that the decision of the Constitutional Court in the case *S v Makwanyane*, the case wherein the Court ruled the death sentence is illegal, is a valuable frame of reference in an interpretation of the importance of the Constitution for the issue of the usage of lethal force in detention. The court analysed the issues that the Constitution posed on the taking of human life by the State thoroughly in the verdict. The key explanations for breaching the South African Constitution are given in Table 2.1 in Judgment Chief Justice Chaskalson in *Makwanyane*. The table further shows whether the constitutionality of the use of lethal force for the purposes of arrest can be demonstrated in some of the reasons given.

The assumption that a human is murdered is not as clear where a lethal weapon is used as the death penalty. Bruce (2003:8) asserts that bullets frequently struggle to hit their target, and even though they do, people cannot die but may be injured or permanently damaged. Moreover, Bruce argues that the usage of lethal force is guilty of leading up with the death penalty and therefore of violating any such civil rights irrevocable.



Bruce (2003: 8) claims that the usage of deadly force is a violation of the most basic freedoms, to the degree that it leads to a violation of the right to live. This was demonstrated by the Constitutional Court in Walters' judgment by the following excerpts from the Makwanyane judgments O'Regan and Langa.

For example, this is what Justice O'Regan stated: "In one way, the right to life is a precursor of all other rights in the Constitution." It will be difficult to practice or to be a holder of rights without life, within the context of the creation. The right to live, though, was not enough to consecrate the right to nature in the Constitution. The Constitution cherishes not the right to existence as a mere biological matter, but the right to citizenship: a freedom to exist as human beings, to be part of a larger society and to participate in humanity's interactions. The definition of human existence is essential to the basic principles of our Constitution. More importantly, the Constitution aims at creating a culture that respects and appreciates the intrinsic interest of each member of the nation. For such an environment, the right to life is necessary. Because that is known, the right to live requires the right to freedom. There is a link between human integrity and life rights (Bruce, 2003: 8). In this situation, Bruce claims more than an individual's right to live; the right to be considered as a citizen of integrity: human life is significantly robbed of respect. No integrity will occur without existence (Bruce, 2003: 8).

Justice Langa has mentioned the following:

*The experience of recent decades has undermined the importance of existence and human integrity. An atmosphere of aggression generated by a society of reprisal and vengeance, financial, social and other causes. During this phase, the key casualties were reverence for life and for a person's intrinsic integrity.*

Justice Langa continued:

*The State's lead must be developed in order to cultivate a culture of reverence for human existence and integrity founded on the principles expressed in the Constitution. By carrying out that position, the State not only preaches law-abiding and murder must stop, but demonstrates the reverence which community gives itself, for failing to sacrifice that of the perpetrator in the most successful manner, for example, for human existence and integrity. Already to*

*destroy will be asked why it's incorrect. The explanation must definitely derive from the idea of the precious importance of human life, and this concept must always be recognized by the State as an example. Not only may lethal force contribute to life denial, but it is also a barbaric, inhuman, and degrading punishment and is thus a violation of Article 12(1) (e) of the Constitution. Much worse than that, there is a strong likelihood of mistake and violence in the case of death penalty, while the 'procedural protections' consist in a systematic review in the evidence about the application of deadly force? Poverty, ethnicity and chance also influence their use.*

Section 7(3) of the Constitution stipulates that the rules specified or alluded to in Section 36 or elsewhere in the Act are limited to certain freedoms in the Bill of Rights. Although some rights may be restricted, the checks stated in Section 36(1) must be carried out. But, since the emphasis is on the freedom to life and integrity of the Constitution, limitations on these rights must be subject to an especially stringent test. The Constitutional Court in the Walters' case emphasised that: "These freedoms are individually necessary and jointly fundamental in relation to the scheme of principles set out in the Constitution, namely to liberty, to human dignity and to bodily integrity. It follows, however, that any substantial limitations on either of these freedoms warrant a very convincing contravening public interest for its rationale" (Bruce 2003: 8).

**Table 2.1 Judgment of Chief Justice Chaskalson in S v Makwanyane**

<b>Reason given in S v Makwanyane</b>	<b>Applicability to question of constitutionality of Section 49 of the CPA</b>
Death is final and irrevocable	Applies equally
The risk of a mistake	The administrative safeguards that may prevent the abuse of deadly power, are much stronger and more likely to be mistaken in fact, and even after the case, they will come into force.

Reason given in <i>S v Makwanyane</i>	Applicability to question of constitutionality of <i>Section 49</i> of the CPA
The death penalty threatens life and civil freedoms and reflects unfair, unjust or adverse treatment or deterrence.	Cruelty and violation of dignity is of a slightly different nature but comparable in degree.
Hunger, colour and opportunity are evident.	Some differences in nature but identical in grade.
The issue of the constitutionality of the capital punishment is not a barrier to the capacity of self-defence.	The same occurs.
Death sentence is a denial of Bill of Rights freedoms. Death sentence	The usage of physical force often explicitly infringes on the freedoms found in the Charter of Freedom.
In the restrictions provision, which is not defined as 'necessary.' Alternatives in the form of lengthy jail terms that may still fulfil the purpose of punishment and mitigation are as effective. Given the supposed proof that the death penalty is successful in the pursuit of such objectives, there is no definitive evidence.	The constraints provision is theoretically warranted but in terms of deadly force regulation for the purposes of detention, and even where there are no rational options to be explained. There is a fair claim that lethal action is appropriate since there are no other ways in which the goal is accomplished under some situations. That was viewed by the courts as a goal.
Government as a blueprint for the establishment of a community of freedoms.	Will also submit fairly (but still have potential) civilians possess sectional rights (22) 49).

<b>Reason given in S v Makwanyane</b>	<b>Applicability to question of constitutionality of Section 49 of the CPA</b>
Consequently, death sentence for homicide conviction is not statutory.	The deadly enforcement power is lawful if the defendant is fairly suspected to have perpetrated a felony causing severe bodily injury.

Source: Bruce (2003:10)

Bruce (2003:10) proposed that the court in Makwanyane focusing the three factors of dissuasion, deterrence and retaliation on an examination of the cases in favour of the death penalty and analysed each of those reasons in accordance with the constitutional existence of the death penalty, made the following remarks:

- The main objective of the prosecution of criminals is the detention, indictment and penalty.
- Avoidance is a legitimate concern but for this reason, jail is sufficient.
- The business has the right of retaliation but that is often what is implied by incarceration.
- Normally, retributive is not a fundamental primary interest.
- The basic human rights and integrity that are the basic beliefs underlying the Constitution cannot really be associated with.

Because of the purposes of dissuasion, deterrence and punishment that could be done in the process of incarceration and respect for human beings and integrity, Bruce (2003:11) points out that the fundamental values of the South African Constitution are, therefore, the Court's conclusions that there cannot be any reason to violating the rights of the death penalty. In this context, Bruce further points out that the main values of the South African Constitution are regard for the life and dignity of people, because of the protection, avoidance and revenge aims which can be fluffed by incarceration. The court thus claimed that the violation of the rights of imprisonment could not be justified. It is clearly a violation of basic rights but there is no proof that the death

penalty is appropriate. Some more effective means to achieve its objectives can be used (Bruce, 2003:11). The purposes are to participate. When contemplating the usage of deadly force, Walters' decision highlights as fundamental principles of the South African Constitution the right to life and independence as well as the right to bodily integrity. As mentioned in the judgment, our Constitution requires reverence for every person's life, reputation and physical integrity. This value normally outweighs the handicap of helping an accused to hide from the law enforcement.

As introduced, the capital punishment was only enforced after a long deliberation, open to challenge by the Judges of the Supreme Court (Bruce, 2003:11). However, although the death penalty is not mandatory, lethal force can be employed in some cases, particularly while inexperienced people behave irrationally. As a rule, the death penalty and usage of lethal force for detention must vary significantly. Government made legislation in order to modify Section 49, redefined in 2003, of the Law 51 on CPA of 1977, in an explicit effort to explain the legal position on using force in arrests of offenders. Refuting its goal of expanding the condition under which police officers may use police force to detain criminals, the government defended the language of amending legislation by arguing that Section 49 redefined in 2003 includes ambiguities that adversely affect the police's ability to carry out its work efficiently.

## **2.3 SUMMARY**

The leaders of SAPS should be aware that broad comments made regularly by politicians "shoot to kill" are not helpful in cases of excessive, irrational or exceeding power. The court stressed in the Walters judgment that State agencies should set a precedent in favour of human rights when carrying out their duties. For example, force should be used in an arrest to respond to antisocial behaviour, in a calculated, logical, proportionate and fair manner. The use of force to carry out the arrest must always be done in accordance with the legal criteria. This section of the study showed that the 2010 Bill for amending the criminal procedure met the criteria of the South African Constitution and international guidelines on the use of force in arrest. Notwithstanding enforcement, a variety of questions still can be raised. The use of firearms by self-

defending officers, for example, against the imminent danger of death or serious harm. In fact, an enforcement officer can only allow deliberate lethal use of weapons if they are purely necessary to preserve life. As member of the International Association of Police Chiefs and the UN, South Africa was inadequate to enforce all foreign policy recommendations in effect. For example, all international regulations mandate law enforcement agencies to include instruction and retraining not only on the use of weapons but also on the use of alternative methods in arresting whether or not the weapons or alternatives were used by such a force, but these have not been enforced sufficiently. These are not guidelines. This gives a summary of the use of SAPS' excessive force in the next chapter.

**CHAPTER 3 :**  
**OVERVIEW OF THE USE OF EXCESSIVE FORCE BY THE SOUTH**  
**AFRICAN POLICE SERVICE**

**3.1 INTRODUCTION**

The use of force by members of the SAPS is extremely delicate, especially if we take account of the political background of the police in South Africa. This chapter provides an overview of the nature and extent of South African police's use of force before democracy and recent trends in the use of excessive force by members of the SAPS.

Pigou (2002:10) notes that ever since 1994, a concerted and systematic attempt to tackle police's misuse of power has been commonly concerning. Pigou (*ibid*) points out that solving crimes is a nationwide concern, for both the State and for public opinion, and public support for the mistreatment of criminals is prevalent. Mistry et al., (2008:11) added that the observation of fundamental rights in a world currently undergoing modernisation and change has become increasingly relevant since the beginning of the 1990s. Police departments have been under pressure to stop hiding behind a culture of secrecy or agency silence by raising their diligence and media attention so that it prevents or disregards the investigation on the use of violence (*ibid*).

According to Mistry, et al. (*ibid*) a violation of international law is the unnecessary use of aggression by police officers. Mistry et al. further maintain that it is also necessary to educate law enforcement officers in the proper use of force, as well as to help them understand the duties and responsibilities to enforce the agreed international obligations in the SAPS, in compliance with international laws. According to Mistry, et al. (*ibid*), police overuse of power is a breach or misuse of freedom of expression. Mistry, et al., also articulate that it is essential to educate law enforcement officers in the proper use of force, as well as to keep them informed of their roles and duties to enforce the agreed international standards. Mistry, et al. suggest the immediate need to openly disclose statements by politicians and corporate officials that the abuse of

power is not acceptable (cruelty, inappropriate weapon usage, criminals, serious misconduct or any other ill-treatment by public officials and particularly by law enforcement officials). The responsible officials must show their dedication to upholding these pronouncements and undertake effective steps to render these commitments reliable and clarify that injustice practice will disappear.

Bruce (2010:9) points out that in tandem with the prevalent hostility towards police killings, current trends in South Africa, linked to State movement to deal more aggressively with crime, have given rise to questions regarding official reactions in the use of deadly military force. Thus, according to Bruce (2003:6), remarks by politicians giving instructions to law enforcement officers to torture the criminals and to use brutal force and teaching the thugs a lesson by using lethargic power and being merciless to offenders is an indication that the police are encouraged to take the law into their own hands. Even though there has been much improvement in the manner in which police operate, but police brutality is still prevalent in most places (Newham, 2005:160).

### **3.1.1 Prominent incidents illustrating the use of excessive force by the South African Police Service**

To set the scene for this chapter, three prominent incidents illustrating the use of excessive force by members of the SAPS are discussed first. These three incidents made international headlines and focused renewed attention on how the SAPS apply the use of force when effecting arrests. The first incident demonstrating the use of force by members of the SAPS is the Ficksburg incident, which will be discussed next.

### **3.1.2 The Ficksburg incident**

In the area of Ficksburg, in the Free State Province, residents of Meqheleng Township were involved in a peaceful march when they were confronted by the law enforcement



officers when they protested for poor service delivery (Petrus, 2012:70). According to Petrus, the peaceful protest was against the Setsoto Local Municipality. The SAPS had one thing in their minds, and that was to get rid of the man who was leading the march in the name of Andries Tatane (SAHRC, 2011:4). According to (SAHRC, 2011:4), the members of the South African Police brutally killed Andries Tatane whom they first assaulted and thereafter shot and killed him at point blank. Later, it was reported that Andries Tatane's death was owing to the minor wounds sustained during the assaults by members of the SAPS, hence, there was live media coverage of the police brutality (Petrus, 2012:70). In addition, Petrus (ibid) reports that Tatane has been eventually determined to have passed away owing to wounds. The situation made it into news stories, both domestically and abroad, and brought numerous international regulators (SAHRC) to media exposure (2011:4). As the consequence of this, following a petition obtained from the South African Constitution Advancement Council (CASAC) and then filed a report based on a review of the incident. The Commission was obliged to review the case (SAHRC, 2011:4).

The accuser, CASAC, claimed whether "the beheaded Andries Tatane, nonviolent people in a nonviolent community rally, has been attacked on a number of occasions by the members of the SAPS (SAHRC, 2011:4). The provisional evaluation by the SAHRC noticed that even though the Commission has not been able to examine the 'illegal legal argument' in which the case was forwarded to IPID, it would still contend with potential suspected infringement of fundamental rights in the matter (SAHRC, 2012:5). The motive of SAHRC to undertake this dimension of the inquiry was important: 'The Commission stated that before democracy in South Africa popular demonstrations grew and that the police increasingly used excessive force in trying to deal with the preservation of these protests by members of the community.' The SAHRC (2012:5) also reports that it discovered that the SAPS breached many of Tatane's fundamental rights, including the right to privacy as well as to life, to liberty and protection and the freedom to free assembly, protest, picketing and petitioning (SAHRC, 2011:6). The other conclusion was that, by using unreasonable aggression leading to injuries severe physical of a protester, the SAPS had "non-compliance with the RGA [the Regulation of Gatherings Act 205 of 1993]. The reports stated that the SAHRC concluded that the SAPS leaders involved "and so were not sufficiently

prepared for the quantity of community trouble," they were also unable "to enable a properly trained, competent individual to portray law enforcement during negotiations or talks ..." and that the SAPS "was employed to reduce or prevent the loss of a sufficient number of officers."

Petrus (2012:71) argues that those police officers who were involved the murder of Tatane even stood trial, which have been tried at the local courtroom in 2012 after the SAHRC's inquiry and conclusion. Petrus further indicates that multiple topics were investigated from the ruling, which focuses on the officer's capacity to responding efficiently to public controls. In some of its proceedings, it was confirmed, nevertheless, that Court eyewitness officer Kabelo Pule had undergone three weeks of riot management and technical training, and all the other officials involved. The effects of such a type of programme have been questioned, particularly if law enforcement has shown that their coronation is not contained within the legal boundaries. One of the highlights of the 28 March 2013 news media is the conclusion of the Tatane death hearing by acquitting the offence and assassination charge of the SAPS groups involved. It was predicated on the Department's failure to produce proof that SAPS was just in fact guilty of Tatane's death without sufficient evidence (ibid).

Petrus (ibid) further points out that, while SAPS members were acquitted in the murder of Tatane, this scenario highlights the history of police force in South Africa, the continued public view of SAPS as a sign of injustice, along with the acts of the authorities themselves make a contribution (ibid). One other case shows that the legislation is not helpful in ensuring that criminals are prosecuted, although there is ample proof of the violence of office. The Commission has admitted: "Whether the protest organizers complied with [the] RGA requirements when taking the protesting actions is uncertain from all these inquiries, this element is not relevant in either situation for determining the problems involved. (SAHRC, 2011:18). The SAHRC (2011:18) notes that the officers used extreme methods in their reaction to the citizens have been seen previously. Therefore, the comparison in both the reaction of the colonial officers and that of the SAPS during the demonstration in Ficksburg could well have affected the findings of the SAHRC inquiry. The press' voice, either orally

or physically, has mostly regularly documented the conduct of the police officers on a common principle to the conduct of the press against the community protestors by the Oppressive Regime, this is according to (Petrus 2012:71).

### **3.1.3 The Marikana incident**

Petrus (2012:72) reports that the tragedies in the region of Rustenburg in the Province of Northern West have been intriguing the South African people, and subsequently the rest of the world, from 11 August 2012 to 16 August 2012. According to Petrus (ibid), in the midst of a disagreement involving miners' unions, the National Union of Mineworkers (NUM), the recently formed Association of Mineworkers and Construction Unions (AMCU) and Lonmin administration occurrences took place at the Marikana Mine operated by the Lonmin mining business. Petrus (ibid) further maintains that the conflict on the Marikana mines exploded into bloodshed and devastation, prompting the intervention of the SAPS to stifle the dramatic increase in the turns of developments that are quite distinctive of the protest tradition and the demonstration heritage in South Africa. Moreover, in the following scenarios, the conflict in both the strikers and the SAPS came to a point that claimed the lives of 44 individuals (Petrus, 2012:72). In addition, 70 individuals have been injured in that conflict; this statement is supported by the Government Gazette (2012:3).

The tragedy, also known as the "Marikana massacres," caused domestic and global criticism by the community; particularly as regards the cruel way in which SAPS passed it down this statement is supported by the Government Gazette (2012:3). As widespread public tension grew, the Head of State of the country commissioned an Investigation Panel to look into the matter (Petrus, 2012:72). The Farlam Commission was formally constituted on 12 September 2012 and issued its eligibility criteria (Petrus, 2012:72). The Panel was headed by the retired Judge Ian Farlam and composed of a few new seats and evidentiary officials. This committee comprised numerous existing seats and justification representatives (Marikana Commission of Inquiry, 2013; Transcript of the Marikana Commission of Inquiry, 1 October 2012:1).

The CASAC summarised the Farlam Commission as follows: “The acts of responsible government officials and senior police officials probably contributed to the use of lethal force by the police (South Africa, 2012:33). Consequently, the options for resolution of the Marikana conflict in a peaceful manner were reduced and it is our contention that the action may justifiably be regarded as a massacre, whose full extent needs to be uncovered by the Commission (South Africa, 2012:33). It is our submission that a clear focus on Marikana has to be against the background of increased undermining of civil liberties in general and the use of maximum in the country. In drawing comparative analysis to other incidents, CASAC submits that what happened in Marikana must be seen in its own right and treated as such.

This is, fortunately, important to pay more attention to the vicious issues of increased cruelty and SAPS utilisation for high power in South African society (and in this specific instance the Farlam Commission (CASAC, South Africa 2012:33). The CASAC adds quickly that this Commission also helped to discover how everything occurred on 16 August in Marikana but also provided greater awareness of the extremely hostile essence of strike dispute in the nation through the review of those tragedies.

Although this does not explicitly fall within the ambit of this Commission, this is part of the narrative, and the key objective of this work may bring is to draw closer to the truth in Marikana and therefore, to demonstrate to the citizens of South Africa how such actions happen with what seems to be indifference (CASAC, South Africa 2012:33). Then on these grounds which South Africans will genuinely create a transparent and egalitarian social structure that is highly controlled and directs all the people's behaviour and the role-playing powers, no matter how immensely disturbing the Marikana killings (CASAC, South Africa 2012:33).

### 3.1.4 The Daveyton incident

Mozambique's cab driver Mido Macia was captured by the bystanders on 26 February as the officers pulled him by force at the rear entrance of the SAPS truck and drove him to a police shop in Daveyton nearby Ekurhuleni, after which he perished (Country Reports on Human Rights Practices, 2013:2). Even though the Daveyton officers indicated that Macia was responsible for blocking the road, a post medico legal report proved that the cause of death of the taxi driver was because of the severe head wounds suffered and internal bleeding (Country Reports on Human Rights Practices, 2013:2).

The State President was shocked by these barbaric actions, which caused the death of the taxi driver at the hands of the law enforcement officers (Country Reports on Human Rights Practices, 2013:2). The latter also reveals that the State President further indicated that this barbaric conduct by the police was uncalled for and disappointing. The Democratic Alliance immediately supported for a Commission of Inquiry to look into the matter (Country Reports on Human Rights Practices, 2013:2). Country Reports Human Rights further indicates that after some few days Mido Macia's killers were arrested and faced the full might of the law at the Benoni Magisterial Courts. However, owing to lack of funds for the lawyers who were defending the matter, that case struck off the roll up until 2014. According to Country Reports (2013:2), there was enough evidence from the footage, which filmed eight police officers handcuffing the taxi driver while dragging him on the back of the police vehicle on the streets of Daveyton.

According to Country Reports (2013:2), those eight police officers contradicted themselves while testifying in court with the evidence submitted before court. Country Reports indicates that those police officers claimed that the deceased attacked them when they tried to arrest him. However, there was enough evidence from the film taken by freelance agents. Country Reports further indicates that at no stage did the deceased fight with the police except that there was an argument. That footage has shown how the police pinned the taxi driver to the ground, while assaulting him and forcefully put him on the back of the police van.

### 3.1.5 Brief analysis of the Ficksburg, Marikana and Daveyton incidents

According to Gevisser (2012:142), the effect of the bloodshed then a few weeks later may be quite lasting as the tragedy at Sharpeville, even though the Marikana protest in South Africa is eventually finished. According to Gevisser, a review of these incidents reveals that South Africa still experiences abuse from government authorities, following over a generation since colonialism. Consequently, just the persons who have been charged with protecting individuals hardly contravene the fundamental human rights, as set out in the Constitution, 20 years after democratic government (Gevisser: 2012:142). For example, the protesters who were killed in Marikana simply fought against the government that regarded it as subhuman for fundamental civil right; in Marikana, they fought for a higher wage against a black-held employer (Gevisser: 2012:142).

According to Petrus (2012:72), the Marikana tragedy is seen as a measuring stick for government oversight, as well as professionalism of the police in effective crowd management (Transcription of the Marikana Commission of Inquiry, 2012:3400-3404). For example, during the Marikana tragedy, the police commissioner forced to work desperately for some sort of protection because the SAPS were directly liable for the murders of Marikana by "constructing" the demonstrators (Petrus, 2012:73). Moreover, the Consortium for Refugees and Migrants in South Africa (CoRMSA) (2013:1), lamented Mido Marcia's death in cells held by the police shows the failure on the part of many members of the law enforcement in South Africa to obey the laws of the land. Furthermore, the death of Mido Marcia at the police holding cells is an indication of the lack of respect for the rule of law by some members of the SAPS (ibid). An analysis on the use of force by members of the SAPS will follow for discussion. This analysis provides theoretical context on the use of force as experienced by members of the SAPS.

### **3.2 THE VIOLENT CRIME SITUATION IN SOUTH AFRICA AND THE USE OF FORCE BY THE POLICE**

According to Crime Statistics 2022/2023, violent crimes in South Africa has increased for the period between April and June. Sexual offences also recorded by the police indicates that a total number of 11 855 cases were received. A total number of 6 424 murders were registered, which is an increase of 11.5%. Attempted murders increased by 8.4% with 6192 received by the police during the fourth quarter of 2022/2023 (Statistics South Africa 2023: 1). Crime Statistics also indicate that assault with the intent to do GBH increased by 0.7% with a total number of 43 090 cases registered with the police for the reporting period.

Although South Africa has been a democratic republic for over 29 years, with appearance of criminal obstacles, it is worth noting that criminal activity is a worldwide problem and that the fundamentals distinctive to every setting must be recognised (Statistics South Africa, 2016:1). Thus, according to Statistics South Africa (2016:1), the colonial-related incidents including aggressive demonstrations and racist attacks define the South African climate. In South Africa, violent offences are classified as community reported crimes and property offences and offences against business (South Africa, 2015:314). The South African Police Year Book (South Africa, 2015:314) further indicates that all violent offences showed a decrease by 0,4% from 1 833 775 cases opened in 2012/13 to 1 826 967 cases for the period 2013/14. Furthermore, the South African Police Year Book (South Africa, 2015:314) indicates that the total number of community reported increased with 0,5% from 617 239 reported crimes in 2012/13 to 620 366 reported crimes in 2013/14 and trio crime with 10.8% (from 44 317 in 2012/13 to 49 120 reported crimes) in 2013/14.

While steps to curb gang violence established, SAPS crime stats as well as the Victims of Crime Survey (VOCS) 2014/15 results indicate that levels of violent crime are rising (Statistics South Africa, 2015:2). The greatest difficulty for the law enforcement officers to reduce the level of criminal activities is their way to cope with the eventual result, that they are less able to anticipate or help deter it (Statistics South Africa, 2015:2). According to ISS (2014:1), the combined impact of progressively higher levels of crime over the past 20 years is problematic for economic expansion and stability in South Africa.

Furthermore, ISS (2014:1) indicates that the volume of killings and assassination rates has risen during the first time in 20 years for a second year running. Thus, cases of murders went up from 16 259 murders in 2012/13 to 17 068 in 2013/14. This indicates that there were 809 more killings than in the previous year. The ISS (2014:2) also maintains that this comes on the back of a similar increase in 2012/13 when 650 more murders recorded compared to 2011/12. The ISS (2014:2) states that South Africa's murder rate increased from an average of 45 murders per day to 47 murders per day.

Based on Statistics South Africa's 2013 midyear estimates, the murder rate in 2013/14 was 32.2 per 100 000, up from 31.1 in 2012/13. South Africa's murder rate is about five times higher than the 2013 global average of six murders per 100 000. According to CSVr (2002:11), high levels of crime also contribute to police brutality in other ways. Thus, the widespread proliferation of firearms and high levels of attack on the police, which appear to necessitate that police are armed, even while off duty (daily) adds a heightened concern about unlawful behaviour continues to marginalise the police officers (CSVr, 2002:11).

According to CSVr, citizens and community organisations have made efforts to manipulate the State in the context of reform. Police brutality has led to distrust and nervousness in South Africa, and the State is ideologically politically contentious with responding to violence and corruption (CSVr, 2007:28). The proposal is that those who advocate for policy reform would align themselves cautiously because of the current spaces involved in enforcement (CSVr, 2002:11).

Along parallel with that statement, in the Green Paper on Policing (South Africa, 2010:5), concerns regarding higher crime rates, in particularly serious offences, escalated mostly in 1990s, and encouraging short-term police agencies approaches over longer-term growth. After all, the adoption of long-term criminal security policies, which were essential to the National Crime Reduction Strategy (NCPS) (South Africa, 2010:5), was barred by such short-term steps. As a result, the SAPS remains within narrow interpretation, with just a position only restricted by the legal power to ensure that all residents are secure and safe, regarding their economic and



social role throughout reducing crime. Consequently, the question of establishing long-term crime strategies should be the focus of public debates (NCPS, South Africa, 2010:5).

According to Lamb (2015:88), in the concept and implementation of these campaigns, the SAPS has constantly delivered a militarised ideology. Lamb (ibid) accentuates that leaders of SAPS often heavily armed and protected by government and army military vehicles in prepared combat configurations. Lamb (ibid) suggests that police officers usually invaded and captured areas of targeting, generally along with South African National Defence Force (SANDF) regiments, like an invasion force. According to Lamb (2015), most of these activities, such as Operation Sword and Shield, Operation Strike, Operation Iron Fist and, lately, Operation Fiela, are military names. Lamb (ibid) argues that massive groups of police officers have been diligently patrolling the area in the background of such activities. Lamb (2015:88) says citizens, automobiles, properties checked, and entrances to dwellings opened up. Lamb also reveals that unregistered weapons, narcotics and robbery were confiscated which include cars. Lamb reports that people who acquired these items brought to detention centres, mostly by the SAPS for serious offences together with sex workers, impersonators and migrant workers without documentation. According to Lamb, friction or hostility to the security personnel has generally associated with an ultra-belligerent reaction throughout these activities.

Lamb (2015:95) points that out in light of a philosophy of the "war on crime," the main tactic was to invade and destroy concentrated police actions. Lamb says the police have confiscated extremely huge numbers of guns and ammunitions from locations (from which guns killings appear to be focused) and detained hundreds of people (especially younger males) for a range of offenses, even in the control of unregistered guns, through blockades and lookup initiatives. Lamb further suggests that, and perhaps even the methods of certain abuse, a substantial percentage of possible weapons violent offenders were excluded from these high-risk crimes zones. According to Lamb, the decline in serious crimes from the period between 1998/1999 and 2010/2011 indicates that the organisational SAPS actions could have led to decreases in the number of firearms killings. Lamb claims these interventions often shown vast and intrusive authority by the police, contributing to the deterioration of many citizens' fundamental rights in areas of

high crime, who have heavily policed, often unworthily dealt with. Lamb (2015:95) reports that a few people too have suffered injuries and had died because of such enforcement activities.

### **3.3 THE EVOLUTION OF POLICY CULTURE OF BRUTALITY FROM THE APARTHEID ERA**

In Reyneke's (2001:12; Mafomme's citation, 2004:61), culture is characterised as a "theory of the awareness, views, convictions, principles, behaviours, definitions, power structures, religions, principles of history, functions and duties of space, cosmos theories, physical items and properties accumulated by individuals over the span of decades." The whole concept includes every aspect perception (Mafomme, 2004:61), and as such shows that culture is a part of living that some individuals form and enjoy sharing. Mafomme also avers that prospective local residents will study the tradition, ensuring that it continues transferred from one century to the next. Culture, therefore, affects what people actually believe, options and tendencies they create. Company performance, be it positive or negative, has a huge effect on the management of the system, which describes its principles among the entire organisation (Mafomme, 2004:61). Mafomme asserts that organisational knowledge is important as it can affect the quality of services provided and the police resources; it has an impact on the performance of official working environment. The history of the South African State police and the police themselves has a significant impact on society in the policing department (Petrus, 2012:74). The tolerance of the dominant culture of using abuse, intimidation, abuse and other oppressive behaviour, according to the Mafomme (2004:61), has, therefore, characterised South Africa's police force. The way the police officers treated similar events, including the deaths of Andries Tatane and Marikana killings, was then illustrated in their deepening of the established community (Petrus, 2012:74). Petrus further indicates that even though tradition is complex fundamentally to alter, it may be a task for politicians to improve the way that the officers work.

### 3.3.1 The culture of abuse of power by the top management

However, it turned out in the 1990s that a range of judicial decision-making judgments was taken out of this context before taking account of how they were made, as a result of comments wrongly provided in conjunction with a public sphere (Muntingh & Dereymaeker, 2013:13). In addition, the politicisation of promotions to key positions, for example the election of the formerly National Police Chief, made professionalism difficult to manage inside the department. Muntingh and Dereymaeker further indicate that some of National Commissioners' appointments have subsequently been declared null and void owing to misconduct, for examples, in 2011 Mr Selebi was proven to have been involved in acts of fraud and Mr Cele was recused in 2012, after an investigation into his involvement in two leasing agreements with the Police Office. According to Muntingh and Dereymaeker (ibid), such allegations by commanding managers are a strong sign of a lack of authority that cannot maintain sustainable development and professionalism of the officers. Muntingh and Dereymaeker also state that all have significant effects on employee productivity, corporate efficiency and community loss of confidence. For example, in the 2012 HSRC study based on the customer satisfaction survey revealed that the police officers are among the most corrupt government officials in the country (Muntingh & Dereymaeker, 2013:13).

According to Muntingh and Dereymaeker, police recruitment methods and preparation are some of the main contributors to the use of excessive force by law enforcement officers and police failure to carry out their duties within the boundaries of the law. Throughout this case, the statuses of a hired employee have not met the job responsibilities and the reputation of police agencies have been significantly undermined. Muntingh and Dereymaeker (2013) indicate that public concerns about fraud, maladministration through aggression, particularly police abuse and detention murder have been commonly reported by the media. Kynock (2012:1) points out that SAPS is commonly considered as a bloated and incompetent organisation, frequently involving representatives in illegal behaviour. Several other people, even so, believe that the police's extreme violence is a heritage of the old days in South Africa. Joshi (2002:1), for example, cites a law enforcement system that is authoritarian in its

framework; it is coaching and extremely authoritative in its culture created by the apartheid government for its assistance and sustainability.

Subsequently, a need to revitalise the SAPS came to be recognised, and in 1994, SAPS began to transform to alter existing public expectations and it succeeded in the transfer of cultural attitudes (Kynock, 2012:1). Such achievements, nevertheless, were short-lived; the militarisation of the police as a tactic to combat alleged irresponsibility and incompetency of SAPS in 2010 has seemed to exacerbate the circumstance (Berning & Masiloane, 2011:61). Berning and Masiloane further suggest that rearmament inevitably seems to have reversed early attempts to change the police department from military-based (as in the case of the SAP) to community-based.

According to Hill and Berger (2009:26), police operations and the mobilisation of law enforcement agency viewed as the re-introduction of colonial practices as there were stark similarities in terms of their operations. Consequently, the degree of police violence in specialised units has increased, with further adverse effects on the SAPS' potential to reduce criminality, misconduct and mismanagement, both of which disrupt SAPS attempts to prevent crimes successfully (Bering & Masiloane, 2011:68). According to Bering and Masiloane, some of these activities have their origins in the apartheid era. Petrus (2012:75) suggests that the Tatane and Marikana incidents are the most prominent features of SAPS remaining in almost the same society as South African Police during colonialism (SAP).

### 3.3.2 The nature and extent of police brutality during the apartheid era

Pigou (2002:1) indicates that there were broad freedom of speech as well as false information development projects in South Africa during the colonial period in relation to violence, oppression and abuse of fundamental freedoms. In addition, Pigou (ibid) further asserts that the State and law enforcement/intelligence services in particular have not released data about unlawful use of firearms replies to claims of cruelty perpetrated by officers. Pigou maintains that information available has never been the degree wherein the actual information has in fact been stored, analysis conducted and interpreted by the government. Pigou (ibid) contends that if any programme to document and track accusations have been introduced, no effort is being made yet. The police officers in South Africa have gained a prominent notoriety for violence during colonialism and apartheid (Agang South Africa, 2010:4).

Agang South Africa (2010:4) also says that the extremely militarised, bureaucratic system of the different law enforcement in the colonial times also compounded everything. Agang South Africa further reports that police officers were granted military positions and names during colonialism. Petrus (2012:75) points out that strong police forces, the lack of constraint in the use of force, authority transgressions, discrimination towards Africans and the lack of consideration for civil liberties or constitutional protections were indeed characteristics of the system taken through colonial period by enforcement. According to Agang South Africa (2010:4), the powers given under colonialism to officers, especially regarding the use of fatal violence, have been fuelling them. Agang South Africa indicates further that, for example, the Internal Security Act 72 of 1982 allowed the police officers to dissipate assault rifles and, when relevant, it did not allow police officers to inform beforehand or application of reasonable force. Agang South Africa (2010:4) notes that members of the police often used the aforementioned statutory law to protect the colonial regime and protests against colonial rule.

Agang South Africa (2010:5) argues that the key function of police officers in the implementation, along with its harsh legacy, of controversial discriminatory apartheid

laws has destroyed South Africa's credibility. The police officers were marginalised by the predominantly African population of the land (Agang South Africa, 2010:5). Agang South Africa (2010) further indicates that as a result, police officers were unpopular and frequently targeted for abuse and violence. Moreover, Agang South Africa (2010) claims that South Africa's police have been strongly autonomous throughout decades. Agang South Africa South Africa (2010) also maintains that by 1990 in South Africa, a majority of surveyed law enforcement have been active, which included the South African Police (SAP) and composed of ten domestic police agencies. This was also formed in the 1970s and 80s according to Agang South Africa South Africa (2010) and comprised a large number of central SAP representatives.

According to Agang South Africa South Africa (2010), the domestic law enforcement became capable of working at Pretoria's city hall with distinctive colour and had large amount of space in exercising policing strategies. Agang South Africa also notes that it offers enough possibilities to manipulate independent powers and governing authority of privilege. Agang argues that decentralising and locating the police control of apartheid enshrines variations in the nature of the policing benefits rendered by South Africans in Black and White. Pigou (2002:2) indicates that the Truth and Reconciliation (TRC) have obtained over 21,000 police killings reports and dozens linked to infringements of police and the military. According to Pigou (2002:2), more than 300 former safety officers presented graphical descriptions of their participation in murders, torture and several other abuses to the Commission's Amnesty Committee. According to (Pigou, *ibid*), there was no ideological willingness to halt such methods in connection with racial segregation law enforcement and its focuses on leadership on military strategy initiatives. In addition, Pigou (2002:2) further says the accessible TRC evidence demonstrates that, often at the government level openly promoted. In South Africa, there was a strong deployment of NGOs in the documentation, compilation and reports of violence and abuse by the police and military, as with other nations under the authoritarian governments.

Pigou (*ibid*) notes that such bodies as the news, the democratic fraternity, healthcare providers, and perhaps other voluntary groups, and their respective key elements for only individuals, focused on a variety of different sources. Furthermore, Pigou (*ibid*) points to the Detainee Parents Support Committee (DPSC) of other residential organisations, such as the Peace Action Network for Independent Monitors in the 1980s. Pigou also indicates

that while they had been instrumental in raising awareness of a spectrum of infringements, they were primarily residential with constrained access to the available villages. Pigou (ibid) cites that the affiliation of the DPSC, located in Johannesburg, extended across the nation and tracked dozens, occasionally hundreds of opposition figures in the 1980s. The South African Human Rights Committee estimates that 78,000 ideologically related arrests held (modestly) respectively 1960 and 1990.

### **3.4 RECENT TRENDS IN THE USE OF EXCESSIVE FORCE BY THE POLICE IN SOUTH AFRICA**

The following cases received by the IPID during the reporting period 2021/2022, 5 295 total number of cases were received by the IPID for investigations (IPID annual report 2021/2022: 36). Most cases received fell within Section 28(1) (a) to (h). Out of these cases, 3 407 ranges from assault cases, 744 cases were complaints where the police were involved in the unlawful discharge or shooting incidents, 410 were cases where people died in the hands of the police, followed by incidents where people died in police lockups.

IPID documented 7 014 complaints in the 2016/2017 report, which mostly did fall within Section 28(1) (a) to (h) in 2015/16 compared with 5 519 (a 21% increase) in 2016-2017. Of these, in 2016/17, assault increased from 3 509 in 2015-16 by 8% to 3 827. For the same time, illegal pistol discharge nearly doubles to 1 640 from 865. There was an increase in cases of people dying at the hands of police officers and deaths during police detention, which is between up 7% and 28%. Such figures shows that, even after laws and restrictions obligating upon South Africa's Government, the lethal force and extreme violence of the police continues seriously (African Police Civil Oversight 2012:1). According to Saferspaces (2023:1), owing to the set targets by police top management, the police apply unnecessary force such as being aggressive, assaulting, strangulations, suffocations, open hands assaults, using booted feet to kick suspects in a bid to force them to hand over illegal weapons and drugs.

There is also evidence that suggests that IPID have been struggling to attend to all cases. For example, the statistical reports released by the IPID in 2012 shows that IPID had a backlog of 9 055 cases, of which 3 310 were cases from the previous year and 5

743 were captured during the 2013/14 reporting period. Of all the cases, IPID managed to finalise 56% (5 045), which is a 2% improvement compared to the previous year (IPID: 2012:30). According to the IPID report, the crime recommended was more than the misconduct cases, namely SAPS, for the first time since IPID was established. Moreover, because of an increasing number of IPID cases, most of their time been spent at court while, on the other hand, their performance has been affected. During that time, 84 police officers were found guilty of wrongdoing for crime-related problems and 185 police officers. These achievements showed that in one case the High Court of Johannesburg granted a serial rapist, who was a Randburg SAPS police officer, a sentence of two lifetimes and 284 years' imprisonment (IPID 2012:30). IPID further stated that in different courts across the country, IPID had 950 pending cases. In previously reported cases, this has resulted in a rise of 77% from 538. Even so, the IPID faced a huge hurdle in punishing law enforcement personnel for high-profile cases, which disheartened the IPID's objectives to address sentiment and to root out corrupt law enforcement employees (IPID, 2012:30).

Police sanctions raised alarming questions about the efficacy of SAPS senior decision makers (IPID, 2012:30). Senior SAPS managers have been clearly indicating that they have blinded their attention to sensitive misconduct by attempting to protect their members by imposing certain unprofessional and unreasonable sanctions (IPID, 2012:30). For instance, police members have escaped minor penalties on serious allegations of corruption and defeat for purposes of justice, and a suspended verdict has been handed out where they are to be rejected (IPID, 2012:30). These kinds of behaviours are a hindrance to the restructuring of the police conduct of top SAPS authorities, and they once more undermine the legal system and bring all disciplined police officers to book (IPID 2012:30). IPID further indicates that this was their second conservative year of operation since taking office. There was a clear indication that changing the then ICD into the newly established IPID was in fact a continuous project. Most of the duties of the IPID are hectic and mostly performed in a set-up with strenuous situations and accompanied by civilian uproar. As a result, there was a need for the SAPS/MPS ensuring that there is stability in the country (IPID, 2012:30). Given the state of affairs of unrest and demonstrations countrywide, there was an indication



of the influential causes of deaths at the hands of the police, as well as reports on police's misuse of powers, unlawful arrests and shootings (IPID, 2012:30).

Cases received by the IPID increased in that reporting year owing to those protests and demonstrations by members of the public. IPID further indicates that it received 84 cases in which MPS were implicated. According to IPID, of the 5 661 cases it received, members of the SAPS were implicated in several criminal activities and misbehaving, therefore, contravening the disciplinary regulations. Out of those cases where MPS were implicated, there were 47 assault related cases, 13 crime-related cases, 11 incidents of killings by the police and ten cases of discharging of firearms (IPID, 2012:30). The IPID further states that most of these reported cases were allegations of assault and crime-related cases.

During this reporting period, the highest number of cases received were assault which was (3 916) in totality and the Western Cape was topping the list with (1 046), Free State (705) and Gauteng (531) (IPID, 2012:30). The report released by the IPID indicated that the second highest incidents received during that period was the unlawful discharging of police service firearms (429) and most of these cases came from the Eastern Cape, which was at 169, KwaZulu-Natal 85 and Limpopo at 54. According to that report, the highest volume of the captured data indicated that crime and the police's abuse of powers were also topping the list at (397), which included arson, fraud, defeating the ends of justice and the highest of these cases were from the Gauteng Province (149), Free State (71) and Western Cape (63) (IPID, 2012:30). Police killings also followed on the list and the highest cases received were at 390. That report indicated that most cases took place in KwaZulu-Natal (106) and Gauteng (105) (IPID, 2012:30).

**Table 3.1: Cases received per province during 2013/2014**

<b>Province</b>	<b>Deaths in police custody</b>	<b>Deaths as a result of police action</b>	<b>Discharging of official firearms</b>	<b>Rape by police official</b>	<b>Rape in police custody</b>	<b>Assault</b>	<b>Torture</b>	<b>Corruption</b>	<b>Criminal matters</b>	<b>Systemic corruption</b>	<b>Compliance</b>	<b>Total</b>
<b>Eastern Cape</b>	33	59	169	12	2	434	30	4	23	1	5	772
<b>Free State</b>	12	22	20	10	-	705	-	16	71	2	3	861
<b>Gauteng</b>	47	105	15	22	2	531	10	12	149	-	15	908
<b>KwaZulu Natal</b>	53	106	85	29	3	368	19	30	11	1	5	710
<b>Limpopo</b>	26	21	54	9	-	206	-	5	4	2	1	328
<b>Mpumalanga</b>	23	17	16	4	6	202	13	2	40	2	26	351
<b>North West</b>	8	18	15	5	-	230	2	6	14	-	1	299
<b>Northern Cape</b>	5	8	9	5	1	194	-	7	22	4	7	262
<b>Western Cape</b>	27	34	46	25	5	1046	4	2	63	-	2	1254
<b>Total</b>	234	390	429	121	19	3916	78	84	397	12	65	5745

Source: IPID 2013/2014

Present situation of civil liabilities against the SAPS is roughly R8 41 512 000, and lawsuits of R1 billion from police officer killing or police shoots have doubled two times as much as two years ago, with civil allegations against the SAPS backed two times (APCO Forum 2012:1). South Africans have no confidence in the police at all (HSRC, 2012:1). About 41% of the Southern Africans, according to the HSRC survey, have lost their trust in the SAPS and 35% of those questioned by the HSRC confirmed that they are frightened of the police officers in 2012. In addition, the world and the rest of the world were shocked about the obstacles of attempting to address the police's abuse of

excessive force and police inhumanity, when seven police officers were found not guilty and released for killing Andries Tatane (APCO-Forum, 2012:1). Failure by the court to prove that matter beyond reasonable doubt is also a disgrace to our judiciary and an indication that they are biased when it comes to handling cases of violence and abuse of powers by members of the SAPS (APCO-Forum, 2012:1). The court did not condemn those seven police officers responsible for the murder of Andries Tatane, which implicated not only the top management but also the investigative police officers responsible for the investigative process to provide substantive evidence that would strengthen the case and therefore, enable the court to decide on the issue. There were some obstacles (APCO-Forum, 2012:1).

According to explanation given by the IPID deaths of inmates in detention cells is because of law enforcement assaults and brutality (IPID, 2012:28). According to IPID in the Marikana massacre, 34 miners died in one single occurrence, but in other scenarios, only one or two people were fatally wounded. IPID further indicates that many killings are because of the police using extreme violence than deaths of inmates in custody (IPID, 2012:28). In totality, the number of cases reported was the highest in Gauteng at 118 (27%), KwaZulu-Natal was second with 102 (24%) cases and the Eastern Cape with 47 (11%) cases (IPID, 2012:28). Table 8(a) depicts the number of incidents of deaths in police custody and deaths because of police action received per province for the period under review as well as the relevant percentages.

**Table 3.2 (a) Deaths in police custody and because of police action**

Province	Deaths in police custody		Deaths as a result of police action		Total incidents	
	Number	Percentage	Number	Percentage	Number	Percentage
Eastern Cape	37	13%	47	11%	84	12%
Free State	23	8%	31	7%	54	8%
Gauteng	52	19%	118	27%	170	24%

Province	Deaths in police custody		Deaths as a result of police action		Total incidents	
KwaZulu-Natal	44	16%	102	24%	146	21%
Limpopo	34	12%	28	6%	62	9%
Mpumalanga	24	9%	37	9%	61	9%
North West	23	8%	23	5%	46	6%
Northern Cape	9	3%	8	2%	17	2%
Western Cape	29	11%	37	9%	66	9%
<b>Total</b>	<b>275</b>	<b>100%</b>	<b>431</b>	<b>100%</b>	<b>706</b>	<b>100%</b>

Source: IPID 2013/2014

The total number of deaths in police detention increased by 19% in 2012/2013 compared to the corresponding reporting period in 2011/2012 (IPID, 2012:28). The number of deaths in police detentions as a result of the police's use of excessive force increased in the following six provinces: North West, Limpopo, Free State, Western Cape and KwaZulu-Natal, while there was a decrease in all other provinces below compares the number of incidents of deaths in police custody received during the financial year 2012/2013 to the same period in the previous financial year. The overall death as a result of police action decreased by 12%. Deaths in police custody decreased in the following provinces: The Eastern Cape, KwaZulu-Natal, Limpopo and Gauteng ranging from 10% to 29%. According to IPID, there was an increase in other provinces, except for the Free State, where there was no change.

**Table 3.2 (b): Deaths in police custody**

Province	2011/12	2012/13	Percentage changes
Eastern Cape	41	37	-10%
Free State	16	23	44%
Gauteng	58	52	-10%
KwaZulu-Natal	43	44	2%
Limpopo	18	34	89%
Mpumalanga	14	24	71%
North West	9	23	156%
Northern Cape	9	9	0%

Source: IPID 2012/13

Twenty-three (23) incidents of 60 deaths in police custody were received in the North-West Province. Of the 706 total number of deaths reports which were submitted by the SAPS, it was discovered that 37 cases should not have been submitted since they fell out of the IPID's limit of operation (IPID, 2012:28). An indication from IPID's report was that those cases should therefore be excluded from the total of 706 incidents reported. Table 3.2(c) compares the number of incidents of deaths as a result of police action received during the financial year 2012/2013 to the corresponding period 2011/2012. According to the IPID in totality, there were 431 incidents of deaths as a result of police action and 485 deaths recorded.

That those cases fell outside of the IPID's limit of operation was only identified after investigations were finalised (IPID, 2012:28). According to the IPID, members of the SAPS should be trained to enhance proper reporting and understanding of the mandate of the IPID; this statement is supported by (IPID, 2012:28). The IPID further indicates that members of the SAPS were also implicated in most of the cases which were received. However, after thorough investigation was conducted, it was discovered that

there was no evidence to support such allegations of police involvement (IPID, 2012:28).

**Table 3.2 (c): Deaths because of police action**

<b>Province</b>	<b>2011/12</b>	<b>2012/13</b>	<b>Percentage changes</b>
Eastern Cape	66	47	-29
Free State	31	31	0
Gauteng	131	118	-10
KwaZulu-Natal	137	102	-26
Limpopo	38	28	-26
Mpumalanga	31	37	19
North West	19	23	21
Northern Cape	5	8	60
Western Cape	30	37	23
<b>Total</b>	<b>488</b>	<b>431</b>	<b>-12</b>

Source: IPID 2012/13

In Rustenburg, IPID received a complaint where there was an allegation that a sex worker was killed by the police, but the investigation which was conducted by the IPID revealed that the sex worker was still alive, and it was not the members of the SAPS who assaulted that sex worker but the Rustenburg municipality workers who conducted an operation in a bid to drive out sex workers from town (IPID, 2012:30). According to IPID, the cause of the deaths of most people in custody were as a result of injuries sustained after members of the SAPS had brutally assaulted them. According to the report released by IPID, these deaths emanated from various acts, ranging from being assaulted by either fellow inmates or the police, hanging which is

self-inflicted, and some cases were as a result of being tortured and suffocated. In four incidents, one person died as a result of an accident which occurred while the deceased was being taken to custody (IPID, 2012:28). The investigation conducted by the IPID revealed that of the total number, 77 deaths were as a result of natural causes. According to the IPID, in most cases, arrested suspects were detained in police custody with injuries. The IPID further indicates that the police denied any wrong doing of those deaths in all provinces. According to the report submitted by the IPID where someone died as a result of injuries sustained before detention, 73 were owing to assault by members of the community involved in vigilante activities (IPID, 2012:28). In four cases, the deceased committed suicide prior to being taken into custody provinces (IPID, 2012:28).

In this article, the IPID has examined hangings in police custody, backed by this assertion (IPID, 2012:28). The report provided by the IPID reported that Gauteng and Western Cape provinces were the provinces receiving most suicide incidents. The least rate of hanging occurred in the North West according to the IPID survey. In the IPID report, unlicensed items were also used to commit suicide in police custody in 72 of the 94 suicide incidents received. The IPID also explains that, in some cases, suicide was committed by using torn or old blankets and torn mattresses. The police failed to conduct proper inspections to prevent the hangings in their cells, and furthermore, there are rules and regulations that guide members of the SAPS on how to manage their cells, but the police did not follow those guidelines (IPID, 2012:28).

According to IPID (2012:28), where police failed to comply with the necessary rules and regulations/guidelines, the IPID submitted recommendations that disciplinary steps were taken against the members who failed to adhere to those standing orders. According to IPID (2012:28), the analysis of circumstances surrounding deaths because of police action reveals that most deaths occurred during police operations, which include arrest and response to crime. The IPID report further indicates that in most of these deaths, service firearms were used and in a few cases, the victims were assaulted and tortured. According to IPID, other deaths occurred owing to domestic violence and negligent handling of official vehicles. Furthermore, the IPID reported

that a smaller number of deaths involved innocent bystanders. According to IPID, of the 706 deaths in police custody and deaths as a result of police action, 422 occurred at crime scenes. The IPID further maintains that of these deaths, most were owing to shooting incidents and vigilantism. In this case, the deceased were taken into police custody as suspects.

One hundred and eight (108) deaths occurred in police cells. According to IPID (2012:28), the incidents of rape in police custody were committed by both members who were on duty and civilians who were in police custody. Furthermore, IPID cites that out of 22 such cases, 13 were committed by police officers. Gauteng (10) received most incidents of rape in police custody by police officer(s). IPID explains that this could be attributed to the lack of command and control as well as poor custody management. There is suspicion on whether the police standing orders should be revised or amended owing the members of the SAPS continually failing to conduct proper custody management (IPID, 2012:28). Table 3.3 shows the total number and the percentages of cases received related to torture and assault per province (IPID, 2012:28). According to that report released by the IPID, the highest number of cases was reported in the Western Cape (1142) followed by the Free State (730) and Gauteng (769). The IPID report further indicated that there were instances where there were multiple victims in one incident. According to IPID report, North West Province received four incidents where there were 41, 40, 38 and 34 victims respectively. South Africa is a member state to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (IPID 2012:28). According to South African law, torture is not regarded as crime, therefore, it is difficult hold the perpetrators in cases of torture accountable (IPID, 2012:28).

**Table 3.3: Torture or Assault**

<b>Province</b>	<b>Torture</b>	<b>Assault</b>	<b>Total</b>	<b>Percentages</b>
<b>Eastern Cape</b>	35	362	397	9%
<b>Free State</b>	-	730	730	17%
<b>Gauteng</b>	3	566	569	14%



<b>Province</b>	<b>Torture</b>	<b>Assault</b>	<b>Total</b>	<b>Percentages</b>
<b>KwaZulu-Natal</b>	8	411	419	10%
<b>Limpopo</b>	-	246	246	6%
<b>Mpumalanga</b>	-	194	194	5%
<b>North West</b>	4	252	256	6%
<b>Northern Cape</b>	-	228	228	6%
<b>Western Cape</b>	-	1142	1142	27%
<b>Total</b>	<b>50</b>	<b>4131</b>	<b>4181</b>	<b>100%</b>

Source: IPID 2012

According to the report released by IPID, the majority of the cases reported were common assault with 68%, followed by assault GBH with 30% overall, cases of assault increased by 218% compared to cases received by IPID. IPID (2012:28) further indicates that the reason for this significant increase is the fact that during the ICD era, such cases were investigated by the SAPS and there was no obligation on the part of the SAPS to report such cases to the IPID. IPID (2012:28) further maintains that the fight against corruption remains a challenge; this calls for the review of current controls to improve the control environment within SAPS and MPS to eliminate opportunity for corruption.

IPID (2012:28) indicates that the majority of these cases were reported in KwaZulu-Natal which accounts for 47% of all cases received. According to the IPID report, these cases range from extortion or soliciting bribes to the sale of exhibits. Furthermore, the IPID report further reveals that in one case in KwaZulu-Natal, three police officers demanded a bribe of R4 000 from a complainant in return for making the case disappear. According to the report, the complainant came to the IPID and a trap operation was set up. The IPID further indicates that the three suspects collected

R2 500 from the complainant at an earlier date. When two of the suspects arrived to collect the balance, they were arrested. IPID (2012:28) further maintains that when they appeared in court, the third suspect was pointed out in the public gallery by the complainant. According to IPID, when that suspect appeared in court the next day, another court orderly went to the magistrate with an envelope containing money and indicated that it was petrol money from the attorney of the suspect who was applying for bail.

IPID reported an average of five cases of police brutality every day, which is an increase of 313% in ten years. APCO-Forum (2012:1) indicates that in 2011/2012, there was evidence of police involvement in crime in 162 deaths reported to IPID. According to APCO-Forum (2012:1), the SAPS is facing R8 41 512 000 civil claims in relation to assault and R1,1 billion in relation to shooting incidents, with total claims having doubled in the last two years. According to the report released by IPID, there were more deaths as a result of police action than there were deaths in police custody. Overall, Gauteng had the highest reported cases with 118 (27%), followed by KwaZulu-Natal with 102 (24%) cases and the Eastern Cape with 47 (11%) cases. Table 8(a) depicts the number of incidents of deaths in police custody and deaths as a result of police action received per province for the period under review as well as the relevant percentages (IPID, 2012:28).

According to IPID, deaths in police custody remained the same, but deaths as a result of police action increased by 25%. According to the IPID, deaths of innocent bystanders during the commission of crime were up by a substantial 300% compared to the past financial year. IPID investigates allegations of criminal offences reported to it. Since the police are not obliged to submit incidents where an innocent bystander was killed by the police to the IPID, it was highly unlikely that the police could be held accountable. According to the report released by the IPID in the 2008/9 financial year, the IPID received 2 289 allegations of criminal activities involving SAPS members. Furthermore, the IPID indicates that the majority of those complaints were reported in Gauteng (18%), followed by the Western Cape with 16%. The IPID reports that it recorded a grand total of 912 deaths as a result of police action in the financial

year 2008/9. According to Bruce (2010:11), it may be noted that the 2008-09 figure is the highest figure ever recorded for killings by the police in South Africa.

Bruce (2010:11) further maintains that higher figures have only been recorded in 1976 (653), 1986 (716) and 1985 (763) though it is also reasonable to question the reliability of figures on killings by police recorded during the apartheid period. Bruce (2010:11) indicates that killings by police also includes a very high proportion of bystanders with the 32 killed during the 2008-09 year accounting for 6% of all shooting related deaths in 2008-09 and accounting for 35% of all bystander deaths recorded by the IPID in the past eight years.

**Table 3.4: IPID figures on deaths because of police action, 1997-2009**

<b>Year</b>	<b>Shootings</b>	<b>Other</b>	<b>Total</b>
<b>1997-98</b>	458	60	518
<b>1998-99</b>	501	57	558
<b>1999-2000</b>	405	67	472
<b>2000-01</b>	402	30	432
<b>2001-02</b>	345 (includes 20 innocent bystanders)	26 (18 struck by police vehicles; 7 beaten with hands, 1 tortured.	371
<b>2002-03</b>	293 (includes 9 innocent bystanders)	18 (9 struck by police vehicle; 8 assaults or beatings; 12 torture)	311

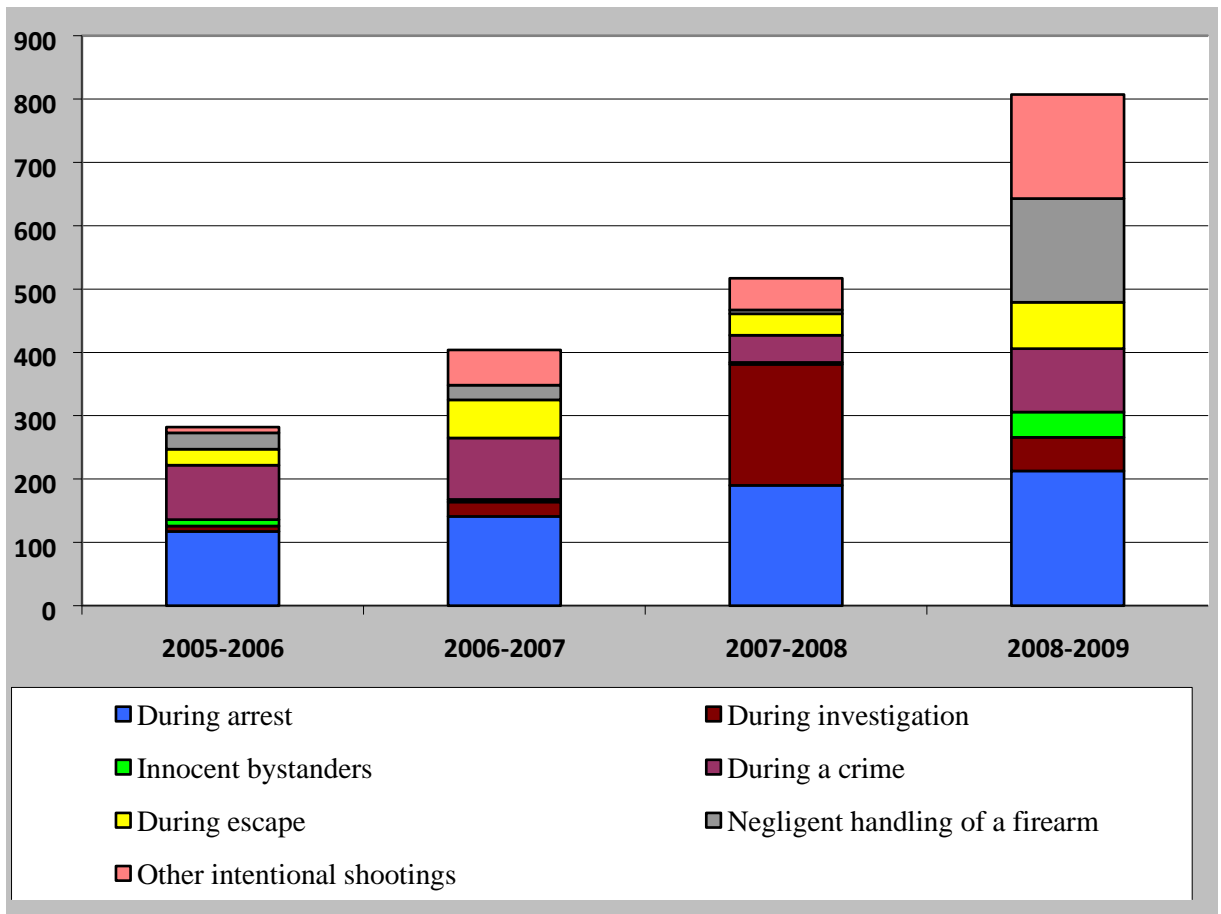
<b>Year</b>	<b>Shootings</b>	<b>Other</b>	<b>Total</b>
<b>2003-04</b>	360 (includes 8 innocent bystanders)	20 (18 in vehicle accidents; 2 beaten with hands/fists)	380
<b>2004-05</b>	341 (includes 5 innocent bystanders)	25 (23 in vehicle accidents; 2 beaten with hands/fists)	366
<b>2005-06</b>	282 (includes 10 innocent bystanders)	44 (30 in vehicle accidents; 14 assaults)	362
<b>2006-07</b>			
	375 (includes 4 innocent bystanders)	44 (all in vehicle accidents)	419
<b>2007-08</b>	420 (includes 3 innocent bystanders)	70 (vehicle accidents)	490
<b>2008-09</b>	568 (includes 32 innocent bystanders)	44 (vehicle deaths)	612
<b>TOTAL: 12 years</b>	<b>4 738 (90.3%) (includes 91 innocent bystanders in the period April 2001- March 2009)</b>	<b>505 (9.7%) (256 struck by police vehicles; 33 assaults/ beatings; 2 torture in the</b>	<b>5 255</b>

Year	Shootings	Other	Total
		period April 2001- March 2009)	

Source: IPID, 2009

Under the IPID studies released from 2003/04 and beyond, the IPID was able to present figures showing how much mortality is related to the Metropolitan Police Forces, instead of SAPS as a result of policing (Bruce, 2010:12). According to those reports, only 98% were ultimately responsible to SAPS and only 2% were responsible for deaths in the Metropolitan Police during the six-year period (Bruce, 2010:11). The IPID report further indicated that of municipal police departments, the Durban City Metropolitan Police (20 deaths) has been the most prominent contributor, particularly in 2003-04 and 2004-05, followed by the police departments in Johannesburg (14), Ekurhuleni of which Daveyton is part of (13) and Cape Town (10). Tshwane Metropolitan Police Department (2) has, according to these figures, accounted for many deaths. The IPID reports often identify deaths as a result of police intervention according to the circumstances in which they might be referred. IPID statistics in this respect are illustrated in Figure 2 for the 2005-2009 periods.

**Figure 3.1 Classification of circumstances of shooting deaths, 2005 2009**



Source: IPID (2009)

As reflected in Table 3.4, IPID statistics indicate that 144 people have been killed in vehicle accidents involving police during the period 2005/06 to 2008/09 (Bruce, 2010:14). Bruce further maintains that there were probably a large percentage of latter fatalities throughout detention of those suspected of evading arrest. Just like shootout, Bruce says, police officers engaged in car pursuits are not always mindful of the fact that passengers or in other vehicles, innocent citizens do not injure themselves, not just through themselves, but by the individual they pursue. There have been scenarios in which police killers have wrongly observed community members as criminals (Bruce, 2010:15). The untimely killing of Olga Kekana, a teenage girl who had been boarding a sedan in October 2009, seemed to be misconduct for the officers as the vehicle was just robbed in a kidnapping case. For example, the question of how SAPS employees shot Olga Kekana was not evident whether or not the killing of Kekana could be classified as a shootout in one of the first four grades or, for instance, a shooting of a public official. The study published by IPID indicates that, in KwaZulu-Natal, the

majority of deaths in that province resulted in 29% of the deaths from the excessive police use comparable to the 23% reported in Gauteng Province (ibid). Bruce (2010:16) also indicates that noticeable was the dramatic increase in number of deaths recorded in KwaZulu-Natal in 2008-09 with these having increased by 71% on the previous year.

Table 3.5 records the circumstances of killings in Gauteng and KwaZulu-Natal as indicated by the report in the most current IPID annual reports. Interestingly, in this period, both provinces recorded the same proportion of killings in the categories of ‘suspect victims’ (83%) (Bruce, 2010:16). Killings by members of the SAPS in the two provinces also accounted for 96% of all deaths as a result of police use of excessive force, related to which both provinces accounted for 55% of all shooting related deaths as a result of police use of excessive force during this four year period. As reflected in Table 3, the dramatic increase in deaths as a result of police action in KwaZulu-Natal in 2008/09 was exclusively the product of an increase in shootings with these having in-fact increased by 84% (from 107 to 197) in the previous year accounts for 61% (90 out of 148) of the increase of shooting deaths recorded nationally in 2008-09 (see Table 3.5).

**Table 3.5: Circumstances of death in Gauteng and KwaZulu-Natal**

	Gauteng						KwaZulu-Natal					
	2005-06	2006-07	2007-08	2008-09	Total	%	2005-06	2006-07	2007-08	2008-09	Total	%
<b>Suspect victims</b>	54	92	87	113	346	83	60	90	104	173	427	83
<b>Bystander</b>	1	2	2	6	11	3	1	1	1	12	15	3

	Gauteng						KwaZulu-Natal					
<b>Other off-duty</b>	2	18	16	2	38	9	0	13	2	9	24	5
<b>Negligent handling of firearm</b>	4	1	1	3	9	2	14	11	0	3	28	5
<b>Sub-total shooting deaths</b>	<b>61</b>	<b>113</b>	<b>106</b>	<b>124</b>	<b>404</b>	<b>96</b>	<b>75</b>	<b>115</b>	<b>107</b>	<b>197</b>	<b>494</b>	<b>96</b>
<b>Vehicle accident</b>	3	4	4	3	14	3	3	4	10	4	21	4
<b>Assault</b>	1	0	0	0	1	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>65</b>	<b>117</b>	<b>110</b>	<b>127</b>	<b>419</b>	<b>100</b>	<b>78</b>	<b>119</b>	<b>117</b>	<b>201</b>	<b>515</b>	<b>100</b>

Source: Bruce (2010: 16)

According to Bruce (2010:17), in Gauteng Province shooting deaths increased by 16% (from 106 to 124) on the previous year, accounting for 12% of the increase. Bruce (2010:17) further indicates that the 197 shooting deaths in KwaZulu-Natal were 35% (34.7%) of all shooting deaths in 2008-09 while the 12 killings of bystanders were 38% (37.5%) of all killings of bystanders in that year. According to the report released by IPID, the 2014 shooting deaths in Gauteng were 22% of all shooting deaths, while the 6 recorded cases were 19% of deaths of bystanders in the 2008-09 year.



**Table 3.6 Rate of fatal shootings by SAPS in 2008-09 relative to provincial indicators**

	<b>No. of fatal shootings by police</b>	<b>Population</b>	<b>Fatal Shootings per 100 000</b>	<b>Murders</b>	<b>Fatal Shootings per 100 murders</b>	<b>Killings of SAPS members</b>	<b>Fatal shootings per killing of police officer</b>
<b>Gauteng</b>	124	10 450 000	1.19	3884	3.1	21	5.9
<b>Limpopo</b>	37	5 270 000	0.70	751	4.9	7	5.2
<b>North-West</b>	22	3 430 000	0.64	937	2.3	3	7.3
<b>Mpumalanga</b>	44	3 590 000	1.22	902	4.9	6	7.3
<b>KwaZulu-Natal</b>	197	10 110 000	1.95	4747	4.1	28	7.0
<b>Free State</b>	29	2 880 000	1.00	910	3.2	6	4.8
<b>E Cape</b>	74	6 580 000	1.12	3260	2.3	11	6.7
<b>W Cape</b>	38	5 260 000	0.72	2346	1.6	11	3.5
<b>N Cape</b>	3	1 130 000	0.27	411	0.7	2	1.5
<b>Total</b>	<b>568</b>	<b>48 687 000</b>	<b>1.16</b>	<b>18148</b>	<b>3.1</b>	<b>95</b>	<b>6.0</b>

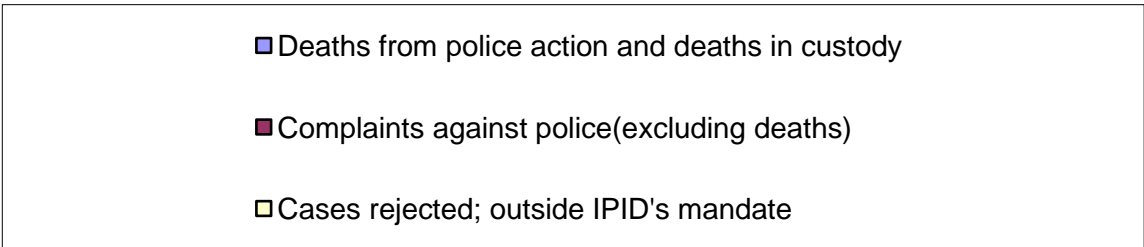
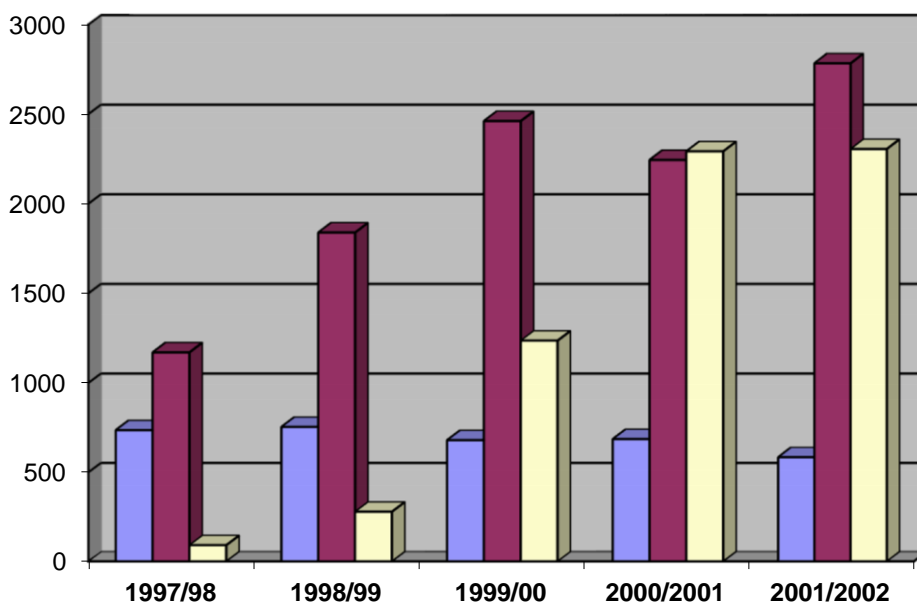
The IPID figures for 2006-07 show that SAPS members with the rank of warrant officers were accountable for many of these fatalities and the police constables were the ones who contributed the most to the percentage of fatalities (Bruce, 2010:17).

Table 4 provides figures on the correspondence between population numbers, murders and killings of police in each province and fatal shootings by police in 2008-2009 (Bruce, 2010:19). According to Bruce, the exceptional high number of killings by police in KwaZulu-Natal emerges from this table as exceptional relative to population figures but not quite so exceptional relative to rates of murder (in relation to which Limpopo and Mpumalanga record higher ratios), and also relative to killings of police

officers in relation to which North West and Mpumalanga record higher ratios and the Eastern Cape records a ratio only slightly lower than that of KwaZulu-Natal.

Bruce (2010:20) cites that it is possible that the high levels of police violence in KwaZulu-Natal should be understood as primarily a response to high levels of violence in the province (manifested in the high homicide rate) and high levels of police killings. Bruce further emphasises that when KwaZulu-Natal's police murder was needed to look at per capita in South Africa, it was never the largest up with the fast. During the period 2003-04 to 2007-08, the Western Cape Province recorded the highest numbers of deaths at KwaZulu-Natal policing, sometimes the second largest, and the third after the Eastern Cape, according to the statistics published by the IPID.

Figure 3.2: All cases and complaints received by the IPID, April 1997- March 2002



Source: IPID 2002

In establishing the ICD (now IPID) collecting task, the statistical analysis has become no longer the responsibility of members of SAPS. A huge step has also been taken to

ensure that a neutral body such as the IPID can record corruption and illegal stats by SAPS members (Bruce, 2010:9). Bruce further alludes that when IPID was established, the rules and regulations that gave the IPID a mandate to carry out its duties were still challenged on the sort of influence those laws would have on the performance of their duties. Whether they could have an impact on the use of excessive force and brutality on police issues was unclear (Bruce, 2010:9). Since the IPID became active, both the collected data and the registered cases have increased, indicating that the IPID was promising and considered an achievement (Bruce, 2003: 26).

### **3.5 ANALYSIS OF APARTHEID ERA/POST-APARTHEID ERA – DIFFERENCES AND CONTINUITIES**

Pigou (2002:9) suggests that SAPS, and even an external involving surveillance and Independent Investigator (IPID), lack adequate oversight and regulation to guarantee that significant changes in the South African legislation and regulations have not been enhanced. In addition, while considerable openness and transparency has improved in some regions, major changes have been made to enhance the support facilities of SAPS and to strengthen civic surveillance systems for unidentified and irregular behaviours. Pigou maintains that in the general campaign against crime, which is still a big issue over almost all South Africans, the biggest problem is the unwillingness of the officers to align illegitimate policies and fraudulent activities, of which the illegitimate use of violent behaviour only has a second dimension. Pigou (2002: 10) avers that inhumane treatment is almost entirely aggressive.

William and Pruitt (2010:118) endorsed this declaration during colonialism of South African police consisting of the widely identified 'kitskonstabels'. This mentions the argument of the Afrikaans "snap cop" (ibid). According to William and Pruitt (ibid), in six weeks 'kitskonstabels' were trained and allowed to police the cities, which were black police officers. William and Pruitt (ibid) also indicate that full membership in the police was not given to "kitskonstabels" when the full policing authority was provided to other police officers. The 'kitskonstabels' could not be uniformed with

whites; they could not give an instruction to a white police officer, and only a white police officer will have superior status to give directions and orders, and white criminals could not be arrested by those 'kitskonstabels' (William & Pruitt, 2010:118). An estimation is that 10% of South African Police (SAP) were kitskonstabels. According to William and Pruitt, the rapid activity and the lack of oversight led to the 'kitskonstabels' violence by the majority of South Africans. William and Pruitt also say they had to "read" manually because they were mostly illiterate. According to William and Pruitt (2010:118), the 'kitskonstabels' were designated to carry out their work, mainly suppressing all revolutionary steps, after completing the training, scarves, sticks, whips and handicrafts.

William and Pruitt (2010:119) argue that South Africa, through Nelson Mandela's leadership race, entered a new period of its national politics. William and Pruitt report that the SAPS members were expected to reform and learn how to work effectively, and how to function in a democratic country. According to William and Pruitt, this resolution has been supported by the South African Police Service Act (Law 68 of 1995) to restructure and introduce a SAPS legislation to provide accountability and oversight for SAPS. William and Pruitt also suggest that the police reform act has established a new obstacle for the restructured South African police. William and Pruitt further indicate that this Act developed Community Police as the restructured SAPS (SAPS Act 68 of 1995). William and Pruitt announced, as part of this new Community-based police, that every local district would have a SAPS officer to establish the main contact persons with the police and to improving education to talk about concerns or questions with the police officers. According to William and Pruitt, the majority of SAPS leaders are taking part in new programmes aiming at overall improvement of SAPS in the implementation of community based police services.

According to William and Pruitt (2010:119), the first major policy reform was really the merger of 11 law enforcement agencies. Additionally, William and Pruitt note that each domestic security force was put forward under one main enforcement agency. They also point out that 'kitskonstabels' were introduced into the programme from every former homeland. William and Pruitt note that while the multiculturalism of

SAPS grew, the degree of expertise in this incorporation diminished. William and Pruitt (2010:119) state that, in proper police strategies, the instruction provided for six weeks from kitskonstabels was vital but involved other people. To prevent the killing of police officials, rules on police behaviour had been established in an attempt to harmonise the law with human rights standards, but these new developments were not welcomed by the SAPS members (Pigou 2002:10). Pigou cites a comeback on immunity inside of SAPS which is highly improbable, whereas the current predicament is clearly unsustainable and stressful. Pigou points out also that, regardless of the specifics of the finalised law which will seek to lower the number of acts of violence, the South African Constitution needs to be better clarified. According to Pigou (2002), the police tend to harass members of the community in South Africa and physically assault them while SAPS members are subject to punishment on their own terms, and each case is considered a breach.

Pigou (2002:11) further maintains that there are instances of electrical brutality perpetrated by employees of police departments, for instance, receiving fines from court system and getting back to work in the same sections. In many areas of SAPS, Pigou (ibid) points out that reluctance to take meaningful measures may result to an environment of abuse of power. Petrus (2014:69) said law enforcement interactions personally affected the viewpoints of police officers through both old and new South Africans. In the past, the law enforcement exchanged negative attitudes about the violent defenders of the discriminatory laws of the white government. Petrus (2014:69) cites that throughout the history, the bulk of black South Africans had been the brutal victims of the restrictive measures of the colonial government. Petrus further (ibid) points to the idea that the precursors of the apartheid regime have, in the opinion of the Africans, broadly accepted themselves, as the 'enemy of democracy', as an impression of the attacking enforcement strengthened by the military systems of the old South African government.

### **3.6 THE NEED FOR A NEW APPROACH WITHIN THE SAPS**

South Africa has had many achievements in consolidating its approach to creating a secure and safe atmosphere for its entire people, as laid down in the Green Paper on Policing (South Africa 2002:4) since democracy came into existence in 1994. The

Green Paper on Policing (South Africa 2002:4) maintains that the immediate task after 1994 was to turn the police force into a governance agency and tackle the urgent need to resolve the spiralling rates of crime. The Green Paper on Policing (South Africa 2002:4) further reports that the democratically elected government focused primarily on ensuring the well-being of all the citizens. To achieve this goal, the Criminal Justice System with transparency and responsibility was only developed and transformed. The Green Paper on Policing (South Africa 2002:4) further cite that all of the 11 South African police forces merged into the new dawn of democracy following the end of racial segregation. It marks a new beginning in the establishment of a single police force symbolising the unity of the nation. Nevertheless, in view of the traditional practice of police violence and irresponsibility, the Green Paper on Policing shows that the need to instil a culture of police accountability and a progressive police ethic was especially relevant. In the light of the Green Paper promoting accountability and trust, the SAPS should be completely under the control of the law and uphold the principles embodied in the Charter of Rights (Green Paper on Policing, South Africa 2002:4). In addition, the Green Paper shows that community-based policing was also a foundation after 1994. This approach is based on building sustainable operating relations with culture based on association and respect (Green Paper on Policing, South Africa 2002:4).

Studies carried out in Johannesburg and Durban by the ISS (2012:14) show that South Africans appreciate law enforcers who handle them equally, not "hard on criminality". According to interviewees by the ISS, they suggested that police treatment with fairness and human dignity could be much more valuable than crime successes. Furthermore, the ISS notes that fair and respectful treatment allows people to consider police officers as lawful and consistent, promoting and cultivating participation. The ISS also asserts that citizens are more likely to call on the police to help and provide information. The ISS stressed that unhappy handling or misuse of power by the law enforcement would lead to society suspicion of the police officers and a refusal to help a cooperative effort to combat crime. Bruce (2011:8) suggests that it is customary for all forms of organisations, by means of procedures.

### **3.7 SUMMARY**

In the colonial era, the way the police operated is similar to the current situation. In the last few years, the police and the military have abused human rights. The only thing observed is that the authorities have in the olden days worked as a military and the police are presently more customer-focused. The police should protect civil rights and the principles described by human rights legislation. South African Constitution is one of the world's best constitutions, fifth from the Constitutions of Germany and of Canada. Pigou (2002:11) argues that the SAPS must implement an efficient monitoring system to assist the police service in the campaign to eliminate crime.

**CHAPTER 4:**  
**OVERVIEW OF THE USE OF FORCE POLICIES AND BEST  
PRACTICES BY INTERNATIONAL POLICE DEPARTMENTS**

**4.1 INTRODUCTION**

This chapter focuses on international police departments' policies on the use of force, which are arguably best practices that encourage good policing with a strong emphasis on compliance with human rights standards, ethics and integrity. These seek to advocate strong interaction with the community with a view to enhance legitimacy of policing, and which seek to address the issue of the use of excessive force in our country by the SAPS and other policing agencies.

Ever since the early days of police operations, various communities worldwide have expressed growing outrage about the use of excessive force and corruption (Alpert & Dunham, 2004:17). The 1215 English burinists gave an order to all sheriffs and constables to avoid disproportionate powers by law enforcement agencies. Police brutality is a global concern (Wittie, 2008:17). With this in mind, this section offers a summary of the use of excessive force and legal strategies implemented by different agencies of the international police forces' policies. First to be discussed is the international standard of human rights, complemented mainly by standards and guidelines drafted and implemented within the United Nations framework. The second point of discussion is a revision by the European Council of its binding legal context, as identified by the Code of police ethics (Wittie, 2008:17). In addition, the section focuses on the use of force strategies designed to promote best practices in the police. These policies have a strong focus on compliance, ethics and integrity with human rights standards and strive to encourage strong interactions between officers and the citizens to enhance legitimacy of police action.



## **4.2 INTERNATIONAL STANDARDS AND POLICIES ON THE USE OF FORCE**

Den Boer and Pyo (2011:8) note that the concepts of human rights are enshrined by global laws. Den Boer and Pyo further indicate that countries should have a global framework, partnerships and be part to special international treaties in universally applicable legal contexts. The mandate to protect and carry out the law enforcement duties of the rights of persons who live within their jurisdiction is with the police (ibid). The Human Rights Pocket-Book for Police Officials (2004:1) points out that international human rights law is binding to all governments and their citizens, including police officers. The Human Rights Book also maintains that international law and international review are valid topics of human rights (Human Pocket-Book for Police Officials, 2004:1). State officials are, therefore, required to be aware of and adhere to international human rights requirements. The Human Rights Act further specifies that the fundamental integrity of the individual is the basis of human rights, and that police officials must uphold and obey the law at all times (Human Rights Pocket-Book for Police Officials, 2004:1). Therefore, by serving the community and protecting all people against illicit actions, they are always ready to fulfil their law-imposed duty (Human Rights Pocket-Book for Police Officials, 2004:1). To do so, they must comply with their profession and not commit any corrupt act as stipulated in the Human Rights Pocket Book, and should be responsible for their job (Human Rights Pocket-Book for Police Officials, 2004:1).

### **4.2.1 The United Nations Framework on the Use of Force and Firearms**

Neyroud (2005: 579) highlights that universal good policing standards that are compulsory legislative powers are required under the UN Directive. Neyroud further asserts that in the scope of different contexts, such as forecasts of institutional changes, transformative community policing programmes, preparation for domestic and international police and trans-frontier law enforcement officers, the importance of these values is significant. According to Mistry, et al. (2011:11), the International Civil

and Political Rights Pact (ICPPR) entered into force in 1976 and included other police professionalism requirements. Articles 9.1 and Article 9.2 indicate that no one shall be deprived of his freedom. Mistry, et al. (ibid) claim that recently there had been signing of several treaties, agreements, and conferences, regulations and norms in most governments in modern times. According to Mistry, et al. (2011:11) measures and freedoms were also provided for compliance with the rules and regulations known worldwide. Furthermore Mistry, et al. (ibid) cite that countries are obliged to avoid and prosecute human rights abuses. According to Mistry, et al. (ibid), such principles reflect the international agreement that the states will aspire for the rest of the world. Mistry et al. further found that the negotiations were carried out of these conditions. According to Mistry, et al. (2011:11), another such instance is the use of the UN's basic principles of weapons and use of firearms.

According to Mistry, et al. (2011:12), the state's dedication to the application and regulation of police forces' compliance with such use of force and weapons is one of the most important aspects of the implementation of such standards. Many countries were member states to a range of UN agreements, resolutions and documentation, that information and files have been widely disseminated late or that state officials are actually trained to meet these requirements. According to the UN's fundamental directives in the use of force and weapons are the fundamental global framework in that sense. According to Mistry et al. (2011:12), this law clearly defines the situations in which police and weapons may be used. Under the UN principles, officials can use weapons when other methods are insufficient or unlikely to achieve the desired outcome.

Mistry, et al. (2011:12) assert that the UN directives on the use of firearms indicate that police officials can only use weapons when protecting society. The UN articles 4, 5, 9 and 10 of the UN declaration are applicable here and states that, in performing their duties, authorities must implement anti-violent measures further than practicable prior to the use of violence and weapons. Moreover, officers are only allowed to be using violence and weapons if other approaches remain unsuccessful. Concept 5 notes that: 'When legal action and weapons are necessary, the police officials are:

- (a) discretion in these usage act in accordance with the severity of the crime and the valid purpose to the focus in this concept being the reference first to as far as possible.
- (b) minimise the harm and suffering to be caused and respect and protect the lives of human beings;
- (c) ensure that medical aid and help is provided to any wounded or harmed person as soon as possible; and
- (d) ensure that families or acquaintances of the harmed or endangered person are made at their soonest.

Mistry, et al. (2011:13) further mention that Principle 9 of the UN proposal states that:

Other than in self-defence and in defenders of others from an immediate threat to murder or severe damage, police officials shall not use guns against people to prevent the perpetrators of especially grave crime which involves serious threat to life and serious harm.

According to Mistry, et al. (2011:13), the UN declaration elucidates that weapons may in any case be used deliberately, only if they are strict. All use of violence and more specifically the use of a firearm are provided for in concept 9. Principle 9 will also be improved by Principle 10 criteria, which specifies that police agencies "should recognize themselves and notify explicitly of their plan to use weapons, with sufficient time to alert them, unless it is unduly threatened or creates the threat of other people's deaths or significant harm. In such situations, a police officer must make an assessment and a splintered second life choice. Mistry, et al. (2011:13) further note that it is critical that the leadership of the enforcement agency provides the important and necessary guidance for law enforcement officers to immediately take appropriate decisions, without doubt (behavioural analysis learning is needed to provide realistic and normal answers). Authorities and the relevant management leadership are also included in the UN resolution in upholding these standards and prosecuting police officers who violate them.

The UN had intended to implement the penalty by independent review of all unauthorised use of occurrences of violence. In regards, police officers sufficiently believed to be using guns in a way inconsistent with global standards should be held to account by the member nations. Mistry, et al. mention the duty to review the data and conclusions of any such inquiry and court case in this proceeding. The UN doctrine implies that all matters relating to practical shooting and normal police operations, such as arrest and imprisonment of suspects require efficiently and mentally trained police officers. The question remains as to how appropriate the realistic administration of weapons is for officers training courses. Administrations were rather often willing and ready to use undefined administration fear to control troublesome demonstrations. The use of disproportionate physical force by state security officials is the undermining of genuine public demonstrations (Mistry, et al. 2011:13).

### **4.3 POLICIES AND BEST PRACTICES IN CANADA**

Stenning (2003:104) asserts that Canada, a democratic government, has a governmental system in which power and accountability shared between various levels of government to enact laws and to develop policies regarding the use of force. In addition, Stenning (2003:104) further notes that while other police services in Canada are organised under federal police laws, the Federal Criminal Code enshrines the criminal law authority of the authorities. According to Stenning (2003:104), the Criminal Code comprises in contrast to specifying police enforcement powers, requirements about the use of force by police and authorisations. The Criminal Code includes clauses on the use of power by the police as well as allowing them to possess firearms in the conditions where innocent people are not allowed to do it anyway, in addition to setting forth the police enforcing powers. Over the years, these provisions of the Criminal Code have been detailed and interpreted significantly by the courts. According to Stenning, this jurisprudence provides the essential legal framework under which the police are permitted to use force in the country and set limits for their interpretation and application.

### 4.3.1 The Canadian Charter of Rights and Freedoms

According to Stenning (2003:105), a set of constitutional standards has been presented in the Canadian Charter of Rights and Freedoms, which requires all such statutory to be described, adhered by the law enforcement as well as the judiciary, and which are subject to assessment of all government actions (including police actions). Stenning argues that from the point of view of the police shootings, Section 7 is primarily a clause of the charter, which guarantees that everyone has the right to be deprived of his / her life, rights or protection, except under the laws of procedural justice. In the broad context, Stenning also accentuates that to determine limits and safeguards of the legal exploitation power, the courts play a very important role. Stenning indicates that in the last 20 years, this has created an increasing legal precedent.

According to Stenning (2003: 106) what matters most is Section 1 of the Charter, where the legislations and government actions, which violate people's rights to the Charter, are nevertheless valid if they are "legal" and "evidenced in a free and open way by the evidence that they have been justified," which does nothing to do with the United States Bill of Rights. Stenning (2003:105) indicates that this clause enables judges to measure what they recognise as cultural, social and political frameworks in respect of the right of Canadians to be able to use the law and in a way that is legitimate. According to Stenning (2003:106), a person who is the victim of police officers, violating their Charter rights is entitled to seek a legal remedy but is not considered valid under Section 1. Stenning highlights that any person who is the subject of a police power abuse violating his privileges in the Charter may, under section 24 of the Charter, seek the remedy of the courts. Stenning (2003:106) points to the wider request of the courts when requesting remedy for those whose Charter laws were violated and considered "appropriate and only subject to the circumstances." Stenning (2003:106, however, suggests that such remedies may include law repealing, prevention of court proceedings. Section 24 also permits the judge, where it would accept the proof obtained in the case in question as a result of a breach of the basic human rights of the guilty person.

Stenning (2003:106) suggests that this clause offers the judiciary broad discretion in seeking redress to people whose Charter Rights have been violated which they consider as "necessary and just under the conditions." Furthermore, Stenning indicates that such remedies may include law enforcement strike and a continued judicial process (for example, against a legal resident resisting force by police reward for payment, which infringed on his or her Charter rights. Section 24 also allows a court, if it considers that acknowledging that testimony would "increase the administrative power of equality," to deny to hear evidence collected as a result of a breach of the fundamental rights of the defendants. According to the terms of the Charter, all rules governing police behaviour, as well as any direct use of violence by the officers, are liable to legal scrutiny. Stenning points out that city and primarily community purpose built authorities, known as security or police departments' commissions, usually regulate municipal policing systems. According to Stenning (2003:107), such law enforcement officers are allowed to pass through laws governing the governance and actions of its police officers, and in many instances, these by-laws include clauses regulated by police officers' use of guns. Stenning indicates that they also permit a local police officer to question rules and procedures and "daily orders," sometimes also containing provisions concerning the use of arms and/or aggression.

Stenning (2003:108) points to Canada's signed the Code of Conduct for Law Enforcement Officials. The Code of Conduct indicates that Law Enforcement Officials may exercise force only where strictly necessary and to the extent required to carry out their duties" with Article 5 banning the use of brutality or any other barbaric, cruel or penalising practice or coercion. "In Stenning's view, it was not unusual for law enforcement officers to proceed for unnecessary or unwarranted use of power, in spite of a considerable number of laws and rules governing the use of police force and the constitutional prohibition against its inappropriate usage. In addition, Stenning (2003:122) notes that up to now the legislation on police use of force has predominantly localised, with wide-ranging proposals applied around the region in separate policing providers.

### 4.3.2 The Canadian National Framework on the Use of Force

The Force Manual (Canada, 2011:1) established that the National Use of the Force Framework can be understood and related by both the citizens and the law enforcement officials. The Manual (ibid) indicates that this model is built on the idea of regulating, pertaining to the Use of Force Manual; police officials should come to terms frequently with brutal disciplines and environments (Canada, 2011:1). According to the Manual (Canada, 2011:1), this behaviour is monitored by the police officers and the brutality is stopped and these individuals are handled by legislation. The term "self-defence" is seldom used by the judiciary in the armed forces except when mortal force is employed. Where ordinary people protect themselves, the community and the judiciary regard the law enforcement as controlled. The National Force Framework enables police officers to analyse their behaviours in a situation that takes due account of the entire conditions (Canada, 2011:1).

Developing on the latter, the National Force Use Framework requires a police officer to evaluate and make a correct decision (Canada, 2011:1). According to the Canadian Manual (Canada, 2011:1), the selection of the force option is measured against what a reasonable, well trained and prudent officer is doing in analogous circumstances. The preceding concepts on the use of power defined in the National Use of Force Framework. Law enforcement agent is primarily responsible for preserving and protecting life. The National Framework indicates that the use of any violence primarily aimed at ensuring safety and security. According to the National Framework (Canada, 2011:1), the protection of the police officer is important to the safety of the public. Furthermore, the National Framework (Canada, 2011:1) indicates that the legislation does not substitute or raise a National Power System Usage; the legislation talks on its own. Considering of state status and existing authority was given to the creation of the collective security framework; no rule shall be dictated to any organisation by the regional application of the power structure (National Framework, Canada 2011:1).

### 4.3.3 The Canadian Criminal Code on the Use of Force

The Canadian Criminal Code (Canada, 2011:1), s25 (1) allows any person with legitimate grounds, authorising or allowed by legislation to use it in the operation or protection of rights, to use as much strength as possible. According to the Code (Canada, 2011:1) s37 (1), when the use of extra power than is appropriate, excuse the use of power to avoid an attack and to safeguard oneself or anybody else protected against an assault. The Code protects everyone by using the appropriate violence to stop a crime from being committed (Canada, 2011:1). The Code also justifies the use of lethal force in some situations. When there is limited application of excessive violence, it would be justifiable to answer with what constitutes mortal strength if a child is reasonably apprehended for the person's death or for serious body injury. Bringing all the sections governing the use of force into account, section 26 includes lethal force. The following section stipulates the following:

- Anyone licensed to be using power by statute will be legally liable to any abuse.
- Anybody who uses power should be able to consider his or her acts.
- When there is no constitutionally permissible use of force or intimidation, the officer can then be subject to criminal and/or lawsuits.

Law enforcement officers are covered under a wide range of more local legal, legislative and administrative provisions (which also cover all police officers in Canada), concerning the use of arms and power which vary considerably from one city or country to another within terms of their scope, thoroughness or material (Canada, 2011:1). Nevertheless, municipal weapons or police force legislation must not be in contradiction to the particular rules and laws of the province, in effect unconstitutional, in order to be applicable (Canada, 2011:1). According to the criminal code (Canada, 2011:1), the fundamental principles laid down in the Charter of Rights and Freedoms complied with in all these rules. Stenning further maintains that all laws governing the use of police force, in spite of its substantial diversity and variable characteristics in



state and local police areas, should reflect certain basic values laid down in the Federal Charter and the Criminal Code as understood and adhered by the judiciary.

#### **4.4 POLICIES AND BEST PRACTICES IN VENEZUELA**

In the Law Enforcement Use Force and Human Rights Manual (2003:32), Venezuela has been an approximately 24.6 million inhabitants (OCEI, 2000) as a constitutional republic. According to the Human Rights Manual (2003:32), Venezuela achieved structured sovereignty from Spain in 1830 and governed by dictatorships. The protest movements defeated the military dictator Marcos Pérez Jiménez until 1958. The law enforcement structured at the state levels and partly distinguished by the component (ibid). According to Human Rights Manual (2003:32), there really are four significant organisations at the state level. The Human Rights Manual Human Rights Manual (2003:32) also maintains that the Judicial Police (Corps for Scientific Research, Civil and Criminal Investigations) is the principal violent criminal investigative body and performs in collaboration with the prosecutor. According to Human Rights Manual (2003:32), the civil rights guide specifies those political crimes regularly, other offences, such as drug trafficking are investigated by the political police (Directions Services Intelligence Prevention). Police and human rights (2003:32) indicates that the National Guard regulates terrorism, drug smuggling and ecological criminality and, on particular night, public security. The Traffic Police (Córpo Técnico de Vigilancia Del Transport Terrestre) is tasked, as specified in the Police Use of force and Human Rights Manual, with monitoring, preparatory investigations and arrests of offences (Human Rights Manual, 2003:32).

The Force Uses Police Manual (2003:32) also stipulates that authority by the Venezuelan police officers of the use of power practised in those organisational and lawful areas, as is the case in several other states. In the Police Handbook (2003:35), the former was a police department; the latter was a criminal judicial system. The former was a police force itself. The Police Use of Force Manual (2003:32) also asserts that there are organisational independent operational and legal restrictions, as each of these may cause action in the other sector. Moreover, the Police Use of Force Manual

(2003:32) avers that administrative control of the use of force can proceed by routine registration of police activities or through inquiry. According to the Police Use of Force Manual (2003:32), officers file reports on encounters in which force is used. Secondly, the police administration gathers information on cases brought to its attention, usually through complaints from citizens.

The Police Use of Force Manual (2003:38) avers that there are no comprehensive information that exists on administrative monitoring of the use of force in Venezuela, but the impression is that control in this domain proceeds almost entirely through inquiry. In most instances, the Venezuelan police are expected to report every shooting incident, which means that they should be inspected prior to the performance of their duties and again when reporting off duty. The Police Use of Force Manual (2003:38) stipulates that regulations for the use of force by the Venezuelan police are defined as both prescriptions and prohibitions. The Police Use of Force Manual (2003:38) further indicates that prescriptions specify when force may be used and found in legal texts ranging from the Constitution to the procedural rules in each department. According to the Police Use of Force Manual, prohibitions indicate when force may not be used and found in the disciplinary codes in each department. The Police Use of Force Manual asserts that prescriptions for the use of force by Venezuelan police are very general.

The Police Use of Force Manual (2003:38) as well as Articles 55 and 68 of the Constitution (Venezuela, 1999) call for the protection of dignity and human rights by government, at the same time limiting the use of firearms and toxic substances by the police. Article 65 of the Penal Code (Venezuela, 1964) provides for the legitimate exercise of authority, including the lawful use of firearms by the police and also for self-defence, provided that the means used in self-defence are proportional to the threat and that there has been no prior provocation of the aggressor by the person who acts in self-defence. Article 282 of the Penal Code restricts the use of firearms by the police to self-defence or the maintenance of public order. Article 67 of the Penal Code (Venezuela, 1964) declares that police officers must use non-violent means for the purposes of maintaining order and keeping the peace. In contrast, Article 68, referring

specifically to the use of firearms, is a near textual copy of Point 9 of the Basic Principles on the Use of Force or Firearms by Law Enforcement Officials, approved during the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Cuba in 1990 (United Nations, 1990).

The Police Use of Force Manual (2003:32) articulates that prohibitions on the use of force found in the Disciplinary Regulations of the Metropolitan Police (PM, 2001). According to Article 64, officers will be terminated if they “cause injury to others by shooting, or otherwise using firearms or other weapons, in an improper, imprudent or negligent manner.” The Police Use of Force Manual (2003:38) maintains that unauthorised carrying of a service firearm while off duty leads to a written warning, as does carelessness or negligence in the use of equipment, including batons (Article 63). According to the Police Use of Force Manual, these disciplinary regulations, like those in place in other departments, do little to indicate specific behaviours or situations avoided. Moreover, the Police Use of Force Manual (2003:38) further highlights that a judgment regarding the “improper,” “imprudent,” or “negligent” use of force essentially shifts the focus of evaluation to authorised uses (for example, where force would not be authorized, it can be designated “improper”). Therefore, prohibitions on the use of force add little specificity to prescriptions for the use of force (Police Use of Force Manual, 2003:39).

## 4.5 POLICIES AND BEST PRACTICES IN THE USA

In Wittie (2008:17), law enforcement agencies in the USA have started re-evaluating their use of force strategies and training following the Rodney King incident of the early 90s. Wittie indicates that the police stopped their violent culture and began to value members of the group. Evidence shows that police brutality and the use of unnecessary force are rife. For example, in a March 1991 poll on police brutality and the disproportionate use of force in public encounters, 9% of minorities said that they were assaulted, and 20% said that they knew someone who had been physically abused by the police (Wittie, 2008:17). Wittie (ibid) proposed that policies and procedures change, as well as clarification, whether the use of force is justified to protect the public, should such abuses be performed. Racism, disproportionate use of force and militarised police approach have taken place in the United States (Policy Link, US, 2014:3). According to Policy Link, US, (ibid), these incidents have raised the need for the policies that could regulate police use of excessive force in the USA. Consequently, the following policies will be discussed:

- **Establish clear standards and values** – According to the Policy Link US, (2014:3), the effective policies include a direct explanation of principles stating that police officers should utilise the minimum required level of power and correct operating as to the application of coercion in compliance with applicable laws and the mentoring of departments.
- **Fix the 'Silence Code'** - According to Policy Link (2014:3), this methodology is defined for its conspiracy of silence between the police officers in the eyes of one colleague's misbehaviour. In accordance with the US, 52% of law enforcement officers concur that a police officer ignoring misconduct by other police officers is uncommon.
- **Ensure oversight and accountability** - Police departments, according to Policy Link (2014:3), are publicly financed and publicly liable. Policy Link also states that police agencies are unable to conduct their own inquiry. Policy

Link further indicates the establishment of established responsibility actions to ensure the objectivity of law enforcement brutalities, systemic racism and/or misuse of powers, in situations where validated summative assessments are an issue.

- **Training Investment** - Policy Link (2014:3) cites race and cultural perceptions. According to Policy Link, tacit or explicit, attitudes and behaviours may be influenced and fatal. Policy Link also points out a requirement for law enforcement officers to receive racial discrimination training, as well as developing skills that demonstrate problem-solving strategies, crisis resolution techniques and conflict management strategies.
- **Militarisation rejection** – According to Policy Link (2014:3), agencies will take extra care, examining attentively the need for initiatives to convert weapons and equipment to the law enforcement services because professional development and the use of unreasonable force frequently stimulate loaded society responses and brutality.

**Implement Technology and Tools for Oversight** – According to Policy Link (2014:3), departments must prioritise the identification, in special operations, traffic violations and any other communication with local communities of personal, national or governmental organisations to empower all police officers of body-wearing camera systems to help eradicate infringements and differences.

#### **4.6 LEGAL STANDARDS GOVERNING THE USE OF FORCE IN THE USA**

By mid-1990, the legislative branch had been virtually powerless at the national and federal level to control racial violence (Schatmeier, 2012:541). Among these are Law and Violent Crime Control Act, 42 of 199 (s14141), corrections in police forces around

the state of systematic excessive use of force activities. Following are even farther steps required to manage the use of powers across the USA.

#### **4.6.1 Implementation of s42 U.S.C 14141(a) (2006)**

In 1994, when the Congress enacted the Law Enforcement Act, the Department of Justice presented the State and local police departments with a strong weapon to amend in constitutional activities (Schatmeier, 2012:540). Schatmeier (2012:540) also asserts over the past 20 years that, as a way to change discriminatory policing procedures such as excessive use of force, racial profiling and illegal stop-and-rig policies, the DoJ has used this authority to review, prosecute or enter into contractual arrangements with police departments. However, Schatmeier (2012:540) notes that these arrangements frequently fail to produce their specified objectives since they lacked frameworks for successful compliance. According to Schatmeier (2012:540), section 14141 authorises the General Prosecutor to bring civil proceedings towards a policing agency that has a 'pattern or procedure' that violates the rights of people to seek a fair or declaratory remedy that replaces the law.

Schatmeier (2012:541) also asserts that the Department of Civil Rights (DoJ) might have pursued or reached settlement deals with 11 law-enforcement agencies during ten years of its enactment. However, the DoJ has totally removed the strategy for lawsuits and provided professional guidance to law enforcement based on a variety of institutional restrictions and the steady progress at which transition is created. Schatmeier also emphasises that, while the DoJ has not continuously implemented feasible restructuring, an assessment of the effective Cincinnati intervention in remedying several massive issues in the country police directorate show that this method can lead to a significant transformation.

#### **4.6.2 Federal Criminal Civil Rights Statute Act 242 of 1866 (U.S.C. 242)**

The Civil Rights Act of 1866, which made a crime the deprivation of another civil law while acting in the colour of the law, was passed in Congress following the Civil War (Thompson, 2015:13). In addition, Thompson points out that the law covers perpetrators of all races while it is specifically intended to preserve African Americans' rights. Furthermore, Thompson (2015-13) explains that the government is obliged to prove three elements in the prosecution in accordance with Section 242: (1) the defendant has deprived the person of an individual's right secured by the Constitution or US law; (2) he or she has acted in a colour of law in depriving that person of the constitutional right and (3) has been willing to deprive that person. Thompson (2015:13) further indicates that again, in compliance with Section 242 cases, the police officer does not have to use force owing to the race of a single person. Thompson (ibid) notes that the individual's civil rights are denied. Therefore, prosecutions under Section 242 do not require that the police officer use force based upon an individual's race.

#### **4.6.3 Federal Civil Rights Claims Act, 42 of 1983 (42 U.S.C 1983)**

Thompson (2015:19) avers that victims of racial mistreatment can give legal claims pursuant to Act 42 of the USC 1983, in addition to criminal conduct. Like Section 242, Section 42 of 1983, which secured constitutional rights of African Americans, was enacted during the era of reconstruction. He further maintains that the complainant must demonstrate that in order to demonstrate a breach in the excessive force claim under Section 1983: (1) an officer has deprived a person of his or her right, in accordance with Fourth Amendment, to be free from unreasonable assault and (2) an officer has acted in the colour. "Unlike its criminal counterpart 18 U.S.C. 242, this section does not contain a state of mind, as it is essential to set up a contravention of the underpinning constitutional interpretation. Thompson (2015:19) also notes that the claimants may demand compensation, compulsory compensation or other equal relief in the proceedings of Section 1983. According to Thompson (2015:19), when an officer is engaging in unlawful activity, she is protected from individual legal damages by a presumption of prosecutorial discretion if his acts "do not breach relevant legal or charter freedoms, which the right individual should have understood."

#### **4.6.4 Excessive Use of Force Prevention Act of 2015 (H.R. 2052)**

To be regarded as "punishment, pain, or imprisonment" (Thompson: 2015:24), improper use of 2015 Force Protection Act (H.R. 2052), the 18 USC.242 amendment will be "based on the narrowing and winding pipes which may obstruct, inhibit or limit the intake of air." Thompson (2015:24) further points out that the practical operation of this Statute is not clear. Thompson (2015:19) also accentuates that the most excessive force cases brought in compliance with Article 242 depend on the first part of the law, deprivation of civil rights, rather than the second portion, of the arbitrary treatment on the race, colour, or alien status of an individual. The cases under this Act, H.R., appears to Thompson that section 2052 will only occur if a suspect's race, colour or foreign identity supervises a headlock as a deterrent or sanction.

#### **4.6.5 Police Accountability Act of 2015 (H.R. 1102)**

A new federal statute will be set up for such homicides by law enforcement officers (Police Reform Act of 2015 H.R. 1101). According to Thompson, the Reform Act (1101of 2015) would provide that any public agency state or local officer, receiving funding under the JAG programme, who commits murder or homicide if the Edward Byrne Memorial Justice Grant (JAG) were in place in a special marine and territorial competence of the US, would be punished in accordance with federal legislation.

#### **4.6.6 National Statistics on Deadly Force Transparency Act of 2015**

Thompson (2015:24) argues that the National Deadly Force Reporting Statistics Act 2015, if it does not generate data on police shootings use such as information relating the following, will reduce state or local government JAG funding by 10%:

- a) Recognising the personality traits to whom the use of deadly force intended and of the officer that used forced death.
- b) Time, date and place of death-force use.



- c) An individual who was the victim of the deadly force suspected criminal activity.
- d) The nature and use of a firearms of the mortal force used.
- e) Clarify, if any, why death force applied by the appropriate police agency.
- (f) Copy, at the time of the submission, of the deadly force guidelines in effect; characterisation of any semi-lethal measures taken the first use of excessive force to arrest or neutralise an individual who has been the focus of the application of death powers.

#### **4.6.7 Police Reporting Information, Data and Evidence Act of 2015 (PRIDE Act) (section 1476, H.R 3481)**

In Thompson's (2015:25) report, the 2015 PRIDE Act (s1476, H.R. 3481) requires that the data relating to any tragedy should be gathered when use of force by either a police officer or social leads to severe physician harm or damage. The following shall contain such data:

- gender, race, ethnicity, and age of every shot, wounded or murdered person; the event period, time and site;
- whether such a private citizen was able to defend and, if so, the citizen's kinds of weapons;
- Form of attack, including the weapons used against a person, soldier, or the two; The amount of alleged assault officers participating; a quick summary of the conditions of the accident.

#### **4.7 EXPLORING THE BEST PRACTICES ON THE USE OF FORCE BY THE POLICE IN THE UNITED KINGDOM**

According to Stenning (2003:13), the British law enforcement is the best in the entire world when it comes to the application of reasonable force. Moreover, Stenning says that the police in regular patrols are defined as "lightly armed," because they are fitted with a stick, handcuffs and (almost invariably) an invalid spray. This link among citizens and police is explained by the College of Police Manual (United Kingdom, 2014:1) in the expression "The officers are the citizens and the society is the police."

The College of Policing Manual (United Kingdom, 2014:1) further indicates that Peel's principles focus heavily on the importance of public support and emphasise the need for the police to 'secure and maintain public respect'. According to the College of Policing Manual (ibid), the Code of Ethics remains true to the founding principles of British policing and highlights the responsibility of those who work in policing to behave in a manner most likely to win the trust and support of fellow citizens. The College of Policing Manual (United Kingdom, 2014:1) further stipulates that the Code of Ethics is the first for everyone who works in policing in England and Wales. The College of Policing Manual (United Kingdom, 2014:1) indicates that the code sets out the principles and standards of behaviour that is expected of a police professional. This applies to every individual who works in policing, whether a warranted officer, member of police staff, volunteer or someone contracted to work in a police force.

#### **4.7.1 International Standards on Policing and Accountability in the UK**

Mawby and Wrights (2005:3) suggest that many international instruments are substantially important to the United Kingdom's police transparency. Mawby and Wrights (ibid) maintain that the UN Universal Declaration on Human Rights of 1948 is a major source of judicial and legislative practices. The Convention in the 1998 Human Rights Act had come into force under the United Kingdom law. To this end, Mawby and Wrights (ibid) point out that the legislation allows the police to adhere to the Convention. According to Mawby and Wrights (ibid), the 1998 Human Rights Act was adopted following the declaration providing for adjudication by UK domestic courts and the award of remedies in cases of violation of the Convention's rights by public authorities.

Mawby and Wrights (ibid) indicate that plaintiffs may argue in the European Court of Human Rights in Strasbourg that UK domestic courts cannot decide on a matter. Mawby and Wrights further contend that these adjustments provide such a strong legal framework that accounts for the actions of the police. In investigating allegations of racial profiling, the Independent Police Claims Commission and the Police Ombudsman in Northern Ireland take into consideration of Human Rights Act 1998. Mawby and Wrights (2005:3) further indicate that the United Nations Code of Conduct for Law Enforcement Officials (1979) lays down fundamental standards for police agencies worldwide and applies to all law enforcement officials with arrest and detention powers. According to Mawby and Wrights, the police must recognise and use force only when appropriate, in line with scenarios, the rights set forth by the UN Universal Declaration and other federal statutes. Mawby and Wrights further suggest that in order to help protect human rights and enhance police officers' status, the Police Declaration (1979) established the anticipated rules of conduct for the police in the member States of the Council of Europe. The Declaration was followed by the Police Ethics Code by the Council of Europe. The EU Police Policy and the Police Ethics Code established basic guidelines for conducting lawful law enforcement in compliance with the United Nations Code of Conduct.

#### 4.7.2 Application of Section 3 of the Criminal Law Act of 1967 on the Use of Force in the UK

To carry out the function of law enforcement, the Independent Police Complaints Commission (IPCC, 2015:6) allows the police, if necessary, to use reasonable force. The IPCC (2015:6) specifies that (legal) force shall be used in England and Wales by the police, and anyone else pursuant to section 3 of the Criminal Act of 1967 stating that, in the prevention of crime or in carrying out or assisting a human being, the use of force is appropriate when in self-defence, defence of another, defence of property, prevention of crime, and lawful arrest. The IPCC (2015:6) explains that if force is allegedly used to prevent crime or arrest an offender, necessities cannot be equated with reasonability (United Kingdom, 2015:6). The IPCC (United Kingdom, *ibid*) also encapsulates the Crown Prosecution Service (CPS). The following factors must be considered in accordance with the IPCC: the essence and force of the application; the seriousness of a crime that is avoided or for which an arrest is carried out; the nature and the extent of any force used by a person resisting arrest against an officer. The guidance or training provided by an officer may be used to help determine what is reasonable (United Kingdom, 2015:6).

- The IPCC notes that the police officers are often driven by three main questions, when and to what degree force can be used to comply with the 'Key Principles of Police Use Force' (UK, 2015:7), that is, the following:
- Would the use of force have a legitimate aim (for example: preventing injury or damage to goods, or performing a legitimate arrest) and, if so, the threat is immediate and serious.
- Are there any means that do not fulfil the legal purpose defined other than the use of force?
- In view of the complexity and severity of the danger and the potential for adverse effects resulting from the use of power (including the possibility of escalation and exposure of other citizens to harm), what is the minimum degree of force required to achieve the objectives identified?

### 4.7.3 Professional Practices by the Police in the UK

Grimwood (2016:6) states that the Police College has published the Armed Police Guidelines for Authorized Professional Practice (APP). Grimwood also explains that the European Convention on Human Rights sets the constitutional mechanism, including UK Acts, common law and rights. Grimwood indicates that the guidance supports a "common and officer-security approach to human-rights" (human rights-based approach) and notes that any force used must be "fair." Furthermore, Grimwood (ibid) says that when the police have to use force to accomplish a valid purpose, such as a lawful arrest, self-defence or other protection, the force used must in such cases be fair. Grimwood (ibid) indicates that the use of force in criminal and civil tribunals by police officers can result in legal proceedings. In the event of death, according to Grimwood (ibid), the coroner or other officer shall conduct a public inquiry or other investigation. Any attempt should be made to solve the problem without recourse to coercion or weapons, but a human rights-based approach to the public and protection of officials must be a major consideration. Grimwood (ibid) notes that the APP (among other things) applies, under conditions where the use of force is inevitable, to control and proportionality:

- Workout limitation and act according to the offense charged and the reasonable aim to be accomplished.
- Reduce harm, regard and preservation of human lives.
- Make sure that any wounded or impacted individuals receive humanitarian assistance and aid as soon as possible.
- Guarantee the wounded individual's family members or good friends are informed as quickly as possible.

## **4.8 SUMMARY**

Police use of excessive force in South Africa is a major concern, and some of the incidents which have been highlighted by the researcher in this study has shocked the international communities. The police are the only authority empowered to use physical force and it is supposed to be used only as a last resort. The primary objective of law enforcement is fighting crime. However, officers and departments vary in their approach. Officers do not understand and have true appreciation for their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties. International policing agencies have already outlined policies and best practices to regulate the use of excessive force and deadly force by the police while executing their duties around the world. The researcher studied different policies from the selected police organisations that are the best practices in the regulation of the use of excessive force by the police. SAPS should copy from those policing agencies to address the issue of police impunity and brutality. In South Africa, the interim Constitution as well as the new Constitution made provision for the establishment of bodies such as the IPID to ensure that the police work within a human rights framework. SAPS like their predecessors did not change their approach when it comes to the execution of their duties and dealing with criminals, protests, arrests and other challenges.

## **CHAPTER 5:**

### **PRESENTATION AND INTERPRETATION OF THE DATA**

#### **5.1 INTRODUCTION**

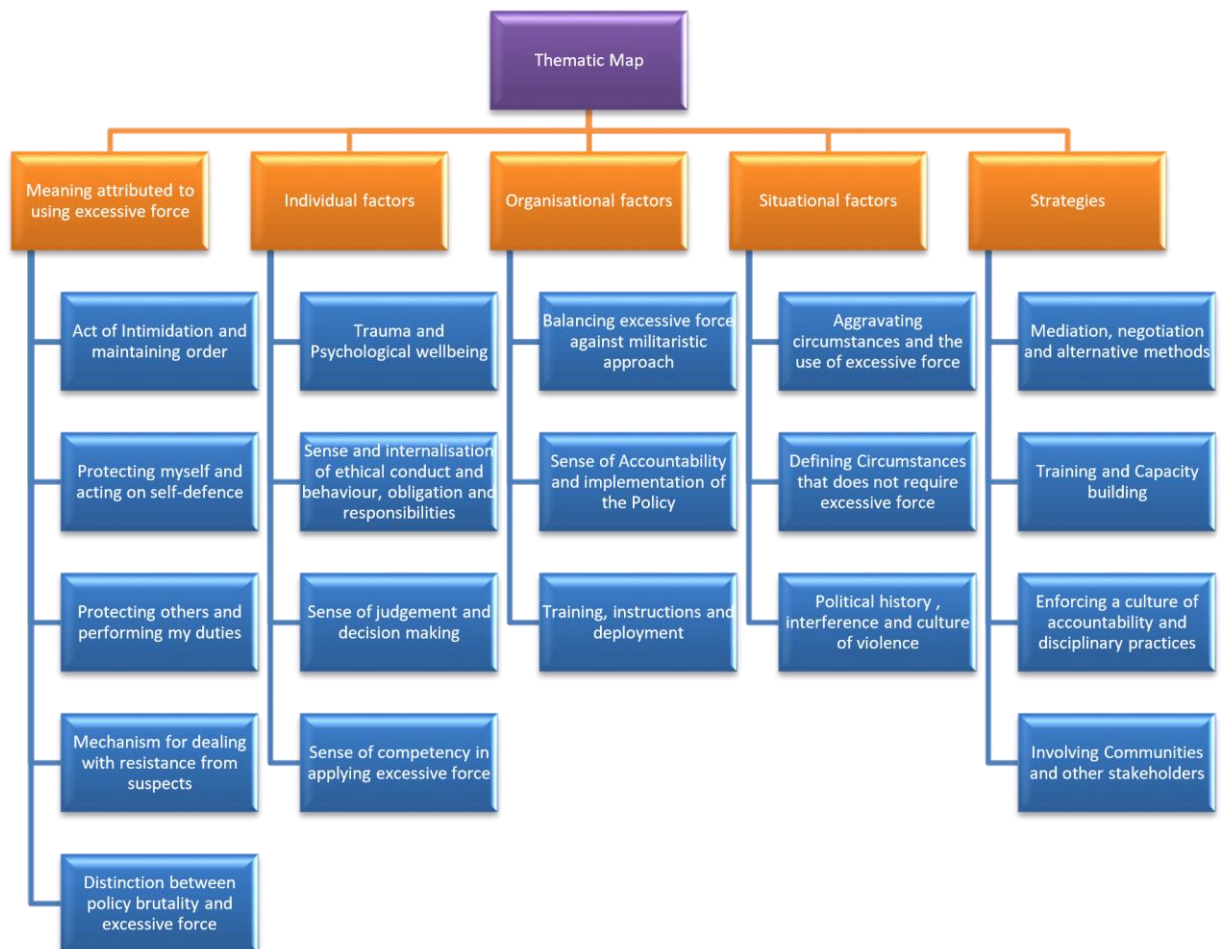
This chapter presents the interpreted data derived from the in-depth interviews with the 30 participants drawn from SAPS and departments or organisations that ensure independent oversight over SAPS (IPID, CSVr, ISS and SARHC). This chapter also presents, interprets and discusses the research findings from the in-depth interviews that were conducted to explore the use of excessive force by SAPS members. An overview of the significant findings in terms of the research data is given. To achieve the research aim and objectives, it was ensured that the research questions were answered according to the conducted in-depth individual interviews with a total of 30 participants. The established themes and their sub-themes are directly linked to causative factors of using excessive force by SAPS members when dealing with offenders and suspects.

Consequently, the interpretation of the established themes will address the research problem statement, research objectives and the corresponding research questions as discussed in Chapter 1.

1. This chapter interprets the experiences, views and opinions of the participants and provide a link to the reviewed literature (as presented in the preceding chapters, 2, 3 and 4). The subsequent sections will first provide a summary of each previously identified theme before the comprehensive interpretation of the findings. The interpretation will be supported by the relevant literature reviewed in the previous chapters. The purpose of the comprehensive interpretation of the findings was to unpack the causative factors of the use of violence by SAPS members, especially when encountering extra-ordinary circumstances. Additionally, the other rationale of the interpretation of these research findings is to empower SAPS members with new

knowledge that may lead to more acceptable practices in the application of the use of force during the execution of their duties during extreme.

Data were imported to Atlas.ti, coded and categorised into themes which were organised according to the objectives of the study and the major research questions. The data on the phenomenon being studied were solicited from the participants through the interview guide developed from the major research questions. Codes and themes were developed from the collected data. Lastly, the themes were presented and analysed to determine the major findings of the study. The summary of the data analysis stages in the form of a thematic map was developed by the researcher:



(Source: Developed for the study by the researcher)



## 5.2 RESULTS EXTRACTED FROM THE INTERVIEWS

The results of this study are presented according to the research objectives that framed the study. Thematic map 5.1 captures the thematic framework outlining the key study themes and subsequent subthemes presented in sections different of this Chapter 5.

**Table 5.1: Themes**

<b>THEME 5.1.1: Meaning attributed to using excessive force</b>
<ul style="list-style-type: none"> <li>• Sub-theme 5.1.1.1: Act of intimidation and maintaining order</li> <li>• Sub-theme 5.1.1.2: Protecting myself and acting on self defence</li> <li>• Sub-theme 5.1.1.3: Protecting others and performing my duties</li> <li>• Sub-theme 5.1.1.4: Mechanism for dealing with resistance from suspects</li> <li>• Sub-theme 5.1.1.5: Distinction between police brutality and excessive force</li> </ul>
<b>THEME 5.1.2: Individual factors</b>
<ul style="list-style-type: none"> <li>• Sub-theme 5.1.2.1: Trauma and Psychological wellbeing</li> <li>• Sub-theme 5.1.2.2 : Sense and internalisation of ethical conduct and behaviour, obligation and responsibilities.</li> <li>• Sub-theme 5.1.2.3: Sense of judgement and decision making</li> <li>• Sub-theme 5.1.2.4: Sense of competency in applying excessive force</li> </ul>
<b>THEME 5.1.3: Organisational factors</b>
<ul style="list-style-type: none"> <li>• Sub-theme 5.1.3.1: Balancing excessive force against militaristic approach</li> <li>• Sub-theme 5.1.3.2 : Sense of accountability and implementation of the policies</li> <li>• Sub-theme 5.1.3.3 : Training, instructions and deployment</li> </ul>
<b>THEME 5.1.4: Situational factors</b>

<ul style="list-style-type: none"> <li>• <b>Sub-theme 5.1.4.1 : Aggravating circumstances and the use of excessive force</b></li> <li>• <b>Sub-theme 5.1.4.2: Defining circumstances that does not require excessive force</b></li> <li>• <b>Sub-theme 5.1. 4.3: Political history, interference and culture of violence</b></li> </ul>
<b>THEME 5.1.5: Strategies</b>
<ul style="list-style-type: none"> <li>• <b>Sub-theme 5.1.5.1: Mediation, negotiation and alternative methods</b></li> <li>• <b>Sub-theme 5.1.5.2: Training and capacity building</b></li> </ul>
<ul style="list-style-type: none"> <li>□ <b>Sub-theme 5.1.5.3: Enforcing a culture of accountability and disciplinary practices</b></li> <li>□ <b>Sub-theme 5.1.5.4: Involving communities and other stakeholders</b></li> </ul>

### **5.2.1 Theme 1: Meaning attributed to using excessive force**

The use of excessive force is prevalent in South Africa as the SAPS members execute their duties and responsibilities of instilling peace and order. In most cases, the use of excessive force will be justifiable while it would be far reached in some cases. This theme presents the participants' views and opinions on the use of excessive force, most specifically, excessive force and the causative factors. This theme presented the participants' views and opinions on the use of excessive force. Given the public outcry of excessive use of force by SAPS members, it is imperative to uproot the causative factors behind it. Having the full knowledge of the causative factors will assist relevant authorities in developing a strategy or framework that will serve as a guideline on, under what circumstances is the use of excessive force applicable. This theme identified various factors cited for the use of excessive force by SAPS members. These factors include historical policing, non-compliance by suspects, the nature of the crime and the prevailing circumstances. Based on the responses from the participants, it became apparent that SAPS members resort to the use of excessive force as to circumvent challenges they face when executing their day-to-day duties. The

following sub-themes emerged because of the preceding theme and discussed underneath as follows:

#### **5.2.1.1 Sub-theme 1: Meaning- Act of intimidation and maintaining order**

Participants ascribed meaning of excessive force as an act of intimidation in cases where there is chaos in the community, or aggravating circumstances such as robbery or hijacking, then they may resort to using excessive force to intimidate the criminals or even maintain law and order. The researcher posed the following question to SAPS, CSVV and IPID participants for this current sub-theme to emerge:

□ *“According to you, what is the meaning that you attach to the use of excessive force?”*

The purpose of this question was to solicit views and opinions on the meaning attached to the use of excessive force by the participants. The first CSVV participants ascribed meaning of excessive force to as an act of intimidation in cases where there is a need to maintain order in the community. SAPS participants mentioned that in cases where there is chaos in the community, or aggravating circumstances such as robbery or hijacking, they may need to use excessive force to intimidate the suspects or even maintain order. This theme presents the participants’ views and opinions on the use of excessive force.

The CSVV participants indicated that excessive force was supposed to be used when the police apprehend wanted suspects, but the problem with the SAPS members is that when they apply force they do it to intimidate members of the community. He further indicated that in some instances, members of the SAPS abuse their powers by getting bribes from the suspects.

## D 2: CSVR2

*And we've also seen excessive force being used where it's not necessary. You know where the force is not needed but obviously is used as a way of maintaining law and order, but for me when I think more broadly about the meaning of excessive force and how the SAPS members may be used on daily basis is not purely about using excessive force for making arrest to where a person is resisting arrest but so the use of other forms of force may need to be considered and that could like cohesion or could be you know intimidation. For example, if you don't give a bribe I will take you to the police station. You know force more broadly can be maybe defined as the use of one's power and authority to influence decisions or behaviour of other people and then often that doesn't require physical force; it can just be using the power that is accounted to you and to influence others.*

CSVr participants further reported that excessive force should be applied when there is a threat or where the people's lives are in danger. They further indicated that force can also be used to protect the people's properties. According to the first IPID participant, members of the SAPS use excessive when they want to retrieve information from suspects by means of interrogation especially when the police want information about a crime committed. The second IPID participant indicated that there is no need for the police to interrogate suspects who have been arrested and where there is enough evidence which could be submitted before a court of law.

The first SAPS participant alluded that the challenge is when a police officer is supposed to arrest an offender and has no back-up, and in that situation criminals and even ordinary citizens may tend to undermine police officials.

*Jah on my side I will say we working one-one is very dangerous because even a person who is not dangerous can just undermine you and start to act violently because you are alone. What must happen we must work buddy-buddy not one because working alone can cause that person to undermine they will say "no you can't arrest me" simply because you're alone.*

Most SAPS participants indicated that it is necessary to use excessive force especially when they are supposed to protect the community. Another participant indicated that he has the mandate to serve and protect the nation. Most SAPS participants indicated that they use excessive force especially in the situation of uncontrolled protestors. Another SAPS participant indicated that excessive force can be used when arresting a dangerous high risk criminal. Another SAPS participant mentioned that community members will protest for electricity and start setting vehicles on fire, and in that situation, he will use excessive force to protect people's properties. Another SAPS participant reported that excessive force can be used to fight fire with fire.

*Yes, the use of force. I can say to me it is acceptable but it depends on how is it used, you see, fight fire with fire, the person will give you tough time during the time when you are your supposed to be, you know performing your duties you must as well show him you are in charge. After all, you are a police officer who is enforcing the law and the end of the he must stand up bowing to what you want him to do.*

#### **5.2.1.2 Sub-theme 2: Protecting myself and acting on self-defence**

One of the meanings that participants ascribe to the use of excessive force relates to the notion of "protecting myself and acting on self-defence". Participants mentioned the meaning of using excessive force can be attributed to protecting themselves and acting on self-defence. This code is derived from participants who mentioned that when they are confronted with aggravating circumstances, they are forced to use excessive force to protect themselves. It is interesting how participants attributed their use of excessive force to protecting themselves or self-defences. This suggests that members of the SAPS often find themselves in a vulnerable position and often compelled to act in self-defence and therefore, excessive force is one of the ways in which they reduce their sense of vulnerability.

Answers from SAPS, IPID and CSVr participants about the meaning that they attach to the use of excessive force, gave rise to the preceding sub-theme:

*‘What contributing factors gave rise to the use of excessive force?’*

The following responses were recorded by the researcher from IPID, CSVr and some of the SAPS participants:

#### **D 1: CSVr1**

*The police force is supposed to be dealing with civilians. You know, a police officer is not like a military is not like soldiers; you see yourself as somebody who is supposed to protect and defending the civilians; you see yourself as a person who is supposed to be mean and kill people; so, it starts there so these are some of the challenges that you know. I’m saying that these are some part of the issues that we need to consider as a country., You can’t be calling people general, what is general, lieutenant and so, so that for me these are the language that is being used to all soldiers who are supposed to be guiding, you know, who are supposed to bring peaceful ability in the country and protect in the event of war you know so that is where the problem starts.*

#### **D 3: CSVr3**

*Excessive force, like I have said, is necessary when there is a threat to life; when there is a threat to people’s livelihood. My MLM research is looking at necessary use of force to protect properties; those are the circumstances when the situation when there is threat to life, crime to well-being of people then those circumstances warrant excessive use of force so circumstances when there is no threat to life there is no threat to injury, there’s no threat to people’s property or well-being. So, excessive force is completely necessary.*

#### **D6: IPID3**

*Where there’s violence, where there’s resistance, they want to arrest the person, the person resists, fights and noncompliance where their lives are in danger then that’s*

*where force is applied. Their lives or lives of any other person are in danger, that's where force, excessive can be applied as long as that excessive force is in line with Section 47 of criminal procedure.*

## **D 9: POL2**

*Actually, we normally use force when it is needed or when there is a danger to someone's life or to a community member or protect myself.*

SAPS participants numbers 3, 4, 5, 6, 7, 8, 9, 13, 14, 16, 17, 18, 20, and 21 all shared one common opinion as they indicated that they sometimes find themselves in a situation where they act on protecting themselves and also acting on self-defence. SAPS members are well trained on the use of firearms. However, the management or those that are in charge of the junior members cannot give clear instructions, especially when it comes to the use of force and or shootings by members who are conducting operations. That is the reason members of the SAPS opt to defend themselves or even shoot to kill even when the situation should have been held differently to avoid the loss of life.

### **5.2.1.3 Sub-theme 3: Protecting others and performing my duties**

One of the research questions of this study relates to the meaning that participants attribute to excessive force. The meaning that SAPS members ascribe to excessive forces has a direct bearing on whether the SAPS use excessive force. One of the findings in this regard relates to the notion of "protecting others and performing my duties". Participants mentioned that they use excessive forces as means of protecting others in the community. Therefore, as a result, excessive force is symbolic of performing their duties as members of the SAPS.

Answers from SAPS, IPID and CSVr participants about whether the use of excessive force by the police is necessary for the execution of their duties, gave rise to the preceding sub-theme:

*‘From your experience would you regard the use of excessive force as necessary for the execution of your duties?’*

### **D 1: CSVr1**

*The police force is supposed to be dealing with civilians, you know. A police officer is not like a military is not like soldiers; you see yourself as somebody who is supposed to protect and defending the civilians. You see yourself as a person who is supposed to be mean and kill people; so, it starts there; so, these are some of the challenges that you know. I’m saying that these are some part of the issues that we need to consider as a country. You can’t be calling people general, what it general, lieutenant and so, so that for me these are the language that is being used to all soldiers who are supposed to be guiding, you know who are supposed to bring peaceful ability in the country and protect in the event of war you know so that is where the problem starts.*

### **D 3: CSVr3**

*Excessive force like I have said it is necessary when there is a threat to life, when there is a threat to people’s livelihood. My MLM research is looking at necessary use of force to protect properties those are the circumstances when the situation when there is threat to life, crime to well-being of people then those circumstances warrant excessive use of force so circumstances when there is no threat to life there is no threat to injury, there’s no threat to people’s property or well-being; so, excessive force is completely necessary.*

### **D 6: IPID3**



*Where there's violence, where there's resistance, they want to arrest the person, the person resist, fight and noncompliance where their lives are in danger then that's where I use force. Their lives or lives of any other person are in danger, that's where force, excessive can be applied as long as that excessive force is in line with Section 47 of Criminal Procedure Act.*

#### **D 9: POL2**

*Actually, we normally use force when it is needed or when there is a danger to someone's life or to a community member or protect myself.*

Most SAPS participants echoed that they use excessive force to protect others and just performing their duties. Another SAPS participant mentioned that he chased one dangerous criminal and shot and killed him after shooting three times warning that fleeing suspect to stop but he never stopped.

#### **D 10: POL3**

*I did regard it but that was my last option because I was chasing him it took 2 to 3 warning shots but he continued running and as you know he was a criminal. He was arrested for house robbery, they were armed, and they shot her dead at that scene there. That was one danger to the public.*

#### **5.2.1.4 Sub-theme 4: Mechanism for dealing with resistance from suspects**

SAPS participants echoed the fact that excessive force can be seen as mechanism to dealing with resistance from suspects. Participants mentioned that quite often they may encounter suspects who refuse arrest and as result they may be forced to use excessive

force to compel the suspect to comply and deal with to mitigate the resistance from suspects.

The answers to the following question gave rise to the preceding sub-theme:

□ *In your opinion, what circumstances warrant the use of excessive force?*

The purpose of this question was to determine whether the participants are aware of the circumstances that could give rise to the use of excessive force while conducting their daily duties. The following responses by IPID, SAPS and CSVr participants and data have been gathered by the researcher.

**D 4: IPID1**

*The resistance of that particular person and then in the case where the police officer make use of excessive force is when maybe they approach the suspect and they found that the suspect is in possession of dangerous weapon like a knife maybe a firearm or whatever, so if that particular person you know maybe point police officer with the set firearm on the intent to harm the police officer that is then that the police officer can make use if the excessive force.*

**D 6: IPID3**

*Where there's violence, where there's resistance, they want to arrest the person, the person resist, fight and noncompliance where their lives are in danger then that's where force is applied. Their lives or lives of any other person are in danger, that's where force, excessive can be applied as long as that excessive force is in line with Section 47 of Criminal Procedure Act.*

**D 18: POL11**

*They will have to use the minimal requirement force to overcome...*

**D19: POL12**

*Excessive I use it with the reasonable doubt is the perpetrator is refusing to abide with me; I have to use excessive force the perpetrator to listen to me.*

**D 21: POL14**

*The use of excessive force is the physical action we use to obtain or achieve our targets. It is the force that is about the resistance of the circuit. As port members we usually we use the force when striking people block the roads or damage the properties. In a situation like this we use short guns to disperse them in our active board.*

**D 23: POL16**

*It happened if you are a police officer sometimes, you must remember before becoming a police officer you are a human being and as a human being you have emotions and sometimes during the tour of your duties you happen to find yourself given a task of arresting someone who has done something very, very kind of inhuman. Let me give you an example, I happened to investigate a case where a 12 year-old was raped, a young girl aged 12 was raped by an old man, twenty something, 25 years. Now if you are investigating such a case, and you happen to take the statement from such a young girl explaining to you what happened, you see the brutality that crime was committed. Then as a person you become angry with the situation. And then if you happen to go out and arrest the suspect, you see as a person you become emotional, issues happened to that girl you see that if it was your girl, if it was your child ultimately but you know feeling is attached to the person coming to arrest that is to be conducted. Now even when the person is not like kind of giving you such resistance, but because of the anger*

*in you looking at the circumstances under which the crime was committed you sometimes lose it and find yourself you know kind of using unnecessary force because of the fact that you are emotional how the person violated a young innocent child. So, it happens in the environment of policing that such are done.*

**D 24: POL17**

*To me when you talk about the use of excessive force, I understand it to be the use of force with cautionary resistance. It is kind of force that is more harmful than the force, I mean the force. That's excessive force.*

**D 30: SAHRC**

*...when people deliberately commit crime or undermine instructions from the police*

**D 30: SAHRC**

*...undermines warnings, not complying with their request that's when you'll find that police lose their temper and act in a manner that is not allowed.*

**5.2.1.5 Sub-theme 5: Distinction between police brutality and excessive force**

The distinction between police brutality and excessive force was lamented by participants as asked by the interviewer. There were different views regarding whether there is a distinction between police brutality and excessive force. Some participants mentioned that there is a difference between the two. For an example, participants mentioned that there is distinction where police brutality is an act of misconduct done by the members of the police members whereas excessive force is when an officer goes beyond what is necessary in terms of managing a situation. Other participants

mentioned that police brutality can also suggest an incident where members of the police are brutalising the members of the community.

The answers to the following question gave rise to the preceding sub-theme:

*'Is there a distinction between police brutality and the use of excessive force?'*

The purpose of this question was to establish whether participants could identify the distinction between police brutality and the use of excessive force. CSVR, IPID and SAPS participants gave the following answers to the foregoing question:

**D 1: CSVR1**

*There is a thin line between police brutality in Marikana and Andries Tatane; in fact, that is the police brutality.*

**D 2: CSVR2**

*Yes, I think in my own understanding I think police brutality when I think about it, it seems like relating more to I don't know... I was going to say police brutality if often heard in kind of more collective kind of response to behaviours, but I don't think there is much of a difference between the two. I think police brutality is often associated with kind of with torture and with physical kind of violence toward you know offender or potential offenders and I think it's just the terms that people use and the meaning I think they kind of use interchangeably.*

**D 3: CSVR3**

*Would say generally there is obedient to; there is an ability of distinguished excessive. Obviously, there are situations where excessive force is completely not justifiable. So, I wouldn't like to characterise. SAPS is a huge organisation. I mean looking at 200 000 people so in terms of its character it is not necessary a military kind of force that one that characterised using excessive force but there are instances where excessive force is used unjustifiably so.*

**D 6: IPID3**

*Here I think it is a difficult one, but I will just use understanding and knowledge. I think when we talk about brutality is when police apply violence but is not at all in line with their duties. Then the excessive use of force is applied in line with their duties because you'll find out that in other cases police just provoke someone; they do something that can be avoided.*

**D 7: ISS-G2**

*No – The use of force is indicative of police brutality.*

**D 8: POL1**

*To answer your question, I'm too not sure if the police are brutal maybe some can say police have brutality. I am not sure of that and excessive force I won't talk of excessive force. I don't know excessive force. I was not taught of it; the only thing I can talk about is minimum force.*

**D 26: POL19**

*Yes, there will be distinguishing on that, you the police brutality and excessive force. I will say, let me say ehh, it's same, we talk of brutality we talk of excessive force, which is you, but then they use it at the same time. For instance, the example that I gave of suspect that needs to be interrogated where the police they brutally assault or torture the suspect where they need information. So, they use force in a wrong way to gain the information to supplement the investigation and then on the other side where they use force, on the excessive force again, where they use force arresting a suspect of sold common or a suspect of possession of suspected stolen roach; so, the force there's difference where they should not use excessive and where they should not brutally assault people.*

## **5.2.2 Theme 2: Individual factors**

Individual factors have been identified by the researcher during the study as some of the factors which were strongly cited by participants. This code gave rise to the following themes and subthemes:

### **5.2.2.1 Trauma and Psychological wellbeing**

One of the factors that trigger excessive force relates to the trauma and psychological wellbeing of police officers. Participants mentioned that police officers are often quick to respond or use excessive force because they have psychological trauma or distress. Police officers who have witnessed traumatic scenes or who have been shot before often struggle to deal with aggravating circumstances more effectively because of previous trauma or psychological distress. Psychological wellbeing has an impact on the police officer's cognitive and emotional competence and capacity to deal with complex crime situations.

The answers to the following question gave rise to the preceding sub-theme to emerge:

*'According to you what are the causative factors on the use of excessive force?'*

The purpose of this question was to establish whether participants could identify the causative factors on the use of excessive force. CSV, IPID, ISS and SAPS participants echoed the following:

**D 2: CSVR2**

*I think that another thing is like psychologically we need to also understand that a lot of ... they are not a lot but some police officers are carrying trauma that they have experienced. Some of these police officers that might have experienced a lot of violence being used during apartheid are still part of the police force. Psychologically factors also need to be considered.*

**D 6: IPID3**

*They must further attend trauma counselling, training for service delivery.*

**D 6: IPID3**

*Not all of them, not all of them can distinguish situations. Specifically, people react differently in situations. This is sometimes influenced by experience, and sometimes we take things differently but I will say majority of them react in a wrong way; hence, we are having huge number of complaints against SAPS members.*

**D 7: ISS-G2**

*Eeh...but the problem with the officers' maybe it is as a result of trauma that they are quick to use excessive force or anger and other personal circumstances. I am not sure if this training is sufficient for an official to respond to all real life circumstances they find themselves in when executing their duties.*

**D 11: POL4**



*Yes, but there are... we've got some uncertainties. In case you don't know, there is no one who wants to traumatise or traumatised his family. You know, the moment you shoot somebody that on its trauma both you and your family you end up at the end of the day when you are investigated you will face some questions whereby you are now a suspect because you killed somebody.*

#### **D 12: POL5**

*Jah, it is a critical challenge because nowadays when you use a firearm, when you use excessive force complying with the criminal law or criminal procedure, you will realise that we've got because there is a letter of personal vendetta of... As long you are from the police, they'll come the personal vendetta and you'll end being charged. They are subjective like how it can now look at the case of Marikana. I mean the police were killed you understand, even though they use excessive force their lives were in danger, if you can physically look into that situation. But now, all those people are now being charged of murder, you understand? The affirmation then is not applicable because you find that the National Commissioner and the Head of IT. They are fighting their own vendetta of critical things which we don't know. The others we are trying to perform our duties you understand...now protecting ourselves we shall end up being charged as a result of the top guys who fighting their own vendetta; so, it's a very serious problem those police are subjective because when I was involved in this issue of mine of money but now if you can look at what is happening now. If you will have to come with some recommendation to say those people who are having this law of enforcement agency, they are not applying these thing of excessive force I mean what do you call excessive force very well there is no fairness there.*

#### **D 22: POL15**

*There are several circumstances in which the police may have to ultimately use sometime, it really depends on the officers' mood and the mentality what his or her job.*

**D 23: POL16**

*I am fully aware; I know when I am supposed to use excessive force and when not to use excessive force. However, remember what I said you in the beginning that before I became a police officer I am human being sometimes emotional. It is not always the case when you will be able to put your emotions aside when carrying out your duties. Sometimes you are overwhelmed or you are overcome by the emotions and you end up using excessive force where it is not necessary.*

**D 24: POL17**

*It happened if you are a police officer sometimes, you must remember before becoming a police officer you are a human being and as a human being you have emotions and sometimes during the tour of your duties you happen to find yourself given a task of arresting someone who has done something very, very kind of inhuman.*

**5.2.2.2 Sub-theme 2.2: Sense and internalisation of ethical conduct and behaviour, obligation and responsibilities**

Participants mentioned a sense of internalisation of ethical behaviour, obligation and responsibilities. It is important to highlight this notion as code because the internalisation of ethical behaviour, obligation and responsibility has a direct impact on the choice of use of excessive force. For an example, when an individual has not internalised the ethical behaviour, they may be inconsistent in their actions. There may be incongruence between what they do and what they believe in. Whereas when there is an internalisation of ethical conduct and behaviour, the individual is more likely to behave in a manner that is consistent with ethical conduct, values and responsibilities.

The answers to the following question gave rise to the preceding sub-theme to emerge:

*‘Are SAPS members fully aware of their obligations and responsibilities of applying the necessary force in the execution of their duties?’*

The purpose of this question was to establish the views and opinions of the participants regarding whether SAPS members are fully aware of their obligations and responsibilities of applying the necessary force in the execution of their duties. CSVR, IPID, ISS and SAPS members echoed the following:

**D 1: CSVR1**

*Not all of them in part, I think this question applies to Section 7. The entity for I think the values of Batho Pele have not been taken to such but they do not find expression within the... so, therefore, so police are not necessarily new from that and another thing that you need you also to understand because police officers before they become members of the police service, they are members of the community. So, the reflection of their behaviour is the reflection of how we as a society protect ourselves. So, those are the issues that we must take into context with respect to this question and therefore, I’m saying I don’t think they understand their roles and responsibilities but in large part because of... I mean the entire civil service itself the values of Batho Pele and all principles.*

**D 3: CSVR3**

*Well part of it, it must construct the whole idea of force being the most effective way of policing. So, the image of toughness should not be necessarily be associated with being more efficient be more... be more professional so part of it is that part of dealing with excessive force will require the deconstructing military. This kind of image and making of SAPS and Boardman of professionalism of professional organisation.*

**D 5: IPID2**

*I think it's not critical; it goes with the understanding and it goes with knowing the law of the country.*

**D 6: IPID3**

*We are no longer in force; we are in service. They must know what they are doing is service delivery.*

**D 7: ISS-G2**

*Ok, I understand the use of excessive force is when a police official uses more than absolute minimum and proportional force than is necessary in order to achieve a lawful objective to make an arrest because he had to prevent crime and then he should only use the force that is necessary and to ensure compliance to undertake duties in such a manner to use only the amount of force necessary.*

## **D 7: ISS-G2**

*The issue about police and training is that crime is shifting and modus operandi occur new weapons etc. Police should not say we are going to train all in the law only once. Even if you have been trained on the use of force once or twice, things might have changed in 15 years. At the heart of a police officials' duties, it will be necessary to use force but that they would use it in such a way that it gains public trust and that, that force is proportionately within the law. I think sometimes not, it is not necessary about the training, but that the training is not internalised that practices occur, that some officials use force that is not meant for.*

## **D 8: POL1**

*No, excessive force is not required because most people comply with the police institutions and duties. Most of them, it's only few of them who you are required to sue a maximum force but in most cases, most understand the police duties, understand law, they know when they are in trouble; they understand the police. It's only few of them maybe when they're drunk or something who required the use of minimum force, excessive force is not actually required most of the time.*

### **5.2.2.3 Sense of judgement and decision-making**

Participants alluded to the notion of sense of judgement and decision-making. Although participants appreciated the notion of decision-making before they use excessive force, they alluded to the notion that they often have limited time to making effective decision-making before applying excessive force. One of the most intriguing findings was that when participants were asked about whether they see the importance of decision-making prior to using excessive force. Participants mentioned that most of the time they act more reactively than proactively when they are faced with aggravating circumstances. This finding is very important since the contemplation of

using excessive force is mainly a cognitive task, and based on the findings and it appears that participants did not appreciate the importance of decision-making.

The answers to the following question gave rise to the preceding sub-theme to emerge:

‘According to you, do you regard SAPS members’ decision-making in terms of the use of excessive force as a critical challenge confronting them or not? What are the challenges confronting them?’

The purpose of this question was to determine the views and opinions of participants on the decision-making by SAPS members whether it is a critical challenge confronting them when they are supposed to apply force. CSVr, ISS, IPID and SAPS members came with the following responses:

#### **D 1: CSVr1**

*You see, I think much relates to things that these guys pay a lot upon the completion and all that, one thing is the question of management on how the management within the police force begin to communicate their information to the killed soldiers on the ground in respect to crime or protest so for me better system in terms of communication within the system itself. For me, it’s quite crucial but secondly how even the political leaders, for example, some of the reckless statement sometimes to alter you know that for me its traumatic.*

#### **D 2: CSVr2**

*Yeah, I think for me when I was looking through this question I thought a lot this links to previous question. So in terms of SAPS members’ decision-making of the use of excessive force, jah, I don’t know maybe I think there’s a lot of things to consider for some police officers. They might be working in hostile and psychologically demanding conditions and maybe the way they might need to respond to those environment might*

*be through the use of force. Also, I think it might be important to consider there might be more research to see you know on how does the environment of officers work affect the decisions around the use of force. For example, I'm thinking of a case of the gangs you know you witnessing and experiencing shooting and killing on a daily basis. So, your ability to use more peaceful police methods is maybe not as practical. Obviously, these police officers want to also protect their own lives. So, I'm sure there are many who consider more peaceful methods maybe in this context doesn't allow for that but then again, I think if there is no cautious effort at different levels to kind of keep in mind being a police officer to be kind of cautious about the use of force, then you know it becomes an issue.*

### **D 3: CSV3**

*I think it is a critical challenge they have said it is themselves is a challenge because when they use force on criminals, they are subjecting to screen majors but when they don't do that then they won't be able to explain because they would have died. So, it's not even a critical challenge in South Africa; it is a policing challenge. So, yes I would say it is a critical challenge.*

### **D 5: IPID2**

*On the decision making remember before they do something they must think of, let's say for instance.*

### **D 6: IPID3**

*Yes, there are challenges, when, in decision-making, the first challenge is that the decision must be made as quick as possible.*

## **D 8: POL1**

*It is a critical challenge what I can say from my experience in instances where you have to use minimum force, you to take a decision within a blink of an eye because that person can act in such a way that you did not expect and as a police officer you have a limited time to think if you see that your life or someone's life is in danger. So, you don't have time to think, you have to think fast and before the loss of lives or something.*

### **5.2.2.4 Sense of competency in applying excessive force**

This code was developed based on the question that was posed to the participants, namely, whether they have the necessary competence in applying excessive force. Most of the participants mentioned that they are competent in applying excessive force. In contrast, some SAPS participants alluded that they are not equipped enough to deal with circumstances that require excessive force. Therefore, this code can be referred to the sense of competence in applying excessive force.

The answers to the following question gave rise to the above sub-theme to emerge:

*'In your opinion, are you sufficiently equipped to apply force that is reasonably necessary and proportionate to the level of resistance you encounter?'*

The purpose of this question was to establish whether participants are fully equipped to apply force that is reasonably necessary and proportionate to the level of resistance they encounter.

CSVR, IPID, ISS participants, and mostly SAPS members echoed the following responses:



### **D 3: CSVR3**

*We find difficulties at times will be SAPS in terms of equipment is that they are ovari equipped with a assets that sometimes we are not allowed to use less force that it is necessary because it carry left in so the standard weapon is 9 mil at times. You see police officers being without hand cuffs to restrain somebody. So, at times, police officers use force that is unnecessary. They are not properly equipped with weapons; for example, it's hard to see a police officer carrying a baton, for example. You will not see in South Africa you will not see a police officer. I'm not talking of Metro here. I'm talking SAPS. A minimum weapon a police officer would carry is a firearm. So, when there is a situation which requires them to use anything else than a firearm, they won't use anything because they don't carry those things; so, the only channel is firearm if you ask me if they are sufficiently equipped the answer is they are not sufficiently equipped. At times, they are not able to use less weaker weapons because they don't carry weaker weapons. It's station level kind of situation.*

### **D 5: IPID2**

*I will say; yes the police officers are trained.*

### **D 6: IPID3**

*I don't think they are. Because I don't think they are fully trained sometimes the issue is service... what we call, resources. Every member, every SAPS member has a fire arm which is called 108. In other instances, you will find that in the encounters with communities. Some will be insulted and member will grab firearm and shoot. So, it shows that there's somewhere lack of training. Because he's having a weapon that he doesn't know how to use it. I think in other instances they encounter difficult situations where other members are being killed. I remember last time I referred to the Marikana incident, the Marikana massacre, the very same group that were on duty where aware of the situation that took place the previous day where two members where hacked and*

*killed. They would go to the following day, you know there's fear, there's anger. Although our law doesn't cater for revenge, it only caters for self-defence but in human nature there's revenge; hence, such a situation that's when the employer lacks to support the members.*

#### **D 11: POL4**

*You know what it is a 50/50 things, yes or no; yes or no on the sense that as I am saying the equipment we are carrying I think they are somehow sufficient and but law. The law we are not sure about the law because of each and every circumstances because the circumstances are not the same, you will end up not knowing whether you are doing right or wrong. As I am saying, you know they can give you that Section 69 and basically it talks about your safety. Your life must be in danger or another person's life that is basically the two people me or another person's life which are the two things when you can use your gun. Back to the first scenario whereby you are in a community, there are certain groups that decided to disarm you. What do you do? You think whether you are protecting yourself or who are you protecting or the gun? You don't know. You shoot people who are not armed even if they were trying to disarm you and at the end of the day you are at loss because you used the unnecessary force. But they don't give you an alternative. What were you supposed to use in that circumstances, remember the possibility is that they can take the gun and kill you at the same time you understand but now they were not armed.*

#### **D 12: POL5**

*Yes, I am fully aware because I attended the course whereby they discussed the roles and my responsibilities in terms of the firearm control.*

### 5.2.3 Theme 3: Organisational factors

#### 5.2.3.1 Balancing excessive force against militaristic approach

This code emanated from the question regarding whether the excessive force translates to a militaristic approach. Participants mentioned that there is a clear distinction between the mandate of the SAPS and that of the South African National Defence Force. Participants felt that excessive force does not translate into a militaristic approach in dealing with aggravating circumstances. However, some participants alluded to the notion of the context, where their action is context-driven or context-dependent. This notion also relates to the police officers' capacity and understanding of their roles in complex crime situations or cases where there has to an application of excessive force.

The answers to the following question gave rise to the preceding sub-theme to emerge:

‘According to you, does the use of excessive force culminate in a militaristic approach during the execution of your duties?’

The purpose of this question was to establish participants' understanding whether the use of excessive force does culminate in a militaristic approach while members of the SAPS are performing their duties.

#### **CSV, IPID**

*I think in some instances it*

**IPID, ISS and SAPS members gave the following responses:**

**D 1: CSVR1**

*Does, this starts with the very... what do you call it? The language that is being to refer to leadership, general, lieutenant these are the language that has been in the military situation. You know you refer the police force is supposed to be dealing with civilians you know police officer is not like a military is not like soldiers. You see yourself as somebody who is supposed to protect and defending the civilians. You see yourself as a person who is supposed to be mean and kill people; so, it starts there. So, these are some of the challenges that you know. I'm saying that these are some part of the issues that we need to consider as a country. You can't be calling people general, what is general, lieutenant. ... For me these are the language that is being used to all soldiers who are supposed to be guiding, you know who are supposed to bring peaceful ability in the country and protect in the event of war, you know, so that is where the problem starts. I'm saying yes there is that element of militaristic approach when we supposed to respond to some of the challenges that we face here for police people who use excessive force using military approach because how do we refer to them anyway? If you refer to me as a general I need to call you general as well if you call me a lieutenant I will respond to you as lieutenant or something of that sort.*

**D 2: CSVR2**

*The other thing obviously Beki Cele from what I can understand was a member of Mkhonto we Siswe (MK). He was involved, you know, to try to fund MK and that involved some serious kind of high end crimes and armed robberies and in the robbing banks and all that kind of staff and I think in his mind-set there's still that kind of MK mentality that is attached and you know, there again obviously I don't even know how many years ago probably eight years ago that shoot to kill policy which you know is linked to the historic factors of apartheid linked to his experiences during the MK, during the struggle and obviously more... the attitude that kind of fighting of criminals*

*as well, I think that another thing as well that contributes that justifies and makes it okay for police to use of excessive force is the way that the society apologizes these criminals and to kind of fail.*

## **D 2: CSV2**

*Yeah, I think we do know that the police's force and often is kind of lined up as military in terms of ranking, you know, and still those kind of hierarchy but I think the way that the police are used to deal with different issues and is almost like a para military. You know instead of calling it a military to deal with student will sent in the police who often kind of might react and respond kind of in the same way as the military would but jah I think as I've said before SAPS can be used as scapegoat by politicians where dialogue should take place and be speaking to the chancellor or vice chancellor and trying to deal with these methods in a more peaceful way. Often, the police will be sent in you know where for instances dialogue was not actually taken through students are frustrated when vice-chancellors don't attend meetings or don't take them seriously as they see them as young people who are quite ideal or you know quite naïve; so, you know, I think that the SAPS was set up for failure to take up a bad rep to those situations.*

## **D 3: CSV3**

*I would say to a certain extent the use of excessive force does play the kind of policing functions and military kind of approach because one would expect that police conduct this in proportional to the threat that is being saturated. So, when police officers behave in a cowboy manner, behave in a manner that we say in Marikana and other places, it does project policing as militaristic. So, in other words, one would say in the military is the enemy and the enemy idea of eliminating the enemy is part of the militaristic but community cannot be the enemy of the police. So, would say when police officers are behaving in a manner that portrays as police are the enemy of the*

*community and as such you use excessive force, force that is necessary to achieve the policing objectives? Yes, it culminates in a kind of militaristic approach.*

**D 7: ISS-G2**

*The SAPS did bring some changes in the legal framework, and this is the culture that emerged of lack of accountability and for the abusing victims through excessive force. Once you take a militaristic approach, it is disastrous. It leads to more forceful behaviour of police officials. There can be certain aspects of the military that can be seen as positive in policing like clear command and control.*

**D 9: POL2**

*Because in most cases, as I said like when you approach a scene of armed robbery, house robbery is like that.*

**D 9: POL2**

*Jah, most of the case may find that the person that you are approaching maybe it's an act police those people they know how to shoot.*

**D 11: POL4**

*I don't understand... presently at the police... in the police I don't understand. I can't differentiate the military style and now in the police. Presently, I don't see it and because I don't see it I would say. I don't know but there is no military style I see in the police now.*

**D 11: POL4**

*It can be but to me they don't make any difference.*

**D 11: POL4**

*On the other hand, we are co-working with the community obviously when you carry firearm, it will be associated with military because you are carrying a firearm. Yes, now that to me that's not an issue as such.*

**D 14: POL7**

*Yes, as I said before, the use of excessive force must be applied professionally in a reasonable manner. The use of excessive force does not culminate in a militaristic approach during the execution of my duties.*

**D 15: POL8**

*Don't think so because now I'm not sure of our duty and not sure a bit of much about the soldiers or defence forces. I just know they are defending the country but I'm not really sure stipulated rules and policies.*

**D 15: POL8**

*I don't think, since I said that I'm not sure of the defence force more about them it becomes little bit more difficult for me to say. It is really true in such institutions or organisations.*

**D 17: POL10**

*Yes, in a militaristic approach.*

**D 18: POL11**

*I think it depends in a situation they are some situation where you will be forced to use that excessive in a military way but other situation will be able to tell which forces to use.*

**D 19: POL12**

*If it rises, it depends on what is happening on that time, on that specific time.*

**D 20: POL13**

*In the military, they are using only life ammunition; they don't use rubber bullets. When we call army, we know there's a war. If you are police officer, you can use force or you can use rubber bullet but for military, they working with life ammunition. We call them if there's a war.*

**D 21: POL14**

*Yes, as a result of use of excessive force, you will see that all people you are going to serve they will be resistant, and you will want to show them that you are a police officer. It will have negative approach during the excessive of your duty on that day.*

**D 22: POL15**



*No, if we understand that police officers they are no longer the police force, we are the police services. We understand that the services we are giving to the community doesn't need military approach when executing our duties. It only needs understanding between police officers and the community at large. That is whereby we can execute without any disturbance because I understand nowadays we have people who are going to the communities be aware who are the police officers; what do they want according to their Constitution? The people they can even told or taught about how are we going to work, interrelationship with the police, interact with the police. So, there's no need for the military approach when we execute our duties.*

## **D 22: POL15**

*The rank structure is similar to the military. As you I understand those who came up with those military ranks, they are not the people who know what they want now they are busy cutting off the ones on the list or the rank structure. For example, those things the measure, those things, those measure ranks they are phased out because those police officers that were implementing those ranks structure they are confused because of that police service, they are controlled by the political people. So now they are taking those they were went through when they were exile they tried to implement here. Those things they were contradicting our South African Police Service Act because they implement military meanwhile we were transformed from police force to police services. This military ranks and the previous ranks are contradicting each other; it seems as if nobody understands what are they going to do, what implementation they will, the first rank structure it was fine because each and everybody knows about the constable, the sergeant, the warrant officer, the inspectors, and stuff like that. But now we even not knowing how to differentiate those ranks because of this military thing that's it won't be take long to be de-implemented. That's why others already are phased out because they seem they are confusing the police service because they are engaging the military one.*

## **D 30: SAHRC**

*If you talk about militaristic approach you will understand that one thing for sure. The police are trained different from soldiers' military; so, there is difference, if we say that culminate military approach. I don't think that way. Because you find that the police are being trained with the public in general to coordinate gatherings to deal with the protests and all those types of things they are trained differently but military approach. My understanding is that they can't even control the crowd because they are always trigger happy; theirs is to give orders. They are different. The police listen to the people but military does not negotiate, when there is an order there is an order and you obey.*

**D 30: SAHRC**

*You know what? Sometimes you will understand that the approach in Marikana and Andries Tatane. I can say that the police maybe used excessive force indeed but they attempt first let us look at the Marikana; it was not military approach. Let us look at build-up into that particular incident; hence, I condemn the incident but the police didn't go and shoot. Yes, they used an excessive force but they negotiated. They did try; some of them they try to push him with their hand and everything, trying to arrest and all those things that I don't think it's a military approach they are dealing with civilians but with regard to Marikana is a total different from military approach.*

**D 30: SAHRC**

*And use excessive force where is not necessary not that they're militarised, No! They are not militarised but I think the only thing that I've noticed is that if it was on the street one was going to say I was pushed. I had no option you understand! But in terms of military approach, you can't be pushed if you are in position you will have to be patient but in both cases, the police try first to negotiate. They used all mechanisms and those things and that is where they end up using that force; I'm not justifying the force.*

### 5.2.3.2 Sense of accountability and implementation of the policy

Participants mentioned that the lack of accountability and implementation of the policy or law has an impact on the increase of the use of excessive force by the SAPS members. Furthermore, participants reported that since there is no sense of accountability by the management and lower ranks in the SAPS, then the SAPS members do not perceive the dangers and repercussions of using excessive force in situations where it is not required. Moreover, the lack of policy implementation within the justice system provides SAPS with a leeway of using excessive force even in circumstances where it is not required. This notion also relates to the cases and litigations that are levelled against police officials. Participants mentioned that lack of urgency in dealing with claims or cases against SAPS members also provides police officials with a leeway to use excessive force because there will be a delay in ensuring that they are held accountable.

The answers to the following question gave rise to the preceding sub-theme to emerge:

‘In your opinion, is there a need to inculcate a culture of accountability relating to the use of excessive force among SAPS members?’

The purpose of this question was to establish whether there is a need to inculcate a culture of accountability relating to the use of excessive force among SAPS members. CSVr, IPID, ISS and SAPS members echoed the following:

#### **D 1: CSVr1**

*The leadership in the police service is also tempted in regards to corruption, you know, so, these are the challenges that I mean evidently permit with the system whereby, for example, a military commissioner at some point you have these that you must attend to at all personal level; so, how we want the society to expect to see the value within; so, it begins to how does he began to give instruction to his lieutenant so this becomes a challenge, these are some things we say must be dealt with.*

**D 1: CSVR1**

*No, I think that the first thing is that the leadership has failed on that as National Development Plan teach how police are supposed to deal with the prevention to protect the society and deal with how they are able to gather intelligence when in response to any crime related to but that document is old because they don't know. So, people just use their common knowledge, so, people just go there using emotions and wisdom and clearly there is no leadership basically. I hope the new general who also raw from the ranks who have still values.*

**D 1: CSVR1**

*Yes, there should be, first I think people must be held accountable to have when entering system what we call an oath. I will give you an example like your lawyers and teachers so that should be still in the police service, whatever he does you must be able to understand that you are using the embassy of the Constitution. So, there are instances where the police would be required to use excessive force but there are instances where police are not supposed to but I mean you can't use excessive force when community is protesting about service delivery, demand fees increment.*

**D 2: CSVR2**

*A lack of accountability and oversight from IPID is generally lack of accountability for your actions as police officers and so, we've seen that with torture and I don't think they have any prosecution for torture and the use of the kind of force only high profile cases like Macia the Mozambican taxi driver and those police officers were kind of imprisoned for that... you know a lot of these kind of crimes go unpunished and it's very difficult for ordinary people to kind of seek justice.*

### **D 3: CSV3**

*For example, force can be located in particular units; so, there are units that are inclined with the use of excessive force than others. In others they won't use excessive force, for example, if you look at units as such as NIU, Amabarake, the DRT those are in Baracks, those units are trained to use excessive force. They are trained basically to use maximum force because they are trained to neutralise high risk; so, they are used in minor or in less or in a situation where force is not necessarily. You are required to use force that's orientation because you are trained. In a situation like Marikana, for example, question was asked why was the intervention unit in Marikana so you wouldn't be surprised that they used an excessive force against the miners because that's what they were trained to do; they were trained to do that.*

### **D 5: IPID2**

*I once was involved in the case of Daveyton where by the police used excessive force when trying to arrest one of the Mozambicans.*

### **D 6: IPID3**

*The concerning factors are poor planning when attending complaints or when in contact with civilians, they need to still fear to civilians. There are situation where you will see that the police want the community to fear them. The lack of knowledge, forcing to be in charge or being bossy is one the things that causes conflict.*

**D 7: ISS-G2**

*So, it is about accountability and management issues...in the words of the incumbent. Victims of excessive use of force eeh...are not aware if they can make a claim against the police or eeh whether to make a complaint or there is difficulty in making a complaint, and the information which do not reach people, and that makes the supervisors to act correctly to a just and feedback and some kind of accountability. Or eeh whether to make a complaint or there is difficulty in making a complaint. And the information which do not reach people and that makes the supervisors to act correctly to a just and feedback and some kind of accountability...eeh...so, that is the one thing about the police organisational system for ensuring that there is no use of force and for accountability...eeh.*

**D 7: ISS-G2**

*Senior management need to lead by example. Management need to be accountable.*

**D 9: POL2**

*A charge may be laid against you.*

**D 11: POL4**

*Yes, but there are... we've got some uncertainties not if the case, you know, there is no one who wants to traumatise his family. You know, the moment you shoot somebody that on its trauma both you and your family. You end up at the end of the day when you are investigated you will face some questions whereby you are now a suspect because you killed somebody. And you feel that you did wrong even if you were not wrong, even*

*if the court of law can plead not wrong but according to the way you are interrogated through court through the investigators you end up regretting what you did.*

## **D 22: POL15**

*No, I'm not fully aware, the reason being, it is clear whether the officer was acting in duty or not. For an example, the officer will not be action in execution of duty if they have assaulted and use excessive force during your execution of duty, it may or not become necessary to use physical force. Force is an individual responsibility to justify, and no office will act above the law.*

### **5.2.3.3 Training, instructions and deployment**

Participants mentioned that one of the factors that can impact on the use of excessive force can be related to lack of training, inability to apply instructions and poor deployment strategies. These factors play an important role in the police officer's ability to mitigate risk, deal with resistance, apply the correct proportional force and decision-making prior to using excessive force.

The answers to the following question gave rise to the preceding sub-theme to emerge:

‘According to you, are supporting structures/interventions implemented to enhance knowledge and awareness of SAPS members’ obligations and responsibilities of applying force in the execution of their duties?’

The purpose of this question was to establish whether factors such as lack of training, supportive structures and lack of interventions do have a negative impact on the use of excessive force by members of the SAPS. CSV, ISS, IPID, and SAPS participants responded as follows:

**D 1: CSVR1**

*Yes, in many instances, the problem is that in the last measures, majority of those who are the leadership in the police service are people who are in coma state. These are the people that are necessarily raw from the ranks in police service from the constable until you become a captain or general. So, these people they just raw to the ranks; so, the person doesn't understand the culture of the system itself. So, therefore, it will create a challenge in SAPS because you are supposed to give people instructions on the ground, that's been a challenge.*

**D 1: CSVR1**

*No, they are not, like I said they are not. You should use capacity and all that but historically, we had to bring various police officers from the TBV stage and into a military service. So, people are bringing the era of apartheid... Entrance on the system would be information agenda but no I don't see it in terms of being equipped, that's why I'm saying we need some sophisticated training force. In fact there should be a unit that is supposed to deal with issues of violent response and violence in community and other crime activities. So, the police force is not equipped to do that because historically we have people who we know have their own prejudice, their own value system that will bring with this new military police force; so, they are not equipped.*

**D 2: CSVR2**

*Yeah, I think ... I mean if I think of the Marikana in those instances often police are following instructions and so, I think that's the way policing would work that they are given instructions and given their briefing and told how they should respond in those circumstances, you know. So, again if someone is controlling a group the team of 20 officers, you know those officers are often following instructions.*



### **D 3: CSVR3**

*I can think of station level lectures. I can think of in-service training that assists the police to enhance their knowledge and awareness and interventions in terms of doing their duties, difficulties the police always face is at times not be able to attend things that there is in-service training on the particular topic that requires members of the station to spend a day or two days but because of the operational demands for policing service, those platforms are often not utilised because members cannot just be away from their work stations on training or in-service training or attending kind of lectures.*

### **D 5: IPID2**

*The deployment is the problem within the SAPS; they don't deploy the right people at the right place I think maybe you...*

### **D 6: IPID3**

*Because I don't think they are fully trained; sometimes, the issue is service. What we call, resources. Every member, every SAPS member has a firearm which is called 108. In other instances, you will find that in the encounters with communities, some will be insulted and member will grab firearm and shoot. So, it shows that there's somewhere lack of training. Because he's having a weapon that he doesn't know how to use it. I think, in other instances, they encounter difficult situations where other members are being killed. I remember last time I referred to the Marikana incident, the Marikana massacre, the very same group that were on duty were aware of the situation that took place previous day where two members where hacked and killed. They would go to the following day, you know there's fear, there's anger although our law doesn't cater for revenge; it only caters for self-defence but in human nature, there's revenge; hence such situation that's when the employer lack to support the members.*

**D 7: ISS-G2**

*Instructors are not effective; it is not effective because the victims eh which are not effective. Instructions are not ok. In other words, it could not become effective. It could be that the issue of not using force adequately not given attention during training. Eeeh. In other words, not really seen to be something that trainers...Eeeh...In the police...eeeh...to be seen as important .eeeh. I think there are a lot of some other organisational factors, for example, currently the SAPS have created an impression that they do not know how to exercise their duties. The law is quite clear; exercise the law.*

**D 7: ISS-G2**

*Police officers are employed by the State. They are provided with firearms and they can use force. They must make sure they are aware of all the laws, have the correct resources. Also plan properly when going out on operations. When orientated they must be made aware to only use necessary force. Officers who are properly trained and have planned their operations would not need to use excessive force, even if they need to use a firearm to defend their own lives. Section 29 of the CPA indicates that in order to affect an arrest even if they are required to use force which result in the death of somebody, it should be within the law.*

**D 7: ISS-G2**

*I'm not sure about that. It is difficult to answer. That is why I say training is so important and that officials should be properly trained in situations that might require the use of excessive force. I am not sure if this training is sufficient for an official to respond to all real life circumstances they find themselves in when executing their duties.*

## **D 22: POL15**

*No, I'm not fully aware, the reason being, it is clear whether the officer was acting in duty or not. For an example, the officer will not be action in execution of duty if they have assaulted and use excessive force during your execution of duty, it may or not become necessary to use physical force. Force is an individual responsibility to justify, and no office will act above the law.*

## **D 26: POL19**

*With Marikana, the Marikana was the same issue of protests, so but the task force were there and lots of task force were there which were not supposed to be there. So, you cannot take task force member with a person of duty; they are not trained the same. That's the problem with the deployment of the SAPS, that's where things got wrong. So, if there's protest, let them deploy the unit which is supposed to deal with crowd control, if it's a heist, they deploy people with skill so that's the problem the SAPS doing it for.*

## **D 30: SAHRC**

*The police did not hear that there are people who are protesting. There are so many who died there. The police who kept on negotiating then they end up losing that's why I'm saying that sometimes they get angry.*

### **5.2.4 Theme 4 : Situational factors**

Situational factors have been identified by the researcher during the study as some of the factors quoted by participants. This code gave rise to the following sub-themes:

#### 5.2.4.1 Aggravating circumstances and the use of excessive force

Participants mentioned that one of the aspects that facilitate the use of excessive force is aggravating circumstances which are mainly situational. For an example in cases of hijacking, robbery and shooting, the police officers are compelled to use excessive force to intimidate suspects, maintain order, repossess property or deal with resistance. The answers to the following question gave rise to the following sub-theme to emerge:

‘Do SAPS members have the ability to distinguish between circumstances that include or exclude the use of excessive force?’

The purpose of this question was to determine the views and opinions of the participants on whether members of the SAPS have the ability to distinguish circumstances that include or exclude the use of excessive force. Most interesting is the fact that CSVR participants mentioned that there is a thin line regarding whether the members of the SAPS are able to distinguish the circumstances that include or exclude the use of excessive force. The CSVR participants further alluded that force can be used in cases where suspects are resisting to be arrested, and also went on to give examples to the incident which happened at Ncgobo settlement referring to an incident where police officers were injured in the execution of their duties. CSVR, IPID, ISS, and SAPS participants echoed the following:

#### **D 1: CSVR1**

*You see this question, there's a thin line between the second question I answered there's a thin line between excessive force, when to do it and when not to do it. I mean the case in Ncgobo I believe police officers were quite correct to use excessive force with regards to the criminal in the same way to protesters. You need to be able to define it you need to say to what extent can I use excessive force to criminal that clearly I mean these people went to the police station, got in the police station and killed people there and all that and therefore, the police would have to respond to that particular incident so that will for me I would say excessive is allowed to use force.*

**D 2: CSV2**

*Jah, I think it obviously for me you see that a person is resisting arrest and I think that the police officer needs to use force to apprehend a suspect or someone who is clearly resisting an arrest. I think that force will be justified and but I think in a lot of instances it is very difficult to know whether that excessive force was needed to make the arrest.*

**D 3: CSV3**

*But I think it's a union environment where also there are difficulties in terms of community respecting the right of life of police officers and police officers get killed in this country which lay the kind of decision-making SAPS at times make. I mean we have seen, for instance, police officers continuously refused to use it because there are consequences an implications of using excessive force. So, I would say my view is that with difficulties in the communities because of high crime in police officers make decision-making very difficult in the process police officers act and get killed let's take Ngcobo. For example, where police officers are tied when police officers trying to arrest that led to police officers being injured or a result to them simply trying to catch a criminal and so there's a very thin line in terms of the correct decision and the application of the use of excessive force. I mean there's that difficult balance that police officers always have to deal with in this country. The criminal firing back so there is police officers always have to deal with in this country.*

**D 6: IPID3**

*Not in all times, circumstances differ, anywhere where force is needed I will regard as acceptable, yes only where force is needed, but whenever is excessive in situation is not needed then is something else.*

**D 7: ISS-G2**

*Ok, I understand the use of excessive force is when a police official uses more than absolute minimum and proportional force than is necessary in order to achieve a lawful objective to make an arrest because he had to prevent crime and then he should only use the force that is necessary and to ensure compliance to undertake duties in such a manner to use only the amount of force necessary.*

**D 9: POL2**

*The contributing factors they arise only if they find that those culprits or those perpetrators they are many, maybe by the shebeens and those legal taverns.*

**D 10: POL3**

*That one I can't say so, excessive force it counts on the situation that's how I understand it.*

**D 11: POL4**

*You maybe enter into a certain area whereby you are going to maybe to solve a certain problem. It may be a domestic problem or a community related ehh... protesting... protest in the community. Whereby you go there peacefully but only when you are in that situation, certain group of members maybe decided to disarm you remember they are not armed, as they are not armed they quickly decided to disarm you, now in that instance, you don't know whether your life is in danger or not because remember these people they don't have any ammunition with them or any weapon with them. But they can overcome you and take the gun, which was what they wanted not your life ... no. In that instance, you don't know whether you were supposed to use your firearm, if*

*you use your firearm possibility is there are other people there who are not part of the group but they are not physically or physically participating in this they may be affected. You end up shooting that innocent person, at end of the day you are wrong but the circumstances you have failed. You did not know what exactly to do because running also is not going to be possible in that circumstances remember you are in the community. As I am saying, the circumstances of each and every case differ, is different to whereby you see an armed robber maybe just robbed somebody at gun point. There you know what to do is easy you know what to do, but other circumstance they make us officers fear you doubt whether you are doing the wrong or right. After on top of that you don't know whether you are going to get the support you need because remember after each and every situation especially if you shot somebody, you need the support. Whether you were right or wrong you need the support so that other people can also maybe learn from that situation and take it positively going forward. Remember after the shooting, I'm still going to work and perform my duties and other members which are looking at that scenario are going to say oh do I have to use my gun in the next future or not or what is it I have to do. That is why sometimes I spoke to some other officers; I can give an example from flying squad whereby they are reacting directly on alpha complaints. I asked this person and say how do you cope and he said to me you know what? What I am looking at is my safety first; I will never go there immediately... I will resist for some time, remember when I go there are chances are I'm going to die or I'm going to kill somebody and which I don't want. Now that tells you that we are police officers are still human beings. They, on the other hand, is the issue of rights which conflicts everything whether you... you don't know... you really don't know that's ... let me stop there...*

#### **5.2.4.2 Defining circumstances that does not require excessive force**

This code refers to the participant's conceptualisation of circumstances that do not require excessive force. It was important to highlight this distinction because this relates to the participants' ability to know when they should apply excessive force and when they can use other methods to maintain order and apprehend the suspects. Participants alluded to the importance of communication as an important aspect when dealing with suspect in

cases where there is no need to exert excessive force. The answers to the following question gave rise to the preceding sub-theme to emerge:

Would you regard the use of excessive force as acceptable for SAPS members to efficiently perform their duties?

The purpose of this question was to establish whether the use of excessive force is acceptable for SAPS members to effectively perform their duties in a democratic state. According to CSVR participants, the use of excessive force is not acceptable in a democratic society. Furthermore, the CSVR participants echoed the rights to life and dignity. They further alluded that police officers should perform their duties as guided by the Constitution as well as the human rights laws. According to IPID participants, there is no need to kill a suspect that is fleeing; police officers should exhaust all other tracing techniques to apprehend the fleeing suspects. CSVR, IPID, ISS, and SAPS members responded as follows:

### **D 3: CSVR3**

*Excessive force is not acceptable in the democracy because one of the tenant of our democracy is respect for life, the dignity of people. So, police in democratic institution are expected to perform within a human rights culture within human rights framework, for force that is unnecessary; it becomes and goes against spirit of Constitution, against spirit of human rights culture. So, the use of force is not an exception.*

### **5: IPID2**

*I would say no because there are methods to gain information from the suspect rather than brutal using excessive force,*



**D 5: IPID2**

*By running, it doesn't mean that the person is dangerous or is having a firearm.*

**D 6: IPID3**

*It is the unnecessary and unjustified application of force, as SAPS, by SAPS members to the civilian basically or in most cases when they are performing their duties.*

**D 8: POL1**

*No, from my experience, excessive force is not necessary.*

**D 9: POL2**

*Mostly, you can exclude the maximum force only if the person doesn't resist.*

**5.2.4.3 Political history, interference and culture of violence**

One of the factors that participants mentioned is the notion of political history, interference by the political system and culture of violence in South Africa. It appears that these factors facilitate a culture of violence in the communities. Furthermore, the political history of South Africa can be described by political unrests and protests, which provoke the use of excessive force from the SAPS. Another aspect mentioned by the participants is the notion of political interference from the public officials, where there is an enforcement of the use of excessive force or police brutality in combating crime. Answers to the following question gave rise to the preceding sub-theme:

‘According to you, do you regard SAPS members’ decision-making in terms of the use of excessive force as a critical challenge confronting them or not?’

‘What are the challenges confronting them? Please motivate your answer?’

#### **D 1: CSV1**

*It's a historical problem where the society have not begun to disown violence. So, we respond to violence because of apartheid system we now even use the same more than polarity to violence that's how in this point we have to begin. So, therefore, training of SAPS members is still entrenched within the apartheid system. So, there are no ways which we can be able to engage particularly on how to communicate; so that's the problem. In that part, this as a result of official gaps that's for me.*

#### **D 2: CSV2**

*I mean for us in some of the research we've heard and some of the things I've seen, obviously there's a historic factor that we must consider. I mean obviously the apartheid government continuously used for against the majority of black South Africans to kind of maintain law and order, and I am sure that ANC and the other kind of duration parties attempted to negotiate the use of peaceful means of kind of having their rights heard and you know making sure that they could bring about equality and social justice but obviously the National Party is kind of used force to call any kind of... should we say any kind of rebellion or any kind of uprising. So, historically, there has been.. It's been quite a long time not only by the SAPS but by the other kind of state authorities. I am sure during colonial era they would have been soldiers that would have force them and tangle order. More recently think maybe post 1994 obviously huge levels of inequality, poverty and unemployment that you see is contributing to the use of crime and for ordinary South African experiencing crime on a daily basis like petty crimes to like more serious crimes.*

### **D 3: CSVR3**

*The one area would be historical factor where police officers come from that history, history of using justified force; force in the SAPS where they were required to do. To neutralise political activism, to neutralise those were seen as communist to neutralise that black communities in the times of struggle to freedom so that's the historical factor but the more contemporary factor would talk accountability system. I'm talking in particular the disciplinary system that it is at times not seen as effective and in dealing with kind of behaviour.*

### **D 5: IPID2**

*The media and all those things so in my thinking would say the police have used excessive force because they complain in that regard that it's not even needed the force that they have used.*

### **D 7: ISS-G2**

*O.K. em I think there are variety of factors...em I think over...Oh! The one factor that is become more normative in other words...eeeh.. it became a style of policing that is not corrected by supervisors or eeh...and is generic factors that if the colleagues of the officer involved eeh what I mean by that is that if for example police officers become involved in the use of excessive force as part of the policing or operations duties and these becomes to the officer and there is no check by supervisors or police management to address the problem. Eeh...the more it becomes more utilised because it becomes normal work of policing.*

## **D 7: ISS-G2**

*The SAPS did bring some changes in the legal framework, and this is the culture that emerged out of lack of accountability and for the abusing victims of excessive force. I think sometimes not, it is not necessary about the training, but that the training is not internalised that practices occur, that some officials use force that is not meant for.*

## **D 12: POL5**

*Jah, it is a critical challenge because nowadays when you use a firearm, when you use excessive force complying with the criminal law or criminal procedure, you will realise that we've got because there is a letter of personal vendetta of... as long you are from the police they they'll come the personal vendetta and you'll end being charged. They are subjective like how it can now look at the case of Marikana. I mean the police were killed, you understand, even though they use excessive force their lives were in danger if you can physically look into that situation. But now all those people are now being charged of murder, you understand? The affirmation then is not applicable because you find that the National Commissioner, the Head of IT are fighting their own vendetta of critical things which we don't know. The others we are trying to perform our duties, you understand...now protecting ourselves we shall end up being charged as a result of the top guys who fighting their own battles. So, it's a very serious problem those police are subjective because when I was involved in this issue of mine of money but now if you can look at what is happening now, if you will have to come with some recommendation to say those people who are having this law of enforcement agency they are not applying these thing of excessive force I mean what do you call excessive force very well there is no fairness there.*

## 5.2.5 Theme 5: Strategies

Strategies have been identified by the researcher during the study as some of the strongly cited by participants. This code gave rise to the following sub-themes:

### 5.2.5.1 Mediation, negotiation and alternative methods

One of the aspects that were evident in the study was that participants appreciated the notion of mediation, negotiation and alternative methods in relation to using excessive force. Most of the participants in the SAPS mentioned that they are often confronted with aggravating circumstances and as a result, they do not have an opportunity to negotiate with the suspects. However, participants mentioned that in cases where the situation does not require them to apply excessive force, they often rely on negotiating, mediation and using alternative strategies and methods such as paper spray and water trucks to manage the situation. The researcher asked the following question that gave rise to the current sub-theme:

‘Do SAPS members have the ability to distinguish between circumstances that include or exclude the use of excessive force?’

#### **D 1: CSV R1**

*And in some instances, let me also take another example; there was a school in the Vaal recently regards 51 students who were assaulted at the school with regards to the issue of language and all that. If you have carefully observed, there are rubber bullet there that for me would have been because in that instances would have for, water cannons would have been much better form of mediating if you have observed quite pointy would have seen that many people were injured there.*

**D 2: CSVR2**

*You know countries like America where in terms of this that force is not really needed. Maybe police officers may require some of those softer skills to kind of calm the person down or whatever it might be but perhaps because the suspect is arguing or something and that person needs to put in their place and to be sure in that you don't actually need you know... me as a police officer I will kind of show you; so, I think psychologically the power don't have a place sometimes. It is difficult to know when force is needed, and I think often force is not needed.*

**D 6: IPID3**

*Where there's compliance and where there's no violence, where there's no threat to... Ja where, like in other instances, you will find that they have overcome the threat but they proceed using the force. For example, you will find that you are interviewing someone, and they are telling that I was handcuffed, then pepper-sprayed, then assaulted, such things. They have overcome the resistance by handcuffing him, and then the use of force there is no longer justifiable.*

**D 9: POL2**

*Mostly, you may find that you are in a situation where you have to arrest somebody by the rules under the influence of FICA; so, normally those people rescued to risk to arrest. So, we normally use minimum force, we need to use pepper sprays and handcuffs so that we can get such a person to restrain from arrest.*

### 5.2.5.2 Training and capacity building

Participants alluded to the importance of training and capacity building within the SAPS. Participants mentioned that one of the factors that contribute to the use of excessive force can be attributed to the lack of training and capacity building in the SAPS. Training and capacity building can be considered as one of the critical strategies that can be used in the model of reducing excessive force and creating awareness among members of the SAPS. The following question gave rise to the current sub-theme to emerge:

‘According to you, are SAPS members sufficiently equipped to apply force that is reasonably necessary and proportionate to the level of resistance they encounter? Please motivate your answer.’

#### **D 1: CSVR1**

*I think its linked to the previous question to say firstly for me the use of excessive force could be better managed if our intelligent service within the police force you know the gathering of intelligence for me is quite crucial; so, there's a lack of intelligent gathering within the police service, what police do in many instances is to respond or to react to the crime or to the protest and all that but in terms of gathering...*

#### **D 2: CSVR2**

*I think a lot of South Africans are able to apply to the police officers and the screening processes that are used; I'm not sure about that but obviously it's a means of employment for a lot of people who can't find work and psychologically some people are not prepared to perhaps to go deep into it and they are getting in because there is a need of police officers and it is one of the avenues that people can get out of poverty. So, jah, I think for there's so many things I find with the police and inside the police...*

### **D 3: CSVR3**

*For example, force can be located in particular units. So, there are units that are inclined with the use of excessive force than others, in others they won't use excessive force for example if you look at units as such as NIU, Amabarake, the DRT those are in Barracks, those units are trained to use excessive force. They are trained basically to use maximum force because they are trained to neutralise high risk so they are used in minor or in less or in a situation where force is not necessarily. You are required to use force that's orientation because you are trained, in a situation like Marikana. For example, question was asked why was the intervention unit in Marikana? So, you wouldn't be surprised that they used an excessive force towards the miners because that's what they were trained to do.*

### **D 5: IPID2**

*So, through interviewing and through gaining evidence from the scene by DNA or by other technique, the police can feel the gap even though they didn't use excessive force.*

### **D 6: IPID3**

*They must further attend trauma counselling, training for service delivery.*

### **D7: ISS-G2**

*That is why I say at supervisory levels and operational level, they ensure that all rules and regulations are adhered to. Police officials must be made aware at least annually of these policies, refresher training and trained to be prepared as they can be.*

### **D 8: POL1**



*Okay, as far as I know in the SAPS, as we get the training we are 30 ways on how to use minimum force.*

#### **D 8: POL1**

*Yes, actually we are equipped, we are equipped. Yes.*

#### **5.2.4.3 Enforcing a culture of accountability and disciplinary practices**

Participants alluded to the importance of enforcing a culture of accountability and consequence management in the SAPS. Participants mentioned that the lack of accountability, transparency and disciplinary practices are some of the factors that lead to the increase in the use of excessive force. The culture of accountability needs to be enforced in the SAPS to ensure that the members are conscious of their actions and consequences. The following question gave rise to the above sub-theme:

*‘In your opinion, is there a need to inculcate a culture of accountability relating to the use of excessive force among SAPS members? Please motivate your answer.’*

#### **D 2: CSV2**

*I think for me I would think that one of the things that obviously need to be... you need greater accountability.*

**D 3: CSVR3**

*This is very important I think one of the things would require there is to make sure that police officers actually understand the code of conduct. The police have very good code of conduct but actually few of the police are quite aware of the code of conduct. So, for me that would be the first thing to get everybody everyday on time to parade before they move out of the station to recite the code of conduct the second issue for me would be around making sure that police officers are held accountable for the force that they use and the necessary use of force and necessary measures are taken to ensure that the accountability system there is a meaning to it if people are held accountable, then it gives meaning to...so I will say yes there is that need and for me, those two areas are reciting code of conduct and strengthening the disciplinary system.*

**D 5: IPID2**

*Yes, if they can do their job looking on those kind of things I think it's not critical for me.*

**D 6: IPID3**

*There's that culture; hence we have special directorate, IPID specifically for SAPS members. I think whenever the action of a person or SAPS members is in line with the law that person must be punished, and that punishment will declare other members not to do the same thing. This must apply in terms of the rule of law.*

**D 7: ISS-G2**

*The police need to ensure that anonymous complaints are enabled in order to take action. Management need to ensure that such complaints are effectively and efficiently managed.*

*Senior management at the top need to be seen to take action that all police act in a professional manner. And that they should prioritise cases where police conduct undermines public confidence like the use of force, corruption etc. Senior management need to lead by example. They need to determine why all these complaints occur so that they can put early warning systems in place.*

**D 7: ISS-G2**

*That is why I say, it is important to have mechanisms in place and not just wait for the complaint. Yes, there is a need. If officials are trained and skilled professionals, they will inculcate general accountability, not just when things go wrong but because they would want to demonstrate that they achieve the goals of the organisation. This accountability should not necessarily be negative for you to wait until an official does something wrong and then you want to punish them. There should be a general accountability culture and should be an overall culture that the police can explain what they've done, why they have done it and should be a natural police culture.*

**D 12: POL5**

*Yes, the matters of the policy of the use of excessive force; they must comply with the procedure Act as well as the common law; so, like, for example, like private defence, their actions will be just fine if they comply with the common law...so like eeh for example, like private defence.*

**D 30: SAHRC**

*Proper training for the police because you will understand that we in constitutional democracy and we are from the apartheid region where power, where obviously the police do as they wish but now under this decision the only way to re-dictate that is to provide proper training to the police more especially the understanding of the*

*Constitution because some of the police do not understand that people have rights or they don't have to do what they are doing. They just think that no because we are police you can do as much as you wish. So, understanding of the policing strategy and human right I think that can access the police.*

#### **5.2.5.4 Involving communities and other stakeholders**

Participants mentioned that one of the key strategies to deal with excessive force relates to involving communities and other stakeholders. One of the aspects that relate to community involvement includes aspects such as forming community police forums which will improve the communication between the community and the police. This will be a key component in building trust between the community and police. The following question gave rise to the above sub-theme:

‘According to you, are supporting structures/interventions implemented to enhance knowledge and awareness of SAPS members’ obligations and responsibilities of applying force in the execution of their duties? Please motivate your answer.’

#### **D 1: CSV1**

*The second one is there's a lack of mistreat between the police and the community; So, the police don't trust the community in their own way because protests by their own nature are violent. In some instances, they become violent. So, therefore, the police will report in that particular manner.*

#### **D 2: CSV2**

*People are experiencing contributes to normal community members you know believing that it is the only way that we should deal this is through killing criminals and kind of reinforces and justifies the use of force and police are often praised when*

*they use force and kill criminals. I think people often congratulate the police for killing criminals; so, is not about we don't praise them when they kind of go through the justice system and are then put in jail but often people praise SAPS when they actually kill criminals.*

**D 3: CSV3**

*But I think it's a union environment where also there are difficulties in terms of community respecting the right of life of police officers and police officers get killed in this country which lay the kind of decision-making SAPS at times make. I mean, we have seen, for instance, police officers continuously refusing to use it because there are consequences and implications of using excessive force. So, I would say my view is that with difficulties in the communities because of high crime in police officers make decision-making very difficult. In the process, the police officers act and get killed let's take Ngcobo, for example, where police officers are tied when police officers trying to arrest that led to police officers being injured or a result to them simply trying to catch a criminal and so there's a very thin line in terms of the correct decision and the application of the use of excessive force. I mean there's that difficult balance that police officers always have to deal with in this country. The criminal firing back so there is police officers always have to deal with in this country.*

**D 5: IPID2**

*The members of the public also assisted because they took some videos when the police were not aware where I think you have seen it in public.*

**D 7: ISS-G2**

*Victims of excessive use of force eeh...are not aware if they can make a claim against the police or eeh whether to make a complaint or there is difficulty in making a*

*complaint. And the information which does not reach people and that makes the supervisors to act correctly to a just and feedback and some kind of accountability...*

**D 22: POL15**

*Ahhh, is that ehh, aahh I,m not ehhh... I'm not aware of those things, what happened, in my opinion I became aware when I engage with the members of the community forming policing forums, awareness and others, engaging stakeholders, the eyes and they ears of the community at large, then it will be much easier to ask as a police officer to render our service with pride to the community.*

**D 30: SAHRC**

*I believe staff members for them to conduct themselves properly or to their duties properly. Support should also come of the leaders of community because that is where you find that indeed we have a huge problem because the structure and the community if they are not having support to start. Obviously, SAPS members will be frustrated and not knowing what to do but if there is support, obviously, the community members support SAPS properly, we may find that we will never have the excessive force been used by the police; sometimes they are forced to use excessive force because some of the community members even the structure in the communities they work as if they are anti-police. They don't give support when effecting arrest; they turn to threaten the lives of SAPS members and the community. So, those are the challenges that SAPS members are facing.*

**5.3 SUMMARY**

This chapter presented findings from the in-depth interviews carried out with participants from the SAPS as well as other departments and organisations that ensure independent oversight over the SAPS. The views and opinions of the participants were

presented by identifying themes and sub-themes that investigated the outcomes derived from the in-depth interviews with the SAPS members and representatives from the IPID, CSV, ISS, and SAHRC. The participants were quoted verbatim to ensure that their thoughts, views and expressions were correctly documented. The in-depth interviews enabled the researcher to obtain a better understanding of the participants' experiences and opinions on dealing with the use of excessive force on criminals, suspects and demonstrators. Their views and opinions on the existence and the non-existence of support structures were also sought after. Chapter 6 will focus on the comprehensive interpretation of the research findings.

## **CHAPTER 6:**

### **INTERPRETATION AND DISCUSSION OF THE FINDINGS**

#### **6.1 INTRODUCTION**

This chapter presents, interprets and discusses the research findings from the in-depth interviews that were conducted to explore the use of excessive force by SAPS members. An overview of the significant findings in terms of the research data is given. To achieve the research aim and objectives, and to ensure that the research questions were answered according to the outline in Chapter 1 (Section 1.5 and 1.6), the researcher conducted in-depth individual interviews with a total of 30 participants.

#### **6.2 CAUSATIVE FACTORS OF THE USE OF EXCESSIVE FORCE AS EXPERIENCED BY SAPS MEMBERS**

After analysing the data derived from the in-depth interviews with the SAPS members and departments and organisations that ensure independent oversight over the SAPS (IPID, CSVR, ISS, and SARHC), many reasons or factors for the use of excessive force surfaced. These various factors are grouped into the following sub-themes for Theme 1; Act of intimidation and maintaining order; Protecting myself and acting on self-defence; Protecting others and performing my duties; Mechanism for dealing with resistance from suspects. The use of excessive force is prevalent in South Africa as the SAPS members execute their duties and responsibilities of instilling peace and order. In most cases, the use of excessive force will be justifiable and in some cases, it would be far reached. This theme presented the participants' views and opinions. This chapter interprets the experiences, views and opinions of the participants and provide a link to the reviewed literature (as presented in the preceding chapters, 2; 3; and 4).

The subsequent sections will first provide a summary of each previously identified theme before the comprehensive interpretation of the findings. The interpretation will



be supported by the relevant literature reviewed in the previous chapters. The purpose of the comprehensive interpretation of the findings was to unpack the causative factors of the use of violence by SAPS members, especially when encountering extraordinary circumstances. Additionally, the other rationale of the interpretation of this research findings is to empower SAPS members with new knowledge that may lead to more acceptable practices in the application of the use of force during the execution of their duties during extreme cases.

### **6.2.1 Interpreting Theme 1**

Given the public outcry of excessive use of force by SAPS members, it is imperative to uproot the causative factors behind it. Having the full knowledge of the causative factors will assist relevant authorities in developing a strategy or framework that will serve as a guideline on the circumstances under which the use of excessive force is applicable. This theme identified various factors that can be cited for the use of excessive force by SAPS. These factors include historical policing, non-compliance by suspects, the nature of the crime and the prevailing circumstances. Based on the responses from the participants, it became apparent that SAPS members resort to the use of excessive force as to circumvent challenges they face when executing their day-to-day duties. Participants ascribed the meaning of excessive force as an act of intimidation in cases where there is chaos in the community, or aggravating circumstances such as robbery or hijacking, then they may resort to using excessive force to intimidate the criminals or even maintain law and order.

According to literature discussed in Chapter 2, it became apparent that the Section 49 of the CPA, 51 of 1977 (see Section 2.1.2) does support the use of force under some given circumstances. Most specifically, the 1998 amended Section 49 has now been amended by Section 7 of the Judicial Matters Second Amendment Act 122 of 1998, and states that:

*“If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without*

*the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm (GBH) to a suspect, only if he or she believes on reasonable grounds.”*

Section 49 further stipulates that in deciding what degree of force is both reasonable and necessary, all the circumstances must be considered, including the threat of violence the suspect poses to the arrestor or others, and the nature and circumstances of the offence the suspect is suspected of having committed; the force being proportional in all these circumstances.

Botha and Visser (2012:347) also interpret Section 49 of the South African CPA 51 of 1977 (see Section 2.1.3) as providing police officers with legal justification to use force in carrying out arrests and includes the rules governing the degree of force to be used, as well as the circumstances in which such force may be employed. Botha and Visser maintain that where a police officer’s forceful conduct transcends the ambit of these legislative provisions, that officer may be subject to criminal liability. According to Botha and Visser, the authority of police to employ force, even deadly force, in effecting arrests has been subject to intense judicial, as well as media scrutiny over the past few years.

In Section 1.2.2, the researcher cited Van der Walt (2010: 9) indicating that the judgement in Walters’ case allowed for potentially deadly force to be used to arrest a fleeing suspect when the suspect committed a crime involving the infliction or threatened infliction of serious bodily harm irrespective of whether or not the suspect posed an immediate threat of serious bodily harm to others at the stage of arrest. Cognisance was clearly given to the right of the State to ensure that dangerous criminals are brought to trial (Van der Walt, 2010: 9).

As discussed in Section 4.2.1, the UN principles also assert that law enforcement officials may use firearms if other means remain ineffective or have no chance of

achieving the intended result. The UN principles maintain that firearms may be used against people only after giving a verbal warning. According to the UN principles, a firearm may be used to prevent death or serious injuries and where less extreme means is insufficient to achieve this stated aim. The UN principles also indicate that, in using force or a firearm, law enforcement officials must respect and preserve human life while simultaneously.

The IPCC, in England and Wales, provides for the use of (reasonable) force to police and any other person under Section 3 of the Criminal Law Act 1967 (see Section 4.6.2), which states that: “A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.” Therefore, according to the IPCC, persons serving with the police (as with all citizens), may use such force as is reasonable in the circumstances for the purpose of:

- self-defence;
- defence of another;
- defence of property;
- prevention of crime; and
- Lawful arrest, minimising damage and injury to the targeted person, let alone any innocent bystanders.

In support of the foregoing literature, Bruce (2010:8) points out four approaches to legal provisions for the use of lethal force commonly found around the world:

- Generally, most jurisdictions recognise the principle of self-defence, where a person may use lethal force only in situations of self-defence, and where there is an immediate or imminent threat. Where this is the only principle, lethal force cannot be used against a fleeing suspect, as he or she no longer poses an immediate risk.
- The future danger principle, which is embodied in the current Section 49, allows for the use of lethal force against a person in self-defence or if there is

reasonable belief or suspicion that a person poses future danger of death or serious harm to another person.

- The third approach is the principle permitting the use of lethal force in self-defence or on a reasonable belief or suspicion that a person has committed a serious violent offence in the past (involving death or serious bodily harm).
- The fleeing felon rule, which is embodied in the old Section 49, allows lethal force to be used on the belief or suspicion that the person has committed any kind of offence for which he or she may receive a sentence of imprisonment of six months or more.

All these four approaches to legal provisions for the use of lethal force came out from the interviews conducted with the participants. In support of these approaches and the literature that supports the situational use of excessive force, SAPS participants stated:

- *“Not in all times, circumstances differ, where force is needed I will regard as acceptable yes only where force is needed, but whenever excessive force is not needed then is something else [sic].”*
- *“These people were going to commit armed robbery, therefore they were in possession of firearms when they wanted to search them and staff [sic] and they started shooting at the police and that’s where the police retaliated.”*
- *“It is necessary when there is a threat to life, when there is a threat to people’s livelihood [sic].”*
- *“Where there is violent demonstration and the demonstrators are reluctant to adhere to the SAPS calls to be non-violent and when suspects resist arrest through physically injuring the police.”*

As per Section 2.6.3, Grimwood (2016:6) emphasises that although the police are sometimes expected to use force to achieve a lawful objective, such as making a lawful arrest, acting in self-defence or protecting others, all force used must be reasonable in the circumstances. The reasonableness of the excessive force used is a highly debatable aspect. What are reasonable uses of excessive force? From the participant interviews and literature, there arose another causative factor for excessive use of force that is linked to the historic militaristic approach of the past police force. As discussed in

Chapter 3, Section 3.3, Lamb (2015:88) asserts that the SAPS has consistently donned a militarised ethos and frequently been heavily armed and deployed in battle-ready formations and often supported by police and military armoured personnel carriers. Lamb (ibid) further indicates that the police have frequently entered and occupied the targeted areas like an invading army, usually in conjunction with contingents of South African National Defence Force (SANDF) soldiers.

Further literature also supports the foregoing causative factor of historical policing. In Section 3.4, Agang South Africa (2010:4) and Joshi (2001:1) buttress that during apartheid, police officers were given military ranks and titles, therefore, their operations have always been an image of the apartheid regime. This old system of policing was militaristic in its structure and training and highly authoritarian in its culture. On the same Section 3.4, Berning and Masiloane (2011:61) blame the militarisation of the police in 2010 as a strategy to combat the perceived indiscipline and ineffectiveness of the SAPS. Berning and Masiloane (2011:61) further suggest that remilitarisation appears to have ironically been a reversal of the initial efforts to transform the police service from one based on a militaristic culture (as was the case with the SAPS) to one geared towards community policing. Therefore, this exhibits that there is still a challenge on members of the SAPS to adjust and learn how to do policing in a democratic country (William & Pruitt, 2010:119) (see Section 3.6).

In corroboration of the foregoing literature, SAPS participants said the following:

- *“The language that is used for leadership ranks such as, general, lieutenant is the same with the one being used by the military...These ranks make us feel like we are in a military.”*
- *“One would expect SAPS’ use of force to be proportional to the threats they face but however, their use of force is questionable, for example, the force used in Marikana and other places recently does not reflect the conduct of SAPS but of a military.”*

Although literature alludes to the support of the use of excessive force by SAPS members, it remains imperative to control the actual levels of the excessive force. Also, given that Section 49 of the CPA supports situational use of excessive force on stipulated circumstances, confusion still reigns as to what exact circumstances warrant

the use of excessive force. Personal judgements differ. Therefore, there will still be contention on the use of appropriate force. It may be worthwhile to develop a clear framework or guideline on when and how to use excessive force. A guiding framework with all the circumstances or situations of when to use excessive force will guide SAPS members and avoid casualties in their line of duty. However, proper human judgement still needs to be exercised even in the presence of a guiding framework as circumstances always differ.

### **6.2.2 Interpreting Theme 2: Individual factors**

One of the factors that trigger excessive force relates to the trauma and psychological wellbeing of police officers. Participants mentioned that police officers are often quick to respond or use excessive force because they have psychological trauma or distress. Police officers who have witnessed traumatic scenes or who have been shot before often struggle to deal with aggravating circumstances more effectively because of previous trauma or psychological distress. Moreover, psychological wellbeing has an impact on the police officer's cognitive and emotional competence and capacity to deal with complex crime scenarios. Participants mentioned a sense of internalisation of ethical behaviour, obligation and responsibilities. It is important to highlight this notion as code because the internalisation of ethical behaviour, obligation and responsibility has a direct impact on the choice of use of excessive force. For an example, when an individual has not internalised the ethical behaviour, they may be inconsistent in their actions. There may be incongruence between what they do and what they believe in. Whereas when there is an internalisation of ethical conduct and behaviour, the individual is more likely to behave in a manner that is consistent with ethical conduct, values and responsibilities.

Participants alluded to the notion of sense of judgement and decision-making. Although participants appreciated the notion of decision-making before they use excessive force, they alluded to the notion that they often have limited time to making effective decision-making before applying excessive force. This code was developed based on the question that was posed to the participants, namely, whether they have

they have the necessary competence in applying excessive force. Most of the participants mentioned that they are competent in applying excessive force. Some SAPS participants alluded that they are not equipped enough to deal with circumstances that require excessive force.

As discussed from the literature, in Section 4.2.1, the UN provides a set of norms for good policing (Neyroud, 2005: 579). Furthermore, Neyroud further emphasises that the value of these norms is considerable in different contexts, for example, in police reform trajectories, post-conflict civil police missions and subsequent training of local law enforcement personnel, and international or cross-border policing. Therefore, these norms can be handy in assisting the researcher in developing a SAPS's own personalised framework for good policing. Additionally, Mistry et al. (2011:12) assert that the UN principles emphasise that intentional use of lethal firearms may only be made under strictly inevitable circumstances in a bid to save lives (see Section 4.2.1). On the same section, Mistry et al. (2011:11) references the ICPPR that contains the following two important provisions;

- i. *“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”*
- ii. *“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”*

From the interview outcomes presented in Chapter 5, participants emphatically confirmed that there are really some circumstances and or situations that require the exclusion of the use of excessive force. The participants had this to say:

- *“You cannot use excessive force on someone doing shop lifting for smaller things such as a chocolate and bread.”*
- *“Mostly, you can exclude the maximum force only if the person does not resist.”*

- *“If you are arresting someone who is not armed and where there’s no life-threatening situation.”*

In line with the discussion in Section 6.1.1, it remains important to the researcher to develop guiding principles or a framework for good policing for SAPS members. Besides identifying causative factors for the use of excessive force, it will be worthwhile to outline the circumstances that exclude the use of excessive force. Given the reviewed literature and the interview outcomes, non-violent crimes and non-resistant to arrest came to the fore.

The interpretation of the third and final theme follows next.

### **6.2.3 Interpreting Theme 3: Organisational structures**

Participants mentioned that there is a clear distinction between the mandate of the SAPS and that of the SANDF. Participants felt that excessive force does not translate into a militaristic approach in dealing with aggravating circumstances. However, some participants alluded to the notion of the context, where their action is context-driven or context-dependent. This notion also relates to the police officers’ capacity and understanding of their roles in complex crime situations or cases where there has to be an application of excessive force. Participants mentioned that the lack of accountability and implementation of the policy or law has an impact on the increased use of excessive force by the SAPS members. Furthermore, participants mentioned that since there is no sense of accountability by the management and lower ranks in the SAPS, then the SAPS members do not perceive the dangers and repercussions of using excessive force in situations where it is not required. Furthermore, the lack of policy implementation within the justice system provides SAPS with a leeway of using excessive force even in circumstances where it is not required. This notion also relates to the cases and litigations that are levelled against police officials. Participants mentioned that lack of urgency in dealing with claims or cases against SAPS members also provides police officials with a leeway to use excessive force because there will be a delay in ensuring that they are held accountable.



Participants mentioned that some of the factors that have an impact on the use of excessive force is lack of training, inability to apply instructions and poor deployment strategies. These factors play an important role in the police officer's ability to mitigate risk, deal with resistance, and apply the correct proportional force and decision-making prior to using excessive force. Although identifying the causative factors and the circumstances that exclude the use of excessive force is vital in the formulation of a good policing framework, proper implementation of interventions and supporting structures is equally important. From the interview outcomes, it became apparent that SAPS members receive training prior to taking up their duties. However, they could benefit from continual training course as a support system. On the same note, interview outcomes revealed the need to improve on the available support interventions and structures' implementation. This means there is need to improve training methods, structures and facilities, and the implementation or utilisation of existing structures as to ensure efficiency and effectiveness.

As illustrated in Chapter 5, few participants echoed the sentiment of receiving adequate training and attending programmes that enhance their knowledge and skills in dealing with suspects and the general public. The participants stated:

- *“There are some of the programmes that the police have under gone on those areas.”*
- *“...they are taken to training to empower themselves.”*

Although the foregoing extracts confirm that SAPS members receive adequate training, literature cast doubts on the calibre of the training received. According to literature reviewed on Section 3.2.1 pertaining to the Ficksburg incident, it emerged from one of the hearings that the implicated officers had received prior training in crowd control and management. Given that in this incident the police exhibited total failure to contain the crowd within the confines of the law, it casts a shadow of doubt on the impact of the kind of training they received.

However, other participants emphasised that more can still be done to improve the existing training or the implementation and utilisation of the existing supporting structures. As noted in Chapter 5, many participants concurred on this notion:

- *“Members must attend courses, they must further attend trauma counselling, training for service delivery, mind you we are no longer in force; we are in service, they must know what they are doing is service delivery.”*
- *“I can think of in-service training that assists the police to enhance their knowledge and awareness and interventions in terms of doing their duties.”*
- *“I have never ever heard any staff member who have gone for counselling. So, all those things are there, and I think there is a budget, but they are not fully functional; they are taken lightly.”*

Reviewed literature also supports the need for training improvement as to assist SAPS members is dealing with the excessive force use plague. On Section 1.2, Mistry et al. (2008:11) suggest that interventions should extent to equipping the SAPS with adequate knowledge on the rules and regulations that should guide them when discharging their duties. In the same line of argument, Bruce et al. (2011:1) reiterate that police officers require special measures to be put in place as a way of support when dealing with violent situations (see Section 1.2). In addition, Bruce et al. further suggest the re-orientation of the SAPS approach to the use of force as to approach professional standards.

Additionally, literature highlight that South Africa is a member of the International Association of Chiefs of Police and the UN and has not sufficiently implemented the relevant international policy guidelines in practice (see Section 2.3). The international policy guidelines require law enforcement agencies to provide training and re-training not only in the use of fire arms but also in the use of alternative kinds of force in effecting arrest.

Literature reviewed on Section 4.3.1 supports the notion of developing a framework or model for training the police force in accordance with the proper use of force in the Canadian context with the intention of making it a uniform policy adopted by all police services in their country (Stenning, 2003:122).

The framework suggested by Stenning (2003) is a plausible idea that could apply to the South African context. Given the rampant reports on inappropriate use of excessive

force by the SAPS members, this initiative will be quite helpful in mitigating these mishaps. There is a need to have continual training and constant encouragement to the SAPS members to effectively use the existing support infrastructure. Also, the relevance of the provided training needs to be assessed and evaluated to ensure that SAPS members receive training that fits the purpose.

#### **6.2.4 Interpreting Theme 4: Situational factors**

Participants mentioned that one of the aspects that facilitate the use of excessive force is aggravating circumstances which are mainly situational. For an example, in cases of hijacking, robbery and shooting, the police officers are compelled to use excessive force to intimidate suspects, maintain order, repossess property or deal with resistance. Some of the factors that participants mentioned is the notion of political history, interference by the political system and culture of violence in South Africa. It appears that these factors facilitate a culture of violence in the communities. Furthermore, the political history of South Africa can be described by political unrests and protests, which provoke the use of excessive force from the SAPS. Another aspect mentioned by the participants is the notion of political interference from the public officials, where there is an enforcement of the use of excessive force or police brutality in combating crime.

#### **6.2.5 Interpreting Theme 5: Mediation, negotiation and alternative methods**

One of the aspects that were evident in the study was that participants appreciated the notion of mediation, negotiation and alternative methods in relation to using excessive force. Most of the participants in the SAPS mentioned that they are often confronted with aggravating circumstances and as a result, they do not have an opportunity to negotiate with the suspects.

However, participants mentioned that in cases where the situation does not require them to apply excessive force, they often rely on negotiating, mediation and using alternative strategies and methods such as paper spray and water trucks to manage the situation. Participants alluded to the importance of training and capacity building in the SAPS. Participants mentioned that one of the factors that contribute to the use of excessive force can be attributed to the lack of training and capacity building in the SAPS. Training and capacity building can be considered as one of the critical strategies that can be used in the model of reducing excessive force and creating awareness among members of the SAPS.

Participants alluded to the importance of enforcing a culture of accountability and consequence management in the SAPS. Participants mentioned that the lack of accountability, transparency and disciplinary practices is one of the factors that lead to the increase in the use of excessive force. The culture of accountability needs to be enforced in the SAPS to ensure that the members are conscious about their actions and consequences. Participants mentioned that one of the key strategies to deal with excessive force relates to involving communities and other stakeholders. One of the aspects that relate to community involvement includes aspects such as forming community police forums which will improve the communication between the community and the police. This will be a key component in building trust between the community and police.

### **6.3 SUMMARY**

This chapter interpreted the research findings emanating from the in-depth interviews conducted with SAPS members and representatives from the IPID, CSV, ISS, and SAHRC. The literature reviewed in Chapter 2, 3 and 4 was also presented as to support the interview outcomes. The research findings were grouped into the same themes as outlined in Chapter 5 and focused on the causative factors of the use of excessive force, circumstances that exclude the use of excessive force and the implementation of supporting structures. Chapter 7 will subsequently summarise all the preceding chapters (Chapter 1 - Chapter 6), and outline the conclusions as guided by the

interpretation chapter. The last chapter will also present the research recommendations based on the main findings in order to mitigate the problem of unwarranted use of excessive force by SAPS members.

## **CHAPTER 7:**

### **SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

#### **7.1 INTRODUCTION**

This chapter provides a summary of the thesis from Chapter 1 to Chapter 6, after which the interpretations derived from Chapter 6, are studied and conclusions drawn. Subsequently, recommendations will be made that are based on the main findings as derived from the presented themes and sub-themes that emerged in Chapter 5 to explore the use of excessive force by members of the SAPS in Daveyton and elsewhere within the Republic of South Africa.

#### **7.2 SUMMARY OF THE PRECEDING CHAPTERS**

The summary of all chapters in this study are hereby discussed as follows:

##### **7.2.1 Summary of Chapter 1**

Chapter 1 presented the methodological framework within which the research was conducted. The purpose of providing the methodological overview was to outline the basis of the study to describe the study's substantive focus and purpose and to position the research problem within an established arena of ideas. This methodological framework further framed the theoretical and practical domains of the study and thereby developing the study's significance and posed research questions. The design section then described how the study was conducted within the identified methodological perimeters. This chapter concluded with strategies followed to ensure the authenticity of the study conducted within the confines of identified ethical considerations.

The following aims and objectives of this study were accomplished:

Since these objectives inform a reader of what you want to achieve through the study, it is extremely important to word them clearly and specifically. To this end, the researcher opines that this area of research, especially in a South African context, had been neglected. Therefore, the void in knowledge needs to be filled. As a result, the main aim of this study was to explore the dynamics of the use of excessive force by members of the Daveyton SAPS as personally described and operationally experienced by these members. To achieve the purpose of the study, the following two specific objectives were addressed:

- To explore and identify the causative factors of the use of excessive force as experienced by members of the SAPS.
- If the causative factors of the use of excessive force, as experienced by members of the SAPS, is identified and described, then the knowledge base of such factors of this phenomenon can be increased.
- To develop a framework for acceptable levels of the use of force to empower police officials with new knowledge leading to good practice in the application of the use of force during the execution of their duties.
- If new information acquired from the findings of this study is applied and further developed police officials at the Daveyton SAPS and elsewhere in South Africa, would be empowered with new knowledge leading to more acceptable practices in the application of the use of force during the execution of their duties.

### **7.2.2 Summary of Chapter 2**

This chapter presented an overview of legislation and policy governing the use of force by members of the SAPS. Related legislation, policies and directives provided the basis of this chapter. Applicable court judgements pertaining to the use of force by members of the SAPS further augmented the regulatory overview. These court judgements provided insight into how the use of force by SAPS has been seen by the court. The focus of this regulatory overview has been limited to the use of force by members of the SAPS when effecting arrest. It is important to emphasise the provisions of each Act, policy and directive to classify the applicable legislation that governs the use of force by SAPS members when effecting arrest and to draw attention to directives as prescribed by the legislation. The provisions on the use of police powers and the protection of the rights of citizens as set out in the Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996) followed for discussion.

### **7.2.3 Summary of Chapter 3**

Chapter 3 presented an overview of the nature and extent of the use of force by members of the SAP, prior to democracy as well as recent trends in the use of force by the SAPS. Furthermore, the chapter focused on efforts which were brought in to try and address issues of police abuse of powers as crime fighting has been prioritised by the government and the community at large. There was an increase of widespread concern ever since the dawn of democracy on the way in which our police agencies had been conducting themselves, especially the human rights watchdogs who timeously raised alarming concerns in the manner in which the SAPS over and over again displayed unacceptable abuse of their powers. This chapter further illustrated the three most prominent incidents which made international headlines and focused renewed attention on how the SAPS apply the use of force when effecting arrest. The first incident demonstrating the use of force by members of the SAPS discussed was the Ficksburg incident where a peaceful service delivery protest resulted in the death



of Andries Tatane. The police shot and killed the leader of that protest in an execution style.

The second well-known incident, which raised shocking police brutality in South Africa, and the international community, was the Marikana incident where the police in the town of Rustenburg in the North West Province gunned down 34 miners. This happened when there was a national union mine strike by the miners at Lonmin owned platinum mine where workers demanded salary increases.

The third incident discussed in this chapter was the Daveyton incident where the members of the SAPS raised alarms again by dragging a Mozambican national Mido Macia on the back of the police van. The Daveyton onlookers who witnessed a horrible act filmed this incident, and barbaric scene of the taxi driver on 26 February 2013 and the later died in police custody. The police were on the spotlight again where the Country Reports on Human Rights indicated the incident as a barbaric and inhuman behaviour by the SAPS members. The chapter further discussed that those practices of police brutality, which happened in the democratic era, had some similarities of police brutality by the old police force of the past with the same culture replicated in the SAPS.

#### **7.2.4 Summary of Chapter 4**

This chapter focused on policies on the use of force, which are arguably best practices that encourage good policing practices with a strong emphasis on compliance with human rights standards, ethics and integrity, and which seek to advocate strong interaction with the community with a view to enhanced legitimacy of policing. International policing agencies have already outlined policies and best practices to regulate the use of excessive force and deadly force by the police while executing their duties around the world. The researcher studied different policies from the selected police organisations, which are the best practices in the regulation of the use of excessive force by the police. The SAPS should copy from those policing agencies in

order to address the issue of police impunity and brutality. In South Africa, the interim Constitution and the new Constitution made provision for the establishment of bodies such as the IPID to ensure that the police work within a human rights framework. The SAPS like their predecessors did not change their approach when it comes to the execution of their duties and dealing with criminals, protests, arrests, and other challenges.

### **7.2.5 Summary of Chapter 5**

This chapter presented, interpreted and discussed the research findings from the in-depth interviews, gathered when exploring the use of excessive force by SAPS members. An overview of the significant findings in terms of the research data is given. To achieve the research aim and objectives, and to ensure that the research questions were answered according to the outline in Chapter 1 (Section 1.5 and 1.6), the researcher conducted in-depth individual interviews with a total of 30 participants. The research data analysis was carried out as highlighted in Chapter 1 (Section 1.15). Data were imported to Atlas.ti, coded and categorised into themes, were organised according to the objectives of the study and the major research questions. The data on the phenomenon being studied were solicited from the participants through the interview guide was developed from the major research questions. Codes and themes developed from the collected data. Lastly, themes were presented and analysed to determine the major findings of the study.

Consequently, the interpretation of the established themes addressed the research problem statement, research objectives and the corresponding research questions as discussed in Chapter 1. This chapter interpreted the experiences, views and opinions of the participants and provided a link to the reviewed literature (as presented in the preceding chapters, 2, 3, and 4). The subsequent sections provided a summary of each previously identified them before the comprehensive interpretation of the findings. More importantly, the interpretation was supported by the relevant literature reviewed in the previous chapters. The purpose of the comprehensive interpretation of the findings was to unpack the causative factors of the use of violence by the SAPS

members, especially when encountering extra-ordinary circumstances. Additionally, the other rationale of the interpretation of these research findings is to empower SAPS members with new knowledge that may lead to more acceptable practices in the application of the use of force during the execution of their duties during extreme cases.

### **7.3 FINDINGS**

Through reviewing the findings and analysis of this research, it can be interpreted that there is a clear lack of policies and guidelines which could be used by the SAPS members when they come across a situation that warrants the use of excessive force. Although identifying the causative factors and the circumstances that exclude the use of excessive force is vital in the formulation of a good policing framework, proper implementation of interventions and supporting structures is equally important. From the interview outcomes, it became apparent that SAPS members receive training prior to taking up their duties. However, they could benefit from continual training course as a support system. On the same note, interview findings revealed the need to improve on the available support interventions and structures' implementation. This means there is need to improve training methods, structures and facilities, and the implementation or utilisation of existing structures as to ensure efficiency and effectiveness.

As illustrated in Chapter 5, few participants echoed the sentiment of receiving adequate training and attending programmes that enhance their knowledge and skills in dealing with suspects and the general public. The participants stated: Although the preceding extracts confirmed that SAPS members receive adequate training, literature casts doubts on the calibre of the training received. According to literature reviewed on Section 3.2.1 pertaining to the Ficksburg incident, it emerged from one of the hearings that the implicated officers had received prior training in crowd control and management. Given that in this incident the police exhibited total failure to contain the crowd within the confines of the law, it casts a shadow of doubt on the impact of the kind of training they received. However, other participants emphasised that there is

more room for improvement to the existing training or the implementation and utilisation of the existing supporting structures. As noted in Chapter 5, many participants concurred on this notion.

Reviewed literature also supports the need for training improvement as to assist SAPS members in dealing with the excessive force use plague. On Section 1.2, Mistry et al. (2008:11) suggest that interventions should extend to equipping the SAPS with adequate knowledge on the rules and regulations that should guide them when discharging their duties. In the same line of argument, Bruce et al. (2011:1) reiterate that police officers require special measures to be put in place as a way of support when dealing with violent situations (see Section 1.2). Bruce et al. further maintain the re-orientation of the SAPS approach to the use of force as to approach professional standards. Additionally, literature states that South Africa is a member of the International Association of Chiefs of Police and the UN and has not sufficiently implemented the relevant international policy guidelines in practice (see Section 2.3). The international policy guidelines require law enforcement agencies to provide training and re-training not only in the use of fire arms but also in the use of alternative kinds of force in effecting arrest.

Literature reviewed on Section 4.3.1 supports the notion of developing a framework or model for training the police force in accordance with the proper use of force in the Canadian context with the intention of making it a uniform policy adopted by all police services in their country (Stenning, 2003:122). The framework suggested by Stenning (2003) is a plausible idea that could apply to the South African context. Given the rampant reports on inappropriate use of excessive force by the SAPS members, this initiative will be quite helpful in mitigating these mishaps. There is a need to have continual training and constant encouragement to the SAPS members and the existing support infrastructure. The relevance of the provided training needs to be assessed and evaluated to ensure that SAPS members receive training that fits the purpose.

The current legislation that deals with the use of force is Section 49 of the CPA 51 of 1977, which has got many loopholes. According to this section, the police may use

deadly force when defending themselves or when defending others from death or GBH. This section also indicates that the police may use force from preventing the flight of a person who presents a substantial risk of causing death or GBH in the future. Now that is where problems arise. How can we decide when someone could be regarded as presenting a “future risk” The law makers should then be able to rectify the current status of Section 49. The South African Constitution is the supreme law of the land. Any law that is in conflict with the principles laid down in the constitution becomes inapplicable. The right to life is a fundamental principle that is contained in the Bill of Rights, therefore if a person’s life is to be taken based on Section 49 of the CPA, 51 of 1977 that is a gross violation of the constitutional rights of a person. In terms of the findings and its expected matters of disciplines, the expected willingness can be found to be more effective in weighing the suspected discovery of the potentiality of the SAPS. Police harassment as well as the use of excessive force is a kind of abuse that deals with the mob violation as well as agitation in any country.

Apart from Section 49, there are other legislations and policies that are at the disposal of the SAPS management that could be used as guidelines on the issue of police brutality. However, lack of training or ill-discipline from the members of the SAPS could be the challenge encountered by the SAPS top management. The following could be examples of the policies and guidelines that the management of the SAPS are utilising just to mention the few: The SAPS Code of Conduct; The SAPS Act; The UN Charter of Rights; The SAPS Standing Orders as well as the CPA, 51 of 1977. However, the foregoing listed policies and legislations seem to fall on deaf ears as there is continuity on the use of excessive force by members of the SAPS. It is clear that the SAPS top management is not concerned about the issue of police brutality or rather clueless on how best they could deal with their member’s ill-discipline. This is reflected by a huge or high increase in civil claims against the SAPS, of which most of those civil claims cannot be successfully defended by the SAPS legal section. The issue of police brutality could be tracked back to the apartheid era which could also be seen as the police culture of dealing with the challenges that require the police to use force. The police have to help in maintaining the human rights of their country. They are supposed to maintain and protect the Constitution of the country. At the time when

the police are the violator of the regulations of the Constitution, then the law system and the faith of the community has become fragile in the country.

### **7.3.1 Recommendations**

The following recommendations which could assist policy makers to set out clear policies and guidelines which could help members of the SAPS when conducting their day to day duties are now discussed:

#### **7.3.1.1 Recommendation 1**

Clear policies with clear guidelines on the use of force should be set out. These policies should outline core values that the police must uphold when using force, and they should set clear guidelines for dealing with situations when use of force is likely to happen. These legal guidelines and policies on the use of force had to be clear with no vague explanations.

#### **7.3.1.2 Recommendation 2**

Some situations require the police to use force. Law enforcement officials have to use only the level of force that is required to mitigate the situation. In this context, the situational awareness is highly recommended as well as the presence of mind can also be useful to get over the on-going hurdles. The police should always display professionalism when applying force, which could contribute to their own safety as well as the safety of the civilians. The level of the force that an officer has used can vary from the situation to situation as the decision and the experience play an important role in this context. The main goal of a police officer is to protect the community from danger as soon as possible.

### **7.3.1.3 Recommendation 3**

Current policies on the use of force should be reviewed by establishing a research team comprising of top authors, academia and the highly experienced police officers, and they should focus on best practices by the international police communities. The SAPS top management should vehemently support all internal directives aimed at enhancing professionalism when applying force.

### **7.3.1.4 Recommendation 4**

Basic training curriculum needs to be reviewed and be aligned with the new approach, where all SAPS members should be evaluated to establish whether they will display a professional conduct when performing their duties. The SAPS members should receive thorough training on the use of force from basic training. The use of force curricula should be included at the police basic training learning programme. Police officials receive training from SAPS academies where the training mostly focus on physical fitness, shooting practice, drill and other tactical approaches which are militaristic, preparing them to police the inhabitants of the country. More importantly, the use of force manual will play a pivotal role in preparing members of the SAPS during training to go and apply force professionally if such situations arise.

### **7.3.1.5 Recommendation 5**

The SAPS should introduce a new support system, which would mainly focus on the continuous in-service training on educating SAPS members on the charter of rights that are contained in the Human Rights Manual. This training should be compulsory, and it should include policing and human rights principles.

### **7.3.1.6 Recommendation 6**

The SAPS top management should be accountable for their members' ill behaviour to ensure that their members comply with a high standard professional code of ethics. All shooting incidents and the excessive use of force should be investigated and members concerned should face the full might of the law. Furthermore, the State should incur its civil liabilities on the member concerned where there are lawsuits instituted against it. Participants mentioned that the lack of accountability and implementation of the policy or law has an impact on the increased use of excessive force by the SAPS members. Participants mentioned that there is no sense of accountability by the management and lower ranks in the SAPS. As a result, the SAPS members do not perceive the dangers and repercussions of using excessive force in situations where it is not required. Furthermore, the lack of policy implementation within the justice system provides the SAPS with a leeway to using excessive force even in circumstances where it is not required.

#### **7.3.1.7 Recommendation 7**

One of the aspects that relate to community involvement includes aspects such as forming community police forums which will improve the communication between the community and the police.

#### **7.3.1.8 Recommendation 8**

The culture of accountability needs to be enforced in the SAPS to ensure that the members are conscious about their actions and consequences. This is because when SAPS members apply force they are seen to be taking the law into their own hands.



#### **7.3.1.9 Recommendation 9**

The SAPS members should apply investigative techniques whenever they want to retrieve information from suspects about the commission of certain crimes. They should refrain from interrogations and lengthy interviews with suspects because they are seen to be aggressive methods of obtaining information and this is unconstitutional. They should rather use interviews techniques when they want information about certain crimes.

#### **7.3.1.10 Recommendation 10**

Members of the SAPS should call for backup whenever they want to apprehend violent and aggressive criminals other than applying unnecessary force. In some situations, the police should summon hostage negotiators or call on members who are trained to deal with crowd management, especially in situations where there are service delivery protests and other strikes by community members.

#### **7.3.1.11 Recommendation 11**

The management of the SAPS should give support to members who have witnessed violent crimes and or having witnessed horrible crime scenes where people died through vehicle collisions and other aggravating circumstances. Police officers who have witnessed traumatic scenes or who have been shot before often struggle to deal with aggravating circumstances more effectively because of previous trauma or psychological distress. Psychological wellbeing has an impact on the police officer's cognitive and emotional competence and capacity to deal with complex crime situations.

#### **7.3.1.12 Recommendation 12**

The ethical behaviour, obligation and responsibilities in the SAPS should be internalised. When an individual has not internalised the ethical behaviour, they may be inconsistent in their actions. There may be incongruence between what they do and what they believe in. In contrast, when there is an internalisation of ethical conduct and behaviour, the individual is more likely to behave in a manner that is consistent with ethical conduct, values and responsibilities.

#### **7.3.1.13 Recommendation 13**

Effective decision-making and accurate judgment should be taken before members of the SAPS could apply excessive force. One of the most intriguing findings was that when participants were asked about whether they see the importance of decision-making prior to using excessive force, of which they mentioned that most of the time they act more reactively than proactively when they are faced with aggravating circumstances.

#### **7.3.1.14 Recommendation 14**

The level of competency by members of the SAPS should be improved at all times. Most of the participants mentioned that they are competent in applying excessive force. Some SAPS participants alluded that they are not equipped enough to deal with circumstances that require excessive force. Therefore, this code can be referred to the sense of competence in applying excessive force. Therefore, the researcher identified that there are some grey areas when it comes to the level of competency by members of the SAPS when applying excessive force.

### **7.3.1.15 Recommendation 15**

The government should demilitarise the SAPS completely. On paper, the SAPS is community related and community based but the manner in which they execute their duties as well as their rank structure is still militaristic. Participants felt that excessive force does not translate into a militaristic approach in dealing with aggravating circumstances. However, some participants alluded to the notion of the context, where their action is context-driven or context-dependent. This notion also relates to the police officers' capacity and understanding of their roles in complex crime situations or cases where there has to be an application of excessive force.

## **7.4 CONCLUSION**

South Africa has continuously scored major successes towards incorporating and uniting the 11 police agencies to create a safe and secure environment in all their inhabitants after achieving democracy since 1994. To address the crime rate among inhabitants of South Africa, the government has reformed its terms and conditions with the help of the SAPS. Though the well-being of customers is considered as the primary concern for elected South African government, the SAPS continues to use excessive force when policing its inhabitants in the Republic of South Africa, which impacts negatively upon their mental and progressive well-being within the country in an interactive way. Inculcating the culture of police, ethos and accountability of democratic policing is essential to maintain the transparency and build trust within the country.

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## Case Law

*Ex parte: Minister of Safety and Security v Walters and Others: In Re S v Walters and Another* [2002] (2) 105 (CC)

*Govender v Minister of Safety and Security* 2001 (2) SACR 197 (SCA)

*Matlou v Makhubedu* 1978 91) SA 946 (A)

*Macu v Du Toit* 1983 (4) SA 629 (A0 (at 635)

*S v Makwanyane and Another* 1995 (6) BCLR 665 (CC)

*Tennessee v Gargner* 471USA (1) 1985

## **Legislation**

Constitution of the Republic of South Africa, Act 108 of 1996

CPA, Act 51 of 1977

Human Rights Law (Human Rights Pocket Book for Police Officials)

South African Police Service Act, Act 68 of 1995

The Prevention of Combating and Torture of Persons Act, Act 13 of 2013

The South African Police Services Standing Order (Standing Order 251)

## APPENDIX A: LANGUAGE EDITING CERTIFICATE

### EDITING AND PROOFREADING CERTIFICATE

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01 June 2024

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This certificate serves to confirm that I have edited MP Mkansi's thesis titled, **"AN EXPLORATION OF THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE."**

I found the work easy and intriguing to read. Much of my editing basically dealt with obstructionist technical aspects of language, which could have otherwise compromised smooth reading as well as the sense of the information being conveyed. I hope that the work will be found to be of an acceptable standard. I am a member of Professional Editors' Guild.

Hereunder are my contact details:



Jack Chokwe (PhD – University of Leicester (United Kingdom))

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## APPENDIX B: TURN-IT-IN DIGITAL CERTIFICATE

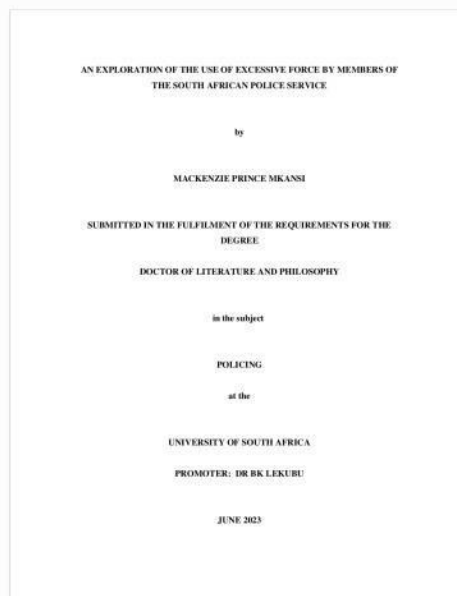


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# APPENDIX C: APPLICATION FOR PERMISSION TO CONDUCT RESEARCH

SUID-AFRIKAANSE POLISIEDIENS



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THE PROVINCIAL COMMISSIONER  
GAUTENG PROVINCE  
PARKTOWN  
2017

2015-01-23

- A. The Head: Legal Service:  
S A Police Service  
**GAUTENG**
- B. The Deputy Provincial Commissioner: Crime Detection  
S A Police Service  
**GAUTENG**
- C. The Deputy Provincial Commissioner: Operational Service  
S A Police Service  
**GAUTENG**
- D. The Deputy Provincial Commissioner: Human Resource Management  
S A Police Service  
**GAUTENG**

## APPLICATION FOR RESEARCH: LT. COL. MKANSI: EXPLORING THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SAPS

A-D: For your recommendation  
D: For your approval

1. Attached herewith is an application from the above mentioned officer to conduct research within the SAPS.
2. The application has been evaluated by the Provincial Research Office (Strategic Management) as per attached Annexure and found to be in compliance with National Instruction 1 of 2006: Research.
3. In the opinion of the Research Office, the research will be beneficial to SAPS in educating members on how to deal with policing challenges.



**APPLICATION FOR RESEARCH: LT. COL. MKANSI: EXPLORING THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SAPS**

4. In line with National Instruction 1 of 2006, you are afforded the opportunity to comment on the relevance and feasibility of the proposed research within your area of responsibility. Any objections against the research will be noted and you will be requested to clarify and motivate those with the Provincial Head: Organisational Development & Strategic Management.
5. In order to ensure the effective and efficient finalisation of this application you are requested to forward your comments back to Strategic Management office within the allocated timeframe.
6. Your cooperation and assistance is appreciated.



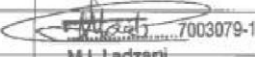
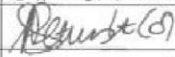
BRIGADIER  
PROVINCIAL HEAD: ORGANISATIONAL DEVELOPMENT & STRATEGIC  
MANAGEMENT  
SJ PHETO

Date: 2015/01/28


**ANNEXURE A**

**APPLICATION FOR RESEARCH: LT. COL. MKANSI: EXPLORING THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SAPS**

**COMMENTS & RECOMMENDATION: PROVINCIAL RESEARCH OFFICE**

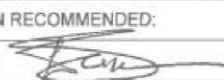
i	OFFICIAL FILE NO:	3/34/2(201500002)		
	FILE COMPUTER REFERENCE NO:	7132647		
ii	MOTIVATION FOR RESEARCH:	To explore, identify and describe the causative factors of the use of excessive force as experienced by members of the SAPS in Daveyton		
	APPLICATION FOUND TO BE COMPLETE:	YES	<input checked="" type="checkbox"/>	NO
	INDEMNITY / UNDERTAKING SIGNED	YES	<input checked="" type="checkbox"/>	NO
iii	APPLICATION PERUSED BY:	SAC ML Ladzani		
	CONTACT NO:	011 274 7324		
	SIGNATURE:	 7003079-1 M.L. Ladzani		
	DATE:	2015-01-28		
iv	APPLICATION VERIFIED BY:	Lt. Col. NS PETERS		
	APPLICATION RECOMMENDED:	YES	<input checked="" type="checkbox"/>	NO
	CONTACT NO:	011- 274 7368		
	SIGNATURE:			
	DATE:	2015-01-28		

**A. RECOMMENDATION BY PROVINCIAL HEAD: LEGAL SERVICE**  
**TIME ALLOCATED: 3 days**


<b>COMMENTS WITH REGARDS TO ANY LEGAL OBJECTIONS AGAINST THE RESEARCH WITH ANY ADDITIONAL LIMITATIONS TO RESEARCHER:</b>			
APPLICATION RECOMMENDED:	YES	<input checked="" type="checkbox"/>	NO
SIGNATURE: 	DATE: 2015/03/16		

**APPLICATION FOR RESEARCH: LT. COL. MKANSI: EXPLORING THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SAPS**

**B. RECOMMENDATION BY RELEVANT LINE MANAGER: DEPUTY PROVINCIAL COMMISSIONER: CRIME DETECTION  
TIME ALLOCATED: 3 days**

COMMENTS WITH REGARDS TO THE RELEVANCE AND FEASIBILITY OF THE RESEARCH WITHIN YOUR ENVIRONMENT:				
The research is feasible within the detective environment especially during questioning				
APPLICATION RECOMMENDED:	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
SIGNATURE: 	DATE: 2015-03-17			

**C. RECOMMENDATION BY RELEVANT LINE MANAGER: DEPUTY PROVINCIAL COMMISSIONER: OPERATIONAL SERVICE  
TIME ALLOCATED: 3 days**

COMMENTS WITH REGARDS TO THE RELEVANCE AND FEASIBILITY OF THE RESEARCH WITHIN YOUR ENVIRONMENT:				
The Research is relevant within the Operational Services Environment				
APPLICATION RECOMMENDED:	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
SIGNATURE: 	DATE: 2015-03-31			



## PERMISSION TO CONDUCT RESEARCH IN THE SAPS

**RESEARCH TOPIC:** EXPLORING THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SAPS

**RESEARCHER:** LT. COL. MKANSI

Permission is hereby granted to the researcher above to conduct research in the SAPS based on the conditions of National Instruction 1 of 2006 (as handed to the researcher) and within the limitations as set out below and in the approved research proposal.

This permission must be accompanied with the signed Indemnity, Undertaking & Declaration and presented to the commander present when the researcher is conducting research.

This permission is valid for a period of Twelve months after signing.

Any enquiries with regard to this permission must be directed to SAC Linda Ladzani at [Ladzanim@saps.org.za](mailto:Ladzanim@saps.org.za).

### RESEARCH LIMITATIONS / BOUNDARIES:

Research Instruments:	Questionnaires , Test (written or other), General Observation, General Survey, Statistical Survey, Behavioural Surveillance, Interviews (Structured), Interviews (Semi-Structured), Interviews (Unstructured)
Target audience / subjects:	Crime Prevention members, Crime Intelligence members, PHO Detectives, POPS
Geographical target:	Benoni Cluster -Daveyton SAPS and PHO
Access to official documents:	No

  
DEPUTY PROVINCIAL COMMISSIONER: HUMAN RESOURCE MANAGEMENT: GAUTENG  
DS DE LANGE

MAJOR GENERAL

DEPUTY PROVINCIAL COMMISSIONER: HUMAN RESOURCE MANAGEMENT: GAUTENG  
DS DE LANGE

## APPENDIX D: EXTENSION OF SCOPE

G.P.S 002-0222

SAPS 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Private Bag / Privaatsak X 57, BRAAMFONTEIN, 2017

Reference Verwysing	3/34/2(20150006)
Enquiries	Lt. Col. Peters
Navrae	SAC Linda Ladzani
Telephone Telefoon	(011) 274- 7529
Fax number Faksnommer	(011) 547- 9189

OFFICE OF THE  
PROVINCIAL COMMISSIONER  
SOUTH AFRICAN POLICE SERVICE  
**GAUTENG**

2016-07-22

- A. The Cluster Commander  
**EKURHULENI CENTRAL**  
S A Police Service  
GAUTENG
- B. The Cluster CIC Commander  
**EKURHULENI CENTRAL**  
S A Police Service  
GAUTENG

### REQUEST FOR AN EXTENSION OF PERIOD TO CONDUCT RESEARCH: EXPLORING THE USE OF EXCESSIVE FORCE BY MEMBERS OF THE SAPS: LT COL. MKANSI

A+B For your attention.

1. Research correspondence, with the above mentioned topic; dated 2015-01-23 refers.
2. In terms of the N/I 1/2006 Par.3 (n), an estimate of the period necessary for research should be outlined.
3. The researcher in his declaration signed and dated 2015-01-21, agreed to take a period of 12 months from the date of approval in finalizing all research activities within the SAPS, and if not yet completed, apply for an extension.
4. On the 19<sup>th</sup> of July 2016, an application for extension to continue with the research was received by this office.
5. Given the above mentioned reasons, you are hereby requested to allow the researcher to continue with the study as it meets the criteria as outlined in the above mentioned document.

  
PROVINCIAL HEAD, ORGANISATIONAL DEVELOPMENT AND STRATEGIC MANAGEMENT: GAUTENG  
S.J. RHETO  
Date:

**BRIGADIER**

## APPENDIX E: UNISA ETHICS CLEARANCE



### UNISA CLAW ETHICS REVIEW COMMITTEE

**Date** 20171213

**Reference:** ST 65 OF 2017

**Applicant:** MP Mkansi

**Dear** MP Mkansi

**Decision: ETHICS APPROVAL  
FROM 13 DECEMBER 2017  
to 12 DECEMBER 2020**

**Researcher:** MP Mkansi  
**Supervisor:** Prof J Van Graan

**Exploring the use of excessive force by members of the South African  
Police Service**

**Qualification:** Doctorate in Policing

Thank you for the application for research ethics clearance by the Unisa CLAW Ethics Review Committee for the above mentioned research. Ethics approval is granted for 3 years.

*The CLAW Ethics Review Committee reviewed the Medium risk application on 28 November 2017 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment. The committee ratified the decision.*

The proposed research may now commence with the provisions that:

1. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.



Open Rubric

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PO Box 392 UNISA 0003 South Africa  
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150  
www.unisa.ac.za

2. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.
3. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
4. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
5. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
6. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data require additional ethics clearance.
7. No research activities may continue after the expiry date 12 December 2020. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

**Note:**

*The reference number ST65 of 2017 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.*

Yours sincerely,



**PROF D GOVENDER**  
Chair of CLAW ERC  
**E-mail: govend1@unisa.ac.za**  
**Tel: (012) 429-9482**



**PROF GS SIBANDA**  
Acting Executive Dean : CLAW  
**E-mail: sibanos@unisa.ac.za**  
**Tel: (012) 429-8374**

URERC-25.04.17 - Decision template (V2) - Approve

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[www.unisa.ac.za](http://www.unisa.ac.za)