

The effect of human rights norms on policing in the North West Province of the Republic of South Africa, with particular reference to Mmabatho and Vryburg Policing Areas.

By

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A dissertation submitted in partial fulfilment of the requirements for the degree of Master of Laws in the School of Post – Graduate Studies in the Faculty of Law, at the North West University, Mafikeng Campus.

SUPERVISOR: PROF. M. L. M. MBAO

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DEDICATION

This dissertation is dedicated to those members of the South African Police Service who are toiling and sweating day and night to ensure that quality service is rendered to the community especially the vulnerable groups. This also goes to their unselfish families who endure sleepless nights not sure whether their loved ones will come back alive.

This also goes for partners of serving members who sometimes have to put up with some difficult moments like baby sitting or spending the nights alone while their spouses are on night duties or deployed far away from home. Some of them come back stressed up and ventilate this on their partners.

The departed members, especially those who passed on during their tour of duty are also remembered and honoured for laying down their lives for a good cause. May their souls rest in peace.

May those who are still serving keep up the good work.

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I want to thank my wife Ikgadimeng Rachel (nee Lesejane) for being patient with me while I spent most of the time at the Library or in front of the computer busy with assignments and other issues related thereto. She also assisted and guided me since she has written a dissertation before.

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I also would like to thank the entire Moses clan, Lesejane clan, Kgaje clan and Rakuba clan for encouraging me and making me to believe in myself and push forward tirelessly.

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Last but not least, I would like to thank my supervisor Professor Melvin Mbao for his guidance and continuous encouragement. When I almost gave up he made me to push on and ultimately I got there. Men like him are golden assets and more often their immense contribution to academic and social development go down not sufficiently acknowledged. May the good Lord bless him and his loved ones immensely.

ABSTRACT

This research is all about the effect of human rights norms on policing particularly in the Mmabatho and Vryburg police stations in the North West Province of the Republic of South Africa. These stations were chosen because Mmabatho is a former Bophuthatswana police station while Vryburg is a former South African police station. The historical context in which these stations find themselves as well as the challenges of transformation faced by each station present the central pith of our investigation.

The research starts by looking at the international instruments on human rights and how they have domesticated into the new South African legal order, thereby influencing our laws and policies. It also looks at policing in seasoned democracies like the United States of America and the United Kingdom with a view to learning important lessons from these mature democracies..

The research is intended to look at how human rights norms have impacted on policing in these two stations. This entails an attitudinal survey of members serving in these stations as well as the communities that they serve.

This means that members who were trained and used to serve the same community under the former dispensation are now faced with the challenges of serving the very same community under a different political dispensation anchored on a human rights culture.

The central question here is whether members of the South African Police Service in these stations are trained and ready to face the new challenges including being psychologically and emotionally transformed? The same goes to the surrounding communities, whether they are ready to accept the new policing methods and strategies demanded by the new constitutional democracy.

In the final analysis, this study aims to elucidate how approaches to policing and crime combating strategies have been transformed and reshaped to be in line with the letter and spirit of the Constitution and other international law instruments. The law is stated as at 30 June 2007.

The study then ends up with some observations and recommendations to all stakeholders, especially the police management in the North West Province, other government departments, the community, Traditional Leaders and the academic community.

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2. Constitution of the Republic of South Africa Act 108 of 1996
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11. Public Finance Management Act 1 of 1999
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13. Prevention of Public Violence and Intimidation Act 139 of 1991
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5. National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 (2) SA 1 (CC)
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4. Whitney v California 274 US 357 (1927)

UNITED KINGDOM

1. Osman v United Kingdom 1929 EHHR 245

ABBREVIATIONS

- | | | |
|-----|--------|--|
| 1. | AFIS | Advanced Fingerprint Information System |
| 2. | ANC | African National Congress |
| 3. | AZAPO | Azanian People's Organization |
| 4. | CIS | Criminal Investigation Services |
| 5. | CSC | Community Service Centre |
| 6. | EAS | Employee Assistance Service |
| 7. | FIFA | Federation of International Football Associations |
| 8. | GA | General Assembly |
| 9. | ICCPR | International Covenant on Civil and Political Rights |
| 10. | ICESCR | International Covenant on Economic, Social and Cultural Rights |
| 11. | ICD | Independent Complaints Directorate |
| 12. | MEC | Member of the Executive Council |
| 13. | PACE | Police and Criminal Evidence |
| 14. | POPCRU | Police and Prisons Civil Rights Union |
| 15. | PSA | Public Service Association |
| 16. | SANDF | South African National Defence Force |
| 17. | SAPS | South African Police Service |
| 18. | SAPU | South African Police Union |
| 19. | SETA | Sector Education Training Authority |

20.	SHE	Security and Healthy Environment
21.	SWA	South West Africa
22.	UDHR	Universal Declaration on Human Rights
23.	UK	United Kingdom
24.	UN	United Nations
25.	USA	United States of America

CHAPTER ONE: INTRODUCTION

1.1. PROBLEM STATEMENT.

It is common cause that due to the legacy of apartheid, the South African Police Service, which was the main instrument of coercion and brutality under the apartheid regime, face tremendous challenges under the broad spectrum of transformation. To-day, almost twelve years since the advent of the “new” democracy, cases of police brutality are being reported.

The Independent Complaints Directorate is at pains trying to show the police that old methods of *Skiet, Skop en Donner* are no longer necessary and or applicable in this era of human rights. Policing is now a service that must treat the community as valued customers, this being in accordance with the Government White Paper on Policing¹.

The police must not ill-treat suspects. It is the duty of the courts to try, convict and sentence suspects. All that police officers have to do is to arrest the suspect, collect the necessary evidence and place them before courts of law.

Numerous complaints, including civil claims, by the community indicate that twelve years down the line the mind-set or attitude of our police members is still a matter of national concern.

¹ SOUTH AFRICA. 1996. White Paper on safety and security, 1999-2004; September 1998; Pretoria

One can also indicate that the number of complaints that end up on the tables of the Police Commissioners, Independent Complaints Directorate, Members of the Executive Council (MECs) for Safety including the National Minister for Safety or even the national President, is just a drop in the ocean. Some of the complaints may land on the media desks, but the truth is that ordinary members of the community, especially those vulnerable groups living in poor, rural and remote areas, are the ones who suffer daily brutalities at the hands of the police and have no-one to help them.

This dissertation is intended to assist the communities of Mmabatho and Vryburg as well as members of the police serving in these areas, to understand the culture of human rights and policing and improve service delivery with regards to policing. The dissertation also aims at promoting a harmonious as well as respectful interaction between police officers and members of the community. People should not be tortured or treated in an inhuman and degrading manner. The Republic of South Africa has ratified the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. The South African Constitution in section 12(1) also protects the freedom and security of the person which includes, inter alia, to be free from all forms of violence, from either public or private persons and not to be tortured in any way.

Members of community who are served by the Police Service are important stakeholders in law enforcement. They should be empowered to know and understand their rights and how to enforce them by placing copies of this

dissertation at Traditional Leaders palaces, schools, libraries, clinics and the two policing areas under investigation.

1.2. RESEARCH AIMS AND OBJECTIVES

The objectives of this research are to determine the impact of new human rights norms in the area of policing, with particular reference to the Mmmabatho and Vryburg policing areas. The advent of the new constitutional democracy in 1994 has meant that human rights norms and culture permeate every sphere of governmental activity.

The final Constitution of 1996 commits this country to the building of a democratic South Africa based on fundamental human rights. Furthermore, among the foundational values encapsulated in section 1 of the Constitution are those of human dignity, the advancement of equality and advancement of human rights and freedoms. In the context of this dissertation, it is axiomatic that these fundamental values must inform, animate and discipline the work of the Police Service. They demand new ethos and a new culture of policing. This dissertation, therefore seeks to evaluate the impact of these norms on policing, in particular the methods and strategies of combating crime and service delivery in the new constitutional dispensation.

1.3. BASIC HYPOTHESIS / CENTRAL THEORITICAL STATEMENT

Members of the South African Police Service are abusing the state power given to them while the community is unaware of a shield called human rights given to them by the Constitution to ward off state abuse, torture as well as inhuman and degrading treatment. Although members of the South African Police Service are alleged to have been work-shopped on human rights and the Bill of Rights, the workshops were very short and in most cases conducted by trainers who did not have any legal training. This compromised the legitimacy and quality of the said workshops and through training statistics mislead the management that members have been works-hopped whereas in real life members were left more confused and fearful than before.

1.4. RESEARCH METHODOLOGY AND DATA COLLECTION

1.4.1. **Research Design**

In prosecuting this study, much of the initial investigation concentrated on library or deskbound research, including the internet plus the South African Police Service Intranet as well as Government Policy documents and other institutions were also visited to gather material that could assist in filling in the gaps in the written sources. A comparative aspect involved the review of materials from countries such as the United States of America, United Kingdom, the erstwhile Bophuthatswana and South West Africa.

1.4.2. Research Methodology and Data Collection

Apart from the qualitative method referred to above, a limited empirical study was also carried out involving structured interviews and participant observations. Each interviewee was requested to complete a questionnaire in both areas. In addition, the researcher embarked on “participant observation” in which the behavior and attitudes of police officers in the two police stations were observed during their policing activities outside the police station and in the Community Service Centres. Where possible their behavior and attitude with regard to how they related to rape victims in their policing precinct during interviews were monitored.

In the premise, this study employed the two principal research methodologies: qualitative as well as a limited quantitative approach.

1.4.3. Test persons / research group / participants

A selected group of communities around Mmabatho and Vryburg were visited and interviewed. Between fifty (50) and hundred (100) people from the community served by each station area were interviewed. This included former and current detainees as well as opinion makers and community leaders. A selected number of police officers were interviewed in their private capacity as members of the community. The selection was done randomly but ensuring that the small number sampled was representative of the general population. The empirical investigation

is particularly explained in the chapter three of this dissertation.

1.4.4. Measuring instruments and / or software

In the pilot survey and random testing of community attitudes, a sample of people aged between fifteen (15) years and sixty (60), who were of average intelligence and education level, who were objective and reasonable was carried out. Those chosen were then asked what level of education they had and their social, political and religious backgrounds. They were further asked whether they were ever ill-treated by police officers. These were approached at shopping centres, bus and taxi ranks, at the Community Service Centre and some even at their homes. This was done using a questionnaire. A copy of the questionnaire is reproduced as Annexure A to this dissertation.

1.4.5. Pilot studies, validity procedures and quality control.

An attempt was made to compare and contrast what information could be distilled from the replies received. The views of those who were interviewed have been schematically presented in Figures 4.3 and 4.4 in chapter three.

1.4.6. Data Analysis

After all the interviews, and questionnaires were collected, the information was analyzed and arranged so as to depict the intended picture or results.

1.4.7. Ethical aspects

In line with the University's stipulations on research ethics, members of the South African Police Service stationed at Mmabatho and Vryburg were interviewed both in their official and private capacities. The necessary permission was sought from and granted by the Provincial Commissioner of Police in the North West Province Commissioner Lesetja Beetha. The researcher observed how things were done and asked questions and sometimes even intervened where there was a need. The researcher also interviewed members of the community in both Mmabatho and Vryburg policing areas. That was done voluntarily. He also spoke to a member of the Independent Complaints Directorate in the North West Mr Sebolai Teledimo for clarity on their mandate and day to day experiences with police cases especially with regard to human rights issues. In that way it was possible to have as much a complete picture as possible.

1.4.8. Expected outcomes

This study set out to investigate a specific problem, namely the impact of human rights norms on policing. It is hoped that the expected results will be relevant to the on-going efforts to re-positioning the South African Police Service in the context of the larger transformation agenda facing the country.

By making the results of the study available to the managers and ordinary rank and file of police officers, it is hoped that they will benefit by knowing that they

are now dealing with a community that is empowered and informed and thus cannot be treated with brutality and disrespect for their basic human rights. Police management will also be made aware of the shortcomings in the policing practices with regards to training and service delivery, especially where human rights are concerned.

1.4.9. Budget and sources of funding

The study was financed from the limited resources available to the researcher from family savings. Due to these budgetary constraints, the study, though dealing with a national problem, was confined to the Mmabatho and Vryburg policing areas.

1.5. SCOPE AND LIMITATIONS OF THE STUDY

This dissertation consists of four interrelated chapters.

Chapter one is the introduction. It identifies the problem under investigation, the aims and objectives of the study, research methodology, scope and limitations of the study as well as other preliminary issues.

Chapter two is concerned with policing within a contextual framework. This chapter examines human rights instruments, in particular international treaties to which this country is a State Party. In line with the Vienna Convention on the

Law of Treaties, 1969, South Africa is enjoined to bring its domestic laws in line with its treaty obligations.

In the context of this study, these international human rights instruments will be analyzed with a view to evaluating how they have helped to re-shape the ethos of the South African Police Service in the new democracy. Domestic laws will also be examined with a view to seeing how they have evolved historically, their influence on policing and the community's perceptions on policing. Both domestic and foreign case law are examined to see how human rights norms have revolutionized police investigations and the approach to police brutality by the courts. Such instruments and institutions include, amongst others:-

- (i) The United Nations Charter, 1945
- (ii) The Universal Declaration on Human Rights, 1948
- (iii) Other relevant International Human Rights Instrument.

Apart from international human rights instruments, Chapter two also investigates trends in other countries, with particular reference to the United States of America and the United Kingdom.

Chapter three deals with our empirical investigation, namely; the "field work", how participants were selected and engaged, as well as their ages, positions, status and literacy levels are depicted as well as their responses. The chapter makes it clear that fifty participants were selected in Mmabatho and another fifty

were selected in Vryburg. Most of the participants were Africans followed by Whites, Coloureds and a few Indians. Women and young people were also included to try to get a general perspective. All the questionnaires distributed were returned successfully and the results assessed and recorded accordingly. The outcome of the questionnaires as distributed amongst members and the community are shown in percentages by way of pie charts.

Chapter four carries the conclusions together with recommendations for re-aligning policing techniques so as to achieve conformance with the relevant international human rights instruments. It is hoped that ultimately this study makes a modest contribution to the transformation of the most distrusted organs of state in this country.

CHAPTER TWO: POLICING: A CONTEXTUAL FRAMEWORK

2. Introduction

In this chapter I will be looking at the United Nations perspectives on human rights and their implications for policing and law enforcement. Thereafter an attempt will be made to look at the South African context, with particular reference to Mmabatho and Vryburg against that context. This will be done against the profound transformative agenda associated with the return of South Africa to the “family of civilized nations”.

In that context, policing as a science and an important aspect of the *raison d’etre* of governance, will be analyzed in a broader context, drawing on important lessons from “mature” democracies such as the United States of America and the United Kingdom.

In order to narrow down our discussion, the police stations of Mmmabatho and Vryburg will be used as case studies. The role of the Independent Complaints Directorate will then be analyzed in order to appreciate “who guards the guardians”.

2.1. UNITED NATIONS CHARTER

From the very beginning it is very clear that one of the purposes of the United Nations Organization is to encourage respect for human rights and for fundamental freedoms for all without distinction. This position is made evident in the Preamble itself:

2.1.1. Preamble to the Charter

We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom²

In terms of Article 13, the General Assembly is empowered to initiating studies and make recommendations for, inter alia, promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

² United Nation Charter adopted June 26, 1945.

Even more relevant to this dissertation are the provisions of Articles 55 and 56. Under Article 55 member states undertake to promote, inter alia, universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

By ratifying the Charter of the United Nations, South Africa became a state party to that instrument and in line with the hallowed principle of *Pacta Sunt Servanda*, the country made a solemn pledge to carry out the Charter's stipulations in utmost good faith, in particular to promote "universal respect for, and observance of, human rights and fundamental freedoms for all", as stated in the Charter.

2.2. UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Under this sub-heading, a brief outline of the background to the development of a human rights culture will be given. The focus will be on the developments leading up to and following the Proclamation of the Universal Declaration of Human Rights in 1948. Human rights have evolved through the struggles of particular sections of society, for instance the barons under the Magna Carta 1215, the guilds of the Middle Ages, the intellectuals of the Renaissance. The storming of the Bastille gave rise to the French Revolution which also shaped the evolution of human rights norms. This was followed by the American War of Independence. This process reached its climax in the Universal Declaration of Human Rights of 1948. Article 1 states that:-

All peoples have the right to self-determination - by virtue of that right

they freely determine their political status and freely pursue their economic, social and cultural development.

Article 2 encourages everyone to act towards one another in a spirit of brotherhood and proclaims that:-

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This Declaration was proclaimed by the United Nations on 10 December 1948 and is regarded as the fundamental international statement of the inalienable and inviolable rights of all members of the human family. Being only a Declaration it still had to be given legal teeth. It took eighteen years of deadlock between the then Eastern and Western blocs to finally come up with the two sister Covenants of 1966, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Universal Declaration of Human Rights together with these instruments were subsequently termed “the International Bill of Human Rights”. Later the United Nations adopted other instruments like the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 as well as the Convention on the Rights of the Child, 1989.

The Conventions Against Torture, 1984 is particularly germane to the work of law enforcement agencies. It is important to note that human rights were now placed

within the orbit of internationalism. State parties to the respective international instruments incur international obligations to promote and protect the rights in the instruments.

For instance Articles 2 of the International Covenant on Civil and Political Rights, 1966, states:- “ Each State Party to the present Covenant undertakes:

- (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) to ensure that any person claiming such remedy shall have his right thereto determined by competent judicial authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) to ensure that the competent authorities shall enforce such remedies when granted.”³

The focus within the United Nations and its respective human rights bodies is on the implementation of these human rights norms globally on the basis of non-discrimination. The primary aim of the United Nations in the sphere of human

3 Article 2 (3) of the International Covenant on Civil and Political Rights 1966.

rights is the achievement by each individual of the maximum freedom and dignity. It is, therefore, imperative that member states fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinction.

The South African government signed and ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 29 January 1993, thereby undertaking a positive obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. Section 12 of the 1996 Constitution is but other testimony to the commitment of the South African government to adhere to the provisions of the Convention. The Constitutional Court has made it clear that all acts of torture have no place in the South African legal order in the landmark cases of S v Williams⁴ and S v Makwanyane⁵. In addition, signatories agree to afford one another the greatest measure of assistance in connection with criminal proceedings arising from acts of torture, and to ensure that education and information regarding the prohibition of torture are fully included in the training of all persons involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

This has made it necessary to revisit and re-evaluate the treatment of persons in the custody of the South African Police Service, including the approach of the police

⁴ 1995 (3) SA 632 (CC)

⁴ 1995 (3) SA 391 (CC)

officers towards interrogation methods, investigation and detention. The erstwhile National Commissioner, George Fivaz, had initiated that guidelines dealing specifically with the treatment of persons in the custody of the South African Police Service be drawn up and such guidelines have since been incorporated into National Orders and the Code of Conduct which binds every police official.

2.3. COMPARATIVE PERSPECTIVES ON HUMAN RIGHTS AND POLICING

2.3.1. Policing in the United States of America

One of the major challenges facing law enforcement agencies in the United States is that of misconduct by federal, state and metropolitan agencies. Police misconduct takes many forms. Few of them are more disturbing than the use of deadly force and physical brutality. Physical brutality is excessive or unreasonable use of force in dealing with citizens, suspects and offenders. Basically the police may use whatever means and amount of force which is reasonable in effecting an arrest, in self-defence, in the face of resistance and in apprehending a fleeing felon. Using more force than is necessary to achieve these ends or using force for any other purpose is automatically excessive or unreasonable force, constitutes police brutality and is therefore illegal.

One major source of objective data on “police brutality” is a study of police-citizen encounters conducted by Albert Reiss. For seven weeks during the summer of 1966, 36 observers (College students with backgrounds in law, police administration and social science) rode in patrol cars assigned to high-crime areas in Boston, Chicago and

Washington DC. During this time the observers recorded and reported the outcomes of 5,360 “mobilizations” of the police. Reiss found that complaints of “verbal abuse” towards citizens was far more common than the use of excessive force. Police behavior was found to be “uncivil” towards 13 percent of all citizens contacted. Thus the common complaint against the police was “they don’t show any respect.”⁶ Although that study was conducted almost forty years ago, more recent studies show that incidents of police brutality are on the rise.

In recent years the Federal Justice Department has been increasingly active in taking legal action against police brutality in cities throughout the country, for example, in Mobile, Memphis and Houston. But nowhere has their drive against brutality been as ambitious and bold as in Philadelphia. Persistent charges of rampant police brutality in the City of Brotherly Love, a record number of annual complaints of police abuse (over 1,000), and television coverage of a confrontation between the Philadelphia police and a black radical group showing officers kicking protesters focused federal attention on the police situation in Philadelphia. In August 1979, after an eight-month investigation, the Justice Department filed an unprecedented civil rights suit charging the then Mayor, Frank Rizzo and the city’s entire 8,000 officers with pervasive and systematic police brutality--conduct that purportedly violated the 1964 Civil Rights Act, Federal laws and the Constitution. It was the first time that the Federal government had charged the entire police force with indiscriminate brutality, rather than proceeding against specific officers. “The conditions we are

⁶ G. D. Robin: Introduction to the Criminal Justice System: Fourth Edition: 1990: New York.

addressing seem institutionalized, and putting away individual officers does not solve the problem.”⁷ The suit asserted that the Philadelphia Police Department followed “procedures which result in widespread, arbitrary and unreasonable physical abuse or abuse which shocks the conscience”. In general the government described a pattern of uncontrolled police violence in which excessive force against suspects, prisoners and citizens was routinely encouraged and concealed. In particular, the Department was accused of shooting non-violent and unarmed suspects who could be apprehended without deadly force, beating handcuffed prisoners, stopping pedestrians and motorists without probable cause and physically abusing those who protested, failing to investigate complaints of police brutality and pressurizing citizens to withdraw their complaints, conducting illegal searches and inflicting disproportionate abuse on black persons and persons of Hispanic origin. The suit asked the court to issue an order prohibiting the police from continuing to engage in these practices and to cut off all federal funds from Philadelphia until the necessary reforms were made. Most of the changes sought by the Justice Department have been instituted by Philadelphia’s new mayor and new police Commissioner.⁸

From the standpoint of the community, the police department and the law, use of deadly force by law-enforcement agencies is a matter of the utmost concern and poses one of the greatest obstacles to police-community relations. Deadly force encompasses any police action that creates a high risk of death or serious injury,

⁷ Time Newspaper; August 27, 1979, p. 27

⁸ Bruce Cory; “The New Politics of Deadly Force”; Police Magazine, March 1981; page 10.

whether or not the incident actually results in death or injury.⁹ Each year about 600 civilians are slain by police, six times the annual number of police killed by suspects, and the number of civilians killed by police intervention has increased in recent years.¹⁰

According to the common law, as a last resort police officers could use deadly force to stop an escaping (fleeing) felon. Dating back to fifteenth-century England, the common law rule was derived from a time when all felonies were punishable by death so that “the killing of a felon resulted in no greater consequences than those authorized for the punishment of the offence.”¹¹

In the United States, all felonies were punishable by death until 1800. About half of the states follow the common law “fleeing felon” doctrine, permitting police to shoot to kill any felony suspect who cannot otherwise be captured. However, recent developments, discussed shortly hereunder, will have the effect of invalidating such statutes. Virtually all of the states permit police officers to use whatever force is necessary, just short of killing, to arrest resisting felons and misdemeanants and in self-defence. Precisely such considerations led the Supreme Court in the case of Tennessee v Garner¹² to abandon the common law fleeing felon doctrine. The case revolved around a 1974 incident in which a Memphis police officer responded to a

⁹ Catherine H Milton: Police Use of Deadly Force (Washington, D. C.: Police Foundation, 1977), page 41.

¹⁰ Robert N Brenner and Marjorie Kravitz, A Community Concern: Police Use of Deadly Force: (Washington, D. C. : Superintendent of Documents, January 1979), p. 92; Arthur L Kobler, Police “Police Homicide in a Democracy,” Journal of Social Issues” Vol. 31, No. 1, 1975, pp. 164-165.

¹¹ Nicholas John DeRoma, “Justifiable Use of Deadly Force by the Police,” William and Mary Law Review; Fall 1970, p. 69.

neighbor's report of a prowler in an adjacent house. Arriving at the scene in the evening, officer Hyman pursued the suspect who was running across the backyard. When the youth stopped at the chain fence at the end of the yard, the officer shone a flashlight on him, saw no sign of a weapon, and was "reasonably sure" that Garner was unarmed. Garner disregarded Hyman's order to halt and began to climb over the fence, Hyman shot the suspect, who later died on the operating table. It was subsequently learned that Garner was 15 years old and had stolen \$10 and a purse -- and paid with his life for the act.

Virtually every study on the subject has revealed blacks are disproportionately the victims of police shootings and killings. In a seminal investigation, Robin found that 87% of the civilians killed by the Philadelphia police from 1950 to 1960 were black, yet blacks constituted only 22% of the city's population.¹³

There are two different schools of thought concerning such racial disproportionality.¹⁴ On the one hand, critics of the police attribute the high rates of deadly force against minorities to racial discrimination in one form or another, or variations thereof: to racism, genocide, the "rotten apple" theory (a few "trigger happy" cops), differential enforcement of the law, violence-prone personality types being attracted to the occupation and to the conviction that "police have one trigger finger

¹² Tennessee v Garner No. 83-1035, decided March 27, 1985.

¹³ Gerald D. Robin, "Justifiable Homicide by Police Officers" JCL, June 1963, p. 226

¹⁴ John S. Goldkamp, "Minorities as Victims of Police Shootings: Interpretations of Racial Disproportionality and Police Use of Deadly Force", Justice System Journal, vol. 2, No. 2, 1976, pp. 169 - 183.

for whites and another for blacks.”¹⁵ Basically, proponents of this school of thought contend that racial disproportionality is legally and morally indefensible, that police misconduct is a major factor accounting for the phenomenon, and that excessive police violence against minorities is traceable to prejudice and related to police stereotypes that may be reinforced and perpetuated by the police subculture.

By contrast, the alternative school of thought relates deadly force and racial disproportionality to over- representation of minorities in homicide arrests, arrests for serious and violent crimes,¹⁶ and to community characteristics that reflect bona fide police safety concerns and police response to stress, threats and danger rather than to police prejudice and police pathology.¹⁷ According to this view, racial disproportionality enters the deadly force picture because minority group members actually commit more violent crime than do whites, thereby precipitating more incidents leading to police discharge of weapons.

Following the Garner case, a lot of states started to move away from deadly force by putting in place regulations that limited the use of force by police officers. The new policy in Prince Georges County, Maryland, prohibits deadly force unless the officer “knows” (rather than “suspects” or “reasonably believes”) that the alleged felon might cause further injury or death unless apprehended. It also prohibits the firing of

¹⁵ Takagi, “A Garrison State,” and “The Management of Police Killings,” Crime and Social Justice, Fall-Winter 1977, pp. 34-43.

¹⁶ Richard W. Harding and Richard P. Fahey, “Killings by Chicago Police, 1969-1970: An Empirical Study,” Southern California Law Review, March 1973, pp311; Milton, *Police Use of Deadly Force*, p. 11.

¹⁷ Richard E. E. Kania and Wade C. Mackey, “Police Violence as a Function of Community Characteristics,” Criminology, May 1977, p. 48.

warning shots, as well as firing at or from moving vehicles, provisions that are often incorporated into revised departmental firearms guidelines. The 1979 Memphis Police Department regulations limited deadly force to the stopping of dangerous felonies in progress, to the apprehending a suspect fleeing from a dangerous felony which the officer has witnessed or “knows” was committed by the suspect, and prohibits the use of deadly force against juveniles except in self-defence.¹⁸

The New York City Police Department’s 1972 guidelines narrowed officer shooting discretion considerably, emphasizing the “value of life” and that the police revolver is a weapon “for personal protection against persons feloniously attacking an officer or others at close range.”¹⁹ In 1977, the Los Angeles Police Department revised its liberal fleeing felon policy to confine deadly force only “to apprehending a fleeing felon for a crime involving serious bodily injury or use of deadly force where there is substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed”.²⁰ The Philadelphia Police Department’s 1980 directive forbids the use of fire-arms unless an officer is in serious danger or knows that a suspect has a deadly weapon or has committed a forcible felony.

The available evidence on the impact of departmental restrictions on the use of deadly force indicates that such policies are remarkably effective in reducing the use

¹⁸ *New York Times*, March 15, 1981, p 26.

¹⁹ James J. Fyfe, “Deadly Force,” *LEB*, December 1979, p. 7.

²⁰ Albert J. Reiss, “Controlling Police Use of Deadly Force,” *Annals*, vol. 452, November 1980, p. 61.

of deadly force and in minimizing racial disparities. Further, these policies do not jeopardize police safety in the process. Civilian review boards and civilian-dominated committees that were independent of the regular police bureaucracy, were established in 1958 for the sole purpose of facilitating, investigating and hearing complaints from citizens against police officers. The Civil Rights Act²¹ is a Federal statute which protects citizens from unconstitutional violations of their civil rights by state and Federal law-enforcement officers.

If the value of college education for police has not yet lived up to all expectations, part of the reason may be the quality of the educational programs themselves. Just as important as the length of training is its content. A final feature of police training that requires improvement is the tendency to have programs operated entirely by sworn police personnel on police academy grounds. This procedure lends itself to insularity, the loss of instructional expertise by non-police, and an overemphasis on law enforcement. One response to this problem has been to have the training performed by university professors either at campus locations or at the police academy, which provides an opportunity to introduce more social science and human relations material into the training curriculum. A second approach is to delegate more of the training responsibility to police department legal advisors.

The boundaries of the police role in a free society are found in the amendments to the United States Constitution and their interpretation by the Supreme Court. The trend of Supreme Court decisions under Chief Justice Earl Warren in the 1960s was towards

²¹ Civil Rights Act of 1871

recognizing the legal rights of the suspects and the accused. Federal constitutional safeguards were imposed on the states through the Fourteenth Amendment. The number and scope of guarantees available to citizens in the custodial arms of the law were expanded. Critics of the Warren Court charged it with being “soft” on crime and criminals, with “legislating” new law and social progress, and “handcuffing the police” in the performance of their duties. According to this view, the Court had tipped the scales too far in favour of civil liberties, the individual, the accused and criminals through its “liberal” interpretation of the Constitution. On the other hand, supporters of the Warren Court contended that its decisions were necessary to safeguard the rights of all citizens and to preserve the foundations of ordered freedom and liberty. According to this view, the Court’s actions were correct, constitutional and necessary to assure equal justice for all regardless of race, social class, background or financial position.²²

During the period of the “due process revolution” the Warren Court invoked the Fourth, Fifth and Sixth amendments in order to provide guidelines for the police officers so that they might abide by and enforce the Constitution while enforcing the substantive criminal law. The two monumental Supreme Court decisions of the 1960s were Mapp v Ohio²³ and Miranda v Arizona²⁴. The Miranda decision led to what became known as the Miranda safeguards or warnings which are as follows:-

²² See 19 above at p. 168.

²³ Mapp v Ohio, 367 U.S. 643 (1961)

²⁴ Miranda v Arizona, 384 U.S. 436 (1966)

- 1 Prior to any questioning, suspects must be warned, in clear and unmistakable terms, that they have the right to remain silent.
- 2 Prior to any questioning, suspects must be informed that anything they say can and will be used against them in a court of law.
- 3 To protect the Fifth Amendment privilege, prior to questioning, suspects must be clearly informed that they have the right to consult with counsel and to have counsel with them during their interrogation.
- 4 Prior to questioning, suspects must be told that if they cannot afford counsel, counsel will be appointed for them if they so desire.

In fact the Miranda Warnings are now a common practice in almost all English-speaking countries. When we look at the manner in which policing is carried out these days in the United States of America we realize that it has improved drastically to be in line with modern norms of human rights. The influence of the Miranda Warnings on South African law can be seen in section 35 of the Constitution on the rights of arrested, detained and accused persons, in particular section 35(1)(a) – (c). It is evident that South Africa comes from a similar situation and can therefore use some of the American experience to improve on their policing techniques.

2.3.2. United Kingdom

Law enforcement in the United Kingdom consists of a nationwide network of law enforcement agencies, investigation or prosecutors in England and Wales. Investigation is carried out principally by the ordinary police forces (sometimes called the civil police) but also by a collection of specialist police forces and a number of organizations which are charged with the oversight of specific kinds of offence such as the evasion of exercise duty or health and safety at work offences. The Crown Prosecution Service has both advisory and prosecution decision-making functions.

There are 43 police forces in England and Wales. They each cover a county or group of counties, except in London where one force covers the City and the Metropolitan Police covers the rest. The main aim of the police service, as set out in the *White Paper Police Reform (1993)*, are to:-

- * fight and prevent crime;
- * uphold the law;
- * bring to justice those who break the law;
- * protect, help and reassure the community; and
- * provide good value for money.

The police are politically accountable through a tripartite structure consisting of the Chief Constables, the Police Authorities and the Home Secretary. In all the forces, the Chief Constable (Commissioner in the case of London) is responsible for all aspects

of the conduct of his or her police force. The Chief Constable has the power to appoint, promote and discipline officers below the rank of Assistant Chief Constable. He or she also has the duty to enforce the law; broadly, to bring to justice those who have broken it.

The police must be seen to carry out their policing role fairly. Towards this end, the Police and Criminal Evidence Act 1984 (PACE) has regulated police powers on the streets, on premises and at the police station. Lay visitor schemes have been introduced to assess and report on conditions of detention in police stations and on the way in which the rules governing the treatment of detainees are applied.

The police's ability to carry out their policing role depends, to a large extent, on public co-operation, and this is more likely to be forthcoming if the police are seen to be responding sufficiently vigorously to their priorities. The public needs more police officers on foot patrol and the police to be more responsive to calls for help. These officers are given responsibility for a particular beat and are expected to get to know the people who live and work in it. They may be expected to maintain regular contacts with local schools, collect information about racial incidents and have responsibility for investigating minor burglaries on their beat.

Most forces now have specialist community liaison officers whose remit is to develop contacts with voluntary and statutory agencies, ethnic minority organizations and schools. Under PACE, police authorities are required to consult local people about the policing of their area. As a result all police authorities have set up consultative

committees on which are represented police authority members, police officers, councillors, statutory and voluntary agencies and community groups.²⁵

A complaint about the police may be informally resolved between the police and complainant or formally investigated by the police. It can be considered for informal resolution if it would not justify criminal disciplinary proceedings. The Police Complaints Authority must supervise the police investigation of very serious complaints. It may supervise other complaints if it considers it desirable and in the public interest to do so. Some people sue the police for damages as an alternative to the police complaints procedure.

It is evident that the British Police is the oldest law enforcing agency in the world. Through the evolution of time they have seen a lot and therefore adjusted their policing techniques to be in line with modern human rights norms like those in European Human Rights Treaty²⁶. Their recruitment and selection methods are such that a police official is psychologically strong to withstand the daily challenges. Members who are very effective in patrols are normally not promoted and taken away from the community they understand and serve effectively but rather their salaries are adjusted and they continue with their daily duties. This is something still lacking in the South African Police Service as members are promoted or transferred elsewhere leaving a gap that is sometimes never closed.

²⁵ Bryan Gibson and Paul Cavadino: Introduction to the Criminal Justice Process Winchester;

Waterside Press, 1995

2.4. THE SOUTH AFRICAN CONSTITUTION ACT 108 OF 1996

In 1994, South Africa became a constitutional democracy, anchored on respect for human rights and fundamental freedoms of all. This profound commitment to a new human rights culture is captured in section 1 and particularly section 7 which reads as follows:-

- (1) “The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36 or elsewhere in the Bill”.

The Bill of rights enshrined in the Constitution is of direct relevance to this study, in particular the imperatives of section 10 (on human dignity); section 11 (on the right to life); section 12 (on freedom and security of the person) and section 35 (on the rights of arrested, detained and accused persons).

In order to appreciate the new Constitutional imperatives or demands on law-enforcement, it is important to have a sense of history. It is therefore proposed to look at the legal framework governing policing before the advent of the new constitutional dispensation.

²⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 1950.

2.5. SOUTH AFRICAN PERSPECTIVES AND CASE LAW.

In trying to unpack the effects of human rights norms on policing it is important to touch on the history of policing with particular reference to the following pieces of legislation: the South African Police Force Act²⁷, the Bophuthatswana Police Force Act²⁸, the South African Police Service Act²⁹, the Interim Constitution of the Republic of South Africa Act³⁰, the Constitution of the Republic of South Africa³¹, the Republic of Bophuthatswana Constitution Act³² and the role of the Truth and Reconciliation Commission which was established in terms of the National Unity and Reconciliation Act³³. The reason is that Vryburg police station is a former South African Police Force station while Mmabatho police station is a former Bophuthatswana Police Force station and both stations are now part of the “new” South African Police Service in the North West Province.

2.5.1. South African Police Force in an historical perspective

Prior to the establishment of the Union of South Africa in 1910, each colony had its own Police Force which was governed by legislation of the respective colonies. The

²⁷ Act 14 of 1978

²⁸ Act 20 of 1981

²⁹ Act 68 of 1995

³⁰ Act 200 of 1993

³¹ Act 108 of 1996

³² Act 4 of 1976

³³ Act 34 of 1995

different Police Forces were all incorporated into the South African Police Force by the Police Act of 1912.³⁴ In terms of section 2 of that Act, pre-Union laws ceased to apply to the Police Force.

The South - West African Police Act,³⁵ as amended by the 1957 Act³⁶, 1958 Act³⁷ and 1975 Act³⁸ provided for the incorporation of the South-West Africa Police Force into the South African Police Force.

The South African Police Force Act was amended thirty – eight times (38) between 1958 and 1993. This period is when the African National Congress and other liberation movements were very active and the international community was also very vocal about the apartheid policy in South Africa. It is during that period that human rights violations which were orchestrated by government through its Police Force were prevalent in South Africa.

The 1978 Act³⁹ consolidated the laws providing for the establishment, organization and control of the South African Police Force. It repealed the Police Act of 1958 and all other subsequent Acts.

³⁴ Act 14 of 1912

³⁵ Act 81 of 1957

³⁶ Act 7 of 1958

³⁷ Act 72 of 1975

³⁸ Act 72 of 1975

³⁹ Act 14 of 1978

However some of the provisions of the 1958 Act deserve a closer look, for instance, section 4 provided that:-

- (1) The Commissioner shall, subject to the directions of the Minister, have command, superintendence and control of the Force, and shall, subject to the provisions of section 3 and the regulations prescribing the conditions of service and the numerical establishment of the Force, appoint fit and proper persons to be members of the Force, and may, subject to the provisions of this Act, discharge, dismiss or reduce in rank any such member.
- (2) Any power vested in the Commissioner under sub-section (1) may, subject to his directions, be exercised by any other officer of or above the rank of Lieutenant-Colonel designated by him.

It must be noted that at that time there were no trade unionism. Police officers were represented by fellow members in disciplinary hearings who also feared victimization in the event they were seen to be helping the charged member to evade punishment and therefore this could be interpreted as a form of window-dressing than real representation, more so because they were not trained in legal or labour related matters. The position has now changed drastically with police officers allowed by the law to join and belong to trade unions.

The functions of the South African Police Force appear in section 5 of the Act as follows:

- * the preservation of the internal security of the Republic;
- * the maintenance of law and order;

- * the investigation of any offence or alleged offence;
- * the prevention of crime.

2.5.1.1 **Limitations of rights to resign and retention of services of members whose period of engagement has expired⁴⁰.**

- * Except with the written consent of the Commissioner, no member of the Force shall be entitled to resign therefrom in time of war, disturbance of the public peace, riot or other emergency or apprehended emergency, even though the period of his engagement may have expired.
- * The Commissioner shall not at any time resign from the Force without the consent of the State President.

2.5.1.2 **Contravention of Act by members of the Force⁴¹**

- * Any member of the Force who contravenes any provision of this Act or fails to comply with an order issued in terms of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or in default of payment, imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine or both such fine and such imprisonment.

⁴⁰ Section 8

⁴¹ Section 9

2.5.1.3 **Witnesses before officers or boards of enquiry**⁴²

- * Any person summoned as a witness at a trial under sub-section (2) of section (9), or before a board of enquiry under section (10), who fails to attend at the time and place mentioned in the summons, or, having attended, refuses to answer all questions that may be lawfully put to him, shall be guilty of an offence and liable on conviction to the penalties to which he would have been liable if he had failed upon summons to attend any trial at the magistrate's court of the district in which the trial or enquiry was held, or being a witness at a trial before a magistrate's court had refused to answer any question lawfully put to him thereat.

In the democratic South Africa all departmental trials are independent from criminal proceedings and copies of statements used at criminal proceedings cannot be used at departmental tribunals. The new South African Constitution does not allow tribunals to have powers similar to those of courts of law especially the power to commit an employee to prison. However even in the old South Africa members had challenged the legality of imprisonment by departmental tribunals and courts were very vigilant in nullifying such imprisonment sentences. In the case of S v Motloba⁴³ where a

⁴² Section 11

⁴³ 1969 (3) SA 314 (T)

member of the South African Police Force was charged with contempt of court and sentenced as if the contempt was done in an ordinary court of law, the learned Rabie J. said:-

At a trial under section 9(2) of the South African Police Force Act 7 of 1958, there can be no *injuria publica*. A trial before an officer is not one before an ordinary court of law. Consequently at that trial no contempt of court can occur.

Contempt of court then may be adequately defined as an injury committed against a person or body occupying a public judicial office, by which injury the dignity and respect which is due to such office or its authority in the administration of justice is intentionally violated.

From its inception in 1958 the Police Act gave the police wide-ranging powers. Section 31(1), for example, exonerated a member of the Force from liability if he had acted in compliance with a warrant. This meant that a citizen who was a victim of such a defective warrant had no redress in law. The Police Amendment Act⁴⁴ widened this power by providing that a member would not be liable for an act which was based upon a defective legislative Act..

In 1961 the powers of police officers were further extended when the Police Amendment Act⁴⁵ made provision that the records of disciplinary proceedings were no longer to be transmitted to the Deputy Commissioner but to the Commanding

⁴⁴ Act 43 of 1958

⁴⁵ Act 53 of 1961

Officer of the Police controlling the area in which the police member was stationed or to any Lieutenant-Colonel of the Force.

In summary, policing under the old order alienated the Police Force from the overwhelming majority of the population.

2.5.2. Bophuthatswana Police Force

The Bophuthatswana Police Force was established in terms of Act No. 7 of 1978 which was later amended by Act No. 6 of 1979 and subsequently Act 20 of 1981.

Section 2 dealt with the composition of the Bophuthatswana Police and provided as follows:-

- * The Bophuthatswana Police shall consist of:-
 - (a) the personnel of the South African Police, or part thereof, who have been transferred or who are transferred from time to time to the Government by the Minister of Police of the Republic of South Africa; and,
 - (b) such persons as may be appointed, and for as long as they serve, as members of the Force in terms of this Act.

Section 6 dealt with functions of the Bophuthatswana Police and stated as follows:-

Subject to the provisions of the Constitution⁴⁶ and of any other law,

⁴⁶ Republic of Bophuthatswana Constitution Act 18 of 1977

the functions of the Bophuthatswana Police shall be, inter alia:-

- (a) the protection of life, persons and property;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence;
- (d) the execution of this Act;⁴⁷
- (e) the prevention of crime; and
- (f) the prevention of cruelty to animals.

Section 7 dealt with powers and duties of members of the Force. Subsection 3(a) provides that:-

Notwithstanding anything to the contrary in any other law contained but subject to the provisions of the Constitution, any member of the force may, in the exercise and performance of the powers, functions and duties referred to in section 6 above, search without warrant any person, premises, other place, vehicle, vessel or aircraft, or receptacle of whatever nature at any place in Bophuthatswana within a distance of three (3) kilometers of any border between Bophuthatswana and any part of the Republic of South Africa or any foreign State or territory and seize anything found by him upon such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle.

Section 9 of the Act covered the issue of discipline and went on to provide that:-

Any member of the Force who contravenes any provision of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand, or, in default of payment, imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

⁴⁷ Act No. 7 of 1978

Section 14 dealt with witnesses before officers or boards of enquiry. Subsection one of this Act was the same as that of the South African Police Force section 11 above. However subsection 2 of the Bophuthatswana Police Force Act provided that any such witness who at any such enquiry or trial made on oath any false statement knowing it to be false would be guilty of an offence and liable on conviction to the penalties prescribed by law for the crime of perjury.

Section 16 dealt with places for imprisonment of certain offenders and provided that any person arrested for an offence under that Act would be imprisoned in any place set apart as a guardroom, police cell or lockup, or would be removed to the nearest prison, and any guardroom, police cell or lockup, in which any such person was imprisoned would be deemed to be a prison for the purposes of any law relating to the commission of offences by persons committed to any prison.

2.5.3. South African Police Service, 1994 to the present.

The South African Police Service Act No. 68 of 1995, as amended by Acts No. 41 of 1997 and No. 47 of 1997 and No. 83 of 1998 provides for the establishment, organization, regulation and control of the South African Police Service. It repeals Proclamation R 5 of 1995, dated 27 January 1995, with the exception of sections 8, 9, 10, 12, 13 and 14.

In his foreword to the second edition of the book Policing and Human Rights, Richard J. Goldstone, a former Justice of the Constitutional Court of South Africa ,

made the following illustrious comment:-

South Africa has the newest and probably the best Bill of Rights in the world. However good it may be, it will not be of any real or lasting benefit to our people unless its aspirations are translated into a way of life. In other words, for the first time in South Africa, we have to develop a human rights culture.

The Bill of Rights relates primarily, but not exclusively, to the relationship between the state and its citizens. It is in that area that the South African Police Service has a vital role to play, a role that is consistent with respect for the rights enshrined in the Constitution and no less with the need to ensure that all citizens are able to live their lives in safety and with security.

During the apartheid era, the old South African Police were in the front-line of the enforcement of many criminal laws which were devoid of morality and founded on the underlying policy of racial discrimination and the oppression of the majority of the people. Those policemen and women were seen by the majority as being the least friendly arm of the state. That perception resulted in the very negative mutual relationship between the police and the people - one of mutual fear and often hate.

In societies where human rights are constitutionally protected, the relationship between the police and the citizenry can more easily be one of co-operation and support. There is a huge burden on the SAPS having regard to the high rate of criminal violence in many parts of the country. It is crucial for our future that this unacceptable state of affairs be corrected Without encroaching upon, let alone sacrificing the very heart of the Constitution - the Bill of Rights. In turn, that can only be achieved if every police man and policewoman not only knows but also understands and appreciates what those rights are and how they relate to law enforcement.⁴⁸

Due to the brutalities of the South African Police Force and the Homelands

⁴⁸ Titus D. et al: Policing and Human Rights: Cape Town; Juta and Co Ltd. 1997; RSA; pp 5.

Police Forces, the new South African government wanted to ensure that policing in the new dispensation did not abuse state power. This became evident from the Interim Constitution.⁴⁹

Section 18 of the South African Police Act which deals with the objects of community police forums and boards, provides as follows:-

1. The Service shall, in order to achieve the objects contemplated in section 215 of the Constitution (interim), liaise with the community through community police forums and area and provincial community police boards, in accordance with sections 19, 20 and 21, with a view to:-
 - (a) establishing and maintaining a partnership between the community and the Service;
 - (b) promoting communication between the Service and the community;
 - (c) promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing;
 - (d) improving the rendering of police services to the community at national, provincial, area and local levels;
 - (e) improving transparency in the Service and accountability of the Service to the community; and
 - (f) promoting joint problem identification and problem-solving by the Service and the Community.
2. This Chapter shall not preclude liaison by the Service with the community by means other than through community police forums and boards.

Section 27 deals with Appointments, Terms and Conditions of Service and Termination of Service and provides as follows:-

- (i) subject to subsection (2), the filling of any post in the Service, whether by appointment, promotion or transfer, shall be done

⁴⁹ Act 200 of 1993

in accordance with section 212 (4) of the Constitution (interim).

- (ii) subsection (1) shall not preclude compliance with measures designed to achieve the objects contemplated in section 8 (3) (a) and 212(2) of the interim Constitution.

This is important because of the imperatives of affirmative action and transformation of the South African Police Service as to be broadly representative of the South African people. Section 46 deals with the political activities of members and provides as follows:-

- (i) No member shall:
 - (a) publicly display or express support for or associate himself or herself with a political party, organisation, movement or body;
 - (b) hold any post or office in a political party, organisation, movement or body;
 - (c) wear any insignia or identification mark in respect of any political party, organisation, movement or body, or
 - (d) in any other manner further or prejudice party-political interests.
- (ii) Subsection (1) shall not be construed as prohibiting a member from:-
 - (a) joining a political party, organization, movement or body of his or her choice;
 - (b) attending a meeting of a political party, organization, movement or body, provided that no member shall attend such meeting in uniform,
 - (c) exercise his or her right to vote.

Members of the South African Police Service can now enjoy all the rights in the constitution, including freedom of association, right to fair labour practices, form and join a trade union. The power to arrest is probably one of the most critical

competencies that the police have. Arrest represents one of the major invasions and restrictions on individual freedom. Not only does it affect one's freedom of movement, it can also affect the dignity and privacy of the person. This was no more apparent than during the time of apartheid when political opponents, often innocent, were mercilessly arrested or even unduly placed under house arrest. Almost invariably arrest was used as an effective instrument to muzzle, if not totally silence, political opponents. Thus, because of its potential to affect negatively other rights such as the right to privacy, freedom of movement and association and the right to security of the person, the power of arrest has critical implications for the establishment of a democratic and constitutional legal order.

The new constitutional dispensation in South Africa is crafted on the need to create a society in which all South Africans are equal and are able to enjoy and exercise their fundamental rights and freedoms. Arrest represents, a drastic interference with the personal liberty of an individual and is therefore valid only if it complies with the procedural requirements set out in the Criminal Procedure Act⁵⁰ and the 1996 Constitution. Section 12(1)(a) protects freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause. No general power to arrest has been accorded to any person. In the case of S v More⁵¹ Marais J, took the view that summons should be preferred to arrest,

⁵⁰ Act No. 51 of 1977

⁵¹ 1993 (2) SACR 606 (W)

⁵¹ 1978 (3) SA 630 (W)

particularly in cases where the gravity of the offence or the particular circumstance of the suspect show that there is no good basis to suppose that the arrested person will abscond. This position is further fortified by the constitutional provisions which require that a person be presumed innocent until proven guilty. The learned Justice could not have put it more vividly when he said:-

where the accused is known and his interests are such as to dispel any suspicion that he might decamp, there is usually no necessity for resorting to a method which however tactfully exercised, must result in some loss of liberty and in the imposition of some measure of indignity.

Section 39(3) of the Criminal Procedure Act provides that:-

The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

However in the case of Nhlabathi v Adjunk Prokureur-General, Transvaal⁵², the court pointed out that detention did not remain lawful merely on the strength of arrest. Both the 1993 and 1996 Constitution now provide additional safeguards. Not only is the detained person entitled to challenge the lawfulness of his or her detention in person before a court of law, but in addition, as an arrested person has the right to be released from detention unless the interest of justice require otherwise. This is in line with the provisions of section 35 of the Constitution which will be discussed further down in this chapter. In S v Mabaza en 'n ander⁵³ the court recognized

⁵³ 1994 (5) BCLR 42 (N)

the principle that bail is an entitlement which should not be lightly denied.

Another important aspect of the development of the democratic order has been the curtailment, if not the total removal, of police secrecy, especially in relation to evidence in criminal proceedings. Before the dawn of democracy in 1994 and the adoption of the Bill of Rights, evidence contained in police dockets was privileged and was not available to the accused for discovery purposes. However, one of the cardinal principles underlying the 1993 and 1996 Constitutions is transparency on the part of government organs and institutions. It is recognized that, in order to make government and government institutions accountable, it is imperative that the veil of secrecy over government operations be confined to the barest minimum, and even then carefully circumscribed.

Section 23 of 1993 Interim Constitution created a right of access to information in government possession. This right creates two distinct problems, the first one being the citizen's right to be informed could encroach on other people's right to privacy and secondly, issues of state security must as a matter of necessity remain confidential in the public interest. This matter was debated in the case of Shabalala v The Attorney-General of the Transvaal⁵⁴ Following this decision the accused is now entitled to statements in the docket so as to prepare his or her defence.

Section 32 of the 1996 Constitution provides as follows:-

⁵⁴ 1995 (1) SA 608 (CC)

- (1) Everyone has the right of access to –
 - (a) any information held by the State; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State.

The National Parliament moved swiftly to pass the Promotion of Access to Information Act⁵⁵ to give effect to the provisions of section 32.

It is ironical and sarcastic that even the former apartheid strong men like Colonel Eugene De Kock⁵⁶ used the norms of the new Constitution to try to access information for his defence. De Kock was arraigned in the High Court on various charges, some of which arose from so-called third force activities in which the C10 or Vlakplaas Unit had allegedly been involved. Those allegations had been the subject of investigation by the Commission of Inquiry under the Prevention of Public Violence and Intimidation Act⁵⁷ (the “Goldstone Commission”). In March 1994 the Goldstone Commission submitted its report to the State President and forwarded a copy to the Attorney - General. At the commencement of the trial, an application was made for an order directing that such information be made available to the accused. It was contended, relying on section 23 and 25(3) of the Constitution (interim), that the accused required the information in order to prepare properly for his defence. The court had this to say:-

⁵⁵ Act 2 of 2000

⁵⁶ S v De Kock 1995 (3) BCLR 385(T)

⁵⁷ Act No. 139 of 1991

In my judgement an accused is entitled to be informed of the case against him with sufficient particularity and sufficiently in advance of the trial to enable him meaningfully to exercise his right contained in section 25(3)(d) of the Constitution (interim) to adduce and challenge evidence.

In order to exercise this right, he is entitled to invoke section 23 of the Constitution (interim). That section requires an accused to show that the information to which he wishes to have access is 'required' for the exercise of his right to a fair trial; and the word 'required' postulates an element of necessity. Section 23 does not mean that an accused is entitled, as of right and without more, to access to the police dossier; although an accused would be entitled to access to the whole or part of a dossier if he could show that he 'required' this information to exercise or protect any of his rights in terms of section 25(3) of the Constitution.

If the accused brought such an application, he would bear the onus of showing that he required the information. If that onus was discharged, the onus would be on the State in terms of section 33 of the Constitution (interim) to prove, on a balance of probabilities, that a law (whether statutory - that is section 66 of the Internal Security Act⁵⁸ or forming part of the common law - that is the privilege relating to non-disclosure of the identity of an informer) of general application which limited access, is reasonable, is justified in an open and democratic society based on freedom and equality; does not negate the essential content of the right in question; and - perhaps - is necessary.

It was furthermore contended that such information was not subject to the docket privilege recognised in R v Steyn⁵⁹ since such privilege extended only to statements specifically obtained for the purpose of a prosecution, where Greenberg said:-

In all the circumstances it seems to me that when statements are procured

⁵⁸ Act No. 74 of 1982

⁵⁹ 1954 (1) SA 324 (A)

from witnesses for the purpose that what they shall be given in evidence in a lawsuit that is contemplated, these statements are protected against disclosure until at least the conclusion of the proceedings, which would include any appeal or similar step after the decision in the court of first instance.

This had not been the specific purpose of the Goldstone Commission in gathering information.

In the case of Qozeleni v Minister of Law and Order⁶⁰, Froneman J. had the following to say:-

It is not fair that the defendant should be allowed the sole advantage of the information revealed by the criminal investigation. It is not fair that the plaintiff is forced to go into the civil litigation blind, as it were, while the Minister sees and knows all, because of the rule that, once the police docket is privileged and in the hands of the government or the State as the prosecuting authority, it remains privileged even though the capacity of the government or the State is now changed to that of the defendant in a claim of damages.. ... the unfairness is compounded. It seems to me to avoid unfairness the docket should be available to both sides, as for all practical purposes it has always been made available to both sides in the past without any harm to public security or to the good administration of justice.

After the inception of the South African Police Service freedom of speech in terms of the Constitution and the establishment of the Truth and Reconciliation Commission in terms of the Promotion of National Unity and Reconciliation Act⁶¹ people started to enquire about the gruesome acts committed by the police prior to the dawn of

⁶⁰ 1994 (3) SA 625 ECD

⁶¹ Act 34 of 1995

democracy in South Africa. Amongst others the following cases will be used to demonstrate the horrible acts of the police.

- (a) In the case Nieuwoudt v Truth and Reconciliation Commission⁶², the applicant was previously a member of the Security Branch of the South African Police Force. The respondent was the Truth and Reconciliation Commission. Through its Committee on Human Rights Violations the respondent was empowered to investigate and gather information and evidence of gross violations of human rights which occurred during the period 1 March 1960 to the cut-off date contemplated in the Constitution (interim).

Buchanan J. observed:

Section 30(2) of the above Act does not, on a proper construction thereof, require prior notice to any person who may be implicated during the course of a hearing by a witness, even should the Commission itself have prior notice of such implication.

This section, in my view, merely requires that, if a person is so implicated, Such person shall be afforded a proper and appropriate opportunity to submit representations to the Commission to answer and deal with any such implications.

- (b) In another case; Nieuwoudt v Chairman, Amnesty Sub Committee, Truth and Reconciliation Commission; Du Toit v Chairman, Amnesty Sub Committee, Truth and Reconciliation Commission; RAS v Chairman, Amnesty Sub Committee, Truth and Reconciliation Commission⁶³, on 14 June 1996 the applicants were convicted in the South Eastern Cape Local Division of the High Court for murder of

⁶² 1997 (2) SA 70 (SECLD)

⁶³ 2002 (3) SA 143 CPD

Warrant Officer Mgoduka, Sergeant Faku, Sergeant Mpipa and Xolile Sakati (who was also known as Charles Jack). The victims were four policemen who were travelling in a police motor vehicle on 14 December 1989. They were sentenced to 20, 15 and 10 years of imprisonment respectively. The applicants applied for amnesty in terms of the Promotion of National Unity and Reconciliation Act.⁶⁴ On 10 December 1999 the Amnesty Committee refused to grant them amnesty.

At page 157 paragraph H, Davis J. indicated that the Committee found that:-

the reason for killing the deceased was to avert their threats and to conceal the illegal activities of the security police. This was patently not associated with a political objective and the action was clearly not directed against members or supporters of the African National Congress (ANC) or any other liberation movement or publicly known political movement known by the Act.

Colonel Eugene De Kock testified in that case that he was concerned about this motivation for the killing of four policemen. He then told the Committee : “I then drove to Head Office and I saw General van Rensburg in his office and I once again asked him why they should be killed for having committed fraud. And that is when he told me that the Goniwe case was involved here and many other similar cases”.

- (c) In the case of Azania Peoples' Organization (AZAPO) and Others v Truth and Reconciliation Commission and Others⁶⁵, the first applicant was a political organization with its headquarters in Johannesburg. Its Deputy President, Mr

⁶⁴ Act 34 of 1995

⁶⁵ 1996 (4) SA 562 CPD

Motsoko Pheko, alleged in his founding affidavit that AZAPO brought the application in the interest of its members as well as in the public interest.

The second applicant, who was the widow of Steven Biko, was Nontsikelelo Margaret Biko, who alleged that she was acting in her own interest, in the interests of her minor children and in the public interest. The late Biko was an erstwhile President of the South African Students Organisation and the Black Peoples Convention. He died in police custody on 12 September 1977.

The third applicant was one Churchill Mhleli Mxenge, who was the younger brother of the late Griffiths Mlungisi Mxenge and brother-in-law of the late Victoria Nonyameko Mxenge, the widow of the late Griffiths Mlungisi Mxenge. The late Griffiths Mlungisi Mxenge was a prominent human rights attorney and a popular political activist who was killed in 1980, allegedly by members of the South African Police, including one notorious Colonel Dirk Coetzee and one Constable Almond Nofomela. The late Victoria Nonyameko Mxenge was a prominent human rights attorney as well and a well-known political activist who was alleged to have been brutally killed by unknown persons in 1984.

The fourth applicant was Chris Ribero. He was the eldest son of the late Fabian Ribero, who was a medical practitioner and allegedly killed by the security forces. The fourth applicant's parents were both allegedly killed by the security forces. The third and fourth applicants both alleged that they were acting in their own and in the public interest.

The above case is an example through which these four applicants demonstrate how the South African Police Force was used as an instrument of oppression to crush anyone who raised his or her voice against the apartheid regime.

(d) In the case of Du Preez and Another v Truth and Reconciliation Commission⁶⁶

Corbett C. J., made the following observation:-

The allegations against Brigadier Jan Du Preez are that he was involved in or had knowledge about the poisoning and disappearance in Port Elizabeth in 1981/2 of a person whose family has approached the Commission for assistance. We understand that he was acting as a member of the South African Police at the time.

It was at the public hearings of these cases that the nation and the world heard for the first time the realities of how the apartheid government brutally killed its political opponents. Some of the perpetrators were pardoned while others like Colonel Eugene De Kock were punished. The Du Preez case, for instance, shows how the police could act within their scope of duty to perpetuate atrocities.

The Promotion of National Unity and Reconciliation Act was passed pursuant to the provision at the end of the Constitution (interim) under the heading “National Unity and Reconciliation” (popularly referred to as the post-amble) which reads as follows:-

This Constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

⁶⁶ 1997)3) SA 204 AD

2.5.3.1 Code of Conduct of the South African Police Service

In order to ensure that the South African Police Service is benchmarked to behave and conduct themselves professionally, a Code of Conduct was included in the Police Act and formed part of Police Regulations and therefore enforceable. For the sake of completeness, a part of the Code is reproduced hereunder

I commit myself to creating a safe and secure environment for all people in South Africa by:-

- * participating in endeavours aimed at addressing the causes of crime;
- * preventing all acts which may threaten the safety or security of any community; and
- * investigating criminal conduct which endangers the safety or security of the community and bringing the perpetrators to justice.

In carrying out this commitment, I shall at all times:-

- * uphold the Constitution and the law;
- * take into account the needs of the community;
- * recognize the needs of the South African Police Service as my employer; and
- * cooperate with all interested parties in the community and the government at every level.

In order to achieve a safe and secure environment for all the people of South Africa I undertake to:-

- * act with integrity in rendering an effective service of a high standard which is

accessible to everybody, and continuously strive towards improving this service;

- * utilize all available resources responsibly, efficiently and cost-effectively to optimize their use;
- * develop my own skills and contribute towards the development of my colleagues to ensure equal opportunities for all;
- * contribute to the reconstruction , development of, and reconciliation in our country;
- * uphold and protect the fundamental rights of every person;
- * act in a manner that is impartial, courteous, honest, respectful, transparent and accountable;
- * exercise the powers conferred upon me in a responsible and controlled manner;
- * and work towards preventing any form of corruption and bringing the perpetrators to justice
- * All police officials are bound by the provisions of the Code of Conduct of the South African Police Service.
- * Police officials who contravene the Code of Conduct are guilty of misconduct in terms of the Regulation.⁶⁷

2.6. Human Rights Norms and Police: An Introspection

In this portion the focus will be on how human rights norms have and will continue

⁶⁷Regulation 20(q) of the South African Police Service Discipline Regulations, 2005.

to affect the police internally. Our discussion starts with recruitment policies and methods, training and promotions criteria with regard to gender, race, disability and social background. I will also look at the right to equality and the relevant legislation as well as case law.

(a) Recruitment Policies

In the former South Africa police officers were recruited on the basis of huge physical built and not intelligence or academic qualifications. Black police officers were specifically recruited to go into black areas and townships to trace and arrest criminals including harassing the community unnecessarily and the poor community had nowhere to complain to or simply took it as enforcement of law and order. White police officers were regarded as permanent members who were eligible for promotions and other benefits. All middle and top management positions were occupied by white males and there was no possibility of a black or female ever making it to the top. The then Special Branch would screen all new recruits to ensure that they were not spies deployed by liberation movements to penetrate the police or they did not come from “rotten” families or social background. Only males were recruited into the ranks of the police until very recently just before the dawn of democracy and even then their number is still very low.

Now in the new democracy, recruitment is done on merit and no longer physique. The minimum academic qualification is Grade 12 and a driver's licence. The prospective candidate must be a South African citizen. Women are now recruited

on the same principles and requirements as men and there must be a certain minimum number of women in every recruited contingent so as to address equity. Recruitment is not only for entry levels but even in higher posts. Civilians especially professionals, can now apply directly into the post level as advertised and be appointed. This is because the new Police Service now has units like Legal Services, Employee Assistance Services and others where basic police training is neither a requirement nor a pre-requisite.

The selection and appointment of employees on post levels 1 to 12 is governed by the National Instruction 6/2005⁶⁸ Paragraph 5 thereof deals with the evaluation of applications for posts as trainees and states that:-

- (1) an applicant who applies and complies with the requirements for the post of a trainee, must undergo a psychometric and physical evaluation.
- (2) an applicant may undergo the psychometric evaluation only once a year.
- (3) an applicant who is required to undergo a psychometric and physical evaluation must provide fingerprints for verification on the AFIS system, to ascertain whether the applicant has a criminal record.

Paragraph 7 deals with the selection process and states that:-

- (1) The selection process must take place in accordance with the instruction.
- (2) The process must promote equal opportunities, fair treatment, employment equity and advance service delivery.
- (3) The chairperson must ensure that records are kept of all the proceedings during the interviews and other meetings of the selection panel as well as of every decision made and the reason(s) for such decision(s).

Paragraph 9 deals with the evaluation of applications and goes on to say:-

- (1) The members of the selection panel must consider all applications on the basis of:
 - (a) the inherent requirements and core functions of the vacant post;
 - (b) the ability and potential of the applicant to function in the post;
 - (c) the status of every applicant as provided for in the Employment Equity Act; and
 - (d) the representivity of the relevant division or province at the salary level that is applicable to the post.

Recruitment into the Police Service is also influenced by The Employment Equity Act⁶⁹ which aims at:-

⁶⁷ http://www.is.org.za/polproc_new/policies

⁶⁸ Act 55 of 1998

- * The eradication of unfair discrimination of any kind in the hiring, promotion, training, pay, benefits and retrenchment, in line with constitutional requirements.
- * Measures to encourage employers to undertake organizational transformation to remove unjustified barriers to employment for all South Africans, and to accelerate training and promotion of individuals from historically disadvantaged groups.

The reasons behind the necessity for employment equity legislation are many. They include, among others, the need to eradicate the past legacy of discrimination that has led to major inequalities in our society and labour market; the need for economic growth; the satisfaction of constitutional requirements; and the standards of the International Labour Organization's Conventions that have been ratified by South Africa.⁷⁰

The South African Police Service, as an employer, is expected, in terms of the Act, to:-

- implement affirmative action measures for people from designated groups.
- consult with employees
- conduct an equity analysis
- prepare an employment equality plan
- report to the Director - General on progress made in implementing the employment equity plan.

⁷⁰ Tiranelli, S.; Employer's Guide to the Employment Equity Act; 2000; Pretoria, Van Schaik Publishers Pp 3.

(b) Training

Once the selection has been completed, new recruits will be expected to go through and complete basic training which lasts for eighteen months. The first six months is done at the Training College where recruits are exposed to different theoretical and academic training. The next six months entails training at community service centres where the trainees are exposed to practical training including handling of customers or complaints. The last six months entails an attachment to the Detectives Services where the trainees are shown how to handle and investigate dockets. After completing the basic training recruits graduate to become fulltime police officers and depending on which Unit they are deployed to, they receive further specialized training to empower them and enhance their career pathing.

The South African Police Service has its own Education, Training and Development Policy which governs the training and development of members. In its Preamble, the Policy states that:-

- (a) The Constitution guarantees the right of access to all employees to basic and further education, training and development, including the need to protect and advance those disadvantaged by unfair discrimination.
- (b) Fundamental changes have in recent years been made to the approach to and management of education, training and development in South Africa, and this policy aligns education, training and development in the South African

Police Service with the legislative requirements that have been promulgated in this regard.

- (c) It is an undeniable fact that the quality of services provided by employees of the South African Police Service is dependent on the level of their competence and skills. The purpose of education, training and development is to ensure that employees are adequately and continuously empowered with the necessary knowledge, attitudes and skills to effectively perform their designated functions and duties.
- (d) In this regard, the South African Police Service is committed to providing continuous education, training and development through the:
 - > Development, maintenance and evaluation of appropriate standards;
 - > Research, development and maintenance of learning programmes;
 - > Provision and delivery of approved learning programmes; and
 - > Inculcation of a culture of life-long learning.

Section 3 of this Policy states that the following legislation provides the framework and authorization:

- > Basic Conditions of Employment Act 75 of 1997
- > Constitution of the Republic of South Africa 108 of 1996
- > Employment Equity Act 55 of 1998
- > Labour Relations Act 66 of 1995

- > Public Finance Management Act 1 of 1999
- > Skills Development Act 97 of 1998
- > Skills Levels Act 9 of 1999
- > South African Qualifications Authority Act 58 of 1995

Sub-section 5.1.2 provides that the primary focus of the management and maintenance of education, training and development is the:

- > skills development of employees in the Service;
- > compliance with stipulated requirements to be accredited as a provider;
- > management of the delivery of learning programmes presented by and for the Service;
- > management of the research and development of learning programmes and delivery mechanisms;
- > management of national training standards determined by and for the Service, as a provider;
- > management of a quality management system;
- > management of the provision of all types of education, training and development in the Service; and
- > liaison between the media, national and international bodies and/or interest groups regarding issues that impact on the Service, as a provider.

Assessment is managed as follows:

- # Formative assessments
- # Summative assessment

English is, for practical reasons, the language of instruction. As for certification, depending on the demonstration of the required outcomes by a learner that meets the criteria of the unit standards and/or qualification, certification is conducted internally and/or externally. Externally, a certificate of competence is issued by the relevant SETA.

Bursaries are offered and allocated to employees for further and higher education opportunities in accordance with the set criteria. The allocation of bursaries supports employment equity objectives.

However, the Police Service is putting in a lot of effort and money in the training and upliftment of police officers and the quality of investigation, but at the same time it should be asked whether the trainers themselves are good enough to effectively train members or is merely a question of sending statistics about quantity and not quality to top management. Currently a Detective Learning Programme runs over a period of three months and there is a lot of money involved and by any margin the products there-from must be worth the money and time spent. The trainees must be equal in competence to the international standards more so because South Africa will soon be hosting the 2010 Soccer World Cup competition and have to be ready to service the international community as they will be descending on this country.

(c) Labour Relations

The new South African Police Service has embraced trade unionism like the South African Police Union (SAPU) and Police and Prisons Civil Rights Union (POPCRU) as well as the Public Service Association (PSA). These movements have made tremendous impact on employment relations in the police service by representing members during disciplinary hearings and ensuring that there are no procedural irregularities. These movements also form part of most of the committees where they sit and engage with management regarding crucial decisions that affect the running of the police. Sometimes members are unfairly charged and convicted unprocedurally up to and including unfair dismissals and this is where trade unions have been active and some of their members have been reinstated.

In the case of Perumal v Minister of Safety and Security and Others⁷¹ the court stated that:-

in terms of the *Audi alteram partem* rule the Employer needs only give employees informal hearings before transfers pending disciplinary action – Inquiry need not address charges themselves. The applicant, a senior police officer, sought an order declaring his transfer from the position of station commissioner to office of the area commissioner unconstitutional and unlawful. The respondent contended that *in limine* the Court lacked jurisdiction because the transfer had been effected in terms of the police regulations, and because the dispute had been referred for arbitration.

The court held that the Act conferred jurisdiction on the court to hear disputes

⁷¹ (2001) 8 BLLR 953 (LC)

concerning alleged violations of fundamental rights entrenched in the Constitution. The connection between a violation of rights, employment, labour relations and labour law brings disputes within the jurisdiction of the Labour Court. The court acquired jurisdiction *in casu* because the dispute involved employment and labour relations, and concerned the constitutionality of an administrative act.

Section 157(2) of the Labour Relations Act provides:-

The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa and arising from:-

- (a) employment and from labour relations;
- (b) any *dispute* over the constitutionality of any executive or administrative act or conduct or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
- (c) the application of any law for the administration of which the *Minister* is responsible.

One of the problems faced by any trade union that wants to represent its members is that the union's officials must have access to employees who are already members of the union, as well as to employees who are prospective members and whom the union wants to recruit as members. The logical place for the contact is the workplace, this is the only place where union members and prospective members are present for the largest part of a working day.

According to section 12 of the Labour Relations Act, a registered union has the right

of access to the workplace. The purpose of this access is for the union to recruit new members, to communicate with existing members, and to serve the interests of members in other ways. A registered union that is sufficiently represented is also entitled to hold meetings with employees at the workplace, but outside working hours. Section 16 of the Labour Relations Act provides for the provision of information to both the trade union representatives and trade unions, but tries to do so in a way which also takes the potentially sensitive position of the employer into account. As regards the disclosure of information to trade union representatives, section 16(2) requires that:-

Subject to subsection (5), an employer must disclose to a trade union representative all relevant information that will allow the trade union representative to perform effectively the functions referred to in section 14(4) whose functions can be summarized as follows:-

- a. to assist and represent an employee in grievance and disciplinary procedures
- b. to monitor an employer's compliance with statutory workplace-related provisions and collective agreements as well as any law regulating terms and conditions of employment;
- c. to report alleged contraventions; and
- d. to perform any other function agreed to between the parties.

(d) Employee Assistance Services

Unlike during the apartheid era, the new Police Service provides for mechanisms to assist, counsel and debrief members who are exposed to traumatic situations. The South African Police Service has put in place the Employee Assistance Service to

ensure that there is support for those members in need.

The objectives of this service are:-

- # To offer support to all employees who encounter personal, emotional, psychosocial or behavioural concerns that detrimentally affect their work attendance and/or job performance.
- # To provide timeous intervention and support as a methodology that may prevent the further deterioration of work performance, and to endeavour to return an employee to pre-crisis levels of production.
- # To provide assistance to employees in need of support through initial assessment and, depending on the nature of the concerns, referral to appropriate resources. Where necessary, such support is extended to the immediate family of an employee if concerns experienced by a dependant detrimentally affects the employee's performance and well being.
- # To ensure that such concerns do not escalate to the extent that employees tender their voluntary termination of service as a result thereof.
- # To promote healthy working relationships.

In order for the police service to be effective and efficient the following principles

serve to define its parameters of operations:-

- > Employees offered support in terms of the EAS must receive all available consideration and support.
- > An employee's request for counseling or treatment does not affect the employee's employment or career opportunities or form the basis for the termination of such employee's service. However, where it becomes apparent in the course of support that an employee has such serious behavioural or emotional problems that the employee's fitness to remain in the service needs to be assessed, existing procedures in that regard must be applied.
- > Employees seeking support are assured that all services provided will be undertaken in confidence and no information regarding the support of an employee will be provided without the consent of the employee concerned.
- > Whereas employees have the right to request, accept or refuse support, it is interesting to note that participation in the EAS does not protect an employee from corrective and / or disciplinary action for continued substandard work performance or misconduct.

The support may include, but not limited to, health (including persons living with HIV and AIDS and persons with disability), emotional (depression, anxiety, stress, grief or loss), financial difficulties, career concerns, marital dysfunction, relationship difficulties, family conflict, child care issues, learning problems, legal

problems, and or alcohol and drug dependence.

It is instructive to note that before the dawn of democracy police officers were deployed in foreign countries and were actively involved in combat, including border patrols where they fought against the then so-called “terrorists”. Many were killed or left disabled and there were no programmes like these to counsel and debrief them nor to support their families and next-of-kin. They did not even have a remedy to challenge that situation.

These days the South African Police Service is also deploying its members on international duties to the Democratic Republic of Congo, Burundi, Rwanda and the Darfur region in Sudan. Before leaving for international duty, members are exposed to EAS programmes to ensure that for the six months that they are away they should not suffer emotionally or otherwise and their families are also to understand that its not about money only but the effect and impact on the family ties and setup that will be temporarily affected. EAS members like social workers, psychologists and chaplains are also deployed with these members to give them emotional, psychological and spiritual support during their tour of duty. In the old South African Police there were no social workers or psychologists, only chaplains were there for the purpose of conducting burials of members and pray at parades and nothing more.

(e) Occupational Health and Safety Act⁷²

The Police Service is also governed by the abovementioned Act and must comply with its provisions without fail. The Act puts forward the general duties of employers to their employees which require that risk assessment needs to be carried out by persons who are competent to carry out such assessments.

Risk assessments must be carried out on a regular basis of at least once every two years or where there have been any changes that may affect the risks. Employees should be trained to inform their employer should they become aware of any risks that may not yet have been identified. This means that the employees should also be trained to be able to identify risks in the workplace, in other words they must embark on some sort of risk assessment training.

In this regard the police service has responded by having a Safety and Healthy Environment (SHE) manager in all its buildings and units or components.

The functions of the health and safety representative are to:-

- * Review the effectiveness of health and safety measures;
- * Identify hazards and potential major incidents;
- * Examine causes of accidents;
- * Investigate complaints;
- * Make representation on general matters;
- * Inspect the workplace;
- * Receive information from inspectors;
- * Attend health and safety committee meetings;

⁷² Act 85 of 1993

- * Visit incident sites;
- * Accompany an inspector on inspections; and
- * Participate in internal audits.

It is evident that the Police Service is trying to comply with the Act in that all police officers on operational duties must be wearing their bullet-proof vests. Members must also be wearing reflective vests so as to be visible, especially during roadblocks or at night. Members must also wear protective clothing like gloves when attending to accident victims. These vests are issued to individual members and are not to be exchanged. SHE managers hold meetings and submit monthly returns or certificates to confirm that regular inspections have been conducted and members are not exposed to risky situations. Members who get injured on duty get compensated or their families get compensated.

Health Inspectors have declared certain buildings as not being fit for human habitation and the Police have not been spared. This happened especially where Police cells have been closed and awaiting trial prisoners were transferred to neighbouring stations. This happened at the nearby Itsoseng and Mooifontein police stations and prisoners were transferred to Biesiesvlei and Mmabatho respectively.

(f) South African Police Service Disability Management Policy.

The purpose of this Policy is to set a framework for the creation of an environment which reasonably accommodates and integrates people with disabilities in the South

African Police Service. This Policy must be read together with all relevant legislation and official directives, including the following:-

- (1) The Constitution of the Republic of South Africa, Act 108 of 1996;
- (2) The Employment Equity Act, 1998;
- (3) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
- (4) The Integrated National Disability Strategy; and,
- (5) The Code of Good Practice on the Employment of People with Disabilities.

For the purpose of this policy, people with disability means people with an impairment who are restricted by the work environment within the South African Police Service from their full and equal participation. The Police Service must adjust the environment to reasonably accommodate people with disabilities by promoting:-

- (1) *Accessibility:*
 - (a) ensuring that facilities and premises, such as Police Stations, are accessible;
 - (b) adapting existing facilities, equipment and work stations to make them accessible;
 - (c) adjusting training facilities and training systems as far as possible in line with inherent requirements of the job;
 - (d) ensuring access to communication systems; and
 - (e) providing transport to execute official duties.

(2) *Employment:*

- (a) internal or external advertisements must specify the inherent requirements and core functions of a post so that a potential applicant with disabilities can make an informed decision as to whether to apply or not; and
- (b) the selection process must be guided by the applicant meeting the inherent requirements of the job and has the ability to perform the core functions of the post.

(3) *Training and Career Advancement:*

Orientation and training programmes must be accessible to people with disabilities to provide them with equal opportunities for career advancement.

(4) *Awareness Programmes:*

Awareness programmes must be introduced and implemented in the working environment to raise awareness of disability matters amongst employees.

(5) *Retention of people with disability:*

- (a) When an employee becomes disabled, the organization in consultation with the employee, must consider suitable alternative work, if

necessary; and

- (b) If necessary, support systems such as the Employee Assistance Services must be put in place to assist with the re-integration of the employee in the work environment.

2.7. Human Rights Norms and Policing: A Circumspection

In this part we look at how human rights norms have affected the police service externally, that is how the community and other government departments and organizations perceive policing since 1995. This will be done by looking at crime prevention methods and techniques as well as investigation methods and techniques including the rights of arrested and detained suspects and the handling of and feedback to witnesses.

Externally by way of looking at how democracy has affected the manner in which suspects are traced, arrested, interrogated or interviewed, pointing outs conducted, rights of detained persons explained, bail applications conducted and treatment in general of suspects and detained persons and with reference to human rights in particular, one gets the impression that the police is moving at a snail's pace in practicing the human rights culture. This will also include assess to information in the hands of the police including access by the media even to crime scenes and court proceedings. Here also the relevant legislation will be explored including cases.

The public eye in the form of the media will also be looked at as they play a pivotal role in shaping the mindset of the community. This is because in the past police activities were a guarded secret and these days there is freedom of expression and the media, transparency and openness.

(i) Crime Prevention

A proactive approach towards crime is smart policing because it addresses the root causes of crime through the consultation and participation of the community. Instead of merely waiting for an individual to call for service or help, the police, with the assistance of the community, identifies and attempts to solve recurring problems. The focus is on creativity to address the underlying causes of crime by using various tactics and strategies to prevent and combat crime and to achieve lasting solutions. The police are no longer confined to the law or visible patrolling.

The South African Police Service can never solve crime and disorder on their own. In order to succeed, the police must establish partnerships and networks with other government departments, citizens, business, schools, non-governmental organizations, criminal justice agencies and community leaders. Networking involves equal partners who act together in order to improve the quality of life in a community. Pursuant to this idea the police service launched Project *Nexus* to enhance and facilitate this partnership

The Police Service must promote communication between themselves and the

community they serve. This occurs through forming partnerships and forums with the community in accordance with Section 18(1)(b) of the South African Police Service Act. The police cannot function without the mutual exchange of information with the community. Interactive policing occurs through formal and informal networks. This creates channels which allow for the community to become an available source of information. Moreover, information is transferred to the community about the functions of the police. The Constitution obliges the Police Service to ensure that there is freedom and security of all persons.

Section 12 of the Constitution provides that:-

- (1) Everyone has the right to freedom and security of the person, which includes the right:-
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.

- (2) Everyone has the right to bodily and psychological integrity, which includes the right:-
 - (a) to make decisions concerning reproduction;
 - (b) to security in and control over their body; and
 - (c) not to be subjected to medical or scientific experiments without their informed consent.

The Carmichele case, which will be discussed about two pages down in this chapter, made some landmark contribution with regard to the abovementioned

section. Specific tactics should be developed to safeguard victims, particularly women, children, the elderly, the disabled and other vulnerable groups to empower them to take reasonable crime prevention measures to protect themselves and thereby contribute to a safe environment (e.g. a police official who trains women to defend themselves against the attack of rapists by teaching them karate tactics).

Usually, police officials apply their knowledge and skills to specific tasks, for example, a murder and robbery detective only attends to murders and robberies. Community policing requires that each police official should be capable and competent of dealing with a broad range of activities. However, we realize that in community policing some degree of specialization is required. Frontline officers are the police officials on the street, those in contact with the community. For them to be effective, decentralization of functions and responsibility to take and make decisions and to utilize all resources according to the needs of the communities is unavoidable. This is a long term process and the ultimate goal of community policing. Community policing demands drastic changes in traditional semi-military structures and the former culture of the police.

A COMMUNITY POLICE OFFICER AS COMPARED TO A TRADITIONAL POLICE OFFICER

Community Police Official	Traditional Police Official
Gives service based on community needs	Only considers arrest and prosecution as answer to crime
Uses wide range of skills	Does not consider needs of community
Uses existing resources	Only reacts to calls for service
Is not a social worker	Removed from community
Pro-active approach	Does not apply discretion
Gives victim support	Deals with crime alone
Preventing crime	Only enforces the law
Resolves conflicts	Goes it alone
Not soft on crime	Only reactive but not preventive
Solves problems	
Forms partnerships	
Knows the community	
Uses discretion	
Smart policing	
Is creative	

Section 17 of the Constitution of the Republic of South Africa provides that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions. Section 18 goes on to provide that everyone has the right to freedom of association. Crime prevention officials have been trained to deal with

the community while picketing or conducting peaceful marches in that they even escort them to ensure that opportunists do not take advantage of the situation and pursue their criminal acts. Marches are video-taped for future reference should there be an enquiry or commission. Police officials, organizers and the municipality sit in what is known as the Golden Triangle meeting to prepare for the envisaged march so as to submit the application to the local Magistrate. Factors such as parking, traffic volume, peak hours, route to be used and accessibility are taken into account at the Triangle meeting. If the Triangle forum does not recommend the march or the Magistrate does not approve the march, if it continues, it will be unlawful and the police will deal with those involved in terms of the Gatherings Act⁷³.

Policing areas of different stations are now divided into sectors and each sector commander has a vehicle which is marked to show the sector number and cellphone number of the sector commander. The sector commander interacts with community organizations in his or her sector and promotes mutual trust and participates in community functions and addresses the community regularly on issues of policing. Crime prevention has already been a subject of litigation in the Constitutional Court through the case of Carmichele v The Minister of Safety and Security and Another⁷⁴ whereby the Police Service and the National Prosecuting Authority failed to heed the plight of a citizen who complained that a certain suspect who was released from custody had a propensity to commit certain types of violent

⁷³ Act No 205 of 1993

⁷³ 2001 (4) SA 938 (CC)

crimes and eventually she fell victim of the same suspect. She sued both the Minister of Safety and Security and the Minister of Justice. The Constitutional Court quoted the following remarks with approval from the English case of Osman v United Kingdom⁷⁵

It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention⁷⁶ may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

It is inconceivable that the case of Carmichelle could have gone to court and be won during the apartheid era. This landmark case is giving hope that South Africa is on the right track towards realizing and practicing a culture of human rights. Fears expressed about the chilling effect such delictual liability might have on the proper exercise of duties by public servants are sufficiently met by the proportionality test which must be carried out and also by the requirements of foreseeability and proximity.

(ii) Community Service Centre

The Community Service Centre is what was formerly known as the charge office.

⁷⁴ 29 EHHR 245 at 305, para 115

⁷⁵ European Convention on Human Rights

This is the frontline desk of the police service and it is designed to be user friendly. In Vryburg during the apartheid era there were two charge offices, one for the whites and one for blacks, while in Mmabatho only one charge office was used by all people. After the dawn of democracy all charge offices were converted and demarcated into cubicles to give complainants some privacy when reporting their cases.

Certain rooms are now built and made available as trauma rooms for the purpose of giving victims of rape and other abuses some privacy. Police officials are trained and instructed to handle complainants as clients and ensure that they leave the community service centre satisfied. This is especially so with regard to issues of domestic violence. Telephones and cellphone numbers of the Community Service Centre and the Community Service Centre commander are made available to the community as well as the numbers of the Station Commissioner. Anyone who is not satisfied may freely request or demand to see the Station Commissioner unlike in the past where Station Commanders were inaccessible.

All members must wear clean and visible uniform which must have their nameplates attached and must give their names to anyone who wants their names either for the purpose of logging a complaint or sending an appreciation.

All suspects arrested must sign a particular form which certifies that their rights have been fully explained to them in the language they understood best. An arrested

suspect must not be admitted into the police cells until or unless such a form has been fully completed which includes the signature or mark or thumb print of the suspect.

The Community Service Centres have been modified structurally to accommodate and ensure access to by both disabled members and the community.

(iii) Criminal Investigation Services (Detectives)

This is one service that still needs a lot of overhauling. Some of the detectives are either untrained, under-qualified or are unsure or reluctant to live up to the expectations of both the community and management of the police service. One of their greatest shortcomings is failure to give feedback to victims.

One of the challenges facing the police service in the new South Africa is that of the right to privacy. This becomes a barrier during investigation especially where the investigating officer is not sure what to do. Most informed suspects would demand a warrant of search as their right to privacy especially at their places of residence is enshrined by the Constitution.

Section 14 of the Constitution provides that:-

“Everyone has the right to privacy, which includes the right not to have:-

- (a) their person or home searched;
- (b) their property searched;

- (c) their possessions seized; or
- (d) the privacy of their communications infringed treatment.”

Arrested, detained and accused persons have fundamental rights enshrined in section 35 of the Constitution as follows:-

- (1) Everyone who is arrested for allegedly committing an offence has the right:-
 - (a) to remain silent;
 - (b) to be informed promptly:-
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
 - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
 - (d) to be brought before a court as soon as reasonably possible, but not later than :-
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - (f) to be released from detention if the interest of justice permit, subject to reasonable conditions.

- (2) Everyone who is detained, including every sentenced prisoner, has the right:-
 - (a) to be informed promptly of the reason for being detained;
 - (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - (c) to have a legal practitioner assigned to the detained person by the state, and at state expense, if substantial injustice would otherwise result, and to be informed of this right

promptly;

- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - (d) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material, and medical treatment; and
 - (e) to communicate with, and be visited by, that person's -
 - (i) spouse or partner
 - (ii) next of kin
 - (iii) chosen religious counselor; and
 - (iv) chosen medical practitioner.
- (3) Every accused has the right to a fair trial, which includes the right:-
- (a) to be informed of the charge with sufficient details to answer it;
 - (b) to have adequate time and facilities to prepare a defence;
 - (c) to a public trial in an ordinary court;
 - (d) to have their trial begin and conclude without unreasonable delay;
 - (e) to be present when tried;
 - (f) to choose, and to be represented by, a legal practitioner, and to be informed of this right;
 - (g) to have a legal practitioner assigned to the accused by the state, and at state expense, if substantial injustice would otherwise result, and be informed of this right;
 - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - (i) to adduce and challenge evidence;
 - (j) not to be compelled to give self-incriminating evidence;
 - (k) to be tried in a language which the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - (m) not to be tried for an offence in respect of an act or omission

- for which that person has previously been either acquitted or convicted;
- (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

As far as the right of the accused to legal representation is concerned at the expense of the state, in the case of S v Vermaas and S v Du Plessis⁷⁷ Didcott J. rejected the claim that a right to legal representation of one's choice implies the right to legal representation at the expense of the state.

One of the more recent challenges facing the Police Service, especially the detectives, is the search and detention of members of the gays and lesbian community. By his own admission, the National Commissioner of Police Service, Jackie Selebi, has recently in the media echoed the difficulty faced by the police in detaining gays and lesbians where a person who is biologically having male sex organs would want to be detained with females or vice versa.

(iv) Equality Jurisprudence

One of the fundamental values in the Constitution is equality. This is expressed by the fundamental rights to equality as follows:-⁷⁸

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).
National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

⁷⁶ 1995 (2) SACR 125 (CC)

⁷⁸ Section 9 of the Constitution

The right to equality has a direct impact on policing. The agitation for reform of the law in this area has insisted on challenging the more overt manifestations of sexual inequality, particularly the application of the criminal law in its determination of the limits of gay sexual expression. The prohibition of homosexual 'sexuality' and the denial of equality to homosexuals in respect of family life, parenting, employment and access to services and resources functions as a powerful mechanism of social control.⁷⁹ The debate around homosexuality in recent years has been transformed from an exclusive concern with privacy and the criminalization of sexually consenting behaviour, to an exploration of the wider ramifications of being gay for civil rights and freedoms. This includes discrimination against gay people in housing, employment, education and other public services as a direct consequence of their sexual preference or orientation. Despite the similarities in the biological make-up of the sexes, once an individual is categorized as female or male significant social consequences follow⁸⁰

A number of landmark cases have been decided on this issue. In the case of National Coalition for Gay and Lesbian Equality v Minister of Justice⁸¹ as per Ackermann J:-

The criminalization of sodomy constituted discrimination on a ground listed in s 9(3) of the Constitution and that it had to be presumed, in terms of s 9(5), that the differentiation constituted unfair discrimination unless it was established that the discrimination was fair.

In similar vein, in the case of National Coalition for Gay and Lesbian Equality v Minister of Home Affairs⁸² ; Ackermann J. observed:-

- (i) Gays and lesbians have a constitutionally entrenched right to dignity and equality.

⁷⁹ Susan S. M. Edwards; Sex and Gender in the Legal process 1996; Blackstone Press Limited; London; UK; Great Britain Pp. 52

⁸⁰ Susan Edwards; Gender, Sex and the Law; 1986; Biddles Ltd; London; Great Britain; pp. 11.

⁸¹ 1999 (1) SA 6 (CC)

⁸² 2000 (2) SA 1 pp 32 para G.

- (ii) sexual orientation is a ground expressly listed in s 9(3) of the Constitution and under s 9(5), discrimination on grounds of sexual orientation is unfair unless the contrary is established.

Gender violence and child abuse are also top of the agenda in the new policing programmes. It is a ideal that all police stations must have trauma rooms where victims of violence, especially rape, are assisted and accommodated if need be. Some places like Mafikeng have Trauma centres run by other government departments like Thuthuzela near the Mafikeng Provincial Hospital and the Mafikeng Crisis Centre in town where victims are normally referred to for counselling and accommodation for a longer period. The Police Service also assists the victims with the application for a protection orders and escorts them to collect their belongings from their homes to ensure that no danger befalls them.

The Domestic Violence Act⁸³ puts an obligation on the police to act in a particular manner where cases of domestic violence are reported. The Independent Complaints Directorate is mandated to monitor the police with regards to the handling of domestic violence cases and any member who can be found to have omitted to act in accordance with the law is dealt with accordingly including being dismissed. A Unit known as Family Violence, Sexual Offences and Child Protection has been formed and specially resourced to handle and deal with such cases in a professional manner. This means that members attached to that Unit are specially trained to

⁸² Act 116 of 1998

interview victims, including young children, and their offices are constructed in such a manner that they are user-friendly to victims in general and children in particular.

Both Mmabatho and Vryburg police stations are fortunate to have these Units within their policing precincts and can thus access and interact with them easily.

(v) Media Communication in the South African Police Service

The Constitution of the Republic of South Africa guarantees freedom of expression as contained in Section 16 which states as follows:-

- (1) Everyone has the right to freedom of expression, which includes-
 - (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to-
 - (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The Constitution also determines the objectives of the Service and requires the National Commissioner to control and manage the Service in a manner that

ensures that these objectives are achieved.

The South African Police Service Employment Regulations, 2000, require the National Commissioner to determine a policy on how employees communicate with the media. Media communication in the police service is governed by Standing Order 156.

In order to balance the constitutional right to freedom of expression with the constitutional obligation on the Service to achieve certain objectives, and, at the same time, to comply with the obligation to determine a policy on how employees communicate with the media, the following principles must be adhered to:-

- (1) Members must view media communication as a potentially constructive means to promote the Service and lobby community support for the activities of the Service. The marketing of the Service in the media as a credible, committed, but not necessarily faultless organization, has a crucial part to play in achieving the objectives of the Service.
- (2) The strategic objectives of the Police Plan of the National Commissioner (policing priorities and objectives) are continuously promoted in the media.
- (3) The nature of the different operations and successes achieved, must receive prominence in the statements issued and must specifically be linked to the strategic objectives of the Police Plan.

- (4) Management at all levels must continuously bear in mind the media implications of their decisions and consult with media liaison officials in developing pro-active communication plans.
- (5) All national, divisional, provincial, area and station management meetings must be attended by the relevant heads of communications or a designated spokespersons. The communication impact of decisions taken at such meetings and the approach to be taken by Communication and Liaison Services in this regard, must remain a standing point on the agenda of all such meetings.
- (6) No member may :-
- (a) without sound reason, obstruct communication between his or her station, unit, section, component, division, media liaison official, etc., and the media; or
 - (b) prevent a media liaison official from obtaining relevant and requested information where such information will not detrimentally affect the Service in the performance of its functions.
- (7) A commander or project manager must consult with the relevant media liaison official during the planning of a major operation or project to ensure that the publicity that may be generated by the operation or project will be properly co-ordinated and will receive due exposure.

- (8) A media release must be issued in English, although it may also be issued in another official language if it is reasonably possible to do so. The Head: Communication and Liaison Services may prescribe the format of media releases or statements.
- (9) A media release must be issued by the office of the National Commissioner or a Divisional -, Provincial -, Area - or Station Commissioner and must, simultaneous with its release, be forwarded to the Communication and Liaison Services Planning Centre at Head Office.
- (10) Where possible, continuity in media liaison must be maintained. Where a member makes a statement to the media, all other statements or enquiries on the same subject or topic must, wherever possible, be dealt with by the same member.
- (11) Members must refrain from making “off the record” statements as these do not prohibit the media representatives from using the information.
- (12) Information must be only be embargoed when this is really necessary. Members must refrain from using embargoes for the sake of using them. Information must only be embargoed to alert editors of a newsworthy matter while allowing the Service sufficient time for publication thereof at an opportune moment and to allow for representatives of the Service to deliver such information officially before the premature publication

thereof. A media release stating “embargoed for immediate release” is contradictory in itself and should never be used.

- (13) A member must request a media representative to quote him or her by name, stating his or her rank and the office he or she is attached to.
- (14) Only a member who is designated as an official spokesperson for the National Commissioner, a Deputy National Commissioner or a Divisional-, Provincial-, Area or Station Commissioner, may be quoted as the official spokesperson of such Commissioner.

The Service is an open and transparent organization and the media may approach any member for information. No member, other than an officially appointed media liaison official or spokesperson, is obliged to communicate with the media. No member may, on his or her own initiative or on that of another member, approach or entertain any media for the purpose of media coverage without the prior consent of his or her commander. When a member is approached by the media and is willing to communicate with the media, such member must obtain the name of the media representative and the name of the particular mass media he or she represents.

In the landmark case of National Media Ltd v Bogoshi⁸⁴, the Supreme Court of Appeal affirmed that freedom of expression, including media freedom, was an

⁸⁴ 1998 (4) SA 1195 (SCA)

essential foundation of a democratic society.

The South African Constitutional Court in Case v Minister of Safety and Security; Curtis v Minister of Safety and Security⁸⁵ declared invalid a legislative provision which restricted the right of a person to possess indecent or obscene material in private. The majority of the Court based its decision on grounds of privacy, although two Judges based their decision on freedom of expression as well.

Three main justifications for freedom of expression have been advanced: (a) it is the best way of attaining the truth (the marketplace of ideas theory); (b) it is a vital part of the democratic process; and (c) it is a manifestation of individual autonomy.⁸⁶

In Whitney v California⁸⁷, the US Supreme Court held that a criminal conspiracy fell outside the scope of free speech, but Holmes and Brandeis JJ, sounded a warning that there must be reasonable grounds to believe that the danger apprehended is “imminent” and ‘immediate serious violence’ must be expected or advocated. ‘... [N]o danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is an opportunity for full discussion’ at page 493.’

⁸⁵ 1996 (3) SA 617 (CC)

⁸⁶ Jonathan Burchell; Personality Rights and Freedom of Expression; 1998; Cape Town; JUTA and CO, LTD; RSA. Pp.1

⁸⁷ 274 US 357 (1927)

The Promotion of Access to Information Act⁸⁸ came into operation on 9 March 2001 in order to give effect to the constitutional ideal of an open and democratic society and a transparent and accountable government. Accordingly the police can no longer refuse to disclose certain information if it is in the public interest or in the interest of an individual seeking that information.

As the apartheid era graphically demonstrated, an authoritarian state exercise its power arbitrarily, without reason or explanation. On the other hand and in stark contrast, the hallmark of an open and democratic society, is one where the government is required to account for its use of power. The actions and decisions of government should be informed by rational considerations that are explicable to those affected by the decisions: democracy is government by explanation⁸⁹

In the Shabalala v Attorney-General, Transvaal⁹⁰ case the Constitutional Court held that access to the docket in the context of a criminal prosecution was directly regulated by the right to a fair trial and not by the right of access to information.

The right of access to the case docket is not absolute as certain portions of the docket may not be disclosed to the accused. This includes the identity of informers and any document which may not be disclosed in the interest of justice.

A fair trial means that the state may not maliciously withhold information which

⁸⁸ See 54 above

⁸⁹ Iain Curie and Jonathan Klaaren; The Promotion of Access to Information Act Commentary; 2002; Siber Ink; Claremont; RSA.

⁹⁰ 1996 (1) SA 725 (CC) para 34

is ordinarily supposed to be given to the accused upon application to access thereto. It is also in the public interest that those accused of committing offences must be tried so that the public can feel protected and have confidence in the justice machinery. Therefore, this case tries to strike a balance between the rights of the accused against the rights of the public thereby creating an atmosphere of a fair trial. This is because previously the docket was regarded as a privileged document and the accused had no access to it but had to wait to be surprised by evidence in court which could have been challenged if it was disclosed before and ample time given to challenge it.

In terms of Section 39(1)(b)(i) of the Promotion of Access to Information Act, a public body may refuse access to records:-

- (1) containing methods, techniques, procedures or guidelines for the prevention, detection, curtailment or investigation of crime, or the prosecution of offenders;
- (2) if disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice their effectiveness, lead to the circumvention of the law or facilitate the commission of an offence.

Ironically, in the past, the police were very secretive in terms of their operations but the days certainly every day police spokespersons are quoted by both the electronic and print media, thereby generating most of the news, albeit negative sometimes.

2.8 THE INDEPENDENT COMPLAINTS DIRECTORATE

The question here is precisely who guards the guardians? The Independent Complaints Directorate is created in terms of section 222 of the Constitution (Interim) of 1993 and also in terms of chapter 10 of the South African Police Service Act ⁹¹.

(i) Mandate

The Independent Complaints Commission considers complaints or allegations relating to:-

- (a) Death of person in police custody or deaths which are the result of police action.
- (b) The involvement of police members in criminal activities.
- (c) Police conduct or behaviour which is prohibited by the Police Regulations, such as neglect of duties or failure to comply with the Code of Conduct.

In outlining what the Independent Complaints Directorate is and what is expected from it, the Minister of Safety and Security Mr Charles Ncquakula said:-

The ICD is an independent mechanism that was established to ensure that policing in our country takes place within a human rights ethic and that those officers who do not uphold the rule of law are held accountable for their actions. The ICD is an important pillar of that system of control that

⁹¹ Bronwen Manby: "The ICD; *An opportunity wasted*" (1996) 12 SAJHR 419.

this government wants to see.

It is important for the ICD to fulfil its mandate with adequate resources. We need to indicate that many of the ICD's problems stem from the fact that it has never had sufficient capacity to do its work effectively. To this end the ICD will receive a budget increase during the 2006/07 – 2008/09 MTEF⁹² cycle. The R4 million additional funding will be used to appoint four provincial heads as senior management level, as well as 24 investigators all over the country. A further 20 investigators will be appointed in the 2007/08 financial year...

The restructuring of the ICD will include the establishment of offices in rural areas to plug the huge gap that has existed in this area of our work. At the moment, people from the villages and countrywide travel long distances to lodge complaints with the ICD, which is located only in major centres⁹³.

The purpose of the Independent Complaints Directorate is to support democracy, promote the observance of human rights and protect people from abuse of government power. While the ICD endeavours to register, investigate and monitor all complaints regarding alleged offences or misconduct committed by members of the South African Police Service, the Directorate has adopted a strategy of prioritizing complaints by classifying them, the most important being death in custody - to ensure the efficient use of scarce resources.

(ii) Challenges

Since its establishment in 1994, the Independent Complaints Directorate has tried

⁹² Medium Term Expenditure Framework

⁹³ Charles Nqakula; MP; Minister for Safety and Security; Budget Vote Debate; Ministry for Safety and Security; National Assembly; June 1; 2006; Vote 22; Independent Complaints Directorate

to surmount a number of formidable challenges, including:-

- * Lack of direction and policy formulation.
- * Lack of or insufficient resources.
- * Most of the time they are unknown and or inaccessible to the needy, vulnerable and marginalized communities – lack of accessibility.
- * Lack of human rights education. Statements by politicians and government officials do more to undermine human rights than to promote them.

2.9 Summary

Flowing from the discussion, it seems the South African Police Service is far from reaching the standard envisaged by the Constitution and international instruments dealing with human rights. This is evidenced by the long road traveled by older democracies in terms of policing like the United States of America. Violation of rights as depicted in the former South African Police Force and the present South African Police Service are indicative that certain things are not so strange but are rather a learning curve or a means to an end. It is only when mistakes are committed and corrected that clear direction is attained. The Police Service must be challenged in the courts by those whose rights have been violated so that the courts can make a ruling and set out some guidelines like in the Miranda case in the United States of America, discussed above.

It seems there are good and enough instruments in the form of policies at the disposal of the South African Police Service and whether they are up to standard or

they are simply in the wrong or incapable hands is a question that must still be pursued.

This chapter was about understanding policing in matured democracies like the United States of America and the United Kingdom as well as comparing them with how South Africa has emerged from the apartheid era and is trying to follow in their footsteps. The next chapter will then evaluate this information with the help of an empirical investigation.

CHAPTER THREE: EMPIRICAL INVESTIGATION

3.0 Introduction

This Chapter explains the empirical investigation carried out in gathering, quantifying and analyzing the data according to percentages then plotted by way of pie charts. The various steps taken are explained.

3.1 Participant Observations and Surveys

A lot of casual as well as formal observations and surveys were carried out at both police stations while I was on duty or even off duty. Sometimes I would be called by a community member who was either not satisfied with service delivery or just wondering how the police were conducting their business. I would then either call the affected police officer or station or if possible proceed to that station and meet the member of the Police Service and intervene.

It must be noted that most of the time it was realized that either the member of the Police Service lacked the necessary knowledge especially legal knowledge and did not ask for assistance or had no one to turn to or the person who gave guidance was equally not steeped in legal knowledge. Sometimes it was just pure arrogance or negligence on the part of police officers who do not adhere to the *Batho Pele* principles.

Observations in Vryburg indicated that case dockets seemed to be allocated and investigated on racial lines. More efforts were put in investigating cases of White complainants and Indians particularly business people whereas cases involving Africans and sometimes Coloureds were investigated rather sluggishly. White police officers were normally not posted as cell guards and also never deployed at the satellite station in Huhudi township.

Most White police officers who were stationed at the Crime Combating Unit in Vryburg under a White commander suddenly took massive transfers to Vryburg Crime Prevention Unit after their commander was transferred there to head that Unit and the Crime Combating Unit was now under an African commander.

Resource allocation indicated that units in Vryburg headed by White police officers somehow enjoyed preference. That could be seen at the Crime Combatting Unit, Dog Unit and Stock Theft Unit. It is the biased investigation of the Stock Theft Unit of Vryburg that discriminated against African complainants in the Ganyesa, Morokweng and the Kgalagadi municipality that lead to the uprisings at Ga-Morona village which left a few cattle posts gutted by fire and more than forty (40) residents and stock owners arrested while some police officers were assaulted and their fire-arms taken⁹⁴ This even led to the formation and launching of “*Kgomo Modimo wa Gae*” group, a community organization which took charge of taking care of livestock and is working with the Police Service in ensuring the safety of their stock as well as reporting and or apprehending suspects and handing them to the

⁹⁴ Bothithong CR 48/09/2004 and Bothithong CR 53/09/2004

police. Subsequent investigation by a task team lead by Captain Kgopodithata sent by the Provincial Commissioner's office unearthed horrible things done by members of the Vryburg Stock Theft Unit which led to some of them being charged departmentally while the commander was also charged and transferred and he subsequently resigned. Five white farmers, amongst them one commonly known as "*Lonao*", were arrested in that area together with some Africans who were working with them to steal stock.⁹⁵

Around the Mmabatho policing precinct this study points or found out that the reaction time of the police is disappointing even though they are assisted by Flying Squad and Dog Unit. Sometimes, especially at night, the police do not answer the telephone. The attitude and conduct of the police was so disappointing that even other government departments like the Department of Social Services which had to refer people to this station daily complained that every day people were turned back from the police station without any valid explanation regardless of how old they were or how far they come from particularly those who want to certify documents. They are either told to go to Mafikeng Police station or that certification was only done on certain days

3.2 Interviews and Questionnaires

Interviews were conducted informally and sporadically around the Mmabatho and Vryburg policing precincts and at villages, townships, bus and taxi ranks as well

⁹⁵ Bothithong CR 52/09/2004, Bothithong CR 49/09/2004 and Morokweng CR 27/09/2004

as sporting places on people aged between fifteen years and fifty years. These revealed that on average the community was not satisfied with the service they got from the police. They differed in terms of how they viewed the kind of services received from the Police Service.

Some thought the old method of policing where fear of the police was the order of the day was the most effective and should be brought back. They further complained that suspects were receiving preferential treatment including getting bail easily. They thought the suspects have too many rights which superseded the rights of law-abiding citizens. They were of the opinion that the fact that suspects were no longer tortured by the police made investigation very difficult, time-consuming and very expensive as the police were sent from pillar to post before the real truth, if ever, was found.

The other disturbing issue was that the Police Service was perceived as one of the more corrupt organizations which cannot be trusted. Community members who confidentially gave information to the police ended up having their identity revealed to the suspect and got victimized. Members of the Police Service were seen taking part in crime and corrupt activities and the trend is growing daily. Police officers are seen drinking at shebeens and taverns with state vehicles sometimes while complainants wait at the Community Service Centre being told that there were no vehicles to assist them. Police officers stationed at the Community Service Centre and the Detectives are incompetent in terms of the quality of customer service as there is no courtesy in the manner in which the police talks to them. The

quality of statements taken is so poor that it ultimately affects the entire investigation and subsequent prosecution and suspects end up getting off the hook. Some community members even believe that it could have been better if statements were written in their vernacular languages.

Amongst the community there are those who believed that forty percent of the people were still trapped in the past and failed to appreciate the improvements done in and by the Police Service. They believed the people should be workshopped and updated in terms of the new policing methods and policies as well as the separation of powers whereby issues like bail were not falling within the competence of the police and besides, the new Constitution had defined a new order not only for the police but for the entire public and private sectors.

About thirty percent, especially academics and professionals, believed that a lot still had to be done and further suggests that professionally qualified individuals in the police are not used optimally or they are mostly misplaced and therefore cannot contribute meaningfully to the development of the Service. If there are graduates every year from Universities and Technikons who are members of the Police Service, where are they placed if the quality of statements is still a matter of concern? Some believe that senior management is either ill-informed, not sufficiently schooled or are too lazy to interpret and implement policies. The other factor could be that degree and diploma holding police officials are mostly at the lower level of management and cannot contribute meaningfully in decision-making or their contributions are either ignored, misconstrued or regarded as a threat and cannot be

tabled before top management to avoid or suppress exposure of the weakness of the commander or capability of the junior member.

3.3 Mmabatho Police Station

It came to light that about seventy percent (70%) of the community members interviewed in the Mmabatho policing area still believe that the Police Service is giving them quality service particularly with regard to human rights. Twenty percent (20%) were not satisfied with the service they got while eight percent (8%) were neutral while the remaining two percent (2%) were not interested in what the police are doing. See Fig. 3.1.

Eighty percent (80%) of members, particularly junior members, working at the Mmabatho police station believed that management is engaged in petty and personal issues which hampered service delivery, thereby affecting their rights negatively. Ten percent (10%) indicated that there were fights and frictions in all organizations and institutions and therefore that should not be used as an excuse for failure to deliver or for anyone not to enforce his or her rights as there were other avenues even outside the Police Service to enforce such rights. The other seven percent (7%) seemed to be neutral while the remaining three percent (3%) seemed to be in the middle of nowhere without knowing what is going on. See Fig. 3.2.

As for human rights and their implications on the daily activities of the Police Service, most of the respondents agreed that they were at some stage workshopped

on human rights norms but could not remember almost everything they were taught, let alone implement it consciously.

3.4 Vryburg Police Station

In Vryburg, sixty nine percent (69%) of those community members interviewed still believed human rights culture is improving in Vryburg in general. Twenty percent (20%) believe there is some resistance from certain quarters, especially the conservative white people. Eight percent (8%) were neutral while the remaining three percent (3%) preferred to mind their own business and did not care what the police were doing. See Fig. 3.3.

About seventy percent (70%) of police officers were of the opinion that human rights culture was gradually replacing racism that was prevalent for many years in the past and things were changing for the better. Twenty percent (20%) still believed that racism and preferential treatment in favour of the whites was still prevalent in Vryburg police station. Eight percent (8%) were neutral while the remaining two percent (2%) did not care about what was happening. See Fig. 3.4.

Questionnaires were also handed to members of the community as well as members of the police service in Vryburg and Mmabatho respectively. Each station was allocated fifty questionnaires. Thirty of which were completed by the community while twenty were completed by members of the police service in each station. All the questionnaires were completed accordingly and all hundred questionnaires

were returned to me.

In all instances the purpose of the questionnaire was explained to the participants and some of them showed no interest or simply did not have time for that. Some even feared exposure and did not want to be involved. Others were just curious but did not want to commit themselves.

Fig. 4.1 Mmabatho Community Members

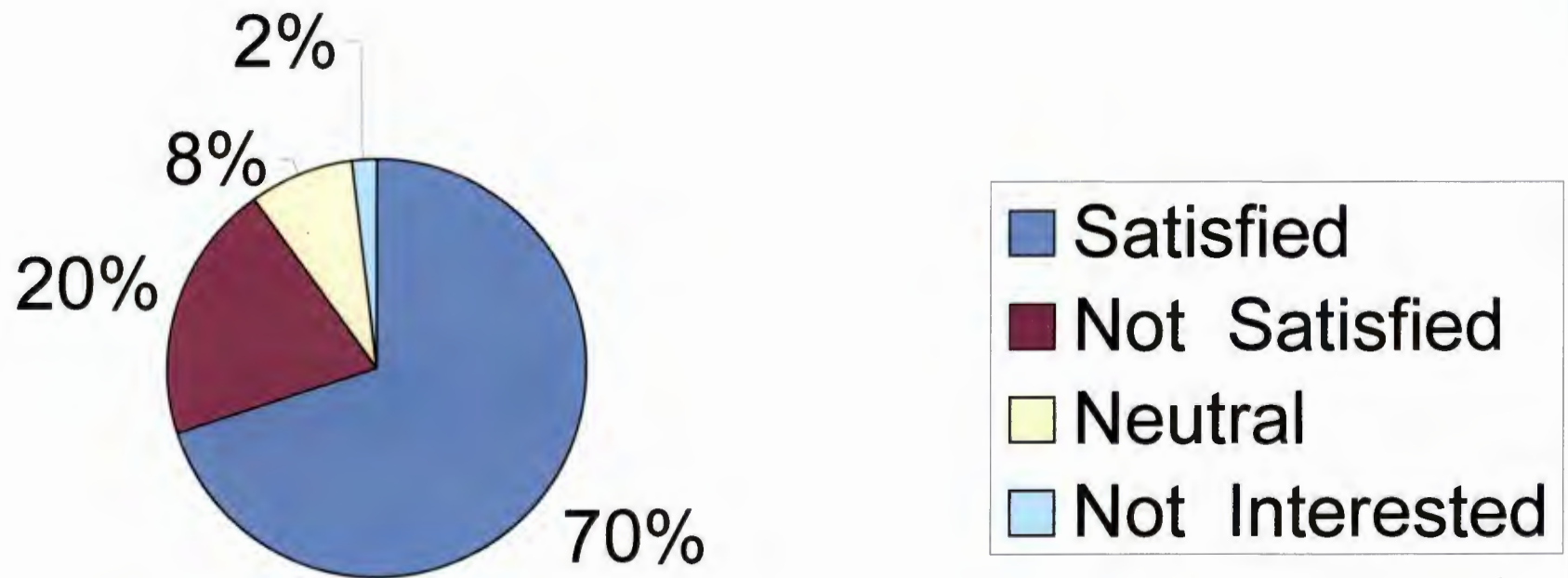


**Fig. 4.2 Mmabatho SAPS
Members**

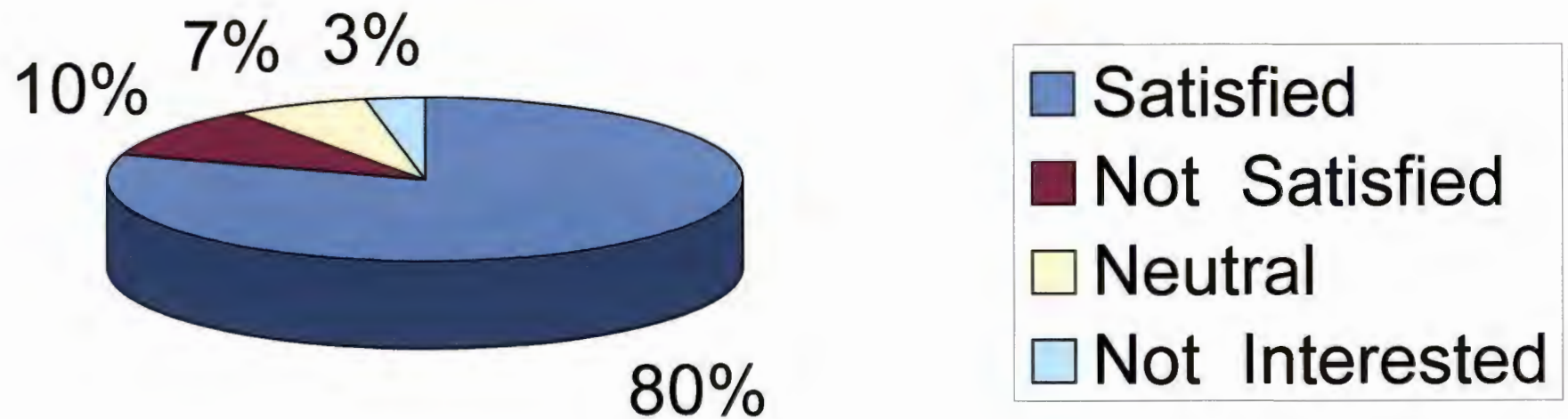


Fig. 4.3 Vryburg Community Members

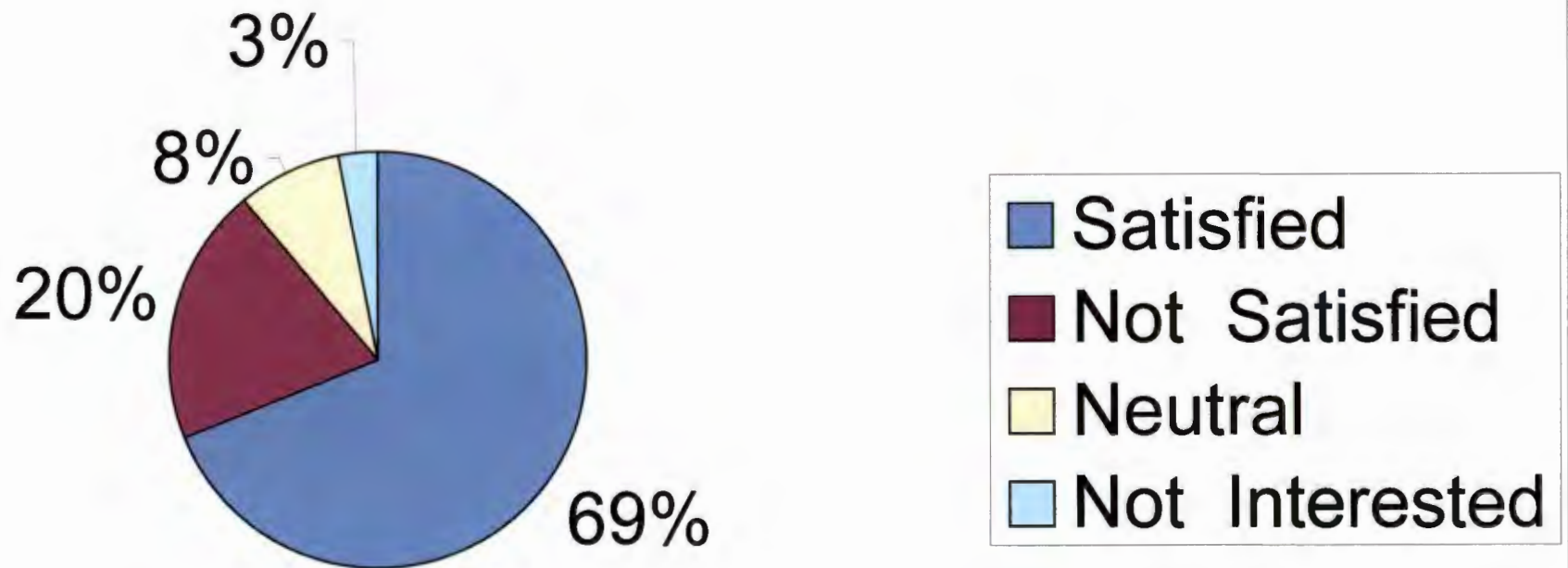
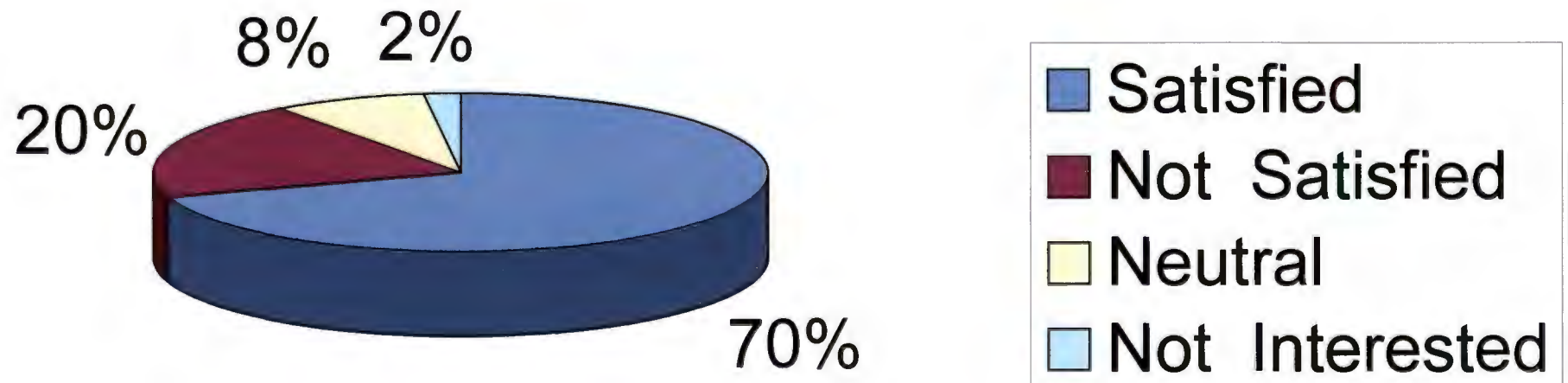


**Fig. 4.4 Vryburg SAPS
Members**



CHAPTER FOUR: CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

The aim of this research was to examine the disparities in the two police stations occasioned by their background as Mmabatho police station was under the erstwhile Bophuthatswana government while Vryburg was under the old South African Nationalists government. Surely these two stations were affected differently by the past and it would be instructive to look at how they embraced the new South Africa with its culture of human rights.

4.2 Conclusions

It is hereby submitted that indeed the South African Police Service still has a long way to go in terms of aligning itself to be in line with both community and international standards on police and community relations. Client service and internal administration still needs to be refined so as to ensure that the service rendered is of acceptable standard and quality. A serious skills audit must be done and police officers be placed according to their capabilities and qualifications. This will ensure that people are comfortable in their working environment, thereby obviating service delivery. Police officers who are not competent and or effective in their posts must be re-tooled or re-trained to be on the required standards of policing within a human rights culture.

With the FIFA World Cup on our door step, it is incumbent upon the South African government to ensure and guarantee the safety and security of millions of football fanatics who will be flocking into our country in 2010. We must not lose sight of the fact that even criminals will use that period to advance their criminal activities. As the North West Province would be hosting some national soccer teams for practices before and during the World Cup competition, with the possibility of Brazil being one of those teams, which will inevitably draw a lot of people especially journalists to Mmabatho, it is imperative that every department gets their house in order, especially the police.

It is therefore my submission that Police officers be adequately trained and some form of dress rehearsals be conducted to enhance confidence so as to avoid embarrassments on the international stage with the whole world watching us.

4.3 Recommendations

4.3.1 Mmabatho Police Station

With regard to Mmabatho Police Station it is important that the Provincial management must meet with the entire junior members and discuss the poor state of affairs at this Station. There should be regular interaction between the community and the Police Station management. Government departments particularly those served by this Station, should also be requested to send reports about whether their

interaction with that station and the service they get there-from are satisfactory.

The Station Commissioner should be allowed to reshuffle his staff including off-loading those he feels are redundant to the Provincial Office and replacing them with willing and energetic ones who will restore the confidence of the customers back as expected. Junior police officers must also be given the opportunity to state their case and come up with inputs on matters particularly where they will be adversely affected by the policy or decision. These members are normally called to what is known as a “lecture” where they are given information from top management and most of the time they are being hammered for their ill-discipline. Even when some try to state their problems or try to come with suggestions, they end up being victimized or being labeled influencers or bad elements who are always negative and this state of affairs instils fear in these junior police officers and they end up in a helpless situation.

The Station Commissioner, together with his new team must then draw a road-map outlining what they are going to do and how they will do it. This Working Committee must be inclusive of even the cleaners so that everybody in the station takes ownership of the whole project and process. There should be targets and time frames as well as monitoring and evaluating mechanisms. It is advisable to involve members of the community as well as professionals and academics so that the end product should address the needs of everybody affected. This role should be played by the Community Policing Forum but as it is this Forum is mostly used for crime related matters and has little to do if any, with the internal

administration let alone the feeling of police officers. The North West University, particularly the Mafikeng Campus should be used optimally. The Police Service should not be a closed book which can only be edited by few people and yet be expected to be understood by everybody. The media must be allowed also to play a watchdog role especially in reminding people about pledges and commitments if not fulfilled.

4.3.2 Vryburg Police Station

With regard to Vryburg, junior police officers must also be met by the Provincial management to assess the realities they face on daily basis. The community must also be met so as to get the real state of affairs from them directly.

There are cases of white police officers who were transferred from Vryburg or who applied for posts outside Vryburg but refused to go or ended up returning to Vryburg. The issue of equity has done little to remove some people from their comfort zones regardless of the fact that this was a national policy designed to redress the imbalances of the past and give equal opportunity to everybody. Internal investigations about police in Vryburg would yield best results if it can be conducted by people from outside the police. This is because junior police officers may feel intimidated by high ranking officials who might be inclined to cover their colleagues as well as the image of the police by writing something next to the truth thereby sending a wrong message and impression to top management. This

investigation must guarantee safety and job security to all members who will come forward and reveal what is transpiring.

Like in Mmabatho, Vryburg must also be overhauled to ensure that people who have been stationed in Vryburg from time immemorial are transferred for they already have developed a culture of impunity and thus not open to change.

Sporadic and impromptu inspections must be genuinely conducted to ensure that police officers at these stations, especially commissioned officers, are kept on their toes at all times.

Other Government departments and Non-Governmental Organizations including Labour Unions be engaged in their fields of specialization to enhance skills development in the Police Service. *Bosberaads* or retreats must be held annually where team building should be part of the programme and external speakers and other role players be invited to inject new lease of life into the Police Service.

Management of the Police Service should also have an open minded approach and allow participation of junior members in the form of brainstorming. Research must also be conducted at station level so as to inform top management of the recent developments in policing as science but not wait for policies to be formulated at National level and implement them even if they do not fit or apply to their domestic situation.

It is incumbent upon management at Provincial level to monitor and evaluate these two stations continuously and come up with remedies that will ensure proper service delivery. Mmabatho police station is responsible for the Legislature, North West University Mafikeng campus, Mmabatho stadium and Garona complex over and above the general community. Politicians, government officials, community leaders, Youth Organisations, Church Leaders, Traditional Leaders and the general community must stand up and demand quality service from the police without compromise.

The Independent Complaints Directorate must bite firmer and deeper to enhance the community's confidence in them and ensure that the police are conscious of the impending repercussions should they default in their tour of duty especially where human rights are infringed.

RESEARCH QUESTIONNAIRE. (ANNEXURE A)

NORTH WEST UNIVERSITY (MAFIKENG CAMPUS)

RESEARCHER: ADV. K. J. MOSES

DEPARTMENT: SOUTH AFRICAN POLICE SERVICE

QUESTIONNAIRE: This questionnaire has five (5) pages.

Dear Participants.

RESEARCH ON: THE EFFECT OF HUMAN RIGHTS NORMS ON POLICING IN
THE NORTH WEST PROVINCE WITH PARTICULAR
REFERENCE TO MMABATHO AND VRYBURG POLICE
STATIONS.

The objectives of this research are to determine whether service delivery to the community is hampered by the following:-

- * Lack of human rights knowledge
- * Discrimination in the application of human rights.

- * Negative attitudes towards human rights culture and
- * Lack of proper training of members of the police.

Questions are based and / or asked on and / or around the above mentioned objectives.

Respondents are hereby assured that all information supplied will be regarded as strictly confidential and will only apply for the purpose of this research. For this purpose, names and other personal particulars are thus not necessary.

INSTRUCTIONS:

1. Kindly mark your answer in the appropriate space with an X.
2. Please answer each question as truthful as possible. There are no right or wrong answers.

Thanking you in advance for your co-operation.

SECTION 1: BIOLOGICAL INFORMATION OF RESPONDENT

INSTRUCTIONS:

1. Read the statements fully
2. Complete each item in this section
3. Do not spend too much time on a particular item, but rather give your spontaneous response to each statement.
4. Indicate your answer in the relevant space with X.

EXAMPLE

How many years are you working for the Police.

(1). 1 – 5 years	
(2). 6 – 10 years	X
(3). 11 – 20 years	
(4). Over 21 years	

1.1. AGE

(1). 18 – 25 years	
(2). 26 – 30 years	
(3). 31 – 35 years	
(4). 36 – 40 years	
(5). 41 – 45 years	
(6). 46 – 50 years	
(7). 50 or older	

1.2. GENDER

1.3.

(1). Male	
(2). Female	

1.4. HOME LANGUAGE

(1). English	
(2). Afrikaans	
(3). Setswana	
(4). Other - specify	

1.4. POPULATION GROUP

(1). African	
(2). White	
(3). Indian / Asian	
(4). Coloured	
(5). Other – specify	

1.5. RANK

(1). Senior Superintendent & Superintendent	
(2). Captain	
(3). Inspector	
(4). Sergeant	
(5). Constable	
(6). Civilian Employee	
(7). Other – specify	

1.6. UNDER WHICH SECTION ARE YOU PLACED

(1). Community Service Centre	
(2). Crime Prevention	
(3). Crime Investigation	
(4). Support Services	
(5). Other – specify	

1.7. HOW OFTEN DO YOU NEED POLICE SERVICE

(1). Daily	
(2). Weekly	
(3). Month end only	
(4). Never	
(5). Other – specify	

1.8.WHEN DID YOU FIRST LEARN ABOUT HUMAN RIGHTS

(1). 1999	
(2). 2000	
(3). 2001	
(4). 2002	
(5). Other – specify	

SECTION 2:

1. Read all statements fully.
2. Complete each item in this section.
3. Do not spend too much time on a particular item, but rather give your first spontaneous response to each statement.
4. Indicate with an X your level of agreement / disagreement with the following statements.

EXAMPLE

New members in the Police should get human rights first before attending training.

Strongly agree	Agree	Disagree X	Strongly disagree	No opinion
----------------	-------	------------	-------------------	------------

If you disagree with the statement you will mark Disagree with X.

2.1. Human rights changes which took place within the Police made a great impact.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.2. My Station Commissioner needs human rights training.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.3. Training can make a difference towards human rights management in the Police

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.4. Members who have already attended human rights training and are implementing it on daily basis are making a difference.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.5. More workshops on human rights has made a difference.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.6. There is no more a need for human rights training.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.7. People with different races respect each other and help one another in enforcing their rights.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.8. Human rights training / workshops are conducted equally and according to each station needs.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.9. It is much quicker to obtain human rights information when we request it.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.10. All members are given equal opportunities to human rights issues.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.11. Police management always encourages members to deliver in terms of human rights culture.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.12. Human Rights Commission does not manage human rights issues properly.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.13. Human rights are excellent tools to be used for effective service delivery.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.14. Police members do not have time to learn and understand human rights.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.15. Police management do a lot of paperwork than implement human rights culture.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.16. Members deliver quicker service to the community by using human rights norms

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.17. Resources are equally accessible to all members at the station / unit.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.18. I am proud to have access to human rights information.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.19. Human rights are very important.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.20. Human rights culture give birth to professional conduct and service.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

2.21. A human rights conscious police official is approachable.

Strongly agree	Agree	Disagree	Strongly disagree	No opinion
----------------	-------	----------	-------------------	------------

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X 801, Potchefstroom, 2520

Verwysing Reference	PC 0513348-3 Over 26/2/2
Navrae Enquiries	PROV. COM. BEETHA SUPT. METSI
Telefoon Telephone	(018) 299-7000
Faksnommer Fax number	(018) 299-7002

**THE PROVINCIAL COMMISSIONER
DIE PROVINSIALE KOMMISSARIS
SOUTH AFRICAN POLICE SERVICE
SUID-AFRIKAANSE POLISIEDIENS
NORTH WEST / NOORDWES
POTCHEFSTROOM
2520**

2008-08-04

ADVOCATE KJ MOSES

P.O.BOX 50040

MAFIKENG

2745

**APPLICATION FOR AUTHORITY TO DISTRIBUTE QUESTIONNAIRES TO MMABATHO
AND VRYBURG POLICE STATIONS FOR ACADEMIC REASONS: NUMBER 0513348-3 SUP.
KJ MOSES: MAFIKENG POLICE STATION**

1. Receipt of your application dated 04/08/2008 is acknowledged with thanks.
2. Approval for distribution of questionnaires to Mmabatho and Vryburg Police Stations is hereby granted as requested in the letter quoted supra.
3. Good luck in your endeavour to complete the LLM.


**PROVINCIAL COMMISSIONER: NORTH WEST
LE BEETHA(SOE)**

2008-08-04

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