# In the Line of Duty?

## Shooting incident reports and other indicators of the use and abuse of force by members of the SAPS

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**Note:** The original draft of this paper was completed in July 1999. However it subsequently became apparent that there was a problem of duplication in some of the shooting incident data on which the report is based. The data has subsequently been rechecked and obvious duplicates removed for the purposes of this October 2001 version.

**Glossary**

**Provinces, areas, and stations** - All police stations are part of a police "area" (formerly district) under an area commissioner. All areas, in turn, fall under the provincial commissioner. Note that while all stations fall within a police area there are also units which are linked to the area which are not attached to a particular station. Similarly, there are usually also units which fall under the province which are not linked to a particular unit.

**"Deaths as a result of police action"** are referred to in ss53(2)(b) of the SAPS Act, 58 of 1995, in terms of which the Independent Complaints Directorate is required to investigate "all deaths in police custody or as a result of police action". These deaths are

in general caused by a use of force by the police but would also possibly include a number of deaths caused, for instance, in vehicle accidents.

References to the **"three provinces"** are references to the Eastern Cape, Western Cape and Free State, the provinces which maintained a reasonably high standard of recording of shooting incidents in the 1995-1998 period.

**Missed/warning shots** - a missed shot is a gunshot which is fired at a target and which does not hit the target. A warning shot is a gunshot fired with the intention of discouraging a person from a course of action (such as fleeing) but which is not intended to hit that person. In fact "missed shot incidents" are incidents where all shots fired miss the target. In an incident where a person is killed or wounded there may also be a number of missed shots. Incidents where the target hit is not the original target are not recorded in this report as missed shot incidents.

The terms **police officer and member of the SAPS** are used in this text interchangeably and the word "officer" is therefore not a reference to rank. In fact, the distinction between "officer" and "non-officer" ranks is only relevant in this report with respect to the fact that the person who is responsible for investigating a shooting incident is intended to be of officer rank (Standing Order 251.15.2) unless prevailing circumstances indicate that this is not practical (Standing Order 251.15.3)

Use of force - a use of force in this report is a physical use of force. Some texts on policing also refer to non physical forms of force (sometimes referred to as psychological force).

**Abbreviations**

ICD - Independent Complaints Directorate
LTL force - less than lethal force. Refers generally to most non-shooting related uses of force.
SAPS - South African Police Service

**Executive Summary**

This report was written in 1999 using information available at that time on the use of force by members of the SAPS. After problems were encountered with some of the data the report has now been revised with duplicates (roughly 2% of cases) removed from the data on shooting incidents.

The report uses the following four main data sources:

- SAPS data on shooting incidents involving SAPS members;
- ICD data on deaths in police custody and as a result of police action and on complaints against SAPS members;
- SAPS data on criminal and disciplinary cases against SAPS members;

- SAPS data on civil claims brought against the SAPS.

The data from these sources is examined with a view to understanding what available information can tell us about the use and abuse of force by members of the SAPS.

The major part of the report deals with shooting incident data received from the SAPS covering the 1996 - 1998 period. During this period the SAPS system for recording shooting incidents was only operating with a reasonable level of consistency in the Eastern Cape, Western Cape and Free State and in a handful of policing areas in other provinces. The analysis of shooting incidents is therefore based on the data from these three provinces in which 4651 shooting incidents were recorded over the 1996-1998 period, though some reservations are also expressed about the data from all three provinces.

Two major indicators which have been applied in other countries as a way of evaluating police uses of force and particularly firearm usage are (i) the ratio of killings by the police to the overall number of homicides or murders, and (ii) the 'fatality index' - the ratio between persons killed and persons injured by the police. Using these two indexes it appears that police shootings in South African cannot be compared with those in some South American countries, where summary executions by police have been prevalent, and are closer to those in the US. However in a context of massive levels of societal violence the fact that police use of force is not necessarily high relative to societal violence does not justify a lack of concern. Furthermore it does not imply that force, when it is used is necessarily used appropriately, effectively or justifiably.

Other key aspects of the report based on the shooting incident data include:

- A projected national picture of firearm use by the police. The report makes what is believed to be a conservative estimate that during the 1996-1998 period members of the SAPS were involved in an average of 6225 shooting incidents per annum. During this period an average of 467 people were killed by the police each year and an estimated 1307 people were injured in police shootings each year.
- The shooting incidents reports indicated that 645 (15%) of the shootings were not legal. Of fatal incidents 41% (122 of 301) were judged to be not legal. In the Free State 45% of fatal incidents were judged to be not legal in the shooting incident reports while in the Eastern Cape 50% of fatal incidents were judged to be not legal in the shooting incident reports.
- While 16% of the total number of incidents involved police who were off-duty, 42% (127 of 301) of fatal incidents involved off-duty police. Of off-duty fatal incidents 76% (96) were judged to be not legal in the shooting incident reports with these proportions being particularly high in the Eastern Cape (82%) and Free State (77%).
- The incorrect target was hit in 3% (127) incidents. Of the 349 incidents in which police reservists were involved the incorrect target was hit in 5% (16).

- The high proportion of incidents in which no-one was killed or injured (76%) is reasonably similar to the rates in various studies of police shootings in the US. However it is not clear from the data what proportion of these incidents were aimed at a target other than a person (such as a vehicle), what proportion merely involved 'warning shots' and what proportion involved shots which were aimed at a target and missed ('missed shots').
- In terms of the time of day at which the shooting incidents occurred, fifty percent (50%) of police shootings occurred between 8 p.m. and 4 a.m.
- Seventy-eight percent (78%) of the police whose names were recorded in the data were only linked to one incident during the three years. Nineteen percent (19) were linked to 2 or 3 incidents during the three year period and the remaining 3% were linked to four or more incidents. International research suggests that police associated with brutality are often found amongst the group of police linked to a large number of use of force incidents.

Other data sources including complaints submitted to the ICD and SAPS data dealing with criminal and disciplinary cases against SAPS members were also examined, partly in relation to whether they reveal anything about non-shooting related uses of force by the police. While these data sources deal with cases where it is specifically alleged that the police actions amounted to criminal conduct, (or at least breaches of police discipline) some degree of caution needs to be applied in using them as indicators of police brutality as, other than in relation to cases on which convictions have been obtained in court, the cases which are recorded amount to cases where police brutality has been alleged rather than proved. A further difficulty is that non of the above data sources distinguish between acts performed by the police while on duty or otherwise performing police responsibilities, and acts involving members of the police in a non-occupational role.

Finally SAPS information on civil claims against the police over the 1995 to 1998 period were also examined. One of the problems here was a level of inconsistency in terms of the categorisation of claims in the different data pieces provided. Key findings from this data were that:

- Claims for deaths and injuries increased from 1995 to 1996 but overall dropped fairly substantially over the 1995 to 1998 period;
- While claims apparently relating to the use of force account for roughly a quarter of the total number of claims and payments, claims and payments in these categories account for over 50% of the total amount of money claimed and paid out;
- Average payments for shooting incidents (over R80 000 per claim) far exceed those for any other category;
- In 96% of the cases of common assault and 98% of shooting incidents for which the SAPS incurred liability, the SAPS members concerned 'enjoyed state protection' and therefore faced no personal liability.

**Summary of Recommendations**

Key recommendations regarding systems for *data collection* are that:

- There appear to be major problems in the operation of SAPS systems for the recording of shooting incidents. The SAPS needs to ensure effective reporting of shooting incidents and the recording of data with a view to monitoring trends in shootings relating to the police.
- The SAPS should give renewed emphasis to the importance of reporting all shooting incidents and should sanction those who deliberately disregard this requirement.
- A high standard of shooting incident investigation should be encouraged which potentially applies comparable standards both to incidents where people are wounded or killed and to other incidents. If unnecessary shootings which miss their target are criticised this may help police officers avoid unnecessary shootings which hit their target. There would be value in a system of shooting incident (and other use of force) review which is focused on promoting learning around the use of force in the SAPS. Such a system may need to be separated from processes which are potentially punitive in their nature in order to be effective.
- The SAPS needs to ensure that proper records are kept regarding complaints, charges and convictions (criminal and disciplinary) against SAPS members, and needs to ensure that this data is reported in a reliable manner.
- Data relating to complaints, charges and convictions of SAPS members would be more useful if incidents which occurred on duty were recorded separately from those off duty.
- In monitoring the use of force by the SAPS, accessing information on civil claims against SAPS members may prove to be a fruitful exercise for the ICD. However, care will have to be taken to ensure that the information received is recorded in a form which facilitates easier interpretation of the information.

Recommendations regarding the *control of the use of firearms by police off-duty* are that:

- Promoting general awareness amongst police officers of the risks and responsibilities associated with firearm possession.
- Clearer guidelines with respect to the responsibilities of police officers to "place themselves on duty" when off-duty. Consideration should be given to the idea of removing from members of the SAPS the obligation to 'place themselves on duty' when off-duty.
- Suggesting to police officers that they consider the option of going "gun free" when off-duty, particularly in areas where there is not a history of attacks on police officers.
- Enforcing strict discipline against police officers who irresponsibly display or use their firearms. In particular, clear guidelines need to be developed and enforced relating to alcohol consumption and firearm possession and use.
- Where police officers are experiencing personal or job related difficulties, which have the potential to impact on their professional behaviour, they should have an obligation to seek professional help.

Regarding *police reservists* the report recommends that:

- The use and arming of police reservists appears to be associated with a higher risk of shootings where the person hit was not the original target. Greater care should be taken by the SAPS in ensuring that police reservists who are armed have appropriate firearm training. Where this is not possible they should be discouraged from using firearms.

Recommendations regarding general strategies to control the use of force are that:

- Preferably, despite the lower visibility of Less Than Lethal (LTL) force (or at least of the consequences of such force), use of force control strategies should attempt to control both shootings and non-lethal uses of force, particularly in terms of their abuse.

#### Conclusion

The report also makes a number of recommendations regarding *further research*.

Two major causes of concern, the apparent breakdown in the system for monitoring the use of firearms by SAPS members, and the general issue of off-duty firearm use by SAPS members, are highlighted by this report. The report also indicates that existing data sources do not provide much information on non-firearm related uses of force, which may also be abused.

The report does not serve as a major indictment of on-duty firearm use by SAPS members. The information provided indicated that the level of fatalities "as a result of police action" recorded by the SAPS is not necessarily exceptional in relation to that recorded in many US cities, if one takes into account general levels of societal violence. However in a context of massive levels of societal violence the fact that police use of force is not necessarily high *relative to societal violence* does not justify a lack of concern. Furthermore it does not imply that force, when it is used is necessarily used appropriately, effectively or justifiably.

## Section A Introduction: Sources of information on police uses of force

What indicators are there regarding the use of force by the SAPS, how reliable are they, and in so far as they may be reliable, what picture do they provide to us regarding the use of force by members of the South African Police Service? This report sets out to address these issues by examining data provided by the SAPS and ICD on the use of force by members of the South African Police Service.

#### 1. Data provided by the South African Police Service (SAPS)

The main information, which we received from the SAPS, was in the following forms:

- SAPS Standing Order 251 requires that "a full factual report" be compiled following any incident where a member "fires a weapon, allows a weapon to be fired or orders the firing of a weapon" and sets out the issues which needs to be

covered in such a report. The researchers were fortunate to be granted access to details regarding all shooting incidents recorded on the centralised SAPS data base for the years 1996, 1997 and 1998, a total of 7566 shooting incidents. As will be seen (Section B), the data was first evaluated in terms of its reliability. This evaluation indicated that data from the 15 policing areas which make up the Western Cape (4 areas), Eastern Cape (8 areas) and Free State (3 areas) demonstrated a higher degree of reliability than that from other provinces. As will be shown, the data from these three provinces also demonstrates a high degree of correspondence with ICD data on deaths as a result of police action in shooting incidents for 1998, the one full year during which the two data sets overlap. A detailed analysis of the shooting incident reports from these three provinces, comprising 4756 or 63% of the total number of incidents recorded on the SAPS data files, was therefore conducted with a view to identifying overall patterns in relation to recorded firearm usage by SAPS members.

- The SAPS also provided data relating to complaints received against SAPS members, criminal and disciplinary convictions – over the years 1994 – 1997, and civil claims – for the years 1995 – 1997. These were also used in so far as they were seen to provide indicators regarding the use of force by the SAPS.

**2. Statistics provided by the Independent Complaints Directorate (ICD)**

Since it started operating in April 1997 the ICD has been producing statistics which, in so far as they are relevant as indicators of the use of force, may be seen to fall into two categories.

- In terms of ss53(8) of the SAPS Act, the police are required to notify the ICD of all "deaths in police custody or as a result of police action". The ICD receives notification of most of the deaths which it records in this category directly from the SAPS. However, there are also cases where the ICD finds out about deaths from other sources such as reports in the press. The ICD statistics reflect "deaths in police custody" and "deaths as a result of police action" under separate headings. Deaths as a result of police action are, in general, deaths resulting from the use of force by members of the SAPS. ICD statistics on deaths as a result of police action are therefore one, and possibly the most, reliable indicator of overall levels of the use of force by the SAPS;

  The ICD also collects statistics on complaints, which it receives. Some of these relate to alleged cases of assault, assault with intent to do grievous bodily harm, or torture. However, as will be shown, there are good reasons to suspect that this information in not particularly reliable as an indicator of overall levels of any of the alleged behaviors.

**3. Other sources**

A variety of other data sources were consulted in so far as the provided useful points of reference or comparison. These included research reports and articles that have been

written relating to the use of force by the SAPS and a selection of sources from other countries, which it was thought, might provide useful comparative information.

The South African sources are listed in **Appendix 1** and compared in terms of the time periods, which they cover, their apparent reliability and other factors. As is apparent from Appendix 1, there is a significant degree of variation between these key data sources:

- They differ in terms of whether they reflect lethal uses of force, or both lethal and non-lethal uses of force (see Table 1 in Appendix 1).
- They differ in the degree to which they reflect possible uses of force in custody and non occupational violence by members of the SAPS (see Table 1 in Appendix 1).
- They differ in relation to whether they reflect uses of force involving firearms only, uses of force primarily involving firearms, or a range of uses of force including those involving firearms, other weapons, or no weapons (see Table 1 in Appendix 1).
- They reflect different time periods (see Table 2 in Appendix 1).
- They differ in the degree of comprehensiveness. Where the data is not comprehensive it appears that some data sources are more representative (as a sample of the overall phenomenon which it is suggested they represent) than are others (see Table 2 in Appendix 1).

It is apparent therefore that these different data sources are not comparable in a strict sense. However they are used in this report in an attempt to "build up a picture" of the patterns and variations in the use of force by SAPS members.

#### 4. Outline of report

Using these data sources the report therefore does the following:

- In section B we focus on evaluating our key data source – the SAPS data on shooting incidents – with a view to establishing whether any part of this data is reliable as a source of information.
- In section C we briefly discuss the ICD data on deaths as a result of police action which include both shooting and non-shooting related deaths. We then present an in depth analysis of shootings by members of the SAPS – primarily relying on data relating to shooting incidents in the Western Cape, Eastern Cape and Free State.
- In section D we look at ICD information on complaints against the police and SAPS information on complaints and charges – of a criminal or disciplinary nature – and civil claims lodged against members of the SAPS. In doing so, we evaluate two issues. The primary purpose of this section is to try and establish whether there are any sources of information, which can serve as indicators relating to uses of force by members of the SAPS, which do not involve the use of firearms. This category of use of force incidents includes fatal use of force incidents, which are not shooting related, and "lower order" uses of force – forms of the use of force that are not generally associated with deaths or serious injuries

(hereafter referred to as less-than-lethal – or LTL – force). This section also raises the issue of whether any of these indicators measure levels of "abuse" of the capacity to use force by members of the SAPS.

- In our conclusion, we make recommendations regarding maintaining reliable and accessible statistics relating to the use of force by the SAPS and focus on general issues relating to control of the use of force as well as the issue of off duty shootings by members of the SAPS.

## Section B Evaluation of key data sources

#### 1. Overall analysis of data on shooting incidents

This report relies primarily on the data provided by the SAPS relating to shooting incident reports recorded on the SAPS centralised database. The original data file covered the period 1996 to 1998 (inclusive) and contained the following fields:

- date and time of incident
- area in which incident occurred
- number of police personnel involved
- number of arrests made
- number of people wounded
- number of people killed
- name, rank, age, years of service of police personnel involved
- whether or not the person shot was the original target
- the duty status of the police personnel
- whether or not the action was legal.

The accuracy of the data is heavily dependent on whether individual police stations reported shooting incidents involving their staff and whether these were recorded by area or provincial offices on the centralised SAPS PERSAP database.

Table 1 provides the distribution of overall shooting incidents by province and compares it to the total population according to the 1996 census and murder rates in 1997 – the middle year of the three years covered by the shooting incident data.

**Table 1: Proportion of total recorded shooting incidents in each province over three years compared to proportion of national population and proportion of total number of murders in 1997**

| | No of Shooting Incidents Recorded: 1996-1998 | % of Total Recorded Shooting Incidents: 1996-1998 | % of National Population: Census '96 | Number of Murders Recorded: 1997 | % of Total Recorded Murders 1997 |
|---|---|---|---|---|---|
| Western Cape | 2039 | 27 | 10 | 3129 | 13 |
| Eastern Cape | 1587 | 21 | 15 | 4219 | 17 |
| KwaZulu-Natal | 1272 | 16 | 20 | 6200 | 25 |
| Free State | 1130 | 15 | 6 | 1285 | 5 |
| Gauteng | 741 | 10 | 18 | 5645 | 23 |
| Northern Cape | 321 | 4 | 2 | 538 | 2 |
| North West | 237 | 3 | 8 | 1351 | 5 |
| Mpumalanga | 163 | 2 | 7 | 1240 | 5 |
| Northern Prov | 4 | 0(0.05) | 12 | 981 | 4 |
| Other/Unspec | 72 | 1 | | | |
| **Total** | 7566 | 100(99) | 100(98) | 24588 | 100 |

As is indicated in Table 1, virtually 90% of the data reflects incidents recorded in 5 provinces. However:

- The proportion of the total number of shootings recorded in the Western Cape, Eastern Cape, Free State and Northern Cape are far higher than their proportions of the national population and murder rates.
- By contrast the proportions of the total number of shootings recorded in KwaZulu-Natal, North-West, Mpumalanga, Gauteng and particularly Northern-Province are significantly lower than their proportions of the total national population and murder rates.

As is indicated in Table 2 the number of recorded incidents has declined annually since 1996. This appears to be related to a dramatic decline in recording of data from shooting incidents reports on the SAPS data system.

**Table 2. Number of reported incidents, by year**

| Year | Frequency | Percent |
|---|---|---|
| 1996 | 3076 | 41% |
| 1997 | 2291 | 30% |
| 1998 | 2199 | 29% |
| Total | 7566 | 100% |

A full breakdown of the data received, by year, is reflected in Appendix 2. This indicates that

i. The three provinces Western Cape, Eastern Cape, and Free State appear to have provided a higher standard of data than other provinces. This is reflected firstly in the fact that the provinces have provided a comparable level of data in all three years and secondly by the fact that there are not dramatic variations in the data indicating a degree of consistency in recording practise in each of the areas over the time period concerned. Even Umtata in the Eastern Cape, appears to have maintained a higher degree of consistency in recording than most of the areas in other provinces. These three provinces which together hold approximately 32% of South Africa's population have accounted for 63% (4756) of the 7566 shooting incident reports recorded.

ii. With the exception of five other areas in different provinces (Umfolozi and Tugela in KwaZulu-Natal, Gordonia and Diamantveld in the Northern Cape, and Marico in the North West), all policing areas show very little consistency in terms of shooting incidents reports recorded. The Northern Cape is the one other province which has a reasonable claim to being included in the group of provinces with more reliable shooting incident data but has been excluded on the basis that 70% of its data is from one area.[1] Most of the areas of KwaZulu-Natal show dramatic fluctuations in terms of number of shooting incidents recorded. In particular, however, in Gauteng, North West and Mpumalanga very few incidents (other than in Marico) were recorded after 1996. The reason for the decline in recorded shootings is therefore primarily that the system for recording shooting incidents from these areas stopped operating with the same degree of effectiveness after 1996. In Northern Province a total of four incidents have been recorded over the entire time period.

The implication therefore appears to be that the differences in recorded shooting incidents between 1996 and 1997 and 1998 is as a result of a collapse in the system for recording shooting incidents on the SAPS database in a significant number of policing areas.

Overall then, it can be assumed that the differences in total number of shootings recorded in the different provinces over the three year period are more of a reflection of differences in recording practice than of shooting levels.

Furthermore even in 1996 it appears that the system for recording of shooting incidents left much to be desired. Thus, for instance. it would appear reasonable to ask whether the totals recorded in Gauteng in 1996 reflect the true extent of police involvement in shooting incidents in the province. Furthermore, in Northern Province, the incidents recorded in 1996 don't even reflect a tiny proportion of the total number of shootings in that province.

**2. Comparison of data from the three provinces**

The data from the three provinces Western Cape, Eastern Cape and Free State therefore appears preferable to that from the other provinces and to be more reliable for purposes of building up an overall picture of shootings by members of the SAPS during the three years in question. However closer inspection of the data from these three provinces also indicated that there a number of cases (105) were the recorded incidents were clearly duplicated. After these duplications had been removed the distribution of data from the three provinces over the 1996 – 1998 period was as reflected in tables 3, 4 and 5 below

**Table 3: Distribution of recorded shooting incidents in the Free State**

| **Free State** | **1996** | **1997** | **1998** | **N** |
|---|---|---|---|---|
| Noord-Vrystaat (Welkom) | 35% | 40% | 25% | 418 |
| Oos-Vrystaat (Bethlehem) | 30% | 40% | 30% | 289 |
| Suid-Vrystaat (Bloemfontein) | 36% | 35% | 29% | 384 |
| **All police areas FS (N)** | **368** | **419** | **304** | **1091** |
| **All police areas FS (%)** | **34%** | **38%** | **28%** | **100%** |

**Table 4: Distribution of recorded shooting incidents in the Eastern Cape**

| **Eastern Cape** | **1996** | **1997** | **1998** | **N** |
|---|---|---|---|---|
| Drakensberg (Aliwal-Noord) | 20% | 46% | 35% | 113 |
| Grahamstad | 32% | 33% | 34% | 90 |
| Karoo (Cradock) | 38% | 33% | 29% | 111 |
| Oos-Londen | 30% | 33% | 37% | 384 |

| | | | | |
|---|---|---|---|---|
| Port Elizabeth | 38% | 31% | 31% | 388 |
| Queenstown | 26% | 39% | 36% | 177 |
| Uitenhage | 31% | 33% | 36% | 177 |
| Umtata | 16% | 29% | 55% | 124 |
| **All police areas EC (N)** | **471** | **522** | **549** | **1542** |
| **All police areas EC (%)** | **471** | **522** | **549** | **1542** |

**Table 5: Distribution of recorded shooting incidents in the Western Cape**

| Western Cape | 1996 | 1997 | 1998 | N |
|---|---|---|---|---|
| Boland (Paarl) | 30% | 39% | 31% | 538 |
| Oos-Metropool (Bellville) | 34% | 32% | 34% | 765 |
| Suid-Kaap (Oudtshoorn) | 26% | 38% | 36% | 138 |
| Wes-Metropool (Kaapstad) | 32% | 37% | 31% | 577 |
| **All police areas WC (N)** | **643** | **719** | **656** | **2018** |
| **All police areas WC (%)** | **32%** | **36%** | **33%** | **100%** |

But questions must still remain about to what extent the data accurately reflect overall shooting levels and other characteristics of shooting incidents. Table 6 compares the proportion of shooting incident reports from each of the three provinces with the proportions of population and proportions of average number of murders.

**Table 6: Proportion of total recorded shooting incidents in each province over three years compared to proportion of national population and proportion of total number of murders in 1997**

| | **No of Shooting incidents recorded over three years** | **% of total recorded shooting incidents: 1996-1998** | **Population as per 1996 census ('000s)** | **% of total population in three provinces** | **Average Annual no of murders recorded: 1996-1998** | **% of murder as per total for three provinces** |
|---|---|---|---|---|---|---|
| Western | 2 018 | 43 | 3 957 | 31 | 3 129 | 36 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Cape | | | | | | |
| Eastern Cape | 1 542 | 33 | 6 303 | 49 | 4 219 | 49 |
| Free State | 1 091 | 24 | 2 634 | 20 | 1 285 | 15 |
| **Total** | 4 651 | 100 | 12 894 | 100 | 8 633 | 100 |

Most significantly, while the Western Cape and Free State both have a higher proportion of the reports relative to proportion of population, the Eastern Cape has a far lower proportion of the total number of reports (33%) relative to its proportion of the population (49%). This might mean for instance, that the Eastern Cape is a less violent place than are the other two provinces. However, the statistic on proportion of murders indicates that the Eastern Cape has a proportion of murders similar to its proportion of the population. In so far as level of violent crime is a predictor of police shootings it may therefore be the case that the Eastern Cape has a higher level of under-reporting than do other provinces.

What types of shootings are least likely to be reported? One possibility is that shootings where no-person is killed or wounded (missed/warning shot incidents) may not be recorded in shooting incident reports to the extent that shootings where a person is killed or wounded are recorded.[2] Overall the proportion of incidents where no one is killed or injured was 76% of all recorded shooting incidents in the three provinces (see Appendix 3).

**Table 7: Proportion of warning/missed shot incidents in each area**

| **Police area** | **Total number of incidents** | **Number of warning / missed shots** | **% of warning / missed shots** |
|---|---|---|---|
| Noord-Vrystaat (Welkom) | 418 | 301 | 72% |
| Oos-Vrystaat (Bethlehem) | 289 | 219 | 76% |
| Suid-Vrystaat (Bloemfontein) | 384 | 263 | 69% |
| **All areas in Free State** | **1091** | **783** | **72%** |
| | | | |

| | | | |
|---|---|---|---|
| Drakensberg (Aliwal-Noord) | 113 | 82 | 73% |
| Grahamstad | 90 | 63 | 70% |
| Karoo (Cradock) | 111 | 94 | 85% |
| Oos-Londen | 384 | 274 | 71% |
| Port Elizabeth | 388 | 315 | 81% |
| Queenstown | 155 | 82 | 53% |
| Uitenhage | 177 | 149 | 84% |
| Umtata | 124 | 27 | 22% |
| **All areas in Eastern Cape** | **1542** | **1086** | **70%** |
| | | | |
| Boland (Paarl) | 538 | 453 | 84% |
| Oos-Metropool (Bellville) | 765 | 638 | 83% |
| Suid-Kaap (Oudtshoorn) | 138 | 110 | 80% |
| Wes-Metropool (Kaapstad) | 577 | 452 | 78% |
| All areas in Western Cape | 2018 | 1653 | 82% |

As can be seen from Table 7 the area in the Western Cape with the lowest proportion of missed/warning shot incidents is the Western Metropole with 78%. By comparison none of the areas in the Free State have a proportion of missed/warning shots higher than 76%. The greatest fluctuations are in the Eastern Cape where two areas in particular (Queenstown and Umtata) have a particularly low proportion of missed shots. As a result of the influence of these areas on the overall provincial statistics the Eastern Cape records an overall lower proportion of missed/warning shots (70%) than does the Free State (72%). The Western Cape statistics are significantly higher than both of the others. It therefore appears reasonable to infer that, unless police shooters in the Umtata and Queenstown policing areas and in the Eastern Cape and Free State generally are significantly more accurate than those in the Western Cape, or that warning shots are used in a higher proportion of incidents in the Western Cape, the reasons for the

differences in proportions of missed/warning shots are to do with the likelihood that police in the Western Cape record a higher proportion of their missed/warning shot incidents than do police in the other two provinces. The inference is that the data from the Western Cape is more reliable than the data from the other two provinces in presenting an overall picture of police shootings. Furthermore, the data from the Eastern Cape may be particularly unreliable due to the influence of recording practice in the Queenstown and Umtata areas. Should we therefore exclude the data from the Eastern Cape and possibly also that from the Free State?

A further point of comparison between the two data sets is ICD data on deaths as a result of police action. As indicated, the ICD has been involved in recording deaths as a result of police action since April 1997. The only full year in relation to which the ICD's data and the data on shooting incident overlaps is therefore 1998. To what extent then is there correspondence between the two sets of data? Table 8 compares the total number of deaths recorded in the shooting incident reports with those recorded by the ICD in each province in 1998.

**Table 8: Recorded deaths as a result of police shootings in 1998**

| | **ICD – Shooting related deaths as a result of police action** | **SAPS – fatalities in shooting incidents** | **Deaths recorded by SAPS as a percentage of those recorded by ICD** |
|---|---|---|---|
| Gauteng | 117 | 1 | 1% |
| Northern Province | 20 | 0 | 0% |
| North West | 13 | 6 | 46% |
| Mpumalanga | 32 | 0 | 0% |
| KwaZulu-Natal | 110 | 60 | 55% |
| *Free State* | *28* | *29* | *104%* |
| *Eastern Cape* | *50* | *48* | *96%* |
| *Western Cape* | *39* | *36* | *92%* |
| Northern Cape | 5 | 7 | 140% |
| Total | 414 | 187 | 45% |

The data reflected in Table 8 appears to give further credibility to the supposition that the data provided from the Free State, Western Cape, and Eastern Cape is reasonably reliable, particularly with respect to shooting incidents which resulted in fatalities.[3] Furthermore Table 8 also indicates that the data from the Free State and Eastern Cape may be slightly more reliable in relation to the number of fatal incidents recorded than is the data from the Western Cape. Thus, despite the reservations earlier noted with respect to the number of missed/warning shot incidents recorded in these two provinces, it would appear to be reasonable to include them in this analysis as the data reflects a reasonable degree of reliability.

It is important not to overstate the significance of the correspondence between the data in relation to these three provinces. However it does suggest at least that fatal shooting incidents involving the police that are reported to the ICD are also likely to be recorded in shooting incident reports in these three provinces.[4]

In summary then:

- The SAPS data relating to shooting incidents appears to be reasonably reliable for the Western Cape, Eastern Cape and Free State and not, with the exception of a few policing areas, for the rest of the country.
- The data in these three provinces appears to be reliable in relation to the recording of fatal shooting incidents and therefore probably also incidents resulting in injury.
- The data may not be equally reliable for all of the three provinces in relation to the recording of "missed/warning shot" incidents. In particular it appears that the data from some areas of the Eastern Cape may be particularly unreliable in this regard.

Despite some reservations then, in what follows we use the data from these three provinces in trying to put together a picture of consistencies and variations in patterns of shootings by members of the SAPS.

## Section C Fatalities and other aspects of shooting incidents

As stated, the primary objective of this report is to attempt to clarify what indicators exist relating to the use of force by members of the SAPS and, to identify what information is provided by these indicators with regard to levels and patterns in the use of force by the police. In this section we focus on shootings by the SAPS – the primary cause of deaths as a result of police action.

### 1. Overall levels of deaths as a result of police action

Table 9 shows the total number of deaths as a result of police action recorded by the ICD in each province. The table also provides the figures for provincial populations from the 1996 national census. In the last column the rate per 100 000 relative to the population of each province is provided. There is therefore a significant degree of variation with

provinces like KwaZulu-Natal, Gauteng, the Free State, Western Cape and Mpumalanga recording noticeably higher rates of deaths than the other provinces.

**Table 9: Deaths as a result of police action over two years relative to provincial populations**

| | April '97 - March '98 | April '98 – Mar '99 | Total: April '97 – Mar '99 | % of national total number of deaths | Provincial Population ('000s) | % of national total population | Rate of deaths as a result of police action per 100 000 |
|---|---|---|---|---|---|---|---|
| Gauteng | 135 | 132 | 267 | 25 | 7 348 | 18 | 3.6 |
| N Prov | 25 | 28 | 53 | 5 | 4 928 | 12 | 1.1 |
| North W | 17 | 25 | 42 | 4 | 3 354 | 8 | 1.3 |
| Mpum | 36 | 37 | 73 | 7 | 2 800 | 7 | 2.6 |
| KwaNatal | 165 | 148 | 313 | 30 | 8 417 | 21 | 3.7 |
| Free State | 36 | 34 | 70 | 7 | 2 633 | 6 | 2.7 |
| E Cape | 47 | 66 | 113 | 11 | 6 302 | 16 | 1.8 |
| W Cape | 40 | 62 | 102 | 10 | 3 956 | 10 | 2.6 |
| N Cape | 5 | 13 | 18 | 2 | 840 | 2 | 2.1 |
| **Total** | 506 | 545 | 1 051 | 100 | 40 583 | 100 | 2.6 |

***(a) Accounting for variations in rates of deaths as a result of police action***

The rate of fatalities is potentially influenced by the nature of policies and laws, which restrict firearm use by the police and the degree of seriousness with which such policies are implemented by managers within police departments. An appropriate legislative and regulatory framework is therefore important to reducing the overall level of deaths as a result of police action in South Africa. At the same time, there appear to be other factors which apparently bear some relationship to the rate at which such deaths may occur. In addition to population size, and the crime rate (particularly of types of crime which might justify the use of lethal force by the police in effecting arrests), studies have attempted to identify other variables which may also be useful as "predictors" of variations in the rates

of the use of force by the police. The focus of such studies has often been on firearm usage by the police and specifically killings by police officers. Other factors which might in general be expected to correlate with or impact on the number of such deaths include:

- disposition of offenders towards violence against the police;
- the types of weapons used by members of the offender population;
- the number of police serving the population concerned (the police to citizen ratio);
- the overall effectiveness of the police in identifying and apprehending offenders; and
- linked to the latter, the number of arrests.

In addition to the type of factors listed here, Geller and Scott (1991) point to studies in the USA which have attempted to identify whether other combination of factors "related to levels of violence in communities explain at least some of the variation in police killings of civilians". Factors which have been analysed in this regard include income inequality, the level of food stamp and welfare receipt, measures of social cohesion (such as divorce, unemployment and suicide rates), and levels of gun density within communities. (1991, pp. 450-451) Finally other studies have suggested that political factors are also likely to have an impact on the level at which such killings occur (e.g. Chevigny, 1995; Jacobs and O'Brien, 1998).

***(b) Evaluating the number of deaths 1 – a proportion of overall homicides***

One important element in evaluating the use of police force is the proportion of the overall number of intentional homicides (i.e. both murders and justifiable homicides) committed by the police. This indicator depends on proportions, rather than actual levels of violence, and therefore reflects the level of police violence in relation to the level of violence in the societal context in which they live and work. Therefore, it can be useful when making international or domestic comparisons. However, when making such comparisons there is a need to observe a certain degree of caution particularly as practices for recording crime differ from country to country. Thus for instance:

- Practice may differ from country to country as to whether all intentional homicides are recorded in murder statistics. Thus it is not clear whether people killed by the police are recorded in national murder statistics.
- Furthermore, it appears that some studies focus strictly on fatal police shootings as a proportion of overall homicides, while other studies include non-shooting related deaths as a result of police action.

In Table 10 therefore the proportion of shooting homicides by the police is compared to overall homicide rates in the three provinces. As can be seen, the proportion of shooting homicides by the police in the Western Cape as compared to the overall number of homicides rose incrementally each year between 1996 and 1998; jumping from .797% of the overall homicides in 1996, to 1.01% in 1998. The Free State saw a higher jump between 1996 and 1997 (from 2.17% to 4.513%), but a precipitous fall from 1997 to 1998 (4.513% down to 2.49%). The Eastern Cape witnessed a slight increase between 1996 and 1997 (1.69% to 1.28%), and an almost imperceptible decrease between 1997

and 1998 (1.28% down to 1.27%). The overall numbers for the three provinces show a decrease in all three years, with a high of 1.69% in 1996 to a low of 1.33% in 1998.

**Table 10: Shooting homicides by police as a % of the total number of murders**

| Province | 1996- Total Homicides | 1996- Shooting homicides by police (% of total) | 1997- Total Homicides | 1997- Killings by police (% of total) | 1998- Total Homicides | 1998- Killings by police (% of total) |
|---|---|---|---|---|---|---|
| **Western Cape** | 3 259 | 26 (.797%) | 3 129 | 29 (0.927) | 3 534 | 36 (1.02%) |
| **Free State** | 1 339 | 28 (2.091%) | 1 285 | 54 (4.202%) | 1 162 | 29 (2.49%) |
| **Eastern Cape** | 4 212 | 41 (1.14%) | 4 219 | 57 (1.351%) | 3 769 | 48 (1.27%) |
| **Total** | 8 810 | 103 (1.69%) | 8 633 | 142 (1.64%) | 8 465 | 113 (1.33%) |

To help understand the relevance of the proportions in the three provinces, it may be useful to compare them with those seen in some American cities with relatively large numbers of killings by police, and to the Brazilian city Rio de Janeiro. In making these comparisons however, it should be noted that:

- In section 1 (see Table 8) we indicated that while there was a high degree of consistency between SAPS and ICD data there were nevertheless discrepancies between the figures for police related shootings fatalities provided by the two agencies. While the SAPS in the Free State, for instance, recorded a higher number of shooting related fatalities than did the ICD in 1998 (29 instead of 28), overall for the three provinces the ICD recorded 117 such fatalities while the SAPS recorded 113 (97% of the number recorded by the ICD). While it may be the case that both ICD statistics and SAPS statistics contain inaccuracies the possibility exists that the SAPS data underestimates the total number of police shooting related fatalities.
- Furthermore, as can be seen from Table 11, police shooting related fatalities may only account for as few as 89% of the overall number of deaths as a result of police action.[5] Potentially therefore, the SAPS data on shooting related fatalities may only represent in the region of 86% of the total number of intentional homicides connected to the police.[6]

In 1991, police in Philadelphia, Los Angeles, and Houston were responsible for less than 4% and police in Chicago and New York were responsible for less than 2% of the total number of intentional homicides. (Cano, 1997, p.33) By contrast, in 1995, in Rio de Janeiro, police shootings accounted for the death of 358 opponents, 9.3% of those killed intentionally in Rio de Janeiro that year (Cano, 1997, p.33).

The international statistics therefore suggest then that, relative to the overall murder rate the level of deaths as a result of police action in the three provinces is not necessarily particularly high. In particular:

- Even if one takes into account the fact that recorded shooting related deaths may account for roughly 86% of deaths as a result of police action the overall numbers for the three provinces remain at less than 2% of overall recorded murders. These proportions are commensurate with the 1991 figures for New York and Chicago, roughly half of those in Philadelphia, Los Angeles, and Houston in the same year, and less than one fifth of that for Rio de Janeiro in 1995.
- The Free State police recorded a relatively high proportion of the overall number of deaths in 1997 being responsible for 4.513% of the total homicides in the province. However the next year the rate dropped back below the international average seen above. For the full three year period Free State police shootings accounted for 116 deaths or 3% relative to the total number of intentional homicides (based on murder rates) in the province. If one adjusts this figure in relation to the figure of 86% of the overall number of deaths as a result of police action it increases to 3.6 % or figure comparable to some of the higher figures recorded in American cities like Los Angeles and Philadelphia.

We will therefore assume that existing statistics provide at least a rough approximation of the overall number of people killed by the police. Presuming this to be the case the above data may be seen to provide one indicator of whether or not the SAPS are responsible for a disproportionately large number of deaths. If the overall number of deaths as a result of police action recorded by the ICD during the two year period April 1997 to March 1999 (1051 deaths) is compared to the total number of murders recorded in official statistics over the 1997 and 1998 calendar years (49 463) this provides a statistic of 2.1%. If this and the statistics from the three provinces can in fact be used as a meaningful form of comparison then they indicate that the current overall rates of deaths as a result of police action are not higher than those registered in major American cities and certainly do not indicate a level of police violence comparable with that recorded in cities such as Rio de Janeiro and Sao Paulo in Brazil.[7]

However there are a number of cautions that should be borne in mind in relation to these statistics. Firstly these province wide, and nation-wide statistics are likely to conceal significant variations in levels of shooting between different localities. Thus, measured relative to murder rates or on any other basis, it is likely that there are significant variations between different areas in terms of numbers of people killed. Secondly, in relation to other variables, and particularly the number of police officers, the number of people killed by members of the SAPS is substantially higher than in a country such as

the US. Thus during the April 1997 to March 1999 period when, according to ICD statistics there were 1063 deaths as a result of police action there were on average about 132 500 SAPS members. Calculating the number of deaths per 1000 SAPS members yields a statistic of 8 deaths as a result of police action per 1000 members. By contrast if the average is calculated from figures quoted by Geller and Scott for 11 policing jurisdictions during 1990 these provide a figure of an average of 3 deaths per 1000 members with these varying between 1 per 1000 in Chicago and 7 per 1000 in San Diego, a city which at the time was recording exceptionally high rates of killings by police in comparison with other US cities (figures provided in Geller and Scott, 1992, p. 120).

Comparing South African statistics on people killed by the police relative to the overall rate of murder with statistics from other countries does not necessarily indicate that the SAPS accounts for a disproportionately high number of deaths. But this should not be taken to imply that there is not value in measures being introduced to reduce the overall level of these deaths. Thus, although comparisons with some major US cities are not unfavourable to the SAPS, the overall number of people killed by police in the US is smaller than the total number killed by the SAPS although the population is roughly seven times larger than that of South Africa.[8] In 1990 for instance, the US police killed fewer than four hundred people, a number lower than the current yearly rate for South Africa (Geller and Scott 1992 cited in Cano, 1997, p.32). However, it appears that the US figures for 1990 reflect a substantial decline in the overall number of fatalities as a result of police action in the US. Thus in the US it has proved possible to bring about substantial reductions in the number of people killed by the police. This was achieved without reducing the overall effectiveness of the police in dealing with the problem of crime. There is no apparent reason why an effort cannot be made to bring about such substantial reductions in South Africa.

**2. A projected national picture of firearm use by the SAPS**

As indicated, not all of the recorded deaths as a result of police action are the result of firearm use by the police.[9] Table 11 separates out non-firearm related and firearm related deaths using the ICD statistics for the two year period April 1997 – March 1999. A projected average number of shooting incidents per year over the 1996-1998 period is seen in the 2nd last column of table 11.[10] The projected provincial average number of shooting incidents per province was then added to get a projected annual average number of shooting incidents nationally for the three years of 6225.

**Table 11: Shooting related deaths as a result of police action recorded by the ICD used as a basis for developing a projected annual average number of shooting incidents.**

| | 24 months: non-shooting | 24 months: total deaths as a | 24 months: shooting deaths only | % shooting deaths in provinc | Average annual number of | Projected average annual number | Annual Average Recorded in SAPS |
|---|---|---|---|---|---|---|---|

| | related deaths | result of police action | | e | shooting deaths as per ICD data | of shooting incidents : 1996-1998 | data: 1996-1998 |
|---|---|---|---|---|---|---|---|
| Gauteng | 22 | 267 | 245 | 26 | 122 | 1 627 | 247 |
| N Prov | 7 | 53 | 46 | 5 | 23 | 307 | 1 |
| North W | 8 | 42 | 34 | 4 | 17 | 227 | 54 |
| Mpum | 5 | 73 | 68 | 7 | 34 | 453 | 79 |
| KwaNatal | 37 | 313 | 276 | 29 | 138 | 1 840 | 424 |
| Free State | 9 | 70 | 61 | 7 | 30 | 400 | 377 |
| E Cape | 10 | 113 | 103 | 11 | 51 | 680 | 529 |
| W Cape | 12 | 102 | 90 | 10 | 45 | 600 | 680 |
| N Cape | 4 | 18 | 14 | 1 | 7 | 93 | 107 |
| | 114 | 1 051 | 937 | 100 | 467 | 6 225 | 2 496 |

In evaluating this table it should be noted that:

- The projected annual average is less than the actual annual average reported in both the Western Cape and the Northern Cape. This is true although the Northern Cape data only appeared to reflect relatively high levels of reporting from one or two of the four policing areas in the province.
- As indicated in section 1, the data from the three provinces, particularly that from the Eastern Cape, may under-represent the total number of incidents by under-representing shooting incidents where no one is killed or injured. It is quite likely that the statistic of 75 to 1000 therefore under-represents the total number of shooting incidents.
- As will become apparent, there appear to be other significant variations in shooting patterns and trends and in the reporting of shooting incidents between for instance different policing areas, stations and even police officers. It is therefore not necessarily the case that the statistic provided here provides a reasonable reflection of the overall national shooting picture.

It would therefore appear reasonable to assume that the projected average of 6225 shootings a year is in some ways a conservative figure – to what degree, however, must at this point remain a matter for speculation.

Using the projected figure of 6225 shootings as an annual average Table 12 therefore uses a more detailed breakdown of the statistics from the three provinces during the years 1996 – 1998 (see Appendix 3) to provide a projected picture of overall annual national shootings.

The right hand column of table 12 is therefore an attempt to provide a rough overall picture of the shooting incidents in which police were involved during an average year based on ICD data relating to fatal police shootings for the period April 1997 to March 1999 and SAPS shooting incident reports for the three year period 1996- 1998. Note that:

- The projected average figure of 467 deaths per year is a figure for firearm related deaths and not the total of use of force related deaths. As indicated by table 11 shootings appear to account for roughly 89% (937 out of 1051) of "deaths as a result of police action".[11]
- Note the distinction between number of people killed (348 in the three provinces), wounded (982) and arrested (3843) and number of incidents where people were killed (301), wounded (859), and arrested (2179). Table 13 should assist with the interpretation of this information pointing out that in roughly 3% of incidents more than one person was killed or wounded.
- In a small proportion of incidents (probably less than 1%) people were both killed and wounded. There is therefore a small degree of overlap between incidents where a person is wounded and one where a person is killed. The level of overlap between incidents where a person is arrested and another killed or wounded is potentially much greater.
- The figure of 127 cases where the person who was hit was not the original target represents 3% of the total number of incidents. However it represents 12% of the total number of incidents (1071) where someone was killed or wounded.

**Table 12: Projected total national shootings and their consequences during an average year based on 1996-1998 data from the three provinces**

| Outcome of shooting incident | Data from three provinces: three years | % - relative to total incidents | Projected national total: three years | Projected national total: average year |
|---|---|---|---|---|
| No of people killed | 348 | 7.5 | 1 401 | 467 |
| No of people wounded | 982 | 21 | 3 921 | 1 307 |

| | | | | |
|---|---|---|---|---|
| No of people arrested | 3 843 | 83 | 15 500 | 5 167 |
| No of incidents where person killed | 301 | 6.5 | 1 215 | 405 |
| No of incidents where person wounded | 859 | 18 | 3 364 | 1 121 |
| No of incidents where person arrested | 2 179 | 47 | 8 778 | 2 926 |
| No of incidents where no-one killed or wounded | 3 522 | 76 | 14 193 | 4 731 |
| No of incidents where no-one arrested, killed or wounded | 2 019 | 43 | 8 030 | 2 677 |
| No of incidents where person hit was not original target | 127 | 3 | 561 | 187 |
| Total number of incidents | 4 651 | 100 | 18 675 | 6 225 |

**3. Incident where people are killed or wounded**

As indicated in Table 12 the proportion of incidents where a person is killed represents 6.5% of the total number of incidents and the proportion of incidents where a person is wounded represents 18% of the total. Table 13 gives a rough indication of the number of people killed or wounded per incident indicating that in 24% of incidents recorded in the three provinces someone was killed or wounded. Of these incidents 21% were incidents were a single person was killed or wounded while in 3% of incidents (135) more than one person was wounded or killed. Of these 135 incidents, two people were wounded or killed in 102 (2%), three people were wounded or killed in 18. Of the remaining 15 incidents, one incident is particularly notable in that an exceptionally large number of people (12) were wounded or killed.

These figures therefore indicate why the number of people killed or wounded exceeds the total number of incidents where people where killed or wounded.

**Table 13: People killed or wounded per incident**

| Number of people killed or wounded | Count | % | Cumulative Percent |
|---|---|---|---|
| 0 | 3 522 | 75.7 | 75.7 |
| 1 | 994 | 21.4 | 97.1 |
| 2 | 102 | 2.2 | 99.3 |
| 3 | 18 | 0.4 | 99.7 |
| 4 | 9 | 0.2 | 99.9 |
| 5 | 3 | 0.1 | 99.9 |
| 6 | 1 | 0 | 100 |
| 9 | 1 | 0 | 100 |
| 12 | 1 | 0 | 100 |
| **Total** | **4 651** | **100** | **100** |

***(a) Evaluating levels of deaths as a result of police action 2 – lethality index***

Another statistic, which has been used in other countries as an indicator of possible police abuses of force, is the comparison between the number of people killed by the police and the number of people they injure when shooting (see Table 14). A high kill to injury ratio would suggest the likelihood of widespread summary executions where police deliberately "take out" suspects whom they have apprehended. This ratio of persons killed to persons injured in a city is termed its lethality index.

Figures quoted by Chevigny indicate that in the United States in the 1970s and 1980s the Chicago Police Department had a .44/1 lethality index, and the New York Police Department had a .33/1 lethality index. By contrast Buenos Aires (1.5/1), Jamaica (1.9/1) (Chevigny quoted in Cano, 1997, p.34), and Rio de Janeiro (2.7/1) all possess alarmingly high indexes (Cano, ibid). These far outstrip those seen in the Western Cape, Eastern Cape, and Free State as reflected in the shooting incident reports received from the police.

**Table 14: Ratio of people killed by police shots to people injured**

| Province | # killed by police shots | # wounded by police shots | Lethality index Free State |
|---|---|---|---|
| Free State | 111 | 243 | 0.46/1 |
| Eastern Cape | 146 | 388 | 0.38/1 |
| Western Cape | 91 | 351 | 0.26/1 |
| **Total** | **348** | **982** | **0.35/1** |

The total lethality index of the three provinces between the years 1996 and 1998 is .35/1. In other words, according to the data contained in the shooting incident reports in the three provinces, roughly 25% of those who were hit by police gunfire died. This proportion resembles that seen in Chicago (31%) and New York (25%) but is far lower than the indices for Buenos Aires (60% of those hit), and Rio de Janeiro (73%). One conclusion to be drawn from this data is that while summary executions may occur they are not practiced systematically by members of the SAPS who are involved in shooting incidents.[12]

#### 4. Legality of shooting incidents

##### *(a) Overall Legality of Shooting Incidents*

Sub-section 15.5.2.8 of Standing Order 251, the Standing Order which provides for the submission of shooting incident reports, provides that the report must state whether the shooting "was legal or not". It might be expected by outsiders that the police officer responsible for producing such reports would consistently "white wash" the police involved in these incidents and exonerate them from any blame. Instead it appears that the police declare a relatively large number of these incidents to have been "not legal". As is apparent from Table 15 this appears particularly to be the case in incidents where people are killed (41%) and where the person hit (whether killed or injured) was not the original target (43%).

**Table 15: Proportion of police shootings declared legal and illegal by category of shooting in the three provinces, 1996-1998**

| | Legal | | Not legal | | Total # |
|---|---|---|---|---|---|
| **Outcome of incident** | **Count** | **%** | **Count** | **%** | |
| Fatality | 179 | 59% | 122 | 41% | 301 |
| Wounded | 669 | 78% | 190 | 22% | 859 |

| | | | | | |
|---|---|---|---|---|---|
| Someone wounded or killed | 831 | 74% | 298 | 26% | 1 129 |
| More than 1 person killed | 13 | 39% | 20 | 61% | 33 |
| Incorrect target hit | 72 | 57% | 55 | 43% | 127 |
| Someone injured or arrested | 2 189 | 90% | 252 | 10% | 2 441 |
| No-one wounded or killed | 3 175 | 90% | 347 | 10% | 3 522 |
| Arrest during incident | 2 052 | 94% | 127 | 6% | 2 179 |
| **All incidents** | **4 006** | **86%** | **645** | **14%** | **4 651** |

**NB Any incident in which at least one shooting act was classified as unjustified has been classified as not legal in this table.**

What is difficult is to evaluate the significance of the fact that a relatively high proportion of shooting incident reports, and particularly reports relating to fatal incidents, contain a finding that the shooting was not legal. After the report has been completed, particularly in incidents where a person has been killed or wounded, the report is sent through to the area or provincial headquarters of the SAPS where the report is supposed to be evaluated by members of the SAPS legal services division. Unfortunately the available data does not indicate what kind of process is involved in such an evaluation and how, for instance, members of the legal services division usually respond to the large number of reports where it is indicated that the shooting was unlawful. Therefore, where a shooting incident report indicates that a shooting was not legal, it is not clear how frequently actual disciplinary or legal steps are taken against the police officer involved.

Shooting incident reports are simply the first step in a bureaucratic process of evaluating shooting incidents and do not have the status of a legal finding. There may be at least three possible tendencies which might impact on the way in which the legality of shooting incidents is evaluated in the shooting incident report:

- The police officer might give an honest evaluation of the situation. However, unless the officer has a relatively sound understanding of the legal issues associated with the use of force, such an evaluation might not actually be legally valid.
- The police officer might not have much confidence in his/her own ability to evaluate the situation and be primarily concerned with avoiding a reprimand for inappropriately declaring an illegal shooting to be legal. He or she might tend to "err on the side of caution" particularly in relation to shooting incidents where a person has been killed by declaring such shooting to be "not legal". If a shooting incident report does not actually generally carry much weight those responsible for producing these reports may not actually be concerned with the implications of finding that the shooting is not legal and may be more concerned with

protecting themselves against a possible reprimand for exonerating a police officer for a shooting which was later judged to have been unlawful.

- The police officer might whitewash shooting incidents because he/she is concerned with his or her popularity with other officers or might have an inclination to be somewhat contemptuous of legal provisions relating to the use of force. This may mean that shooting incidents are only declared illegal in exceptional circumstances.

There is of course another possibility. The provision which requires that the report should state whether the shooting was "legal or not" also indicates that "[If doubtful, this should be specifically mentioned]". The police officer responsible for writing the report could reasonably be uncertain about whether the shooting was legal or not. This might be because of a lack of clarity about the legalities or because of insubstantial or conflicting evidence about what actually happened during the incident. It would therefore be reasonable that in a lot of cases shooting incident reports express uncertainty about the legality of incidents. However, there is no record of the uncertainty in the data on shooting incidents which we received which either records shootings as legal or not legal.

One particular issue on which there is little clarity is why such a high proportion of shootings which have fatal consequences are declared to be not legal while a relatively small proportion of shootings where no one is killed or injured are declared to be illegal. While some of these may be warning shot incidents, part of what is implied is that, in many circumstances, a shooting which would have been declared unlawful had the shooter hit the target is declared legal because the shooter missed.[13] Some may argue that it is a positive sign that shooting incidents which have more serious consequences are viewed in a more critical light. However, what is far from clear is whether the evidence at hand shows that a consistent (and preferably rigorous) standard is applied to the evaluation of shooting incidents.[14]

At base level then, we cannot be sure that variations in proportions of shootings declared to be unlawful (whether by shooting type or by other variables such as policing area) reflect different bureaucratic practices, or real differences in the legality and illegality of shootings. In particular, we suspect that if a more consistent standard was applied to the evaluation of all shooting incidents there would be a higher level of consistency between the proportion of shootings in all categories which are declared to be not legal. Whether this would mean that fewer fatal shootings, or more shootings in which there were no deaths or injuries, would be judged to be not legal is impossible for us to ascertain.

Without a more in depth insight into the significance of these judgments on the legality of shooting incidents the best option may be to take these judgments at face value as an indicator of the opinion of the officer charged with investigating the shooting incidents.[15]

***(b) Incidents involving fatalities and woundings***

One of the more alarming statistics in Table 15 is the legality of shooting incidents which resulted in a fatality. Only 59% of all shooting fatalities between 1996 and 1998 were declared to have been legal shootings. If the finding in the shooting incident report

reflects a serious belief on the part of the officer charged with investigating the incident that the shooting is lawful or unlawful then this suggests that the police have engaged in haphazard, dangerous shooting. Table 16 provides a breakdown of each province individually. A more complete breakdown by area (see Appendix 4) shows even more dramatic variations with the East Metropole having found 12% of fatal incidents (4) to have not been justified while areas in the Eastern Cape found up to 57% (13 fatal incidents in Queenstown) and 78% (7 fatal incidents in Uitenhage) to have been unlawful.

**Table 16: Proportion of fatal incidents declared legal and illegal by province**

| | Justified | | Not justified | | Total # |
|---|---|---|---|---|---|
| **Province** | **Count** | **%** | **Count** | **%** | |
| Free State | 52 | 55% | 42 | 45% | 94 |
| Eastern Cape | 62 | 50% | 63 | 50% | 125 |
| Western Cape | 65 | 79% | 17 | 21% | 82 |
| **All** | **179** | **59%** | **122** | **41%** | **301** |

As seen in Table 15, a far higher proportion of incidents in which someone was wounded are found to have been legal than is the case in incidents involving a fatality. The average rate at which incidents in which a person was wounded were found to have been legal was 78% for the three provinces. Nevertheless some area statistics do stand out. In the Southern Free State, of a total of 78 incidents where people were wounded over the course of three years, 33 of those incidents (42%) were categorized as illegal by the police. Both Grahamstown (50%) and Karoo (57%) have high rates of illegal wounding too, although each region reported fewer than twenty-one incidents.

The proportion of all shooting incidents in which someone was wounded or killed which were found to have been legal or illegal is seen in Table 17. The three province total of legal shootings that wounded or killed someone stands at 74% of all such shootings. In the Western Cape, 88% of these shootings were legal, while in the Eastern Cape and the Free State the percentage was below 70%.

**Table 17: Proportion of incidents where someone was wounded or killed declared legal and illegal by province**

| | Justified | | Not justified | | Total # |
|---|---|---|---|---|---|
| **Province** | **Count** | **%** | **Count** | **%** | |
| Free State | 208 | 68% | 100 | 33% | 308 |

| | | | | | |
|---|---|---|---|---|---|
| Eastern Cape | 301 | 66% | 155 | 34% | 456 |
| Western Cape | 322 | 88% | 43 | 12% | 365 |
| **All** | **831** | **74%** | **298** | **26%** | **1 129** |

According to the shooting incident reports therefore in more than one quarter (27%) of the incidents where someone is injured or killed and substantially more than a third of incidents where someone is killed (41%) the shootings were judged not to be lawful. Particularly in the Free State and Eastern Cape even higher proportions of shootings where a person is killed or injured are declared to be not legal.

As seen in Table 15 in 42% of the cases where the police hit a person who was not the original target the action was judged to be legal.[16] The proportion of these cases which were judged not to be legal therefore resembles the proportion of cases where a person was killed which were judged not to be legal. While cases where the incorrect target was hit do not necessarily point to unlawful police conduct – the shooting could be a reasonable mistake – one would perhaps expect a higher proportion of these shootings to be judged to be illegal. Of all the shooting incidents between 1996 and 1998, one hundred and twenty seven (3%) hit an incorrect target. These represent 11% of incidents were someone was killed or wounded.

These statistics therefore provide cause for serious concern. In a large number of incidents where a person is killed or injured the shooting is not at face value legally justified. If what the numbers say is to be believed, then there is a widespread pattern of unjustifiable gunfire in circumstances where this causes a death or injury.

As we will show however, the data relating to the legality of fatal shootings becomes even more disturbing in relation to shootings involving off-duty police officers.

#### 5. Off-duty shootings

The data in Table 18 is a sobering reflection on the state of off-duty policing.[17] Although off-duty police officers participated in 16% of all recorded incidents, they accounted for 23% of all incidents where someone was wounded, 35% of all incidents where the incorrect target was hit, and a staggering 42% of all fatalities. According to the data reflected in Table 15 when they discharged their guns, off-duty police officers were twice as likely as their on-duty counterparts to wound or kill someone, three times as likely to hit the wrong target, and almost four times as likely to kill someone.[18]

**Table 18: Involvement of on and off duty officers in incidents with incorrect target hits, woundings and killings**

| | All | Incorrect target | Wounding | Fatality |
|---|---|---|---|---|

| | incidents | | hit | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Status** | **Count** | **%** | **Count** | **%** | **Count** | **%** | **Count** | **%** |
| On duty | 3 888 | 84 | 82 | 65% | 659 | 77% | 174 | 58% |
| Off duty | 763 | 16 | 45 | 35% | 200 | 23% | 127 | 42% |
| **Total** | **4 651** | **100** | **127** | **100%** | **859** | **100%** | **301** | **100%** |

As seen in Table 19, while only involved in 16% of the total number of shooting incidents, off duty police accounted for 42% of incidents in which fatalities where involved. These statistics are particularly pronounced in the Free State where off-duty police officers were involved in 28% of all shootings incidents but accounted for 51% of all fatal incidents and in the Eastern Cape, where off duty police accounted for 18% of shooting incidents but 46% of all fatal incidents in the province. In the Western Cape, although off-duty police officers were involved in only 9% of all shooting incident, they were accountable for 27% of the shooting fatalities.

**Table 19: Provincial Breakdown of on/off duty police incidents involving a fatality**

| | | All incidents | | Fatal incidents | | |
|---|---|---|---|---|---|---|
| **Province** | **Status** | **Count** | **%** | **Count** | **% of fatal incidents** | **% of all incidents** |
| Free State | On duty | 784 | 72% | 46 | 49% | 6% |
| | Off duty | 307 | 28% | 48 | 51% | 16% |
| Eastern Cape | On duty | 1 271 | 82% | 68 | 54% | 5% |
| | Off duty | 271 | 18% | 57 | 46% | 21% |
| Western Cape | On duty | 1 833 | 91% | 60 | 73% | 3% |
| | Off duty | 185 | 9% | 22 | 27% | 12% |
| **Total** | **On** | **3 888** | **84%** | **174** | **58%** | **5%** |

| | | | | | | |
|---|---|---|---|---|---|---|
| | **duty** | | | | | |
| | **Off duty** | **763** | **16%** | **127** | **42%** | **17%** |
| | **All** | **4 651** | **100%** | **301** | **100%** | **7%** |

What is most disturbing about the data relating to off-duty shooting is the high contribution which these shootings make to the overall level of fatalities with 127 out of the total of 301 fatal incidents having involved off-duty police officers. Of these incidents 57 were in the Eastern Cape, 48 were in the Free State and 22 in the Western Cape.

While 17% of the recorded incidents involving off duty police resulted in a fatality, in the Eastern Cape 21% (one in five) of these incidents were fatal. Potentially, one reason for such a high fatality rate is that a smaller proportion of the non-fatal incidents involving off-duty police officers are recorded in the shooting incident data.

In all likelihood, off-duty police officers discharge their guns more frequently than is seen in the data here. It is however, also possible that the circumstances in which off-duty police officers use their guns might tend to be quite different from the circumstances in which police use their guns while on duty. For instance, if it were the case that off-duty shootings tended to happen at closer range than the average on duty shooting, or warning shots tended to be less of a feature of off duty shootings, then this might also contribute to there being a lower proportion of missed/warning shots recorded for off duty shootings.

Overall, roughly 28% of the time that a police officer from the three provinces was involved in an incident where someone was injured or killed he was off-duty. When the three South African provinces are broken down individually, it becomes clear that there is a real discrepancy in patterns. In the Western Cape in 14% (52 out of 365) of the incidents when someone was shot and killed or injured by a policeman, that policeman was off-duty. This number rises to 30% (135 out of 456 incidents) when in the Eastern Cape, and escalates to 42% (128 out of 308 incidents) in the Free State. In a disturbing 34% of the incidents where more than one person was killed or wounded in an incident (46 out of 135 incidents) the police officer was off-duty.

One point of comparison is a study of on- and off-duty shootings in Michigan state between 1976-1981, where off-duty police officers contributed to 17% of incidents where persons were killed or wounded (Horvath, 1987, p. 231). By comparison with these data it seems that the proportion of off-duty shootings involving a fatality or injury in the three provinces – and potentially throughout South Africa - is relatively high. Several factors might be relevant to understanding the issue:

First, members of the SAPS (like the police in many other countries) are expected to place themselves on duty in certain situations even when they are off-duty. As far as we

are aware the exact nature of the obligation of a police officer to "place himself on duty" is not clearly defined anywhere. What exists is a general expectation, backed up by the potential for reprimand or discipline, that police officers will do so particularly where they are faced with a situation of a more serious crime in progress. It is not known, for instance, to what extent training deals with the potential dynamics of a situation which a police officer might encounter while off duty but our impression is that the issue is not covered in police training. While police officers may deal with some such situations relatively effectively this is not necessarily generally the case. As noted by Geller and Scott,

"Police officers traditionally have considered their responsibility for off-duty action to include aggressive intervention (termination of crimes and arrest of suspects) and not just careful observation and notification of on-duty police. The arming of off-duty police, a practice which has been severely criticised by some commentators … facilitates such aggressive action. But police frequently are at a tactical disadvantage while off duty, being out of radio communication with other officers and usually not having the opportunity to plan a course of action as they travel to a suspected crime scene … . [O]ff–duty officers who happen to be socialising in a tavern when armed robbers enter may be in no condition to outdraw the holdup men, yet the presumed imperative to take police action may prompt an ill-advised confrontation.

Geller and Scott go on to note that off-duty police officers who are out of uniform do not possess the same legitimacy to intervene that on-duty officers have. An attempt to interfere in a situation may often be perceived as aggression, and therefore received with more resistance.

A further possible explanation for the high rate of off-duty shootings is that police officers may live in high crime neighborhoods themselves, and therefore be exposed to situations where the use of force appears to be necessary when off-duty. Thus, disproportionate off-duty lethality might also be explained by the mere chance that off-duty police officers in these areas are frequently found in situations which require them to shoot and kill.

Therefore there may be legitimate reasons for off-duty shootings. In fact, the overall proportion of incidents where a person is injured or killed which occur off-duty (28%) is only slightly higher than that in some US cities. According to sources cited by Geller and Scott, studies conducted in a number of major American cities indicate the proportion of civilians shot by off-duty officers has tended to lie somewhere between 17% and 26% (Geller and Scott, 1991, p. 460).

The proportion of persons who are shot by off-duty officers in the US is regarded by some observers as quite large and is therefore not necessarily cause for complacency. Furthermore the proportion of fatal incidents which occur off-duty (43%) is a particular cause for concern as becomes even more apparent in relation to data on the legality of off-duty shootings.

As is apparent from Table 15 and again in Table 20, 41% of the 301 fatal incidents were judged to have been unlawful. However, as is also reflected in Table 20, the picture changes dramatically when these fatal incidents are evaluated according to whether they happened on or off-duty. Altogether, 15% of fatal incidents which occurred while the police officer was on-duty were judged to be legal, while 76% of fatal off-duty incidents were judged to be illegal.

**Table 20: Proportions (%) of on and off duty fatal incidents declared not legal in the three provinces**

| | All fatal incidents | | | On duty | | | Off duty | | |
|---|---|---|---|---|---|---|---|---|---|
| **Province** | **# fatal incidents** | **# fatal incidents illegal** | **% fatal incidents illegal** | **# fatal incidents** | **# fatal incidents illegal** | **% fatal incidents illegal** | **# fatal incidents** | **# fatal incidents illegal** | **% fatal incidents illegal** |
| Free State | 94 | 42 | 45% | 46 | 5 | 11% | 48 | 37 | 77% |
| Eastern Cape | 125 | 63 | 50% | 68 | 16 | 24% | 57 | 47 | 82% |
| Western Cape | 82 | 17 | 21% | 60 | 5 | 8% | 22 | 12 | 55% |
| **All** | **301** | **122** | **41%** | **174** | **26** | **15%** | **127** | **96** | **76%** |

Table 20 therefore shows the major differences between proportions of on and off- duty fatal incidents which were declared not legal. The overall figure of 76% of off- duty fatal shootings which are declared to be not lawful in the shooting incident reports amounts to persuasive evidence that there is a most serious problem relating to off-duty firearm usage by police officers.

- Most striking is the Eastern Cape which reflects the highest overall number of fatalities, the highest proportion of on-duty fatalities declared illegal (24%) and an exceptionally high proportion (82%) of off-duty shootings declared to be illegal.
- The Free State similarly records an exceptionally high proportion of off-duty fatal incidents (77%) as unlawful. The proportion of on-duty fatal incidents declared unlawful (11%) is comparable to the low number in the Western Cape.
- In the Western Cape the proportion of off-duty fatal incidents declared unlawful (55%) is low by comparison with other provinces. Nevertheless even a figure of 55% should still be seen as providing room for concern. Effectively even in the

Western Cape a high proportion of fatal firearm usage off-duty was judged by fellow police officers to be prima facie unlawful.

While there is a need for further examination of this issue it would appear that this evidence doesn't support the contention that, fatal off-duty incidents primarily occur as a result of police officers being faced with situations where they are compelled to act in defence of their own lives. The statistics here would appear to suggest that the high number of off-duty fatalities is not a by-product of attacks on police officers as, we presume, officers compiling shooting incident reports would not judge pure defence of life shootings to be unlawful.

We are not in a position to evaluate to what extend off-duty incidents which are illegal might not be recorded in shooting incident reports. However, it appears unlikely that the shooting incident reports exaggerate the picture with respect to off- duty shootings – though we have expressed some reservations about interpreting the exact significance of this component of the reports. Later on we will report on information from the SAPS that during the years 1994 to 1997 an average of 223 police officers were charged and 40 convicted of murder each year. However, we have no way of knowing to what extent these charges relate to the incidents of shooting – on and off-duty – which are deemed not legal by the officer charged with investigating the incidents. Nevertheless it would appear that the data on off-duty shootings could in some ways be seen as the SAPS' own indictment on a large proportion of shootings by off-duty police officers.

***(a) Involvement of police reservists in shooting incidents***

Altogether for the 4651 incidents recorded reservists were indicated as having been involved in 349 (8%) of them while in 4302 (92%) there were no reservists. However it should be noted that the proportion of incidents involving reservists varies quite substantially by station. Thus for instance a police station like Maitland which recorded a total of 72 shooting incidents recorded only one as involving a reservist. On the other hand of the roughly 70 stations recording more than 20 shootings 10 record at least 20% of these shooting incidents as having involved reservists. Particularly notable are Ravensmead (43%), Kensington (38%) and Wellington (32%) in the Western Cape and Bethelsdorp in the Eastern Cape (37%).[19]

**Table 21: Involvement of reservists in incidents where incorrect target hit**

| | **Incorrect target hit occurred during incident** | | | |
|---|---|---|---|---|
| | **No reservists involved** | | **Incident involved at least 1 reservist** | |
| **Province** | **Count** | **%** | **Count** | **%** |
| Free State | 18 | 2% | 4 | 8% |
| Eastern Cape | 54 | 4% | 4 | 6% |

| | | | | |
|---|---|---|---|---|
| Western Cape | 39 | 2% | 8 | 4% |
| **All** | **111** | **3%** | **16** | **5%** |

As seen in Table 21in 5% (4.6%) of incidents in which reservists' were involved the incorrect target was hit. This percentage is almost twice the rate for incidents in which reservists were not involved where the wrong target was hit in 5% (4.6%) of cases. In particular reservists in the Free State were particularly poor shots, as they hit the wrong target 8% of the time they discharged their weapons. For shooting incidents in the three provinces overall (excluding Reservists) the wrong target was hit in roughly one in eight incidents where a person was injured or killed. The reservists' rate was even worse, as the wrong target was hit in roughly one out of every five incidents where a person was injured or killed.

**Table 22: Involvement of reservists in incidents with fatalities, by province**

| | **Fatality occurred during incident** | | | |
|---|---|---|---|---|
| | **No reservists involved** | | **Incident involved at least 1 reservist** | |
| **Province** | **Count** | **%** | **Count** | **%** |
| Free State | 92 | 9% | 2 | 4% |
| Eastern Cape | 120 | 8% | 5 | 7% |
| Western Cape | 76 | 4% | 6 | 3% |
| **All** | **288** | **7%** | **13** | **4%** |

**Table 23: Involvement of reservists in incidents with woundings, by province**

| | **Wounding occurred during incident** | | | |
|---|---|---|---|---|
| | **No reservists involved** | | **Incident involved at least 1 reservist** | |
| **Province** | **Count** | **%** | **Count** | **%** |
| Free State | 205 | 20% | 16 | 33% |
| Eastern Cape | 327 | 22% | 17 | 24% |
| Western Cape | 256 | 14% | 38 | 17% |
| **All** | **788** | **18%** | **71** | **20%** |

**Table 24: Involvement of reservists in incidents with killings and/or woundings, by province**

| | Killing and / or wounding occurred during incident | | | |
|---|---|---|---|---|
| | No reservists involved | | Incident involved at least 1 reservist | |
| **Province** | **Count** | **%** | **Count** | **%** |
| Free State | 290 | 28% | 18 | 38% |
| Eastern Cape | 434 | 30% | 22 | 31% |
| Western Cape | 323 | 18% | 42 | 18% |
| **All** | **1 047** | **24%** | **82** | **24%** |

Table 22 on the other hand demonstrates that while reservists were relatively frequently involved in incidents where the wrong target was hit the incidents in which they were involved did not result in fatalities as often as those where they were not involved.

However, as is suggested by Table 23 people were only slightly more likely to be wounded in incidents involving reservist than in incidents in which reservists are no involved. As is shown in Table 24 the fact that they are less likely to be involved in incidents involving fatalities and slightly more likely to be involved in incidents where people are wounded means that, when looking at incidents where people are killed or wounded, reservists are as likely to be involved in these ordinary members of the police service.

In incidents in which reservists are involved the wrong target is likely to be hit more frequently than in incidents where they are not involved. While people are more likely to be injured than killed in these incidents overall it would appear that greater care needs to be taken to ensure that reservists are properly trained in the use of firearms.

**6. Other general characteristics of shooting incidents**

***(a) Missed/warning shot incidents***

Over the three year period between 1996-1998, there was a total of 4651 shooting incidents among the three provinces. In 3522 (76%) of incidents no-one was wounded while, as indicated above in Table 13 in 1129 (24%) incidents someone was wounded or killed. In roughly 24% (1129) of those incidents, someone was wounded or killed. However it is not clear from the data regarding the 76% of incidents in which no one was killed or injured, in what proportion of these incidents no attempt was made to hit a person – i.e. presumably the only shots fired were warning shots – and in what proportion the shots were intended to hit a person but missed.[20]

**Table 25: "Hit rates" recorded in a variety of US jurisdictions**

| Police department city, or state, time period and number of incidents | Proportion of shots which hit civilians |
|---|---|
| Michigan State: Five years to end August '81 - sample of 1585 incidents where shots were discharged | 13% involved warning shots, 60% were shots that missed and 27% either wounded or killed the person fired at i.e. in 60 out of 87 incidents (69%) where a person was fired at the shots missed. |
| Los Angeles Police Department: 1980 – 1988 | 28% of incidents resulted in either death or wounding |
| New York Police Department: 1987 - 223 firearm discharge incidents | 26% resulted in either death or wounding |
| New York Police Department: 1988 - 245 firearm discharge incidents | 31% resulted in either death or wounding |
| Chicago: 1974 – 1978 | 18% resulted in either death or wounding |
| New York City: 1971-1975 | 31% resulted in either death or wounding |

*(Sources: Horvath (1987); others cited in Geller and Scott, 1991, p. 450)*

By contrast Table 25 records data from a number of US jurisdictions cited by Geller and Scott indicating that in the places referred to "missed shots" accounted for between 69% and 82% of overall shooting incidents. Only in one of these localities did the statistics distinguish between missed and warning shots. In section 1 we suggested that the overall number of missed/warning shot incidents might be under-represented in the data which we have. In the Western Cape particularly the proportion of missed/warning shot incidents was 82%. However even if this is a more accurate reflection of the overall rate of missed/warning shots the figure still is comparable to that recorded in at least one of the American jurisdictions (Chicago recorded a hit rate of 18% in the years 1974- 1978).

Taking into account Geller and Scott's caution against comparing hit rates across either cities or studies it nevertheless appears that SAPS rates may be similar to those seen in American cities.

***(b) Overall number of shooting incidents***

What is perhaps of greater concern is the overall number of shootings involving SAPS members. Geller and Scott indicate for instance that in 1987 the New York Police,

responsible for policing a city of 7 million people, were involved in 223 firearm discharge incidents. In the Western Cape by contrast, a province of 4 million people, the police were involved in an average of 680 incidents each year between 1996 and 1998.[21]

***(c) Time of Day***

As seen in Table 26, 50% of all shootings took place in the 8 hour period between 8:00pm-4:00am and two thirds (67%) took place in the 12 hour period from 4pm – 4 am. Within the 8:00pm-8:00am time frame, there was however a rise in the percentage of shots which neither injured nor killed someone and a relative decline in the number of fatalities. Between 8:01pm-12:00am, 76% of the shooting incidents resulted in no one being hit and between 12:01am-4:00am, 81% of the shooting incidents resulted in no one being hit (between 4 am and 8 am. the proportion returns to 75%). This relative decline might be due to the fact that shooting accurately at nighttime is more difficult. It could also be that for unknown reasons warning shots are used more at night or otherwise that officers were more willing to shoot during the night, even if the chance of hitting the proper target was slim, because there may have been less people around who might be injured, and less of a chance that a civilian would witness any unjustified gunfire.

**Table 26: Time of day in which shooting incidents occur**

| | Total # and % of shooting incidents | | Proportion of incidents with no wounding or killings | Proportion of incidents involving fatalities | Number and proportion of total fatalities | |
|---|---|---|---|---|---|---|
| **Time of day** | **Count** | **%** | **%** | **%** | **Count** | **%** |
| 4:01am - 8:00am | 427 | 9 | 75% | 8% | 48 | 14% |
| 8:01am - 12:00pm | 529 | 11 | 72% | 7% | 45 | 13% |
| 12:01pm - 4:00pm | 599 | 13 | 74% | 6% | 43 | 12% |
| 4:01pm - 8:00pm | 810 | 17 | 72% | 7% | 65 | 19% |
| 8:01pm - 12:00am | 1 183 | 26 | 76% | 6% | 79 | 23% |
| 12:01 - 4:00am | 1 100 | 24 | 81% | 6% | 68 | 20% |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Total** | **4 648** | **100** | **76%** | **7%** | **348** | **100%** |

**7. Characteristics of police shooters**

***(a) Number of officers involved in incidents***

Table 27 provides a general profile of the number of police officers involved in shooting incidents, indicating that 95% of incidents involve one or two police officers. However while 81% of incidents involved one officer, this may be taken to indicate that during most of the incidents in question only one police officer discharged his firearm and not that the officer was necessarily unaccompanied.

**Table 27: Number of Officers Involved In Incidents**

| | Number of officers involved in incidents | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 officer | | 2 officers | | 3 officers | | 4 officers | | 5 officers | | 6 or more officers | | Total |
| **Province** | **Count** | **%** | **Count** | **%** | **Count** | **%** | **Count** | **%** | **Count** | **%** | **Count** | **%** | |
| Free State | 937 | 86% | 111 | 10% | 22 | 2% | 12 | 1% | 3 | 0% | 6 | 1% | 1 091 |
| Eastern Cape | 1 246 | 81% | 211 | 14% | 54 | 4% | 13 | 1% | 10 | 1% | 8 | 1% | 1 542 |
| Western Cape | 1 560 | 77% | 341 | 17% | 66 | 3% | 25 | 1% | 15 | 1% | 11 | 1% | 2 018 |
| **All** | **3 743** | **81%** | **663** | **14%** | **142** | **3%** | **50** | **1%** | **28** | **1%** | **25** | **1%** | **4 651** |

***(b) Age and experience***

According to the shooting incident data reflected in Table 24 the average age and experience of all officers involved in shootings in each of the three provinces rose steadily from 1996 -1998. This is probably attributable to fact that a moratorium was placed on recruitment during 1996 and 1997 with the first new group of recruits since 1995 only being inducted into the SAPS in late 1998. Therefore it is understandable that the average age and experience of shooters rose accordingly.

**Table 28: Average Age of officers involved in shooting incidents**

| **Province** | **Average** | **1996** | **1997** | **1998** | **Total** |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| **Western Cape** | **Average Age** | 27 | 29 | 30 | 29 |
| | **Average Experience** | 7 | 8 | 9 | 8 |
| **Eastern Cape** | **Average Age** | 29 | 31 | 31 | 30 |
| | **Average Experience** | 7 | 8 | 9 | 8 |
| **Free State** | **Average Age** | 29 | 30 | 31 | 30 |
| | **Average Experience** | 7 | 8 | 9 | 8 |

***(c) Rank***

The number of SAPS members declined quite dramatically during the 1996 to 1998 period from 141 000 in 1996 to 127 000. Of the total number in the SAPS in 1998 roughly 59 800 were said to be involved in the visible policing component and a further 21 000 involved in detective units (Nel and Conradie, 1998, p. 6).[22]

As indicated in Table 29, Constables account for a proportion of the total number of shooting incidents (36%) which is greater than the proportion of the entire SAPS visible policing component. Sergeants constitute 60% of the visible policing component but account for 50% of all incidents while Inspectors were involved in a proportion of shooting incidents also slightly less than their overall representation in the visible policing component. However it is possible that constables are more often involved in police work of a type which carries the risk of involvement in shooting incidents. Without clearer information about the deployment of police officers it is not clear what the significance of this information is.

***Table 29: Rank of police officers who discharged their gun in shootings incidents***[23]

| **Rank (Total)** | **% of visible policing component** | **% of total incidents in which involved** |
|---|---|---|
| Constable (12,964) | 22 | 36 |
| Sergeants (35,720) | 60 | 50 |
| Inspector (7,768) | 13 | 11 |
| Other rank (3306) | 5 | 3 |

| | | |
|---|---|---|
| **All ranks (59 758)** | **100** | **100** |

***(d) Police officers involved in a large number of shooting incidents***

The data carries the names of 4253 police offices. Table 30 indicates that 78% of these police officers are recorded as having been involved in only one incident in the three year period. Another 19 % were involved in 2 or 3 incidents. The remainder were involved in 4 or more incidents.

***Table 30: Number of incidents per officer***[24]

| Number of incidents | Number of officers | % |
|---|---|---|
| 1 | 3 508 | 78% |
| 2 | 700 | 15% |
| 3 | 185 | 4% |
| 4 | 70 | 2% |
| 5 | 29 | 1% |
| 6 | 13 | 0% |
| 7 | 9 | 0% |
| 8 | 2 | 0% |
| 9 | 5 | 0% |
| 10+ | 2 | 0% |
| **Total** | **4 523** | **100%** |

Adams notes that the Christopher Commission "documented that a small group of Los Angeles police officers used force with above average frequency." However the interpretation of findings such as these needs to be undertaken with caution as work styles and assignments may account for such frequencies.

Some officers are more active in their crime control efforts, and self-initiated officer activities are more likely to arouse resentment and resistance amongst citizens; some officers are assigned regularly to high risk areas where the proportion of violence-prone offenders is higher. However, when its findings were corroborated by a variety of

indicators the commission concluded that officers who use force recurrently are a good place to start looking for officers who use excessive force. (1996, p. 56)

Following this analysis it may be that the group of police members whose names appear more frequently in the data may include some who are prone to using excessive force.

**Section D Indicators regarding other uses of force**

While there are significant limitations, particularly in coverage of some of South Africa's major provinces it appears the shooting incident reports may have given us some idea of the profile of firearm usage by members of the SAPS. There are at least two other aspects of the use of force on which it appears that the information is far less substantial:

- As indicated above, (see Table 8) 114 (11% of the total of 1051 deaths, an average of 57 per year) of the deaths as a result of police action recorded by the ICD between April 1997 and March 1999 were recorded as not being related to shootings by SAPS members. Therefore, one major question concerns these deaths and the circumstances in which they occurred.
- Secondly, the use of firearms is generally understood to represent the severest "end" of a "continuum of force." In general, it can be assumed that the members of police services will use force far more frequently than they use their firearms (though we should not assume that the use of force is an everyday occurrence for the average police officer). Forms of the use of force which do not generally cause serious injury or death (unless abused) can be referred to as "less-than-lethal" (or LTL) force. While LTL force is not as serious in terms of its consequences, it can nevertheless be abused. The fact that LTL force does not have such serious consequences may be a reason why it is likely to be abused even more than firearms and other forms of lethal force are abused. Therefore a question arises as to whether there are ways of monitoring LTL force and with a view to better controlling it, and discouraging abuses of it.

What other indicators might there be relating to the use of force by the police and to what extent do these assist in developing a profile of uses of force, whether fatal or less than lethal, which do not involve the use of firearms? It would appear that the only consistent sources of such information might be information relating to complaints, charges and claims lodged against the police. In this sub-section three potential sources of such information are examined.

Two problems immediately become apparent in evaluating such information. The first question concerns what categories of complaints, charges, or claims against members of the police service can be seen to be representative of the use of force. In the rest of this section the categories of offence or claim which have been selected generally involve some form of violence or force. The focus will be primarily on offence categories such as murder, culpable homicide, attempted murder and assault with intent to do grievous bodily harm (assault GBH) and common assault as well as firearm related offences. The reason for focusing on these offences is that a police officer, in the ordinary and lawful

performance of his or her duties, may find him or her self being accused of misconduct relating to one of these categories as a result of a use of force which might have exceeded the bounds of what was necessary but which also may have not. Thus, for instance, according to Maguire and Corbett, police forces in England and Wales (excluding London) recorded a total of 22 439 complaints in 1989. Of these roughly 6280 (28%) were complaints of assault. In discussing a sample of 264 dockets which they analysed, Maguire and Corbett go on to state that,

Most complaints of assault by police officers are arrest-related: 87 (33%) of the 264 cases included a complaint of assault, and in 79 of these the alleged police violence either followed or preceded the arrest … . The victims of the alleged assaults were predominantly males under the age of 30, and three-quarters had at least one conviction. Nearly all the complainants asserted that they had been assaulted at the scene of the arrest – predominantly in the street. (1991, pp. 43-44)

The problem of police brutality is partly a problem of "overzealous" police who abuse their power to use force in fulfillment of their ordinary occupational role. In other words a police officer may abuse his or her capacity to use force – use excessive force - while believing that s/he is trying to fulfil his or her occupational responsibilities. The problem of excessive force is therefore a general problem associated with the police capacity to use force.

Statistics relating to police involvement in other forms of violent criminality such as robbery or rape are arguably not possible indicators of "excessive force". This is not to say that, certain such activities are not carried out during the course of police duties. A police officer may, for instance, rob someone or rape someone who has been arrested. A police officer who rapes a prostitute, or someone else who has been arrested, may even rationalise his criminal behaviour in terms of his occupational role – for instance by seeing it as a form of punishment. Therefore the distinction between these forms of police criminality and criminal excessive force is not watertight. However this report has restricted itself to a focus on forms of criminality which relate more directly to the problem of excessive force and therefore relate specifically to the issue of the use of force.

This then links to the second problem: Even if we identify a list of offences which may potentially be linked to the use of force, as we will see, (with the partial exception of civil claims) existing data does not indicate to what extent the alleged illegal acts which are recorded were performed in an occupational role. An assault complaint recorded against an SAPS member may be an allegation of an unlawful assault committed during an arrest or may relate, for instance, to a bar fight or domestic incident which he had been involved in. Therefore allegations of criminality involving violence are not necessarily linked to the occupational role and may relate to actions which are not related to the police function.

**1. Complaints submitted to the ICD**

One potential source of information relating to such non-lethal force would appear to be the ICD which receives complaints relating to alleged crimes and misconduct involving members of the SAPS. Table 31 provides a breakdown of complaints received by the ICD over the two-year period April 1997-March 1998 in selected categories relating to uses of force by the police.

**Table 31: Selected ICD statistics relating to police conduct involving use of abuse of force as proportion of total cases recorded by ICD over two years**

| Complaint category | April '97 – March '98 | April '98 – March '99 | Combined total: April 1997 – March 1999 | % of all complaints/cases recorded |
|---|---|---|---|---|
| Death as a result of police action: shooting related | 451 | 486 | 937 | 20 |
| Deaths as a result of police action: non-shooting related | 55 | 59 | 114 | 2 |
| **Sub-total: Deaths as a result of police action** | **506** | **545** | **1 051** | **22** |
| Attempted murder and assault with intent to do grievous bodily harm | 157 | 311 | 468 | 10 |
| Torture | 68 | 60 | 128 | 3 |
| Assault common | 71 | 69 | 140 | 3 |
| **Sub-total: complaints relating to non-lethal violence/force** | **296** | **440** | **736** | **16** |
| **Total: Cases Relating to Lethal or Non- Lethal Violence or Force** | **802** | **985** | **1 787** | **38** |

| | | | | |
|---|---|---|---|---|
| Deaths in police custody | 219 | 189 | 408 | 9 |
| Complaint categories not listed above | 948 | 1 565 | 2 513 | 53 |
| **Total: All Cases Recorded by the ICD** | **1 969** | **2 739** | **4 708** | **100** |

In summary over the two year period ending March 1999 38 % of the cases recorded by the ICD related to alleged uses of force or criminal violence by members of the SAPS. However even if we assume that ICD statistics provide a fairly accurate picture of fatal uses of force by the police, the same cannot be said for non-fatal uses of force by the police. As indicated in Table 14, SAPS shooting incident statistics indicate that for every person killed in a shooting incidents involving the police roughly three people are wounded (lethality index of .35/1). In general it can be assumed that the "profile" of use and abuse of force in a police organisation would be one where non-lethal and, in general, "lower order" uses of force would be more prevalent than lethal uses of force. However the ICD statistics indicate the opposite, and in fact represent an "inverted pyramid", with deaths (22%) outnumbering cases of alleged attempted murder, assault GBH and torture, (combined 13%) and the latter outnumbering cases of common assault (3%).

Furthermore, while the category of torture is presumably directly linked to alleged acts which were performed by police officers in the course of their duties, the same cannot necessarily be assumed in relation to the other complaints recorded. Thus, some of the cases of assault might for instance be instances of alleged domestic violence while others might be alleged "arrest related assault" of the type referred to by Maguire and Cobbett.

As we will also see (see Appendix 5 table 5A) the number of cases recorded by the ICD in many of these violent crime categories represents only a fraction of the number recorded by the SAPS. To take only one example during the two year period 1996 – 1997 the SAPS recorded 7671 complaints or allegations of assault against its members. During the first two years in which it was in operation the ICD, on the other hand, recorded 140 such cases.

#### 2. Criminal and disciplinary cases against SAPS members

Tables 5A and 5B (see Appendix 5) summarise some figures, provided by the Minister of Safety and Security in answer to questions in Parliament, in relation to a number of categories of complaints or charges lodged against SAPS members.[25] However serious questions need to be asked about the reliability of data provided by the SAPS on this issue. Not only is some of this information contradicted in a another set of statistics provided in answer to questions asked in Parliament, but a further set of figures is

provided by the SAPS Crime Information Analysis Centre (CIMC, 1/97, pp. 38- 39). In their first quarterly report for 1997 for instance the following figures were reported for 1996:

- 142 cases of murder (as opposed to 248 murders in 1996 reflected in Table 5A);
- 164 cases of attempted murder (as opposed to 649 reflected in Table 5A);
- 39 cases of rape (as opposed to 85 reflected in Table 5A);
- 177 cases of assault GBH (ass opposed to 1287 reflected in Table 5A);
- 419 cases of common assault (as opposed to 3854 reflected in Table 5A);
- 251 cases of theft (as opposed to 879 recorded in Table 5B)
- 351 cases of malicious damage to property (as opposed to 36 recorded in Table 5B).

The data in Table 5C is also contradicted by other data provided by the SAPS. According to the CIAC report quoted above, 462 members of the SAPS (0.4% of all SAPS members) were either convicted of crimes or paid admission of guilt fines in 1996 (1997b, p. 39). According to the data provided in Table 5C, the number was 1303, representing 0.95% of SAPS members.

Therefore, in addition to the fact that it is not possible to ascertain whether the alleged acts reflected in these tables were occupationally related "uses of force", the data provided by the SAPS on these issues appears to be inconsistent and unreliable.

**3. Civil claims against the SAPS**

***(a) Claims***

Appendix 6 records a selection of data provided by the SAPS on civil claims against SAPS members. As indicated in Table 6A and 6B, the SAPS received claims in relation to 525 deaths during the years 1995-1998. As indicated in Table 6A however, the number of claims which they received for deaths fell fairly dramatically from 159 to 67 per year (a drop of 68%) during the four year period. Similarly, the number of claims for injuries also dropped fairly substantially (by 29%) from 1995 to 1998, despite escalating in 1996. However, it is not clear to what extent these deaths are deaths as a result of police action, and specifically, what proportion are shooting related. They may be deaths in police custody or even deaths of police officers where it was alleged that the SAPS had been negligent in some way. They may also be deaths in motor vehicle accidents.

Table 6C indicates that in the single year between April 1995 and March 1996 the SAPS received 340 claims for shooting incidents and 880 for assaults (common). Presumably, the 340 claims for shooting incidents related to deaths and injuries (though they may also have been for damage to property). Therefore table 6C indicates that roughly 22% (1220 out of 5507) of the claims received by the SAPS related to uses of force though it is not clear, what number of deaths and injuries were linked to the shooting incidents. At the same time, in terms of value, these claims accounted for 55% (R152 million out of R277 million) of the total amount claimed from the SAPS.

***(b) Payments***

While the information in Table 6A and 6B covers a period of four calendar years, most of the information relating to payments made in relation to civil claims relates to the three (financial) years April 1995 – March 1998. Furthermore the data relating to payments relates to claims made in different years. About 60% of payments made in any one year relate to claims which were made between 2 and 5 years previously. (Director Sutton, SAPS, personal communication, June 1999).

Tables 6E, 6F and 6G relate to 7 categories of claim which appear to be related to the use of force. In addition to the categories "shooting" and "assault" (some of these "unrest related) which were referred to in Table 6C, there are also the categories "injuries:bystanders", "loss of support: deaths and disabilities" and "damage to property". It is not clear to what extent the latter three categories relate to the use of force. Potentially, all three categories of claim might for instance arise in relation to shooting incidents or motor vehicle accidents (though data is also provided on vehicle collisions it is not clear if this includes injuries and deaths – loss of support – in such collisions). It is also not clear to what extent the "shooting incidents" category includes all shooting incident related claims and whether or not it covers claims relating to injuries to bystanders in such incidents. This issue is not clarified by Table 6D – covering payments over a 14 month period ending in July 1996 - which indicates that damage to property related claims should possibly not be regarded as linked to the use of force. However the Table still does not clarify whether, for instance, a car damaged accidentally in a shooting incident would be classified as a "shooting incident" or "damage to property" related claim. Table 6D provides indications relating to the circumstances associated with assault and shooting incident claims. Note that "dog bites and other incidents" make up 29% of "assaults (common)" while almost 50% of the assault payments made at that time were for assaults (probably including torture) "during detention/questioning [and] other forms of unlawful force."

Other aspects which emerge include:

- Table 6E indicates that payments made for "unrest related" assaults and shooting incidents decline during the 1995 to 1998 period and were effectively eliminated as a category of payment in the 1997-1998 financial year. For an unknown reason the same appears to apply to the category "loss of support: deaths and disabilities."
- Of the seven categories, the largest number of claims were made for "damage to property" (the number of payments made for vehicle collisions – 3789 – is more than double the total number of payments made in all of the seven categories i.e. 1489 over the three year period). The number of payments made for "common assault" only slightly exceeds the total number of payments made for shooting incidents (89% of the former). However, the average payment for shooting incidents (particularly 'unrest related' of which there are a relatively small number) far exceeds that for any other category.
- Table 6A indicated a trend of declining number of death and injury related claims being made against the SAPS during the four year 1995 to 1998. Table 6E

indicates that this trend appear also to have been borne out in terms of payments made for assaults (down from 167 to 103) and shooting incidents (down from 140 to 95) during the three year period covered. The number of claims paid out for "damage to property", the other major category reflected in Table 6E fluctuated quite dramatically (motor vehicle accidents showed a similar fluctuation) with the result that the number of payments made in the first and third years was roughly the same.

- Table 6F shows that shooting incidents (not unrest related) accounted for 31% of the total amount paid out by the SAPS during the three year period, while common assault accounted for a further 8%. In all, the 7 categories accounted for 52% of the total amount of R97 million paid out during the three year period. The total amount paid out for the 3789 motor vehicle claims (R30 925 000) only exceeded the amount paid out for the 378 shooting incidents by R306 000.
- As soon as a civil claim is settled and the compensation paid out the state attorney has to determine whether the SAPS members whose actions were the subject of the claim should enjoy state protection (ESP) or forfeit it (FSP). The guidelines are set out in treasury instructions and address issues such as whether the person acted within his or her duties and acted in good faith (*bona fide*). If it is decided that the member acted outside of these standards he or she forfeits state protection and the state may exercise its right to recover the amount paid out from him or her. As is indicated in Table 6G, in 96% of the cases of common assault and 98% of the shooting incidents for which the SAPS was held liable the SAPS members concerned enjoyed state protection (ESP).

Therefore information on civil claims against the SAPS may provide a certain level of information about forms of less than lethal force (including extreme forms of such force such as torture) involving members of the SAPS. In addition it may also be a further potential source of information relating to some shooting incidents. While the last year for which we have information on the number of assault claims lodged is the 1995 – 1996 financial year, in that year the total number of claims lodged (880 – see Table 6C) exceeded the total number of less than lethal force complaints received by the ICD (736 – see Table 31). Furthermore, the fact that the overwhelming majority of these claims (96%) are judged to enjoy state protection indicates that they are probably occupationally related.

## Section E Recommendations

Amendment to s 49(2) of the Criminal Procedure Act is likely to have a profound impact on the trends relating to the use of force by members of the SAPS. Nevertheless, there will be a need for ongoing scrutiny of issues relating to the use of force by members of the SAPS. This will be necessary not only in the interests of holding members of the SAPS to account but also in the interests of providing support to SAPS members in relation to issues relating to the use of force.

#### 1. Data collection relating to the use of force

- There appear to be major problems in the operation of SAPS systems for the recording of shooting incidents. The SAPS needs to ensure effective reporting of shooting incidents and the recording of data with a view to monitoring trends in shootings relating to the police. Some form of centralised monitoring of shooting incidents is a necessity for both the SAPS and ICD.
- The SAPS should give renewed emphasis to the importance of reporting all shooting incidents and should sanction those who deliberately disregard this requirement.
- A high standard of shooting incident investigation should be encouraged which potentially applies comparable standards both to incidents where people are wounded or killed and to other incidents. If unnecessary shootings which miss their target are criticised this may help police officers avoid unnecessary shootings which hit their target. There would be value in a system of shooting incident (and other use of force) review which is focused on promoting learning around the use of force in the SAPS. Such a system may need to be separated from processes which are potentially punitive in their nature in order to be effective.
- The SAPS needs to ensure that proper records are kept regarding complaints, charges and convictions (criminal and disciplinary) against SAPS members, and needs to ensure that this data is reported in a reliable manner.
- Data relating to complaints, charges and convictions of SAPS members would be more useful if instances which allegedly occurred on duty were recorded separately from those off duty.
- In monitoring the use of force by the SAPS, accessing information on civil claims against SAPS members may prove to be a fruitful exercise for the ICD. However, care will have to be taken to ensure that the information received is recorded in a form which, inter alia, uses categories which make it meaningful.

**2. Greater emphasis on and control of the off-duty use of firearms by police**

While we will stop short of recommending an across the board withdrawal of service pistols from members of the SAPS while off duty, it is abundantly clear by now that off-duty firearm possession and use by police officers is a significant problem area – both in terms of its implications for the victimisation of off-duty police officers as well as in relation to the problem of off-duty firearm use. Some suggestions are:

- General awareness amongst police officers of the risks and responsibilities associated with firearm possession.
- Clearer guidelines with respect to the responsibilities of police officers to "place themselves on duty" when off-duty. We are not opposed to the idea of removing from members of the SAPS the obligation to place themselves on duty and might be preferable that have the same obligations as ordinary citizens when off-duty.
- Suggesting to police officers that they consider the option of going "gun free" when off-duty, particularly in areas where there is not a history of attacks on police officers.

- Enforcing strict discipline against police officers who irresponsibly display or use their firearms. In particular, clear guidelines need to be developed and enforced relating to alcohol consumption and firearm possession and use.
- Placing an onus on police officers who are experiencing personal or job related difficulties which have the potential to impact on their professional behaviour to seek help.

**3. Police Reservists**

- A particular cause for concern is the far higher rate of incorrect targets hits by police reservists. The use and arming of police reservists appears to be associated with a higher risk of shootings where the person hit was not the original target. Greater care should be taken by the SAPS in ensuring that police reservists who are armed have appropriate firearm training. Where this is not possible they should be discouraged from using firearms.

**4. General strategies to control the use of force**

The US example shows that it is possible to monitor and reduce the levels of use of lethal force without compromising police effectiveness. However, LTL force is far more difficult to monitor and therefore to control. In the US there appears to be a pattern of abuse of LTL force, apparently a reflection of the fact that control strategies have overwhelmingly focused on lethal force. Preferably, despite the lower visibility of LTL force (or at least of the consequences of such force), South African strategies should attempt to control both levels of force particularly in terms of their abuse.

**5. Further research**

Potential areas for further research might include:

- The reasons for high levels of victimisation of and victimisation by off duty police officers and the link to firearm possession.
- This report primarily focuses on three provinces. There would be great value in more detailed examination of patterns and problems associated with the use of force – particularly shootings - in South Africa's other 6 problems and particularly in Gauteng and KwaZulu-Natal.
- Problems and patterns associated with non-firearm related forms of the use of force.
- The whole issue of the degree to which the Criminal Justice system and SAPS internal disciplinary system are effective in dealing with SAPS members who abuse the power to use force.
- Those examining SAPS shooting incidents in future should request the data on warning shots to also be included.
- Race and gender as variables both in relation to shooters and victims.
- The spatial distribution of police shootings and the reasons why, and degree to which, shootings and other forms of the use of force are associated with specific localities.

## Section F Conclusion

This report points to two major causes of concern. The first of these is an apparent breakdown in the system for monitoring the use of firearms by SAPS members through the reporting of shooting incidents and the recording of these incidents on a centralised database in six of South Africa's nine provinces. The second is the general issue of off-duty firearm use by SAPS members.

However the report also indicates that existing data sources do not provide much information on non-firearm related uses of force. Such forms of the use of force are known to be difficult to monitor. While the evidence presented here therefore does not demonstrate this to be the case there may be a problem of abuses of force of force of this kind.

The report is merely an analysis of official data sources and cannot be taken as a rigorous scientific analysis of actual SAPS practice relating to the use of force. As it stands the report does not serve as a major indictment of on-duty firearm use by SAPS members. The information provided indicated that the level of fatalities "as a result of police action" recorded by the SAPS is not necessarily exceptional in relation to that recorded in many US cities, if one takes into account general levels of societal violence. However in a context of massive levels of societal violence the fact that police use of force is not necessarily high relative to societal violence does not justify a lack of concern. Furthermore it does not imply that force, when it is used is necessarily used appropriately, effectively or justifiably.

We therefore hope that this report will feed into a process in the SAPS in which greater attention is paid not only to monitoring of the use of force and to improving the ability of SAPS members to use force appropriately as well as to improving understanding around how effective policing can be carried out while uses of force which are not really necessary, are avoided.

**Notes:**

[1] The area in question, Diamond Fields accounts for about 40% of the murders in the province during the period 1996-1998.

[2] Another possibility is that unlawful shootings are unlikely to be reported on. Differences in number of shootings declared to be illegal are analysed later in the report.

[3] Furthermore Table 4 also once again appears to indicate that the SAPS shooting data from the Northern Cape is also relatively reliable. However for the reasons indicated earlier the data from this province has not been used.

[4] The ICD may wish to examine the shooting incident data to establish whether or not these actually correspond with the deaths "as a result of police action" which it has recorded.

[5] In an earlier study of 165 ICD dockets shooting were found to have accounted for 106 out of 110 (96%) deaths as a result of police action with the remainder being vehicle deaths (3) and a non-firearm related uses of force (1). Of the 54 deaths in police custody dockets analysed in the study 4 were the consequence of a use of firearms by the police and another 5 were believed to be caused by non-firearm related uses of force by the police. Therefore out of a total of 116 use of force related deaths either in custody or outside of custody, 110 (94%) were the result of shootings by the police (Bruce, 1998, p. 10).

[6] i.e. if shootings account for 89% of deaths and the SAPS data only reflects 97% of shootings than this indicates that SAPS data reflect 86% of the total number of deaths as a result of police action.

[7] According to figures provided in Chevigny (1995) the level of police killings in metropolitan Sao Paulo was as high as 26% in 1991 and 48% in 1992 of all other homicides (p.162).

[8] Note that the total number of people murdered and killings of police officers is also lower despite the disparitities in population and number of police.

[9] See footnote 5 above. In addition it is not necessarily the case that all deaths, which are the consequence of firearm use by the police, would be recorded by the ICD as "deaths as a result of police action". For instance a person might be fatally injured following a shooting by the police in custody. It is not clear to what extent the ICD follows consistent practice in recording such deaths but it appears that at least some such deaths are recorded by the ICD as deaths in police custody.

[10] This projection was made using the data provided in the shooting incident reports for the 3 provinces which indicate that, on average, SAPS members are involved in 1000 shooting incidents for every 75 persons killed. The average annual number of deaths as per ICD data was therefore multiplied by a factor of 1000/75 to get a projected annual number of shooting incidents per province. The projection is therefore based on the assumption that the ratio derived from the three provinces can be applied nationally. It is quite likely that the statistic of 75 to 1000 significantly under-represents the total number of shooting incidents.

[11] See also footnote 5 and 6 above.

[12] Without more detailed information it is not possible to specify whether the differences between the Free State (where a person was killed in 31% of incidents where a person was killed or wounded) and the Western Cape (where the figure is 21%) point to systematic differences in police practise between the two provinces.

[13] Standing Order 251 actually requires that warning shots be recorded separately from shots fired at the target. Unfortunately in the request for data which we made to the SAPS

we did not ask for a breakdown of incidents in terms of whether both types of shots or only one type were fired.

[14] Note however, that more than half of the total number of incidents which were declared not to be lawful were in fact incidents where no one was killed or injured.

[15] At a station level certain stations reported a particularly high proportion of the overall number of shooting incidents as illegal. Of stations recording over twenty shooting incidents in the 1996-1998 period, for instance, six showed illegality rates of over 30%. From the data provided for instance Batho police station reports the highest rates of illegality with 48% of the 29 reported shooting incidents having been declared to be illegal. Furthermore, Hennemen, A Komm Umtata, Graaff-Reinet, King William's Town, and Umtata all have illegality rates of 30% with Henneman recording 45% of incidents as illegal. In fact however the station which reported the greatest number of illegal incidents was East London which reported a total of 20 such incidents (as opposed to the 14 reported in Batho). However these 20 incidents only represented 12% of the total of 173 incidents reported by East London station in the three-year period.

[16] Sub-paragraph 15.5.4.2 of standing order 251 actually refers to "whether or not it was the original target (s)/ victim(s) fired at". The implication appears to be that a positive indication in this section could be a reference to e.g. a vehicle which was not the original vehicle fired at. However in this report we have assumed that the cases where the target hit was not the original target refer to cases where people were hit by stray bullets. We would welcome any clarification indicating that this is not the case.

[17] Of the police members involved in these shootings, 85.1% of them were on duty at the time, 1.7% put themselves on-duty, and 13.1% were off-duty. For the purposes of this study, those who put themselves on-duty are categorized as on-duty.

[18] Off-duty shooting have a lethality index if 0.65/1. A person is killed in 40% of incidents involving an off duty police officer where the person is hit by the gunfire.

[19] The other six stations are Paarl East, Elsies River, Bishop Lavis, and Steenberg in the Western Cape, Gelvandale in the Eastern Cape and Thabong in the Free State all of which record between 20 and 27% of incidents as having involved reservists. At the other end of the spectrum sum of the stations which only recorded a total of 1 incident indicate that this involved a reservist while for some stations which recorded 2 incidents indicate that 50% of incidents involved reservists.

[20] The data set contains a variable which it appears is intended to indicate whether the target was hit or not (from which we have gained information on incorrect target hits). However it appears that this data does not capture all incidents in which gun-fire was aimed at a target (whether it hit the target, hit the wrong target or missed altogether) and, other than in relation to wrong targets hit, this variable has not been used in this analysis . Thus this data appears to indicate that there were only 1071 incidents in which a shot was aimed at a target of which in 944 the only target hit was the right target while in 127 a

wrong target was hit. If it were true it would indicate that SAPS shooters hit the right target in 88% of cases, the wrong target in 12% of cases, but never missed altogether. It also appears to be inconsistent with the information that in 1129 incidents someone was killed or injured. If this were true then the implication would be that SAPS members hit the target in 88% (944) of incidents where they aimed for the target, and hit the wrong target in 127 (12%) of incidents where the aimed for a target, but also hit someone in at least 58 incidents where they were not aiming for a target. As is suggested by the data which follows in the main text this is highly unlikely.

[21] The estimate of 6225 shootings per year by the police in South Africa (see Table 12 above) may also be compared with Geller's 1986 estimate of an annual total of 3 600 shooting incidents involving the police in the US (Geller 1986 quoted in Geller and Scott, 1992, p.60).

[22] The figures provided in Table 29 are based on the composition of the visible Policing component of the SAPS and not the SAPS as a whole while the data on shooting incidents is taken from the entire data set of 7566 shooting incidents. Note that the data here appears to imply that only one police officer is involved in each incident or that those involved in each incident are always of the same rank. Possibly the data purely reflects the first police officer whose rank is recorded next to each incident.

[23] This data is derived from the entire data set of 7566 incidents.

[24] As indicated in Table 27 some incidents involved more than one police officer. The number of police involved in shooting incidents is therefore not the same as the number of incidents.

[25] The figures were given in response to a question asked of the Minister of Safety and Security by JA Marais in the National Assembly in May 1998 (Question 643).

[26] The SAPS document carries a note underneath this table to the effect that 'Global amounts for claims, which are relevant to more than one cause of action, were not included in the above statistics'.

Appendix 1