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OPEN SOCIETY FOUNDATION FOR SOUTH AFRICA

AND THE

OPEN SOCIETY  
JUSTICE INITIATIVE

## **Civilian Oversight and Monitoring of the Police in South Africa**

Rosebank Hotel, Johannesburg  
20 November 2003

## Introduction

This report outlines the proceedings at a workshop hosted by the Open Society Foundation - South Africa (OSF-SA)<sup>1</sup> and the Open Society Justice Initiative (OSJI)<sup>2</sup>. The workshop forms part of a project to enhance police accountability in South Africa. The intention was to provide participants with an overview of particular approaches to policing oversight and some South African cases studies to set the scene for debate around presentation of the intervention proposals identified earlier on in the project. The style of the report is dictated by the nature and content of the presentations and additional information can be obtained from the presenters whose contacted details are attached.

## Background – Cheryl Frank<sup>3</sup>, OSF-SA

Civilian oversight is a key element of democratic policing, and the experience of transforming the police in South Africa has some important lessons for police reform initiatives across the world. The transformation of policing in South Africa

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<sup>1</sup> **The Open Society Foundation for South Africa (OSF-SA)** is a part of an international network of Foundations and programmes founded and supported by George Soros. Its mission in South Africa is to promote the values, institutions and practices of an open, non-racial and non-sexist, democratic, civil society, and it works for a vigorous and autonomous civil society in which the rule of law and divergent opinions are respected. OSF-SA has 4 programmes in South Africa, namely the Criminal Justice Initiative; the Human Rights and Governance Programme; the Media Programme and the Education Initiative. The Criminal Justice Initiative (CJI) is both a grant-making and operationalised programme with an interest in both criminal justice and crime prevention. Since its inception in 1999, the CJI has focused on funding activities that build innovation in policy and practice, aimed at benefiting women, children and young people. Its current work includes grant making and operationalised projects in the following areas: Corruption, Sentencing and Prisons, Policing, Local Crime Prevention, and Access to Justice.

<sup>2</sup> **The Open Society Justice Initiative (OSJI)** is a new programme of the international Soros network, which aims to pursue rights-based law reform and strengthen legal capacity worldwide. Designed to produce practical benefits that have broader policy implications, Justice Initiative projects employ a variety of tools, including hands-on technical assistance to governments, NGOs and inter-governmental organs; litigation and legal advice; knowledge-dissemination and network-building among law reform advocates; and counsel to donor institutions supporting the rule of law. The Justice Initiative promotes open society values in several distinct, yet related, thematic program areas: national criminal justice reform, international justice, freedom of information and expression, equality and migration, anti-corruption, and legal capacity development.

<sup>3</sup> **Cheryl Frank** is currently the Director of the Criminal Justice Initiative at the Open Society Foundation of South Africa. She obtained a Bachelor of Social Science degree in 1992 at the University of Natal, and an MBA at the Graduate School of Business, University of Cape Town in 2000. She worked for four years at Nicro, specialising in diversion, and work with youth. She later went on to join the Institute of Criminology at the University of Cape Town, as Senior Researcher in Juvenile Justice and worked on a range of projects relating to both juvenile justice and crime prevention.

has been characterised by a strong emphasis on accountability and oversight, with numerous agencies established in the past decade:

- The Portfolio Committee on Safety and Security in the National Assembly, and the Select Committee in the National Council of Provinces
- The Independent Complaints Directorate
- National and Provincial Secretariats for Safety and Security / Liaison
- Courts, especially the Constitutional Court
- Community Police Forums (CPF), in so far as they 'monitor' local policing
- Civilian Oversight Committees established to oversee Municipal Police Services
- Chapter 9 Institutions such as the Commission on Gender Equality and the SA Human Rights Commission, in so far as they have played an oversight role in relation to police agencies.

The project on Civilian Oversight and Monitoring of the Police in South Africa is a joint initiative by OSF-SA and the OSJI aimed at strengthening structures and processes for Civilian Oversight of Policing in South Africa, to promote policing which is consistent with the spirit and provisions of the Constitution of South Africa, and to improve police-community relations and police performance.

The project was initiated with a workshop in February 2003 that sought to engage key civil society players in a discussion on the state of police oversight in South Africa. This workshop concluded with the recommendation that civilian oversight agencies should themselves be engaged in a discussion about their effectiveness and impact; and that through this process, appropriate projects to strengthening oversight, should be identified.

With this objective in mind, a second workshop was held in June 2003, involving key oversight agencies including the Independent Complaints Directorate (ICD), National and Provincial Secretariats, Human Rights Commission, Public Protector and non-governmental organisations. The workshop revealed a range of problems and concerns in relation to work of these mandated oversight institutions. A range of project activities were identified as important to strengthen oversight. These projects would examine, analyse and assess the achievements, weaknesses and gaps relating to different aspects of the police oversight infrastructure, and create information (in some cases, developing toolkits) to inform a third and implementing phase of this project that will begin in or around May 2004.

As a result of the project process outlined above, a call for proposals was put out requesting NGOs to submit proposals on a range of projects related to strengthening oversight of the police.

- The development of monitoring indicators for national and provincial Secretariats for Safety and Security. This will include an audit and assessment of oversight functions as well as recommendations on how to improve the functioning and operation of these bodies. (Institute for Security Studies – ISS)
- The development of a monitoring tool for local communities which can be used by a range of community structures for example community police forums. (U Managing Conflict - UMAC)
- The development of monitoring tools for Civilian Oversight Committees which are tasked at local government level with the oversight of municipal police services. This will include: research of current oversight arrangements in the five metropolitan cities in which municipal police services are currently operational; recommendations on how these structures should operate and be constituted; policy recommendations regarding legislative reform; and the identification of capacity building interventions. (Centre for the Study of Violence and Reconciliation – CSVr)
- The development of a website on police accountability. The website will serve as a networking and advocacy tool for civil society and practitioners. (Institute for Criminology –UCT).
- The development of indicators for democratic policing. This will involve the integration of information from the other research initiatives and an engagement with civil society, government and international partners. The aim of the project is to develop benchmarks for democratic policing. The OSF-SA will play a key role in managing and facilitating this process. (CSVr)

### **Objectives of the Workshop**

The objectives of this workshop were,

- To give input on overall project and on the new OSF-SA/OSJI funded projects;
- To elicit South African Police Service (SAPS) views on oversight of the police, needs and priorities;
- To engage with parliamentary oversight structures;
- To initiate dialogue on oversight of new Municipal Police Services;
- To receive input on and where necessary redefine the civil society research proposals;
- To receive inputs from the SAPS and the National Portfolio Committee on Safety and Security ;
- To receive input from international experts on lessons from other countries.

## Participants

Invitations were extended to a range of non governmental organizations; experts involved in police research; civil society organisations involved in monitoring of the police; the national portfolio committee on safety and security; the National and Provincial Secretariats for Safety and Security; the South African Human Rights Commission (SAHRC); the Public Protector; the Commission on Gender Equality (CGE); the ICD; Metropolitan Councils' with Municipal Police Services and Municipal Police Services themselves; and the SAPS.

A full list of participants is attached to the report.

## Program

- Cheryl Frank, OSF-SA - Background to the Project
- Rob Davis, Vera Institute of Justice - Innovations in civilian monitoring of the police; examples from the USA
- Panel Discussion on the state of oversight in practice and limitations of current oversight mechanisms:
  - Kaajal Ramjathan: Lawyers for Human Rights -Case study on experiences of refugees;
  - Fiona Nicholson: Thohoyandou Victim Support Centre – Case study on experience of children;
  - Lisa Vetten: Gender Unit, Centre for the Study of Violence and Reconciliation– Case study on women’s experience
- Luvuyo Tshoko: Input on the National Secretariats Monitoring Tool for Police Stations
- Research Project Inputs:
  - Elrena van der Spuy (Institute of Criminology): Website on Police Accountability
  - Anton du Plessis (ISS): Provincial Secretariats for Safety and Security
  - Sean Tait (UMAC ):CPF/ Community Monitoring Tool
  - David Bruce (CSVR): Development of Indicators for Democratic Policing
  - Gareth Newham (CSVR): Civilian Oversight of Municipal Police Services
- Cheryl Frank, OSF-SA - Way Forward

## **Innovations in civilian monitoring of the police- examples from the USA - Rob Davis<sup>4</sup>, Vera Institute of Justice, New York**

### National and local initiatives:

There have been dramatic changes in police accountability in last twenty to thirty years. Public expectations of the police have increased. The federal structure of Government in the US has resulted in a free market approach to the development of oversight mechanisms. Innovative approaches have sprung up in different localities which are often replicated in other areas. The federal government has also begun to play a role in crime prevention, one such example is the funding of approximately 100 000 police officers on the street as community police officers. High profile occurrences of police misuse of force such as Rodney King Incident have also highlighted the issue of police accountability.

### Interesting international examples:

St Petersburg – Russia: In 1999 the first citizen survey was developed which sought to assess public attitudes of the police;

A Polish expert has adopted an innovative approach by using citizen surveys to design police stations;

A Chinese police officer has been getting the community to sign up to engage in crime prevention activities. In terms of the contract brokered between the police and community, if the communities were subsequently victimized by crime the police were liable to pay damages.

### New ways of thinking about the role of police

In the past standard mechanisms of accountability were based on indicators of arrests, clearance rates and response time. Some indicators currently utilized:

- Prevention of crime through problem solving approaches and mapping techniques based on trends and location of crime ;
- Upholding quality of life standards. In New York police officers now involved in policing “petty” offences such as drunkenness and also engage in trash removal, building code enforcement and removal of abandoned cars. This is done in close association with city officials;

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<sup>4</sup> Rob Davis joined Vera in August 1998. He has led more than two dozen federally funded projects in the areas of policing, victimization, crime prevention, domestic violence, and criminal courts. His current projects include: developing neighbourhood satisfaction indices for the New York City Police Department; assessing the court monitoring of the Pittsburgh Police Department; a project promoting international police accountability; evaluating a program to reduce repeat incidents of elder abuse; and a national evaluation of federally funded victims' assistance programs. He is co-author of *The Prevention of Crime: Social and Situational Strategies* (Wadsworth, 1998) and principal editor of *Victims of Crime* (2nd edition; Sage, 1997).

- Treatment of all citizens with respect not just victims but suspects as well;
- “Shepherding” victims to relevant social services.

### New roles require new ways of thinking about police accountability

#### 1. Compstat

Compstat was introduced into New York by Bill Bratton, New York Police Chief in 1993 and seeks to hold local commanders accountable for crime statistics. Fortnightly meetings are held attended by Senior police officers and even the Commissioner at which local commanders are questioned on what they have done to address crime and why have they have not done certain things. Program relies on mapping of crimes and identifying trends.

Compstat’s main purpose is to track crime but also tracks precinct overtime, citizen complaints, searches and seizures and performs an integrity monitoring role. Most police agencies have integrity units which consist of undercover officers who pose as citizens enticing police officers into doing things; bribes, abuse of power, use of force etc.

Statistics reveal dramatic drop in crime. Commentators and academics are however in disagreement about whether this has been achieved through Compstat.

#### 2. Civilian Oversight

This really took off in 1960s and was motivated by race relations problems. Almost every major city in the USA now has an oversight body.

Sam Walker’s arguments for and against civilian oversight:

For:

- Civilian investigators not biased toward police;
- Citizen communities more often find officers guilty; and
- Increase public confidence in process.

Against:

- Most misconduct claims not as serious as people think (80% of complaints do not involve use of force);
- Police officers better trained in investigation techniques than civilians; and
- Citizen oversight undermines police morale.

A major challenge facing these bodies is to get police to see civilian oversight bodies as protecting the integrity of the department.

Civilian oversight bodies investigate individual complaints as well as trends, better performing agencies do both. Some of the reasons impacting on the effectiveness of oversight bodies are:

- Political opposition can undermine effectiveness, lack of political support, and no power to compel police officers to appear before them;
- Ineffective leadership may reduce effectiveness; and
- Lax procedures or poor record - keeping may blunt effectiveness.

The USA now has a national agency, the US National Association of Police Citizen Complaints Agencies which seeks to codify standards and standardise quality. There have been some problems with the recommendations of this body e.g. requiring the investigation of anonymous complaints or complaints which have been withdrawn by complainant. This has raised the question as prejudice against police officers who are investigated namely having information on personnel records. This process has also been criticised for wasting time.

#### Assessing success of Citizen Complaints Agencies

- How does one measure citizen satisfaction?
- How reliable are complaints as an indicator?
- Certain cases are handled by the police – more frivolous complaints are dealt with by the police themselves?
- And what constitutes real complaints?

Citizen surveys it is argued are a more accurate means of assessing citizen satisfaction. Surveys of complainants and their level of satisfaction have revealed that matters resolved by conciliation have a greater public satisfaction rate.

#### 3. Civil Suits against government:

In 1970 a new interpretation of an existing civil rights law allowed for civil suits to be brought against individuals and government and public institutions. These have been effective in bringing about policy changes. In one example a case involving domestic violence resulted in a change in police policy which made arrests mandatory in all domestic violence cases.

#### 4. Federal Interventions – Consent Agreements

In 1994 new legislation passed by Congress enabled the federal government to sue local agencies where a pattern of abuse could be proved. Since 1994, 12 investigations have reached consent agreements with 8/9 agencies settling out of court.

These consent agreements usually take the following form:

- Independence, accountability and publicity of citizen complaint process
- Enhanced training on use of force
- Collection of data on all traffic stops, use of force incidents, searches and seizures
- Early warning system
- Independent police monitor
- Five year life span

Questions which have emerged regarding this process:

- Is five years enough time to make real changes?
- Are reforms structural or do they impact on how police interact with citizens?
- Do efforts to increase accountability produce more paper work and make police less effective?
- Are reforms accepted by rank and file?
- Once the justice department moves out, do reforms stick are they sustainable?

Regarding early warning systems in particular, these systems identify problematic officers by using a unified database on each officer with the following indicators:

- Use of force
- Citizen complaints
- Disciplinary actions
- Shootings
- Absenteeism
- Arrest
- Traffic incidents etc
- Some indicators are tracked on race basis

Older systems are based on a numerical threshold i.e. highlighting where an officer exceeds a numerical threshold. Newer systems compare officers to peers i.e. highlighting when officers deviate significantly from their peers

How is information used?

- Annual reviews of each officer when officer is up for promotion or transfer or a salary increase.
- Supervisor is alerted if officer exceeds threshold on month-to-month basis.
- If supervisor does not respond the system logs an overdue recommendation to the next level of supervisor, making this officer's

supervisor culpable if he/she does not do anything. The supervisor is required to explain in writing why action is not taken.

What are the disadvantages of this system:

- It is expensive; and
- It generates more paper work, admin time etc. e.g. Pittsburgh quarterly review

## 5. Public Opinion Surveys

These assess public opinion of police and are a good indication of confidence in police. Public opinion surveys conducted in the US reveal that between 60 and 80% of people are satisfied with police. Municipalities do their own surveys on annual basis. Included in their questionnaires primarily on municipal services are question about policing. Some cities doing surveys on police – these are not on an annual basis but sporadic. Opinion surveys have proved to be a good tool to promote police accountability. They can also assist in identifying subgroups that are unhappy with police service.

Questions related to Police Effectiveness and Police Misconduct

- Opinions of Police Effectiveness

Telephone surveys are conducted on random selection. Interviewees are asked whether they felt police were doing a good job of preventing crime. Whether police responded promptly to non-emergency calls? Whether police were helpful? Whether police were effective in dealing with problems that concern people? Whether police work together with residents to solve local problems?

- Opinions of Police Misconduct

Questions asked related to whether: police stop people without good reason? Whether police officers used offensive language and whether they were verbally or physically abusive?

Research found a low correlation between what people think about police effectiveness and police misconduct.

## 6. Customer satisfaction surveys

Research engaged only people who have had specific contact with police in last month either suspects, or victims or people who have approached police for help. The disadvantages of “ride –alongs” are that police are often influenced by presence of external party.

### Why are citizens viewed as consumers?

- Citizens choose whether or not to call police;
- Citizens can withhold cooperation if they don't think the police provide quality service;
- Without citizen support the police can't function effectively.

### Value of customer surveys:

- Surveys can gauge level of misconduct when other sources are unreliable;
- Surveys can assess gradations in quality of police behaviour;
- Surveys pinpoint precincts doing better or worse than average.

### Use of information to enhance police accountability

- Compstat is expanding the notion of police accountability in New York by making district commanders responsible for public opinion by including indicators in Compstat reporting systems.
- Every month 5000 citizens are interviewed who have had contact with police in each precinct (76 precincts) as well as community leaders. Questionnaires are very short (see attached document). 6 basic questions are asked. A profile is prepared for each precinct with the results. A map also indicates which areas are doing well, which are doing worse. The precinct commander can get a sense of how precinct is doing as a whole and how each borough is doing.
- There is little variation from month to month and the research team has recommended that it is not necessary to do this every month but perhaps on a quarterly or six monthly bases.

### Research results

- Negative experiences matter more than positive ones;
- Personal bad experience with police strongly affect peoples opinions;
- New data shows that vicarious negative experience also has a strong effect on opinion of police;
- Questions of personal experiences don't correlate with general impressions of police.

## **Panel Discussion**

### **Kaajal Ramajathan- Lawyers for Human Rights, Johannesburg**

There are two government departments who are essential role players in the asylum process namely the Department of Home Affairs (DHA) and the Dept of Safety and Security. The DHA regulates and administers the asylum process and the SAPS enforce laws and regulations. There are also a several private companies involved in the administrative procedures of arrest, detention and deportation.

Asylum seekers arriving in the country have to present themselves before an immigration officer to make known their intention to claim asylum. They will be directed to Refugee Reception Office (RRO) in order to make an application for asylum and are issued with an asylum seeker permit. In terms of the Refugees Act the asylum process is supposed to last for a period of 6 months, until the asylum seeker is formally recognised as a refugee or his/her claim is rejected. In practise the asylum process can last for up to three years. The Braamfontein RRO has a target to finalise 8 cases per week. News reports estimate that there are about 2 million Zimbabweans fleeing political persecution in South Africa. And this is just from one refugee producing country. With only 5 RRO in the country each finalising on average 8 cases per week, we have a serious problem on our hands...

While on an asylum seeker permit, the asylum seeker is expected to renew this permit every month. The DHA is known for its corruption. Even the Minister and Director General (DG) have publicly acknowledged that corruption and bribery is a serious problem with the department. The RROs are tainted with corruption as well.

The difference between being a documented migrant and an undocumented migrant is sometimes a grey area. A person with valid documents may be arrested for being found contravening a condition of their permit. A person, who is in possession of valid documents in terms of South African legislation, may be arrested and detained regardless, for not having this document on their person. This person may spend up to a month or longer in detention, if they are unable to produce this document or pay a bribe to an immigration official even after they have produced their documents.

Apart from the corruption there are several practical problems associated with the asylum process.

#### **1. Access**

LHR encounters a great number of people who are unable to access the RRO. This could be for a number of reasons: overcrowding, DHA's lack of capacity and

resources (reason most often stated), or the inability or refusal to pay the bribe that is requested of them.

As a result many of them have been queuing to get access to the RRO for months. Without a permit they are subject to police harassment and even arrest and detention.

Police and immigration officials have discretion on whether to arrest persons claiming to be asylum seekers. Asylum seekers and refugees are required to carry on their person at all times proof of their status in the form of the original status documents.

If an asylum seeker or refugee is asked by a police official to produce his/her status documents and they are unable to the police official may either arrest this person or allow them an opportunity to produce this document.

There are occasions when the asylum seeker is given an opportunity to produce this document. However and especially during raids and crackdowns, this almost never happens and all suspected illegal persons are rounded up and arrested without being given any opportunity to first prove their status.<sup>5</sup>

## 2. Identification and Unlawful Police Action

We have received numerous complaints about police officials removing documents or even tearing up documents and arresting asylum seekers or demanding bribes for return of the document or to be released. These incidents are occurring in Johannesburg and surrounding areas.

Our office has on occasion been contacted by police stations in the surrounding areas, particularly Hillbrow and Johannesburg Central for assistance or verification of asylum seekers who are unable to produce documents to prove their status.

### Identification: Family permits

The DHA issues one permit to a recognised refugee and all the dependants of that refugee. The single permit means that at any time only one member of a family has a valid legal document and this leaves the rest of the family at risk of arrest and detention and possibly deportation.

Children generally are not subject to arrest and detention, but we are aware of one incident where a refugee child was arrested on his way to school, and detained for a few days without anyone being aware of his whereabouts.

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<sup>5</sup> From LHR's consultations with detainees in Lindela, 2003

In the case where both spouses are on the same permit - this causes undue hardship. Individuals are subject to harassment, arrest, and detention and may be asked to pay a bribe to avoid harassment. We have in some instances managed to have individuals issued with separate permits, but this is not always possible.

LHR has found that persons suspected of being illegal are treated like they have committed a criminal offence. We have come across instances where police officials have released suspected illegal persons after the payment of a sum of money.

### 3. Police Raids and Crackdowns

We are not aware of the numbers of undocumented migrants in South Africa. However, from conversations with Police officials, SAPS is of the view that increasing crime stats are a direct result of the influx of undocumented migrants, and this is the reason for the stations' targeting of foreign nationals in their crime prevention strategies.

#### Racial Profiling and Xenophobia

Although there is case law prohibiting arrests on the basis of racial profiling arrests of immigrants in Johannesburg still happen as a result of profiling. This is reflected in the nature of special operations such as "Operation Crackdown" in mid-2000 and more recently in "Operation Identify Yourself".

This is reflected in the nature of these operations and the fact that 99% of the detainees at Lindela are black or Asian. There is no attempt to identify white as foreign or to confirm their status in the country. This element of racial profiling leave the DHA, SAPS and the South African National Defence Force (SANDF) open to delictual claims as well. The Wits Law Clinic currently has at least four cases of wrongful arrest of refugees or South African citizens currently enrolled in the High Court, with each case seeking damages of around R100 000.

"Operation Identify Yourself" was a crackdown on foreigners in the Hillbrow area where numerous asylum seekers and refugees were not only been arrested on suspicion of being illegal aliens, but they have been detained for prolonged periods at police stations and even been transferred to Lindela for deportation.

LHR has raised this issue with the SAPS and the station commander of Hillbrow Police Station has responded as follows:

"Operation Identify Yourself is in line with our National Operation "Operation Khiba" and that it is never the intention to target foreigners or illegal foreigners, but rather a process of identification of buildings that have been identified as problematic and are known havens for criminal activities. In this process it will

happen that: persons who have entered illegally and undocumented persons are identified and arrested for the purpose of detention and deportation.

He added on the issue of whether Zimbabweans were being targeted that: Zimbabweans do not have automatic refugee status; they have had an opportunity since their arrival to present themselves to an official from DHA or to police officials. Further that once an illegal immigrant has been handed over to the DHA it becomes that department's ultimate responsibility and the police station has no authority to implement or secure the release of any person.

Research studies on refugees and asylum in Johannesburg and Cape Town (conducted by Morris and Quint<sup>6</sup>) found that interactions with the police were a major source of anxiety for foreigners. It emerged from interviews that foreigners were often stopped on the basis of their appearance and asked to provide evidence of their status.

#### 4. Unlawful Detentions

One issue on detention at police stations that seems to be a real problem is that people arrested on suspicion of being illegal are detained at police stations but are still deemed to be in the custody of Immigration. The police and station commanders have informed us, when approached to attend to unlawful detentions, that they are unable to release these persons as they have no authority to affect the release. Asylum seekers and refugees (even on production of proper documentation) have to wait until they are released by an immigration officer or they are transferred to Lindela. In both instances the SAPS are aware that they are documented and should no longer be in detention, but the detainee may remain in detention for up to 2 weeks before they are released.

If a foreign national is unable to get access to the asylum procedure he is effectively illegal and may be arrested and detained at Lindela pending deportation.

There is a definite need for training and education around refugee protection. From a sample survey of police stations and prisons earlier this year, several were not even aware that there was a new Immigration Act in operation.

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<sup>6</sup> Morris, A (1998) "Our fellow Africans make our lives hell: The lives of Congolese and Nigerians living in Johannesburg in *Ethnic and Racial Studies*, 21,6.

Quint, L (1999) *Refugees in Cape Town: The question of Just Administration*, Cape Town: National Association of Democratic Lawyers, Human Rights Research and Advocacy Project

## **Fiona Nicholson - Thohoyandou Victim Support Centre (TVET), Limpopo**

Types of services offered by Thohoyandou Victim Support Centre (TVET):

- Support services – one stop trauma centre at hospital
- Deal with Domestic Violence (DV) cases
- Provide Workshops e.g. DV
- Education/Empowerment – includes visits to schools, crèches in an attempt to break silence around abuse.

Modus Operandi:

- Each case of rape, especially cases involving children, is allocated a case monitor to follow progress.
- Monitors obtain signed consent forms to access any information relevant to victim's case.
- Case is tracked through the Criminal Justice System.

Case study of young boy allegedly killed by uncle.

- Police refused to investigate because there was no complainant
- According to police child died of knee injury and there was no need for a post mortem because "they saw the body".
- The body was exhumed as a result of efforts by TVET and an autopsy conducted in Aug 2001. TVET are still awaiting response.
- Sent letters to ICD and SAPS

Case Study of 3 year old girl

- Child was examined at hospital. She had been sodomised repeatedly over time which had caused an infection. She died half an hour after being admitted.
- The Doctor reported sodomy as the cause of death
- The post mortem report stated dehydration as cause of death.
- Forensics called for tissue samples, blood samples. No record of these could be found. Post mortem results had still not been collected, five months later.
- Subsequently told by two Senior Superintendents, that the head of detectives decided to look at body himself and said there was no evidence of sodomy.
- Old man who was responsible for looking after child was taken into custody but released.
- Police did not see need to look for forensic evidence at the home.
- Inquest held on examination of docket noted that magistrate listed child as wrong gender. Further the magistrate had failed to notice that forensic evidence was not collected, that the age of child listed was incorrect and that the date of incident was incorrect.

- The incident was reported to the SAPS National Evaluations Department A response was received saying that “nothing was wrong”, and that matter had been referred to provincial authorities who would carry on with investigations.
- Internally within the SAPS, no disciplinary steps were taken and no misconduct investigated
- The ICD had been approached and had responded by saying allegations were unfounded.
- TVET as complaining body was not notified of formal inquest.

**Lisa Vetten - Gender Unit, Centre for the Study of Violence and Reconciliation**

Some research findings:

- Traditionally women come into contact with police as victims, except in case of sex workers.
- Vulnerable groups such as sex workers and refugees are often easy targets for police e.g. Operation Crackdown
- Often sex workers who had been arrested could not show admission of guilt fines. Records were rarely kept at police stations and reports abounded that sex workers traded services with police in exchange for release. Sex workers were too afraid to lay charges against the police for fear of victimisation because they were engaged in illegal activity.

Case study: Women who died of injuries to the head- police complicity

- Victim’s husband who was a police constable said she fell off the bed
- Director of Public Prosecutions declined to prosecute because of lack of evidence for murder. It is unclear why the husband was not charged for culpable homicide.
- Accused now a captain and his career has never been affected.
- 8 months later the police had still not handed docket to the Directorate Public Prosecutions (DPP).
- Asked ICD and Provincial Commissioner to intervene but to date no response has been received.
- Nine years later, docket still not been handed over – “matter stuck”.
- Recommendations regarding this case include the need for oversight over DPP

2<sup>nd</sup> case study – police complicity

- Have noted in research that where police officers are suspects they are prone to use their knowledge of police matters and access to crime scene, to interfere with evidence and jeopardized the case.
- In this particular matter evidence at the crime scene had been cleaned up.
- Evidence included witnesses alleging they had been asked to murder his wife

- Officer never charged or investigated.

3<sup>rd</sup> case study: dereliction of duty by the police

- woman assaulted
- police arrived and called for ambulance
- they then left the woman alone,
- Accused returned and killed the woman.

4<sup>th</sup> case: civilian involvement

- Civilian in charge office had obstructed police investigation by not keeping records of complaints.
- Highlights the danger of involving CPFs, community volunteers in policing and emphasise the need to be proper systems and supervision.
- Case referred to ICD

Trends:

- Failure of police to serve subpoenas on witnesses,
- Police not following through.
- Difficulty in getting access to dockets. The access to information act is being used as gate keeping measure.

### **Questions/Comments:**

Provincial Secretariats

- Need to strengthen secretariats
- Problems of capacity in provincial secretariat.
- Provincial Secretariat has constitutional mandate to oversee and monitor police performance and conduct.
- They need to oversee police practices, police service delivery, strategies. They also need to question what informs the crime prevention strategies (assessing whether strategies benefit).
- Role of secretariat is to ensure what SAPS is doing and how they are doing is meeting the needs of the communities and clients they are serving.
- Secretariats need to inform policy directives and policy general in that regard. We need to move towards a criminal justice approach.

Assumption that civilian oversight of the police is an independent operation

- Looking at international examples e.g. New York most police agencies have internal investigation units. In South Africa the ICD investigates the most serious of cases. Both agencies need to work together.

- Internal disciplinary procedures need to be enforced more strictly. National evaluation services need to ensure and monitor what is happening on the ground in practice.
- The issue of poor training

#### ICD

- Only have capacity to investigate the most serious of cases. Recently it was decided they will investigate serious cases of misconduct and have requested an increase in budget from Parliament.
- Limited power if police not compelled by law to co operate.
- The bureaucracy can take 6 months for a request to pass up to national level and back.
- In Limpopo, ICD has mechanism to deal with complaints. Have been able to get dockets re-opened and get disciplinary action taken against police officers.
- Need co-operation between SAPS and non-governmental organisations.

#### Perceptions of problems in the police

- Main problem with police is attitude. Problem is that when you expose a rotten apple instead of police gathering to eliminate the rotten apple, they close rank and protect officer, doing irreparable damage to relationship with public.
- There is a need to strengthen police management.

#### Oversight Agencies

- NGOs working on the ground are not aware of the range and role of oversight agencies upon which they can rely when monitoring the police.

#### **National Secretariat -Luvuyo Tshoko**

See attached presentation

#### **Research Projects**

#### **Local Government – effective monitoring of municipal police services (MPS) (CSV – Gareth Newham) Time Frame: January – May 2004**

#### Project Proposal:

Identify and work with oversight mechanisms at local government level to develop effective models for oversight of municipal police agencies. This will include:

- An assessment of existing Section 80 Committees and Section 79 Standing Committees mandate and functions;
- Identification of weakness and areas for intervention;
- Inquire into the existence of similar mechanisms internationally, and where they do exist provide comparative input;
- Make recommendations on basis of research and comparative studies towards the development of a model, capacity building interventions including training and other initiatives. The latter will form the basis of a second phase of interventions for which the NGO will submit a proposal at a later date.
- Identify opportunities for partnership, engagement with community police forums, provincial government, SAPS and other role players.

Outputs:

- Review of the status of local government accountability mechanisms in relation to municipal policing. This will include an analysis of problems, strengths and weakness;
- Suggestions/ recommendations on the strengthening of oversight mechanisms at local level. This will include the development of a model/toolkit for oversight and will include monitoring indicators and protocols;
- Development of indicators by which municipal police services can be measured (this will feed into the development of indicators for democratic policing (discussed below)).
- Recommendations in the form of a draft proposal on the piloting this model. This should include capacity building and training interventions (PHASE 3).

**CPF Monitoring Tool (UMAC- Sean Tait and Ian Bentley) Time Frame: November 2003 – May 2004**

Project Proposal:

To build a safer society through the development of a democratic police.

Purpose: To promote trust between civil society and the police through the strengthening of policing oversight mechanisms.

Outputs

- To develop a set of indicators to monitor police performance based on an assessment of legislation, policing standing orders and civilian needs
- To develop a mechanism of accessing performance based on the indicators developed above
- To train a group of Community Police Forums in the implementation of the monitoring and oversight tools.

- To assess the effectiveness of the indicators in building trust in a pre and post intervention study.
- To publish the findings of the intervention

### Activities

#### Stakeholder Support

- Establishment of a reference group of key stakeholders in Civil Society (joint Forum on Policing, Civilian Oversight Department of Community Safety, SAPS, Academia)
- Interaction will happen individually, over email and at a final seminar to discuss results

#### Pilot Sites

- Identification of Pilot sites – In consultation with reference group

#### Determination of Indicators for Confidence Index

- Coalition of data relating relevant legislation and standing orders and existing initiatives such as the Service Delivery Improvement Plan.
- Community Focus Interviews to determine key areas impacting of credibility of police service delivery
- Identification of key indicators and development of measurement methodology

#### Implementation

- Training of Community Police Forum and SAPS members in methodology
- Implementation of monitoring

#### Impact Assessment

- Design of research methodology
- Collection of data
- Writing of results
- Key stakeholder workshop to announce and discuss results

### Risks

Willingness of SAPS and CPFs to participate. This risk will be addressed through an extensive consultation. Furthermore prior UMAC work will serve as a reference.

### Linkage with OSF- SA – OSJI Project

The Community Police Forum is an important mechanism in the overall monitoring and oversight of policing. The CPF has been under used as an

oversight mechanism partly due to the fact that a user friendly methodology is not available.

The tool as developed, together with the result of the evaluation will serve to bring grassroots community and community based organizations into the debate regarding their role in police monitoring and oversight. It will also provide a qualitative set of performance indicators to the more quantitative indicators of crime statistics to the oversight of police performance. Together these elements will add to building a holistic lobby and advocacy strategy on policing oversight in South Africa.

### Evaluation

An evaluator will be appointed to design a methodology to measure impact. This will be gauged on the basis of interviews of persons exiting the SAPS Service centre before and after the intervention as well as on the basis of the perceptions of those working directly with the tool as to its effectiveness and viability.

### **Provincial Secretariats (ISS: Duxita Mistry and Anton du Plessis) Time Frame: January – May 2004**

#### Project Proposal

The project aims to:

- Examine the relationship between the Secretariats and the SAPS at provincial level **as well as** the National Secretariat and the SAPS head quarters
- Analyse the relationship between the Secretary for Safety and Security, the Minister of Safety and Security and the National Commissioner and how this impacts on the functioning of the Secretariat. Relationships at provincial level between Members of the Executive Committee (MECs) and the Provincial Commissioner of SAPS will also be analysed.
- Determine the role played by the Secretariats in respect of oversight over the SAPS
- Investigate the relationship between the National and Provincial Secretariats and develop ways of improving co-ordination between them
- Make recommendations and develop strategies to improve co-ordination between the National and Provincial Secretariats

#### Project outputs and outcomes

- Paper
- Briefings to key-stakeholders
- Provincial workshops with relevant members of the Secretariat and SAPS
- Briefings to Parliament and Provincial Legislatures
- Seminar

### Project activities

- Set up: a series of briefings to gain support and raise awareness of the project with the Secretary for Safety and Security, Ministry for Safety and Security, MECs for Safety and Security, Provincial Commissioners and the National Commissioner.
- Collect and analyse legislation, policy documents and articles pertinent to the topic. These will include documents developed by governmental and non-governmental institutions.
- Conduct interviews (focus group and one-on-one interviews where appropriate) with the Secretary for Safety and Security, selected staff at the Secretariats and Ministry for Safety and Security, MECs for Safety and Security, Provincial Commissioners and the National Commissioner.
- Undertake an evaluation of the Secretariats role in civilian oversight of the SAPS.
- Collate and disseminate the research findings. This is a culmination of the previous stages. In terms of the dissemination of results, the ISS has developed a systematic, well-known and widely used dissemination process that assists in achieving project objectives. The processes to disseminate written results will be supplemented by a public seminar, targeted briefings to specific stakeholders and parliament, and media interactions. In terms of dissemination to specific beneficiaries of this project, the strategy will be to involve these beneficiaries as early on in the research process as possible. Through workshops and roundtable discussions, these stakeholders will be part of the planning, analysis and recommendation development processes, and as such will be familiar with the results before they are made public. They will also have the opportunity to shape the outcomes, which will assist in securing their support of the results, and hopefully increase the likelihood that recommendations will be acted upon. The inclusion of target groups in the public dissemination of written results and seminars is also aimed at increasing the uptake of recommendations within their departments and organisations.

### How this project relates to other work within the OSF-SA/OSJI initiative:

The overall purpose is to create an understanding of civilian oversight over the SAPS at various levels. This research also aims to improve coordination between, and the efficiency of, the National and Provincial Secretariats, thus contributing to the general strengthening of police oversight in the country. Research and recommendations will also be guided by international best practice and experiences, with specific emphasis on countries in transition.

## **Development of a toolkit which will enable civil society to hold police accountable (CSVR: David Bruce) Time Frame: January – May 2004**

### Project Proposal

This will involve the following activities:

- Comparative research review of similar mechanisms internationally;
- Develop indicators by which to measure police performance and police compliance with human rights standards. This will involve the identification of the type of information/data which civil society requires holding police accountable both for their service delivery and human rights standards. This will also involve an examination of enabling mechanisms which may assist in development of protocols and secure access to information i.e. Access to Information Act, other legal and institutional instruments (e.g. Human Rights Commission and other Chapter 9 Institutions, portfolio committees etc.)

Information for this process will be drawn from:

- Comparative research;
- Analysis of relevant research and studies undertaken locally;
- Review of enabling mechanisms;
- Information supplied by other research projects and input by international experts at the Review Workshop (November 2003) and Progress Workshop (March 2004).

Outputs:

- A toolkit for democratic policing. This will contain what type of information is required, the legal instruments/mechanism by which it can be obtained or protocols which need to be developed to obtain this information;
- Recommendations on advocacy strategies whom should be engaged, issues of access, partnerships etc.
- Proposal on how to pilot this toolkit i.e. Gathering information on an annual basis, where necessary building capacity in certain institutions to gather, analyze and release this information.

Development of a handbook which will include list of headings under which people are scrutinising the police. This handbook will explain who is doing what, this is what they are doing, and this is where you can find information, highlight do what extent ICD information does or does not answer certain questions, what should be doing? See table for list of indicators - 10 headings will be extracted under each category and a tool produced for each.

<b>Indicator</b>	<b>Some data or information currently provided on this by ...</b>
<b>Conduct</b>	
Deaths as a result of police action and in custody	ICD
Police shootings	ICD
Other uses of force	ICD
Torture	ICD
Corruption	SAPS, ICD
Complaints against police	ICD/SAPS
Civil claims	SAPS
<b>Service delivery<sup>7</sup></b>	
Service delivery complaints	ICD
Detection/referral rates (conviction rates)	SAPS, research
Emergency Response Time	?
Certain types of arrests	SAPS
Seizures of illegal goods	SAPS
Public satisfaction (based on surveys)	Occasional studies
Crime rates (based on methodologically sound scientific studies)	?
Services to specific sectors, constituencies (e.g. women)	?
<b>Other?</b>	
Indicators re: accountability/transparency	?
Police killings (on duty and off duty)	SAPS
Police suicides	?
Support services for police	?
Indicators regarding employment practices, diversity and affirmative action	SAPS
Absenteeism	?
Labour practises (status of labour unions)	?
Public or other statements by police representatives	Press

**Development of a Website on Police Accountability and Monitoring. (Institute of Criminology – UCT, Elrena van der Spuy) Time Frame: March 2003-December 2004)**

Project Proposal:

Phase 1:

Developing an Annotated Bibliography on Police Accountability and Oversight Mechanisms in South Africa, 1998-2003 as a Resource for Policing Researchers. Time frame: March-June 2003

The aims of the annotated bibliography are the following:

- To map the structural architecture within which the accountability of the South Africa Police Service is organised with particular reference to the legislative

<sup>7</sup> These are based partly on Leggett, Ted (2003) What do the police do? Performance measurement and the SAPS. Institute for Security Studies. Paper 66

and policy framework and institutional mechanisms created to facilitate police accountability.

- To provide an overview of all South African research on police accountability with particular reference to the post-1998 period.
- To provide a list of useful links to international and national websites and links to international research on police accountability and oversight.

#### Outputs

- A publication entitled Research on Police Accountability and Oversight Mechanisms in South Africa, 1998-2003.
- An electronic version of the publication is housed on the website of the Institute of Criminology.

<http://web.uct.ac.za/depts/criminology/polacc/paindex.htm>

#### Phase 2:

Developing the Website on Policing Oversight into a Resource Tool and Networking Device for Researchers and Policing Practitioners located within both the State and Civil Society. Time frame: October 2003-June 2004

#### Objectives:

- Expand the existing website as a Resource Tool. This would involve making all resources listed in the bibliography electronically available either by links or through publication of abstracts. Expanding the South African Links page so as to provide information on the institutional terms of reference of each of the organisations listed and developing a classification of core activities of such listed organisations. Furthermore developing, electronic linkages on policing oversight elsewhere in the developing world.
- Develop a new website to serve as a resource for supporting, profiling and promoting the research endeavours to be undertaken under the auspices of this project.

This would require that both expertise and adequate capacity is created to

- Design and update a website - located on an independent URL location with facilities for tracking website usage - suited to the broader projects objectives as they evolve. Technical expertise to be bought into the project when needed.
- Manage and maintain the website systems to be located at the Institute with the necessary inputs to be provided by OSF as overall Project Coordinator through an assigned project liaison person. SJRP Librarian to collaborate with OSF contact person with the view to feeding project results and toolkits into the website.

- Help define the kinds of strategic changes in form, content and operation of the website necessitated by the evolution of the Policing Oversight Project through consecutive phases (November Workshop 2003; March workshop 2004; Conference mid-2004 and beyond).
- Develop the website as an active networking device amongst both researchers and practitioners involved in research, advocacy and capacity building of policing oversight mechanisms. Using the website as a tool for providing regular updates on research developments and project related initiatives. Effort will be made to actively solicit data and research material of relevance to policing oversight which may be located within structures such as the National and Provincial Secretariats.

### **Possible Use of Research Products**

Possible uses of the research products include developing a Protocol on Indicators for Democratic Policing Time frame: July 2004-December 2004 and supporting the processes whereby

- The project initiatives are translated into a Protocol for Civilian Oversight and Democratic Policing;
- Ownership of the Civilian Oversight and Democratic Policing initiative is transferred, if desirable, to other more appropriate quarters, and
- Recommendations are formulated so as to support the future sustainability of the Policing Oversight Website as a critical resource.

### **Comments on Research Projects**

#### **1. Local Government - Civilian Oversight Structures**

Cape Town Metropolitan Council:-

- Composition of Committee consists of Councillors and experts from various fields.
- The function of the oversight committee is not the same as the Provincial Secretariats. Do not re-invent the wheel.
- Need legislation regulations on what these bodies should be doing – committees should not be getting involved in the operations of the municipal police services.

Tshwane:-

- The Committee has been in existence for two years. They have had problems but will be initiating a workshop and inviting SAPS and ICD to discuss roles, functions, mandate and operations.
- Composition includes Councillors, CPFs, business and other institutions;
- There is a need for a manageable committee that can meet often – every second month unless there are urgent matters to attend.

- Finances are problematic and it is currently funded from municipal manager's office.

#### SAPS Act review

- There is a need for legislation on how these committees should work.
- There is need to standardise roles and functions of various stakeholders.

#### Co-Ordination

- Role national police coordinating mechanisms needs clarification and strengthening. Interaction/engagement between SAPS/ICD/ MPS is crucial.
- Tri-angular agreement between SAPS/ICD/MPS may exist but is it working?
- Capacity of MPS to deal with complaints/investigation needs to be examined and the role of the oversight committee needs to be clarified.
- Relationship with provincial MEC must also be scrutinized.
- Need to examine oversight role of province, council and mayoral committees as a whole.
- Need to engage with local government landscape – South African Local Government Association (SALGA), Dept. of Provincial and Local Government when conducting research.
- Beware of overlaps and support linkages.

#### Committees

- Empowerment of councillors needs attention.
- Composition of Committee must be analyzed.
- Role of CPFS and relationship with committees needs examination.
- Complaints systems – external, internal complaints, whistle blowing systems in municipalities – need to research how these work together.

#### Outputs:

- -development of indicators for civilian oversight committees;

#### 2. CPF Project/ Community Monitoring Tool

- Speak to Public service Commission who are in the process of evaluating CPFs.
- CPFs rely on information received by SAPS have no way of accessing information themselves or verifying capacity.
- Need to address issue of capacity of CPFs. One of the challenges is that CPF representatives keep changing.
- Research must identify indicators and developing toolkit.

- Dialogue between project, SAPS, and Secretariat crucial.
- Capacity of CPFs to do monitoring/using the tool.
- Risk – revision of CPFs in terms of Police Act.
- Tool must be adaptable if things change i.e. be used by other bodies such as Sector Police Forums/ Ward Committees, CSF, Councillors
- Must include oversight role of CPFs in terms of other structures e.g. neighbourhood watches

### 3. Provincial Secretariats

- Interrogate Provincial Portfolio Committees on budget process etc.
- Need a developmental and contextual analysis to identify shifts in procedures and ethos over time.
- Oversight procedure body must be sustainable.
- Abuse of office by secretariats must be included in scope of research together with subsequent interventions.
- Research must recommend prioritisation of functions, in particular monitoring functions;
- Relationships with other oversight bodies i.e. ICD and referral systems in particular must be addressed;
- Power and therefore strength of provincial secretariats is their independence from the National Secretariat and SAPS. Keep this in mind when addressing co-ordination issue and need for standardisation;
- Explore relationship to national overall oversight infrastructure, but also provincial landscape and local government

### 4. Indicators for Democratic Policing

- Engage with SAPS tool and National Secretariat Monitoring tool.
- Select indicators of whether democratic policing is being delivered.
- Reasonableness, level of data generating capacity, level of numerical capacity.
- Tool is for civilians use and must address things that will be meaningful to civilians.
- Benchmarks of behaviour should be rights based and include reporting back of cases, being informed of rights.
- Indicators need to be tested.
- Report card approach will be difficult.
- Be less ambitious. Focus on certain areas, different projects. This needs to be broken down into distinct areas.
- Just ask questions do not necessarily produce report card at least not yet?
- Emphasize what are police supposed to be doing? Stop using rhetoric i.e. police effectiveness. Indicators should be tied to procedural aspects
- Need to look: at resource management, police conduct in criminal trials, surveys of people who have had experiences of the police and community opinion of the police. Under conduct include a section on unlawful arrests

- and detentions. Regarding training of the SAPS, are they sensitised about human rights. What are police values? Track changes in values/opinions of SAPS over time.
- Consult with SAPS
  - Engaging with different tools – accumulative process
  - See service delivery indicators in Strategic Planning (SAPS)

## 5. Website

- Allow for feedback/peer review of projects.
- Network of people.
- Mailing list – of updates – broader group of role-players.
- OSF-SA should be an active partner providing strategic direction.
- Electronic access into the system.
- Current issues – clipping services –news and radio
- Scan document of different - NGOs involved in police monitoring
- SA oversight document – links to oversight agencies
- International Links
- Get broader input on design of website
- Use web site for advocacy strategy
- Speeches to Minister/ debates in Portfolio Committee/SAPS – invite responses to website

## Conclusion

During the early part of 2004 the Project will be engaging with stakeholders around the use of monitoring tools and information produced by the research projects discussed. This will culminate in a conference after the elections during which we hope to present the research results and monitoring tools which have been developed to Government. The Project Team envisaged continued communication and engagement with all of you and will be arranging briefings and meetings as and when they are required to keep you updated on the project.

Some issues highlighted during the discussion on the workshop evaluation:

- The need for political will / the project needs to engage with the politicians. The project has briefed the National Portfolio Committee who was also invited to this workshop. We will be engaging with the politicians next year and part of the advocacy strategy and conference planned for next year will address how we engage the political leadership.
- What is SAPS commitment to police oversight?  
The SAPS have been briefed during a series of meetings between the OSF and SAPS. SAPS members are also attending today and will be reporting back to SAPS.