

# **POLICE & THE USE OF FORCE IN SOUTH AFRICA**

**TIME FOR A NEW APPROACH**



## OLGA KEKANA, ANDRIES TATANE, CAPTAIN BONGANI HLENGWA AND CONSTABLE ZAMIKHAYA HLANGULELA: MANY TRAGEDIES LIKE THESE CAN BE AVOIDED...

In South Africa there are high levels of murder, rape, robbery and other forms of violence. Police work in such a public environment can be difficult and dangerous. Incidents like the killing of Captain Bongani Hlengwa and Constable Zamikhaya Hlangulela in Creighton in May 2011 bring home how dangerous police work can be.

Police need to be prepared for any situation. When necessary, they need to be able to use force – to defend themselves, defend other people, carry out arrests, and bring violent situations under control. But force needs to be used in a professional and appropriate manner – this means:

- Being guided by the law and the concern to protect human life.
- Emphasising the avoidance of unnecessary force.
- Where force is necessary using the minimum amount of force required.
- That police services monitor the use of force and support members in achieving professional standards.

Where force is not used professionally then police become part of the problem. Some police succumb to the temptation to take the law into their own hands. Others unintentionally misuse force through errors of judgement or inexperience. Such actions can have destructive and sometimes deadly results. They also bring the police image into disrepute, cause community

anger and mistrust, and undermine public support. In so doing they also compromise police safety.

The police capacity to use force can be a double-edged sword. It is necessary for the police to have this capacity. But tragic incidents, such as the killings of Olga Kekana in October 2009 or Andries Tatane in April 2011, illustrate its potential costs. Yet, despite the dangers and difficulties involved in policing, incidents like this are not inevitable. Many of the incidents of killing of police are also preventable.

***Professional use of force contributes to greater police and civilian safety reducing the death toll amongst police officers and members of the public.***

## **THE LAW ON DEADLY FORCE – SECTION 49 OF THE CRIMINAL PROCEDURE ACT**

Parliament is due to amend Section 49 of the Criminal Procedure Act, the law which defines when deadly force may be used for arrest.

**The current section 49:** states that police may use deadly force to defend themselves or other people from ‘death or grievous bodily harm.’ Section 49 also states that they may also use such force to prevent the flight of a person who presents a substantial risk of causing death or grievous bodily harm in the future. This is problematic. How do we decide when a person should be regarded as presenting a “future risk”? Because of this difficulty it seems necessary to amend Section 49.

**Defence:** Most people agree that the police and other people are justified in defending themselves or

other people against an immediate or imminent threat. Where the threat is one of serious bodily injury or death it can be justified to use deadly force to prevent the threat. The 'common law' accepts the use of deadly force in such situations.

**The big questions:** If section 49 is to be amended, the big questions are:

- Should the use of deadly force be restricted to use for defence only? Are there other situations where it should be allowed?
- In particular, can shooting at a fleeing person, if there is no other way of preventing them from escaping, be justified? - this is known as the use of deadly force for arrest.
- If the law is to allow the use of deadly force for arrest: when should this be allowed?

These are difficult questions. Any answer to them has its own problems. Whatever conclusion parliament reaches will therefore not be entirely satisfactory. On its own, the amendment of section 49 is not going to ensure that police in South Africa use deadly force professionally.

The amendment to Section 49 will hopefully provide greater clarity to police on the legal principles governing the use of deadly force. ***But ensuring the professional use of force requires more than amending the law.***

## **WHAT CAN BE DONE – PROFESSIONALISING THE USE OF FORCE IN SOUTH AFRICA**

- **Political and police leadership** – Police leadership needs to unequivocally support a new approach,

based on a commitment to the professional use of force. Leaders need to emphasise, consistently and regularly, the values, policies and law intended to guide the use of force by police officers. They must ensure that there is no confusion and no ambiguity about the principles that guide them and the standards required. For example, police management must never condone torture or any unlawful violence by police officers.

- **National task team on the use of force** – We need to establish a national task team that includes a range of expertise including highly experienced police and ICD officials, and independent experts. This team needs to review current policy and practice on the use of force and formally recommend improvements to the Minister of Police, the National Commissioner of the SAPS and the Chiefs of the Metropolitan Police Departments
- **A use of force policy** - A use of force policy is an internal directive to police members from the police service. It puts forward the core values that police must uphold in using force and guidelines for dealing with situations when force may have to be used. It supplements the standards set out in legislation, clarifies grey areas and provides a consolidated source of reference to police on the use of force.
- **New systems of support to police officers** – Currently police in South Africa rely on the training system to prepare members to deal with situations where force may have to be used. New systems of support need to be introduced to ensure ongoing learning about dealing with such situations. Systems for investigating incidents should consider not only whether uses of force were legal, but also provide lessons on how to deal with future situations.
- **Management responsibility** – Police managers must

be held accountable for ensuring that members adhere to professional standards. In doing so they should be guided by the use of force policy. This includes proper monitoring of the use of force and ensuring that recognition is also given to police who distinguish themselves through solving conflict and arresting suspects without using unnecessary force.

- **Consistency and high standards in the training system** – The SAPS basic and in-service training systems need to be reviewed and upgraded to align them with this new framework so it can be effectively implemented. All police members should be rigorously assessed following their training to ensure that they have acquired the skills and knowledge necessary to protect themselves and members of the public when using force.
- **The Independent Police Investigative Directorate (IPID)** – The Independent Complaints Directorate will soon become the IPID. It will continue to have a key role to play in investigating alleged or possible violations of the law linked to the use of force by police. If people experience the misuse of force by the police, they must report it to the IPID.

## **THE USE OF DEADLY FORCE AND THE PROTECTION OF HUMAN LIFE**

Deadly force can cause death, serious injury or permanent disability. It includes the use of firearms, as well as any actions that endanger people's lives, such as reckless driving. ***Above all else police who use force professionally are conscious of the dangers involved in the use of deadly force and seek to ensure that its use conforms to the highest standards.***

This means defining the protection of human life as a core police value and objective. This implies giving priority to both the safety of police officers and members of the public.

The SAPS and metropolitan police departments should commit to the protection of human life as a core value. This commitment should be given prominence in their guiding documents and day to day police work.

## **BENEFITS OF THE PROFESSIONAL USE OF FORCE**

- **Greater police safety** - training and support provided will assist police in learning how to intervene in situations without exposing themselves to unnecessary risks. Ensuring that police adhere to the law also contributes to police safety. Members of the public who know that the police will not kill or mistreat them once they have been arrested, are more likely to submit to arrest rather than resisting arrest at all costs.
- **Greater community respect** – because police are known to aspire to and adhere to high standards, they will win community respect.
- **Greater police effectiveness** – members of the public are more likely to cooperate with police who have earned the respect of the community. Public cooperation is a fundamental requirement for effective policing and law enforcement.
- **Greater respect for the law** – research in other countries shows that people who know that police adhere to the law, and that they will be treated respectfully, are more likely to adhere to the law themselves.

The police are the most visible representatives of the state and its authority. When they violate the law by using excessive force they bring themselves, the law, and the state into disrepute. Part of the task of building a law abiding society is to build respect for the criminal justice system and the law. Police who consciously abuse their powers become criminals in the process and compromise the achievement of these objectives.

The policing that is most effective is policing that wins public respect. This results in greater cooperation with the police and respect for the criminal justice system. Police win public respect when they are seen to uphold high standards. **Professional use of force is central to winning public respect for the police.**

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