



civilian secretariat for police service

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CSPS RESEARCH BRIEF

POLICE AS OFFENDERS

A TRENDS ANALYSIS OF SAPS' CASES OF DISCIPLINE RELATED TO ASSAULTS AND TORTURE

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Police officers are vested with discretion in the performance of their duties and to make decisions based on their skills, expertise and professional knowledge. They are guided by the 1996 Constitution and various other policy and legislative prescripts; in particular, the Criminal Procedure Act and the SAPS Code of Conduct and Ethics.

The police are not above the law. If an officer transgresses the law, consequences follow the action, and the 2016 SAPS Discipline Regulation is put into effect. The Regulation supports constructive relations between the employer, employees and managers, provides a common understanding of misconduct and ill-discipline for supervisors, promotes acceptable conduct, and provides a user friendly framework in the application of discipline.¹

The following excerpts demonstrate the varying types of abuse committed by the police:

“A police official while on duty, assaulted another Constable by head butting him in the Community Service Center”

“A police officer assaulted his wife - they are busy with a divorce”

“Whilst off-duty at a tavern, a police officer was involved in arguments. He swore at innocent bystanders and assaulted and choked one of the patrons”

“In one case the employee assaulted another employee, by wrongfully and intentionally hitting her subordinate with an open hand in full view of her colleagues”

For the past few years, the South African Police Service (SAPS) have been under the spotlight for incidents of police abuse. During the 2018/19 financial year, the Independent Police Investigative Directorate, (IPID), the department tasked to investigate criminality committed by members of the SAPS, investigated 5 829 cases against members of the SAPS. Of that almost 70% (4 105) of the cases involved assault and torture.² It must be

¹ South African Police Service. 2016. Regulation for the South African Police Service, Accessed on 11 March 2019; Available at: https://www.gov.za/sites/default/files/gcis_document/201611/40389rg10662gon1361.pdf

² IPID. 2019. Annual Report 2018/19. Accessed on 11 June 2020; Available at: <http://www.ipid.gov.za/sites/default/files/documents/121764%20IPID%20Annual%20Report%20FULL.pdf>

noted that while the IPID may receive high volumes of cases for investigations, the cases that IPID recommends to the SAPS for initiation or further disciplinary action may be much less than it initially received. This is because there were cases that the IPID concluded and did not require further disciplinary action from the SAPS.

This research brief thus focuses on cases of misconduct committed by members of the SAPS in so far as assaults and torture are concerned, and also looks at the trends of the sanctions/sentences (outcomes) of these cases spanning the period 2016/17 to 2018/19. The study is based on a desktop quantitative analysis of members charged by the SAPS; with data having been obtained from the SAPS Division: Personnel Management. It is important to note that there are no carry-over of cases in the data for the years under review. Cases that are pending are not recorded in the succeeding financial years as this would result in duplication of cases reported.

Reflecting on the national and provincial statistics for assaults and torture

The SAPS is a large organisation, with an average staff population of 193 393. For the period 2016/17 to 2018/19, the overall cases of assault and torture totalled 1295. In 2016/17, the SAPS recorded a total of 491 cases and in 2017/18 the number decreased by 24% to 372. The 2018/19 year saw an increase of 16% (432) for torture and assault cases. While the cases average less than 1% for the years under review, the numbers are concerning as police members are entrusted with upholding the law and providing professional services to communities.

Cases of assault³ by members based at the SAPS national divisions are reflected in Table 1 below (members with national competencies who are located at provincial level and are accountable to the national office).

³ The national competencies did not register any torture cases for the three-year period under analysis.

Table 1: Breakdown of members accused of assault per SAPS Divisions

Divisions	2016/17	2017/18	2018/19	Grand Total
Crime Intelligence	11	6	5	22
Directorate For Priority Crimes Investigation	0	2	2	4
Human Resource Development	0	1	1	2
Operational Response Service	0	2	13	15
Personnel Management	0	0	1	1
Protection And Security Services	0	3	2	5
Technology Management Service	0	0	1	1
Supply Chain Management	0	2	0	2
Presidential Protection Service	0	2	0	2
Criminal Record & Forensic Science Services	4	3	10	17
Visible Policing	9	5	4	18
Grand Total	24	26	39	89

Source: SAPS Personnel Management 2018/19

The figures of interest reflected in Table 1 relate to the 2018/19 assaults in the Division: Operational Response Service (ORS) and the Division: Criminal Record and Forensic Science Service (CR&FSS), with a 100% increase in the number of members accused of assault in ORS, and a 150% increase in the number of members accused for assault in the CR&FSS. A deeper analysis of the ORS figures show that seven (7) of the thirteen (13) cases occurred on the same day in Beitbridge, and two (2) cases occurred at the Maseru Port of Entry.⁴ That both of these occurrences happened at points of entry could indicate strict management and enforcement of accountability within the Division ORS. Unfortunately, there were no visible indications from the data as to the reasons for the sharp increase in the Division: CR&FSS.

A myriad of other factors may be attributed to the increases in discipline cases for assaults. These include police officials being unversed with the discipline prescripts,

⁴ Out of the seven members charged at Beitbridge, five (5) were given counselling and a one-month salary suspension. The two (2) members charged at the Maseru POE received final written warnings.

conscious disregard of the discipline prescripts, general ill-discipline, pressure placed on police officials to meet performance targets, and police officers acting harshly as a result of uncooperative suspects.⁵

The other figures of interest in Table 1 pertain to the decreases in cases of assaults in Crime Intelligence (CI) and Visible Policing (VISPOL). Though it is unclear what factors may be attributed to the decreases, various factors such as individual responsibility, enforced accountability by managers, and the understanding of the discipline management prescripts may be contributors.

Table 2 below provides a breakdown of assaults and torture cases committed by the SAPS members at **provincial level**. This includes members based at police stations as well as those at the provincial offices. The provincial figures reflect higher than the national figures as the majority of operational work occurs at the provincial level.

Table 2: Breakdown discipline cases for assault and torture per Province

Provinces	2016/17	2017/18	2018/19	Grand Total
Eastern Cape	137	54	30	221
Free State	10	29	39	78
Gauteng	0	60	123	183
KwaZulu-Natal	38	51	53	142
Limpopo	58	17	3	78
Mpumalanga	60	50	22	132
North West	10	24	32	66
Northern Cape	58	9	9	76
Western Cape	96	52	82	230
Grand Total	467	346	393	1 206

Source: Disciplinary Cases Data Provided by SAPS Personnel Management 2018/19

⁵ Mistry, D., Minnaar, A., Redpath, J., & Dhlamini, J. 2001. The use of force by members of the South African Police Service: Case studies from seven policing areas in Gauteng. Accessed on 28 August 2020; Available at: https://www.gov.za/sites/default/files/gcis_document/201409/force0.pdf

Table 2 demonstrates that overall, the number of assault cases decreased by 15.8% from 467 cases in 2016/17 to 393 cases in 2018/19. Western Cape as the highest contributor of assault cases at 230 for the three-year period, while North West recorded the lowest number of assault cases for the three-year period at 66 cases.

Limpopo experienced a huge decrease of 94.8% from 58 cases in 2016/17 to three (3) cases in 2018/19. Northern Cape as well experienced a large decrease of 84.4% from 58 cases in 2016/17 to 9 cases in 2018/19. In contrast, Free State recorded a 290% increase in assault and torture cases, while Gauteng experienced a 100% increase of assault cases from zero (0) cases in 2016/17 to 123 cases in 2018/19. As the SAPS dataset does not provide the specifics as to why these crimes were committed, the possibility that the discipline rules are being applied inconsistently throughout the provinces can be surmised.

Ranks of offenders in the SAPS

Table 3 below demonstrates that in the three-year period under review, the majority of the SAPS officials accused of assault and torture range from the **rank** of Constable to Captain at 94% (1 212). Constables contributed to 61% (757) of torture and assault cases, while Sergeants contributed 18% (220) of the cases. The figures are not surprising as Constables and Sergeants are at the coalface of police operations and constitute mostly of ‘bobby’s on the beat’. These members are on a daily basis entrusted with using force, and if constituted with poor self-regulation when facing strenuous situations, can act irrationally.

Table 3: Ranks of the SAPS members accused of assault and torture

RANKS	2016/17	2017/18	2018/19	Grand Total
Constable	324	210	223	757
Sergeant	64	61	95	220
Warrant Officer	71	57	46	174
Captain	17	21	20	58

RANKS	2016/17	2017/18	2018/19	Grand Total
Lieutenant	3	0	0	3
Lieutenant Colonel	5	7	6	18
Colonel	2	1	8	11
Brigadier	0	0	2	2
Cleaners and Groundsmen ⁶	1	0	8	9
Administrative Personnel ⁷	4	12	24	40
(blank)	0	3	0	3
Grand Total	491	372	432	1 295

Source: SAPS Division Personnel Management, 2018/19

While there were fewer administrative staff 3% (40) accountable for cases of assault, and 2.4% (31) managers⁸ contributing to misconduct cases, it still remains a concern that junior and senior staff are not adhering to prescripts.

Sanctions meted out for misconducts

Table 4 demonstrates that over the three (3) year period, 35% (448) of the lodged cases resulted in a not guilty verdict. What is of concern is that in 2016/17, 51% (252) of the cases resulted in a not guilty verdict. Reasons provided for the not guilty verdict include witnesses contradicting themselves, witnesses' not credible, offenders being charged under the incorrect regulation, no evidence to link member to the crime, procedures not being followed, cases not being proved, and lack of evidence.

Table 4: Outcomes of misconducts related to assault and torture at SAPS Divisions and Provinces

OUTCOMES OF MISCONDUCTS	2016/17	2017/18	2018/19	Grand Total
Not Guilty	252	110	86	448
Blank (Pending Cases)	24	67	148	239
No Departmental Steps Recommended	7	59	68	134

⁶ The variable of Cleaners and Groundsmen entails Cleaners, Foreman-Cleaners, Groundsmen and Handymen.

⁷ Administrative Personnel variable includes only the following personnel, Personnel Officer, Senior Registry Clerk, Senior Provincial Admin Clerk, Provincial Admin Clerk, Chief Typist, Accounting Clerk and Senior Admin Clerk.

⁸ Managers entails Brigadiers, Lieutenant Colonel and Colonel.

OUTCOMES OF MISCONDUCTS	2016/17	2017/18	2018/19	Grand Total
Withdrawn	50	16	27	93
Written Warning	29	32	22	83
Final Written Warning	17	28	25	70
Declined to Prosecute	26	2	1	29
Appeal Confirmed	1	0	0	1
Case Dismissed	1	1	0	2
Corrective Counselling	0	7	3	10
Dismissal	5	3	8	16
Suspended Dismissal for Period not Exceeding Six Months	21	1	0	22
Duplicate	0	3	0	3
Final Written Warning & Counselling	2	4	1	7
Investigation Outstanding	0	1	0	1
Matter Dismissed	1	0	1	2
No Prima Facie Case of Misconduct	0	3	11	14
Purchased Discharge	0	1	0	1
Fines ranging from R150 to R900	32	0	0	32
Referred for a Normal Hearing (Expeditious)	0	1	0	1
Suspended Dismissal & R500 Fine	1	1	0	2
Suspension Without Salary (One or two Month) & Counselling	1	9	12	22
To Be Recaptured with New F/A Date	11	0	0	11
Verbal Warning	1	0	10	11
Withdrawn by Complainant	11	3	6	20
Withdrawn by Component Head	0	2	1	3
Provisionally Withdrawn	0	19	2	21
Grand Total	491	372	432	1 295

Source: Disciplinary Cases Data Provided by SAPS Personnel Management 2018/19

Guilty and non-guilty verdicts is also dependent on the competence of the organisation to meted out sanctions. The SAPS in subsequent years experienced a 193% decreased in the number of employees found not guilty to 86 cases in 2018/19. Some reasons for the **reduction** in the 'not guilty' verdicts could be attributed to the improved understanding and application of the Discipline Regulation introduced by the SAPS in 2016, and more awareness regarding the consequences of ill-discipline.

The SAPS also recorded a 517% increase in the number of cases without any outcomes or cases that are pending, from 24 cases in 2016/17 to 148 cases in 2018/19. These are cases that the provinces and divisions could not finalise at the end of the financial years. Pending cases means that the charged employees have to wait a longer time to clear their name, or be held accountable for their actions. The 2016 SAPS Discipline Regulations requires that disciplinary cases be finalised within 90 days. Reasons attributed to delays include functionary's heavy workload, management failure to apply progressive discipline, relegating cases which could be solved at police stations and cluster levels to the SAPS provincial office, poor investigations, the need to use lawyers, and over-commitment of union representatives in other cases. Delays in finalising cases can impact on members' opportunity for promotion and their reputation.

Another matter of concern is the number of cases where no departmental steps were recommended from seven (7) cases in 2016/17 to 68 cases in 2018/19. This is because there was insufficient evidence against the accused police officials due to the absence of witnesses or the actual physical evidence of the assault. There is also the possibility of police officers opting against testifying against one another. These factors allow for the possibility of a repeat of the offence with no impunity.

Conclusion

Assaults or torture, or any act of violence committed by members of a police service that is entrusted with the responsibility to protect citizens is a cause for concern. It diminishes the peoples trust and lowers confidence in the police, it taints the image of the SAPS as

an uncaring and unresponsive organisation, and it raises questions as to the levels of professionalism and management in the SAPS.

The data does not provide the details required to determine the root causes of each misconduct, neither does it provide the detailed information as to the outcomes. What is evident is that the provincial **torture and assault** cases are much more than the national cases. This is due to the operational activities conducted by the provincial members. This is also evident by the high numbers of lower ranking officials who are in the operational environment. This said, it is concerning that members who are less operational are still involved in misconducts. The concern regarding the outcomes of the sanctions where no departmental steps recommended suggests that members are not being charged for their actions. Additionally, the pending cases must be dealt with expeditiously as it can disadvantage a member or the organisation.

Overall, the SAPS management needs to ensure the prescripts and code of conduct and ethics is understood and implemented. Corrective behaviour is a secondary response; it is preferable that members abide by laws and policies.