

Examining Violent Police-Citizen Encounters in South Africa: A Focus on Suspect and Police Behaviour



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ABSTRACT

Numerous grievances have been lodged against police officers who abused their mandate to use force, which is a matter that has raised serious concern not only in policing circles but in the media as well. Independent Police Investigative Directorate (IPID) reports do not provide adequate information on how cases related to assault occurred nor when they occurred. Therefore, this empirical study was conducted to enlighten an understanding of rogue officers' misuse of force that resulted in criminal cases of assault. The researcher conducted one-on-one interviews with ten IPID investigating officers from KwaZulu-Natal province. Through the use of a thematic analysis process, the findings revealed that police officers used force *before* a suspect resisted arrest, *during* suspect resistance *and after* containing a resisting suspect. Furthermore, it was revealed that police used force when a suspect questioned their procedures and became violent when a suspect was disrespectful towards the police, and sometimes as a form of intimidation even though there was no threat. Even when the threat had been contained and the suspects arrested, the police failed to cease using force. It is thus important to educate citizens about their legal rights, police procedures, and the importance of respecting not only the law but the enforcers of the law as well. In the same vein, police management should work at addressing and eradicating police involvement in criminal activities, proactively monitoring all officers' behaviour to detect signs of excessive force, and swiftly dealing with criminal behaviour by the police.

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INTRODUCTION

Securing an arrest is important as it serves to protect citizens from criminals. However, police encounter suspects who often shout obscenities at the police, throw punches at arresting officers, kick them, or head-butt them with their foreheads when arrested.¹ This, creates volatile interaction between the suspect/s and the police because police would use the power conferred to them to forcefully arrest the resisting suspect, which poses a risk for everyone involved. Even though South African law authorises the police to use force to restrain and confine resisting suspects, their conduct is guided by democratic principles, which

¹ Jonny Steinberg, *Thin Blue: The Unwritten Rules of Policing South Africa* (Jeppestown: Jonathan Ball Publishers, 2008).

obligate the police to align their response to resisting suspects to legal prescriptions and restrictions regarding the use of force, the rule of law, and human rights standards.²

Section 49 of the Criminal Procedure Act No 51 of 1977 (as amended) guides police conduct in the application of force when enforcing the law to avoid the violation of human rights.³ It outlines that police may use force when “reasonably necessary” with the intention “to overcome any resistance” or when “the suspect cannot be arrested without the use of force”. Force may also be used when police officers believe that a suspect “poses a threat of serious physical harm, either to the officer or to others”. The use of unnecessary and particularly excessive force outside these parameters is an infringement of suspects’ human rights and a breach of the democratic principles of fairness and proportionality.⁴

Considering that police decision to use force endangers their lives, the lives of suspects and that of bystanders, Mesloh, Henych, and Wolf argue that police may wish to capture and arrest a suspect with the least possible amount of injuries, however, it is often not possible.⁵ The impossibility may be due to the high levels of violence in society, and the aggressive and violent behaviour of suspects when being arrested. To shed light on the risks associated with police versus suspect volatile interaction, statistics provided by the IPID in its annual report for the financial year 2014 to 2018 show that approximately 1320 suspects and bystanders died during police operations in that five-year survey period.⁶ These events occurred when the police responded to crimes, during crowd management incidents, and during arrests. Some suspects were assaulted, shot with a police firearm or suffocated, while forty bystanders were also hit when firearms were discharged. A large number of the deaths of suspects and bystanders occurred during arrests (652) than during any other police operations. In these five years, approximately 158 SAPS members were murdered while on duty.⁷

Nevertheless, it is not in all situations where force is used for self-defence, to constrain a resisting suspect or to protect the lives of innocent people. Some rogue police officers misuse their power by applying unnecessary force and subjecting suspects to unnecessary pain and injuries. For instance, in the 2014/15 financial year, 44 members of SAPS and Municipal Police Services (MPS) were arrested for assault and 19 were arrested for murder. In the year 2015/16, 127 officers were arrested for assault and 31 for murder. However, in the year 2017/18 survey period approximately 45 officers were arrested for assault and 24 arrested for murder.⁸ Police officers were arrested for various forms of assault ranging from common assault to Grievous Bodily Harm (GBH) assault. The figures quoted above suggest that the problem of police misuse of force leans towards less lethal rather than lethal force.

Therefore, the significant number of assault statistics that were observed in the IPID annual reports prompted the researcher to seek insight into how trained and skilled officers with knowledge about acceptable policing practices still reverted to assaulting citizens and suspects. IPID reports generally reveal the extent of assault in South Africa as they shed light on the number of cases reported per province. For instance, in the 2014 to 2018 survey period, roughly 18 536 cases of assault were lodged against SAPS and MPS officials. Furthermore, IPID reports outline the different categories of assault, which include common assault, assault GBH, torture, crowd management, and dog attack.⁹ However, these reports do not explain *how* each of these cases occurred and *when* they occurred. Often, it is the media that fills in these gaps, but their reports usually relate to more newsworthy incidents in which lethal force was used. Therefore, this empirical study which relied on interviews with IPID officers unpacks the three stages of infringement during criminal cases of assault, namely the use of force *before* a suspect resists arrest which violates the principle of ‘reasonable necessary’; use of force *during* a suspect’s efforts to resist arrest, which infringe on the principle of ‘proportionality’ when a police office use excessive force; and

² P. J. Potgieter, “Exploring the Public Image of the Police in a Post-Apartheid South Africa,” *Acta Criminologica: African Journal of Criminology & Victimology* 26, no. 2 (2013): 147–69.

³ Republic of South Africa, *Criminal Procedure Act No. 51 of 1977* (Pretoria: Government Printer, 1977).

⁴ Potgieter, “Exploring the Public Image of the Police in a Post-Apartheid South Africa.”

⁵ Charlie Mesloh, Mark Henych, and Ross Wolf, “Less Lethal Weapon Effectiveness, Use of Force, and Suspect & Officer Injuries: A Five-Year Analysis,” *A Report to the National Institute of Justice*, 2008.

⁶ Independent Police Investigative Directorate, *Independent Police Investigative Directorate Annual Report (2014-2018)* (Pretoria: Government Printer, n.d.), http://pmg-assets.s3-website-eu-west-1.amazonaws.com/IPID_APP_2018-19_WEB.pdf.

⁷ Republic of South Africa, *South African Police Service Annual Reports (2014-2018)* (Pretoria: Government Printers).

⁸ Independent Police Investigative Directorate., *Independent Police Investigative Directorate Annual Report (2014; 2015; 2017)* (Pretoria: Government Printer).

⁹ Independent Police Investigative Directorate, *Independent Police Investigative Directorate Annual Report (2014-2018)*.

after containing a suspect, which goes against the instruction that force must be used to ‘overcome a threat’. In short, this paper discusses the behaviour of suspect and police during their interaction with each other, which results in cases of assault lodged against the police.

LITERATURE REVIEW

The complexity of police violence renders it one of the most debated issues in the field of policing, and defining the boundaries between ‘reasonably necessary’ and ‘excessive force’ has become a pivotal debate in law enforcement discourse.¹⁰ At its core, this debate seeks to find a balance between the appropriate level of force that should be used during police-suspect encounters and the actual level of force that is habitually used. Johnson argues that there is no middle ground in this debate as the force used is either reasonable or a criminal act.¹¹ However, when cases against police officers are investigated, determining what actions were actually criminal and what behaviour has not marked the difference between what police officers did in the execution of their lawful duty to protect citizens and maintain social order and what they did that sent them to the dock and sometimes to prison. Was it that one extra baton strike, a shove, or a forceful control hold,¹² and who determined what action was necessary in a given situation and what was not?

South African studies have revealed various reasons for police misuse of force. Some studies found that the prevalence of police misuse of force is due to the absence of accountability.¹³ Furthermore, the escalating rate of police murders has prompted top ministerial-level officials to issue instructions such as “shoot to kill”; “shoot first and ask questions later”; and “kill the bastards if they threaten you or the community”.¹⁴ Moreover, police officers believe that they are the law rather than representatives of the law, and this has perpetuated the continued misuse of force by some officers.¹⁵ Many scholars have also argued that organisational factors such as poor management supervision, inappropriate recruitment and training practices, and poor leadership play a pivotal role in the failure of police officers to use force in line with the rule of law, especially when management underscores the seriousness of the problem of police use of force to uphold the image of the police organisation.¹⁶ In addition, citizen’s disrespect for the law, criminality within the police ranks, and blatant disregard for internal disciplinary procedures have resulted in the persistence of brutality in South Africa.¹⁷

Nevertheless, research on policing has consistently shown that officers are likely to use force during encounters when there is evidence of criminal behaviour, the suspect resists arrest, and conflict between citizens.¹⁸ In such incidences, police may be required to effect arrest as the gatekeepers of the criminal justice system to effectively control dangerous people, solve problems on the streets, and initiate criminal prosecutions.¹⁹ Therefore, due to the proximity of the police to citizens, discourse on police use of force needs to consider the role of crime suspects whose behaviour is often said to contribute to violent police-citizen interactions. Scholars involved in the review of research on police policies and practices found “conflicting evidence regarding the impact of suspects’ demeanour on police actions toward suspects.”²⁰ Others discovered that many suspects refuse to cooperate during an encounter or arrest and

¹⁰ Philisiwe Hadebe, “A Blurred Line between Reasonable and Excessive Force: Exploring Investigative Officers’ Understanding of Section 49(2) of the Criminal Procedure Act No. 51 of 1977 (as Amended),” *European Journal of Economics, Law and Social Sciences* 5, no. 2 (2021): 464–78.

¹¹ Jeffery Johnson, “Use of Force and the Hollywood Factor,” *Journal of California Law Enforcement* 41, no. 1 (2007).

¹² Johnson, “Use of Force and the Hollywood Factor.”

¹³ David Bruce, “How to Reduce Police Brutality in South Africa,” *ISS Southern Africa Report* 2020, no. 40 (2020): 1–20.

¹⁴ Mthuthuzeli Ntseku, “Police Minister Bheki Cele Criticized for the ‘Shoot to Kill’ Statement,” *IOL News*, November 18, 2022, <https://www.iol.co.za/capeargus/news/police-minister-bheki-cele-criticised-for-the-shoot-to-kill-statement-d69c6b05-2188-4715-adb3>.

¹⁵ Z.V. Zondi and W I Ukpere, “Police Brutality in Post-Apartheid South Africa Reviewed,” *Mediterranean Journal of Social Sciences* 5, no. 3 (2014): 574–79.

¹⁶ Johan Burger, “To Protect and Serve: Restoring Public Confidence in the SAPS,” *South African Crime Quarterly* 36 (2011): 13–22.

¹⁷ Graeme Hosken, “Crime in the Ranks,” *IOL News*, May 26, 2011, <https://www.iol.co.za/capeargus/news/crime-in-the-ranks-1074346>.

¹⁸ John D McCluskey, William Terrill, and I I I Paoline Eugene A, “Peer Group Aggressiveness and the Use of Coercion in Police–Suspect Encounters,” *Police Practice and Research* 6, no. 1 (2005): 19–37.

¹⁹ Rachel A Harmon, “Why Arrest,” *Mich. L. Rev.* 115 (2016): 307.

https://michiganlawreview.org/wpcontent/uploads/2016/12/115MichLRev307_Harmon.pdf.

²⁰ Wesley Skogan and Kathleen Frydl, *Fairness and Effectiveness in Policing: The Evidence* (Washington, DC: National Research Council, 2004).

assault police officers to evade capture.²¹ The consequences of suspects' tendency to taunt the police and resist arrest are multifaceted and have far-reaching implications, not only for suspects but for police officers as well.²²

Stryker explains that human beings respond to an environment that is mediated through symbols, thereby suggesting that citizens' response to police instructions, such as their facial expressions (lowering brows, pressing lips together firmly, and bulging eyes that express anger), what they say (e.g., "If you dare touch me, I will sue you and take away your badge"), gestures (e.g., pulling out a gun, shaking a fist), or what they do (e.g., aggressively walking towards a police officer, shooting at the officer, or fleeing) determine the nature of police-citizen encounters and the level of provocation that prompts violent police response.²³ In line with Stryker's contention, Rojek, Alpert and Smith explained how police and citizen interaction can lead to violence:

"The consequence of a citizen's failure to meet [police] officer's behavioural expectations, which may or may not result from miscommunication between the actors, potentially increases in the likelihood that the encounter will end badly, perhaps in physical resistance and the use of force. In other words, if the actors do not respond to each other as expected, defiance may escalate and each will disrespect the other using verbal and nonverbal forms of communication."²⁴

The notion that suspects fail to meet police behavioural expectations has reinforced the importance of determining whether violence was instigated by a police officer or a citizen, which is a crucial aspect that researchers have considered in evaluating the drivers of police use of force. Although it is extremely difficult to determine who initiated a violent response and at which point it became excessive, unnecessary, or disproportionate, some studies have found that suspects initiated violence, which might justify the use of force by police if they apply proportionate force.²⁵ However, Reiss cited by Rojek, Alpert and Smith, mentioned that police instigate violent interaction with citizens when they use force even though a citizen did not, by word or deed, resist the arrest.²⁶ Reiss further outlined other incidences where a police officer would use force unnecessarily or improperly:

- a police official physically assaulted a citizen and then failed to make an arrest;
- the policeman, regardless of resistance to the arrest, could easily have restrained the citizen in a non-violent manner;
- many police officers were present and could have assisted in subduing the citizen/s in the police station, in lockup, or in the interrogation room;
- an offender was handcuffed and did not attempt to flee or offer violent resistance;
- the citizen initially resisted arrest, but the use of force continued even after the citizen had been subdued.

Although a justification for the use of force plays a significant role in protecting police against criminal charges, by definition, even if the use of force was initially justifiable, once the use of force no longer serves the purpose of subduing resistance, it is considered assault.²⁷ This means that the police must cease all manner of force once a suspect has been restrained. Furthermore, despite suspects' violent resistance becoming a routine in police officers' daily encounters, the use of force by police must be a last resort and not a routine practice.²⁸

Reports on police brutality have revealed that police use of force results in assault, torture, and even the killing of citizens in South Africa, such as the killing of 34 mine workers in Marikana in August

²¹ Cassandra K Crifasi, Keshia M Pollack, and Daniel W Webster, "Assaults against US Law Enforcement Officers in the Line-of-Duty: Situational Context and Predictors of Lethality," *Injury Epidemiology* 3 (2016): 1–6.

²² Kelly A Hine, Jason L Payne, and Alex R Piquero, "When Suspects Resist Arrest: Prevalence, Correlates, and Implications for Front-Line Policing," *Police Quarterly* 24, no. 2 (2021): 135–58.

²³ Sheldon Stryker, "Symbolic Interaction as an Approach to Family Research," *Marriage and Family Living* 21, no. 2 (1959): 111–19.

²⁴ Jeff Rojek, Geoffrey P Alpert, and Hayden P Smith, "Examining Officer and Citizen Accounts of Police Use-of-Force Incidents," *Crime & Delinquency* 58, no. 2 (2012): 301–27.

²⁵ Noel Otu, "Police Violent Response or Pre-Arrest Warning and Defensive Victimization," *The Police Journal* 82, no. 1 (2009): 13–33.

²⁶ Albert Reiss, "Police Brutality: Answers to Key Questions," *Trans-Actions* 5 (1968): 10–19; Rojek, Alpert, and Smith, "Examining Officer and Citizen Accounts of Police Use-of-Force Incidents."

²⁷ Reiss, "Police Brutality: Answers to Key Questions."

²⁸ Otu, "Police Violent Response or Pre-Arrest Warning and Defensive Victimization."

2012, the death of Mido Macia after being dragged behind a police van, the ruthless assault on Clement Emekeneh and the killing of Khulekani Mpanza.²⁹ International media platforms have also reported on cases of the killing of George Floyd, Michael Brown fatally shot by a police officer in Ferguson, and Jordan Edwards killed by a police officer in Balch Springs in 2017.³⁰

When suspect violence is met with police violence, the situation often leads to allegations of police brutality, resulting in criminal charges being brought against the police, particularly when a suspect sustained visible bruises and injuries, while the police put themselves at risk when they pursue fleeing suspects or encounter physical resistance, and more officers are injured or killed,³¹ their actions may also result in the death of innocent victims due to cases of mistaken identity shootings or as innocent bystanders, or during disputes between police officers and suspects.³² Therefore, failure by the police to follow the rules on the use of force can result in the loss of the public's confidence in law enforcement and in escalating civil claims against the organisation. Also, according to the African Policing Civilian Oversight Forum,³³

“The way in which the police approach the use of force can have an impact on community perceptions of the police and the level of trust that the community will have in the police. The way in which the community then engage the police will have, in turn, an effect on the way that the police themselves perceive and respond to the community.”

Therefore, this paper must share insight into the nature of police and suspect interaction that results in allegations of assault against police.

METHODOLOGY

A qualitative research approach was adopted because of its distinctive ability to produce well-founded cross-contextual generalities.³⁴ The qualitative research approach allowed the researcher to meet the requirements of the study which was to obtain and gather the perceptions and experiences of IPID investigating officers on the nature and causes of assault.

A sample of ten (n=10) IPID investigating officers was recruited purposively. A purposive sampling is a technique according to which “respondents are chosen in a non-random manner based on their expertise on the phenomenon being studied.”³⁵ This was adhered to by selecting IPID investigative officers as participants who were chosen non-randomly because they were deemed to have an extensive understanding of the cases of assault from the perspective of the public and the police, and they were assumed to have had access to the evidence that had been collected during the investigation process.

Ethical clearance to conduct the study was obtained from the University of KwaZulu-Natal Human and Social Sciences Research Ethics Committee, and permission to interview IPID participants was obtained from the Independent Police Investigative Directorate (IPID). Each participant signed an informed consent form that stipulated the study's aim and declared that all interview participants would remain anonymous and that their participation would be voluntary. Thus, to protect the anonymity of the interviewees, each is referred to by a code ('P' for Participant followed by 'Inv' for Investigator and a number, e.g. P-Inv-41).

Each investigating officer participated in a one-on-one interview conducted by the researcher to explore their views on police-suspect violent interaction. In-depth interviews were deemed suitable for

²⁹ Irene Chapple and Errol Barnett, “What's behind South Africa's Mine Violence,” CNN World, September 14, 2012, <https://edition.cnn.com/2012/08/17/world/africa/marikana-south-africa-mine-shootings/index.html>; Faranaaz Parker, “Cops Drag Man to His Death for Stopping Traffic,” Mail & Guardian, March 1, 2013, <https://mg.co.za/article/2013-03-01-00-cops-drag-man-to-his-death-for-stopping-traffic/>; Xolani Koyana, “Cop Assault Man ‘Also Beaten Earlier,’” IOLNews, March 11, 2014, <https://www.iol.co.za/news/cop-assault-man-also-beaten-earlier-1659199>; Aljazeera, “South Africa Police Filmed ‘shooting Unarmed Suspect Dead,’” November 2, 2015, <https://www.aljazeera.com/news/2015/11/2/s-africa-police-filmed-shooting-unarmed-suspect-dead>.

³⁰ Richard. Meadow, “High-Profile Killings by Police,” Police Brutality Center, July 1, 2022, <https://policebrutalitycenter.org/police-brutality/high-profile-killings/>.

³¹ Harmon, “Why Arrest.”

³² David Bruce, “An Acceptable Price To Pay?,” *The Use of Lethal Force by Police in South Africa*, 2010.

³³ African Policing Civilian Oversight Forum, “African Commission for Human and People's Rights. Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa,” 2017, 11.

³⁴ Jennifer Mason, *Qualitative Researching* (Thousand Oaks: SAGE Publications Ltd., 2002).

³⁵ Anol Bhattacharjee, *Social Science Research: Principles, Methods, and Practices* (University of South Florida, 2012).

this study because they permitted the researcher to explore people's views, perceptions and understanding of an area, providing the researcher with rich and sensitive material. An unstructured interview guide consisting of thirteen questions that were based on the study's research objectives was used. This paper highlights findings pertaining to the first two objectives of the broader study, namely the nature and cause of police assault. It is acknowledged that the data were collected from a relatively small sample size and that the findings may therefore not be generalised to the entire police officer population of South Africa.

The data were qualitatively analysed using the thematic analysis method as proposed by Braun and Clark.³⁶ The researcher thus engaged in several re-readings of the transcripts coded the data, and allocated the key codes to themes. To ensure reliability, an independent researcher ensured that each category set was comprehensive, mutually exclusive, and exhaustive.

FINDINGS

Defining Assault

In the quest to understand and describe police assault, the IPID participants' responses revealed the following:

"Assault is when a complainant complains that a person slapped me [speaking as the subject] with an open hand in my face, a person punched me, a person kicked me, a person pushed me, [and] when I was arrested the handcuffs were tight, you know, fastened, and things like that. That is assault." (P-Inv-54)

Correspondingly, P-Inv-55 stated:

"...they [the police] just inflict physical injuries on your [the suspect's] body. In some instances, a person might have bruises, or some will have internal injuries. The doctor's report will show that they suffered internal injuries."

P-Inv-50 also provided an example to explain assault:

"If a police officer is on duty and comes across someone who is beating up another person and tries to stop that person and that person refuses to stop, then a police officer beats him. That is general assault."

The above responses revealed that the participants' perception of assault entailed two aspects, these are, *how* force is used, and *when* it is used. Furthermore, the use of force becomes a criminal offense of assault in the following circumstances:

- i. When police exercised their discretionary power to use force when the suspect was not a threat,
- ii. When police used force against a person or persons that were refusing to recognise their presence and interference in the situation; and
- iii. When police used force in a case where they could have easily arrested the suspect/s without using any force.

It was inferred from the responses that police officers got carried away and used force indiscriminately, even after there was no need for it as the suspects had been restrained. The African Policing Civilian Oversight Forum argues against the use of any form of force after a suspect has been arrested.³⁷ It states:

"No justification whatsoever exists for beating, kicking, or otherwise ill-treating an arrested person, and there is no excuse whatsoever for a member to act in this manner. Any member found guilty of an offence as a result of the use of force while effecting an arrest where the use of such

³⁶ Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology," *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101.

³⁷ African Policing Civilian Oversight Forum, "Independent Monitoring of Police Custody in South Africa," Training Manual Annexure 2, 2019, <http://apcof.org/wpcontent/uploads/apcofindependentmonitoringtrainingmanualannex2.pdfloads/apcofindependentmonitoringtrainingmanualannex2.pdf>.

force cannot be justified must expect to be dealt with according to the departmental disciplinary proceedings and the relevant criminal law.”

Two participants described more severe cases of assault where a police officer inflicted grievous bodily harm (GBH) on a suspect. P-Inv-47 explained this as follows:

“Assault is when force is excessive. It’s when a SAPS member assaults a person...but once the blood comes out, it is no longer common assault, but assault or GBH, because it is grievously bodily harm.”

Similarly, P-Inv-54 mentioned GBH in his definition of assault:

“There is assault, which is grievous bodily harm, whereby a person may sustain like an open wound. Let’s say a person maybe was assaulted with a chair and it caused injuries, you understand?”

The above narratives highlighted the fact that police assault that was investigated by the participants was not limited to slapping, kicking, and punching, which may be viewed as low levels of force, but that police actions were also severe to the point where suspects bled or sustained open wounds.

Resisting Arrest

Three aspects that constitute contraventions of the Constitution namely, the use of less lethal force *before* a suspect resists arrest, *during* suspect resistance, and *after* containing a suspect who resisted are discussed below,. Understanding these contraventions is important as they result in criminal cases of assault being lodged against police officers. The behaviours of suspects (victims) and police officers (perpetrators) are discussed.

Police behaviour *before* an arrest

It is the core duty of police officers to arrest a person suspected of having committed a crime. However, it is often when a suspect resists arrest that a police officer decides to use force, but the participants argued that, in some cases of assault reported to them, the police had used force against a suspect before an arrest or before various forms of resistance or threat were evident. For instance, P-Inv-46 stated:

“Let’s say, for example...eh...they are coming to arrest me here in my office. ‘Ok, Mr or Mrs so and so, we are here to arrest you for such and such a case.’ Or they come to kick down the door without saying anything. They start assaulting me, beating me, handcuffing me...handcuffing me tightly in the sense that I can’t even move my wrists, then there are marks here [pointing at wrists], or they start slapping me and everything. Then I swell [pointing at the face to illustrate how swollen it would be]. They could have easily come to my office and arrested me without using force. It is when I’m not a threat to them, but they continue to use force.”

The first indication of the contravention of regulations regarding the right of the police to use force was that the police tended to initiate contact with a suspect by using force without first assessing whether the situation required any forceful measure. It is a well-known fact that assessing a situation assists in understanding whether it is necessary to use force and determining the level of force the situation requires as well as the type of force necessary. Therefore, if they do not take the time to process a situation, the police risk abusing and misusing their power to use force.

Similarly, P-Inv-51 felt that, despite suspects’ contribution to situations of conflict, it was the police who instigated violent interaction:

“The victim also plays a role as well a little bit, but it is mostly the police; the scale hangs more on the side of the police. It’s unlikely that the victim will instigate being tortured or assaulted, but it cannot be denied that some victims do play a role as they provoke the police.”

The participants highlighted two important points: (1) Suspects provoked police violent response, which is not a reasonable justification if the suspect was not a threat or following police instructions; (2) Police officers started their interactions with suspects by using unnecessary force. It therefore seemed that,

at times, police officers applied force when accosting a person suspected of committing a crime even in the absence of resistance.

Suspects' behaviour during an arrest

Questioning Police Procedures

Some participants argued that a suspect's behaviour during an arrest would aggravate the police to use force. However, they also highlighted that the public's lack of understanding of police procedures contributed to them being assaulted by officers, for instance when a suspect questioned an officer's behaviour and rights. P-Inv-54 discussed the assault of suspects during stop-and-search operations:

“A complainant will come and say, ‘A police officer came and said, ‘I’m searching you’ without explaining why, and the person would say, ‘Ayibo, why are you searching me?’. Then a slap will come there, and it starts like that. If the member resists, then the police get upset and then the assault starts. The people will ask, ‘Where is the search warrant?’ and that would upset the police [who will say], ‘What do you know about a search warrant?’”

P-Inv-50 made a similar comment:

“Complainants reported a lot of cases whereby a police officer stopped and searched the complainant. Sometimes the complainant was aware of the reason why the police stopped him, but he would ask the police officer to produce a warrant. As he was asking for a warrant, he was not cooperating or responding to any of the questions posed by the police. Sometimes a person will say, ‘I will not say anything until you show me a warrant.’ Surely the police officer will lose his temper and use force [to get an answer]. So, it's in those kinds of situations where the police end up assaulting people.”

The authentic narratives above suggest that some citizens believe that the police should produce a search warrant whenever they stop and search a member of the public. This means that some citizens are not aware of section 22 of the Criminal Procedure Act 51 of 1977 which permits an officer to search a person without a warrant “if he on reasonable grounds believes (i) that a search warrant will be issued to him under paragraph (a) of section 21 (1) if he applies for such warrant; and (ii) that the delay in obtaining such warrant would defeat the object of the search.” Therefore, citizens' lack of understanding of police procedures, particularly their questioning procedures and practices and citizens' resultant resistance, leaves the police with the impression that the suspect defies their authority.

Suspects' Violent Behaviour

The participants believed that, in some incidences, the public's violent behaviour when interacting with the police prompted the decision or instinctive behaviour to use force. For instance, P-Inv-46 commented as follows:

“One example is service delivery protests and all of that. [These protests] alone contribute a lot to assault because, as you also know, most of the time it is always the case of the community against the police. They [community members] throw stones at the police and all of that, and the police in retaliation would use rubber bullets, teargas, and all of those things, so [such an incident] increases cases of assault against community members.”

Similarly, P-Inv-56 stated:

“In some instances, members of the public are violent towards the police. They take no notice of them. A suspect resists arrest and when the police officer tries to forcefully arrest him, he starts pushing and fighting with the police, then the police retaliate.”

The participants acknowledged that during public protests, anger and frustration would consume citizens and they would readily use violence against the police when instructed to disperse. When violent protests erupted and the instigators were accosted by the police, they resisted, and then the police felt that they were allowed to use force. However, these protesting citizens viewed police action of dispersing them with teargas and rubber bullets as a form of assault. Moreover, it happens that when citizens resist, police

retaliate by using force that is excessive and not proportionate to the citizens' behaviour, and thus they violate the principle of 'proportionality'.

Law enforcement agencies often construe violent protests as having 'crossed the line', hence the perpetrators are increasingly met with brutal, repressive force by the police.³⁸ This was evident in the Marikana massacre that occurred in August 2012, when 34 miners lost their lives when the police opened fire on the protesters.³⁹ The protest was caused by a lack of service delivery, amongst other deprivations, and the demands issued by the mineworkers occurred in a threatening manner. This is a tragic example that police intervention often results in severe injuries and, in some cases, even death.

Suspects' behaviour after arrest **Disrespectful remarks**

The participants raised the issue of lack of respect for police. For instance, P-Inv-47 stated:

"Some of our complainants like to pick a fight with the police when they are drunk. They say irritating things and swear at the police. They know what to say to upset the police."

P-Inv-50 also shared his observations of how the public would aggravate police violence:

"People provoke the police. In our days, people claimed to know their rights and they didn't know when their rights were limited. Even when his rights are limited, you find that the person doesn't want to behave according to the circumstance because he claims that he knows his rights, you understand? For example, someone is arrested, so in the case of the police, once they have arrested someone, automatically they have to handcuff that person. But then you find that, as he is seated in the back of the van, he is busy swearing at the police [saying things like] 'These handcuffs are too tight...blah, blah, blah...' So, the police will smack him around a little bit."

Lack of respect for police officers by society is a deeply concerning yet prevalent issue in South Africa. It can be argued that police involvement in illegitimate activities such as corruption, money heists, drug and human trafficking, and lack of justice is rife, resulting in citizens losing trust and respect for them. Moreover, the participants highlighted police retaliation as a form of misuse of force, which therefore adds to the criticism and negative perception of the police. However, Phillips and Smith found that complaints of assault included encounters where civilians had physically provoked and disrespected the police.⁴⁰ Frequently, police officers counter citizens' disrespectful behaviour with the attitude that they are in authority and should be obeyed. They demand a certain degree of respect and, when citizens fail to respect them, they tend to revert to force.

One participant argued that suspects contributed to their victimisation because they failed to understand the limits of their rights. However, if the police use force without a threat or any form of resistance is unconstitutional regardless of what the suspect said. Therefore, when suspects can no longer resist arrest and are not attempting to flee the scene but are merely annoying and rude, it does not threaten the safety of the police or violate any law. These suspects simply undermine the sense of dignity of police officers and they should thus merely shrug it off as they are in the position of power anyway.

Contrary views emerged regarding the notion that victims trigger police violence. For instance, Participants P-Inv-47 and P-Inv-48 argued strongly against the idea that suspects could contribute to their victimisation. P-Inv-47 stated:

"When it comes to him being assaulted, I don't think it is right at all from the start [as we should not forget] section 49 that guides the use of minimum force. So from the get-go, I don't think there is anything done by the victim that contributes to him or her being assaulted."

P-Inv-48 also argued that suspects could not contribute to being victimised, comparing this with rape:

³⁸ N Breakfast, G Bradshaw, and T Nomarwayi, "Violent Service Delivery Protests in Post-Apartheid South Africa, 1994–2017—a Conflict Resolution Perspective," *African Journal of Public Affairs* 11, no. 1 (2019): 106–26.

³⁹ Irene Chapple and Errol Barnett, "What's behind South Africa's Mine Violence," CNN World, September 14, 2012, <https://edition.cnn.com/2012/08/17/world/africa/marikana-south-africa-mine-shootings/index.html>

⁴⁰ Tim Phillips and Philip Smith, "Police Violence Occasioning Citizen Complaint," *British Journal of Criminology* 40, no.3(2000):480–96.

“When someone comes here and says, ‘I have been tortured by a police officer...’, when I’m conducting my investigation I can’t ask a victim, ‘What did you do to make the police [officer] assault you?’ You can’t ask that question. It’s like asking a rape victim, ‘What did you do to be raped?’”

In the two excerpts above, the participants argued against interrogating the alleged assaulted suspect about their role in the crime, as they believed the suspect should not have been manhandled or assaulted in the first place. However, contrary to the views of the two investigators and others who were like-minded, the role of the suspect in the situation of assault is key in determining whether police used force when it was ‘reasonably necessary’ to do so. For instance, if a police officer used force because the suspect was resisting arrest, or the lives of other officers and citizens were in danger, the use of force is lawful if it is proportionate to the circumstance, thus the officer cannot be charged for assault. Therefore, the decision to not focus on the suspects’ complicity in the alleged assault may pose challenges when evaluating whether the accused officer’s actions were constitutional or not.

Police use of force *after* an arrest

The force used after a suspect has been handcuffed

The core of police work is to arrest a person suspected of committing a crime. However, the participants argued that the execution of this task was often challenged by suspects who resisted arrest, and this exacerbated the rate of police assault incidences as the police would not limit the force they applied. P-Inv-51 shared the following information in this regard:

“You find that a person resisted arrest but the police continued to assault the person while the person was handcuffed. [So] even when the person did not pose any danger to the police, the police were continuing to assault him or her when he or she was handcuffed.”

P-Inv-51’s assertion was corroborated by P-Inv-49, who also referred to the issue of the use of force by the police after an arrest had been secured and the suspect had been handcuffed. She stated:

“In the case I just told you about, that person was handcuffed and had leg irons on, so she couldn’t even defend herself or do anything whether using her head, hands or legs, you know. She couldn’t defend herself or whatever to try and avoid being assaulted. She couldn’t.”

When suspects revert to active resistance, they will likely be forcefully arrested as the law permits. However, according to the narratives above, suspects were assaulted even after resisting arrest and being restrained. In such events, the police failed to adhere to the principle of using force only to restrain a resisting suspect. Secondly, the level of force used by police officers to restrain a resisting suspect seemed to be much higher than what is allowed to subdue suspects. Therefore, even when police officers used force such as when a suspect resisted arrest, they sometimes failed to ensure that the force used was proportionate to the situation, or reasonable. Such behaviour was tantamount to the criminal offence of assault.

DISCUSSION OF FINDINGS

The purpose of this paper is to share insight into how and why police officers, who should know how and when to use force, do not refrain from assaulting citizens. The findings revealed that the problem of police misuse of less lethal force occurs as a result of their failure to respect the human rights of suspects who allegedly violated the rights of other citizens. Earlier studies, such as the report by the Special Rapporteur of the UNCHR, attribute the unlawful use of force by the police to acts of ignorance, the policing subculture of silence, lack of sanctions due to criminal justice being overburdened and inefficient, and the culture of impunity.⁴¹ The empirical data obtained by the current study proposes that police assault occurs in contravention of the Constitution in three stages: *before* a suspect resists arrest, *during* resistance and law enforcement, and *after* a suspect who resisted arrest has been restrained. When police assault occurs

⁴¹ Duxita Mistry et al., “The Use of Force by Members of the SAPS: A Case Study of Seven Policing Areas in Gauteng,” Institute for Human Rights and Criminal Justice Studies, 2021, https://www.gov.za/sites/default/files/gcis_document/201409/force0.pdf.

in these three stages, three fundamental principles that guide the use of force are violated: force is only permissible when ‘reasonably necessary’; force must be ‘proportional’ to circumstances, and force can be used to ‘overcome a threat’.

According to the participants, when a suspect resisted arrest, the police used force as advised by the law, yet they did not limit the force or cease using it when a suspect was no longer resisting or had been restrained using handcuffs. Such acts defy the principle of using force to overcome a threat. Once a suspect has been handcuffed, he/she is no longer a threat regardless of the use of expletives and disrespectful language. When police officers then continue to hit, slap, or pinch the arrested suspect, their action deviates from the law which demands that police officers use force only to defend themselves or other people.

It is logical to assume that all police officers possess sufficient professional knowledge to make the best possible decisions on how and when to use force, make an arrest, or effectively control crime. It is therefore expected that police officers’ response to suspects’ lack of respect for their authority, their lack of understanding of police procedures, and their failure to adhere to police instructions should always occur within the boundaries of the law. If the police disregard the principle of actions that should be ‘reasonably necessary’, they expose themselves to criminal prosecution because such victims will not hesitate to lodge a complaint. Police officers should be reminded that the necessity for using force cannot be justified by feeling disrespected and undermined. When a suspect is intoxicated, he or she will naturally be antagonistic and verbally abusive. In such circumstances, the use of force by police officers occurs in response to a non-criminal act, and thus they overstep the limits of their rights by using force and conducting themselves like lawbreakers instead of law enforcers.

It is undeniable that the police must often make lightning decisions under difficult circumstances that entail assessing a situation at the drop of a hat to determine whether they need to respond using force or not. However, if they fail to make the right decision, it results in the abuse of the discretionary power vested in police officers and their behaviour will be used as a weapon to further discredit them and alienate them from the public they are tasked to serve and protect. Furthermore, using force when suspects refuse to respond to questions is often an act to curb the perceived defiance of police authority, and the police then use force to ‘educate’ suspects and to persuade them ‘not to mess with the police’. For instance, Beek and Gopfert explain that beatings are often administered by the police as a violent means of ‘educating’ civilians as they perceive this physical form of inflicting pain as an efficient warning against and impediment to future criminal behaviour.⁴² The perception seems to persist that excruciating physical pain is an efficient tool to ‘educate’ a suspect.

Once police officers have decided to make an arrest, they are authorised to use force to enforce that decision.⁴³ Likewise, as long as some members of society do not comply with the law and resist the police, force will remain an inevitable part of policing. The participants argued that the use of force by the police often occurred when citizens hurled stones, pulled out guns or knives, and physically attacked the police during arrests particularly when suspects refused to comply with instructions by the police. However, in all circumstances, the use of force to quell violent situations should only be used in line with legislation and prescripts.⁴⁴ In the case of assault, the participants highlighted that police officers tended to ignore the principle of ‘proportionality’, which emphasises the importance of ensuring that force is only used when it is reasonably required. The use of force must also always be proportionate to the level of resistance or the circumstance, as provided for in Section 49 of the Criminal Procedure Act No. 51 of 1977.⁴⁵

To ensure that the level of force that is used is proportionate to the circumstance, Crawford and Burns cite Sykes and Brent and Garneret, Schade, Hepburn and Buchanan who argue that police officers must continuously assess, act, and react according to suspects’ behaviour because failure to use reasonable

⁴² Jan Beek and Mirco Göpfert, “Police Violence in West Africa: Perpetrators’ and Ethnographers’ Dilemmas,” *Ethnography* 14, no. 4 (2013): 477–500.

⁴³ Harmon, “Why Arrest.”

⁴⁴ Civilian Secretariat of Police, “White Paper on Policing.”

[Http://www.policesecretariat.gov.za/downloads/bills/2016_white_paper_on_policing.pdf](http://www.policesecretariat.gov.za/downloads/bills/2016_white_paper_on_policing.pdf), 2016.

⁴⁵ Republic of South Africa, *Criminal Procedure Act No. 51 of 1977* (Pretoria: Government Printer, 1977).

force could result in injuries and may even have lethal consequences.⁴⁶ Failure to consider the principles that guide the use of police force may result in police officers finding themselves on the wrong side of the law.

RECOMMENDATIONS

One factor that contributes to the use of violence by the police against citizens is the absence of accountability, which is closely aligned with the issue of impunity that has become consistently evident in studies on police violence.⁴⁷ A culture of impunity is strengthened by the culture of silence and solidarity that prevails among police officers. Therefore, ensuring that the police comply with the law when force is used requires continuous refresher training that focuses on improving police professionalism, strengthening police accountability, and ensuring the effectiveness of the IPID to curb and eventually eradicate the culture of silence and solidarity in the police organisation.

Furthermore, the primary function of the police is to protect the constitutional rights of citizens; therefore, abusing their power when citizens fail to show respect or recognise their authority is a travesty of their mandate. It is therefore important to educate citizens about their legal rights as well as police procedures so that mutual respect will be developed between the police and citizens as they work towards building good relations and trust. Workshops should be initiated to educate ordinary citizens about the importance of respecting not only the law but the enforcers of the law as well. In the same vein, police management should work at improving its image and focus on the professional behaviour of officers. This will require identifying and disciplining rogue officers as an example to others, actively reducing cases of police corruption, addressing and eradicating police involvement in criminal activities, proactively monitoring all officers' behaviour to detect signs of excessive force, and swiftly dealing with criminal behaviour by the police.

Another important requirement is that all officers should work together to enhance the specialised knowledge and skills they collectively possess. Police officers who have worked in violent and dangerous communities under difficult circumstances have a skills and knowledge base that is invaluable in the policing environment, and these should be shared with less experienced officers. However, the police should never close ranks against law-abiding citizens but should cultivate a relationship of trust with communities who have the potential to become their allies in the mutual fight against crime.

CONCLUSION

The purpose of this paper was to provide deeper insight into the criminal offence of assault that is often perpetrated by some police officers in South Africa. Three principles of section 49 of the Criminal Procedure Act No. 51 of 1977 are violated by police officers when they assault citizens. Based on the findings of the study police initiate physical contact with a suspect by subjecting him or her to violence before assessing whether the situation requires any forceful measure, which means that the police use force in the absence of a threat, which contravenes the principle of using force only to pacify the suspect. This article has further shown that police tend to use force when suspects refuse to respond to questions, show a lack of respect for their authority, demonstrate a lack of understanding of police procedures, and fail to adhere to police instructions. In common police vernacular, the force police officers use in such instances is intended to 'educate' suspects and to 'persuade' them 'not to mess with the police'. In short, police officials tend to view any resistance or contradiction as acts of defiance of police authority, and thus overstep their mandate by using force inappropriately and not when 'reasonably necessary'.

Consequently, they expose themselves to criminal prosecution because victims will not hesitate to lodge a complaint. Some police officers tend not to limit or cease the use of force once a suspect has been restrained. Although the use of force when a suspect is resisting is justified under section 49 of the Act referred to earlier, the use of force when a suspect is no longer resisting defies the principle of using force only to defuse a threat. Therefore, the persistent violent behaviour of police officers demonstrates an approach to policing that is unethical and unprofessional, and this compromises the legitimacy of the

⁴⁶ Charles Crawford and Ronald Burns, "Resisting Arrest: Predictors of Suspect Non-Compliance and Use of Force against Police Officers," *Police Practice and Research* 3, no. 2 (2002): 105–17.

⁴⁷ Bruce, "How to Reduce Police Brutality in South Africa."

police organisation and corrodes citizen-police trust. In a democratic South Africa, the use of force by police officers should reflect their unwavering commitment to their constitutional mandate.

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