

The Use of Lethal Force by the Police in South Africa



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Introduction

The present study is the first outcome of a collaboration between the African Policing Civilian Oversight Forum (APCOF), the Laboratório de Análise da Violência of the State University of Rio de Janeiro (LAV-UERJ) and the Network of African National Human Rights Institutions (NANHRI), established through a Memorandum of Understanding (MoU), with the purpose of analysing the use of force by the police in African countries.

Abuse of force by public security agents of the state is a thorny issue in many countries around the world. In 2020, the death of George Floyd in Minneapolis in the United States of America dramatically brought this topic to international attention, and not just in developing countries.

As the holder of the monopoly on legitimate violence, the state is entitled to use force to protect people's rights and to uphold the law. However, the use of force has to be contained and monitored lest it cause more harm than the harm it is meant to prevent.

According to international standards such as the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions – known as the Minnesota Protocol – lethal force can be used only in exceptional cases.

Principles regarding the use of force that are often contained in international documents and in national guidelines tend to include the following:

- a) **legality**, which requires that force be used only to pursue legal aims;
- b) **necessity**, that is, that there are no alternative and less violent means to achieve the same ends;
- c) **proportionality**, which means that the force used by state agents cannot significantly exceed that used by suspects or opposers;¹
- d) **precaution**, which imposes a duty on the state to plan law enforcement operations in a manner that minimises the use of force; and
- e) **accountability**, according to which the state has to duly investigate incidents of lethal force and inform the relatives of victims of the outcome of such investigations.

Lethal force, that is, the use by state agents of instruments such as firearms that are likely to cause death needs to be specifically controlled and is subjected a fortiori to the above-mentioned principles. Specifically, lethal force must be used only in exceptional circumstances.

The African Commission on Human and Peoples' Rights, in its General Comment No. 3 on the African Charter on Human and Peoples' Rights: The right to life (Article 4), specifically states the following in paragraph 27:

The intentional lethal use of force by law enforcement officials and others is prohibited unless it is strictly unavoidable in order to protect life (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary).

This, in turn, echoes Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

In other words, the principle of necessity can be applied only to the objective of saving lives, with the result that any other purpose, such as the protection of property, does not warrant the use of lethal force.

Despite all existing regulations, human right reports in many countries are filled with cases of extrajudicial executions as well as cases of alleged abuse of force by the police that result in the death of members of minority groups or suspects in general. When such cases arise, it is often hard to challenge the official version of events in court. In fact, in many countries, the criminal justice system appears to find it difficult to prosecute and sentence law enforcement officers who use force inappropriately. This can be attributed to several factors, namely: the difficulty in obtaining evidence, particularly where the victim is deceased; people being afraid to testify against police officers; the official version being given precedence, the assumption seemingly being that law enforcement officers acted legitimately; and the fact that significant sectors of the population may support harsh and illegal interventions against alleged criminals. Since a criminal investigation into the death of a person takes months or years, law enforcement officers may continue working – sometimes being removed from the streets, and sometimes not – while the investigative process is ongoing.

A point that has to be highlighted is that **use of force has to be subjected to limits and controls that go beyond the criminal test**. Considering that lethal force has to be minimised, there are many circumstances in which its use would not be considered criminal, yet it should nevertheless be avoided or restricted.

In fact, given their mandate to use force, the possibility of **abuse of force should be viewed as a professional risk** by law enforcement officers and should be treated accordingly, rather than being seen as an extremely unlikely event that could only result from the criminal nature of a few errant police officers.

Given the limitations of the criminal justice system in identifying and imposing sanctions for abuse of lethal force, it is even more important to resort to an **overall analysis of patterns of use of lethal force** in a country. Specific indicators have been developed in the literature to establish whether the use of lethal force is proportionate and, therefore, legal or excessive. This is what the project, Monitor of Use of Lethal Force in Latin America² did for five countries in the region: Brazil, Colombia, El Salvador, Mexico and Venezuela. The project developed a set of indicators of use and abuse of lethal force, and a common methodology to measure them, that allowed for international comparison. In order to facilitate access to relevant data

and the comparability of results across countries, the project focused on incidents in which law enforcement agents on duty made use of firearms as a result of which death or injury ensued. Information on the behaviour of off-duty agents in Latin America is often much harder to obtain and such statistics are sometimes added to the total number of victims of police interventions, and sometimes not. Likewise, records of other incidents of use of force apart from the use of firearms are frequently lacking, and, where they exist, are categorised in different ways that are difficult to consolidate.

Given the limitations of the criminal justice system in identifying and imposing sanctions for abuse of lethal force, it is even more important to resort to an overall analysis of patterns of use of lethal force in a country.

The purpose of the present study is twofold. First, it will attempt to **use, the same indicators for South Africa as used by the Monitor of Use of Lethal Force in Latin America** so as to assess the possibility of excessive use of force in the country and to place South Africa in a comparative international perspective. In order to do this, it should be remembered that the Latin American countries concerned were chosen precisely because they have a serious problem with excessive use of force and extrajudicial killings by law enforcement officers. Thus, the fact that a country compares favourably with these five countries does not mean that there is no reason for concern.

The second purpose of this study is to analyse existing information on the use of lethal force in South Africa in order to explore its patterns, characteristics and geographical distribution. Ultimately, this information could be used to try to devise measures to: a) improve the quality of the data so as to allow for better monitoring and accountability; and b) prevent excess in the use of force.

In South Africa, external oversight of the police is assigned to the **Independent Police Investigative Directorate (IPID)**, an independent organisation established by the IPID Act 1 of 2011. In terms of section 28 of the IPID Act, IPID **must investigate**, among other things, the following incidents in the prescribed manner³:

- (a) *any deaths in police custody;*
- (b) *deaths as a result of police actions;*
- (c) *any complaint relating to the discharge of an official firearm by any police officer;*
- (d) *rape by a police officer, whether the police officer is on or off duty;*
- (e) *rape of any person while that person is in police custody;*
- (f) *any complaint of torture or assault against a police officer in the execution of his or her duties;*
- (g) *corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be;*
- (h) *any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be.*

The Directorate may also investigate matters relating to systemic corruption involving the police.

Section 29 of the IPID Act deals with **reporting obligations on the part of the South African Police Service (SAPS)** and determines as follows:

The Station Commander, or any member of the South African Police Service or Municipal Police Service must —

- (a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(l)(a) to (f); and*
- (b) within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any matter as contemplated in paragraph (a).*

The incidents of interest for the purposes of this report will be the first three types that IPID is mandated to investigate and, therefore, to record, namely deaths in police custody, deaths as a result of police action, and complaints related to the discharge of an official firearm by a police officer. It is important to note, however, that, while **deaths must be reported to IPID by the police themselves, discharges of firearms** by police officers will only be **reported if such actions are the subject of a complaint**, presumably by a member of the public. Obviously, this introduces a potentially significant filter and bias, since citizens may not always report a potentially inappropriate or even illegal use of a weapon by a police officer owing to a lack of knowledge on their part of IPID and its operations, for fear of reprisals, or due to any other factor.



METHODOLOGY

Sources

The **main source** for both objectives indicated above, namely the calculation of indexes of use and abuse of lethal force, and the analysis of the profiles of such cases, will be the **Independent Police Investigative Directorate (IPID)**.

The IPID database related to the **three types of incidents** concerned was requested and obtained for the years 2017 to 2018 and 2018 to 2019. These three types of incidents are:

- a) **Deaths in police custody;**
- b) **Deaths as a result of police actions;** and
- c) **Discharge of an official firearm.**

The database includes the variables indicated in Table 1:

Table 1: Variables included in the IPID database
Province
Police station
Case control number
Crime Administration System (CAS) number
Date of incident
Class
Incident code
Incident subcode
Description of complaint

However, the database that we obtained for 2018 to 2019 lacked several fields, namely CAS number, data on incident, and, crucially, incident subcode. This last variable is very important in interpreting the incident. In view of this missing data, we opted to analyse the data for 2017 to 2018, which was complete. Also, this is the same period as that covered by the Monitor of Use of Lethal Force in Latin America, thus facilitating comparison.

The IPID database **for the period April 2017 to March 2018** included a total of 1 546 cases classified as deaths in custody, deaths as a result of police action, and discharges of police firearms. However, several repetitions were identified, either because a record was duplicated or because two records referred to the same incident. After eliminating these repetitions, the final database numbered **1 521 cases**, divided up as follows:

- a) **200 cases of death in police custody;**
- b) **434 cases of death as a result of police action;** and
- c) **887 cases of the discharge of an official firearm.**

As indicated above, each case included a short description of the incident. Each of the 1 521 descriptions was read, was interpreted in conjunction with the information from the other variables, and was coded for relevant information.

Indicators of use and abuse of lethal force

The **incidents of interest** for the calculation of indicators so as to maintain comparability with the relevant Latin American countries are those in which **firearms were intentionally used by or against on-duty public security agents** and which resulted in **injury or death**, excluding suicides and accidents.

There are several reasons for selecting only cases involving firearms. First, this is a criterion that is easily applied in various countries with different registration systems, since the use of firearms by the police is more frequently and reliably coded than other uses of force. Secondly, given the high degree of lethality of this kind of weapon, the criterion tends to include the vast majority of victim fatalities resulting from interventions by state agents in most countries.

Restricting the cases to those in which agents were on duty is done owing to the lack of homogeneity in the way the various countries record cases in which off-duty police officers are involved in fatal incidents. These situations may include reactions to attempted robberies, participation in private security operations, instances of domestic violence, conflicts with neighbours, participation by state agents in criminal activities, etc. In addition to this diversity and the different ways in which such situations are coded, there is no consensus regarding the extent to which the police officer in each of these cases is deemed to be intervening as an agent of the state or as a private individual, for instance when reacting to a robbery witnessed in his or her free time.

The concept of **public security agent** used to calculate the indicators includes: a) national, regional and local police officers; b) the army when it performs public security functions; and c) members of other public agencies that perform public security functions. In practice, since the source of the data for South Africa is IPID, cases will be limited to those institutions about which it receives information, namely the South African Police Service (SAPS) and metropolitan police forces. Thus, cases where the South African National Defence Force (SANDF) might be called on to perform public security duties are not included, as such cases are not reported to IPID.

The indicators used are presented below and are divided into two groups: incidence and abuse. The former intend to measure, and compare internationally, how frequent or how intense the use of force is. However, a high incidence does not mean that the level of lethal force is

necessarily excessive, for there may be circumstances that account for or justify such force. Abuse-of-force indicators, on the other hand, aim to measure precisely if there is evidence to support the claim that the use of force is excessive and therefore illegal.

Indicators relating to the incidence of the use of lethal force

- I-1: Absolute number of civilians killed by on-duty public security agents, by gunshot;
- I-2: Number of civilians killed by on-duty public security agents, by gunshot, for every 100 000 inhabitants (rate);
- I-3: Number of civilians killed by on-duty public security agents, by gunshot, for every 1 000 public security agents (rate);
- I-4: Number of civilians killed by on-duty public security agents, by gunshot, for every 1 000 people arrested (rate);
- I-5: Number of civilians killed by on-duty public security agents, by gunshot, for every 1 000 firearms seized (rate);
- I-6: Absolute number of on-duty public security agents killed in homicides, by gunshot; and
- I-7: Number of on-duty public security agents killed in homicides, by gunshot, for every 1 000 public security agents (rate).

It is important to note that police officers who are victims of police interventions are included among the civilians, since they are also part of those affected by the use of lethal force on the part of the police.⁴

The **incidence indicators** endeavour to measure the intensity of the phenomenon: first in absolute terms (I-1), and, secondly, as weighted by the population (I-2) and the number of public security agents (I-3), given that one can expect a greater number of instances of use of force as the population, and the size of the police force, increases. Thirdly, the indicators are weighted by incidents that imply a greater probability of the use of lethal force, such as arrests (I-4) and firearm seizures (I-5). During arrests and firearm seizures, there is a greater likelihood of resistance to authority than in the case of other incidents, thereby increasing the possibility of the use of force. Weighting the use of lethal force by the number of arrests or seizures allows for better comparisons between security forces. Since, as mentioned previously, the use of lethal force is internationally regulated by the principle of proportionality, the presence of firearms among civilians is a critical factor in justifying the legitimate use of lethal force, though only in cases where civilians pose an imminent threat to someone's life. In other words, the presence of firearms among the population is almost a necessary condition – albeit an insufficient one on its own – to warrant the use of lethal force by security agents.

Along with civilian victims, incidence indicators also contemplate the number of on-duty public security agents who are victims of homicide, both as an absolute number (I-6) and as a rate for every 1 000 agents (I-7). The incidence of homicide victims among law enforcement officials is included for two reasons. The first is that this is a very serious occurrence that has to be minimised. The second is that homicides in which law enforcement officers are killed are relevant in understanding the use of lethal force against civilians, since these two phenomena are closely associated in some countries.

Indicators relating to the abuse of lethal force

- A-1: Homicides by gunshot caused by on-duty public security agents as a percentage of total intentional homicides (I-1);
- A-2: Ratio of the number of civilians killed by gunshot by on-duty public security agents (I-1) to public security agents killed by gunshot in homicides while on duty (I-6);
- A-3: Lethality index: Ratio of the number of civilians killed by gunshot by on-duty public security agents (I-1) to number of civilians wounded by gunshot by on-duty public security agents;⁵
- A-4: Ratio of the lethality index of civilians (civilians killed divided by civilians wounded) to the lethality index of public security agents (agents killed divided by agents wounded) (All of these correspond to people killed or wounded by gunshot in incidents involving the participation of on-duty public security agents.); and
- A-5: Average number of civilians killed by gunshot by on-duty public security agents (I-1) per incident, considering all incidents that caused civilian deaths or injuries by gunshot.

The **abuse indicators** aim to measure to what degree patterns of excessive use of lethal force occur in a country. In principle, as explained above, a high level of incidence, while concerning, does not automatically mean that the use of force has been abused. It is possible that lethal force has been elevated in response to a violent environment in which the lives of police officers have been threatened. For that reason, incidence indicators must be complemented by abuse indicators.

The **proportion of intentional homicides that result from the intervention of public security agents** (A-1) compares the lethality caused by public agents with the overall levels of lethal violence existing in a country. In a country where the homicide rate is low, high lethality caused by the police could hardly be justified as proportionate considering that they can only make legitimate use of their firearms when there is an imminent threat to their lives or the lives of others. In such sense, this indicator constitutes a test of proportionality regarding the use of force. In a study by Cano (1997) of cities and countries where there was no reason to suspect abuses, the proportion of fatal cases due to police intervention was around 5%. When this percentage surpassed 10%, this was a clear indication of abusive use of force. In short, this proportion must remain below 10%, and, when it does not, the result is incompatible with the moderate and legal use of lethal force.

The **ratio of civilians killed by gunshot by public security agents to public security agents who are victims of firearm homicides** (A-2) is an even clearer indicator of the principle of proportionality – interpreted here as the degree of force exercised by both sides, considering that law enforcement officials should only use lethal force in response to an imminent risk to their lives or the lives of others. If public security agents never become victims but cause a large number of civilian to become victims, it is hard to justify that the latter occur exclusively to protect the lives of the former. Instead, this would point to the existence of summary executions in which public security agents decide to kill civilians when they could arrest them instead.

In general, a greater number of victim fatalities is to expected among those who confront law enforcement officials than among the officers themselves. There are a number of reasons

for this, for instance the police tend to operate in groups, they are trained, they often use bulletproof vests, etc. Nevertheless, according to studies by Chevigny (1991), when the disproportionality between death figures exceeds the ratio of 10 to 1, this constitutes a strong indication of excessive use of force. Therefore, the acceptable upper limit for this indicator would be 10.

If public security agents never become victims but cause a large number of civilian to become victims, it is hard to justify that the latter occur exclusively to protect the lives of the former.

The **ratio of civilians killed to civilians wounded** in interventions by public security agents – also called the lethality index (A-3) – is perhaps the clearest test relating to the abuse of force, since it addresses the principle of proportionality. Medical literature on armed conflicts registers a greater number of wounded victims compared with the number of dead. In the Vietnam War, the ratio was four wounded for every person killed from 1964 to 1973, whereas, during the conflict between Israel and Lebanon, the ratio was 4.5 people wounded for every person killed in 1982 (Coupland & Meddings, 1999). The International Red Cross states that ‘the ratio of dead to survivors in modern conflicts tends to be about 1:4’ (Giannou & Baldan, 2010). However, these levels of lethality occur in scenarios in which the attacker’s intention is to kill, whereas, in a context of public security, the principles of necessity and proportionality should apply, which would diminish the lethality index. Also, the obligation to provide medical assistance for victims of the use of force by the police should help reduce the number of fatalities. Indeed, in a context of law enforcement, there is a difference between use of force that is potentially lethal and use of force which is intentionally lethal, considering that the latter should be a very rare occurrence (such as when a kidnapper is threatening to kill his or her victim right away). In contrast, in a war situation, force that is intentionally lethal is commonly accepted.

On the other hand, there are diverse circumstances that may produce a negative bias in relation to this indicator. Records of deaths in armed confrontations may rise over time, since people who are initially wounded may end up dying (Holcomb, Wade, Stansbury, Bellamy & Champion, 2006). Thus, the number of dead, and the index’s value in turn, may be underestimated. Also, Fazal (2014) describes how lethality may decline over time as a result of medical advances that save people who would otherwise have died.

Despite these limitations, the lethality index is one of the most widely used indicators in the literature regarding the use of lethal force by the police (Cano, 1997; Silva, Pérez Correa & Gutiérrez, 2012). As indicated above, this index’s value should always be below 1. Values exceeding that threshold, with more victim fatalities than victim non-fatalities, point to excessive use of force and, possibly, to summary executions. Yet, as already explained, this indicator is dependent on the availability and reliability of records of incidents of use of force that result in non-lethal injuries. In South Africa, Bruce and O’Malley (2001) arrived at a lethality index of 0.35 in respect of SAPS shootings that occurred between 1996 and 1998 in the Western

Cape, the Eastern Cape and the Free State. In other words, their result for these three provinces was within expected parameters relating to the legal use of force at the time.

The **ratio of the lethality index in respect of civilians to that in respect of law enforcement officials** (A4) compares the two lethality indexes and tests for the principle of proportionality. There is no literature that defines a specific threshold for acceptability in this case. However, if the lethality in respect of civilians is much greater than it is in respect of officers, that is, if the index is much higher than 1, this would indicate an excessive use of force. Public officials tend to justify the number of victim fatalities caused by police interventions as a consequence of the risk that agents are exposed to when facing heavily armed and highly dangerous criminals. If this risk is real, then the value of this indicator should stay close to or below 1.

Lastly, the **average number of civilians killed per incident**, considering deceased or wounded civilians (A-5), is an indirect means of detecting the occurrence of massacres – incidents of multiple summary executions – in which a high number of deaths occur. In such situations, the indicator rises significantly above 1, while a value close to 1 (either above or below) can be expected in situations of relative normality.

All of the above-mentioned indicators are unable to determine if there was abuse of force during one specific incident, which would require an in-depth criminal investigation, but they reveal whether the overall pattern of use of force is compatible with legal principles and, therefore, where force is used in a legal manner (Cano, 2010; Chevigny, 1991; CELS, 2002; Sozzo, 2002; Silva, Pérez Correa & Gutiérrez, 2017).

As already mentioned, it is precisely the doubts about the performance of the criminal justice system when it comes to the excessive use of force that highlights the need for a comprehensive approach through the use of indicators. Internal and external oversight systems have also revealed their limitations regarding such purpose.

Among the international principles that govern the use of force by state agents, legality and necessity are very difficult to evaluate by way of indicators precisely because they would require assessing the concrete circumstances in each case. Hence, the indicators relate mainly to the principle of proportionality. Proportionality can be understood in different ways:

- Proportionality regarding existing levels of violence in the context in which security agents work (This overall level of violence is measured by the homicide rate (indicator A-1).); and
- Proportionality with respect to the threat to law enforcement agents when they face suspects, which can be assessed by comparing the resulting number of victims on both sides (indicators A-2 and A-4).

Also, proportionality is reflected in the indicators that compare the dead and wounded, such as A-3 and A-4.



INDEXES OF THE USE OF LETHAL FORCE IN SOUTH AFRICA

This section calculates the indexes in respect of the use and abuse of lethal force described in the methodology section above and compares them with those of Latin America countries for which they have been published.⁶

In order to obtain the number of civilians killed as a result of the intentional use of firearms by the police, the description of every case recorded by the Independent Police Investigative Directorate (IPID) as a 'death in police custody' and a 'death as a result of police action' was read and the number of victim fatalities recorded. This detailed procedure was necessary because the unit of analysis in the IPID database is the incident and not the victim, so one incident can involve more than one victim.

As with any other aspect coded from this data, the number of victims coded for every episode depends on the interpretation of the descriptions. Some of the descriptions were detailed and precise, whereas others were very brief, were sometimes ambiguous or omitted relevant information. The data gathered on each incident relies, crucially, on who provided it, that is, whether it was provided by the police officer involved in the incident himself or herself, or by a civilian who was a victim or a relative of a victim, or by another police officer who was called to the scene. One can identify different approaches and narrative styles, depending on who furnished the information. Consequently, the versions depend on who is giving the account, and this influences the responsibility assigned to police officers involved in the incident. Occasionally, conflicting accounts find a way into the description.

Interpretation was based on the description of the incident, while also taking into account the information from other variables, such as incident code and incident subcode. In cases of doubt, the lower figure was always used. For instance, where the description spoke of 'several' victims, and there were no further details, we recorded two victims.

Thus, the data provided in this report should be considered an estimation, to the best of our knowledge, based on official data rather than the exact figures. Although coding for individual cases may contain inaccuracies owing to missing information, the overall pattern should not be affected by the unreliability of single events.

All cases of civilian fatalities as a result of the intentional use of firearms by the police were classified by IPID as 'deaths as a result of police action', except two which were wrongly

categorised as 'deaths in police custody'. There is no definition of 'police custody' in IPID reports, but it is clear that these two cases occurred because of customary police interventions. In any event, 'deaths in custody' includes many different situations, such as deaths resulting from natural causes in police cells and others where the police are called to a crime scene and the victim dies while they are there but not as a result of their actions. Obviously, these cases will not be considered in the analysis of the use of lethal force, even though some of them may have been the result of negligence by the police.

Cases of 'discharge of official firearm' were, as will be explained below, also read and analysed to ascertain whether there were wounded victims, and, as expected, it was found that they indeed involved no fatalities.

According to the IPID database, 390 civilians⁷ in total were killed by police officers using their firearms in a total of 332 incidents. Of these, 32 fatalities occurred while police officers were off duty, with the remaining 358 occurring while such officers were on duty. In most of these incidents, just one person was a victim fatality, but, in 31 cases, there were two or more victim fatalities. In one incident involving the Engcobo police station in the Eastern Cape, the police killed seven civilians. In nearly all cases, the deaths concerned were the result of the use of live ammunition by the police. However, in two cases, the description mentioned only rubber bullets as the possible cause of death.

In addition, seven civilians in total were killed in crossfire between the police and suspects (one of them while officers were off duty) where it is not clear from which side the bullet originated. In any case, it should be remembered that police officers must minimise risks to bystanders even when they are otherwise rightfully responding to a grave threat to life by suspects.

In contrast, 23 civilians were killed by the police by means other than firearms, such as beatings.

Apart from the victims cited above, there were other deaths registered on the IPID database, such as five civilians killed by accidental gunshot and three people killed in police cells. Car accidents involving police vehicles caused a relatively high number of victim fatalities, that is, 14 suspects and 41 passers-by. A total of 69 civilians committed suicide during incidents in which the police or a police firearm was somehow involved; the vast majority of these happened in police custody, though there were three victims in cases classified as 'death as a result of police action' and one in an incident categorised as 'discharge of official firearm'. The following table summarises the victim fatalities included in the database.

There were five police officers killed by suspects, nine killed intentionally by colleagues and five killed by accidental gunshots of police officers, including themselves. However, these figures in respect of officers who were fatally wounded, particularly those fatally wounded by suspects, are grossly underestimated, since deaths of officers not classified as 'deaths as a result of police action' do not have to be reported to IPID. In fact, official figures for members of the police killed by suspects are considerably higher, as will be shown later. Thus, officer victim fatalities in IPID data tend to be part of an incident also involving civilian victims, and that is the reason they are reported. This explains why the number of police officers shot by colleagues (nine) in this database is higher than the number of officers shot by suspects (five). Likewise, the number of officers accidentally shot dead by colleagues (three) is also very similar. A total of 19 officers committed suicide, often using their firearms.

It should be noted that, in the case of all of the above figures, there is no presumption indicating whether or not police action was legitimate and appropriate. Most civilians killed by

Table 2: Victim fatalities registered on the IPID database: 2017–2018

Category	Number of victims
Number of civilians intentionally shot dead by the police	390
Number of passers-by shot dead in crossfire	7
Number of civilians killed as a result of accidental gunshots by the police	5
Number of civilians killed by the police through other means (i.e. other than a firearm)	23
Number of suspects dead as a result of aggression in police cells	3
Number of suspects dead in car accidents involving the police	14
Number of passers-by people killed in car accidents involving the police	41
Number of police officers shot dead by suspects	5
Number of police officers shot dead as a result of intentional gunshots by colleagues	9
Number of police officers shot dead by accidental gunshots of police officers (or shot dead by themselves)	5
Number of police officers who were victims of suicide	19
Number of civilian victims of suicide (with the involvement of the police or in police custody)	69

the police were apparently persons suspected of committing crimes, as will be shown later, but some of them were unjustifiably attacked by police officers or were even victims of femicide committed by police officers. Thus, there can be no clear assumption that police officers in these incidents were upholding the law and civilians were breaking it, although this seems the most common scenario. Similarly, when a police officer was intentionally killed by colleagues, he or she may either have been committing a crime or resisting it.

As for the number of civilians wounded as a result of intentional gunshots by police officers, which is a critical piece of information in calculating the indexes, this is obtained from reading and coding the cases of ‘discharge of an official firearm’, on top of the cases of ‘deaths in police custody’ and ‘deaths as a result of police action’. These last two categories may also contain, apart from victim fatalities, victim non-fatalities.

As previously explained, cases of ‘discharge of an official firearm’, unlike the other two categories, depend on the existence of a complaint by a civilian. This creates the possibility of a considerable underestimation of the actual number of civilians shot and wounded by police that is obtained from IPID data, particularly if the wounds are relatively minor or if the victim is suspected of a crime. Consequently, these figures are not a reliable estimation of the total number of civilians wounded by the police.

In total, 288 civilians were shot and wounded by the police in the 2017–2018 period according to IPID data, 268 while the police were on duty and 20 while off duty. Another 20 civilians were wounded in crossfire between the police and suspects, but it is not clear whether they were

hit by an officer's or by a suspect's bullet. Only seven civilians were wounded by police officers through means other than a firearm. This very low number can be attributed to the fact that the only category analysed, other than deaths, is the 'discharge of an official firearm', so these actions by police officers causing injuries through other means would not be included here, although they might be recorded by IPID as 'assaults' if there was a complaint. The same caveat applies to the figures in respect of victims of car accidents, which only need to be reported to IPID if there are victim fatalities. In fact, the number of civilians wounded in accidents (10) is considerably smaller than that of victim fatalities reported above.

Nineteen police officers in total were shot and wounded by suspects, and 18 were wounded through other means. Again, this number is obviously considerably underestimated because we are here analysing only IPID cases that involve death or the discharge of a firearm.

Table 3 summarises all victim non-fatalities recorded in IPID data.

Table 3: Wounded/injured victims (non-fatalities) registered on the IPID database: 2017–2018

Category	Number of victims
Number of civilians intentionally shot and wounded by the police	288
Number of passers-by shot and wounded in crossfire	20
Number of civilians wounded by police through other means (i.e. other than a firearm)	7
Number of suspects injured in car accidents involving the police	2
Number of passers-by injured in car accidents involving the police	10
Number of police officers injured in car accidents	6
Number of police officers shot and wounded by suspects	19
Number of police officers shot and wounded by intentional gunshots of colleagues	3
Number of police officers shot and wounded by accidental gunshots of police officers (or by shooting and wounding themselves)	3
Number of police officers wounded by other means (i.e. other than a firearm) by suspects	18
Number of police officer who were victims of attempted suicide	3

Apart from the number of civilians wounded and killed by the gunshots of police officers, data from other sources were also needed to calculate the indexes described above. The population of the country was obtained from the website of Statistics South Africa (StatsSA), the official census and statistical body of the country. As for the number of homicides (murders) in the country, the number of firearms seized, the number of arrests and the number of police officers, such statistics were all obtained from the South African Police Service (SAPS) Annual Report 2017/2018. The number of police officers considered was only that comprising 'Police Service Act employees', that is, police officers themselves, omitting 'Public Service Act employees' who are supposed to perform supporting roles. However, the number of police officers is restricted to the SAPS and does not include metropolitan police officers. It should be noted that the number of civilians killed and wounded does include those killed and wounded as a result of interventions by metropolitan

police officers, since such cases are reported to IPID. Unfortunately, we were unable to obtain figures for all metropolitan police forces in the country.

The number of SAPS police officers murdered (28)⁸ was also obtained from the SAPS Annual Report indicated above. As expected, for the reasons set out above, this number is much higher than that recorded through IPID cases (five). Although there is no indication whether these 28 officers were killed by way of firearms, we can assume that many, if not most, must have been killed in this way. In fact, in IPID records, there is no evidence of any police officer killed through any other means. Again, we do not have the figures for metropolitan police officers murdered while on duty.

As for police officers wounded by gunshot while on duty, we are left without any reliable source. As indicated, the figure in IPID records is most probably grossly underestimated, since cases in which there are only police casualties are not reported. In fact, the number of police officers in IPID records who were shot and wounded (19) is less than the figure in the SAPS Annual Report in respect of officers murdered (28), which is contrary to all available evidence from many countries which shows that the number of officers wounded tends to be greater than those killed.

Table 4 presents all indicators relating to the use and abuse of force, as formulated in the methodology section, that could be calculated from available data.

The first column shows the indicators for all cases recorded by IPID, including cases involving metropolitan police forces. The second column presents some of these indicators for only the SAPS, omitting the 15 incidents in which only metropolitan police officers were involved. There are another three incidents involving both the SAPS and metropolitan police officers and these were considered as SAPS cases as well. In fact, for some indexes, we only have data for the SAPS and not for the other police forces. Thus, in some cases in this second column, the numerator and the denominator refer to the same contingent.

Table 4: Indicators of the use and abuse of lethal force for South Africa: 2017–2018

Indicators	South Africa	Only South African Police Service
I-1: Civilians killed by firearms during on-duty law enforcement interventions (CK ⁹)	358	353
I-2: CK per 100 000 inhabitants	0.62	0.61
I-3: CK per 1 000 law enforcement agents	–	0.22
I-4: CK per 1 000 arrests	–	0.22
I-5: CK per 1 000 weapons seized	–	18.99
I-6: Agents killed by firearms while on duty (AK)	–	28
I-7: AK per 1 000 agents	–	0.19
A-1: Percentage of homicides due to state intervention	1.76	–
A-2: Ratio of CK to AK	–	12.61
A-3: Civilian lethality index* ¹⁰	1.27	1.28
A-4: Lethality ratio	–	–
A-5: Average number of civilians killed per incident	0.74	0.74

The ratio of people killed by police officers on duty is equal to 0.62 per 100 000 inhabitants. Different variations of this indicator, weighted by the number of agents, arrests and weapons seized, can only be calculated for the SAPS.

The 28 SAPS officers killed by firearms while on duty results in an index of 1.19 deaths per 1 000 agents.

As for abuse-of-force indexes, the first one is the proportion of homicides due to police interventions, which is below 2%. This level falls within what is to be expected in countries where there is no pattern of significant abuse of lethal force.

However, the ratio of civilians killed to police officers killed, which can only be calculated for the SAPS, since we do not have a record of metropolitan police officers killed while on duty, is 12.6. This is above the threshold of 10, which Chevigny (1991) considers the maximum acceptable. This suggests that the police kill more people than is justified by considerations of police safety in the face of a deadly threat and given the principle of proportionality. If 28 police officers were killed in the period concerned, one should expect fewer than 280 civilians to be killed as a result of police action. In fact, the data do not support the rhetoric of some public officials that the police needed to shoot more in order to defend themselves.

The lethality index is above the tolerable threshold of 1, both for the country as a whole (1.27) and for the SAPS (1.28), meaning that there are more victims who are killed than who are wounded. However, as argued previously, it is likely that not all cases of wounded victims are reported, since the only cases recorded are those in which a complaint has been lodged by a civilian. Consequently, it is not possible to necessarily conclude from this indicator that there has been excessive use of force in view of the data on which the indicator is based.

The lethality indicator (A-4) cannot be computed for lack of information on wounded police officers.

Lastly, the average number of deaths by incident is below 1 (0.74), which does not indicate the existence of frequent massacres or cases of multiple deaths as occurred at Marikana.

In short, the percentage of homicides due to police intervention in South Africa seems to reveal moderate use of force, but the high ratio of civilians killed to SAPS officers killed points to the contrary. There thus seems room for the reduction of civilians killed by the police in South Africa.

Table 5 compares the indicators for South Africa with those obtained for five Latin American countries chosen precisely because the use of force is problematic in such countries. Although these countries calculated the indexes on the basis of two sources, official records and the press, we only present here those obtained from official sources.

The per capita ratio for South Africa of civilians killed by police officers by firearm while on duty (0.62) compares with such ratios for Venezuela and El Salvador, which are extremely high, and also for Brazil, which is almost four times higher than for South Africa. The only country with a lower ratio is Colombia (0.3), though the figure in Colombia is not absolutely reliable owing to, among other things, the discovery of mass graves in the country.

The ratios in respect of civilians killed per thousand law enforcement agents and per thousand arrests are lower in South Africa than for all other countries concerned, including Colombia. In addition, the ratio of civilians killed per thousand weapons seized is lower in South Africa (18.9)

Table 5: Indicators of the use and abuse of lethal force for South Africa compared with those for Latin American countries in 2017: Brazil (BR), Colombia (CO), El Salvador (ES), Mexico (MX) and Venezuela (VN)

Indicators	South Africa	BR	CO	ES	MX	VN
I-1: Civilians killed (CK)	358	4 670	169	407	–	4 998
I-2: CK per 100 000 inhabitants	0.62	2.3	0.3	6.18	–	15.9
I-3: CK per 1 000 agents*	0.22	7.8	0.4	9.9	–	28.6
I-4: CK per 1 000 arrests*	0.22	–	0.7	9.78	–	–
I-5: CK per 1 000 weapons seized*	18.99	39.3	7.1	154.2	–	–
I-6: Agents killed (AK)*	28	81	143	4	251	–
I-7: AK per 1 000 agents*	0.19	0.1	0.3	0.1	0.5	–
A-1: Percentage of homicides due to state intervention	1.76	7.3	1.5	10.3	–	25.8
A-2: Ratio of CK to AK*	12.61	57.7	1.2	101.8	–	–
A-3: Civilian lethality index		–	–	–	–	–
A-4: Lethality ratio		–	–	–	–	–
A-5: Average number of civilians killed per incident	0.74	–	–	–	–	–

(*) Indicators calculated only for the SAPS, since data in respect of metropolitan police forces was unavailable.

than in El Salvador or Brazil, but is still higher than in Colombia (7.1), though with the caveat for this country as already mentioned.

On the other hand, the ratio of law enforcement officers killed per thousand officers in South Africa (0.19) is almost double that of Brazil and El Salvador, but lower than that of Mexico – which has the highest ratio – or Colombia.

As far as indicators of abuse are concerned, the proportion of homicides as a result of police intervention in South Africa (1.7) is close to that of Colombia (1.5) but far from the levels where abuse of lethal force is pervasive, such as in Venezuela and El Salvador, both of which are above the threshold of 10%.

Nevertheless, the ratio of civilians killed to law enforcement officers killed is much higher in South Africa (12.6) than in Colombia (1.2), even if, as already stated, the data for Colombia is not entirely reliable. The indicator is, however, lower in South Africa than in Brazil (over 50) or El Salvador (over 100).

Lastly, the average number of civilians killed by incident in South Africa (0.74) cannot be compared with that of the other countries concerned, since it was not possible to ascertain the number of episodes but only the number of victims for these countries.

The preceding comparisons can be summarised by stating that South Africa presents a contained level when it comes to the use of lethal force when compared with countries in Latin America, where the problem is very acute. However, the ratio of civilians killed to law enforcement officers killed in South Africa is concerning both in absolute terms and in comparison with some of the countries in Latin America.



ANALYSIS OF EPISODES OF USE OF LETHAL FORCE IN SOUTH AFRICA

In this section, we analyse the context in which cases of the use of lethal force by law enforcement agencies occur in the country. The evidence on which the analysis is based is the same as that used in the previous section, namely the database of the Independent Police Investigative Directorate (IPID) for 2017–2018, and specifically the three categories already mentioned: death in police custody; death as a result of police action; and discharge of an official firearm by a police officer. All cases included in these categories were read through one by one, including their descriptions, and coded for relevant information. As explained above, the results depend on the interpretation of the descriptions, which involves a certain degree of uncertainty, since the accounts are not always unambiguous. In fact, of the 1 521 episodes classified into one of the three categories above, serious doubts about the nature of the event remained in respect of at least 49 of them.

Initially, there were several issues of serious concern arising from these cases of the use of lethal force:

1. There were **45 episodes** in which, according to the descriptions, police officers appeared to fire **at fleeing suspects**. This is a grave violation of basic international principles, since, as explained in the beginning, lethal force can be used only if there is an imminent threat of death or serious injury to the police officer concerned or to somebody else. Thus, a fleeing person cannot legally be stopped through lethal force. These cases should be prioritised in all policies so as to prevent excessive use of lethal force, including through training, principles and monitoring.
2. There were **53 cases** in which police officers fired **warning shots**, which appears to be a relatively common practice. These 53 episodes resulted in 20 civilians being killed, which should not be taken to mean that the deaths resulted from the warning shots themselves. Nevertheless, warning shots are not an acceptable practice and should be explicitly banned. In some countries, use-of-force regulations already contain a provision in this regard.¹¹ Warning shots are meant to intimidate persons into submission for fear that they may be shot at later. However, such practice involves a serious risk for suspects and bystanders and should not be resorted to. If an officer is about to be shot at by a person, he or she should fire a direct shot at such person, not a warning shot which might place him or her (the police officer) in danger. And, if there is no imminent threat to life or of serious harm, warning shots serve no purpose, for the

police are not allowed to shoot at individuals simply because such persons do not react to a warning shot.

3. There were **two incidents of looting** in which the **police discharged their weapons**, one of them through warning shots and the other by actually causing a gunshot wound. There is no justification to use lethal force to protect property, since the value of a life is greater than that of any object that may be stolen or damaged. Thus, no incident of looting should cause the police to use their firearms.

There were several circumstances – relating to the episodes registered by IPID – involving use of force by police officers that are worth describing:

1. A sensitive issue is that of **suicide**. IPID recorded a total of **19 suicides and three attempted suicides by police officers**, which corresponds to a high suicide rate and indicates a need to reflect on measures of suicide prevention within the ranks. In addition, there were **69 civilian victims of suicide in incidents involving the police**. There were a few cases of suspects committing suicide when being arrested or while attempting to evade arrest. But the vast majority (**60**) were people who **committed suicide in police cells or in custody**. This high number underlines the need to consider the design and monitoring of police cells in order to prevent suicides by inmates.
2. There were **seven deaths allegedly by torture** committed by police officers. This is an extremely serious allegation that needs to be thoroughly investigated and, if confirmed, prosecuted in order to prevent a repetition. In this regard, Bruce (2020) argues that IPID, given its limited resources, needs to introduce a proper screening system that prioritises cases according to their seriousness and solvability. Torture is certainly a crime of the utmost gravity.
3. There were **10 people allegedly killed by accidental shots fired by police officers**, five of them police officers themselves. This underlines the need to promote training in the safe use of firearms by law enforcement officers.

Next, we will analyse cases of **civilian deaths attributed to the actions of police officers**. As already noted, we will consider civilians killed by the police and also police officers killed by their colleagues. A total of 485 victim fatalities can be attributed to police actions involving shootings, aggression or accidents; 448 happened while officers were on duty and 37 while they were off duty.

These victim fatalities resulted from a total of 407 episodes. Just eight of these involved only metropolitan police forces; the rest involved the South African Police Service (SAPS). In two episodes, there were members from both the SAPS and metropolitan police forces.

Of the aforementioned 485 victim fatalities, 65 were accidental deaths: 41 pedestrians or motorists killed in car accidents involving police vehicles; 14 suspects killed in car accidents involving police vehicles; and 10 people killed by shots fired accidentally by police officers (five of these 10 were police officers themselves).

We will further examine in detail the episodes involving the **420 victims who died as a result of intentional police actions**, which can be summarised as follows:

- a) 390 civilians shot dead by the police, most of them suspects;
- b) 7 civilians shot dead during crossfire between the police and suspects; and
- c) 23 civilians killed by the police by means other than a firearm.

Of these 420 victim fatalities, 356 occurred during incidents classified by IPID as 'death as a result of police action' (Code 28.1b) (which is to be expected), but three occurred in circumstances categorised as 'deaths in police custody' (Code 28.1a) and one as a result of the 'discharge of an official firearm'. Thus, the classification system employed by IPID is not entirely reliable in detecting victims of police actions.

The 420 victims correspond to 360 incidents, which the IPID variable 'Incident code' classifies as follows:

Table 6: IPID incident codes for episodes of death attributed to police officers

	Frequency	Percentage
Shot with service firearm	329	91.4
Assaulted	21	5.9
Shot with private firearm	4	0.8
Suicide (shooting)	3	0.8
Discharge of official firearm	1	0.3
Struck by police vehicle (pedestrian accident)	1	0.3
Suffocation	1	0.3
Total	360	100

As can be seen, these IPID codes are not very informative, since most of them reveal only that the incident that happened involved a service firearm. There are still 21 cases of assault and one of suffocation which should be duly investigated, since nobody is supposed to die after being assaulted by the police.

The three cases of 'suicide' are actually femicides committed by male police officers followed by their suicides, but the official classification emphasises the latter over the former. The episode classified as 'struck by police vehicle' appears to have been a deliberate running over of a suspect by police officers who did not stop their vehicle after the incident.

Another variable from the IPID database is 'Incident subcode', which has slightly more information, though not a lot. The cases are classified as follows according to this variable:

Table 7: IPID incident subcodes for episodes of death attributed to police officers

	Frequency	Percentage
A suspect died during the course of a crime	151	41.9
A suspect died during the course of arrest	125	34.7
A suspect died during the course of an investigation	19	5.3
Domestic violence-related deaths	16	4.4
A suspect died during the course of an escape	14	3.9
Negligent handling of a firearm leading to a death	9	2.5

	Frequency	Percentage
An innocent bystander died during the commission of a crime	7	2.0
Crowd management -related incidents	7	2.0
Private capacity-related death	7	1.7
Injury sustained prior to custody (SAPS)	2	0.6
Attempted murder – crowd management ammunition	1	0.3
Injury sustained prior to custody (vigilantism)	1	0.3
Negligent handling of an official vehicle leading to a death	1	0.3
Total	360	100

The overwhelming majority of the deaths occurred, as expected, when suspects were committing a crime or were being arrested.

Episodes classified as ‘negligent handling of a firearm leading to a death’ are not really such actions. The nine cases include femicides, bar fights, and other types of incidents, but in not one of them does the gunshot appear to have been accidental, which might appear to be implied by the use of the word ‘negligent’. This reinforces the interpretation that IPID category codes are not necessarily clearly defined or applied consistently.

Furthermore, the two cases classified as ‘injury sustained prior to custody (SAPS)’ do not qualify to be categorised as such. Both cases are typical situations of police officers confronting suspects. Furthermore, the description of the single case coded as ‘injury sustained prior to custody (vigilantism)’ corresponds to a death by torture after the victim was assaulted by four police officers. The term ‘vigilantism’ suggests aggression on the part of private citizens, but the description in fact mentions metropolitan police officers.

Finally, the case categorised as ‘negligent handling of an official vehicle leading to a death’ is the same one identified by the incident code ‘struck by police vehicle’ where a police vehicle appears to have run over a suspect deliberately.

Apart from the official classification, cases were, as already explained, read one by one and coded for relevant information. A new typology of the cases was developed (see Table 8), with more information than that contained in the official categories.

Table 8: Nature of incidents of death attributed to police officers

Nature of event	Frequency	Percentage
Confronting suspects	72	20.0
Ongoing robbery	62	17.2
Confronting persons suspected of car hijacking	22	6.1
Ongoing car hijacking	21	5.8
Confronting persons suspected of robbery	17	4.7
Femicide/suicide by police officer	10	2.8

Nature of event	Frequency	Percentage
Confronting persons suspected of murder	8	2.2
Police officers involved in a fight in a private capacity	7	1.9
Death by torture	6	1.7
Public protest	6	1.7
Femicide by police officer	5	1.4
Unknown circumstances	5	1.4
Attempted robbery of a police officer	4	1.1
Domestic violence among civilians	4	1.1
Police shooting at fleeing suspect	4	1.1
Attempt to rob a police officer of his/her firearm	3	0.8
Confronting persons suspected of shooting police officers	3	0.8
Ongoing drug sales	3	0.8
Ongoing hijacking	3	0.8
Shot by police during arrest/unclear circumstances	3	0.8
Shot by police while trying to escape	3	0.8
Attempted robbery of a police officer/shooting at fleeing suspects	2	0.6
Breaking into a police officer's house	2	0.6
Confronting a mentally ill person	2	0.6
Confronting a suspect who is a police officer	2	0.6
Confronting persons suspected of car hijacking/shooting at fleeing suspects	2	0.6
Confronting persons suspected of domestic violence	2	0.6
Confronting persons suspected of causing grievous bodily harm (GBH)	2	0.6
Confronting persons suspected of housebreaking	2	0.6
Confronting persons suspected of theft/unclear circumstances	2	0.6
Gender violence by police officer	2	0.6
Illegal mining	2	0.6
Murder	2	0.6
Ongoing housebreaking	2	0.6
Poaching	2	0.6
Robbery/shooting at a fleeing suspect	2	0.6
Suspect killed during arrest	2	0.6
Suspected femicide by police officer	2	0.6

Nature of event	Frequency	Percentage
Found bruised and dead in police cell	1	0.3
Arrest (not known whether deceased was a suspect)	1	0.3
Assaulted/unknown circumstances	1	0.3
Assaulted by police at time of arrest	1	0.3
Assaulted by police at time of arrest (cause of death uncertain)	1	0.3
Attempt to wrestle firearm from police officer/confronting persons suspected of murder	1	0.3
Attempt to wrestle firearm from police officer/confronting persons suspected of possession of a firearm	1	0.3
Attempt, while in custody, to wrestle firearm from police officer	1	0.3
Attempted car hijacking of police officer	1	0.3
Attempted murder of police officer	1	0.3
Bar fight	1	0.3
Bystander shot in shootout involving the police	1	0.3
Confronting a suspect who escaped from custody	1	0.3
Confronting a suspect/shooting at fleeing suspects	1	0.3
Confronting gangsters	1	0.3
Confronting a person suspected of having injured a police officer	1	0.3
Confronting a person suspected of robbery/attempt, while in custody, to wrestle firearm from police officer	1	0.3
Confronting a person suspected of stock theft	1	0.3
Confronting suspect who chased the police	1	0.3
Confronting suspects/unclear if police involved	1	0.3
Confronting persons suspected of business burglary	1	0.3
Confronting persons suspected of illegal mining	1	0.3
Confronting persons suspected of robbery/police shooting at suspect getting out of vehicle	1	0.3
Confronting persons suspected of theft of police firearm	1	0.3
Dead after assault by police/unknown circumstances	1	0.3
Dead in custody after assault by police	1	0.3
Dead after assault by police officer in private capacity	1	0.3
Dead after physical struggle with police and being handcuffed	1	0.3
Death as result of stun grenade	1	0.3
Ex-convict wishing to exact revenge on police officer	1	0.3
Femicide/attempted suicide by police officer	1	0.3
Serving a court order	1	0.3

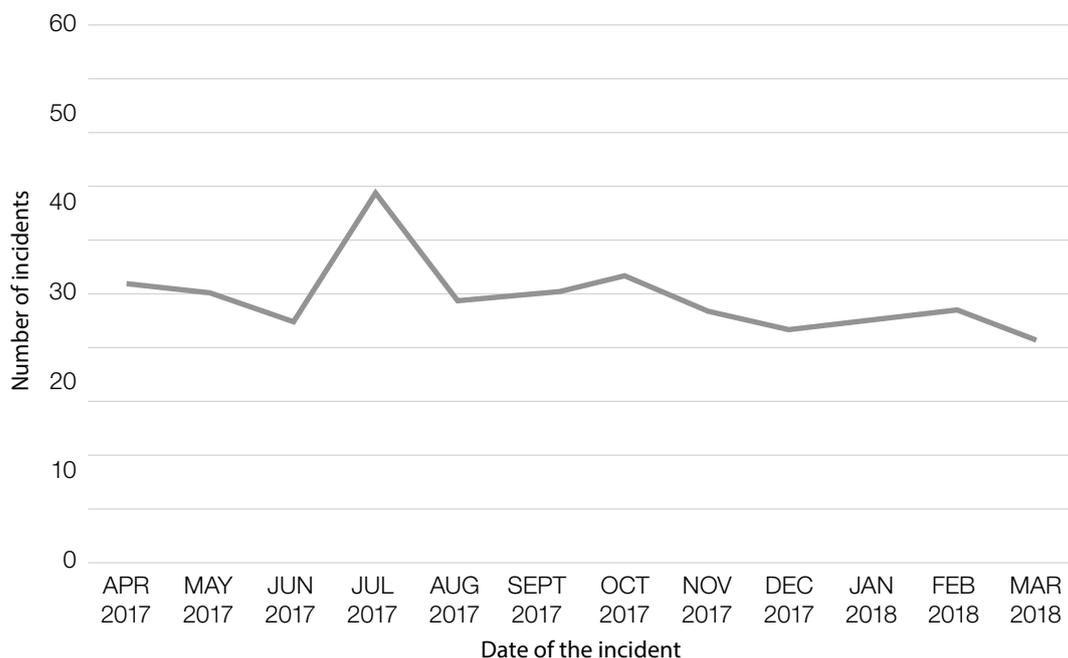
Nature of event	Frequency	Percentage
Homicide and suicide by police officer	1	0.3
Hostage situation	1	0.3
Ongoing business burglary	1	0.3
Ongoing drug sales/attempt to wrestle firearm from police officer	1	0.3
Police officer on duty killing a colleague	1	0.3
Police officer in private capacity killing a colleague and later resisting arrest using a firearm	1	0.3
Police officers involved in a fight in private capacity/attempt to wrestle firearm from police	1	0.3
Police officer summarily executing a person	1	0.3
Possible death by torture presented as suicide	1	0.3
Public protest/police shooting apparently unarmed suspects	1	0.3
Public protest/unclear as to who was responsible for the death	1	0.3
Shootout among police officers	1	0.3
Shot by police/unknown circumstances	1	0.3
Shot by police after stopping person's vehicle	1	0.3
Shot during arrest	1	0.3
Shot during police custody/unknown circumstances	1	0.3
Suicide by police – person apparently wanted to be killed by police	1	0.3
Summary execution of suspect in custody	1	0.3
Suspect dead as a result of inhalation following use of stun grenade	1	0.3
Suspect run over by police vehicle	1	0.3
Taxi driver violence	1	0.3
Trespassing/unknown circumstances	1	0.3
Victim suffocated by teargas	1	0.3
Total	360	100

Apart from the individual details of all these episodes, it is evident that the type of crime which is most commonly associated with fatal outcomes during police interventions is **robbery**, within which category we include cases of car hijacking. A total of 138 cases and 160 deaths were related to robbery, 49 episodes and 55 deaths of which were linked to hijacking.

Consequently, any planning and training with regard to the use of lethal force by the police should take into account the fact that the probability that these two types of crimes will be committed, is the highest.

A situation which is worth mentioning is that in which the police face **suspects armed with knives or cutting objects**. There were 42 episodes of this nature, with just as many deaths.

Figure 1: Instances of death attributed to police officers, per month: 2017–2018



Ideally, in most of these circumstances, the police should be able to deal with the situation using less-than-lethal weapons such as tasers, sprays, stun grenades, etc., and by having protective gear (shields, etc.). When the use of firearms is unavoidable, the police should aim at parts of the body such as the legs and, sometimes, the arms, which is less likely to result in fatalities. In fact, of the 20 cases recorded by IPID (in the three general categories presented above), there was only one fatality where the police shot at the legs of a suspect. Such practice should, therefore, form an important component of police training.

In addition, there were **six cases** of civilians trying to **wrestle firearms from police officers** that resulted in death. This is a typical situation where the risk of use of lethal force is highest and where the danger for both sides is also very high.

Next, we will analyse the distribution, in space and time, of civilian deaths attributed to the actions of police officers.

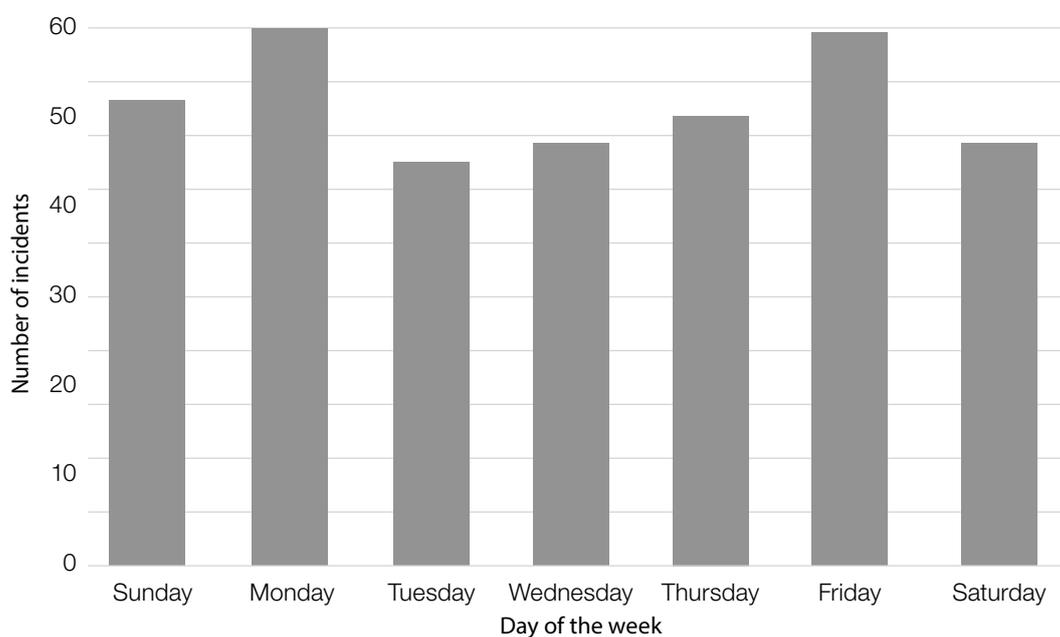
Two of the 360 episodes were indicated as occurring in 2015 and 2016. We have, however, assumed that this was a recording error and that such episodes actually fell into the period analysed. The number of cases per month is relatively stable, with around 30 episodes, as can be seen from Figure 1. The only exception is July 2017, which exceeds 40 instances.

There are also no great differences between days of the week. The highest number of cases occurred on Monday and Friday, with around 60 cases each, but the situation is not very different for the rest of the days.

As for the distribution of cases between provinces, Table 9 presents the number of deaths attributed to the actions of police officers per province, as well as the corresponding rate per hundred thousand inhabitants.¹²

The average for the whole country is 0.7 deaths caused by the police for every hundred thousand inhabitants. Most provinces have a rate close to this. However, KwaZulu-Natal has

Figure 2: Instances of death attributed to police officers, per day of the week: 2017–2018



a much higher rate which is almost double the national rate. Such rate, which was found during research in past years (ICD, 2007; Bruce, 2010), indicates that there is a persistent problem in this province.

In contrast, the Northern Cape has an extremely low rate.

Table 9: Number of deaths attributed to police officers and cases of discharge of official firearm, per province: 2017–2018

Province	Number of civilians killed by the police	Rate of civilians killed by the police per 100 000 inhabitants	Episodes of 'discharge of official firearm' registered by IPID	Rates of discharge of official firearm per 100 000 inhabitants
Eastern Cape	50	0.8	150	2.3
Free State	13	0.5	85	3.0
Gauteng	105	0.7	169	1.2
KwaZulu-Natal	143	1.3	130	1.2
Limpopo	31	0.5	70	1.2
Mpumalanga	21	0.5	45	1.0
North West	9	0.7	53	4.4
Northern Cape	1	0.0	16	0.4
Western Cape	47	0.7	169	2.6
Total	420	0.7	887	1.6

The last two columns of Table 9 present the number of cases that IPID received as ‘discharge of official firearm’. They do not involve deaths as a result of police interventions – with the single exception indicated above – but are shown here as an indication of general complaints regarding the use of firearms by police officers.

The average rate for the country is 1.6 cases per 100 000 inhabitants. The North West and the Free State are well above the national rate, while the Northern Cape is again well below.

When we compare this rate with the rate of civilians killed by police officers, as shown in Figure 3, there are some interesting contrasts.

The North West and the Free State have a relatively high rate of discharge of firearms but a medium to low rate of killings by the police. On the other hand, KwaZulu-Natal has a low rate of discharges and a very high rate of killings. This might be partly due to differences in reporting criteria between the provinces. In any case, this also underlines the need to further explore both the high level of lethality as regards the use of force and the specific reporting criteria of the SAPS in KwaZulu-Natal.

Lastly, we present the number of killings by police officers according to the police station where the killings were recorded. It seems safe to assume that, in most cases, the incidents concerned were recorded in the same area where they occurred and, presumably, that officers from police stations in those same areas were involved in the incidents.¹³ The analysis by police station is highly important, since research in other countries has shown that there are sometimes specific subcultures in certain police stations that may account for a higher or lower level of use of force; hence preventive policies should take this into account. Any police station with a higher number of lethal incidents should review such incidents and the relevant procedures to determine if anything can be done to try to minimise such numbers in future.

Figure 3: Average rate for the country compared with rate of civilians killed by police officers

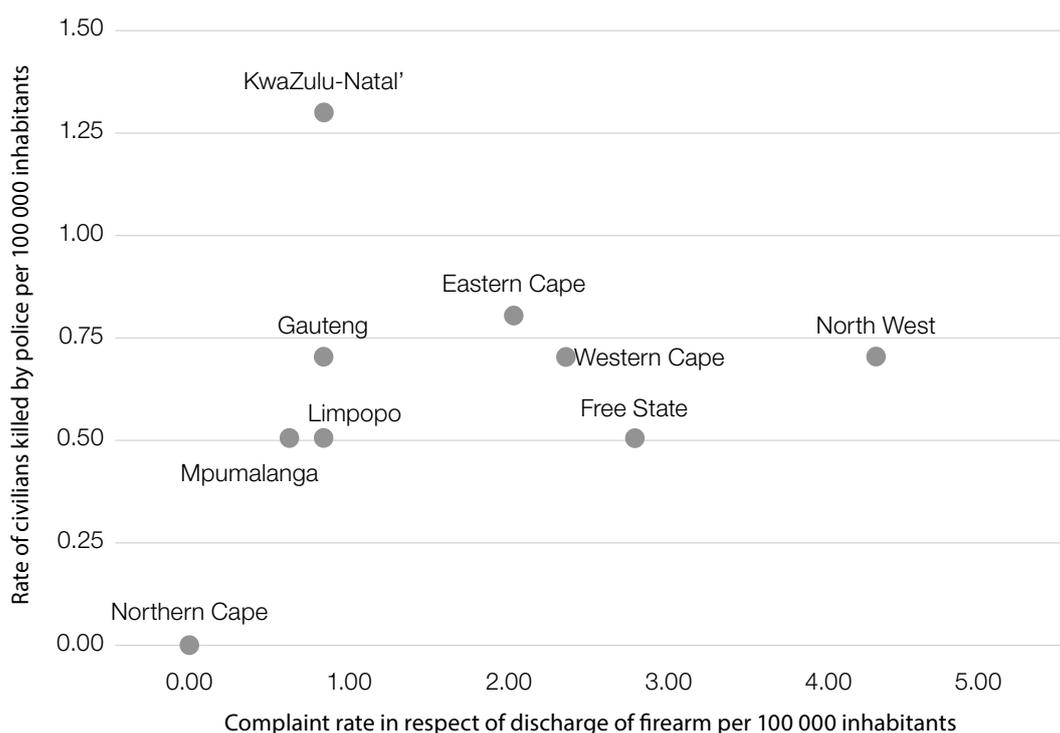


Table 10 includes all police stations recording a minimum of five civilian deaths for 2017–2018.

Benoni, in Gauteng, is the police station with the highest number of victim fatalities (10), followed by Delft (seven) in the Western Cape, Engcobo (seven) in the Eastern Cape, and Kwadabeka (seven) in KwaZulu-Natal. Nevertheless, seven out of the first 10 police stations are from KwaZulu-Natal, which confirms that this province should be studied more specifically in order to understand the high level of lethal force used by its police force members. More particularly, six of the first 14 police stations are located in the eThekweni Metropolitan Municipality, around the city of Durban. Consequently, there is an intense concentration of use of lethal force by the police in the vicinity of Durban that requires explanation.

The recommendations here are divided in two sections. The first section deals with the way deaths attributed to police officers are reported and recorded by IPID. The second relates to measures to prevent or minimise the use of lethal force in South Africa.

Reporting and recording of cases of use of lethal force

Recommendations that refer to the way cases of lethal force are reported and recorded by the Independent Police Investigative Directorate (IPID) can be summarised as follows:

1. Establish a system designed to **review the IPID coding system** and which guarantees its reliability so as to avoid some mismatches between descriptions and categories,

Table 10: Deaths attributed to police officers, per police station: 2017–2018¹⁵

Station	Province	Total number of deaths attributed to police officers	Total number of incidents
Benoni	Gauteng	10	6
Delft	Western Cape	7	7
Engcobo	Eastern Cape	7	1
Kwadabeka	KwaZulu-Natal	7	5
Bulwer	KwaZulu-Natal	6	3
Dalton	KwaZulu-Natal	6	2
Inanda	KwaZulu-Natal	6	5
Kwamashu	KwaZulu-Natal	6	4
Mpophomeni	KwaZulu-Natal	6	1
Umlazi	KwaZulu-Natal	6	6
Jeppe	Gauteng	5	4
Mthatha	Eastern Cape	5	5
Ntuzuma	KwaZulu-Natal	5	4
Pinetown	KwaZulu-Natal	5	1

such as deaths coded as 'Deaths in police custody' (Code 28.1a) or 'Discharge of official firearm' (Code 28.1c) but whose description indicates that the deaths should be coded as 'Deaths as a result of police action' (Code 28.1b). On the other hand, the terms 'deaths as a result of police action' and 'deaths in police custody' are not mutually exclusive, as in the case of somebody being assaulted by the police in a police cell. There must be clear rules that specify how such a case should be recorded. In fact, IPID category codes do not necessarily appear to be clearly defined or applied consistently.

2. Review and study the possibility of **expanding the 'incident code' and 'incident subcode' variables** so that they provide more precise information for monitoring the use of lethal force.
3. **Code the number of victim fatalities and victim non-fatalities in respect of each episode** so they can be counted, rather than coding just the nature of the incident.
4. **Register who provides the evidence on which the information reported is based**, that is, whether it was a police officer who was involved in the case, a civilian victim or a relative, or a police officer who arrived at the scene, so that this can be considered in the analysis of cases.
5. Register, as part of the system, the **nature of the incident as reported initially**, and, later, the **nature of the incident after investigation by IPID**, in order to ascertain what the changes are and what the final nature of the incident is.



RECOMMENDATIONS

Preventing abuse and minimising the use of lethal force

Recommendations that refer to how police forces in South Africa can prevent abuse of lethal force and reduce its overall use can be summarised as follows:

1. Consolidate the **legal and regulatory framework regarding the use of force** through a unique piece of legislation such as the Model Bill on the Use of Force by Law Enforcement Officials proposed by the Institute for International and Comparative Law in Africa and the African Policing Civilian Oversight Forum (APCOF) in order to provide police officers with a comprehensive and non-contradictory legal orientation. The Panel of Experts on Policing and Crowd Management Established by the Minister of Police in terms of the Recommendations of the Marikana Commission of Inquiry has already recommended that the South African Parliament consider the Bill as a starting point for future legislation.¹⁴
2. Establish a list of **priorities within IPID** so that, given its limited resources, the most severe cases of possible abuse of force – among which would be any **allegation of death by torture** – can be thoroughly investigated.
3. Commission a study on options for **preventing suicides in police cells**, which study might include aspects such as cell design, monitoring systems, psychological evaluations of suspects, cell-sharing, etc. For instance, there should be routine, proactive monitoring of police cells carried out by IPID, possibly with the assistance of civil society organisations given IPID's current overstretched resources. Although not related to the use of lethal force, measures should also be instituted to **prevent suicides by police officers**, the incidence of which is also high.
4. Review operating principles and training pertaining to situations in which **police officers face suspects armed with knives or sharp objects** so as to try to contain these situations using methods falling short of the use of lethal force, or, where lethal force is unavoidable, targeting areas of the body that are unlikely to result in fatalities.
5. Ensure that **warning shots are not an acceptable police procedure** and train police officers to avoid their use.

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6. Introduce measures and training to guarantee that **lethal force is not used in cases of looting**, or to protect property generally, unless looters pose a threat to life or of serious bodily harm.
 7. Review operating principles and training to ensure that police officers **do not shoot at fleeing suspects**, unless such suspects present an immediate threat to life or of serious bodily harm.
 8. Promote regular training in the **safe use of firearms** by police officers and to **avoid accidental gunshots**.
 9. **Create a commission within each police force to review all cases of lethal outcomes** – irrespective of whether civilians or police officers are the victims – in order to reflect on what could have been done differently to avoid fatalities. The findings of this commission, which should not have disciplinary consequences so as to maximise cooperation, must inform proceedings, regulations and training. An initiative such as this would help increase internal oversight over the use of force by police forces instead of shifting the responsibility to IPID.
 10. **Commission an in-depth study of the use of force in KwaZulu-Natal** to ascertain the reasons for the high incidence of deaths and to propose preventive measures, especially considering that such elevated incidence has been present for at least over a decade now.
 11. Although falling outside the scope of the use of lethal force, operations and training should also be reviewed so as to **reduce fatal accidents involving police vehicles**, which killed at least 55 people in a year.

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NOTES

- 1 Some authors and jurisprudence consider 'proportionality' to also mean an evaluation of the benefits of the use of force versus the harm it may cause, that is, proportionality is judged according to the purpose of the agent (see, for example, Heyns, 2017: 13). However, in this text, 'proportionality' will basically be assessed in relation to the resistance of, and threat presented by, suspects.
- 2 See <http://www.monitorfuerzaletal.com/Executive-Monitor-English.pdf>.
- 3 IPID Act, section 28.
- 4 Thus, these police officers who become victims are counted both among the civilian victims and among the law enforcement victims.
- 5 In order for this indicator to be meaningful, data also need to be collected about non-lethal incidents, that is, cases of use of force that result in injuries but no fatalities.
- 6 See <http://www.monitorfuerzaletal.com/Executive-Monitor-English.pdf>.
- 7 As indicated above, civilians here include several police officers (nine in total) who were killed by fellow police officers, since they were also victims of the use of lethal force by the state.
- 8 The number in the Report is actually 29, but one murder occurred prior to 2017–2018.
- 9 Including those killed in crossfire. Accidents and suicides are excluded.
- 10 The number of victims wounded is probably grossly underestimated.
- 11 See https://www.unodc.org/documents/lpo-brazil/noticias/2011/01-janeiro/03012011_Portaria_uso_da_forca.pdf.
- 12 As explained earlier, the population data was obtained from Statistics South Africa (StatsSA).
- 13 However, in some cases, specialised units may have been involved. This was the case in the Engcobo shootings – the police station at which seven people were killed in a single incident; see <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=14728>.
- 14 Panel Recommendation Number 35 of the Panel of Experts on Policing and Crowd Management Established by the Minister of Police in terms of the Recommendations of the Marikana Commission of Inquiry, Final Report, 27 May 2018.
- 15 Police stations located within the eThekweni Metropolitan Municipality are highlighted in blue.

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About the author

Ignacio Cano got his joint Ph.D. in sociology and social psychology at the Universidad Complutense de Madrid (Spain) in 1991. From 1991 to 1993 he worked with UNHRC in El Salvador, with UNHCR. He was also a member of the United Nations Truth Commission for El Salvador. He later developed post-doctoral research at the universities of Surrey (UK), Michigan, Arizona (USA) and Lancaster (UK), centred on research methodology and programme evaluation. From 1996 onwards, he worked in Rio de Janeiro, Brazil, on topics related to violence, human rights, public security and education in an NGO called ISER. In 2000, he joined the department of social sciences of the State University of Rio de Janeiro, where he is now a full professor of sociology. He is a founder of the Laboratory for the Analysis of Violence (LAV) of the same university.

About this report

Excessive use of lethal force is a contributing factor in undermining the legitimacy of the police. This report uses a set of indicators through which the use of lethal force by the state can be measured to better understand the patterns and risks of use of force in South Africa. It is the first in what we hope will be a series of studies on use of force in Africa.

About APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

About the Laboratório de Análise da Violência

The Laboratory for the Analysis of Violence (LAV-UEJR) was founded in 2002 as a Research Centre connected to the Institute of Social Sciences of the State University of Rio de Janeiro, Brazil. Its mission is to foster public security and human rights and to diminish violence through the production of applied knowledge.

About the Network of African National Human Rights Institutions

The Network of African National Human Rights Institutions (NANHRI) is a not-for-profit- regional umbrella organization that brings together 46 National Human Rights Institutions (NHRIs) in Africa. Founded in 2007, NANHRI is registered under Kenyan laws as an independent legal entity. Its Secretariat is hosted by the Kenya National Commission for Human Rights in Nairobi. The Network works towards the establishment and strengthening of NHRIs in Africa. It provides capacity building, facilitates coordination and cooperation amongst NHRIs by linking them with other key human rights actors at the regional and international levels.

