

A critical analysis of the human rights violations of detainees in South African police custody with specific reference to police brutality

By

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A mini-dissertation submitted in fulfilment of the requirements in respect of the Master of Human Rights Degree in the Free State Centre of Human Rights, Faculty of Law at the University of the Free State

Date: November 2019

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DEDICATION

To my late grandmother, Mathabiso Mariam Leeuw

To my parents, Themba Kojana and Dipuo Monica Leeuw

DECLARATION

I, **Leeuw Tembisa**, declare that the Master's degree research dissertation or interrelated, publishable manuscripts/published articles, or coursework Master's degree mini-dissertation that I herewith submit for the Master's degree qualification at the University of the Free State is my independent work, and that I have not previously submitted it for a qualification at another institution of higher education.



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November 2019

ACKNOWLEDGEMENT

I would like to express my sincere gratitude to my supervisor, Prof. John Mubangizi, for his support, patience, inspiration and intellectual guidance throughout this thesis. I thank him for providing invaluable guidance, comments and suggestions throughout the course of this dissertation. I thank him for his ability to challenge me to think critically and to have a voice in every argument provided in this dissertation. I also wish to extend my gratitude to the Faculty of Law for believing in me and giving me the opportunity to enroll in this Master's degree.

I am highly obliged to taking this opportunity to thank my partner Mpumelelo Gift Nyiko Assegai and our son Mvuyelwa Omphile Leeuw for their patience, understanding and support throughout this year. I extend my appreciation to my mother Dipuo and my two siblings Thabisa and Thuliswa Leeuw for their undivided love, support, encouragements and most of all for understanding and appreciating the little time I spent with them during the course of this year.

Additionally, I would like to pass my warmest thanks to my friends Aphiwe Ntoyi, Esihle Boko, Nosipho Witvoet, Bukelwa Mateis, Khothlang Moseli, and Kgotso Motemekoane for all the support and advice that I received from them towards the fruitful and timely completion of this thesis.

Above all, I thank the Almighty God for all the strength that He gave me throughout this study. I thank Him for always picking me up every time was down and gave me more strength to proceed.

ABSTRACT

This study analyses the human rights violations of detainees in South African police custody. In so doing, the study focuses on police brutality. In explaining police brutality in custody, different scholars gave a common definition, namely that police brutality is the use of excessive force to cause physical, emotional, mental and deadly harm to a suspect held in custody. Police brutality is the legacy of apartheid from its formation as the Union of South Africa in 1910. The South African Police (SAP) then already adopted the features of a colonial military force, and members were socialized to use excessive force during arrest and to suspects held in custody.

A desk review was adopted to gather information from primary sources such as legal documents and secondary sources such as books, academic journals and newspaper articles on police brutality in holding cells. This process was guided by three research objectives: a) to explore the nature and causes of police brutality in South African holding cells; b) to examine the effects of police brutality in South African holding cells; c) to recommend remedial measures to mitigate police brutality in South African holding cells.

The findings of this study discovered that police brutality in custody is mostly caused by leadership failure and the non-reporting of cases of police brutality by the police administrators who are responsible for reporting these. In many cases, investigations favour the accused police officer. Police brutality is caused by ineffectual civil remedies. This means that if police officers are not held responsible for their brutality in holding cells they are more likely to persist with this behaviour. Passivity with regards to criminal prosecutions is another issue, as prosecutors often do not want to prosecute officers who usually help them with criminal cases.

In explaining victimisation in police custody, three learning theories are relevant. They are the social learning theory, the differential association theory, and the group socialisation theory. These state that police brutality in custody is learned through socialisation and integrating with other violent police officers. The study also makes use of the conflict theory and the routine activity theory to explain what motivates the violation of detainees' rights in custody.

The study further examines the role of the Independent Police Investigative Directorate. In so doing, it analyses the IPID Act (1 of 2011) and its mandate and

powers. Since its establishment, the number of cases of police brutality has decreased and more police officers have been held responsible for their misconduct. The study provides recommendations to help mitigate police brutality towards detainees in South Africa.

KEY WORDS

Police, police brutality, human rights violations, custody, detainees, victims, detainees' rights, Independent Police Investigative Directorate.

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ABBREVIATIONS

ICD	Independent Complaint Directorate
IPID	Independent Police Investigative Directorate
MPS	Municipal Police Services
PAC	Pan Africanist Congress
SAHRINGON	Southern African Human Rights NGO Network
SAP	South African Police
SAPS	South African Police Service
SWEAT	Sex Worker Education and Advocacy Taskforce

CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1. Introduction

This study critically discusses violations of the human rights of detainees in South African police custody. According to Bruce (2002), South Africa is one of the countries with the highest rate of police brutality towards detainees in custody. The first part of this chapter will contextualize significant concepts and what they mean for this study. These include definitions of police, police brutality, holding cells, detainees, and victims. The second part will provide a historical background of police brutality in holding cells. South African police brutality dates back to the arrival of the Europeans in the country. It is generally believed to have escalated during the era of apartheid. To date, police brutality in holding cells is still a serious problem. The third part comprises the formulation of the problem, specifically focusing on the extent, statistics and different cases of police brutality in South African holding cells during the post-apartheid period. This part will also discuss the legal framework, socio-cultural implications and economic implications caused by police brutality in custody. The fourth part of the chapter will outline the research goals, aims of the study and the research questions. The last part of this chapter will discuss the methods used to gather information such as academic resources, books, and online publications.

1.2. Conceptualisation

In this section, definitions of the most important concepts will be provided. Each concept will be operationalised to clarify its meaning concerning this study.

1.2.1. Police

Police are the “civil force of a state, responsible for the prevention and detection of crime and the maintenance of public order” (Bruce, 2002). The role of the police is to arrest and use minimum force to maintain community safety and order (Makgopa & Snyman, 2014). In South Africa, “the police have been instituted and legitimated by virtue of statutory law, the South African Police Service Act No 68 of 1995 to use their powers bestowed upon them to ensure community safety” (Potgieter, 2013:150). The duties of the SAPS are first to protect the citizenry and fight crime, secondly to maintain law and order, and lastly to advocate and enforce the law (Sebola, 2014).

1.2.2. Police brutality

Police brutality is defined by Bruce (2002) as an illegal utilisation of the powers granted to the police and the ability to impose these powers unlawfully. Bruce further explains that police brutality is the negligent use of force by the police without concern as to whether the force is lawful or not. Police brutality, according to Masuku (2004:6), includes the “unlawful use of weapons such as batons, pepper spray, dogs and flashlights to force detainees to give confessions in police holding cells”. Moreover, “police brutality is excessive use of force by police officers, including unjustified shootings, severe beatings, lethal chokings and rough treatment” (Zander & Larson, 2004). Police brutality is the use of excessive force on detainees, including violations of human rights, denying detainees access to a lawyer, and not giving them food or water (Gawthra, 1993). Moreover, Sebola (2014) includes the following aspects in his definition of police brutality: the use of nerve gas, batons, pepper sprays, kicking, slapping, verbal abuse, torture, and even the killing of detainees in police holding cells.

The torture and killing of detainees in holding cells are the most violent and cruel forms of brutality. If a detainee survives the torture, the experience can have a long and negative effect on the detainee’s life (Bruce, 2002). Police torture can be defined as “a deliberate, systematic or malicious infliction of physical or mental suffering by one or more police officers acting alone or following the orders of any authority to force detainees in custody to yield information or to make a confession” (Bosch, 2005:193). According to Singh (2004:90), torture is “any cruel, inhuman or degrading treatment and any act causing severe pain, suffering or humiliation, whether physical or mental, on a detainee to obtain information or a confession in holding cells”. Death in custody refers to the killing of detainees who are arrested or held in police holding cells by police officers (Gawthra, 1993). This may include deaths that occur during an arrest, inside police vehicles, or in police holding cells (Heide & Chan, 2016). Additionally, death in police custody occurs mainly in cases where the detainee is not cooperating during a police investigation of a crime, or when evidence cannot be gathered without using excessive force, which could then later lead to death in custody or hospital (Balagopal, 1986).

1.2.3. Police holding cell

A police holding cell is a short-term facility where suspects/detainees are kept for no longer than 48 hours (Dissel & Ngubeni, 2000). Section 35(d)(i) of the South African Constitution states that when a detainee is held in a holding cell, he or she has to be freed as soon as the police are done with questioning, and can only be detained in police holding cells for a maximum period of 48 hours (Singh, 2004). However, according to the South African Police Services (2012), a police holding cell is a room where detainees are kept while they are being processed or booked at the police station. By law, “the side and back walls of the holding cell should be 230mm brickwork walls, with a highly flexible steel wire between the skins in the exterior walls. The front face should be 16mm round bar framework, 90mm centre to centre with steel bracing, and a grill gate. A concrete ceiling of about 3,0m high over the area, with a conventional roof structure over the slab. Windows are not necessary as the cell is ventilated through the gate. A holding cell should have a trellis gate used as a door” (South African Police Services, 2012:19-20).

Dissel and Ngubeni (2000) state that all holding cells must have proper lights and ventilation. The lights should always be kept on and there should be no light switch enabling detainees to turn the lights on or off. A cell should be equipped with chairs or seats for detainees to rest or sleep at night. Again, detainees held overnight in holding cells have to be provided with mattresses and blankets so that they can sleep at night. Washing and toilet facilities should be provided to detainees in a holding cell (Dissel & Ngubeni, 2000).

1.2.4. Detainee

Detainees are individuals detained in police holding cells, which is a short-term facility, where they are usually kept for no longer than 24 hours (Dissel & Ngubeni, 2000). Usually, “they have not yet been convicted of any crime. The majority of detainees are individuals who are unable to obtain sufficient funds to post bail and therefore cannot be released from jail pending trial on criminal charges”(African Commission for Human and Peoples’ Rights, 2017:2). However, Section 35(1)(f) of the South African Constitution states that when a detainee is held in a holding cell, he or she has to be freed as soon as the police are done with questioning. Furthermore, a detainee should only be held in police holding cells for a maximum period of 48 hours (Singh, 2004). A

detainee has the right to be informed of his or her rights as a suspect in custody in a language that he or she understands. A detainee has the right to a legal representative, adequate nutrition, use of a telephone, medical treatment, and most importantly the protection of his or her human rights (South African Police Services, 2012).

1.2.5. Victim

Peacock (2013) defines a victim of crime as any person who is harmed, injured or even killed as a result of crime or any other incident. According to Section 185 of the Criminal Procedure Act (51 of 1977), a victim has the right to protection against crime, violence, and intimidation by the police. A victim has the right to be informed, for instance on the development of the case. According to Section 20 of the Criminal Procedure Act, victims have a right to restitution. Restitution refers “to cases where the court orders the accused to return property or goods that have been taken unlawfully, or to repair property or goods that have been unlawfully damaged, to restore a victim’s position to that before the crime” (Moolman, 1997). Section 175 of the Criminal Procedure Act states that victims have a right to address or give more information or evidence to the court (Moolman, 1997). According to the South African Service Charter for Victims of Crime (2004), victims of crime have the right to information, the right to be assisted, the right to be treated with respect and fairness, and the right to compensation.

1.3. Background

This section investigates the historical background of police brutality in South Africa, from the colonial period to the post-apartheid era.

It is believed that police brutality in South African holding cells started during the colonial period. It can be assumed that it escalated during the apartheid era. Police brutality in South Africa is, therefore, a legacy of the past. It is a serious problem and many detained and convicted prisoners have experienced it. During the apartheid era, the South African Police (SAP) relied mostly on the use of force and had a reputation of high levels of brutality (Bruce, 2002). When the South African Police were first established under the Act of the Union in 1910, it adopted the features of a colonial military force. The police used excessive force during arrests, and also towards detainees in police holding cells (Cawthra, 1993). According to Singh (2005),

detainees originally had no rights in South Africa. Between 1910 and 1979, detainees were treated badly because no laws were regulating their treatment, especially in custody. For example, the case of *Goldberg v Minister of Prisons 1979 1 SA 14 (A)*, authorised the Commissioner of Prisons to determine how detainees and sentenced prisoners should be treated, thereby defining the rights of detainees and prisoners. This case introduced the concept of the rights of detainees in police custody. Although such rights were introduced so long ago, detainees are still ill-treated and even killed in custody by police officers.

Punitive measures were presented as brutal and public demonstrations during Jan van Riebeeck's time in the Cape. During this period, detainees in custody were held in chains and made to labour in public (Singh, 2005). In an example from the previous century, an incident in May 1921 between the South African Police and the Israelite sect left about 200 people dead, more than 100 wounded and about 141 in police custody. Detainees in holding cells were tortured, brutally beaten and choked with electronic wires (Brogden & Shearing, 1993). Likewise, in 1922 the police, supported by the army, were called in to control a strike by employees. On their arrival they started shooting and more than 250 people died on the scene, 75 were taken into custody for questioning, and those who refused to cooperate with the police were beaten, kicked and even threatened with death (Brogden & Shearing, 1993).

Bruce states that police brutality increased dramatically during the apartheid period (1948 to 1994). During this era, "South Africa had a worldwide reputation for police brutality" (Bruce, 2005:141). This increase has been associated with black people resisting the laws of the apartheid state, which labelled their resistance as unrest (Olivier, 1991). The South African Police (SAP) managed and controlled situations of conflict and misunderstanding by using excessive force in police custody (Brogden & Shearing, 1993). Additionally, police officers of the SAP used military weapons to kill and injure unarmed and retreating crowds. When black people politically challenged their oppression, the police reacted brutally during arrests and in police custody (Brogden & Shearing, 1993). The well-known Sharpeville massacre is a good example. In 1960 Sharpeville's black residents marched against the pass laws. Most of the people marching that day were members of Pan Africanist Congress (PAC). People left their passes at home and everyone went to turn themselves in at

Sharpeville police station. The crowd was then dispersed with gunfire killing 69 people and leaving 180 people wounded. Many of these were taken into custody despite their injuries. The police officers continued beating and torturing them, and violating their basic rights (Olivier, 1991).

Another incident of police brutality occurred in June 1976 in Soweto. Thousands of black students were fighting against the policy to be educated in Afrikaans. The march of students was peaceful until they met with heavily armed police who opened fire (Cawthra, 1993). According to Olivier (1991:109) the Soweto unrest resulted in “575 students losing their lives, 3 907 brutally injured and 451 of the deaths and 2 389 of the injuries were because of police brutality in custody”. Similarly, soon after the Soweto uprising, Steve Bantu Biko was arrested at a police roadblock because he was a leader of a black consciousness movement. While in police custody in Port Elizabeth, the police interrogated Biko for an exhausting 22 hours. Biko was tortured and beaten because he failed to provide the police with information. “While in prison Biko was chained all day to a window grill” (Cawthra: 1993:19). He suffered major head injuries. He fell into a coma and died of head injuries on 12 September 1977 (Cawthra, 1993). According to Brogden and Shearing (1993), SAP members killed 851 people in police holding cells during the State of Emergency in the middle 1980s. Subsequently, in 1985, the police killed 697 and injured 2 312 people in police shootings. Again, in 1986, 130 detainees were killed in police holding cells. The police in South Africa have a bad history of brutality, and their behaviour hasn’t changed, even during the era of independence.

1.4 Problem formulation

The South African Police (SAP) was replaced with the South African Police Service (SAPS) in 1995 when the new government took over. Police brutality towards detainees in holding cells is a huge problem in South Africa. It occurs whether there is supervision or not (Bruce, 2002). Some detainees find it difficult to report police brutality because it is their word against that of the police. Another reason could be that they fear further victimisation, or that their cases will merely be ignored (Bruce, 2002). Several incidents of police brutality by police officers “over the past years have received wide press coverage both locally and in the international media” (Human Rights Watch, 2000). These incidents include assault, torture, and the beating and

killing of detainees in custody to attain information or confessions (Ncube, 2014). When a person has broken the law, that person should be arrested and taken into custody for the investigation of the crime. If the person refuses to talk or cooperate with the police, the police will sometimes brutally beat or torture that person to get the information that they want (Bosch, 2005).

According to Human Rights Watch (2000), footage from 1999 shows a policeman beating a detainee and stubbing a lit cigarette on his forehead. This form of torture is still practiced by some members of the police. From April 1997 to March 2000, 2 174 detainees died in police custody (Bosch, 2005). Deaths as a result of police action are mostly due to “the use of force or violence by the police, and constitute 65% of the more than 4 600 deaths recorded by the Independent Complaints Directorate (ICD) since 1997” (Dissel & Ngubeni, 1999). Moreover, Bruce (2002) states that approximately 70% of the deaths in police custody are as a result of the use of force by the police.

Between 1994 and 1997, “members of the SAPS faced 256 charges of murder, 125 charges of culpable homicide, 630 charges of attempted murder, 1 119 charges of assault with intent to do grievous bodily harm, 3 564 charges of common assault and 660 charges of pointing firearms” (Bruce, 2002). From 1997 to 1998, 48 cases were reported involving police officers severely assaulting and killing detainees in their holding cells (Singh, 2004). Between 1998 and 1999, the Independent Complaints Directorate recorded 1 051 cases of death as a result of police brutality, 468 cases of attempted homicide and assault with intent to cause serious bodily harm, 128 cases of torture, and 736 cases of common assault (Bruce, 2002). According to Potgieter (2013), statistics confirm that the number of cases of police brutality in holding cells increased from 639 in 1998 to 2 493 in 2012.

Annual statistics and previous research on police brutality show that police brutality in custody is a challenge in South Africa. Potgieter (2014) states that police brutality in South Africa increased by more than 300% between 2001 and 2011. For instance, the 2002 and 2003 Annual Reports of the ICD indicate that 311 deaths in police custody were because of police brutality, while 295 were as a result of police shootings in police holding cells (Masuku, 2004). There was an increase of 31.3% in deaths of detainees in police holding cells (309) between 2003 and 2004. In the same period,

63% of the detainees who died were African, 18% white, 9% coloured and 6% Indian. 95% of these detainees were male (Singh, 2004). Between 2006 and 2011 over 4 000 detainees were victims of police brutality in holding cells (Potgieter, 2014). Detainees held in police custody have the same human rights as any other person, but the rights of detainees are violated daily. The police officers who are supposed to protect human rights are in reality the ones that violate them.

Statistics further indicate that during 2009 and 2010, 294 deaths in police holding cells were recorded, while about 566 deaths as a result of police brutality during the arrest were also recorded (Potgieter, 2013). About 2 320 cases in 2011 and 2012 were lodged against police misconduct and brutality (Ncube, 2014). In 2011 the Independent Police Investigative Directorate (IPID) was adopted as the new police complaint body. According to the IPID 2012/2013 annual report, about 6 728 cases of police misconduct were reported during that period. 275 detainees died in custody, 22 cases of rape in custody, 50 cases of torture and 4 131 cases of assault. The 2013/2014 annual report indicates that of the 5 745 cases reported to the IPID, 234 were cases of death in custody, 19 were cases of rape in custody, 78 were cases of torture and 3916 were cases of assault. The IPID recorded 5 879 cases of police misconduct, 244 were cases of deaths in custody, 34 were cases of rape in custody, 145 were cases of torture and 3 711 were cases of assault, according to its 2014/2015 annual report. The IPID experienced an increase during the 2016/2017 reporting year. 7 014 cases were reported, and 302 of these were of deaths in custody, 30 cases of rape in custody, 173 cases of torture and 3 827 cases of assault.

The following cases cited by Bruce attempt to illustrate the seriousness of police brutality in South African holding cells. In June 1998, Moses Ngubeni and his friends were arrested and taken to Jabulani police station in Soweto. The police claimed that the four youths tried to escape from their holding cell and that they (the police) were trying to control the situation when Moses Ngubeni was killed. However, according to the deceased's father, his son had five gunshot wounds, including three on the forehead, one on the chin and one on the leg. His fingers and toes were brutally cut and bruised. Moses's father believed that his son was tortured (Bruce, 2002). In August 1999, at Bayview police station in Durban, the police arrested and severely assaulted four teenage boys. The boys were kept in a police holding cell that was freezing and filthy, and the police intentionally hit them with a broomstick and brutally

assaulted them. One of the boys died within 24 hours of arrest. As they were in pain, they pleaded for a medical treatment which the police refused to allow (Bruce, 2002). Similarly, “a Mozambican immigrant Mido Macia was arrested for causing a traffic jam on 26 February 2013. He was tied behind the back of a police vehicle and dragged around Daveyton” (New York Amsterdam News, 2013). Macia was then taken to a police holding cell, wounded and bleeding, where the police continued beating him to death (New York Amsterdam News, 2013). In South Africa, laws and policies were implemented against police brutality so that detainees in custody could be free from abuse, violation of human rights, torture, and even death. The main aim of these laws was to prevent police officers from using excessive force and violating detainees’ rights in custody.

1.5 Legal framework

“As law enforcement agents, police officers have the right to use force, but only when necessary” (Singh, 2004:88). Nevertheless, according to the Police Code of Conduct, when enforcing the law or maintaining order, police officers should use minimum force (Prenzler, Porter & Alpert, 2013). The police should use reasonable minimal force in difficult situations, but only as a last resort (Prenzler *et al*, 2013). Section 27(1) of the Criminal Procedure Act (51 of 1977) gives power to a police officer to use reasonable force on any person who resists being searched by the police, or when resisting to have his or her premises searched. Section 49 of the Criminal Procedure Act states that force can be used when a suspect resists arrest or when a suspect poses a threat of violence to the police (Criminal Procedure Act, 1977:55). In the case of Mido Macia, however, excessive force was not necessary because he was not fighting with the police or resisting arrest. He was killed in custody (New York Amsterdam News, 2013). The Criminal Procedure Act (51 of 1977) stipulates that detainees have the right to a free legal representative if they cannot afford one, the right to a phone call to inform family members about the arrest, the right to three meals a day, the right to exercise and the right to sleep at least eight hours within a 24 hour period.

According to Masuku (2004:6), the “SAPS agreed with the commitments of the South African government, to ensure that police brutality does not occur. South Africa acknowledged the duty to prevent and protect its people against police brutality or torture with the signing in 1994 of the United Nations Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment". Despite this commitment, police brutality by members of the SAPS towards people in custody is still a major problem in South Africa. The police is still severely beating, torturing and even killing suspects during arrest and in police holding cells (Masuku, 2004).

According to Makgopa and Snyman (2014), SAPS Standing Order (general) 349 states that detainees should be provided with medical care and hospitalisation whenever the need arises. However, a study conducted on police holding cells states that if the police paid more attention and acted with more haste providing immediate medical care to detainees who were ill or badly injured, most deaths in custody could have been avoided (Masuku, 2004). According to the South Africa Constitution (Act 108 of 1996), human rights must be protected at all times (Singh, 2004). This is however not the case as people die or are killed in police holding cells, meaning that the police are abusing and violating the right to life.

In 2008, the then Deputy Minister of Safety and Security Ms. Susan Shabangu announced that the police should shoot to kill, and other police officials such as Bheki Cele supported the statement that the police must be harsh on crime (Berning & Masiloane, 2011). The result of this was an increase in incidents of police shootings, and several innocent people have been killed by the police following this order. One example is that of a 28-year-old woman who was brutally shot and killed because she was mistaken for a car hijacker (Berning & Masiloane, 2011).

Another relevant policy is the Policy on the Prevention of Torture and the Treatment of Persons in Custody of the South African Police Service. Section 2 of this policy explicitly states that "no member of the police may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone". Torture is prohibited by the South African Constitution in Section 11 (2), particularly where it involves physical force. It is also, as the policy indicates, contrary to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (Bruce, 2002). According to Dissel and Ngubeni (2000), "this document aims to set out procedural guidelines for station commissioners and their commanders for the treatment of detainees in police custody". While the thrust of the document is to prevent the torture of detainees, it also deals with conditions in holding cells and the

treatment of prisoners. South Africa formulated this policy to protect detainees from torture and police brutality (Masuku, 2004).

1.6 Socio-cultural implications of police brutality

In some police stations, those wishing to lay complaints of police brutality in holding cells are discouraged by threats, ignorance or having to wait a long time before the police attend to their cases. This discourages and intimidates victims of police brutality (Bruce, 2002). It also leads to a situation where members of the community lose confidence and develop a negative attitude towards the police, especially when they have been victims of police brutality before (Potgieter, 2014). Most victims of police brutality do not report such incidents. One reason for this is that some police officers have a negative attitude when performing their official duties. Another reason is that some members of the police show no interest or empathy towards the victims visiting police stations to report police brutality. A third reason is the poor service in most police stations when crime is reported (Potgieter, 2014).

1.7 Economic implications of police brutality

Police brutality has a negative impact on the economy. The money used for the compensation of victims of police brutality might have been better spent on more important things such as education and housing (Potgieter, 2014). According to Mlangeni (2016), claims against police brutality are on the rise. Over R4 billion in civil claims were lodged against the Mpumalanga provincial police in 2016. Around R2.2 billion has been claimed by detainees for wrongful arrests, and the remainder constitutes compensation for police brutality, torture, and suffering while in police holding cells (Mlangeni, 2016). These alarming statistics were revealed by the provincial police commissioner, Lt Mondli Zuma, at a two-day safety and security summit held at Ingwenyama Conference and Sports Resort in 2016 (Mlangeni, 2016).

After victim compensation has been paid, the state attorney has to decide whether the police officer involved should enjoy state protection or not. This decision is based on whether the police officer acted within his or her duties and in good faith. If, however, the police officer acted outside of his or her duties and not in good faith, he or she might lose state protection. The state may then request the police officer to repay the compensation amount to the state (Bruce, 2002). Between 1995 and 1998, the SAPS received 1 489 claims of police brutality concerning the use of force and paid out

roughly R50 316 000. In 96% of the cases of assault and 98% of shooting cases, it was decided that the police officers involved should enjoy state protection (Bruce, 2002). In South Africa, police brutality and the standards of policing are not conventional for a democratic state seeking a non-violent environment for nation-building (Ncube, 2014).

1.8 Research goals and aims

The purpose of this study is to provide critical analysis of the human rights violations of detainees in South African police custody with specific reference to police brutality. The study also critically discusses what contributes to such violations of human rights. Bruce (2002) states that “South Africa is one of the countries with the highest rates of police brutality”. The overall goal of this study is to gain a broader understanding of what police brutality is by looking at the nature of police brutality in South African holding cells. The purpose of this is to understand the reasons for severe beatings, torture, and death of detainees in police custody. Moreover, police brutality in custody is an important topic to explore as it is something that occurs in South Africa regularly, and which violates some of the rights stipulated in the constitution.

To achieve the mentioned goal, the following aims have been formulated for the study:

- a) To explore the nature and causes of police brutality in South African holding cells.
- b) To examine the effects of police brutality in South African holding cells.
- c) To recommend remedial measures to mitigate police brutality in South African holding cells.

1.9 Research questions

The research will aim to answer the following research questions:

- How are detainees’ rights violated while in police custody?
- To what extent does police violation of detainees’ rights amount to brutality?

To respond to these questions, relevant literature in the form of scholarly articles will be reviewed.

1.10 Research methodology

This study made use of primary and secondary sources and employed a qualitative research approach to analyse relevant information obtained from those sources. Such an approach “provides the texture of real life in its many variations as it gives insight into the reasoning and feelings that motivate people into action” (Mangaba, 2017:8). This means that the study was mainly desktop and library-based. A desk review was undertaken to gather information from primary sources such as legal documents and secondary sources such as books, academic journals and newspaper articles on police brutality in holding cells. Primary sources are useful as they offer direct evidence and original material on police brutality. Secondary sources describe, analyse, and process primary sources. Within this research, academic journals, books, and online articles were consulted to collect information, statistics and cases of police brutality in holding cells. The reason for using these sources was to establish what has been written about police brutality and the violation of the rights of detainees in police holding cells in South Africa and to use this information to answer the research questions.

1.11 Conclusion

In summary, police brutality in holding cells refers to the violation of human rights, severe beatings, torture, and killing of suspects in police holding cells. Police brutality in holding cells in South Africa is a legacy of the past. Police brutality started from the beginning of colonialism, where the police used military force to discipline or maintain order in society. Rates of police brutality and human rights violations increased dramatically during apartheid when police used excessive force to control and maintain order. The police used excessive force during arrest, on suspects in transit in police vehicles, and in police holding cells. Although there are laws and policies restricting the police from using excessive force on detainees, the police are often in violation of these laws and continues to beat, injure, torture, violate human rights and even kill detainees in holding cells. Police brutality in custody is mostly not reported because victims fear further victimisation by the police. The state is often forced to use a lot of taxpayers’ money to pay compensation to victims. The next chapter of this study is a literature review, which looks at what different scholars have written about police brutality and human rights violations in custody.

CHAPTER 2

LITERATURE REVIEW

2.1. Introduction

After 1994 the government of South Africa faced the massive task of transforming the police service into one that would be both acceptable to the majority of the population, and effective against crime. Historically, “the police force in South Africa has always aimed to provide a service to the public, which is in line with the South African government’s Batho Pele (People First) initiative to improve the delivery of public services” (Zondi & Ukpere, 2014:576). These services would include “crime prevention and community policing, as well as ensuring the safety of the general public during strikes or protest actions” (Molepo, 2019:47). The vision and mission of the South African Police Services are stated in Section (205)(3) of the Constitution of the Republic of South Africa (108 of 1996). Zondi and Ukpere (2014:574) state that “the SAPS is responsible for maintaining public order, upholding and enforcing the law, ensuring that criminals are brought to justice, the prevention, combating and investigation of crime, participation in efforts to address the causes of crime, preventing and investigating any crimes that threaten the safety or security of any community, creating a safe and secure environment for all people in South Africa, and protecting the inhabitants of the Republic and their property”.

This chapter discusses what different scholars have said about police brutality and human rights violations of detainees in police custody. Police brutality in custody is a global concern, but for this research, the focus will be on South Africa. The first part of this chapter will explore the nature and causes of police brutality in South African holding cells. Secondly, police brutality takes many forms, and the focus will be on physical assault, verbal assault, torture, sexual assault, and death. The third part of this chapter will present empirical support for the different perspectives on the relationship between police brutality and its effect on detainees, the police officers involved, the SAPS and the general community. Lastly, the South African Constitution guarantees certain rights to individuals who have been arrested, detained and accused, and those rights will be expanded on in detail.

As mentioned earlier, this study is an attempt to understand the phenomenon of police brutality towards detainees in South African police custody. “As such police brutality

in custody forms one of a series of reports commissioned by the Southern African Human Rights NGO Network (SAHRINGON). These reports are intended to document information in the 11 SADC countries on the factors brutality, on the nature and extent of police brutality, and on the institutional responses to the problem contributing to police” (Bruce, 2002).

2.2. Nature and causes of police brutality

Gaines, Kappeler, and Vaughn (1994) describe police brutality as an act or illegal behavior that violates the legal rules or norms of the country, as well as that of the police institution, which is expected to be upheld by all police officers. Zondi and Ukpere (2014) define police brutality in custody as “a civil rights violation that occurs when a police officer acts with excessive force by using an amount of force that is more than necessary”. Barker (1986) proposes three elements contributing to police brutality: a) an existing opportunity structure with its accompanying techniques and informal rules; b) socialisation and occupational experiences; and c) peer group influence, such as the reinforcement and encouragement of rule violation. This indicates that police officers can learn brutal behavior from other officers through socialisation. The distinctive police subculture has been exposed to prevailing informal rules emphasising police secrecy and violent behavior towards detainees in police custody (Potgieter, 2014).

Potgieter (2014) argues that police brutality is ever-present in police work because members of the police have all the resources needed to commit acts of brutality, especially when there are suitable targets such as detainees in custody who are perceived to be vulnerable, with no one else present to intervene on their behalf. Police officers are entitled by law to use minimum force under certain conditions, but only as the last resort to maintain order and stability in police holding cells (Prenzler, Porter & Alpert, 2013). Moreover, police use of force may only be regarded as a useful instrument of power for a limited number of activities, such as controlling violent protests and the protection of human life and property (Potgieter, 2013; Zondi & Ukpere, 2014). A study on police brutality by Mwanajiti, Mhlanga, Sifuniso, Nachali-Kambikambi, Muuba, and Mwanayanda (2002), asserts that police brutality should not be seen as police torture only, but as part of a predominant condition which also includes police killings of suspects during arrest or detainees in police custody.

According to Bruce (2005), excessive force was used during the apartheid era by some police officers who were oppressive instruments of the state. Between 1948 and 1994 police brutality was common in South Africa. It was also an acceptable control measure to deal with detainees in police custody (Brogden & Shearing, 1993). Police brutality was highly allied with black people who refused to accept the laws of apartheid. Additionally, Bruce (2005) argues that this brutality in custody was highly motivated by political reasons. This means that people were beaten, tortured and even killed because they resisted the apartheid laws, or they belonged to organisations which were not accepted by the apartheid government. An example is the Soweto uprising, where students engaged in protests against the government's decision that all students must be taught in Afrikaans. The students were attacked by the police. Many were killed, some were severely injured while a number was taken into police custody where they were beaten and tortured. Some died in custody (Olivier, 1991).

As mentioned by McLean and Jenkins, "on 12 September 1977, Steve Biko died while in detention in South Africa. This event became notorious worldwide. Biko was a leader of the Black Consciousness movement in South Africa, and an opponent of the apartheid regime. His death raised severe moral questions about the behaviour of the security police in whose custody he died, and about the nature of the society that employed such security apparatus" (McLean & Jenkins, 2013:77). Hadfield adds: "His death at the hands of security police in September 1977 revealed the brutality of South African security forces and the extent to which the state would go to maintain white supremacy. After Biko's death, the state declared Black Consciousness-related organizations illegal" (Hadfield, 2017:1).

Some police officers beat detainees because they have been socialised into a culture of abuse. Police officers function within an organisational culture where good or bad behaviour occurs. "Organisational culture can be defined as a system of shared meaning and understanding that influences how the individual acts within the functions of that organization" (Mofomme, 2001:2). Also, beatings, harassment, torture, rape, human rights abuses and killings of detainees in custody are common and are also practiced by the SAPS. These brutal behaviours are an approved or enforced part of their prevalent organisational culture. Police officers adopt this culture through the process of socialisation. This process includes intensive physical training, gun handling, and classroom studies. Police training in South Africa takes approximately

six months, which includes both theory and practical work. During their training, police trainees usually work in groups. This is where the influence of brutality is firstly enforced, and their practical work often includes the use of excessive force (Bruce, 2005). Zondi and Ukpere (2014) investigated the reasons why police officers are so brutal towards detainees in police custody. They identified “poor training, negligent police management, criminal members within the police force, disrespect for law and order, as well as a disregard for internal disciplinary procedures as the main causes for the increase in police brutality affecting the SAPS”.

The emphasis of police training is on producing tough police officers who are hostile, willing to do what it takes to get detainees into custody to provide them with information, and to follow the commands of superiors without questioning (Steyn & Mkhize, 2016). For example, police officers were instructed by the then Deputy Minister of Safety and Security, Susan Shabangu to shoot to kill (Berning & Masiloane, 2011).

This means that police officers learn brutality from the organisation and each other. This happens when police officers continually observe officers treating detainees in custody badly. He or she will learn that because there are no serious consequences, the beating, torturing and killing of detainees in custody are acceptable forms of behaviour (Bandura, 1977).

2.3. Forms of police brutality

2.3.1. Physical assault

Physical assault occurs when a police officer or a group of officers provoke and physically attack a detainee with or without the use of a weapon (Potgieter, 2013). The Independent Police Investigative Directorate (IPID) reports that out of five detainees in custody, four will be subjected to severe beatings (Bruce, 2002). During a time of six months between 2006 and 2007, 3 313 cases of police brutality were reported and 1 857 of those were physical assault (Balagopal, 1986). “A victim of physical assault, having lived through a traumatic ordeal, may be affected not only physically (physical scars, chronic pains) but also psychologically (shock, constant fear, emotional instability). Depending on the injuries sustained in custody, detainees may be unable to walk or talk, be hospitalised and in more serious cases, have to undergo rehabilitation therapy” (Potgieter, 2013).

For example, according to Mlangeni, Mr. Mabaso was physically assaulted by police officers after an argument. The police officers then took him out of his cell to the back of the police station in the parking lot where he was beaten by numerous police officers. After the attack Mabaso, severely injured, spent 24 hours in a police holding cell, without medical attention. Beatings can cause serious injury to detainees in custody including fractures, internal bleeding, and spinal cord injuries (Mlangeni, 2016). Police officers also assault detainees with batons, fists, and booted feet (Bruce, 2002).

2.3.2. Verbal assault

Verbal abuse by the police occurs when police officers use language, whether spoken or written, to cause harm to detainees in custody (Bruce, 2002). Police officers may use vulgar language to insult detainees. Threatening them also forms part of verbal assault (Potgieter, 2013). For example, according to Bruce, in 1999 a police officer from Brixton police station verbally abused Dr. Frank Nyame, claiming that he was an illegal immigrant. The police officer called him “makwerekwere” and told him to go back to his country or he would beat him to death. He was then arrested and knocked unconscious because he refused to show the police his immigration papers. When he recovered he requested medical attention, but the police refused because he was an immigrant. The police kept swearing at him and calling him names (Bruce, 2002).

2.3.3. Torture

According to the Prevention of Combating and Torture of Persons Act (13 of 2013), “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishing him for an act he has committed or is suspected of having committed”. Torture occurs when a police officer deliberately causes very serious and cruel suffering (physical or mental) to a detained person. Police officers sometimes torture detainees to punish or intimidate them, or to obtain information from them (Singh, 2004). Also, during the apartheid era, torture was “primarily used as an investigative method, in other words as a means of extracting information and confessions” (Swart, 2015:353). Following the United Nations Convention Against Torture (CAT), South Africa has legislation against torture such as the Prevention of Combating and Torture of Persons Act (13 of 2013). In Section 12 it states (a)

everyone has the right not to be tortured and (b) not to be treated or punished in a cruel, inhuman or degrading way. Also cases of torture “are dealt with in terms of the Criminal Procedures Act, under the broad category of assault to cause grievous bodily harm” (Dissel & Ngubeni, 1999). Although the SAPS has adopted a Prevention of Torture Policy, which includes a more expansive definition of torture than that contained in the CAT, the SAPS does not record or categorise complaints of torture. It rather relies on the Independent Complaints Directorate (ICD) for the provision of statistics in this regard (Pigou, 2002). The SAPS is required, in terms of Section 53(8) of the SAPS Act (68 of 1995), to report all police action, including torture, to the ICD. “Despite this statutory obligation, the experience of the ICD has been that these provisions are sometimes ignored. Some reports which the ICD receives originate from sources other than SAPS reports” (Pigou, 2002).

Torture also occurs when police officers inflict cigarette burns or electric shocks, or when they suffocate detainees in police custody (Singh, 2004). The *Human Rights Report* of 2013 shows that “the use of lethal and excessive force by police, including torture, resulted in numerous deaths and injuries” (Zondi & Ukpere, 2014). There are about 20 cases involving torture in custody every year in South Africa, according to Bruce (2002). Bruce further states that there are many more cases that remain unreported. The South African Constitution and other laws prohibit such practices, but police officers persist in using electronic shocks, isolating, and raping detainees in custody. Amnesty International verified cases of torture, including the use of electric shock and suffocation (Bruce, 2002).

2.3.4. Sexual assault

Sexual assault in police custody occurs when a detainee is forced to unwillingly take part in sexual activities with a police officer (Potgieter, 2013). “The Sex Worker Education and Advocacy Taskforce (SWEAT) has found that the police are engaging in unlawful and unconstitutional acts when arresting sex workers. The rights of sex workers who are arrested and detained are not upheld and in some cases, members of the police engage in criminal actions themselves, while supposedly enforcing the law” (Fick, 2006:27). SWEAT analysed 48 statements received up to the end of 2004, to identify common types of abuse experienced at the hands of the police. One in three of the women who made statements to SWEAT described being forced to have sex

with police officers or knew other sex workers who had been coerced. Women spoke of police officers that offered to release them from jail in return for sex:

“Sometimes they ask for sexual favours in the cells (one policeman will come to the cell and choose who he would like to have sex with, so that he can free them all) and if that sex worker doesn’t want to do that they all had to sleep there (in the police cell)” (Fick, 2006).

A police commander at Jericho in the North West Province was arrested and suspended without pay for allegedly raping a female detainee who was held at the local police station. She was a suspect of theft. The police officer fetched the woman from her cell to the storeroom where he allegedly raped her and then took her back to her cell. She reported the incident in the morning but no one believed her (Dissel & Ngubeni, 2000).

2.3.5 Death

According to Heide and Chan (2016), death in police custody is defined as the death of any suspect who had been arrested or held in a police holding cell, or otherwise died while police officers tried to get more information, or died in hospital due to injuries sustained while in custody. According to Pigou (2002), deaths as a result of police actions in custody remain high. Pigou further states that between 1997 and 2002, between 550 and 700 people died annually in custody as a result of police action. Bruce estimates that of the 1 548 deaths as a result of police brutality during that time, 626 were of detainees in police custody (Bruce, 2002). The ICD provides its breakdown in terms of cases of deaths in custody. “Deaths in custody are broken down into five categories, namely, deaths due to natural causes, suicide, injuries in custody, injuries before custody, and possible negligence. While this provides an insight into what may have happened and whether or not the police are responsible, these categories are not definitive” (Pigou, 2002). Although there is a specific category dealing with negligence, for example, it is quite possible that police negligence also contributed to deaths in the other categories. On the other hand, “in terms of abusive behaviour, it is also possible that the injuries sustained before custody were sustained at the hands of arresting or investigating officers, or that suicide was induced” (Pigou, 2002).

In addition, Makgopa and Snyman (2014) also identify four categories of deaths in police custody, namely suicide, natural causes, assault by police officers and death

due to injuries before detention. They argue that suicide is the leading cause of death, followed by natural causes, assault by police officers and injuries sustained before detention. Additionally, according to ICD statistics, 29% of detainees (59) who died in police custody in 1998 died because they took their own lives (Dissel & Ngubeni, 2000). However, Moloto (2013) agrees that death can be the result of assault or injuries sustained before detention, but disagrees that suicide and natural causes can be causes of death in police custody. Moloto rather maintains that causes of suicide or natural death should be closely investigated. For instance, detainees in custody might choose to take their own lives because they cannot bear the bad treatment and torture they experience while in custody. Moreover, the *South African Human Rights Report* (2013) points out that between 2012 and 2013, 706 suspects died due to police brutality in South Africa. However, during a half year period (2016/17) “the Independent Police Investigative Directorate (IPID) reported that there were 207 deaths as a result of police action” (Balagopal, 1986).

2.4. Institutional factors related to police brutality

In light of the information provided in the first chapter about the current issues of police brutality in South African holding cells, and the public perception of the ineffectiveness of the South African Police Services, as illustrated by the high police brutality rate, it becomes necessary to consider the range of available research in identifying the factors that promote and facilitate the use of excessive force towards detainees.

2.4.1. Leadership failure

The police commissioners and officials who should be the ones addressing the problem of police brutality, do not take human rights violations, beatings, torture and the killing of detainees in custody seriously. “The leadership gap is evident in the poor performance of police departments' internal affairs divisions around the country, which too often conduct untidy and incomplete investigations that tend to be biased in favour of fellow officers” (Collins, 1998:41). Moreover, “the early warning systems that should identify and manage problematic officers are not fully operational, despite findings by oversight commissions and journalistic investigations. A small percentage of officers are responsible for a large percentage of brutality incidents in custody” (Collins, 1998:44). Disciplinary action against officers responsible for the brutal treatment of

detainees in custody is not taken seriously, while internal review actions remain hidden in secrecy (Collins, 1998).

2.4.2. *Ineffectual civil remedies*

“Police officers do not often take responsibility for their actions or are not held accountable through administrative or criminal procedures. Many detainees or members of the community whose human rights have been affected by police action rely solely on civil remedies for redress” (Collins, 1998: 41). However, Sebola (2014) and Collins (1998) note that in reality, civil lawsuits generally allow police departments to continue to overlook violations committed by police officers in custody. Some detainees have succeeded in receiving compensation payments, and 28% of civil lawsuits have requested police departments to accept responsibility for violations, leading to improvements in training and addressing inconsistent policies. Sebola further states that the money to pay victims of police brutality mostly does not come directly from the police department, but instead comes from the state’s overall budget. For example, between 1995 and 1998 the SAPS paid over R97 372 to the victims of police brutality in police custody (Bruce, 2002).

2.4.3. *Passivity on criminal prosecutions*

The criminal prosecution of police officers who commit human rights violations of detainees in police custody is not common, especially with many prosecutors unwilling to prosecute police officers who usually help them in criminal cases (Collins, 1998). “State prosecutors, who can prosecute police officers under criminal civil rights statutes, rarely pursue even strong cases, due to, in part, the high legal threshold required to win such cases and a shortage of resources” (Collins, 1998:41). Additionally, the Justice Department receives thousands of police brutality cases annually, but only prosecutes less than a hundred police officers for these misdeeds. Although state “prosecutors claim they should play a “backstop” role in prosecuting officers who commit human rights violations, they rarely do so even when local prosecutors decline prosecution or do a poor job in presenting a case” (Collins, 1998:42).

2.5. Effects of police brutality

The consequences of police brutality can be overwhelming for all parties involved. One incident of police brutality in custody can have negative effects for the victim, the police officers who committed the human rights abuses, the South African Police Services and the community as a whole.

2.5.1. *The victim*

Victims of police brutality in custody can experience both short- and long-term effects, depending on how they were treated. Suffering may differ from one person to another (Ncube, 2014). Sebola (2014) points out that victims of police brutality in custody may suffer from sleep deprivation, sensory deprivation, and emotional manipulation. Similarly, many detainees suffer from mental and emotional damage after being subjected to brutal acts, which are not always visible. Emotional and mental harm may cause feelings of indignity, worthlessness or isolation, and memory loss, which require therapy to overcome (Bruce, 2002). Physical assault can also have negative and long-term effects on victims, especially if they sustained severe bodily injuries such as broken bones, loss of sight or hearing, and brain damage (Bosch, 2005:193).

2.5.2. *The police officer*

If a police officer is accused of police brutality, the police captain or commissioner can take away his or her weapon and assign him or her to desk responsibilities (Singh, 2005). The police officer's reputation and the record may be affected by the accusations of police brutality towards detainees in custody (Mlangeni, 2016). The department may lose trust in the police officer because of his or her bad history with detainees in custody (Bosch, 2005), while the commissioner will have to decide on the fate of that police officer. The sentencing of such police officers should be proportionate to the abuse committed (Bosch, 2005). Bruce (2002) states that there is a high probability that such a police officer may be suspended or forced to resign when found guilty of police brutality and the violation of the human rights of people in custody.

For example, in 1999 the ICD reported a case of Mr. Mabelana who died because he was handcuffed, beaten and tortured with a welding machine on his genitals. Six police officers were arrested in this regard. Three of them were charged with murder and the

other three were charged with defeating the ends of justice. The police officers were sentenced to five years of imprisonment. The ICD further demanded that disciplinary proceedings be instituted against the SAPS members (Masuku, 2004).

2.5.3. *The SAPS*

The SAPS tries to prevent instances of police brutality by excluding extremely aggressive trainees from its academies. However, when police officers commit human rights violations, the community and the media mostly blame the SAPS department and not the alleged police officers (Mlangeni, 2016). Police officers work under supervision. This means that when they engage in brutality, their supervisors may also be held accountable as it is their responsibility to ensure that those police officers follow the right procedures when dealing with detainees in custody. Moreover, the community may lose trust in the police, making it difficult for them to report cases or to provide the police with necessary information regarding crimes happening in their area (Bruce, 2002).

2.5.4. *The general public*

Potgieter (2013) argues that the impact police brutality on the community, in general, can be more or less the same as on the victims. The harm caused to the general public may sometimes be impossible to fix because of the number of people affected, so it is difficult to reach out to them individually (Bruce, 2002). When news of incidents of police brutality reach the general public they are most likely to be distrustful towards the police and the government in general (Motley, 1980). According to Potgieter (2014), although there is no direct contact between the community and the police, they can react from what they observe, what the detainees tell them and what the media brings to their attention.

2.6. Section 35(2) of the Constitution: rights of detained persons

2.6.1 *The right to be informed of the reasons for detention*

According to Section 39(2) of the Criminal Procedure Act (51 of 1977), a police officer making an arrest should inform the arrested person of the reason for the arrest. Section 35(2)(a) makes it compulsory for a detained person to be informed of the reason for the arrest. It is every detained person's right to know the reasons and legal basis of his or her detention. These rights give a detained person the "right to protest

the lawfulness of his or her detention“(Mubangizi, 2001). According to Loubser, Van der Walt, Van Wyk and Barnard (2019), this right includes that the state must inform the accused about the fact that a verdict could follow on the charge. The accused is entitled to prepare his defence and to have adequate time and facilities to do so.

2.6.2 The right to legal representation

Section 35(2)(b) stipulates that every detained person has the right “to choose, and to consult with, a legal representative, and to be informed of this right promptly”. Mubangizi (2001) focuses on three elements contained in this right. Firstly, it is within the detainee’s right to decide who should be appointed to represent him. Secondly, if a detainee cannot afford a legal representative, the state should provide one at its expense. Thirdly, the detained person should be promptly informed of these rights. A legal representative is important for enforcing the detainee’s rights in custody. This right is also reflected in the Criminal Procedure Act. When in custody, detainees should be kept in a holding cell for no more than 48 hours, and then they should be brought before court. “It is possible to obtain police bail and/or make a formal after-hours bail application immediately after their arrest. This will ensure that detainees spend as little time as possible in police cells” (Loubser *et al*, 2019). The appointed legal representative will assist detainees in this regard.

“The right to legal representation when arrested and detained in the pre-trial stage of the criminal process protects the suspect or detained person from state abuses and violations of his or her constitutional rights” (Loubser *et al*, 2019).

2.6.3 The right to challenge the lawfulness of the detention

Detainees have the right to challenge the lawfulness of their detention in person (Section 35(2)(d)). Under criminal law, unlawful detention means keeping or confining a person in custody without any lawful reason (Zondi & Ukepere, 2014). However, it is not clear under which conditions a detainee can challenge the lawfulness of his detention, aside from the challenge related to the right to be informed of the reason for detention (Mubangizi, 2001).

2.6.4 The right to conditions of detention that are consistent with human dignity

This right should be read in conjunction with Section 10 of the Constitution, which provides that “everyone has inherent dignity and the right to have their dignity respected and protected”. Pieterse (2006:119) states that “detained persons have a right to conditions of detention that are consistent with human dignity, including opportunities for exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material, and medical treatment”. According to Gontsana (2015), one of the detainees awaiting trial at Pollsmoor prison stated that the prison was overcrowded. They had to share single beds because there were not enough beds for everyone. Some detainees slept on the floor. The detainee stated that:

“It is filthy inside here. There is only one toilet for 40 of us so some end up urinating in the shower. This causes a bad smell because we don’t get any cleaning detergents here to clean the shower or the toilet” (Gontsana, 2015).

The right to human dignity should also be incorporated with the right to life under Section 11 of the Constitution. This means that nobody, including the government, has the right to take another person’s life. It also means that the government should take appropriate measures to safeguard life by making laws to protect detainees and, in some circumstances, by taking steps to protect detainees if at risk. Also, according to the South Africa Human Rights Commission Act (40 of 2013), the state is also required to investigate suspicious deaths and deaths in custody.

For example, a person’s right to life is not breached if they die when a public authority (such as the police) uses force to:

- stop them from carrying out unlawful violence
- make a lawful arrest
- stop them escaping lawful detainment, and
- stop a riot or uprising

Moreover, “the positive obligation on the state to protect a person’s life is not absolute. Due to limited resources, the state might not always be able to fulfil this obligation. This could mean, for example, that the state does not have to provide life-saving drugs

to everyone in all circumstances” (South African Human Rights Commission Act, 2013)

2.6.5 The right to communicate and to be visited

Section 35(2)(b) offers detainees the freedom “to communicate with, and be visited by, a spouse or partner, next of kin, chosen religious counsellor, and chosen medical practitioner”. Mubangizi (2001) identifies two dimensions attached to this right. Firstly, the right to communicate requires that correctional centres or police stations make it easy for detainees to “make and receive telephone calls, to write, post and also receive letters”. The second dimension relates to the right to be visited. This right does not only relate to married couples, but extends to unmarried couples as well. This means that transgender partners are also included. According to Mubangizi (2001), Section 35(2)(f)(ii) means that detainees can also be visited by their extended families. Lastly, the right to be visited by one’s chosen religious leader or medical practitioner should be read in conjunction with Section 15(1), providing for the right to freedom of religion, and Section 27(1)(a), providing for the right to access adequate medical treatment. The categories under Section 35(2)(f) are not in any way exclusive to one another (Mubangizi, 2001)

2.7. Conclusion

Police brutality in custody can be caused by different factors. Police officers’ use of force in custody is at times necessary to contain a situation. Also, detainees are subjected to different forms of brutality resulting in physical, emotional and psychological injuries, and even death. In some cases, there is negligence or even ignorance, where police officers do not realise that their brutal actions against detainees are against the law. Section 35 of the South African Constitution provides clarity on how detained individuals should be treated in custody. The next chapter will examine the phenomenon of police brutality in custody by touching on different theories such as social learning theory, the differential association theory, the group socialisation theory, the conflict theory, and the routine activity theory.

CHAPTER 3

INTEGRATED THEORETICAL APPROACH

3.1. Introduction

This chapter investigates the various theories that are pertinent to the understanding of police brutality in holding cells. The purpose of the chapter is to provide relevant theories that would explain police brutality and human rights violations in South African holding cells. The theories discussed are the group socialisation theory, the social learning theory, the differential association theory, the conflict theory and the routine activity theory.

The first part of this chapter focuses on an integrated perspective of the group socialisation theory, the social learning theory and the differential association theory. These theories have a common theme, which holds that brutal behaviour is learned through interaction with others. The second part of this chapter explains the conflict theory, which holds that the police is a repressive instrument of the state, and that they enforce the will of the ruling class. The last part discusses the routine activity theory, “which holds that for a crime to occur there must be a motivated offender, a suitable target and the absence of a capable guardian” (Fu, Nikitkov & Bay, 2013). These theories are important in explaining police brutality and human rights violations in police custody, because they provide an overview of how and why police officers engage in brutal behaviour. Moreover, the theories also explore how personal and learned behaviour can influence the actions of police officers. The theories also explore how police officers frequently rationalise their brutal behaviour to get away with such crimes. No theory works in isolation, so an integrated perspective of theories is important, because together they can overcome the shortcomings of the theories in isolation. This chapter excludes theories such as the genetic theory, the social bonding theory and the rational choice theory, because most of them tend to hypothesise, which is not the aim of this chapter.

3.1. An integrated perspective of learning theories

The purpose of discussing three learning theories in this chapter is to illustrate that brutal behaviour can be learned in different ways and different contexts. As mentioned earlier, the relevant theories are the group socialisation theory, social learning theory

and the differential association theory. According to the group socialisation theory, behaviour is learned through socialisation with friends or the group that one always engages with (Bandura, 1977). On the other hand, the social learning theory maintains that individuals can learn brutal behaviour either from parents, family, their environment and the media, especially if the person is not punished for such behaviour (Williams & McShane, 2013). Similarly, the differential association theory emphasises that brutal behaviour is learned the same way that conventional, or good, behaviour is learned, and that family, the environment and the media all play a significant role in shaping a person's behaviour (Cressey, 1954).

According to the group socialisation theory, an individual's interaction with peer groups can influence his or her personality and behaviour in adulthood. According to Bandura (1977) "adolescents spend more time with their peers than with their parents. Therefore, peer groups have stronger correlations with personality development than parental figures do". For example, "twin brothers, whose genetic make-up is identical, will differ in personality because they have different groups of friends, and not necessarily because their parents raised them differently" (Bandura, 1977). In contrast with this, the differential association theory states that learning can take place directly or indirectly when individuals interact with each other in the process of communication (Sutherland, 1939). This means that police officers can directly and indirectly learn from each other when they observe the use of torture by other officers to force detainees to confess or provide them with useful information. According to Chan (1996), some police officers are three times more likely than others to copy the brutal behaviour that they observe from other experienced police officers, even if they do not find such conduct acceptable.

According to the social learning theory, people are not born with the ability to behave violently, but they acquire it through the experiences that they encounter throughout their life span (Williams & McShane, 2013). Similarly, "the salience of work demands and occupational pressures is mediated by individual experiences. For example, a focus on risk and uncertainty is part of the enacted environment of police work, since the perception of danger is constructed and sustained by officers in the course of their routine work. A sound theory of police culture should therefore recognise the interpretive and active role of officers in structuring their understanding of the organisation and its environment" (Chan, 1996:112). Those experiences include

personally observing someone behaving aggressively to obtain a common goal, or by observing people being compensated for violent acts on television or in the community (Bandura, 1977). Similarly, a police officer who works in a police station where police officers regularly use excessive force on detainees in custody, has a greater chance of emulating this behaviour and also using force, because his or her character as a police officer is influenced by interacting with other police officers (Williams & McShane, 2014). According to Potgieter (2014), the socialisation theory holds that there is a possibility that the police officers' brutal behaviour towards people in custody are learned from on-duty contact with other police officers.

The differential association theory argues that when police officers become involved in deviant (brutal) behaviour, they do so because of their contact with criminal patterns of behaviour. For example, police officers spend a high percentage of their time at work and are exposed to other police officers who violate the rights of detainees in custody. They are therefore prone to imitate that behaviour (Cressey, 1954).

According to Williams and McShane (2014), group socialisation is like a subculture, because in a subculture people share similar values and norms. What others do or how they behave in a subculture requires every member to conform to those acts (Williams & McShane, 2014). Mofomme (2001:1) defines a subculture as a small culture that is formed within a culture. On the other hand, "a culture is a system of shared meaning representing common perceptions that are held by its members" (Welgemoed, 2012:7).

According to Chan (1996:111), police culture refers to the "core skills, cognitions and affects that define good police work. It includes accepted practices, rules, and principles of conduct that are situationally applied, and generalised rationales and beliefs". Reiner (1992) equates it with the values, norms, perspectives and rules that inform police conduct. Skolnick (1966) speaks of the "working personality of a police officer" – meaning a response to the danger of police work, the authority of the police constable, and the pressure to be productive and efficient in police work.

Reiner (1992) isolates certain features of police culture that are related to this "working personality". These include a cynical view of the world, a machismo and racist attitude, a strong sense of solidarity with other officers, and a conservative political outlook. "Police culture is not, however, primarily negative. It is seen to be functional to the

survival of police officers in an occupation considered to be dangerous, unpredictable, and alienating. The bond of solidarity between officers offers its members the reassurance that the other officers will "pull their weight" in police work, that they will defend, back up and assist their colleagues when confronted by external threats, and that they will maintain secrecy in the face of external investigations" (Chan, 1996:111). The development, transmission and maintenance of this culture are assumed to also be related to the demands of police work (Reiner, 1992:109). Steyn and Mkhize (2016) argue that police culture plays a significant role in shaping the attitudes and behaviour of police officers. Also, "the police subculture may facilitate deviant behaviour by transmitting the beliefs, values, definitions, and manners of expression that depart from acceptable behaviour. This happens because the subculture's shared value system allows them the opportunity to rationalize, excuse, and justify deviance" (Chappel & Piquero, 2004:93).

According to the differential association theory, a police officer may engage in brutality towards detainees in custody if three elements are present (Williams & McShane, 2014). In the first element, the police officer needs to learn the skills and techniques for committing crime. For instance, police officers will be trained on how to get a detainee to confess, and the type and intensity of force they can use (Mofomme, 2001). In the second element, the police officer has to learn definitions favourable to crime as opposed to those unfavourable to crime, which are different for different subcultures (Mofomme, 2001). For example, within the police subculture, it might be appropriate to beat, torture and to violate the rights of detainees. However, the community at large might view such conduct as unacceptable, humiliating and illegal (Mlangeni, 2016). In the last element, the police officer gets an opportunity to commit the crime, after learning the skills and techniques, and the norms and values acceptable within the police subculture. He or she will then use this knowledge and experiment to see whether what he or she was taught works, and if certain goals are attained this behaviour will persist (Mofomme, 2001).

According to the differential association theory, for learning to take place there must be a strong relationship between the enforcer and the person learning. This allows for the successful transference of skills and techniques (Cressey, 1954). The theory identifies four elements, of which the first is frequency. Frequency refers to the number of instances during which brutal behaviour is presented to the police officer. The

second element is duration, which is the length of time the police officer is exposed to this brutality. The third identified element is priority, meaning how early in a police officer's career he or she is exposed to brutality. In this case Mofomme (2001) argues that police officers can learn violent behaviour during their pre-service training before they even begin with practical work. The last element, intensity, relates to the strength of the relationship with the individual presenting the brutal behaviour (Williams & McShane, 2014). The social learning theory does not speculate whether there has to be a relationship between the victim and the offender for learning to take place, other than observing and then imitating the behaviour. Similarly, the group socialisation theory is also not clear on whether learning in peer groups involves relationships or not, because one could belong to a certain group but does not have solid relationships with the other members of the group.

According to the social learning theory, the behaviour of police officers does not only rely on learning, but the reward and punishment model plays a significant role in shaping such behaviour (Williams & McShane, 2014). The social learning theory argues that when police brutality and human rights violations in custody are punished, police officers will learn that brutal behaviour has negative consequences. Other police officers will therefore not imitate brutal behaviour, because of these negative consequences. However, when police brutality is rewarded, such as police officers getting promotions, or being praised, other police officers will view their behaviour as appropriate and will imitate it, because of its positive rewards (Bandura, 1977). For instance, during the apartheid era, some police officers who had brutally assaulted, tortured and even killed detainees in custody, never faced serious legal consequences for their actions (Ncube, 2014). Ncube argues that their punishment was not equal to their offences. For example, those who murdered detainees in custody would face short term suspensions and written or verbal warnings (Ncube, 2014). This could however be the reason why police officers persist with brutality in holding cells to date. "Rewards continue to be powerful motivators for workers. Rewards can take the form of increased pay, job perks, promotions, special assignments, recognition, and other forms" (Kelling, Wasserman & Williams, 1988:6).

The social learning theory places more emphasis on what can happen instead of what the observer does with what had already happened. This means that the social learning theory only addresses the behaviour of police officers after they have

observed other police officers' brutal behaviour, and not what is done in response to the behaviour. The social learning theory does not take into consideration the physical and mental changes of police officers. It also does not clarify all behaviour but only the violent, brutal or bad behaviour of police officers towards detainees in custody. Furthermore, it does not take into consideration that what one police officer views as punishment, another might view as reward. On the other hand, the differential association theory does not address the issue that a police officer may brutally assault a detainee in his or her capacity, and it does not address the issue of supervision. Moreover, the group socialisation theory does not take into consideration that police officers do not always act in groups, and that not every group member shares the same interests or has the same intentions towards detainees in police custody.

3.3. Conflict theory

According to Ferrante (2013: 27) "the conflict theory focuses on conflict over scarce and valued resources and the strategies that dominant groups use to create and protect the social arrangements and practices that give them an advantage in accessing and controlling those resources". The conflict theory holds that when there is inequality between two groups, those groups will conflict with each other. The conflict theory discussed in this section provides a Marxist perspective, which will explain the conflict that happens between police officers and detainees in custody.

According to Williams and McShane (2010), conflict in society is caused by a scarcity of resources and the unequal distribution of those resources. This inequality causes conflict between those with and those without power. The consequence of this is that those with more resources have more power than those without resources. According to Ferrante (2013:27), "Marx views every historical period as characterised by a system of production that gave rise to specific types of confrontation between an exploiting class and an exploited class". In this regard, "the institutions and structures of politics, law, economy and ideology are historically conditioned to facilitate the reproduction of oppressive social conditions that have been borrowed from the past" (Mutsiwa, 2015:40). Therefore, history is not made under "self-selected circumstances but under existing circumstances given and transmitted from the past" (Marx, 1937:1). For example, the "colonial and apartheid antecedents of structural and institutional victimisation in South Africa have continued to reproduce oppression, social

imbalances and injustices despite the much celebrated independence from political colonialism” (Mutsiwa, 2015:41).

According to Mutsiwa, “the primary forms of oppression, subjugation and victimisation in every social formation arise from the interaction between the dominant mode of production and the relations of production” (Mutsiwa, 2015:39). Hence, the success of victimisation and oppression is reliant on the material conditions of production (Marx & Engels, 1976). Also, the conflict theory holds that conflict exists between two groups, namely the proletariat and the bourgeoisie. The bourgeoisie are the profit- driven owners of production. They control the economy, and the state is controlled by the economy. The proletariats are those individuals who sell their labour to the bourgeoisie. In this instance, police officers have more resources and power than detainees, and they use these recourses to suppress and violate the rights of detainees in custody (Ferrante, 2013).

In essence, during the apartheid era, laws were created to serve the interests of the rich and the members of the ruling party. The duties of the police included maintaining order and suppressing individuals who posed a threat to the status quo (Petrocelli, Piquero & Smith, 2003). The apartheid government trained the SAP to serve its interests and not those of the community. “Police officers adopted values such as the use of force, alienation from the community and the abuse of human rights because their primary agent was the government” (Mofomme, 2001:1). Accordingly, because the government and the police had more power and resources, they used those resources to overpower the poor and to suppress detainees in police custody.

Similarly, the police was an instrument of violence and repression which served the interests of the state, which is, in essence, a representative of the rich (Fryer, 1989). The capitalist economic system is one of the major causes of the phenomenon of police brutality in police custody. According to Williams and McShane (2004:173), Marxists believe that the class struggle affects crime in two ways. They firstly argue that the law itself is a tool of the ruling class. The definitions of crime found in the law are a reflection of the interests of the ruling class, and serve to perpetuate existing concepts of property which is the foundation of capitalism (Schultz & Schultz, 2013). However, brutal behaviour by the police towards people in custody does not usually fall within the scope of criminal law. Instead, it is processed under administrative and

regulatory laws (Fryer, 1989). Tagaki (1974) maintains that the law itself violates the rights of detainees in custody. For example, Section 185 of the Criminal Procedure Act (51 of 1977) states that everyone, including detainees, has the right to be free from violence. However, Section 27(1) of the same statute makes provision for police officers to use force when dealing with detainees in custody. Secondly the Marxists view all crimes (in capitalist societies) as the product of a class struggle producing individualism and competition. Moreover, the emphasis on power and respect leads to conflict between classes and within classes (Williams & McShane, 2004). Although there is conflict between detainees and police officers, detainees' behaviour, disrespect and lack of cooperation increase their chances of mistreatment and human rights violations by officers.

3.4 Routine activity theory

According to Cohen and Felson (1979), three important elements are necessary for brutality and human rights violations to occur. Firstly there must be a motivated offender and offences motivating him or her to commit the crime. Secondly, there must be a suitable target, and lastly there must be an absence of capable guardians (Brogden & Shearing, 1993). The probability that brutality or human rights violations will occur, strongly depends on a motivated police officer's ability to find suitable detainees (Clarke & Felson, 1993). Similarly, Cohen and Felson point out that the probability that detainees will be violated, at a specific time and in a specific cell, can be taken as the function of the convergence of motivated police officers in the absence of other police officers, detainees and supervisors. Pratt, Holtfreter and Reisig (2010:273) argue "that structural changes in aggregate routines can influence the convergence in time and space of motivated offenders and suitable targets in the absence of capable guardians".

Detainees' chances of victimisation also depend on their behaviour in custody. Uncooperative detainees make it difficult for police officers to do their job. Detainees who do not follow police orders increase their chances of being victims of police brutality in custody (Pratt *et al*, 2010). For example, in 1922, 75 workers who were on strike were taken into custody for questioning, and those who refused to cooperate or follow police rules were beaten and threatened with death (Brogden & Shearing, 1993). Aggressive and rude detainees who try to escape from their holding cells give

police officers every reason to use excessive force and to rationalise their behaviour afterwards (Pratt *et al*, 2010).

According to the routine activity theory, detainees in police custody are more likely to be victimised by police officers than non-suspects. This is because they are under the supervision of police officers and, accordingly, they can be victims of torture, assault, psychological harm and even death (Williams & McShane, 2013). Detainees held in single cells are more vulnerable and likely to be victimised than those held with others in a cell, because if they are alone there is no one to prevent the police from beating and torturing them, and violating their human rights (Schultz & Schultz, 2013; Mustaine & Tewksbury, 1999). According to Bruce (2002), "police brutality in custody often takes place in situations of low visibility in terms of the presence of witnesses other than the persons who are the targets of police action. It is believed that the presence of third party witnesses tends to discourage unlawful behaviour on the part of the police. In so far as police brutality is a problem it is therefore likely to occur in circumstances where there are no (particularly non-police) uninvolved third parties present". Moreover, Pratt *et al* (2010) found that those detained for minor offences are violated less than those detained for more serious crimes.

Detainees become suitable targets because, in custody, the only people they have direct contact with are police officers. Police action is at times driven by the availability of torturing tools and guns, and their ability to use force (Mustaine & Tewksbury, 1999). Also, the fact that police brutality and human rights violations in South African are not taken seriously by the SAPS and the criminal justice system, motivates police officers to continue with their behaviour (Mustaine & Tewksbury, 1999).

According to Pratt *et al* (2010), the other factor that encourages police brutality is that there are no serious consequences when a police officer is found guilty of police brutality. This is confirmed by an incident which clearly illustrates that the SAPS and the state need organisations such as IPID to further investigate cases of police brutality in custody to ensure that the officers involved receive proper punishment. According to Bruce (2002), five police officers and one SAPS inspector, allegedly handcuffed and tortured Mr Mabelane with a welding machine on his genitals. He later died from his injuries while in the hands of the police. The case was investigated by

the ICD and all involved police officers were arrested. The case was handed over to the Director of Public Prosecutions with recommendations that three suspects be charged with murder and attempted murder, and the other three for defeating the ends of justice. The Director of Public Prosecutions accepted the recommendations from the ICD and initiated criminal proceedings against all six members of the SAPS. The case went to court, but the inspector and three police officers were found not guilty. However, the remaining two were sentenced to four and five years' of imprisonment, respectively. The ICD further recommended that those who were found not guilty should go through disciplinary proceedings (Bruce, 2001).

In a case such as this the members of the police are the motivated offenders, and detainees are the suitable vulnerable targets with no one present to prevent police brutality or human rights violations. In essence, the theory states that if one of the three elements is absent, it can be assumed that a crime is not likely to be perpetrated. If, however, all elements are present, the probability of crime increases (Williams & McShane, 2014). This theory has been criticised by some who say that crime can occur even when there is a significant guardian. The police can for example beat, torture and even kill detainees in front of other detainees. The police sometimes do that to show what happens if one does not follow orders or cooperate with them (Brogden & Shearing, 1993).

3.5 Conclusion

This chapter discussed various theories to explain police brutality towards detainees in police custody in South Africa. The first theories discussed were the group socialisation theory, the social learning theory and the differential association theory. These theories were all integrated as they all hold that police brutality is the product of learned behaviour through interaction with other police officers. The other theory was the conflict theory, which speculates that there is conflict between the police and detainees in custody, and that the police use the resources at their disposal to violate detainees' human rights. The last theory was the routine activity theory, which maintains that for a crime to happen there must be a motivated offender, a suitable target and the absence of a capable guardian. The next chapter will discuss the role played by the Independent Police Investigative Directorate in dealing with police brutality and human rights violations in police custody.

CHAPTER 4

THE ROLE OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

4.1. Introduction

While South Africa faced high levels of police brutality and human rights violations of detainees in custody during its first years of transition to democracy, this is by no means different from other countries that had similar experiences. This chapter intends to address the following questions: How are detainees' rights violated while in police custody, and to what extent does police violation of detainees' rights amount to brutality? In answering these questions, the findings from the IPIDs annual reports will be analysed. The first part of this chapter will provide a historical background of the Independent Police Investigative Directorate. The second part will provide a detailed overview of the mandate and powers of the IPID in ensuring police accountability for human rights violations in custody. Part three will discuss the problems associated with measuring police brutality and human rights violations in police custody. The last part will investigate to what extent police violations of detainees' rights amount to brutality.

4.2. Background of the IPID

During the apartheid era, the SAP was brutal in their response to political protests during an arrest and in dealing with detainees in police custody (Bruce, 2002). However, during the transition to democracy, the SAPS's focus shifted from serving the interests of the minority group to serving the community as a whole, and to operate in a manner consistent with human rights principles (Bruce, 2002; Berg, 2013). According to Vawda and Mtshali (2013), investigating police brutality and human rights violations in custody is not a new phenomenon in South Africa. They further state that, during the apartheid era, the South African Police lacked ways of dealing with police brutality towards detainees in custody. In 1991 special investigative units were established to deal with police brutality. They were, however, only tasked to investigate politically motivated brutality (Haysom, 1992). These units were considered to be ineffective because they were mostly supervised by senior members of the SAP. Moreover, the community perceived the units as acting in favour of the alleged police aggressors (Bruce, 2002). In response to political violence and community distrust, the National Peace Accord of September 1991 established the Police Reporting

Officer system to deal with complaints and to investigate police brutality. The system soon failed because of lack of commitment, abuse of power, and lack of cooperation from other police officers (Vawda, & Mtshali, 2013). To ensure that police officers follow the law and act accordingly, a new independent police body was established.

The first independent police complaint body was the Independent Complaint Directorate (ICD). The creation of the ICD was first provided for in Section 222 of the Interim Constitution (Act 200 of 1993), which states:

“There shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated effectively and efficiently”.

The ICD was established to investigate four different classes of police misconduct. The first was offences as a result of police brutality, including deaths in police custody. The second was cases referred to it by the Minister or provincial executive. The third class was criminal offences including sexual assault, torture, serious corruption and physical injuries sustained by detainees in police custody. Lastly, the ICD had to refer less serious offences to the SAPS for investigation (Burger & Adonis, 2008). The 2000/2001 SAPS annual report was criticised in Parliament because of its lack of information on what happens in custody, or the results of police action (Bruce, 2000). In 2002 the ICD reported in Parliament that it had discovered that the SAPS and the Municipal Police Services (MPS) did not report cases of police brutality and human rights violations of detainees in custody because they were not obliged to do so.

In 1996, South Africa adopted a new Constitution which, in Section 206(6), established an independent police complaints body. However, suddenly in 2005 the government, SAPS, and the community were unhappy about the services provided by the ICD. Burger and Adonis (2008) viewed the ICD as “a watchdog without teeth”. This was mainly because the ICD did not clearly define its mandate, making it difficult to fulfil. According to Montesh and Dintwe (2008), the ICD was unable to fulfil its mandate because it mostly depended on police structures and the government, meaning it was never independent. Burger and Adonis also argue that the ICD had weak legal powers to conduct effective investigations and to put into effect its recommendations. They also found that the police did not comply with recommendations relating to internal police brutality and corruption. Vawda and Mtshali (2013) further state that the ICD

would make a recommendation to the SAPS that police officers who were involved in human rights violations of detainees in custody should be called to order through disciplinary action. The SAPS usually did not comply with this recommendation and did not take such action against its members. Reasons for this non-compliance were rarely communicated to the ICD. Vawda and Mtshali concluded that the work of the ICD was ignored by the SAPS.

After many hearings on these issues, it was decided that the ICD needed to be restructured and its mandate revisited (Bruce, 2000). In 2009 the Portfolio Committee recommended that the ICD be removed from the SAPS Act. In 2011, after amendments to the Bill and public hearings, the IPID Act (1 of 2011) was adopted. The Act came into force in 2011 and the ICD became the IPID (Mwanajiti *et al*, 2002). The IPID, therefore, took over from the Independent Complaints Directorate, which had failed because of numerous reasons. These include ineffective powers, a lack of independence and an unclear definition of its mandate. According to Vawda and Mtshali (2013:141), the IPID Act has “sought to remedy the ICD’s shortcomings”.

4.3. The mandate and powers of the IPID

The mission of the IPID is “to be an effective, independent and impartial investigating and oversight body that is committed to justice and acting in the public interest while maintaining the highest standards of integrity and excellence” (IPID Annual Report 2013/2014). The aim of the IPID is “to ensure independent oversight over the South African Police Service (SAPS) and the Municipal Police Services (MPS), and to conduct independent and impartial investigations of identified criminal offences allegedly committed by members of the SAPS and the MPS, and make appropriate recommendations” (IPID Annual Report 2013/2014). The vision is to “promote proper police conduct following the principles of the Constitution” (IPID Annual Report 2013/2014).

According to Vawda and Mtshali (2013), an active independent complaints body must firstly have a clearly defined mandate. Secondly, it should be sanctioned to fulfil its mandate, and thirdly, it should be independent and free from excessive outside influence. Section 28 of the IPID Act (1 of 2011) outlines the types of offences that the IPID is mandated to investigate. The Act states that the IPID must investigate cases

of human rights violations in custody and corruption cases received from the community and those that are initiated by the Executive Director.

In terms of Section 28 (1) of the Act, the IPID is obliged to investigate:

- “(a) Any deaths in police custody
- (b) Deaths as a result of police actions
- (c) Complaints 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 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, or after a complaint from a member of the public or referred to the Directorate by the Minister, a MEC or the Secretary for the Police Service
- (h) Any other matter referred to the IPID as a result of a decision by the Executive Director or if so requested by the Minister, a MEC or the Secretary for the Police Service as the case may be”

Table 1: Comparing number of cases reported between 2013/2014 and 2014/2015

Table 1: Intake comparisons	2013-2014	2014-2015	Percentage changes
Section 28(1)(a) deaths in police custody	234	244	4%
Section 28(1)(b) deaths as a result of police action	390	396	2%
Section 28(1)(c) complaint of the discharge of official firearm(s)	429	940	119%
Section 28(1)(d) rape by police officer	121	124	2%
Section 28(1)(e) rape in police custody	19	34	79%
Section 28(1)(f) torture	78	145	86%
Section 28(1)(f) assault	3916	3711	-5%
Section 28(1)(g) corruption	84	93	11%
Section 28(1)(h) other criminal matter	374	90	-76%
Section 28(1)(h) misconduct	23	39	70%

Section 28(2) systemic corruption	12	3	-75%
Non-compliance with Section 29 of IPID Act	65	60	-8%
Total	5745	5879	2%

Source: IPID Annual Report 2014/2015

The table above shows that during 2013/2014 IPID reported 5745 cases. The majority of cases reported fall within Section 28(1)(a) to (h). Of these cases, 244 were cases of death in custody, 396 were cases of death as a result of police action, 34 were cases of rape in custody, 145 were cases of torture and 3711 were cases of assault. The table shows that IPID experienced an increase of 2% in 2014/2015 as compared to 2013/2014. "There was an increase in the number of all types of cases reported in 2014/2015 except for assault, other criminal matters, systematic corruption and non-compliance with Section 29 of the IPID Act" (IPID Annual Report 2014/2015).

The investigators of the IPID, as an independent directorate, are given full powers to investigate police brutality, human rights violations in custody and corruption matters. These powers include investigating the death, cases of physical, verbal and sexual assault, torture, and death in custody. In addition to these powers, Sections 24(3)(a) and (b) of the IPID Act confer more powers on the investigators. These provisions also place a duty on all members of the SAPS to report or notify the Directorate of any misconduct, brutality or human rights violations in the department. Sections 28(1) to (f) state that a police officer who is aware of the committing of a crime by another police officer must report this to the IPID within 24 hours. According to Bruce (2005), the SAPS is required by law to submit all offences of police brutality in custody together with a detailed written report to the IPID within 24 hours. Similarly, "the IPID Act compels the SAPS to co-operate with the IPID in other ways, such as giving identity parades, if necessary, within 48 hours, making officers available for taking affidavits; giving evidence or producing any document or providing any other information or documentation required for the IPID to investigate a case" (Berg, 2013:150).

Thirdly, the SAPS is required by Section 29(2) of the IPID Act to:

"Provide their full cooperation to the Directorate, including but not limited to- (a) the arrangement of an identification parade within 48 hours of the request made by the Directorate; (b) the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the

matter being investigated; and (c) any other information or documentation required for investigation purposes”.

The guidelines provided in the IPID Directorate (2012) clearly state the responsibilities of the Act. These guidelines suggest that the IPID should supply all details of the case to the complainant, provide feedback within seven days, and provide monthly updates on the progress of a case. Also, the IPID, together with members of the SAPS, must visit the scene in a case of death as a result of police brutality. The investigation of the case should take approximately 90 days (Berg, 2013).

Unlike the ICD, the IPID has sanctions when police officers breach Section 29(2). Section 33 contains several offences intended to protect the mandate or work of the IPID. Sections 33(1)(3) and (5) of the IPID Act state that:

“Any person or private entity, who interferes, hinders or obstructs the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years; ... any police officer who fails to comply with Section 29 is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years ... Any person, who pretends to be an investigator in terms of this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years”.

Vawda and Mtshali (2013) argue that such obligations help the IPID to successfully conduct its investigations. They further state that those police officers must cooperate and respect the work of the IPID because non-compliance with the Act has negative consequences. Section 30 of the IPID Act outlines a series of procedures that have to be followed when making disciplinary recommendations. It requires that:

“The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred must, (a) within 30 days of receipt of the recommendation, initiate disciplinary proceedings in terms of the recommendations made by the IPID and inform the Minister of Police in writing, and provide a copy to the Executive Director and the Secretary; (b) quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy to the Executive Director and the Secretary; and (c) immediately on finalisation of any disciplinary matter referred to it by the IPID, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary”.

The “most important provision in the IPID Act is the fact that the National Commissioner of Police is now compelled to initiate the disciplinary recommendations made by the IPID within 30 days, submit a quarterly report on progress regarding disciplinary matters to the Minister of Police and similarly report when a disciplinary matter has been finalised and report on its outcome” (Berg, 2013:150). According to Vawda and Mtshali, the IPID is part of disciplinary processes, but it doesn’t participate. This means that the IPID cannot be sure whether the recommendations have been implemented or not. They further argue that there should be a system which allows the IPID to reinstate a case when it suspects that its recommendations have not been implemented properly. Berg (2013) suggests that quarterly reports must be submitted to the Minister and the Parliamentary Portfolio Committee on Police. This will ensure that cases of police brutality and human rights violations of detainees in custody “do not disappear behind a veil of official secrecy” (Berg, 2013). This will also ensure compliance and cooperation from the SAPS in implementing the IPID recommendations (Berg, 2013). “The IPID Act explicitly mentions that those police officers who fail to comply with the requests of the IPID will be liable for conviction” (Berg, 2013:150).

4.4. Statistics released by the ICD before the establishment of the IPID

Bruce (2003) states that the IPID was created as a tool to investigate and deter human rights violations and abuse of detainees in custody by police officers. The establishment of the IPID was motivated by the high level of police brutality in South Africa, including unjustified killings and the use of torture in custody. According to Pigou (2002), a study conducted by students at the University of Cape Town in 1991 concluded that ordinary detainees are subjected to similar treatment that was experienced by political detainees during apartheid. The ICD’s 2002/03 annual report shows that there were 1 002 reported cases of police brutality and human rights violations, including cases of murder. The report indicates that 58% of those cases occurred during arrest and the remaining 48% in police custody (Masuku, 2004).

According to Bruce (2000), cases of sexual assault constituted a small portion of the cases received by the ICD. However, between 1997 and 1998, they constituted 1% of the complaints (10 cases of rape, two of indecent assault, and three of sexual

harassment). Also, between 1998 and 1999 the ICD recorded 1 051 cases of death as a result of police action, 468 cases of attempted murder and assault with intent to do grievous bodily harm, 128 cases of torture, and 736 cases of common assault (Bruce, 2002). Between 2001 and 2002, cases of sexual assault constituted 0.5% of the complaints (14 cases of rape and two of sexual assault). Moreover, between 2008 and 2011, the reported cases of police brutality increased by 31.6% (Mwanajiti *et al*, 2002). Criminal cases against members of the police also increased by 18.6% between 2008 and 2011. The overall cases against members of the police remain at an unacceptably high level (Mkhize & Madumi, 2019).

Since the era of apartheid, death in custody has remained a major human rights issue in South Africa (Masuku, 2004). This is even though clear guidelines are prescribed the treatment of detainees, from their time of the arrest to when they are detained in police holding cells. Bruce (2000) further states that the use of force by the police is the cause of over 90% of police action deaths, and also of roughly 12% of deaths in custody. Police brutality in custody accounts for “roughly 12% of deaths in custody. These deaths include lawful actions - such as cases where a suspect is lawfully shot while trying to escape from custody - and unlawful cases of police violence against persons in custody” (Bruce, 2000).

In a democracy, the police should not violate the human rights of detained persons. It is further argued that “rights can be violated by the police only in circumstances where it is deemed legally permitted and when it is done in the best interest of protecting innocent people” (Berg, 2013). According to Bruce (2003), police brutality is not only about criminal incidents, but also involves discourtesy, rudeness, and failure to provide adequate services to detainees in police custody. For instance, detainees should be provided with mattresses and blankets, allowed to use toilet facilities and offered adequate washing facilities. Failure to provide these basic amenities is considered police brutality and the violation of human rights (Dissel & Ngubeni, 2000).

4.5. Problems associated with determining police brutality and human rights violations in custody

According to Bruce (2002), police brutality and human rights violations in custody are likely to take place where there are no other witnesses than the victims of police

misconduct. It is believed that the presence of witnesses other than the ones that are being victimised will discourage police officers from violating the rights of detainees in custody. In most cases where detainees are killed by police officers in custody, the only other witnesses are members of the SAPS. However, should it happen that a detainee survives and makes allegations against police officers, it is sometimes difficult to conclude whether such allegations are true or not (Mwanajiti *et al*, 2002). Moreover, in cases where a detained person in custody sustains bruises, it is common for police officers to proclaim that those were sustained before detention and are as a result of the person resisting arrest (Mwanajiti *et al*, 2002). Bruce (2005) argues that in such cases it is usually difficult to conclude with a reasonable degree of certainty who is telling the truth between the detainee and the police officers. This can be serious, not only because there are two opposing stories, but because people making the allegations of brutality are usually of a lower status than the police officers. Due to the trauma that they have experienced, it is sometimes difficult to present their version of the story in a manner that is more understandable than that presented by the police (Mwanajiti *et al*, 2002). Similarly, because victims of police brutality and human rights violations in custody tend to be poorer, they are more likely to be vulnerable to police intimidation, and also less likely to lodge complaints against police officers (Bruce, 2003).

According to Bruce (2000), the system of lodging complaints against members of the police in police stations is also a problem because it is mostly controlled by police officials. Again, if such complaints are not recorded, the investigation process may not necessarily be effective, and some cases will not even be investigated. However, even in cases where the investigations are effective, the system and two opposing versions of the story often make it difficult to reach a solid conclusion (Bruce, 2002).

The problem also lies with the definition of police brutality. Most reporting systems do not distinguish between misconduct that occurs in police custody and misconduct that happens during protests or arrests. A type of police brutality which is of particular concern is torture. The South African criminal justice system does not make provision for an offence such as torture, so torture can only be prosecuted under offence categories such as assault or assault with the intention to cause bodily harm, or sometimes murder or attempted murder. As a result, it becomes difficult to evaluate the extent of police brutality in this category (Mwanajiti *et al*, 2002).

In addition, “in so far as incidents, where the police are involved in using force or violence are recorded in one form or another, a major question still arises as to what criteria to apply in deciding whether an action amounts to police brutality” (Bruce, 2002). So whether an incident is recorded as a police shooting incident or whether the case is filed as an offence, the question remains whether this should be considered as police brutality or not. Even witnesses of police misconduct may judge the police as being brutal, however, if the incident is to be evaluated professionally the same conclusion may not be reached (Mwanajiti *et al*, 2002; Bruce 2002; Bruce, 2005).

Similarly, a court of law may conclude that the amount of force used by police officers on detainees was lawful and justified, while the victims might not come to the same conclusion. In cases against police officers who have gone to court, it must be emphasised that the issues concerned were not only the criteria applied by the courts in deciding whether actions were legally justified or not, but also the issue of standard of proof (Bruce, 2002). Mwanajiti *et al* (2002) state that it is important to know that for the court to make a ruling there needs to be a standard of proof, especially in criminal cases. However, at times it happens that the standard of proof brought to the court does not meet the criteria, and in such cases, it is advisable to settle out of court. Part of such settlements usually “involves an agreement that the settlement of the matter does not amount to an admission of any of the facts in question. Even if actions of alleged brutality are recorded in one way or another the fundamental question arises as to the procedures and criteria to apply in deciding whether such actions amount to brutality or not” (Bruce, 2002).

Zondi and Ukpere (2014) argue that the results of police brutality and death in custody recorded in the IPID statistics do not measure police brutality. Potgieter (2014) further states that many of the assaults, instances of torture, and deaths recorded by the IPID are not as a result of police brutality. While these deaths, assaults and torture cases are investigated by the IPID and not the SAPS, there are very few convictions of police officers with these types of misconduct. Even where there is enough evidence of police brutality and human rights violations in custody, police officers are less likely to be prosecuted or convicted.

4.6. Determining police brutality and human rights violations in custody

According to Mwanajiti *et al* (2002), law enforcement officials shall, in carrying out their duty, apply non-violent means as far as possible before resorting to the use of force. They may use force only if other means remain ineffective. Indeed, force should only be used where it is necessary to achieve a lawful policing objective, and then it should be used to a degree that is proportional to the perceived threat. Bruce (2002) argues that firearms can be used in self-defence, serious injury, defence of others against an imminent threat to death, and to protect life. The right to life is termed a foundational human right, as all other rights are dependent on its respect and protection (Osse &Cano, 2017).

Whenever police use firearms, they are obliged to try to minimise the damage, to seek medical assistance for the victims and to inform the victims' relatives. They must account for the use of firearms by detailed recording and reporting of incidents causing death or serious injury to allow for proper administrative review and independent judicial control. It is considered a good practice that such an investigation should be conducted independently, or at least carried out by a unit other than the one that was involved in the incident. Should the use of force be found to have been arbitrary or excessive, measures should be taken not only to individual officers but also to those in command, to establish whether they have been negligent in preventing it (Osse &Cano, 2017).

According to Bruce (2002), a Northern Cape senior police officer was arrested in 1999 for the rape of a female prisoner who was awaiting trial. According to the police spokesperson, the police officer was returning from his lunch break when he offered to assist the woman make a phone call to her family. Before she was returned to her cell, the police officer forced himself on her. At Sekgosese police station, two police sergeants were disciplined. One was suspended for the rape of a woman who came to lay a charge, while the other was permanently dismissed for raping the wife of a suspect who was in custody (Bruce, 2002; Mwanajiti *et al*, 2002). Between 1995 and 1999, over 1 200 officers were sentenced for criminal offences. 23% of those convictions related to cases of common assault and assault with the intent to cause harm, and 13% related to cases of the mistreatment of firearms. Approximately 170

police officers were convicted of murder and a further 220 charged for attempted murder. In 2000, over 14 600 charges were laid, including several thousand allegations of assault (Bruce, 2002).

According to the IPID's 2017/2018 annual report, there were 5651 cases reported. Of those, 5524 involved SAPS members, 118 cases involved the MPS, and the remaining nine cases involving civilians. "A total number of 1823 disciplinary recommendations were referred to SAPS" (IPID Annual Report 2014/2015). 311 SAPS members were convicted for police brutality, 93 received written warnings, 39 received verbal warnings, 13 were fined, 10 received corrective counselling, 10 were suspended without pay, 25 received final written warnings, four were reprimanded, and four received suspended sentences. According to the 2015/2015 IPID annual report, "the IPID is dedicated to investigating police violence allegedly perpetrated by members of the SAPS and bringing these members to justice". A total number of 99 arrests were made, 76 members of the SAPS were arrested and some were arrested for more than one offence during 2017/2018. Some of these arrests were made by the SAPS before IPID took over the investigations. There were 25 members charged for common assault, five for assault with intent to cause grievous bodily harm, 13 were charged for rape, one was charged for rape and defeating ends of justice, four were charged for attempted murder, 13 were charged for murder, two were charged for both murder and attempted murder, one was charged for murder and defeating ends of justice, one was charged for murder, kidnapping, and assault with the intent to cause grievous bodily harm, one was charged for the discharge of a firearm and attempted murder, one was charged for business robbery and attempted murder, one was charged for possession of an unlicensed firearm, one was 1 charged for sexual assault, two were charged for incest, five were charged for corruption and one was charged for culpable homicide and reckless driving. Moreover, 22.2% were police officers from KwaZulu-Natal and 2.6% from the North West (IPID Annual Report 2017/2018).

4.7. Conclusion

In conclusion, the IPID has played a significant role in the South African police environment. The establishment of the IPID has reduced police brutality and human rights violations in custody. In addition, the IPID meets all the requirements of an active investigative body. These include a clearly defined, understandable and detailed mandate, the ability to fulfil its mandate successfully, and the ability to be independent

with no interruptions from a third party. The IPID is mandated to investigate cases of police brutality, human rights violations in custody and corruption in the SAPS. Section 28(1) of the IPID Act (1 of 2011) outlines all the offences that are investigated by the IPID. Moreover, Sections 24(a) and (b) state that the IPID has full power to investigate the offences outlined in Section 28. Police brutality and human rights violations of detainees in police custody can be difficult to measure. Brutality can, however, be measured when the conduct is unconstitutional and when the relevant police officer is punished, warned or convicted for such conduct.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

This study critically analysed the human rights violations of detainees in South African police custody with specific reference to police brutality. Police brutality or human rights violations in custody is not a new phenomenon. It originates from the era of oppression, where black people were ill-treated by the white apartheid government. The research has confirmed that police brutality and human rights violations in custody are indeed serious problems in South Africa. However, some police officers are abusing the power afforded to them by law.

This chapter provides the conclusion and the recommendations of the study, specifically as these relate to the historical background of police brutality towards detainees in custody, the laws protecting the rights of detainees in custody, the transformation from the ICD to the IPID, and the concept of human rights. The role of the IPID in South Africa is recognised and valued, as it has proven itself able to protect the rights of detainees, investigate police brutality and ensure that police officers account for any misconduct in this regard.

5.2. Methodology and research questions

South Africa has an active investigative complaints body that assists the government to investigate police brutality cases received from the SAPS and the community. In addressing and investigating police brutality against detainees in custody, a desktop methodological approach was adopted. This study was conducted as a literature study, and the information used is mainly from primary sources such as academic journals, books, and newspaper articles. The purpose of this literature study was to critically analyse a segment of the published body of knowledge through summary, classification, and comparison of prior research studies, reviews of literature, and theoretical articles.

This study addressed the following research questions:

- How are detainees' rights violated while in police custody?
- To what extent does police violation of detainees' rights amount to brutality?

This study examined what is meant by police brutality, and the rights of detainees while in custody. It also investigated how Section 35 of the South African Constitution protects those rights. Another aspect investigated by the study was to what extent police violence amounts to police brutality, and this is usually the case when an act is unlawful. Section 35 of the Constitution lists all the rights of detained persons in custody, and the violation of those rights amounts to police brutality. This study further applied criminological theories to explain police culture, and how police officers learn criminal behavior by interacting with each other.

5.3. Research aims and objectives

The overall objective of this study was to review the relevant literature regarding police brutality towards detainees in police custody in South Africa. This was done in an attempt to gain a better understanding from a victimological perspective and to ultimately identify the elements which have led to the rapid increase in incidents of police brutality and human rights violations of detainees in custody. Research has shown that South Africa has one of the highest rates of police brutality against detainees in custody (Bruce, 2002). The study investigated three research aims and objectives to gain insight into the various dimensions of the phenomenon in question. The first of these was to explore the nature and causes of police brutality in South African holding cells. Police brutality or human rights violations in custody occur when police officers use unnecessary force on detainees with the intention to injure or to kill. Research has indicated that police brutality is caused by socialisation in the workplace. Also, police culture plays a central role in shaping the behaviour of police officers, because what is done by one police officer will usually be copied by his or her colleagues, whether they approve of that specific behaviour or not. The second aim was to examine the effects of police brutality against detainees in police custody. The effects suffered by the victims are similar to those suffered by the community and family members. Taxpayers' money, that should be used to develop the country, sometimes has to be used to pay compensation to victims of police brutality. Police officers found guilty of police brutality are also at a high risk of losing their jobs. The third and last aim was to recommend remedial measures to mitigate police brutality of detainees in police custody.

5.4. Review and discussion

This research investigated the brutality that happens in South African police custody. Detainees in custody are not always treated as human beings with human rights, and they are subjected to multiple forms of brutality. The rights of detainees in custody listed in Section 35(2) of the South African Constitution are violated by some police officers daily. This research has examined how those rights are violated, and to what extent police violation of detainees' rights amount to brutality.

There is limited research with regards to the violation of human rights in custody, particularly in South Africa, where detainees are exposed to violence by police officers. This study aimed to address various forms of abuse. Despite legislation to protect detainees, the release of statistics on this topic and the implementation of ideas and recommendations from research, there are still incidents of police brutality in custody. This study investigated different sources and tried to bridge the gaps regarding areas which most other researchers have not covered.

The study consists of five chapters. The first chapter contains an introduction explaining the background of the study, the problem formulation, methodology (including an overview of the main sources to be used in the research and a note on their value and relevance), goals and aims of the research, and lastly the research questions. The research commenced with an overview of what is considered as police brutality. The chapter examines the history and origins of police brutality. Research has shown that specifically in South Africa police brutality is a legacy of the past. There is a trend from apartheid to democracy that can be seen from an analysis of statistics and cases of police brutality in custody. This chapter also shows how police brutality affects the relationship between the community and the police, and its impact on the economy of the country.

The second chapter contains the literature review from primary sources, such as legal documents, and secondary sources such as books, academic journals, and newspaper articles. These were used to ascertain what different scholars have said about police brutality and human rights violations of detainees in holding cells. This chapter investigates the nature and causes of police brutality, and the types of brutality that detainees are generally subjected to in custody. These include physical assault, verbal assault, torture, sexual assault, and even death while police custody. Moreover,

police brutality does not only affect the victims (detainees in custody), as the perpetrators themselves, the SAPS, the state and also the community are also affected by the misconduct of police officers. The chapter highlights the rights of detainees in custody and explains how those rights should be protected. The chapter concludes with the consequences faced by police officers when detainees' rights are violated in custody.

The third chapter presents an integrated theoretical approach, integrating different theories associated with police brutality such as the social learning theory, the group socialisation theory, the differential association theory, the conflict theory, and the routine activity theory to explain why police brutality occurs in police custody. The chapter explores different theories to explain the rapid growth of human rights violations in police custody. The group socialisation theory, the social learning theory, and the differential association theory were integrated as they all speculate that brutality is learned through human socialisation, as it is known that police officers do not work in isolation. These theories apply to the phenomenon of police culture. The chapter also touches on conflict theory, which states that the conflict between police officers and detainees in custody is caused by inequality and power. The chapter further explains how detainees are suitable and vulnerable targets when they are in custody, by applying the routine activity theory.

Chapter four investigates the role of the IPID. In this chapter, the focus is on the role of the IPID, as a Directorate established to deal with cases of police brutality and corruption. The IPID is mandated to investigate cases of human rights violations occurring in custody and to make recommendations. The IPID investigates cases received from both the SAPS and the community, although the SAPS do not report all cases of police misconduct to the IPID. This means that the SAPS is protecting and hiding what its members are doing to detained persons in custody. This chapter further examines the problems associated with measuring police brutality, and to what extent police violations of detainees' rights amount to brutality in custody. Chapter five consists of conclusions and recommendations.

5.5. Recommendations

There are many recommendations that flow from this study which may be helpful to the South African government, legal institutions and the broader South African

community to ensure that the rights of detainees in custody are respected. Those recommendations are shared below.

5.5.1. Statistical reporting

As discussed in various sections of this study, there is a lack of proper reporting on nature and statistics regarding police brutality in custody. Not all brutality incidents are recorded by the police, making it difficult to publish reliable statistical evidence. However, through the intervention of bodies such as IPID (Independent Police Investigatory Directorate), many incidents of police brutality have been recorded and valuable statistics have been provided.

Police brutality incidents are under-reported because of the fear of secondary victimisation by the police. To overcome this there should be a separate section in police stations where such misconduct can be reported. Police officers in charge of that section should receive proper training on how to deal with cases of police brutality and human rights violations in custody. There should also be improvements within the SAPS with regards to the functioning and effectiveness of internal investigations of conduct and applicable disciplinary measures. Researchers should also investigate issues of gender so that it becomes clear if gender plays a role in the victimisation by police officers in custody.

5.5.2. Police training

Currently the training period of police officers is six months. This should, however, be extended to two years to ensure that those police officers are well-trained, and fully understand the laws against police brutality and human rights violations in custody.

Police training is lacking in two areas, namely interviewing skills and a legal approach to restraining a detainee. The training of police officers does not align with the challenges they encounter in executing their duties on the street and towards detainees in custody. Based on these concerns, it is clear that SAPS training needs to be reassessed and improved, especially to focus on and emphasise how police should conduct themselves in situations such as public protests, police raids, and stop and search operations. According to Mubangizi (2001:216), the absence of an “appropriate approach to certain situations results in the adoption of illegal methods of restraining and arresting”. It also leads to the use of illegal methods of interrogation

that are a violation of the human rights of detainees. According to Latham (2001) “training is an art that requires not only the ability to perform tasks but also the ability to explain why and how things are done. Police need to be trained to deal with violent suspects, they should learn interrogation skills and also how to deal with violent detainees”.

5.5.3. Security

Detainees in custody are not safe from police violence. Statistics from the IPID’s annual reports indicate that police brutality is increasing. The SAPS should ensure that detainees are safe and free from police violation. The SAPS should consider employing special security guards tasked with ensuring that police officers do not victimise or violate detainees’ rights while in custody. These security guards should receive special training regarding police violations and detainees’ rights in custody so that they can identify lawful and unlawful use of force in custody. Security cameras should be installed in holding cells and in investigation rooms to ensure that police do not use unnecessary force. In this way police violations will also be captured on camera, providing practical evidence to enable SAPS to hold police officers accountable.

5.5.4. Overcrowding, dirty cells and meals

It is every detainee’s right to be detained in a cell that will not harm his or her health. According to the Human Rights Report (2013), detainees “were still subjected to serious overcrowding, a lack of medical care, and torture”. Overcrowding in custody is a human rights violation. The government should build more police stations or correctional centres to avoid overcrowding in custody. Dirty cells are also bad for detainees’ health. Police cells should be cleaned daily to avoid disease. Detainees should be encouraged to clean their cells and be provided with cleaning materials to do this. Detainees should not be punished by withholding meals. There should be a monitoring system in place to monitor whether detainees receive their meals when they are supposed to.

5.5.5. Policy recommendations

Certain laws may perpetuate police brutality, because they state that those police officers can use force on detainees in custody, without specifying at which point force

turns into brutality. In this regard, to prevent future victimisation of detainees, the current legislation should be revisited, put the rights of detainees first. Before someone is employed by the SAPS a background check should be done to establish any history of violence. Moreover, police culture and how police members are socialised should also change.

According to Bruce (2005), in terms of Section 53(8) of the SAPS Act (68 of 1995), the SAPS is required to report all police brutality actions and deaths in custody. However, most of the information received by the IPID originates from sources other than SAPS reports. This points to the fact that the SAPS does not reveal all instances of police brutality occurring in custody (Bruce, 2005). For future research, the police department should record all instances of police brutality and publish them every six months. Legislation and policies restricting members of the SAPS from using excessive force have been implemented, but it seems that they are just ignored, as members of the police are still beating, torturing and even killing detainees in police custody.

5.5.6 *Retributive justice*

According to Moore (1997), retributive justice is the notion that punishment must follow any wrongdoing by an offender. The retributive justice approach intends to correct the injustices caused by perpetrators, through legal prosecution. Relevant punishment is also assigned to the crimes committed (Goodhart, 2013). This approach is based on four distinct rationales. Firstly, if a police officer has committed an offence of violating the rights of detainees in custody, such an offence of brutality must be publicly recognised. At the time of trial, the details of the offence must be openly discussed. Secondly, an officer that is found guilty of any offence against a person in custody must be punished. The purpose is to remove the officer from the SAPS and to rehabilitate him before releasing him back into the community. Thirdly, disciplining the police officer for his brutality will set an example and educate other police officers. When people see how police officers who violate the rights of detainees in custody are dealt with, they will likely refrain from committing similar offences. Lastly, the capacity to conduct a trial illustrates and supports the notion that the justice system is an institution capable of dealing with retributive justice (Goodhart, 2013).

Even though there are laws against police brutality in South Africa, police officers still commit human rights violations against detainees in custody. Police brutality should

not be tolerated in South Africa. Police officers accused of police brutality should be severely punished. They should be sentenced to at least 25 years in prison or be fined up to R100 000 per case, as this would act as a deterrent. Such police officers should further be suspended for five years without pay, or be forced to resign immediately.

Police officers should be held accountable if they perpetrate brutal acts against detainees in custody, otherwise, they will continue with such behaviour on the assumption that it is condoned, or even regarded in a positive light. A police officer who commits acts of police brutality must account for the violation of human rights of detainees in custody. Any police officer who violates the law should face all the consequences that result from their misconduct.

5.5.7 *Reparative justice*

Reparative justice differs from both retributive and restorative justice since its primary objective is to try and repair where mistakes have been made. Its goal is to provide remedies for the suffering and losses incurred in custody (Goodhart, 2013). Also, reparative justice strives to mend broken hearts by compensating the victims of police brutality and helping them overcome their abuse by providing counselling (Sheeran & Rodley, 2016). Reparative justice is done either by the perpetrators themselves or by the state, in accordance with the pain the victims have suffered. Furthermore, there are two forms of reparative justice, namely an apology and restitution.

The first essential way of repairing the past is by issuing an apology. The police officer himself/herself simply has to apologise for what he/she has done. In cases where the perpetrating police officer has already passed away, a family member or the government will be required to issue an apology on his/her behalf (Goodhart, 2013). An apology has many benefits, including acknowledging the cruel behaviour of the police officer towards detainees in custody. Admitting brutality or the violation of detainees' rights in custody will provide the victims with closure, and help them to forget about the pain suffered as a result of police brutality. Secondly, an apology lessens the hatred and bitterness felt by victims. It does not wipe away the pain or make victims forget, but an apology might reduce feelings of anger and hurt (Goodhart, 2013). Thirdly, an apology allows victims to feel recognised as victims of abuse. Lastly, the trauma caused will also be reduced or lessened by an apology (Goodhart, 2013).

Another method used for reparative justice is restitution. This is a form of financial compensation paid out to victims for their loss or injuries. The specified compensation is more or less the same as that prescribed by civil courts when, for example, a child was killed through negligent actions. No amount of money can restore a child's life, however, or the harm that was caused, as there is no way to quantify the relative value of a person's life (Goodhart, 2013). It is quite correct to stress that the notion of compensation is not suitable, because no amount of money can compensate for the loss or harm caused by police officers in custody, and no cruelty can be righted with financial compensation (Goodhart, 2013).

Victims of police brutality in custody currently receive compensation from the state budget, but it would be meaningful if the money could come directly from police officers' pockets. After the state has paid compensation to victims of police brutality, the state should require the police officer to refund the money. This will eliminate the abuse of detainees in custody, and ensure accountability. Such reparations are mainly symbolic, as no amount of money can compensate for the effects of police brutality. For example, in 2017, an immigrant woman was arrested in a Tembisa police station because she refused to pay a bribe (Munyati, 2017). She had her eight-month-old baby with her. There was no reason to arrest her, as she had her asylum documentation with her. The police detained her for 72 hours, however, and also failed to bring her before the court. Taking all of the above into account, the Pretoria Regional Court declared her arrest and detention unlawful. The court ordered the Minister and the National Commissioner of Police to pay the victim R180 000 for damages caused. According to Munyati (2017), the magistrate stated that "this amount does not, in any way, measure the amount of pain and trauma suffered by her and her daughter".

These reparations serve as a way of apologising to victims and acknowledging the wrongs that have been done. The restorative justice approach strives to restore the dignity of victims and to restore the perpetrators of crime into harmony with society. In other words, this approach aims to dignify and empower victims of human rights violations (Goodhart, 2013).

5.5.8 Budget and resources

The South African government should prioritise and intervene in the IPID budget. It should also commit to remedying the current situation of police brutality as efficiently as possible. The IPID's powers and resources should be improved. The IPID is underfunded, so the government should provide funding so that it can continue to adequately achieve its mandate. The government should review the funds allocated to the IPID at the beginning of every financial year to allow the IPID to continue with its investigations on police misconduct. Input from all stakeholders should be considered to facilitate good governance.

Section 36(1) of the South African Constitution states that:

“The rights in the Bill of Rights may be limited only in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom”.

However, budget constraints and a lack of resources for institutions such as the IPID should not serve as a justifiable limitation to the rights of detained persons in custody.

5.5.9 Increased access to information about police brutality and human rights violations in custody

Police brutality is the intentional use of excessive force, usually physical, but potentially in the form of verbal attacks and psychological intimidation by a police officer.

When harassed by a police officer, one should always endeavour to follow the instructions of the officer. If one resists arrest, it will probably only incite the police officer to become more brutal. One should try to comply with police orders. If there is an opportunity, one should note down the officer's name, badge name, and number, and car registration number (if applicable). If a person has been physically assaulted by a police officer, he/she should visit a local doctor as soon as possible to record all physical injuries in detail. Photographs should also be taken of injuries, as a form of evidence. The contact details of all witnesses should be noted so that they can be called to testify if the case is heard in court. If a person has suffered an injury or any damage as a result of police brutality, a claim for damages can be instituted against the police officer and his/her department.

5.5.10 Increased access to information about IPID

The public and victims of police brutality in custody should be educated about the importance of filing complaints against police officers. Filing a complaint may help to identify dishonest and unprincipled police officers, and to hold them accountable for their brutal and unlawful behaviour towards detainees in custody. Detainees should be informed about the role of the IPID as an oversight body that is responsible for investigating allegations of police brutality. In this manner, more cases will be reported and investigated.

Awareness campaigns by the IPID with communities and detained persons will help to educate them on how to lodge complaints, and all the necessary documents needed to complain. Such documents might include medical reports if a victim or detainee was beaten while in custody. Medical reports may assist in ensuring that the victims of police brutality in custody have enough evidence against police officers. This will lead to a higher success rate in holding guilty police officers accountable for their acts of violence.

Victims and the public are advised to report cases of police brutality to the IPID, which “is mandated to conduct independent and impartial investigations of specified criminal activity committed by members of the South African Police Service (SAPS) as well as by members of Municipal Police Services (MPS)” (Slater, 2015). The IPID allows any person to complain, whether a person is the direct victim, witness or representative. Non-governmental and community-based organisations also have a right to lodge complaints against police officials and members of the MPS.

5.6. Conclusion

“The scourge of police brutality that still plagues South African communities is not an old or a new South African phenomenon, as it appears to be firmly embedded in a police culture that persists in embracing force and violence as operational tools” (Hadebe, 2017).

The overall objective of this study was to review the relevant literature regarding police brutality in South African holding cells, in an attempt to gain a better understanding of its nature and causes. There has been a rapid increase of incidences of physical assault, verbal assault, torture, sexual abuse and death in holding cells. Three

research aims and objectives were formulated to assist in this regard: a) to explore the nature and causes of police brutality in South African holding cells; b) to examine the effects of police brutality in holding cells, and c) to recommend remedial measures to mitigate police brutality in holding cells. Moreover, existing literature, statistics, and the legal framework do not address all relevant information, which led to the inclusion of the suggestion that more in-depth studies should be conducted in the future.

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Act of the Union (1910)

Criminal Procedure Act (51 of 1977)

Interim Constitution Act (200 of 1993)

Investigative Complaint Directorate

Independent Police Investigative Directorate Act (1 of 2011)

Prevention of Combating and Torture of Persons Act (13 of 2013)

South African Constitution Act (108 of 1996)

South African Human Rights Commission Act (40 of 2013)

South African Police Act (68 of 1995)

Service Charter for Victims of crime in South Africa (2004)

Policy on the Prevention of Torture and the Treatment of Persons in Custody of the South African Police Service (1984)