Analysis of Independent Police Investigative Directorate Investigators' Experiences of the Application of Section 28(1)(f) of the IPID mandate, Torture and Assault, by Police Officials in KwaZulu-Natal, South Africa

by

Philisiwe Nicole Hadebe

Supervisor: Prof. N Gopal

Submitted in partial fulfilment of the

requirements for the degree of Master of Social Science

in the

Faculty of Humanities, Development and Human Sciences

at the

University of KwaZulu-Natal

December 2017

DECLARATION

This is to confirm that this

dissertation is my own work which

I have never previously submitted to any other university for

any purpose. The references used

and cited have been acknowledged.

Signature of candidate……

On the……. day of…….2017

DEDICATION

This dissertation is dedicated to every individual who have been a victim of torture and assault at the hands of the police,

To every member of the SAPS who have been a victim of public violence in the execution of their duties,

To every police officer who put their lives in danger to protect us,

We appreciate you,

To the Independent Police Investigative Directorate Team

We are grateful for your hardwork, your sacrifies of time with your families, for fighting for us

We are indeed thankful.

ACKNOWLEDGEMENTS

First and foremost, I would like to thank Jehovah,

I now strongly believed in Proverbs 3:5-6

"Trust in the Lord with all your heart and lean not on your own understanding; in all your ways submit to him, and he will make your paths straight"

I would like to thank the following people

My Mother, Nomawethu Hadebe. Mma I know you prayed for me more than I did for myself. You are my anchor, my source of strength, my God given gift. You would swear we both registered for this master. You gave me hope and believed in me. Ngiyabonga Mma.

My Supervisor, Prof Gopal. Thank you for guiding me throughout this journey. Thank you for your patience in taking me through the journey of learning and for your support, time and knowledge.

The IPID Team, thank you for not only participating in this study but most important for your willingness to assist me in every way possible for me to finish my degree. Your warm welcome was felt.

Ms Chammane Van der Sandt, without your patience, understanding and assistance, this dissertation wouldn't be completed. I am forever grateful to you and your entire IPID family.

To an amazing selfless intellectual I've yet again come across, Dr Witness Maluleke. Thank you for going that extra mile to assist me. Thank you for directing me, for sitting with me for hours help me figures out my research and for your willingness to share your knowledge. I have benefited a lot and I would forever be grateful.

My sponsor, Education, Training and Development Practices Sector Education and Training Authority (ETDP-SETA). Thank you for giving me an opportunity to fulfil my dreams.

Ms Linda Coertze, thank you for editing my work and sharing your research knowledge.

To all my friends, to every single one of you, you are amazing. You are a bunch of loving, caring and supportive friends. Thank you for your encouraging words, for being my motivational source. NiyiziMbokodo NamaQhawe eNsizwa.

Abstract

The South African Police Service officers have informally incorporated the operational methods of torture and assault in the execution of their duties in the reformed police service of South Africa. This historical conversation of police torture and assault has generated a debate over what constitutes torture and what has caused the persistence of this blunder in the police service. This study went a step further by exploring accountability mechanisms that are in place to reduce incidences of torture and assault. The investigation entailed an analysis of the effectiveness of the Independent Police Investigative Directorate (IPID) strategies and challenges encountered by investigating officers in addressing section 28(1)(f) of the IPID mandate. The analyses of the experiences of the selected IPID investigating officers strove to determine the nature of police torture and assault in this country's democratic dispensation and to determine the stumbling blocks that exist in the SAPS and IPID organisations for the reduction of police torture and assault in KwaZulu-Natal.

This study adopted a qualitative interpretive phenomenological approach. In-depth interviews were conducted with ten (n=10) IPID investigating officers whose investigations were guided by section 28(1)(f) of the IPID mandate in the KwaZulu-Natal province. The participants were selected by means of the purposive sampling technique. Using a thematic analysis approach, the study revealed that assault in KwaZulu-Natal province includes slapping, kicking and punching a suspect whereas torture constituted strangulation, suffocation, electrocution and tubing and occurred predominantly when the police were searching for information about dagga, firearms and undetected suspects. The influx of cases of torture and assault is the outcome of several problems, namely public's lack of understanding of the police procedures, public provoke the police, excessively volatile raids, inadequate police training as it does not address the challenges that the police experience in their occupational setting, and management pressure on the police to meet projected targets for firearm or drug retrieval.

More specifically, the study also found that, in addressing the issue of police torture and assault, IPID investigating officers encountered various challenges such as a lack of evidence from complainants, lack of police cooperation, lack of complainants' cooperation in the investigation, and lack of resources. The findings thus suggest that investigation strategies in terms of police brutality are ineffective due to investigative challenges. This in turn renders the disciplinary and criminal conviction strategies ineffective in ensuring police accountability. As a result, torture and assault by police officers are perpetuated.

Key terms: Police officer, South African Police Service, Independent Police Investigative Directorate, Accountability, Torture, Assault, Complainant, Suspect.

List of Figures

Figure 2.1: Flow diagram to illustrate how a case of torture and assault will be dealt with….51

Figure 2.5: The Independent Police Investigative Directorate Logical Model…….55

Figure 3.1: The Skinner Box……69

Figure 4.1: Map of the jurisdiction area of the IPID: KwaZulu-Natal Province…….85

Figure 4.2: Example of a Thematic Map……..…92

Figure 6.1 Below is a diagrammatical representation of the main findings……..…….144

Figure 6.2: Illustration of the causes of torture and assault in the SAPS organization……149

Figure 6.3: Factors that contribute to the cycle of police brutality (torture and assault) in the IPID organisation…….154

LIST OF TABLES

Table 1.1: Police Torture and Assault Rates in South Africa and in KwaZulu-Natalover Four Years……8

Table 1.2: The Outcome of Torture and Assault Cases in South Africa over a Period of Four Years…….9

Table 2.1: Table 2.1: Amendments in respect to two existing acts……...27

Table 3.1: Assumptions of the Symbolic Interaction Theory in Relation to Torture and Assault……..68

Table 3.2: Environmental Consequences Relative to the Law of Operant Behaviour……70

Table 3.3: Delineation of the Influence of Reinforcement and Punishment on the Criminal Behaviour of Torture and Assault by the Police……72

Table 3.4: Table 3.4: assumptions of the theory of differential reinforcement theory linked with police torture and assault…….74

Table 4.1: Table 4.1: Delineation of the Characteristics of KwaZulu-Natal…….86

Table 4.2: Table 4.2: The Six Phases of Thematic Analysis that were Utilised in this research……91

List of Appendix

Appendix A: Complaint Reporting Form by Members of Public……..…180

Appendix B: Informed Consent Form……183

Appendix C: Interview Schedule Guide……186

Appendix D: Gatekeepers Letter……...188

Appendix E: Ethical Clearance Letter……...189

Table of Contents

DECLARATION ..... **I**
DEDICATION ..... **II**
ACKNOWLEDGEMENTS ..... **III**
ABSTRACT ..... **IV**
LIST OF FIGURES ..... **V**
LIST OF TABLES ..... **VI**
LIST OF APPENDIX ..... **VII**

CHAPTER ONE **1**
1.1 Introduction **1**
1.2 Background to and Context of the Study **3**
1.3 Problem Statement **7**
1.4 Rationale for the Study **11**
1.4.1 A lack of scholarly literature that assessed the IPID 11
1.4.2 Limited exploration of IPID investigating officers' perceptions of and experiences relating to police torture and assault 12
1.4.3 The conflict between appropriate and excessive use of force 12
1.4.4 Value of the study 13
1.5 Aim and Objectives of the Study **13**
1.5.1 Main arguments in terms of the research objectives 14
1.6 Research Questions **15**
1.7 Significance of the Study **16**
1.8 Research Methods **17**
1.9 Structure of the Dissertation **17**
1.10 Summary **18**

CHAPTER TWO **19**
2.1 Introduction **19**
2.2 Definition and Legislative Framework of Torture **19**
2.2.1 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 19
2.2.2 The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 21
2.2.3 South African's obligations under international law to criminalise torture and other cruel, inhuman or degrading treatments or punishments 23
2.2.4 Prevention and Combating of Torture of Persons Act No. 13 of 2013 25
2.3 Legislative Framework that Guides the SAPS and the IPID **27**
2.3.1 South African Police Service Act No. 64 of 1995 (referred to as the SAPS Act) ... 28

2.3.2 Legislative mandate of the Independent Police Investigative Directorate.....28
2.4 The Nature Torture and Assault under Police Custody.....29
2.4.1 Torture.....29
2.4.2 Conceptualization and the nature of assault.....32
2.5 Perpetrator-Centred Perspectives on Torture and Assault.....36
2.6 The Use of Torture and Assault in the Police Organisation: A Paradox.....38
2.7 Are Police Torture and Assault effective operational methods? 39
2.8 Citizens' Characteristics that Influence Police Torture and Assault.....41
2.9 The Influence of Police Culture on Torture and Assault by Police Officials 42
2.9.1 Violence as part of the job 43
2.9.2 Ineffective supervision of and discipline among police officers 44
2.10 The Principle of Police Accountability.....45
2.11 IPID's Strategies to ensure Police Accountability 49
2.11.1 System to file complaints against the police.....49
2.11.2 Sections 29 and 33 of the IPID mandate.....52
2.11.3 The investigation process dealing with complaints 53
2.11.4 Recommendations for disciplinary and criminal investigations by IPID 57
2.12 Are SAPS Members Enjoying de facto Impunity? 59
2.13 The Challenges Encountered by the IPID 61
2.13.1 Lack of independence 61
2.13.2 Lack of capacity and resource.....62
2.14 Summary.....63

CHAPTER THREE.....64
3.1 Introduction.....64
3.2 The Symbolic Interaction Theory.....64
3.3 The Theory of Differential Reinforcement.....68
3.4 Summary.....75

CHAPTER FOUR.....76
4.1 Introduction.....76
4.2 Qualitative Research Design.....76
4.3 Purpose of Inquiry - Exploratory Research.....77
4.4 Research Paradigmatic Perspectives.....78
4.4.1 Interpretive paradigm.....78
4.5 Strategy for Participant Recruitment 82
4.5.1 Gatekeeper permission and sample selection procedures.....82

4.5.2 Sampling techniques 83
4.6 Profile of the Kwazulu-Natal Province 84
4.7 Methods of Data Collection 87
4.7.1 In-depth interviews 87
4.8 Data Presentation and Analysis 90
4.9 Ethical Considerations 93
4.9.1 Permission letters 94
4.9.2 Affecting IPID investigating officers' careers 94
4.9.3 Legal harm 94
4.9.4 Deception 95
4.9.5 Voluntary consent form 95
4.9.6 Anonymity 96
4.10 Research Trustworthiness 96
4.10.1 Credibility 97
4.10.2 Dependability 97
4.10.3 Confirmability 98
4.10.4 Transferability 98
4.11 Summary 98

CHAPTER FIVE 99
5.1 Introduction 99
5.2 The nature of police torture and assault in Kwazulu-Natal 100
5.2.1 Interrogation techniques that are applied as forms of torture 100
5.2.2 Torture as a method of extracting information 102
5.2.3 Conceptualisation of assault 106
5.3 The Situational Context of Torture and Assault 108
5.3.1 Excessively volatile raids 108
5.3.2 The public's lack of understanding of police procedures in stop-and-search operations 109
5.3.3 Suspects who resist arrest 110
5.3.4 Provocation of the police by the public 112
5.4 Organizational factors that contribute to police brutality in KwaZulu-Natal 114
5.4.1 Pressure to meet projected targets of weapons retrieval 114
5.4.2 Inadequate training of police officers 115
5.5 The Extent of Incidences of Torture and Assault in KwaZulu-Natal 118
5.5.1 An influx of torture and assault cases 118
5.5.2 High rates of cases that are declined by prosecutors 120
5.6 Challenges encountered by KZN IPID investigating officers 125
5.6.1 Lack of evidence from complainants 125
5.6.2 Lack of cooperation from the complainant 126

5.6.3 Lack of cooperation from the police 129
5.7 Inadequately capacity of the IPID 131
5.8 IPID Organisational Strategies to Ensure Police Accountability 134
5.8.1 Investigation of cases of torture and assault 134
5.8.2 The obligation to report police torture and assault and cooperation by SAPS members 136
5.8.3 Recommendations for disciplinary measures 137
5.9 Summary 141

CHAPTER SIX 142
6.1 Introduction 142
6.2 Conclusion in Terms of the Findings of the Study 143
6.2.1 Findings relating to the nature and extent of police torture and assault in KwaZulu-Natal…. 145
6.2.2 Factors contributing to police torture and assault 147
6.2.3 Challenges encountered by KZN IPID investigating officers 151
6.2.4 The effectiveness of IPID strategies to ensure police accountability 152
6.2.5 Drawing the line between minimum force and excessive use of force by the police 155
6.3 Contribution of the Study Findings 156
6.4 General Conclusion 156
6.5 Limitations that impacted the research 158
6.5.1 Language barrier 158
6.5.2 Participants' demographics 158
6.5.3 Sample presentation 159
6.6 Recommendation Pertaining to the Findings of the Study 159
6.6.1 Recommendations pertaining to the SAPS 159
6.6.2 Recommendations pertaining to the IPID 160
6.7 Suggestions for Further Research 162
6.7.1 Research on members of the SAPS who have been suspects in cases of police torture and assault 162
6.7.2 Public awareness of the role and functions of the IPID 162
6.8 Summary and Concluding Remarks 163

REFERENCES 164
APPENDIX A: COMPLAINT REPORTING FORM BY MEMBER OF PUBLIC 180
APPENDIX B: INFORMED CONSENT FORM 183
APPENDIX C: INTERVIEW SCHEDULE GUIDE 186
APPENDIX D: GATEKEEPERS LETTER 188
APPENDIX E: ETHICAL CLEARANCE LETTER 189

CHAPTER ONE

BACKGROUND TO THE STUDY

1.1 Introduction

Globally, police torture and assault have become entrenched in policing styles in the occupational setting of the police. Violent but non-lethal encounters between police and civilians are an important yet neglected social problem (Phillips & Smith, 2000). Peters (1996:4) argues that measures based on the world's most authoritative histories and of pre-modern torture began as a "legal practise [sic] and has always had as its essence in its public character [sic]". However, this legal enforcement practice has been challenged and prohibited in many post-modern societies. Cohen (1991:23) states that "to talk about torture is not just to talk about pain, but to enter into a complex discourse of morality, legality and politics". In the South African context, the political sphere of the apartheid regime demonstrated that to control defiance, the government used measures such as fines, intimidation, harassment, censorship, incarceration, torture, exile and even murder (Krantz, 2008), and the alleged abuses by the security forces in this country included "the use of electric shock, suffocation torture, forced painful postures, suspension from moving vehicles and helicopters, and severe and prolonged beatings" (Joshi, n.d.). This kind of behaviour that symbolises the past of the South African policing system makes the problem of police torture and assault in South Africa a legacy of the past. A gnawing question is what is to be done with this legacy of the past in a post-revolution, democratic South Africa.

Non-transformed institutions such as the police played a crucial role in the South African society in the past. So severe were the perceived acts of human rights violations committed by the erstwhile South African Police (SAP), that the organisation was transformed into the South African Police Service (SAPS) under a new legal framework. When South Africa reached a point of shifting from the apartheid regime to a new South Africa, the question was not whether there would be policing in the new South Africa, but rather what shape it would take, the practices it would promote, and whom the system would empower (Brogden & Shearing, 1993). Surprisingly, media reports and academic findings suggest that South Africa is still struggling with the problem of police torture and assault. In this context the IPID Annual Report (2012 -2016) indicates that more than 60% of cases of torture and assault were reported yearly, which challenges Newham's (2005:162) view that the abuses committed by the

apartheid police were far more severe and extensive than those committed by the SAPS. His argument that extensive improvement has taken place is therefore questionable, as statistics suggest that the police are still involved in systematic use of brutality, torture or extra-judicial killings in a similar manner that characterised policing during the apartheid era. This dichotomy was an indication that an in-depth assessment of the extent of police torture and assault was of paramount importance to understand the shape of policing in South Africa and to determine whether a systematic use of brutality still occurs.

Hajjar (2000:108) argues that "no society on earth advances the claim that torture, as legally defined, is a valued or integral part of its cultural heritage or political culture. If such an argument could be made, it would be [that] the practice of torture would be acknowledged rather than denied". In the South African context, torture and assault have to be acknowledged in the light of annual reports by the IPID, which reveal that there is a high number of reported incidences of police torture and assault annually. If this is indeed the pattern, it remains a matter of major concern to determine the causal factors of these behaviours in a democratic South Africa.

Hill and Berger (2009) warn that, if there is no awareness of the fact that police officers behave like the military in countries where the security forces rely on the use of force to solve problems, those countries will travel the same path as that of countries like Israel, which is battling the after-effects of a policing style in which the 'suspect' or 'offender' is treated as the 'enemy'. In South Africa, the warning should be taken seriously, because police torture and assault are becoming part and parcel of the modus operandi of the SAPS. Most importantly, the high statistics of police torture and assault should be regarded as a call for more research on police criminal behaviour in an attempt to curb and eradicate this phenomenon. The literature that was consulted regarding police brutality was found to be mostly concerned with police misconduct, police accountability, police culture and improving police professionalism (Loftus, 2010; Keenan & Walker, 2005; Stone & Ward, 2000; Poaline III, 2001& 2003; Crank, 1998; Manning, 1989). This is not surprising, as our new democratic policing system still encompasses some elements of traditional policing. These traditional practices occur among law enforcement agencies across the country, including the SAPS, and for this reason the nation is currently witnessing an escalation in the number of complaints against SAPS members for criminal behaviour. It is noteworthy that reports in the post-modern society have reveal that members of the SAPS increasingly committed criminal offences. However, two main issues

that are often overlooked are the *extent* and *nature* of police torture and assault, which suggest that problematic practices within the police service are perpetuated.

In relation to police criminal behaviour, a central development in policing was the establishment of the Independent Police Investigative Directorate, which plays an important role in the professionalisation and demilitarisation of the SAPS, which are processes that aim to increase police accountability (IPID Strategic-Plan, 2020; 2015) by prosecuting wrongdoers in order to restore the public's faith in the SAPS (20 Years of policing in a democracy, 2015). Prosecutions of these acts remain problematic (Diesel, Jensen, & Roberts, 2009), because SAPS members enjoy de facto financial, disciplinary, and prosecutorial impunity for their behaviour (Dereymaeker, 2015). Thus, the effectiveness of the IPID which is contradicted by the failure of the NPA to prosecute police officers raises the question whether South Africa will ever be able to shift from the culture of torture and assault of suspects to a community service policing approach.

The basis of this study rests on understanding the extent, causes and nature of police torture and assault. Expanding the scope of this research to include an evaluation of the challenges and effectiveness of the strategies used to address incidences of torture and assault aimed to highlight the need for police accountability. The objectives were achieved through the lens of theoretical perspectives, an examination of the related legislative framework, an extensive literature review, and an examination of KwaZulu-Natal IPID investigating officers' perceptions from the standpoint of their unique context and background. A participatory sample was therefore selected from the latter population group to illuminate the topic under investigation by means of a qualitative study.

1.2 Background to and Context of the Study

Police violence is a global policing issue that most countries are still battling with. South Africa is no exception. It is undeniable that police torture and assault are deeply rooted in the historical nature of policing. Tulloch (2017) states that the relationship between the police and the community must be situated within its historical context as well as within our modern, pluralistic society. Thus, police torture and assault and its impact on the public should be assessed in relation to historical realities. Throughout the apartheid period in South Africa, the police and security forces gained a fearsome reputation as the brutal enforcers of the regime's policies (Petrus, 2014:68). Their tactics involved extreme violence, torture and other methods that were used to destroy the enemies of apartheid who were generally referred to as 'die swart

gevaar' (the black threat) and the 'Kommuniste' (the Communists). In this way, the apartheid regime built a system of policing which was militaristic in its structure and training and was highly authoritarian in its culture (Joshi, n.d). At the end of the 1990s, Adejumobi (1999) and the Tanzania Conference Report (1998) raised the question of whether a democratic re-orientation of the state and civil society could be engineered in a country that had a long history of police use of force and where violence was seen as the most appropriate way of solving its security problems. Cock (2005:799) referred to South Africa as "a country that [has been] devastated by ruthless military dictatorship, domination and savagery for years".

However, fifteen years later, South Africa is still struggling to police in a democratic manner (Masuku, 2005). This failure to apply democratic policing principles may be explained through the lens offered by Muntingh and Dereymaeker (2013:11), who explain that the new government did not inherit a clean slate but rather a security force that came from a very particular history shaped by the apartheid regime. In this context, Ross (2011) indicates that the problem of police violence and excessive use of force has become a prominent issue of public, police, governmental and media concern over the past two decades. It can therefore be concluded that the phenomenon of police torture and assault is not a new problem. Langbein (2006:xii) argues that it is a problem that indicates that law enforcement strategists are ignorant of the facts of history because, if they weren't, they "would not have replicated one of history's worst blunders".

In the hope of not perpetuating police violence in a democratic South Africa, policy makers implemented a new system that was designed to address the issue of police use of violence to positively shape its policing style in the new democratic South Africa. To this end, SAPS Act No. 68 of 1995 legislates Community Police Forums (CPF) is the only recognised consultative forums that are mandated to permit communities to make their policing concerns known to the police. These forums were created as a platform where community members, organizations, other relevant stakeholders and the police could meet to discuss local crime prevention initiatives (Pelser, 1999). The aim of Community Policing Forums is also to create police-public rapport; however, this outcome has not been reached in some areas in the country (Smith, 2008). Instead, according to the Congress of the People Report (2014) there is disturbing evidence that South Africa is experiencing high levels of violence between the police and many members of the public. Moreover, statistics and reports suggest that this country is far from reaching its crime- and violence-free ideal, as our policing system increasingly resembles the policing style of the apartheid regime.

The problem is not skewed towards members of the public as offenders only, but includes the police who are also committing criminal offences against the public. The irony is that South Africa now has to police the police. To this end, the Independent Complaints Directorate (ICD) was established in April 1997. This Directorate was mandated to investigate complaints of brutality, criminality and misconduct against members of the SAPS and Metro Police Service (MPS). It was later replaced by the Independent Police Investigative Directorate (IPID) when the ICD proved to be ineffective. This Directorate was established on 1 April 2012 in terms of section 206(6) of the Constitution of the Republic of South Africa, which provides for the establishment of an independent police complaints body. The objectives of the IPID were to provide independent oversight over the SAPS and to serve as a platform of recourse for both the public and police members who want to report crime and corruption within the SAPS. It is also tasked with the responsibility to ensure transparency and willingness to prosecute wrongdoers. In this context, this body aims to restore the public's faith in the SAPS (20 Years of policing in a democracy, 2015).

In South Africa, police violence is not the only problem that the country is facing. The White Paper on Policing (2016) emphasizes that crime is a convergence of many factors that include historical, social and economic drivers. Pillay (2001) outlines that the socio-economic challenges that impact South Africa are macroeconomic policy, the labour market, poverty and inequality, the social sector, globalisation, and the economy and fiscal decentralisation. These factors have a direct and indirect impact on the rate of crime and violence that is either projected by the police or the public. Pillay (2001) further highlights that South Africa still has a high incidence of poverty and inequalities that emerge as new dimensions; for example, there are still high levels of unemployment and crime is increasing and becoming more violent. These factors increase the crime rate and crime in communities and exacerbate police violence. Ross (2011) argues that police violence is indirectly connected to the crime in a community, in the sense that when one evaluates the incidences of police torture and assault, one has to consider the rate and type of crimes in the communities and the number and types of arrests. The higher the incidences of crime in a country, the more incidences of police violence are reported.

In the presence of such concerted strategies to reduce incidences of police violence, the remilitarization of the police service has exacerbated the problem of police torture and assault. Remilitarisation of the police service is a system that was established in the hope of increasing the conviction rate and decreasing crime rates in communities (National Development Plan – 2030, 2015). According to Kraska (2007:3), police militarization may be defined as "police use

of force and threats of violence as the most appropriate and officious way to solve a problem". Wyrick (2013) emphasizes that, as communities change, the police also change their policing style to meet the demands of the public in relation to safety and security. In responding to crime challenges, the South African Police Service has often been criticised for using excessive force that is seen partly in the establishment of para-military police units that are often called upon to respond to everyday policing situations. The deployment of these specialised structures, along with regular policing to deal with public order policing incidents, has been seen as instilling a militarised culture within the police (White Paper on Policing, 2016).

In 2000, the SAPS started to gradually resemble a paramilitary force in its quest to fight against the backdrop of increasingly violent crimes, high levels of community frustrations and fear, and a perception that the old military ranks would command greater respect among the community (National Development Plan - 2030, 2015). Hills (2001:92) states that "the militarized approach to policing generates more problems than it solves and cause [sic] continual issues in policing". This evidently occurs in the SAPS as, according to IPID reports as well as ICD reports there has been a high number of deaths as a result of police actions since 2010 up to date. Many reported cases of police torture and assault during the execution of their duties have been headlined in newspapers and there has been incidences where junior officers disrespected the rights of suspects and accused persons (Congress of the People Report, 2014). There has also been an increase in the violation of people's human rights since the re-militarization of the police, as some members may now feel that they are mandated to use excessive force in line with a militaristic style (Congress of the People Report, 2014).

Therefore, in an attempt to contribute to a positive way forward and to avoid making the mistake of establishing a policing style that perpetuates the use of force, this study investigated this phenomenon in the KwaZulu-Natal province as a starting point to provide scholarly knowledge of and insight into the increasing numbers of torture and assault that are reported yearly in this province. The issue of police torture and assault was assessed through the eyes of IPID investigating officers responsible for investigating cases of torture and assault that were allegedly committed by members of the SAPS. This process is mandated by section 28 (1)(f) of the IPID that was created with the objective of professionalising and demilitarising the police force through ensuring police accountability (IPID Strategic Plan - 2020, 2015).

1.3 Problem Statement

The heart of this study was informed by aspects of criminal behaviour by police officials, especially in terms of police torture and assault that occurred in KwaZulu-Natal. The researcher was motivated by two shocking sets of details, namely (i) the large number of reported cases in relation to section 28(1)(f) of the IPID mandate, and (ii) the different forms of police torture and assault that the public experienced at the hands of the police. Phillips and Smith (2000:480) assert that the use of violence by the police has implications not just in terms of individuals' pain and suffering or the workings of the Criminal Justice System, but that it also causes a social problem that ripples throughout society. One major issue associated with police torture and assault is that it negatively impacts the relationship between the police and the public. Bearing in mind that the main objective of the police in a democratic South Africa is to police communities in partnership with its members, it is a travesty that the public is gradually losing confidence in the police due to their unlawful behaviour. This statement is support by Harris's (2009:25) assertion that when officers use more force than is reasonable, or when force is misused, trust between the police and the public is damaged as the police themselves become offenders.

The fact that the media reports only high-profile incidents obscures to some extent the scope and extent of human rights violations perpetrated by SAPS members (Muntingh & Dereymaeker, 2013). However, the annual reports of the IPID exposes the extent of the police torture and assault problem. This section thus highlights the magnitude of quantitative data (IPID annual statistics reports, 2012 -2016) on torture and assault in South Africa and matches these data with the paucity of qualitative data (scholarly arguments) on this issue. This is done to highlight the problems that prompted the researcher to conduct an in-depth study on the use of torture and assault by police officers. Comparison of torture cases for the year 2014/15 with the financial year 2013/14 indicates an increase of 86% in all nine provinces. Table 1.1 below shows that over a period of four years, more than 5 500 cases of police criminal offences were reported every year. Of these numbers, more than 3 500 cases of torture and assault were reported. This reveals that section 28(1)(f) of the IPID mandate is the highest type of criminal offence that was reportedly committed by SAPS officials in the four-year financial period (2012/13 – 2015/16). This equates to more than 60% of reported cases of torture and assault with an average of 65% for the past four financial years (2012/13 – 2015/16). It was these startling figures that prompted this investigation into police torture and assault.

Table 1.1: Police Torture and Assault Rates in South Africa and in KwaZulu-Natal over Four Years

	Republic of South Africa				KwaZulu-Natal Province		
	Overall Criminal Offences	**Torture**	**Assault**	**Overall %**	**Torture**	**Assault**	**Overall %**
2012/13	6728	50	4131	62.14%	8	411	10.14%
2013/14	5945	78	3916	67.18%	19	368	09.88%
2014/15	5879	145	3711	65.59%	45	467	13.80%
2015/16	5519	145	3509	66.21%	31	426	13.02%
Total	**24072**	**418**	**15267**	**65.28%**	**103**	**1672**	**11.71%**

Note: The overall criminal offences include only those as indicated in the IPID mandate, section 28(1)(a) to (f).
Source*:* Adapted from the Independent Police Investigative Directorate (IPID) Annual Reports (2012-2016)

Notwithstanding a noticeable decrease in the number of reported cases of police assault nationally from 4131 in 2012/13 to 3509 in 2015/16, KwaZulu-Natal Province experienced a fall and then a steady rise again (see Table 1.1). To clearly understand the magnitude of the problem of police torture and assault in KwaZulu-Natal, a comparison of torture and assault cases for the 2012/13 with the financial year 2015/16 indicate an increase of 2.88% with an average of 11.71% for the past four financial years (2012/13 - 2015/16). These torture and assault statistics indicate that there are serious shortcomings in the SAPS institution that require urgent attention (IPID Annual Report, 2015).

The number of reported cases of torture and assault needs to be assessed in relation to the number of successful outcomes of these cases. Although conviction rates do not indicate the full extent of the crime, they do provide us with an idea of the progress the Criminal Justice System makes in addressing crimes of this nature (Andersson & Mhatre, 2003). However, statistics on police convictions with respect to cases of torture and assault do not fully expose the extent of torture and assault in KwaZulu-Natal, but they do indicate the progress that the IPID has been able to make in terms of ensuring police accountability. To measure the number of convictions in relation to the number of crimes reported, the performance of a variety of state actors in contributing to successful prosecutions has to be evaluated (Redpath, 2012). The two primary actors are the National Prosecuting Authority (NPA) that conducts prosecutions,

and the IPID that investigates and makes arrests. It is therefore argued that an increase in the reported rates of torture and assault cases cannot be used exclusively to measure the success of the IPID organization in relation to addressing torture and assault. Rather, it is arrest, prosecution and conviction rates that demonstrate justice for the victims of this particular crime (Vetten, 2005).

Table 1.2 below illustrates the number of cases of torture and assault that were considered unsubstantiated. These cases were those that were declined by the courts or that were closed by not granting a conviction. It is evident that, in the four-year period, only 1.9% of police officers were convicted at a conviction rate of lower than 2.5% per year. It is noteworthy that there was a zero conviction rate for torture, whereas assault was the predominant crime that ended in convictions. In the four-year period, the NPA declined to prosecute in 36.58% of the cases, and in the 2014/15 financial year specifically, 64.10% of the cases of torture were declined by the courts, with 13% of the cases considered to be unsubstantiated. One of the reasons for the high number of declined cases of torture and assault by the courts is that unsubstantiated evidence impacted the cases, as the rate of unsubstantiated cases was 39.25%.

Table 1.2: The Outcomes of Torture and Assault Cases in South Africa over a Period of Four Years

Financial Years	Overall completed cases	Unsubstantial			Declined to prosecute			Convicted		
		Assault	**Torture**	**%**	**Assault**	**Torture**	**%**	**Assault**	**Torture**	**%**
2012/13	344	220	0	64.00%	43	0	12.50%	8	0	0.2.32%
2013/14	1199	745	1	62.00%	251	1	20.93%	18	0	01.50%
2014/15	1156	159	1	13.00%	738	3	64.10%	28	0	02.42%
2015/16	1637	276	13	18.00%	789	10	48.80%	23	0	01.41%
Total	4336	1400	15	39.25%	1821	13	36.58%	77	0	01.91%

Note: The overall criminal offences include only those as indicated in the IPID mandate, section 28(1)(a) to (f).
Source: Adapted from Independent Police Investigative Directorate (IPID) Annual Reports.

The IPID report suggests that several barriers caused the unsuccessful investigation, prosecution and conviction rates of police officers who were accused of torture and assault. In the light of these statistics and their implications, this research attempted to evaluate the IPID

organization and uncover the challenges that served as a barrier to the conviction of police officers for their criminal behaviour of torture and assault. The latter statement implies the assumption that the reported police officers were guilty of these accusations, therefore the researcher had to remain open-minded should the study demonstrate the opposite based on the viewpoint of the participants. In this context, it is acknowledged that police officers might also have acted in self-defence in some instances, or might in fact have been innocent, as it is a known fact that criminals have become progressively aggressive and provocative when apprehended by the police (Harris, 2009).

A number of concerns have been raised regarding the IPID in relation to dealing with some reported cases of torture and assault. There is a wide range of problems that vary in nature and extent, and they include the following:

- In the financial year 2011/12 alone, civil damages claims against the SAPS totalled R7.1 billion. Financial claims to the value of about R853 million were laid for allegations of assault (Dereymaeker, 2015).
- Compliance by SAPS members in relation to disciplinary recommendations remains a challenge. The IPID verified that 60% of the cases against police officers in 2014/15, and 61% in 2013/14, dealt with disciplinary measures (IPID Annual Report, 2014/15).
- The oversight body of the police, namely the IPID, receives hundreds of complaints annually alleging assault and torture, yet prosecutions and convictions of implicated officials are rare, which suggests *de facto* impunity (Muntingh & Dereymaeker, 2013:6).
- The IPID's lack of capacity and resources impacts conviction rates negatively, as these shortcomings tend to compromise the quality of investigations. It becomes difficult to respond swiftly to crime scenes, affects the turnaround times within which the IPID is expected to finalize cases, and it also impedes the integrity of investigations and the independence of the IPID (IPID Annual Performance Plan, 2016).

The problems that were listed above raise the question whether they are stumbling blocks in the way of reduction of similar incidences, or whether they are causal in the perpetuation of torture and assault. Insufficient information to address this question has limited practitioners' and scholars' ability to reach a conclusion or find a solution to the problem of torture and

assault. This study was an attempt to contribute to the broader discussion of torture and assault by addressing the problems that seem to persist within the SAPS and the IPID.

1.4 Rationale for the Study

The persistence of police torture and assault is a major challenge that impacts both the public and the SAPS. In a democracy, citizens may grant the government the authority to use force to uphold the law, "but the extent of this power sometimes leads us to question whether the tremendous power vested in governmental authorities is prudent" (Dunham, 2012). It is such questions that prompt debates and studies that appear to be of significance due to the practical problems that the country is currently dealing with in the policing sphere. The criminal behaviour of the police that counteracts the fundamentals of community policing raises the question whether there will ever be interactions between the police and the public that will be based on policing partnerships rather than on violence. Tulloch (2017:14) urges that modern policing should be founded on public trust. However, this trust is tested when a member of the public is seriously injured by police action, or when a police officer behaves in a manner that is considered to fall below the professional standards expected of them (Tulloch, 2017:4). Literature on public attitude towards the police suggests that positive experiences with the police result in increased confidence in them, but that negative encounters undermine confidence (Jackson & Sinshine, 2007; Tankebe, 2010). The shortcomings that form the rationale of this study are briefly discussed below.

1.4.1 A lack of scholarly literature that assessed the IPID

There is insufficient literature that assesses the IPID. An evaluation of the ICD was conducted by Montesh and Dintwe (2008) and it was shown to be ineffective based on issues such as the dependence of the ICD to SAPS, lack of power to force institutions to comply and implement findings, duplication of functions with other law enforcement agencies, and limited policing powers (Montesh & Dintwe, 2008). However, there is limited information on the challenges and effectiveness of the newly developed IPID. This study therefore evaluated this organisation's ability to curb police torture and assault for which there had been a high number of declined cases and a high number of instances where cases were closed without a conviction because of unsubstantiated evidence. It was therefore argued that the challenges and effectiveness of currently applied strategies to ensure police accountability needed to be assessed qualitatively.

1.4.2 Limited exploration of IPID investigating officers' perceptions of and experiences relating to police torture and assault

The knowledge and experiences of the IPID members with regards to criminal offences committed by police officials have remained unheeded by scholars. This has deprived communities of fruitful knowledge and understanding of the current issue of police torture and assault that is meted out to the public. Some insight has been gained of police use of force through studies on the public's attitudes towards the police (Jeggeris, Kaminski, Holmes, & Hanley, 1997), whereas other studies explored the views of police officials to understand their unlawful behaviour (Ross, 2011). However, no studies that explored the perspectives and experiences of IPID members to better understand the issue of torture and assault committed by police officials could be traced. This study was therefore deemed imperative as the day-to-day occupation of IPID officials requires independent and impartial investigations of the criminal offences that were allegedly committed by members of the SAPS.

1.4.3 The conflict between appropriate and excessive use of force

There is lack of understanding of where the police should draw the line between appropriately used force and inappropriate torture and assault. Most people probably have an understanding of unwarranted police torture and assault and have a working definition of it. However, many people do not know where the line between appropriate use of force and excessive use of force should be drawn. For example, it is unclear what form of force qualifies as police torture or assault and under what circumstances the use of force is legal within the scope of policing regulations and the Constitution. The distinction between legitimate force and illegitimate violence is therefore blurred (Tilly, 2003:27). Section 49(2) of the Criminal Procedure Act No. 51 of 1977 states:

> "*If a suspect resists the attempts at arrest and flees, the arrestor may…use force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect form fleeing."*

Although this Act attempts to draw a line, the terms "reasonably necessary" and "proportional use of force in circumstances" are open to various interpretations. In cases where there have been criminal convictions, the thin line between reasonable use of force and excessive use of force was the central debate. For instance, Hajjar (2000:12) states that there are differences of opinion about where to draw the line between 'torture' and 'not torture'. Hence, it is important

to understand the nature of police torture and assault in order to differentiate between cases that qualify as reasonable use of force and those that demonstrate excessive use of force. Experienced IPID investigating officers and NPA member therefore have to draw the line between appropriate use of force and excessive use of force in their investigations to ensure satisfactory and fair outcomes for the cases that they prosecute.

1.4.4 Value of the study

Based on this investigation, the researcher is of the view that the findings will enable readers to differentiate between being tortured and assaulted and when police fulfil their duties within their mandate. The public should also note the important procedures that they should undertake before reporting a case of torture and assault. The study also endeavoured to identify shortcomings and areas for improvement in both the SAPS and IPID organisations. The value of the study is that it will invite a wide range of readers such as scholars and policy makers in the policing sphere who will utilise the recommendations and solutions to the challenges to reduce the incidences of torture and assault and to improve police-public relationships. The findings of this study will also invite readers to make a connection between elements associated with this study and their own experiences. The reader will thus explore and provide rich descriptions of the subject under investigation. The study findings may therefore be applied to other settings. The empirical knowledge gained from this study in respect of understanding police torture and assault from a theoretical perspective may therefore become applicable in practical contexts.

1.5 Aim and Objectives of the Study

The empirical component of this study concentrated on the experiences and perceptions of KZN IPID investigating officers. They were questioned on the IPID mandate in terms of section 28(1)(f) that addresses the issues of torture and assault by members of the SAPS against the public. To achieve the aim of this study, the researcher simplified the topic and formulated the following objectives that aimed to:

- Determine the nature and extent of torture and assault among SAPS officials in KwaZulu-Natal;
- examine the underlying contributory factors that influence police officials to torture and assault suspects in the execution of their duties in KwaZulu-Natal;

- examine the challenges that IPID officers face in investigating accusations of torture and assault against SAPS officials in KwaZulu-Natal;
- assess the effectiveness of IPID strategies in ensuring that SAPS officials are brought to account for cases of torture and assault in KwaZulu-Natal.

1.5.1 Main arguments in terms of the research objectives

This investigation analysed the perspectives and experiences of IPID investigating officers with regard to police acts of torture and assault. The investigation was underpinned by the IPID mandate as provided in section 28 (1)(f) of the IPID mandate. The first two primary objectives focused on the nature and causes of torture and assault. The researcher argued that a large number of cases of torture or assault had gone unnoticed and that only a few high profile incidences had been reported in the media. The frequency and types of these cases of torture and assault were published by the IPID in their annual reports; however, the extent of these acts was overlooked and the nature of these incidences was not communicated in these annual reports. Hence, there was a need to understand *the nature* and *extent* of torture and assault cases that had been reported to, but had not necessarily been tried by, the IPID and the NPA respectively. In order to address this unabated issue of torture and assault, it was deemed best to understand its root causes as well as the internal and external factors that might contribute to the problem. Wyrick (2013) asserts that the police "shape themselves according to contemporary events [and that] they react to problems in communities and change so [that] they can confront and resolve them". As societies change, police also change their policing strategies. It was therefore essential that this study recognized the *circumstances* that influenced the use of torture and assault by members of the SAPS. The fact that cases of reported torture and assault were on the increase in KwaZulu-Natal, if not in the rest of South Africa, strongly justified urgent investigation into the causal factors that contribute to torture and assault.

The secondary objectives paid attention to the successes and challenges experienced by the IPID organisation. This body was established to ensure police professionalisation and demilitarisation (White Paper on Policing, 2016). In light of the obvious failure of the IPID to comply with this mandate (i.e., the rising rates of violent acts committed by police officers in KwaZulu-Natal – see Table 1.1), it became a matter of urgency to place this institute under a magnifying glass. The main problem under investigation was the fact that torture and assault by members of the SAPS appeared to escalate yearly in KZN, if not in all provinces. A gnawing

question was why this organization was lacking in this regard in KZN. It was argued that the answer to this question would be found in exploring and identifying the *challenges* that investigators experienced in the process of investigating cases of torture and assault. It was also argued that the problems would extend to *disciplinary* and *prosecuting processes* involving 'rogue' SAPS members. Although some police officials had been apprehended and prosecuted for their unlawful and violent behaviour, it was surmised that challenges within the institute might serve as stumbling blocks for the full effectiveness of the IPID. So, being able to identify these challenges would facilitate the development of strategies that will address these encounters and improve the effectiveness of the Criminal Justice System.

Moreover, before attempting to provide suggestions for the improvement of the IPID organization in dealing with cases of torture and assault, it was important to first assess the *effectiveness* of *current strategies.* It was argued that some strategies might be highly effective as evidence was traced of positive aspects in terms of the investigations of police torture and assault. The focus would therefore be on exposing weak strategies that might impede a sense of accountability.

1.6 Research Questions

Denscombe (2012:73) elucidates that research questions "guide a study in a specific direction" by determining what needs to be researched. In light of this definition, the intention of this study was to answer four imperative questions that had been derived from the objectives to address the main concerns of this research. The questions that were formulated were as follows:

- What is the nature and extent of the acts of torture and assault that are committed by SAPS officials in KwaZulu-Natal?
- Which factors contribute to the commission of torture and assault by members of the SAPS in KwaZulu-Natal?
- Which challenges do the IPID face in investigating torture and assault cases against SAPS officials in KwaZulu-Natal?
- Are the IPID's strategies to investigate torture and assault cases against SAPS officials effective in ensuring police accountability in KwaZulu-Natal?

1.7 Significance of the Study

The significance of this study will be related to the contribution it will offer to society as well as to the policing and academic spheres. The study will add to the stock of scholarly knowledge in terms of police torture and assault. Limited literature has been published under the scope of torture and assault by members of the SAPS against members of the public. This study will therefore contribute to this pool of knowledge by illuminating the extent to which the IPID has contributed to or curbed incidences of torture and assault by SAPS officers. Moreover, the nature of and the circumstances that cause incidences of torture and assault will be elucidated, and this information will highlight the slip-ups that police officers make as well as the organisational problems in the SAPS and the IPID that need to be addressed.

The problem of police torture and assault is a social issue that has ripple effects in society. Therefore, findings and recommendations will benefit not only police organisations but society as well. Statistics reveal that a large number of incidences of torture and assault are reported annually, while it is surmised that many such incidences go unreported due to a lack of knowledge among the public about what to do and where to go when they have become victims of police torture and assault. Therefore, if the findings and recommendations are appropriately published and disseminated, awareness of this issue and how to deal with it will be created. In this manner society will be informed that there is an independent oversight body, namely the IPID, to which the public can address their grievances with the police. The aim of producing findings that can be practically used by members of the community will therefore be achieved. For example, the public will be informed of strategies to improve their relationship with the police and which procedures to consider when they encounter situations where they are tortured and/or assaulted.

This study should also alarm the government and police institutions of the magnitude of the problem of police violence. By focusing on section 28(1)(f) of the IPID mandate, strategies to deal effectively with the challenges within the IPID will be elucidated. If these challenges are addressed, an effective and efficient independent oversight body will become a reality. Such an organization will facilitate police responsiveness to the communities that they serve in line with democratic policing principles that require the police to be a public service and not a militarised punishing machine. If the issue of police torture and assault is left unchecked, it will reach a point where it will be difficult to create public-police relations that are based on policing partnerships rather than on violence. It is therefore of primary importance to address

the problem of police torture and assault before we find ourselves battling with the aftermath of a normalized police culture that embraces and perpetuates torture and assault.

1.8 Research Methods

To answer the research questions that gave impetus to this study, the researcher applied a qualitative research approach within the realm of a descriptive-interpretive research paradigm using the phenomenology strategy of inquiry. The qualitative research approach provided the researcher with the opportunity to listen to the voices of Independent Police Investigative Directorate (IPID) officers who illuminated police torture and assault from their unique points of view. The researcher conducted in-depth interviews with ten (*n=10*) participants that were selected by means of a purposive non-probability sampling technique. This technique was employed because the participants that were interviewed had rich information that uncovered various issues relating to police torture and assault. The information provided by the participants was analysed thematically. In this process, key themes were developed that formed the pivotal discussion points to expose the participants' views and experiences relating to the problem of torture and assault. This study was conducted in Durban, KwaZulu-Natal province. A more in-depth discussion of the research methodology is provided in Chapter four of this dissertation.

1.9 Structure of the Dissertation

Chapter One introduces the study by outlining the intent of the study, the background and the context. The issue of torture and assault by members of the SAPS against members of the public is problematized. The rationale of the study and its aim, objectives and the critical questions that guided it are also presented in this chapter.

Chapter Two presents a review of the literature related to the topic under investigation. The discourse focuses on the legislative mandate, debates on police violence, the nature of police torture and assault, as well as on the issue of police accountability. The literature review chapter lays the foundation for the next chapter.

Chapter Three presents the theoretical framework within which the study was located. It focuses on two theories, namely the differential reinforcement theory and the symbolic interaction theory. These two theories assisted the researcher in discovering how and understanding why police officers exhibit criminal behaviours such as torture and assault when dealing with suspects.

Chapter Four describes the scientific methodology that was employed in this study to achieve the study's objectives and to address the research questions. The study was essentially qualitative in nature and approach, and these research elements and how they were employed are elucidated.

Chapter Five presents a detailed discussion of the data that were obtained by means of the interviews that were conducted with the study participants. The data are analysed and similarities and differences among the participants' responses are explored and explained through the use of thematic analysis.

Chapter Six concludes the study report. It highlights the main findings and conclusions and also submits various recommendations that emanated from the results of this research.

1.10 Summary

Chapter one introduced the study by highlighting the background to the investigation. This was done by presenting a general overview of the study. The justification for and an overview of the importance of the study were also provided. This chapter further outlined the nature of the problem under investigation. The research design and the methodology that were employed were briefly expounded. This chapter also highlighted the aim, objectives the research questions that gave direction and impetus to the study.

CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction

In this chapter, a review of literature relevant to the aim and objectives of the current study is conferred. Researchers and media reports on policing have extensively recognized the issue of unlawful behaviour by the police and its impact on the democratic policing approach that the SAPS is obligated to implement as the required policing approach post-1994. The review of relevant literature that is presented in this chapter serves as a foundation for this research project as it highlights important information pertaining to torture and assault by members of the South African Police Service (SAPS) in the execution of their duties. Marshall (2015:20) defines a literature review as "a systematic method for identifying, evaluating, and interpreting work produced by researchers, scholars, and practitioners". This section therefore elucidates the legislative framework, debates, contradictions in scholarly views, convergence of knowledge from different scholars, the nature and extent of torture and assault in an international context, and the findings of other studies on torture and assault by police officials in South Africa. This chapter further discuss the IPID organization including its strategies that seek to ensure police accountability. This chapter will provide an informed perspective or a comprehensive overview of the knowledge available on the topic of torture and assault (Baker, 2015).

2.2 Definition and Legislative Framework of Torture

2.2.1 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In 1948, the international community condemned torture and other cruel, inhuman or degrading treatment in the United Nations Universal Declaration of Human Rights (1975). Peters (1996) stipulates that torture began as a legal practice. The Declaration condemns this practice and renders it illegal with the aim of protecting all people who are subjected to it. The Declaration first provides a definition for torture that takes into accountant all the important elements that may be evident in an incident of torture. It also provides important information to ensure that the perpetrators of such brutality are punished. The Declaration (1975) defines torture as:

> *"…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third*

person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners".

The Declaration defines torture in broad terms on the basis of physical and mental abuse, but does not convey the specific form of physical or mental abuse that can be classified as torture that distinguishes it from other forms of police criminal behaviour that entails the use of force. However, Parry (2003:240) states that, according to the United Nation's code of Conduct for Law Enforcement Officials, the phrase "physical and mental pain" should be interpreted as extending to the widest possible protection against abuses, whether physical or mental. This means defining torture in a reasonably precise term would limit the forms of torture and exclude some of the forms of punishment that the police might use.

A report that was published by the Committee Against Torture (2009:25) indicates that this definition takes on the view that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering, and that mental pain or suffering refers to prolonged mental harm caused by or resulting from:

i. *"the intentional infliction or threatened infliction of severe physical pain or suffering;*
ii. *the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;*
iii. *the threat of imminent death; or*
iv. *the threat that another person will imminently be subjected to death, severe physical pain or suffering."*

In its condemnation of torture and other cruel, inhuman or degrading treatment or punishment, the Declaration does not restrict the scope of torture to physical pain or suffering, but it extends it to include being intimidated or threatened and to be subjected to physical pain or death. The Declaration (1975) also indicates that torture is a criminal offence that does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. This means that it only constitutes physical or mental pain that is 'intentionally' inflicted for purposes of extracting information not incidental to 'lawful' sanction.

The Declaration (1975) further considers torture as "an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment". To ensure the success of the prohibition and protection of all persons from being subjected to this aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment, and based on the United Nations (2002), Article 3 of the Declaration stipulates that "no exceptional circumstances such as a state or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment". In 1975, responding to vigorous activity by non-governmental organisations, the UN General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2.2.2 The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was a crucial and significant starting point that later led to the international agreement prohibiting torture, which is known as the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. This Convention was signed by the United States and various other member states, including South Africa (Garcia, 2009). The latter Convention was adopted by the General Assembly on 10 December 1984 and came into force on 26 June 1987. The definition provided by the Declaration was accepted in the Convention as a legal definition of torture.

Article 5 of the Convention (1984) obligates all states to criminalise all acts of torture as offences under its criminal law. The criminalisation of torture is not only limited to the infliction of physical and mental pain, but it also takes into account "an attempt to commit torture [and] to an act by any person which constitutes complicity or participation in torture as well as making the offences punishable by appropriate penalties which take into account their serious nature". Any person found guilty of an offence of torture as outlined by the Convention is to be prosecuted in the same way as the authorities would have prosecuted a case of any ordinary offence of a serious nature under the law of that state and the standards of evidence required for prosecution (Garcia, 2009). This means that the Convention regards torture as an offence of a serious nature where the prosecution's decision should impose a sanction that is appropriate for this crime. Torture is considered as a criminal offense because by its nature "it

constitutes a serious and deliberate form of cruel, inhuman or degrading treatment or punishment" (United Nations, 2002:5).

According to the United Nations (2002), the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment requires state parties, inter alia, to:

- incorporate the crime of torture in their domestic legislation and to punish acts of torture by appropriate penalties;
- undertake a prompt and impartial investigation of any alleged act of torture;
- ensure that statements made as a result of torture are not invoked as evidence in proceedings; and
- establish an enforceable right to fair and adequate compensation and rehabilitation for victims of torture or their dependants.

Under the Convention, jurisdiction is recognised on the principles of territoriality, active and passive neutrality, and presence (Garcia, 2009). This means that each state is required "to exercise its jurisdiction and enforce the provisions of the Convention irrespective of whether the act of torture occurred in any territory under its jurisdiction or whether it has obtained personal jurisdiction over the alleged torturer". The justification is that because states "are unlikely to take effective measures against their own agents, someone else should be able to do so in order that torturers do not enjoy de facto impunity (Fernandez, 2003). The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) requires signatory parties to take measures to end torture within their territorial jurisdiction and to criminalise all acts of torture (Garcia, 2009). The obligation to the signatory parties in the customary international law requires states not only to prohibit torture and other forms of cruel, inhuman, and degrading treatment or punishment but also "to prevent the placing of persons in situations liable to result in torture" (Fernandez, 2003:117).

Article 11 of the Convention Against Torture (1984) proposes a strategy that can be considered to prevent any case of torture, as it stipulates that a state needs to systematically "review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction". This enables a State to have standard principles of interrogation that can be used to guide law enforcement officers in the execution of their interrogation of suspects or witnesses. Torture under the convention is not only limited to torture as defined in the Convention Against Torture (1984), but Article 16 obligates the state parties to "prevent

any other acts of cruel, inhuman and degrading treatment or punishment, whether committed or instigated by a public official or other person acting in an official capacity", and to also "ensure impartial investigation of those acts". These are some of the obligations that are imposed by the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment to states that are party to this Convention that obligates States to refrain from committing any act or torture or cruel, inhuman and degrading treatment, but most importantly, to also protect persons under its jurisdiction from being subjected to any acts of torture by State actors.

2.2.3 South African's obligations under international law to criminalise torture and other cruel, inhuman or degrading treatments or punishments

Apart from international law offering a legal foundation for torture, section 39 of the Constitution of the Republic of South Africa, Act No. 108 of 1996, indicates that the South African courts are required to consider international law when interpreting the Bill of Rights. This obligation also includes general treaties, customs, general principles of law, the writing of jurists, and the decisions of international and municipal courts recognised by Article 38 (1) of the statutes of the International Court of Justice (Dugard, 1994). In *S v Makwanyane 1995 (3) SA 391 (CC)*, former Chief Justice Chaskalson of the Constitutional Court considered international law to include both binding and non-binding law. However, section 231 of the Constitution says that a treaty binds South Africa only after that agreement has been approved by the National Assembly and the National Council of Provinces, "unless it is self-executing, or of a technical, administrative or executive nature". This means that the court may inquire into treaties that South Africa is party to or rules of customary international law that have been accepted by the courts (Combrinck, 1998). Torture is a crime against humanity under international law. It is prohibited and cannot be justified under any circumstances. This prohibition forms part of customary international law, which means that it is binding on every member of the international community, regardless of whether a state has ratified international treaties in which torture is expressly prohibited (United Nations, 2002).

Section 232 of the Constitution makes customary international law the law in South Africa, unless it is inconsistent with the Constitution or related legislation. In *S v Makwanyane 1995 (3) SA 391 (CC)*, former Chief Justice Chaskalson of the Constitutional Court stated that international agreements and customary international law provided a framework within which the Bill of Rights should be evaluated and understood. Section 233 of the Constitution of the Republic of South Africa (RSA, 1996) states the following:

> *"When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law."*

This means that, when the South Africa court interprets legislation, it must take into account international law and ensure that the interpretation is consistent with international law. In December 1998, South Africa approved the United Nations Convention against Torture (UNCAT) and Article 4 of UNCAT which requires that state parties to the Convention should criminalise torture in their domestic laws (Muntingh & Dereymaeker, 2013; Fernandez, 2003). South Africa also signed other international instruments outlawing torture and domesticated the Prohibition of Torture and Cruel, Inhuman or Degrading Treatment in its Constitution.

South Africa has also signed the Optional Protocol to the Convention against Torture (OPCAT) and other Cruel, Inhuman or Degrading Treatment (CIDT) or Punishment. This indicates South Africa's willingness eradicate torture. South Africa (2013:2) sates that the Republic of South Africa is "committed to preventing and combating of torture of persons, among others, by bringing person who carry out acts of torture to justice as required by international law". This commitment became evident with the establishment of the IPID that is mandated to investigates cases of torture and ensure the prosecution of police officials or other persons acting in an official capacity who are found guilty of this criminal behaviour.

However, despite the official commitment to eradicate torture and CIDT in South Africa, torture and other cruel acts of inhuman treatment by police officers still remain a problem (Dissel, Jensen, & Roberts, 2009). South Africa expressed a strong moral commitment to the notion of eradicating any form of torture and cruel, inhuman and degrading treatment. This is evident in South Africa's commitment to Article 5 of the African Charter on Human and People's Rights (1981) which prohibits "all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment". South Africa also engaged in the creation of the Robben Island Guidelines which address torture in Africa (2002) and which were adopted by the African Commission on Human and People's Rights (Dissel, Jensen, & Roberts, 2009). The matter of torture has been taken seriously in South Africa since in 2003, when the South African government published the draft Criminalisation of Torture Bill for comment. The Bill aims chiefly to: (a) criminalise torture and other cruel, inhuman or degrading treatment or punishment; and (b) provide for the prosecution in South African courts of persons accused of torture in South Africa and, in certain circumstances, outside its borders (Fernandez, 2003).

2.2.4 Prevention and Combating of Torture of Persons Act No. 13 of 2013

In 2012, the Bill of Rights gave effect to the Republic's obligation in terms of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to provide for the offence of torture of persons. It was stipulated in section 11(2) of Act No. 200 of 1993 that:

> *"[No] person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment."*

This means that torture is considered as a criminal offense. The prohibition of torture is in line with section 12(1)(d) of the Constitution of the Republic of South Africa (RSA, 1996), which provides that everyone has the right to freedom and security, which includes the right not to be tortured in any way. It was therefore important to adopt an Act that clearly stipulates the objectives, offences and penalties as well as factors to be considered in sentencing. All acts that constitute torture are criminal offences that are punishable by appropriately severe penalties, including acts constituting "attempts, complicity, participation and conspiracy to torture" (South Africa, 2013:2). Hopkins (2009:22) states that Acts impose an obligation on the state, especially on law enforcers, to refrain from engaging in such treatment, whereas it also imposes an obligation on the state, specifically on an appointed independent oversight agency, to conduct an effective investigation into the allegations of this criminal offence.

The South African legislative mandate for police torture was further extended from the UN definition to consider other factor that are involved in torture such as emotional suffering that may be endured by a person being subjected to torture. The law further protects every citizen and prevents crime by specifying the type of people that the UN definition refers to as "other persons acting in an official capacity" by outlining the types of person to be considered to have violated the law in any circumstances of torture. Section 4(1) of Act No. 13 of 2013 states:

> *"Any person who commits torture; attempts to commit torture; or incites, instigates, commands or procures any person to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life."*

Act No. 13 of 2013, section (4)(2), further explains that:

> *"Any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life."*

In view of the Constitution, torture is considered a felony that is punishable with incarceration that may carry a life imprisonment sentence. This indicates that South Africa treats torture as a serious offence that deserves severe punishment. Scholars such as Bagari and Clarke (2007), Grimaldi (2011) and Schiemann (2012) argue that certain circumstances can be used as defense or as a justification for the use of torture, especially if its purpose it to extract vital security information. However, the South Africa law diverges from this notion as it supports the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), by declaring that no exceptional circumstances are to be accepted as justification for torture.

The legislation further indicates that, even if the suspect was instructed by a superior to use torture, that person is still liable for an offence. The fact that the suspect is a representative of the government or a police agency does not mean that his/her action is justifiable under any circumstances. This is reflected in Act No. 13 of 2013 (section (3)) which states:

> *"Despite any other law to contrary, including customary international law, the fact that an accused person (a) [I]s or was head of state or government, a member of a government of parliament, an elected representative or a government official; or (b) [W]as under a legal obligation to obey a manifestly unlawful order of a government or superior, [I]s either a defence to a charge of committing an offence referred to in this section, nor a ground for any possible reduction of sentence, once that person has been convicted of such offence."*

On the strength of the Constitution of the Republic of South Africa, laws have been designed that attempt to cover all the angles of abuse and torture; in this context, specific factors to be considered in the case of torture provide direction for investigators and prosecutors to assess this issue. However, even though the legal framework has argued against torture in South Africa, according to the IPID annual reports, for the past five years 418 cases of torture were reported in the period of 2012 to 2016. Dissel et al. (2009) argue that despite official commitment to eradicate torture and acts of cruel and inhuman degrading treatment (CIDT) in South Africa, both remain a problem based on the assumption that victims of torture and CIDT are people who are less fortunate in society such as criminals, prisoners and migrants. Dissel et al. (2009) are of the view that police officers at times apply torture in the knowledge that they are violating the law, but it appears that torture and CIDT have become routine occurrences. The latter authors corroborate Cingranelli-Richards's (2006) finding that acts of torture are still practised frequently in post-apartheid South Africa.

There are minor differences in the South African criminal law. According to Fernandez (2003), South African criminal law does not define the crime of torture as an independent crime. Cases of torture are dealt with under the common-law crimes of assault, or assault with the intention to cause grievous bodily harm, or as a form of intimidation. This is evident in the IPID Act No. 1 of 2011, Section 28(1)(f), which indicate that the IPID investigates "any complaints of torture or assault against a police officer in the execution of his or her duties". In the IPID statistical report, torture is categorised as another form of assault. In South Africa, an accused is prosecuted only after the victim has laid a charge and the complaint has been investigated, whereas under the Convention Against Torture, a state is obliged to investigate even on the basis of a belief that an act of torture has been committed in any territory under its jurisdiction.

Since giving effect to the Republic's obligation in terms of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, amendments were made to the Criminal Act of 1977 and the Prevention of Organised Crime Act of 1998. Table 2.1 highlights these amendments.

Table 2.1: Amendments in respect to two existing acts

Number and year of law	Short Title	Extent of Amendment of Schedule
Act No. 51 of 1997	Criminal Act of 1977	The amendment of Schedule 1 and Parts II and III of Schedule 2, by the inclusion of the offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act of 2012.
Act No. 121 of 1998	Prevention of Organised Crime Act of 1998	The amendment of Schedule 1 by the inclusion of the offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act of 2012.

Source: RSA Prevention and Combating of Torture of Persons Bill (2012)

2.3 Legislative Framework that Guides the SAPS and the IPID

In the context of this study, torture and assault as a criminal offence is committed by members of the SAPS. The independent oversight body that is responsible for ensuring that the police are accountable for their criminal behaviour of torture and assault is the IPID. Therefore, it is important to put the legislative framework that guides SAPS behaviour as well as the obligations of the IPID into perspective.

2.3.1 South African Police Service Act No. 64 of 1995 (referred to as the SAPS Act)

Members of the SAPS are government officials and Act 13 of 2013 section 4(3)(a) indicates that if torture is committed by a government official, it is an offence that is punishable by law. It is therefore important to review the SAPS mandate in terms of the apprehension of suspects and the procurement of evidence. Section 205 (3) of the Constitution of the Republic of South Africa (RSA, 1996) stipulates that the objectives of the police are "to prevent, combat and investigate crime, maintain public order, protect and secure the people of the Republic and their property, and to uphold and enforce the law". In the process of fulfilling these objectives, section 12 (d) and (e) reminds the police that everyone has the right to security, is free from being tortured in any way and not to be treated in a cruel, unhuman, or degrading way. This means that the police have to be mindful that the manner in which they fulfil the objectives of the law and ensure that they do not violate the human rights of the people they serve.

To ensure that that section 12 of the Constitution is adhered to by the police, section 13 (1) of the SAPS Act (RSA, 1995) holds that, subject to the Constitution and with regard to the fundamental rights of person, a member of the SAPS "may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official". This means that the police are obliged to ensure that communities are safe and protected and that order is maintained without violating the human rights of people by applying any form of torture or punishment that is cruel and degrading to the person who is being tortured. The Bill of Rights, which is entrenched in the Constitution of the Republic of South Africa (RSA, 1996) contains provisions that guarantee the rights to all individuals. In terms of section 7(2) of the Constitution, the state is required to "respect, protect, promote and fulfil the rights in the Bill of Rights". This provision obligates the police as state employees to ensure that they do not violate the human rights of everyone when they are executing their duties.

2.3.2 Legislative mandate of the Independent Police Investigative Directorate

The IPID Act No. 1 of 2011 gives effect to the provision of sections 206 (6) of the Constitution, ensuring independent oversight of the South African Police Service (SAPS) and Municipal Police Service (MPS). The IPID resides under the Ministry of Police and functions independently of SAPS. Berg (2013) mentions that it is the responsibility of this independent oversight body to instil practices that engender accountability among all police members. To ensure that this practice of police accountability is instilled in South Africa, IPID Act No. 1 of 2011, section 2(a) to (g), includes provisions for the independent and impartial investigation of

criminal offences that were allegedly committed by members of the SAPS and the Municipal Police Services. These provisions mandate the IPID: (i) to make disciplinary recommendations to the SAPS resulting from investigations conducted by the Directorate; and (ii) to enhance accountability and transparency among SAPS and Municipal Police Service personnel in accordance with the principles of the Constitution. Therefore, independence and impartial investigations, disciplinary recommendations, and the enhancement of accountability are pivotal in solving criminal offences committed by members of these organisations as outlined in section 28(1) of the IPID Act No. 1 of 2011. Torture and assault are specifically addressed in section 28(1)(f) of the IPID mandate. The aim of the independent complaint oversight body is not only to establish accountability, but also to identify and eliminate the root causes of what led to the violations committed by police officers (Amnesty International, 2015). The IPID is therefore mandated to identify the root causes of deaths that occur while suspects are in police custody, deaths as a result of police actions, any complaint of rape in police custody, any complaint of torture and assault, as well as allegations of corruption such as bribery and fraud.

2.4 The Nature Torture and Assault under Police Custody

2.4.1 Torture

Torture is defined as "an act that seeks to annihilate the victim's personality and [to deny] the inherent dignity of the human being" (United Nations 2002:3). The UN definition of torture focuses on the rationale for torture, and it points out that a suspect "can be intentionally tortured for the purpose of obtaining information or as a form of punishment (The United Nations General Assembly, 1984). Acts of torture are rooted in historical political and power relations. Cohen (2011) states that torturing regimes tend to be denied as wrongdoing by perpetrators. Particular patterns of denial are identifiable such as literal denial ('We don't torture'); interpretative denial ('What we do isn't torture'); and implicatory denial ('Torture was the work of rogues' and/or 'Our enemies deserve what is done to them'). In the pre-modern era, the use of torture was in some instances acknowledged and corrected. In some countries where widespread torture against political activists had occurred, there was a stated commitment to eradicate torture (Dissel et al., 2009:5), irrespective of whether it was regarded as an effective measure or not.

Various acts, conducts or events may be considered as torture in certain situation. Garcia (2009) argue that there are no single definitions existing under the international law. The Advisory Service on International Humanitarian Law (2014) states that the majority of the international

bodies defined torture by focusing on four elements of torture that are most found in the international definitions of torture and these elements includes, (1) nature of torture, (2) the intention of the perpetrator, (3) the purpose, and (4) the involvement of public official. Torture include both acts and omissions that intentionally inflicts severe pain and suffering to the victim with the purpose of extracting confessions or for obtaining from the victim or third person information or for punishment or discrimination and the perpetrators is a public official.

However, the question is what elements characterize the practice of torture that renders it a criminal offence by police officials. Schiemann (2012:12) indicates that there is a debate over what exactly constitutes torture. For example, British interrogation techniques that were employed in Northern Ireland are cited. Garcia (2009) states that, according to the European Court of Human Rights (ECHR), five interrogation techniques were sometimes used in combination or individually. These forms of torture are briefly described below.

- Wall-standing: Detainees had to remain for lengthy periods in a 'stress position', which was a spread-eagled position against a wall, with fingers put high above the head against the wall, the legs spread apart and the feet back, causing the victim to stand on his toes with the weight of the body mainly on the fingers.
- Hooding: A black or navy coloured bag was put over the detainee's head and, at least initially, it was kept there all the time except during interrogation.
- Subjection to noise: Pending interrogation, a detainee would be secluded in a room where there was a continuous loud and hissing noise.
- Deprivation of sleep: Pending interrogations, a detainee would be deprived of sleep.
- Deprivation of food and drink: A detainee would be subjected to a reduced and unpleasant diet pending interrogation.

According to Garcia (2009) the ECHR considered the abovementioned techniques to have violated the European Convention's prohibition of "inhuman or degrading treatment", but it found that the interrogation methods "did not constitute torture".

The second case that is cited are Israeli interrogation techniques employed against Palestinian security detainees. Garcia (2009) reveals that, according to the CAT Committee, these interrogation methods included the following:

- restraining in very painful conditions;
- hooding under special conditions;

- sounding of loud music for prolonged periods;
- sleep deprivation for prolonged periods;
- threats, including death threats;
- violent shaking; and
- using cold air to chill.

The CAT Committee considered these interrogation techniques constituted torture as defined by CAT Article 1 (Garcia, 2009). Even though these two cases share some similar interrogation techniques, there were contradicting views on whether these techniques constituted torture or not.

Recent literature has elucidated a combination of techniques used by the police in interrogating suspects and witnesses. Parry (2003:240-41) lists these methods of torture as follows:

> *"Being beaten, being given electric shocks, forced to stand, hooded, for long hours, where the victim then fell, broke his/her leg and [was] denied medical treatment for a period of time, having one's hooded head put into foul water until nearly asphyxiated, having objects forced into one's anus, enduring a fractured jaw while being kept hanging for hours by the arms, thrown on the floor, rape, [and] threats of physical mutilation."*

Miller (2011) expands on Parry's (2003) list:

> *"Torture includes such practices as searing with hot irons, burning at the stake, electric shock treatment to the genitals, cutting out parts of the body e.g., [the] tongue, entrails or genitals, severe beatings, suspending by the legs with arms tied behind [the] back, applying thumbscrews, inserting a needle under the fingernails, drilling through an unanesthetized tooth, making a person crouch for hours in the 'Z' position, waterboarding (submersion in water or dousing to produce the sensation of drowning), and denying food, water or sleep for days or weeks on end."*

The methods of torture mentioned by Parry (2003) and Miller (2011) have been used for different purposes, which is in line with the UN definition which states that torture is "caused intentionally for a purpose" (The United Nations General Assembly, 1984). Parry (2003:247) asserts that "the impulse to torture may derive from the identification of the torture victim with a larger threat to social order or values". When the social order is threatened, torture may function as a method of maintaining order. History reveals that among the Greeks and in the Roman Republic, torture was almost entirely confined to slaves. The reason for torturing slaves was that the slave was entirely at the mercy if his master and would naturally testify in accordance with the master's wishes, unless some stronger incentives to speak the truth were

brought to bear (Lowell, 1897:220). This reason for torture in history seems to be similar and relevant to motives of torture in the modern age.

According to South Africa (2013:4), torture may be intentionally inflicted on a person for such purposes as to obtain information or a confession from him or her. A Ghanaian police officer summarised this motive as follows: "I tell you…because they seem to know every procedure that goes on in the police station [...] So it's like, if you don't beat them, you will not get the information you need instantly, to move on it" (Beek & Golfert, 2012:492). However, the US Senator John McCain in the study that was conducted by Blakely (2007) said "believe me, they would say anything towards the end, no matter whether they did it or not. Anything". This suggest that the information that is obtained through intimidation and torture is not guaranteed to be true. Due to fear of being tortured, they provide information that they think the police wants to hear in order to make the pain stop.

South Africa (2013:4), provides that torture "may be inflicted as a form of punishing a suspect for an act he or she or any other person has committed, is suspected of having committed or is planning to commit [and] it is also used to intimidate or coerce him or her or any other person to do, or to refrain from doing, anything; or for any reason based on discrimination of any kind". In Chan's (2000: 88) view, the police use violence in the cells as punishment. This is clearly an illegal form of violence, but in reality the distinction between subduing a suspect and punishing him is not clear. Parry (2003) argues that the purpose of torture may be to extract money from the victim or someone has given the police money to thrash him/her, usually in revenge. Torture is also perpetrated as "an [animal-like form] of brutality; because of a desire for revenge; and as a method of individual or collective assertion that creates an illusionary sense of overcoming vulnerability by the thorough domination of others" (Parry, 2003:247). However, Jefferson (2009:13) argues that the use of violence should not be understood as merely instrumental; it is also born out of genuine moral conviction and, in this researcher's view, and innate desire to hurt and overpower.

2.4.2 Conceptualization and the nature of assault

According to Burchell and Milton (2007:680), South African law defines assault as "unlawfully and intentionally applying force to the person of another or inspiring a belief in the other person that force is immediately to be applied to him or her". This definition highlights that a person who is assaulted does not have to be a victim of physical application of force, but that emotional or psychological intimidation by making the person believe that force will be used against him

or her is also considered as assault. Bezuidenhout (2011:210) states that assault also constitutes inspiring fear in the mind of a person who is made to believe that he/she will suffer physical harm.

Based on South African crime statistics, there are two common types of assault, namely common assault and assault with the intent to do grievous bodily harm (GBH). Common assault in the context of police brutality occurs when a police officer uses force to compel an individual that is resisting arrest when s/he defends his/her private property and person (Burchell & Milton, 2007:682). The perpetrators may include resisting burglars, trespassers, thieves or robbers. Common assault then occurs when a police officer applies undue force which causes bruising, wounding, breaking or mutilation, and may also be committed indirectly by setting a dog on a suspect (Bezuidenhout, 2011:211). However, since the South African law considers both direct and indirect application of force, the mere intention to frighten a person is sufficient to constitute assault.

Assault with the intent to do grievous bodily harm is defined on the bases of serious physical injuries that are inflicted on another person. Burchell and Milton (2007:688) contend that in the context of assault with the intent to do grievous bodily harm, the victim has to suffer serious injuries that interfere with the health of the victim. Bezuidenhout (2011:211) argues that even if the perpetrator intended to cause grievous injuries but actually caused only slight or no injuries, the perpetrator (police officer) is still guilty of assault with the intent to do grievous bodily harm. Most studies in the field of police brutality tended to concentrate on the use of lethal force, which is an important issue. However, it is equally important to remember that the vast majority of violent encounters between citizens and the police concern lesser degrees of force to effect an arrest (Phillips & Smith, 2000). On a day-to-day basis, suspects respond with violence when police procedures involve violence. Beek and Golfert (2012) assert that citizens often resist arrest by using violence. However, Reiss (1968a) provides insight into the use of improper and unnecessary physical assault on citizens by officers even when they were not refusing arrest. It is noteworthy that Reiss proposed these elements almost fifty years ago, yet they are still relevant in this day and age when assault continues virtually unabated.

It is argued that proper use of force involves being able to make an arrest; therefore, once a police officer has physically accosted a citizen but has failed to make an arrest, it is considered as an unlawful act. Grimaldi (2011:249) contends that the purpose of the infliction of potentially intensifying pain may be based on the police officer's desire to dominate the victim.

In such instances, the police are no longer working within the boundaries of their mandate. This is supported by Reiss's (1968a) second indicator of assault as he states that "if the citizen being arrested did not, by word or deed, resist the police officer, force should be used only if it is necessary to make the arrest". This can be illustrated in a case that was reported by eNCA news:

> *"Sifundo, Sabelo, Xolani and Zamokwakhe were accused on ATM bombing. The four civilians were confused about the allegations and they denied the allegations. The police handcuffed them and led them outside and they did not resist arrest [but] the police officers opened the back of the van and asked the dog to bite them*. (Mistaken identity leads to death of man at hands of police, 2016).

Such an incident is considered a case of assault based on Reiss's (1968a) and Grimaldi's (2011) assertion that the license given to police officers to use force to arrest suspects who resist arrest can at times be used for other purpose that are outside the mandate of the use of force. This argument asserts that it is only when a citizen being arrested resists whether by word or deed, then force should be used only if it is necessary to make the arrest. Moreover, instruments of restraint "that may include handcuffs, chains, irons and straitjackets should never be applied as a punishment and chains or irons should not be used as restraints but should only be used for the purpose of preventing escape during a transfer, on medical grounds or as a last resort to prevent a person from injuring themselves or others or from damaging property" (United Nations, 2002:36).

A good example of incidences of assault with the intent to do grievous bodily harm may be when a police officer deliberately and physically injures a civilian. IPID reports indicate that this type of assault is the second highest reported at 30% in the 2012/13 financial year, 772 (19.7%) cases reported in the 2013/14 financial year, and 545 (14.7%) cases reported in the 2014/15 financial year. This relates to South Africa's Criminal Procedure Act No. 51 of 1977, section 49 (2) which indicates that the use of force is to "overcome the resistance or to prevent the suspect from fleeing". Once it no longer serves the purpose of subduing resistance, then it is considered assault (Reiss, 1968a).

Reiss (1968a) explains that if a police officer, even though there was resistance to the arrest, could easily have restrained the citizen in other ways, but decided to assault a citizen, then the police officer is guilty of a criminal offence against the citizen because the use of force is a last resort. Parry (2003:258) suggests that "coercion must be a last resort, not a routine practice, even with a person as little deserving of our sympathy and as likely to have specific knowledge"

(of a crime). The latter is one of the biggest challenges that we are currently facing in the policing system, as coercion has become routine and the norm in most police departments. This comment is supported by an incident involving Gideon Koeberg reported in the Cape Argus:

> *"Gideon, who was mentally challenged, was arrested on suspicion that he had committed a robbery. He was allegedly carrying an iron bar at the time, to fend off attacks from dogs, and when accosted by [the] police [he] 'freaked out' and tried to defend himself with the iron bar. He was allegedly assaulted and taken into custody by two policemen and a traffic officer…photographs showed that he was covered in bruises and bleeding from his ear"* (Authorities stall over cell death, 2006).

In relation to this incident, it can be argued that the police could have used other proper measures to restrain the suspect instead of letting the dogs out to bite him. In this context, Reiss (1968a) argues that in situations where a large number of police officers were present and could have assisted in subduing the suspect in the police station, in the lockup facility or in an interrogation room but failed to do so, then this can be judged as assault on a citizen. Parry (2003:258) states that when a police officer decides to use force as a necessity for defence, then the reason for defence should be valid. The use of violence cannot be a common modus operandi of the police; rather, it should be based on valid reasons for self-defence in a given situation.

2.4.2.1 Situational factors that influence assault

Using police officers as participants, Phillips and Smith (2000) found that five non-lethal forms of force were used by police officers namely kicking, punching, grabbing, pushing and baton-hitting. The later study revealed that 62% admitted that they had grabbed a citizen; 53% indicated they had pushed or poked a citizen; 44% indicated that they had punched a citizen: and only 23% of the participants admitted that they had kicked a citizen during the execution of their duties. Only 15% had hit citizens with a baton. These findings suggest that the use of different forms of assault has become part and parcel of the modus operandi of the police when executing their duties.

However, the methods referred to above are outside the scope of making arrests and are linked to the abuse of power. Burchell and Milton (2007) regard the use of such forms of force as unacceptable as they result in suspects being bruised and wounded. Phillips and Smith (2000) argue that there is a clear qualitative difference amongst the five types of physical force in terms of their seriousness. When categorising these arrest procedures on the basis of seriousness, acts such as grabs and grapples and pushes and pokes represent minor physical

force and are more likely to arise in situations where the police officer is trying to restrain a suspect. However, punches, kicks and baton hits can be classified as major forms of physical force that indicate an aggressive and violent mode of operating. If applied, the latter forms mean that the police abuse their power by applying major physical force and aggressive and violent methods that are considered to be illegal. Balko (2006) explains that both minor physical force and aggressive and violent modes of operating are apparent in drug and firearm raids.

2.5 Perpetrator-Centred Perspectives on Torture and Assault

Hajjar (2000:13) advises that to understand police torture and assault, one must not seek the explanation through a victim-centred perspective because victims are on the receiving end which means they do not reveal the purposes or assess the benefits derived from their pain and suffering. Rather, a perpetrator-centred perspective should be used which can assist in understanding the purposes that these forms of assault and torture served in a lawful society. The most important question that has been analysed by scholars is whether torture achieves its aim of punishment and extracting information from suspects. In this context, a police officer in Beek and Golfert's (2012:489) study indicated that assault and torture served as a form of educating suspects, as the police officer stated: "You have to use the chicotte [small leather whip]. That way they won't forget! If they think of a police officer, they will at once remember their flesh." This means that from the perspective of the police, different forms of torture or assault are used to educate suspects and the public 'not mess with the police'. The perception is that physical pain is an efficient tool to educate the public.

Despite recent legal attempts to eradicate torture and protect every citizen's rights, Beek and Golfert (2012:489) reveal that the idea of torture and assault as efficient forms of education have been embraced by police officers, gendarmeries and the public who believe that beating is an effective form of educating a person. Even some victims share the perception that these forms of violence are legal on the basis that they are used instead of regular legal proceedings. Parry's (2003:238) study found that some US officials asserted that "if you don't violate someone's human rights some of the time, you probably aren't doing your job". Attitudes such as this lead to the perpetuation of police torture and assault even in democratic contexts, to a point that police use of violence is considered by Beek and Golfert (2012:489) as being more instrumental than punitive in the sense that some police officers regard it as useful.

Police use violence as an effective technique to deal with suspects even though detectives who use violence during interrogations are highly insecure because they are aware of its illegality and contested legitimacy. Thus, Hajjar (2000:9) states that there is an efficacious relationship between torture and the truth. Parry (2003:237) acknowledges that the police "have treated some detainees roughly, including a little bit of 'smacky-face' to provide 'extra encouragement' during interrogations…our guys may kick them around a little bit in the adrenaline of the immediate aftermath". In essence, police criminal behaviour in terms of torture is supported by some police officials, the public, and victims challenges the effectiveness of the law which, at the same time, is also challenged by the people it was intended to protect.

Based on the findings of their study, Beek and Golfert (2012) conclude the following:

> "Before they start beating a suspect, detectives call the suspect a 'criminal', a legitimate target. By beating suspects from behind, they protect their identity and avoid face-to-face confrontations. In this way, the suspect becomes the subject of a bureaucratic routine."

Their findings were contrary to Chan's (2000: 96) arguments that police officers inflict pain for joy and pleasure. In Parry's (2003) view, when social order is threatened, torture may function as a method of individual or collective assertion that creates an illusionary sense of overcoming vulnerability through the domination of others. This illusive logic has led to most police officers considering the torture and assault of suspects as an effective mode of operating when dealing with suspects. In Beek and Golfert's (2012) study, it was indicated by a detective that "colleagues and superiors supervise it closely, and 'if you do it out of pleasure, the big men will sack you'." In some instances it seems that the justification for the use of torture is to extract information from suspects for the purpose of joy and pleasure. However, Parry (2003:248) raises concern that when such criminal behaviour by police officers are treated as legal in the sense of being an official policy, "the victims' suffering and pain become irrelevant to the law and they become further isolated at the moment they are most in need of the law's protection". Therefore "torture mocks the law, using punishment to gather evidence to justify the punishment already inflicted, rather than using evidence already gathered to justify punishment" (Parry, 2003:247).

2.6 The Use of Torture and Assault in the Police Organisation: A Paradox

Perez (2011:xii) emphasises that the issue of torture and assault in the police organisation is fraught with paradox. The scholar explains this argument as follows:

> "The paradoxical problem is that the law does not always provide the police with sufficient tools to accomplish their numerous tasks. What 'works' is not necessarily legal, and conversely, that which is legal does not necessarily 'work'. Police officers must consistently utilize non-legal, quasi-legal, and semi-legal means to deter crime, keep peace, and maintain order in society" (Perez, 2011:xii).

The dilemma the police face is that they do not know whether to use force in order to prevent crime, or not to use violence and accept the increasing rate of crime and its negative impact on society. The belief that legal strategies are not effective in addressing the issue of public unlawful behaviour has led to findings that are evident in the study conducted by Beek and Golfert (2012), who found that the use of violence by police officers also manifests in superiors' decisions or instructions such as: "I don't want that you beat him; just overpower him"; or "Beat him, that's the right thing". The main issue with such statements is that a police officer is instructed to overpower the suspect, but there are no explicit specifications on how the police is to overpower a suspect without inflicting pain or wounds. On the basis of instructions by superior officers who condone – and even order − the beating of a suspect, it becomes a grey area whether such an instruction from a superior makes assault a lawful act or not. Instructions that lacked specification in terms of the use of force have resulted police officers being severely sanctioned and even brought to trial, while their superior officers have been let off the hook. A police officer commented as follows in this regard:

> *"Your own commanders will put you into the cells. And even later your commanders will say: 'You were wrong! You should have used minimal force!' And the civilians, they know! You are in front of the crowd and they will say mockingly: 'We know that you can't use your rifle!' They will even slap you and then tell you to your face: 'Use minimal force, Officer!' When you are assaulted, the commanders don't want you to report it"* (Beek & Golfert, 2012).

This creates what scholars such as Manning (1995), Paoline III (2003; 2007); Steyn (2007) express as "an issue of the existence of unpredictable and punitive supervisory as well as the ambiguity of the police role". Beek and Golfert (2012) argue that popular discourses and organizational conditions form an inconsistent framework of violence, in the sense that popular discourse and conditions within the organization provide definitions of whether the use of violence is legal and morally justified, or legitimate. In support, Luhmann (2000) argues that

legality and legitimacy can be conflicting normative patterns, in the sense that one country may view torture and assault as a legitimate instrument whereas in another country, or even department within the same country, that moral discourse may seem illegitimate or excessive. On the other hand, Reemtsma (2004:351) argues that the police's authority to use reasonably necessary force can be described as "a scope of arbitrariness and is always ambiguous". This ambiguity is clearly illustrated in Beek and Golfert's (2012) assertion that "beating a thief...is unmistakably expected in popular moral discourse, but is prohibited and described as excessive in another − the official legal − discourse".

Bayley (1996:277) has reached the conclusion that there is no clear difference between brutality and non-brutality because, according to Beek and Golfert's (2012) assertion, "legally and morally justified violence can be a source of long-term legitimacy; however, because of multiple possible readings of a specific situation (according to different, conflicting moral and legal discourses), the very same situation can potentially have delegitimizing effects". This is the main dilemma that police officials deal with on a daily basis in their occupation. Hence, Behrends (2003:162) asserts that, in each incident of police use of violence, "police officers walk a very fine line" and in such cases police find themselves assaulting suspects. However, Beek and Golfert (2012) are of the view that this is caused by the low legitimacy of police work in most situations − not as a result of the police's use of violence, but of perceived corruption and a lack of impartiality.

2.7 Are Police Torture and Assault effective operational methods?

Scholars have contradicting views on whether torture and assault are effective operational procedures for the interrogation, punishment and restraining of suspects. In a study that was conducted by Blakeley (2007), the findings revealed that those who justify torture assume it works because it is believed that a suspect will respond to torture because they would rather speak up than suffer physical torment that they are subjected to. Some scholars argue that torture is an effective tool to extract important information. For example, Bagaric and Clarke (2007:35) believe that "torture should be confined to situations where the right to life is imperilled". The justification of the use of torture lies in the outcomes that could be reached if the torturer succeeds in extracting the perceived value of the information. Similarly, Grimaldi (2011:6) argues that the application of the practices mentioned by Miller (2011) and Parry (2003) that are used as modes of punishment are not essentially wrong on the basis that "if an individual has not engaged in harmful behaviour, then punishment of said individual constitutes

not only a hurt but also a harm, because it is justified...if punishment is justified, then it does not constitute a harm". In Grimaldi's view, the premise of torture lies in its justification; thus once a police official can justify his/her use of torture to punish or to get a confession, then it is not a wrongful act or cannot be considered a criminal offence.

However, Schiemann (2012:4) states that "if torture is used as a last resort by a democratic state on known guilty, knowledgeable detainees who fail to provide valuable information via other methods, and in cases where innocent lives are threatened, then it should be used infrequently". Two points are raised by Schiemann: that is, police violence should be last resort and be infrequent. Correspondingly, Bagaric and Clarke (2007:36) provide justification for the use of torture as they assert that torture is to be used but with a minimum degree of pain, as it necessary to ensure that information is obtained from the suspect. In their view, limited pain eliminates the element that makes it a criminal offence or a violation of individual human rights. Blackeley (2007) state that the effectiveness of torture rely on the intended fear instilled on the victim of torture. Whether the pain is less or severe, the perceived fear of being tortured makes the victim to cooperate, which tends to make torture to be considered as effective method of operating.

Furthermore, Koppl (2006:91 cited in Schiemann, 2012:4) believes that if the use of interrogational torture is an "epistemic system, and the measure of an epistemic system's success is its reliability, [then] a high ratio of true judgements to total judgements [will be achieved]". The argument is that if it can be validated that the system of torture will be effective and provide valuable information, then it is a good method to use. Nonetheless, Feinberg (1984:26) provides a good point when he states that "it is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor and there is probably no other means that is [sic] equally effective at no greater cost to other values". In this way the use of torture will work as a general deterrence which seeks to punish people as a way to make other people who are planning to do similar crime be aware of the consequences of the crime. In support, Parry (2003:247) argues that if torture is applied as a form of punishment, then it will gradually become a ritual and once it functions as a ritual, then legal definitions aimed at official state policies and goals will remain inadequate.

Burchell and Milton (2007:682) argue that there are circumstances in which assault can be justified and not be considered as an unlawful act. Such circumstances include assault that is

inflicted when an individual (suspect) resists arrest. Once the police have been given permission to arrest an individual, which means it is not an unlawful arrest, then the police are within their rights to use force in their attempt to arrest the suspect. Furthermore, Bezuidehout (2011:211) argues that, in the case of assault with the intent to do grievous bodily harm, if the perpetrator inflicted grievous injuries but without intention to do so, then the perpetrators cannot be charged for GBH because if there is an absence of 'intention' then that does not constitute GBH crime. Beek and Golfert (2012:490) state that, during arrests, police officers try to avoid violence or at least limit its use, and they use violence in such a way that bystanders consider it as legitimate because it is a way of protecting themselves from legal and public criticism. In this way police officers tend adjust the practice of violence by carefully weaving it into the situational context, oscillating between instrumental and punitive dimensions, depending on the status of the target and the visibility of their actions.

2.8 Citizens' Characteristics that Influence Police Torture and Assault

Phillips and Smith (2000) argue that the nature of incidences of non-lethal violence is closely associated with citizens' characteristics. A study that was conducted by Harris (2009) revealed that 39% of improper force cases involved open defiance of police authority, whereas 27% of the improper force cases involved a suspect who was intoxicated. In a study that was conducted by Phillips and Smith (2000), it was found that police officers used non-lethal violence in incidences where civilians provoked police officers, whereas others were disrespectful towards these officers. These findings indicate that in some cases, suspects instigate violence and are then punched or beaten. The role of the suspect in cases of assault was also illustrated by Friedrich cited by Harris (2009) who examined suspects' characteristics. He explored eleven situational variables, and the findings indicated that both reasonable and improper force was more likely when a suspect was involved in a serious offense, was antagonistic towards the police, or appeared agitated and/or drunk.

When focusing on the location of the use of improper force, variables such as gender, race and class of the suspect, the suspect's sobriety as well as the number of officers and citizens present during the encounter also play a role in the use of improper force by the police (Harris, 2009). In relation to the location of the use of improper force, the latter author's findings that were based on 37 identified cases of improper force revealed that 37% of these situations occurred in the patrol car or the precinct station, whereas two out of three most severe cases of improper force, in which suspects were injured so badly as to require hospitalization, occurred in the

police lockup (Harris, 2009:33). These findings strongly suggest that cases of torture and assault occur not only on the streets, but in police cells as well. Balko (2006:1) argues that, in cases of raids, "intentionally inflicted confusion and disorientation, forced entry [onto the premises or] into the home, and the overwhelming show of force makes [sic] these raids excessively volatile".

2.9 The Influence of Police Culture on Torture and Assault by Police Officials

Culture denotes humans' way of living and influences how people think and behave. Therefore, understanding the culture of the police aids in comprehending how police operate. Therefore, by examining police torture and assault, and more specifically the underlying elements that influence police operation to include torture and assault, this study analysed facets of police culture. In Paoline III's (2003:200) view, police culture "is a valuable concept in understanding many aspects of policing from learning the ropes, day-to-day functioning, investigating forms of police deviance, keeping the police accountable, and the success of reform efforts". In support, Terpstra and Schaape (2013) note that police culture "is frequently used as a taken-for-granted explanation of all kinds of police aspects such as lack of accountability, resistance to innovation, adverse treatment of members of ethnic minorities, or lack of compliance with formal rules".

Many scholars have noted that the main obstruction to reforming the police is the culture that exists among police officials (Dean, 1995; Goldsmith, 1990; Greene, 2000; Skagan & Hartnett, 1997; Sparrow, Moore, & Kennedy, 1990). Instead of ameliorating behaviour, the culture strengthens traditional policing practices that stress the use of force and threat of violence as the most appropriate and officious ways to solve problems. This culture then manifests in unlawful behaviour such as torturing and assaulting members of the community. Some researchers aver that the culture frequently endorses the violation of citizens' rights and the abuse of police authority (Brown, 1998; Kappeler, Sluder, & Alpert, 1998; Skolnick & Fyfe, 1993). The current challenge is to eradicate the misuse of police authority that results in torture and assault as such behaviour encourages the violation of human rights and perpetuates the use of violence by members of the SAPS when executing their duties. When the human rights of citizens are violated by police officials, it means the police are no longer serving the public in accordance with the democratic policing principles.

Roberg, Crank, and Kuykendall (2000:265) define police culture as "the occupational beliefs and values that are shared by officers across the whole country". Moreover, police culture is derived from "conspicuous qualities of two interdependent but paradoxical surroundings within which police perform their duty, [namely] the organizational and occupational settings" (p. 265). An analysis of these two settings may assist the scholar in understanding why the police revert to torturing and assaulting suspects in the execution of their duties. In this context, Simmons (2010) highlights three key components that characterise police culture, which are (i) the widespread belief among various levels and ranks of police officers that some violence or brutality is a necessary part of effective policing; (ii) the lack of effective identification; and (iv) disciplinary problems among police officers. Police attitudes also contribute to the distinct culture to which they adhere, and further elements of this culture are discussed below.

2.9.1 Violence as part of the job

Police officers experience strain within their occupational surroundings where they are exposed to potential dangers or physical harm as they work on the streets and they face the harsh reality that they may be killed or injured in the line of duty. Simmons (2010:386) contends that many police officers adopt the belief that a certain amount of violence is necessary to protect themselves and to execute their duties as officers. However, the extent of that 'necessary violence' has often been uncontrollable, to the extent that many police officers' actions have become a criminal offence due to their severity and impact on the public. An example is police assault with the intent to do grievous bodily harm. This type of assault cannot be explained as 'necessary violence'; rather, it is a criminal offence, even more so because it is initiated and fuelled by the prevailing perception that violence is 'part of the job'. Muir (1977) avers that police work is unique in that the police are given license to threaten drastic harm to others. However, when extrajudicial killings are commissioned by police officials in their line of duty, then deprofessionalisation, a lack of accountability and a return to an authoritarian policing style are the result.

Many debates have been held about the 'license' given to police officials. Westly (1970) indicates that police officers believe that they are justified in using force, whereas Summons (2010:388) identified nine categories under which police officers justify their violent behaviour. These categories are: "disrespect for the police; when impossible to avoid; to obtain information; to make an arrest; for the hardened criminal; when you know a man is guilty; for sex criminals; for self-protection; and when pressure is on you".

In the presence of a militarized approach to policing, danger is a stronger driver for violence than coercive authority is for restraint. In Skolnick's (1994) view, danger is such an integral part of police officers' lives to a point where it induces anger and frustration towards the public. This makes it difficult for the police to serve citizens with respect and care; rather, it is a sense of danger that drives them to policing styles that encourage misuse of coercive authority as well as threats of violence as a way of dealing with the source of danger. In addition, Kappeler et al. (1998) note that the element of danger that is present in the police occupational setting unites police officers while at the same time separating them from the main source of danger, which is the public. Because it is against the law to use excessive force, police officials usually rely on one another for protection. This unity among police officers results in coping strategies such as protecting one another against those who do not value their lives or occupation. It is in this context that Paoline III (2003) asserts that the police culture develops and evolves as police officials confront situations collectively. This means that, in order to respond to their threatening real-life situations effectively, they develop unique attitudes, values and norms that equip them with emotional and psychological coping mechanisms. A gnawing question is whether the fact that police use violence and brutality helps in eradicating the danger that they face in many communities, as police statistics suggest otherwise.

2.9.2 Ineffective supervision of and discipline among police officers

In the presence of a code of silence and aggressive policing styles in the police organisational setting, ineffective supervisory and inadequate discipline may very well contribute to a police culture that facilitates police misconduct (Simmons, 2010:388). IPID reports indicate that there is a significant number of police officials who engage in criminal offences, especially in the use of excessive force against the public such as torture, assault and killing. Simmons (2010:388) states that police department managers covertly condone this behaviour "through a pattern of lax supervision and inadequate investigation of complaints". Investigation processes are important as they are strategies to ensure that the police are held accountable for their actions. Simmons (2010:390) suggests that various measures should be taken to avoid covering up unacceptable police conduct, such as:

- excluding evidence that was illegally obtained from criminal suspects;
- imposing civil sanctions on police officers engaged in wrongdoing;
- imposing municipal liability for police misconduct;
- prosecuting officers who were engaged in misconduct under the law;

- performing internal investigations of police misconduct; and
- implementing effective internal disciplinary measures.

Scholars have noted that culture could also be used as a constructive tool in reforming the police (Crank, 1997; Skogan & Hartnett, 1977) as well as in regulating and preventing inappropriate police conduct (Goldsmith, 1990; Kappeler et al., 1998). Therefore, in order to eradicate police acts of torture and assault, the notion that violence and the use of force may be used in the performance of their duties should be eradicated through constructive intervention programmes.

2.10 The Principle of Police Accountability

To understand the relevance of the IPID strategies that have been implemented to improve police accountability at the individual level, it is important to comprehend the principle of police accountability as presented by different scholars. An important actor in the security sector is the police, whose functions are to prevent and detect crime, to maintain public order, and to provide assistance to the public. In order to carry out these functions, the police have certain powers, such as the power to arrest and detain and the power to use force (Herbert, 2006). It is the exclusive control of the use of force and power to arrest that places the police in a unique and sensitive position, and for this reason sufficient control mechanisms are essential to make certain that these powers are consistently used in the public interest. However, the United Nations Office on Drugs and Crime (2011) states that there are certain key challenges in the execution of their mandate, which means finding a balance between:

a) serving the state, who must serve the public interest and who scrutinizes the police in terms of how they do their work and hold them accountable for any errors during the execution of their duties;

b) serving the public, with its potentially varying community needs and high levels of violence that pose a potential danger to the police; and
c) being professional in their attempts to maintain order, prevent crime and enforce the law.

Therefore, a balance needs to be struck between serving the police, the public and the state. Failure to find this balance opens a gap for police officials to use their power to arrest and to use force inappropriately. Hence, accountability measures are required to ensure that police

officials find a balance in their occupational context so that they will avoid using torture and assault when they arrest and detain suspects.

The term 'accountability' refers to, among other things, the conduct of individual officers in their interactions with citizens (e.g., courtesy, respect, fairness, equal protection) and the nature and quality of the general services delivered to the public (e.g., crime control, order maintenance, and miscellaneous services) (Keenan & Walker, 2005:190). Accountability means that, in a democratic society, the police should treat all people with respect, fairness and equal treatment. At the same time they should answer for their conduct, particularly in cases of alleged misconduct.

Accountability is an important element in policing. Citizens usually required that their police force is accountable; however, a gnawing question is how can the citizens of a democracy control the behaviour of the police? Herbert (2006: 482) argues that the root of debates about the power of the police lies in the question how the police should stand in relation to the citizenry. There are conflicting answers to this question. Inevitably, concerns about potential police abuse of authority often reinforce call on notions of police accountability because a state that claims to be democratic must be answerable to the public, and therefore the police must, to some extent, be rendered subservient to the citizenry and to some degree of citizen control. Given that the police have historically modelled themselves on the military in terms of their hierarchical structure, discipline, uniforms and the potential and actual use of lethal force (Wren, 2005), they still resemble the military to some extent (Kraska, 2007).

It is not surprising that even in the most democratic of regimes there is a level of concern that the police force needs to be accountable to the citizenry and the government (Hughes & Cox, 2010:2). Stone and Ward (2000:15) argue that the police in a democratic dispensation must be accountable for how they attempt to protect the public, how they respond to reports of crime, and the results they achieve in terms of public safety. This means that the police must be accountable both for how they behave in the execution of their duties and in the protection of public safety. However, in practice police forces and individual police officers have accountability regimes that are complicated and far-reaching (Hughes & Coz, 2010). Herbert (2006:482) argues that the coercive power of the police both threatens and strengthens their legitimacy.

United Nations Office on Drugs and Crime (2011) accountability involves a system of internal and external checks and balances aimed at ensuring that the police perform the functions

expected of them to a high standard and are held responsible if they fail to do so. There are different systems that apply to ensure police accountability such as civil claims and criminal and disciplinary convictions. The aim of police accountability is to prevent the police from misusing their powers, prevent political authorities from misusing their control over the police, and most importantly, to enhance public confidence and (re-)establish police legitimacy. This means that when there is a lack of police accountability, three things might happen;

- The police will continue to misuse their power;
- Political authorities will misuse their control over the police; and
- The public will lose trust in the police.

Accountable policing means that the police accept being questioned about their decisions and actions and accept the consequences of being found guilty of misconduct, including sanctions and having to compensate victims. Not only do the police need to accept external civilian oversight, but the community needs to perceive that they are effectively held to account for their operations and actions, as well as misconduct, in a transparent and fair way (Herbert, 2006).

Police integrity is "the product of both actual police behaviour and the public perception of that behaviour" (Police Foundation, 1994:2). Public perceptions of police behaviour have been an effective instrument to measure police accountability and lawfulness. Police accountability can be thought of in terms of two issues: (i) whether the behaviour that the public views as a trust violation is acknowledged by the police agency and/or governing bodies; and (ii) whether something is being done to correct the acknowledged problem. Police accountability at any place and time is said to be strong when the answers to these two questions are in the affirmative

However, the behaviour of the police is influenced by the nature of the communities they serve. Therefore, the threat of potential danger in the occupational settings in which the police function cannot be overlooked. The police of necessity perform a variety of difficult and dangerous jobs that often put them in conflict with people. They then respond with violence and excessive use of force to protect themselves from the potential danger that exists and to fulfil their obligations to the citizens. Keenan and Walker (2005:192) argue that even though violence may erupt in perhaps only a few incidents, an important number of these situations call for the police to exercise force that is nearly always coercive and sometime deadly. Therefore, given that the police are the only agents in society who are legally granted "the

unique capacity to use force" as an inherent part of their job, the police are obligated to use of force under special situations (Poaline III, 2003:201).

In light of the last statement, police officers have argued against the questioning of their conduct. Keenan and Walker, (2005:190) contend that police officers argue that they "must be granted the widest latitude to exercise their discretion in handling difficult and often dangerous situations, and should not be second-guessed if a decision appears in retrospect to have been incorrect". However, if as many as 5 500 reports of cases of police misconduct are issued to the IPID annually, then something is wrong and action must be taken. If the police are not held accountable, the number of reported cases of police criminal offences will increase and reach a point from which it will be difficult to return. In support of the last statement, Keenan and Walker (2005) argue that if police officers have a greater responsibility to conduct themselves in the most professional manner regardless of their special power to use force, then it arguably follows that they should be subject to the closest scrutiny regarding alleged acts of misconduct. But in their defence, police officers have argued that, if this were the case, officers will be reluctant to take aggressive action to fight crime as is often necessary, and that this will result in more suffering among and victimisation of the community if officers' decisions in the field are subject to scrutiny. However, Bovens (2002:463) argues that accountability is important as it can help to ensure that the legitimacy of the government remains intact. Loader and Walker (2001) further indicate that effective police accountability measures are pivotal in achieving the police goals of lawfulness and legitimacy.

Police officers can be violators of the human rights that they are supposed to respect, protect, maintain and uphold if they commit acts that range from the unlawful use of force or firearms, torture, to unlawful detention or arrests. Human rights violations by the police can occur in a variety of situations and in any given country. Amnesty International (2015) explains that the discretionary powers of individual police officers, as well as the operational discretion of the police, bear an additional risk of abuse of power, even though to ensure effective policing discretional powers are important. However, it is equally pivotal to ensure effective scrutiny of police conduct to prevent impunity. This is done by oversight mechanisms that serve to balance the powers of law enforcement officials and to ensure that individuals operate within the law which, in turn, will lead to the prevention of misconduct or a disciplinary or criminal response to particular incidents. It will also contribute to improving policing on a wider scale, which in turn will strengthen the legitimacy of the police agency. According to Tulloch (2017), police oversight agents, the police and the community are inextricably intertwined. The

independent and external mechanism (the IPID) that was created in South Africa to specifically receive complaints of abuse by SAPS members thus forms an integral component of the system of accountability that should shape police reform in South Africa's new democracy (Pigou, 2002).

2.11 IPID's Strategies to ensure Police Accountability

Berg (2013:144) states that it can be argued that one of the most direct attempts to instil practices of accountability within the police was the creation of an independent complaints mechanism in 1997. This body was known as the Independent Complaints Directorate (ICD), which is currently functioning as the Independent Police Investigative Directorate (IPID). The IPID Act No. 1 of 2011 gives effect to the provision of sections 206 (6) of the Constitution. One of the objectives of the Act is "to enhance accountability and transparency of the SAPS and the Municipal Police Services in accordance with the principles of the Constitution". This means one of the goals of IPID is to improve accountability, which is described by Walker (2005) as a difficult and enduring problem.

According to IPID Annual Report (2015:27), to strengthen the IPID's oversight role over the police service and to ensure policing that is committed to promoting respect for the rule of law and human dignity, they rely on conducting investigations, making appropriate recommendations on investigations that are reported to the SAPS and NPA, and submitting feedback to complaints. The improvement of accountability and the reduction of police impunity depend on the potential of the independent oversight body to investigate misconduct effectively without bias, and therefore their findings are often considered highly credible by the public. They also investigate individual complaints or incidents of misconduct and review general policies and procedures.

2.11.1 System to file complaints against the police

It is important that the public is able to file complaints against the police. Smith (2013:199) states that any system to lodge complaints is an accountability mechanism that is established with the aim of identifying rogue officers for the purpose of maintaining a disciplined and effective police force by holding law enforcement officials accountable for their actions in criminal and disciplinary proceeding that are taken based on the evidence obtained in the investigation of a compliant. UNODC (2011) contends that members of the public may feel

reluctant to file a complaint against the police with the police themselves, and therefore there should be alternatives such as the possibility of filing a complaint with a body that is independent of the police or the prosecutor's office.

Fortunately, section 206 (6) of the Constitution (RSA, 1996) makes provision for the establishment of an independent police complaints body and stipulates that:

> *"…on receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province."*

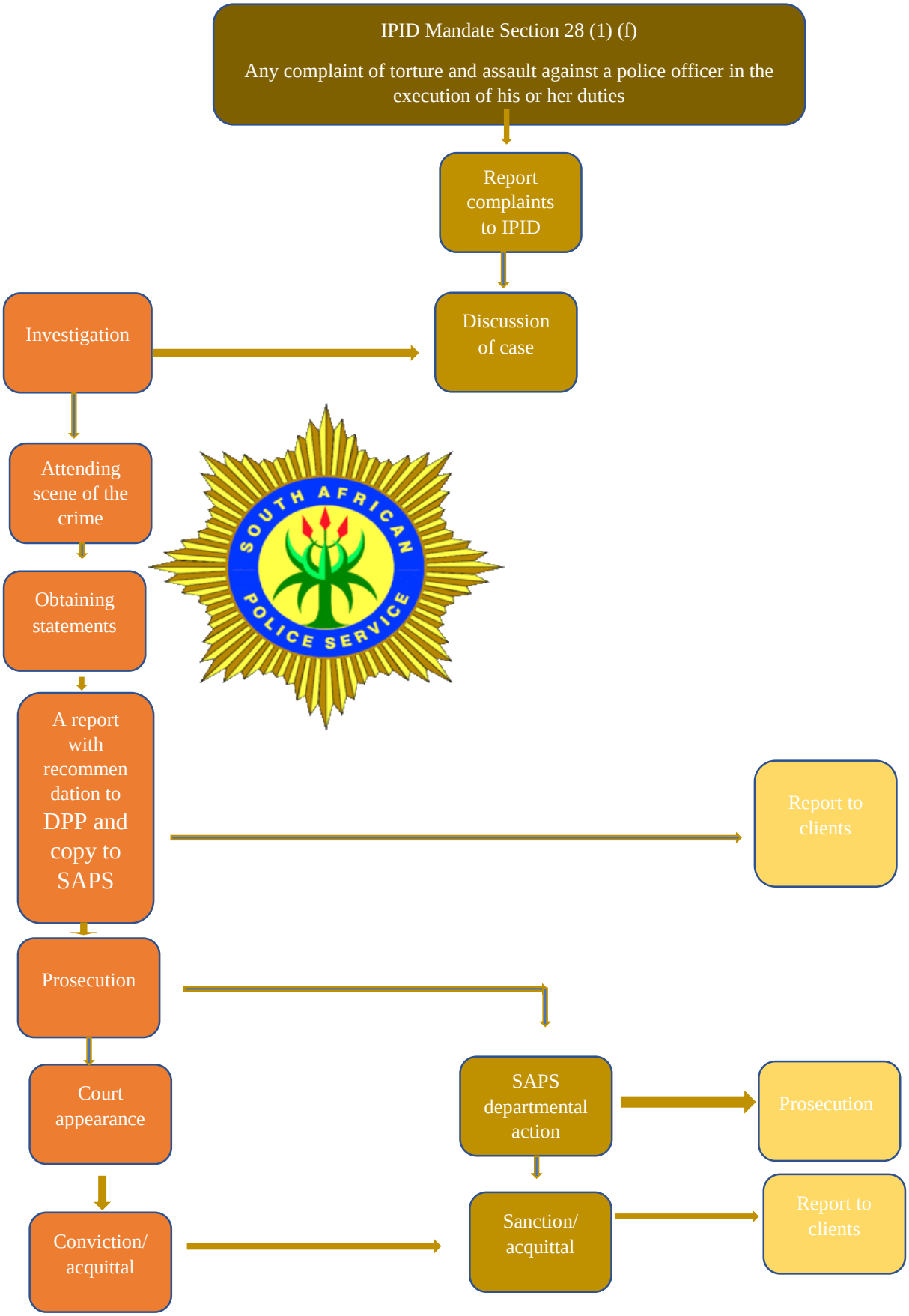
In South Africa, the IPID which is an independent oversight organisation is responsible for accepting any complaints made by the public against a police officer. This system minimises chances of secondary victimisation and fear of intimidation by the police. According to Smith (2013), this body improves trust and confidence in the complaints system. The system of lodging a complaint is an initial stage of accountability, in a sense that without the public reporting cases of criminal behaviour by police officers, there will be no accountability measures such as disciplinary or prosecution sanctions. Most importantly, this complaints body serves to protect human rights (Smith, 2013:199). Therefore, to operationalise Act No. 13 of 2013 section (4)(2), the initial step for a civilian to lodge a complaint is important. Since the establishment of the IPID in 2012, more than 60% of the complaints received pertained to assault.

According to the IPID, a complaint may be lodged by any person, either as a victim, witness or representative, or non-governmental and community-based organisations. There are various ways to lodge a complaint such as lodging a complaint in person, by telephone, per letter or email to any IPID office. A complainant will then be required to fill in a complaint registration form (see Appendix A). Figure 2.1 indicates how the complaint will be dealt with once a public member has lodged it in writing. It shows the different steps that the IPID take and the different strategies that the IPID rely on when dealing with a complaint.

Smith (2013:199) states that "complaints procedures serve to address citizens' grievances with the police" as it is difficult for the public to report their grievances to the same people that are their perpetrators. According to UNODC (2011), complaints against the police should be lodged because of the following reasons:

- In the absence of a complaint, an investigation is unlikely to be initiated.

Figure 2.1: Flow diagram to illustrate how a case of torture and assault will be dealt with



- If there is no complaint, the police will miss a potential learning opportunity that could lead to an improvement in services.
- The lack of a complaint may lead to impunity for the offender and a culture of impunity in the longer term.

According to UNODC (2011), the aim of a complaint procedure is to prevent impunity and restore or enhance public confidence. Smith (2013:199) states that the police complaints procedure acts as a regulatory mechanism in a sense that it allows a network comprising a number of policing partners to work together to maintain an effective police force. It is often observed that the number of complaints increases rather than decreases if police enhance their efforts to improve the integrity and the complaints procedure in particular (UNODC, 2011).

In Smith's (2013:199) view, an investigative directorate that focuses on complaints against the police was established with the purpose of facilitating and demonstrating police responsiveness to the communities that they serve. This is in line with democratic policing principles that require the police to a public service and not a militarized clone of warmongering armies. In this context, the substance, volume and handling of complaints have developed as measures to elicit public trust and confidence in the police. For the complaints system to be effective, it must contribute significantly to good police-community relations. Complainants are therefore encouraged to come forward with their grievances and their legitimate concerns are acknowledged. The strategy that the IPID uses to ensure the effectiveness of the complaints system is to submit feedback to complainants within 30 days of the closure of the investigation.

2.11.2 Sections 29 and 33 of the IPID mandate

The IPID institution was established in response to the shortfalls of the ICD, which means it was created as an improved version of the ICD. One of the changes is the section that obligates members of the SAPS to cooperate with IPID investigations. Section 29 (1) and (2) of Act No.1 of 2011 stipulates that any member of the South African Police Service or Municipal Police Services "must notify the Directorate of any matters referred to in section 28 (l)(a) to (f) within 24 hours. This suggests that the IPID does not only receive complaints that are directly reported by the public to their offices, but they also investigate cases that are referred by the SAPS to them. Members of the SAPS or MPS are obligated to provide their full cooperation to the IPID, for example when they need assistance with identification parades. They also have to avail

themselves for the taking of affidavits or affirmed declarations, give evidence, produce any document in their possession or under their control which has a bearing on the matter being investigated. Berg (2013) states that the police were not forced to cooperate in the ICD investigations, hence other police officers were not cooperative. However, the implementation of section 29 was to ensure that the IPID does not experience the challenge of lack of cooperation from members of the SAPS.

The IPID Act No. 1 of 2011, Section 29 aims at improving police accountability by ensuring that the police are on board. It also addresses the police culture of solidarity and the so-called 'blue wall of silence' by forcing police officers to be cooperative in any investigation process that involves a colleague. The effectiveness of section 29 is ensured by the establishment of section 33 of the IPID Act, which imposes sanctions for police officers' failure to adhere to section 29 of the IPID mandate. Section 33(3) of Act No.1 of 2011 (RSA, 2011) states: "Any police officer who fails to comply with section 29 is guilty of an offence and liable to conviction of a fine or to imprisonment for a period not exceeding two years". This section ensures that police officers, both those involved in a case as well as the ones that are not involved in a case but are aware of the incident, will provide the IPID investigating officer with valuable information that they might be needed in the investigation.

2.11.3 The investigation process dealing with complaints

To fulfil the obligation highlighted in section 4 (1) and (2) of Act No. 13 of 2013 (RSA, 2013) which states that a police officer who uses torture is guilty of a criminal offence, a person who is found guilty is eligible for imprisonment. To reach this point, the complaint has to be investigated to determine if the alleged perpetrator is guilty or not and if he/she should be prosecuted. Once a complaint has been lodged and the case has been discussed, (see Figure 2.1), the next step is to investigate the case. This involves attending the crime scene and obtaining statements. In order to achieve effective accountability, it is essential that police misconduct is thoroughly investigated (Amnesty International, 2015). One of the strategic goals of the IPID as an independent oversight body is to conduct quality investigations without fear of favour and to investigate cases effectively and efficiently. The quality of the investigations should ensure their effective completion. According to Hopkins (2009:19), the purpose of an investigation is twofold. Firstly, it must lead to an effective individual remedy;

and secondly, the lessons learned from it must be used by the police agency to reduce the likelihood of abuse of rights in the future.

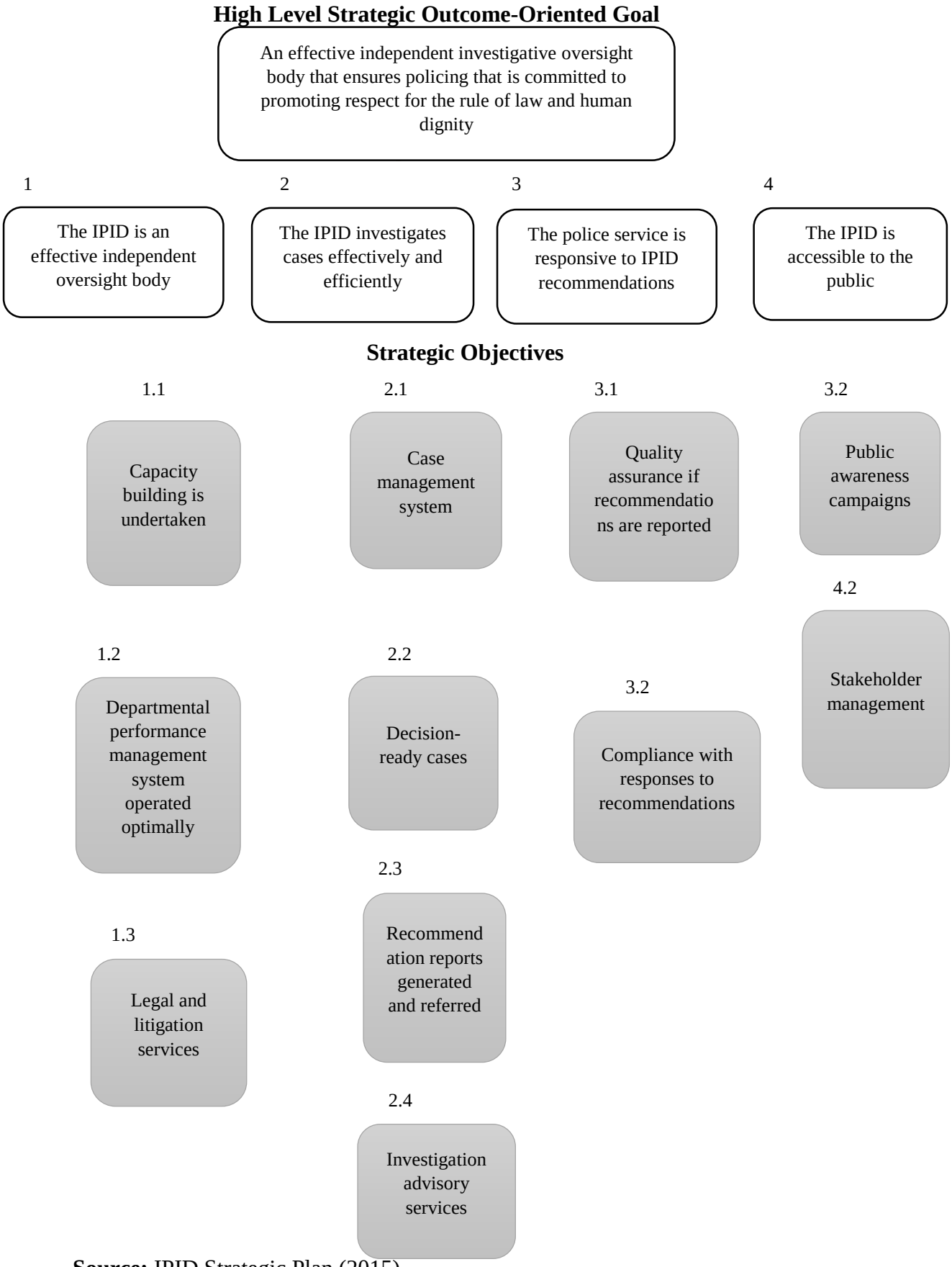
In De Boer and Fernhout's (2008) view, when it concerns external review procedures with a civilian element, there are three models:

- Civilian review model: investigation, adjudication and recommendation of punishment.
- Civilian input: the recording and investigation of complaints.
- Civilian monitor: oversight of police complaints administration.

Figure 2.2 of the IPID model is in line with the three models mentioned above that emphasise the importance of an investigation into complaints. Stelfox (2009) considers that the aim of the investigation and of the investigators is not merely to generate knowledge, but rather to gather evidence with regards to knowledge. Knowledge and the truth of the matter are what concern the courts. The process of obtaining evidence, according to the Technical Working Group on Crime Scene Investigation (2013), also includes collecting anything that can be used as evidence in the crime scene and, in the process of procuring this evidence, the investigator has to remove persons from the crime scene and limits the number of persons who enter the crime scene. This must be done to protect the crime scene and prevent individuals from destroying physical evidence by restricting movement. According to Hopkins (2009:23), investigators should be able to gather uncorrupted evidence to determine whether the complaint had substance and to be able to identify and punish those who were responsible. According to Amnesty International (2015), investigators must hear any person and obtain any information and any documents necessary for assessing situations falling within its competence. It should also submit reports on its findings and issue recommendations.

Miller (2009:23) emphasises that the aims of criminal investigations are to bring offenders to justice, crime prevention, intelligence-gathering, protection of witnesses, asset recovery, ensuring reasonable clear-up, and [realistic] conviction rates. This requires that investigators are able to control and identify all individuals at the scene such as suspects, witnesses, bystanders, victims, as well as family and friends with the aim of interviewing them to best use their reported experiences to benefit the overall investigation (Technical Working Group on Crime Scene Investigation, 2013). This may assist in establishing where the victim is at risk or whether the witness needs protection. The New York American Civil Liberties Union notes

Figure 2.5: Independent Police Investigative Directorate Logic Model



Source: IPID Strategic Plan (2015)

that "[P]atterns and practices of police misconduct will not become apparent without the rigorous investigation of individual complaints. [In the absence] of thorough investigation it is unlikely that discipline of an individual police officer or reforms of lawed policing practices will occur" (Hopkins, 2009:20). Thorough investigations create greater public confidence, and therefore investigations against the police have to be carried out properly. This means that strategies to investigate complaints against police officials are a critical function of the independent oversight body. A point that does not seem to receive focus in the literature is that police officials may also be falsely accused for various reasons, two of which are to exert revenge or to weaken police investigative powers in a particular case. It is also for the latter reasons that IPID investigations have to be thorough, fair and fast.

According to Bruce (2007), one purpose of the oversight body is to reassure members of the public that investigations against the police are carried out properly, even though there is a tendency for members of the public to suspect that investigations carried out by police agencies to investigate their own members are not necessarily carried out vigorously or impartially. In the view of Bruce (2007), this suspicion is not without basis, as police throughout the world have been known to protect their colleagues from being held accountable under the law. In Hopkin's (2009:24) view, the effectiveness of the investigation strategy as an accountability measure lies in the element of public scrutiny of the investigation or the result generated from that investigation as a way to ensure accountability in practice as well as in theory. However, the most important issue is to maintain public confidence in the authorities as they will take note of the fact that authorities adhere to the rule of law and prevent any tolerance of unlawful acts.

The core responsibility of the IPID as an independent oversight body in investigating especially cases of torture committed by members of the SAPS is, according to the Technical Working Group on Crime Scene Investigation (2013), to preserve the scene with minimal contamination and disturbance of physical evidence. This can be done by being aware of any persons or vehicles leaving the crime scene, approaching the scene cautiously, scanning the entire area to thoroughly assess the scene, and noting any possible secondary crime scenes and being aware of any persons and vehicles in the vicinity that may be related to the crime. The main responsibility of the investigating officer is to be observant when approaching, entering, and exiting a crime scene.

Evidence collected from a crime scene, including statements by the victim(s), suspect(s), witnesses, family members and friends, makes up the knowledge that Miller (2014:24) considers to be information that can prove whether or not a suspect is factually guilty and, if so, to recommend that the suspect be prosecuted. But the issue of stating whether the suspect is legally guilty is a matter for the courts to determine. Thus, Hopkins (2009:20) argues that public complaints and investigations of the police are "the gateway to criminal or disciplinary sanctions against the perpetrator of human rights abuses". Figure 2.2 indicates that the IPID is tasked to ensure effective and efficient investigation of the complaints. Bruce (2007) indicates that the purpose of oversight bodies is to ensure that investigations into the police are carried out effectively, thereby making certain that cases in which it is alleged or possible that there has been criminality on the part of the police are investigated properly.

2.11.4 Recommendations for disciplinary and criminal investigations by IPID

Upon the conclusion of an investigation, IPID makes appropriate recommendations to SAPS management who, in turn, must initiate disciplinary proceedings in compliance with section 30 of the IPID Act. The SAPS is also required to report to the Minister of Police on the recommendations forwarded to it by the IPID (IPID Annual Report, 2015:41). Section 30 of the IPID Act obligates the National Commissioner to act on or to respond to the IPID's disciplinary recommendations in the following manner:

> *(a) "…within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof 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 thereof to the Executive Director and the Secretary for Police; and*
> (c) *Immediately on finalisation of any disciplinary matter referred to it by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary*" (IPID Annual Report, 2015:16).

In accordance with the IPID mandate, the IPID responsibilities are mainly based on criminal offences, but sanctions for criminal offences are not always criminal convictions; there are also disciplinary convictions for criminal offences. The United Nations Office of Drugs and Crime (2011) defines a disciplinary offence as "neglect of duty", which is an umbrella term for any

kind of misconduct by a police officer that is not a criminal offence as defined by national criminal law, including misconduct such as being rude to colleagues or members of the public, using company equipment for private gain, harassing or bullying colleagues, insubordination, and disrespect for standard operational procedures. Disciplinary convictions are imposed for criminal offences such as possession of suspected property, assault, improper performance on duty, non-compliance with section 29 of the IPID Act, murder, unlawful discharge of a firearm, and corruption. A case where a police official used unnecessary force such as being found guilty of assault and/or torture may receive a disciplinary conviction or be prosecuted.

Muntingh and Dereymaeker (2013:37) conclude, based on their analysis of SAPS disciplinary cases, that the inefficiency of the internal disciplinary process of the SAPS is an area of concern. The penalties applicable in a disciplinary process may range from verbal warnings, written warnings, cuts in salary, working without pay and demotion to dismissal, and are usually less intrusive than criminal sanctions, such as fines or imprisonment (United Nations Office of Drugs and Crime, 2011). Moreover, a disciplinary offence may be easier to prove than a criminal offence, and can thus constitute the first stage in the accountability process. In this context, Muntingh and Dereymaeker (2013:37) argue that "disciplinary actions are under-utilised in the SAPS.

Excessive use of force has been one of the main challenges in policing linked with police failure to comply with standard operational procedures, such as failing to register a detainee properly. While this technically constitutes neglect of duty, it can facilitate serious offences including human rights violations such as torture in custody (United Nations Office of Drugs and Crime, 2011). If there is information that a criminal offence has been committed but the criminal investigation authorities find that there is not enough evidence to charge the suspected officer, he or she may still be subjected to disciplinary procedures.

Section 7 of the IPID Act requires the IPID to refer recommendations in criminal matters to the National Prosecuting Authority (IPID Annual Report, 2015:41). Under criminal law, to impose a criminal conviction, liability for the offence must be proved beyond reasonable doubt, whereas in the context of disciplinary procedures it is sufficient to prove it probable that the offence occurred and was committed by the officer in question. However, when a disciplinary investigation leads to a criminal investigation, "the disciplinary procedure must be frozen until the results of the criminal investigation are available" (United Nations Office of Drugs and Crime, 2011). After the investigation has been concluded, its findings are sent to either the

police supervisor in the case of disciplinary proceedings, or to a prosecutor for criminal offences. If sent to a prosecutor, the procedures are similar to those for common criminal procedures, although police officers may face more severe sanctions for a crime committed during the performance of police duties (United Nations Office of Drugs and Crime, 2011). Criminal sanctions are imposed for criminal offences such as murder, rape, assault, attempted murder, corruption, undue discharge of an official firearm, and defeating the ends of justice.

Even though the IPID organisation is an important oversight system, it has been criticised for focusing on punishing individual wrongdoers on a case-by-case basis rather than focusing on deeper, systemic organisational problems that are rooted in police culture (Berg, 2013). Prenzler and Ronken (2001) therefore suggest that independent oversight mechanisms should have the ability to penetrate police institutions "given the strength of the police culture and police knowledge of how to evade prosecution". It is argued that instead of asking who is to blame, the question should ask how offences can be prevented from recurring in light of the conditions that were present when the problem took place (Berg & Shearing, 2011).

2.12 Are SAPS Members Enjoying de facto Impunity?

Muntingh and Dereymaeker (2013) investigated the issue of impunity in South Africa and addressed, among other things, the problem of discipline and prosecution by the SAPS and the NPA. The United Nations (UN) Commission on Human Rights (1996) defines impunity as "the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether criminal, civil, or administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims." However, in the study entitled '*Understanding impunity in South African law enforcement agencies*' by Muntingh and Dereymaeker (2013:8), it was found that in the South African context "the problem of impunity is not so much one of impossibility, but rather the high improbability of bringing perpetrators to account". This argument attributes to the rationale that, in South Africa, it does happen that once an investigation has been completed and the police officer in question has been found guilty. But this is not always the case, as there is low probability of police officials being held accountable.

Muntingh and Dereymaeker (2013) further provide some of the indicators of impunity, which are as follows:

- The number of prosecutions initiated against law enforcement officials compared to the number of complaints lodged is one such indicator.
- The extent to which and quantum of internal disciplinary actions instituted.
- The sanctions imposed for either criminal cases or disciplinary proceedings, are indicators of how human rights violations are regarded by the sanctioning authority.
- How the executive responds to input and recommendations from designated oversight structures as well as the broader civil society is an indicator of impunity.

South Africa is no exception to these indicators of impunity, as IPID reports that are published annually reveal that SAPS members are enjoying de facto impunity. The culture of impunity develops and becomes entrenched in the police culture due to failure of police managers, prosecutors and the courts to take appropriate action against criminal or disciplinary offences committed by an officer. Impunity is also a result of the reluctance of citizens to complain about the police, which may be caused by their lack of confidence in the complaints system (Smith, 2013:199) or, in this researcher's view, in their ignorance of where to lay a complaint as it makes no sense to complain about the police to the police. Principle 20 of the 1996 UN report of the Independent Expert on the Question of Impunity makes it clear that impunity is a consequence of "the failure of the state to meet their [sic] obligations under international law to investigate violations, take appropriate measures in respect of the perpetrators, particularly in the area of justice, ensure that they are prosecuted and tried and provide the victims with effective remedies" (UNODC, 2011).

In South Africa, the current issue is the high failure rate of efforts to ensure that police officials are prosecuted and tried for their unlawful behaviour against civilians when an individual has filed a claim. Dissel et al. (2009) states that although South Africa is more transparent than some countries, investigations into acts of torture and CIDT, as well as follow up prosecutions, remain problematic. In support of this statement, Dereymaeker (2015) argues that law enforcement officials enjoy de facto impunity for illegal acts they commit and highlights the fact that police officials enjoy de facto financial, disciplinary and prosecutorial impunity for their behaviour which has an impact on the future conduct of many other police officials. Similarly, Smith (2013:199) states that a complaints system is aimed at providing protection against the development of cultures of impunity within the police services. He argues that once these measures have been proved to be ineffective, then the culture of impunity develops and is sustained.

Advocacy Forum Nepal (2011) indicates that failure to hold perpetrators to account creates an environment in which those in power know they can act as they please. IPID statistics reflect an increase and in other years a decrease in the reported cases of police torture and violence, but the fact remains that such acts occur unabatedly. Two explanations can be provided for this fluctuation. When reported cases increase, it may be because police officials are not disciplined and prosecuted for their unlawful behaviour and this encourages them to engage in further unlawful behaviour in the knowledge that they will not be brought to book. Conversely, a decrease in reported cases may be due to the public's lack of trust in the IPID's ability to investigate and prosecute SAPS members, hence they slowly lose confidence in the system and stop filing complaints against police members. This has a negative impact on the consolidation of the rule of law. Another possibility is of course that some elements of sanctioning, training and control over police officials are successful in curbing police deviant behaviour during certain periods.

Muntingh and Dereymaeker (2013) assert that the legislative framework presents no major obstacles to holding state officials accountable for gross human rights violations. However, it remains a rare event that officials are prosecuted and convicted for assaulting and torturing suspects to the point where their actions resulted in the death of these alleged perpetrators. When measuring the number of investigated cases of assault and torture by IPID against the number of disciplined, prosecuted and convicted police officials, it is evident that police officials are generally not held accountable for their actions and that the majority enjoy de facto impunity. The manner in which the NPA has dealt with human rights violations that were perpetrated by law enforcement officials clearly indicates that it is reluctant to prosecute these officials. However, the NPA has also not been called to account for this trend and asked to explain the reasons why recommendations by oversight structures to prosecute have, in the overwhelming majority of cases, not been followed (Muntingh & Dereymaeker, 2013).

2.13 The Challenges Encountered by the IPID

2.13.1 Lack of independence

With the establishment of the IPID, a question that has been plaguing various role-players is whether the new IPID would overcome the challenges faced by its predecessor, the ICD (Berg, 2013). For example, the IPID Annual Performance Plan (2017:13) lacks full independence investigative capacity and relies on the SAPS for technical, forensic and ballistic investigative support. A severe consequence of this is that its dependence on the SAPS may result it long

delays given the SAPS's forensic backlog as it still has its own public cases of crime to investigate (IPID Annual Performance Plan, 2017:13). This is against section 4 (1) of the IPID Act which emphasizes that the IPID Department must function independently from the SAPS. The issue of police dependence was noticed by evidence leaders during the Marikana Commission, as they criticised the IPID on the issue of its lack of personnel and experts as they had observed how the IPID investigating officers handled the crime scene.

Moreover, when the ICD was launched, there was no budget; as a result this body had to rely on the SAPS for resources and logistical assistance (Manby, 2000). This resulted in its budget increasing eightfold from 1997 to 2011 and its staff almost tripled (Berg, 2013). Also, from 1997 to 2012 the ICD made use of SAPS photographers and officers to collect evidence on their behalf, and they utilized the SAPS-run ballistics and/or DNA laboratories (Berg, 2013). This issue of lack of independence has not been resolved to date, as between 2013 and 2017, the IPID Annual Performance Plan (2016:14) reports that, in 2017, the IPID is not only dependent on the resources of the SAPS, but also on the services offered by specialists such as the Department of Health, especially in terms of post mortem examinations and filling in of the J88 form for victims of torture or assault cases. The IPID does not do its own forensic investigations nor does it carry out autopsies, but IPID investigators facilitate these situations. In this context, Hendricks and Musavengana (2010) assert that even though there was an increase in investigative resources, the facilities never attained a full contingent of IPID staff. Moreover, despite these increases in personnel and resources, the demand always seemed to outweigh the capacity to deliver, particularly with the steady rise in reported cases of police misconduct.

2.13.2 Lack of capacity and resource

The IPID is structured at national level with nine (9) provincial offices and nine (9) district offices in the respective provinces. Provincial offices are managed by a provincial head. The SAPS comprises 1 138 police stations with a number of satellite stations, particularly in rural and semi-urban areas. From 2011 to 2017, the total personnel strength of the SAPS stood at 193 692, consisting of 150 950 SAPS Act members and 42 742 Public Service Act members. The SAPS ratio to the population is 1:358 and IPID ratio to SAPS and MPS ratio is 1:1 100 (IPID Annual Performance Plan, 2017:13). At the start of its activities when this body was still operating as the ICD, it had to rely heavily on SAPS investigators (Berg, 2013), but in late 1997 the ICD began to recruit its own investigators (Manby, 2000), However, twenty years

later the ICD, now known as the IPID, still has a shortage of investigators as one investigator investigates misconducts of approximately 1 100 police officials at any given point.

2.14 Summary

The criminal acts of torture and assault are crimes that are punishable by law, as the South African legal framework protects it citizens against any cruel, inhuman and degrading treatment or punishment. It further established an oversight body that is mandated to investigate criminal offences committed by police officers with the aim to ensure police accountability. The discourse centred on the various views of scholars and revealed paradoxical perspectives in terms of the application of torture and assault as well as the effectiveness of interrogations into these phenomena. The issues of de facto impunity, challenges that are experienced by IPID investigative officers as well as the need for police accountability were extensively illuminated.

CHAPTER THREE

THEORETICAL FRAMEWORK

3.1 Introduction

This chapter presents the theoretical frameworks that informed this study in its exploration of police torture and assault as illegal acts committed by police officers. Barlow and Ferdinand (1992:13) express that the aim of utilising theories within the field of criminology is to provide explanations that attempt to address the question why crime occurs and to envisage the outset of criminal behaviour. These theories are not restricted to time or place. Hennick, Hutter and Bailey (2011:37) state that "research is never conducted 'out of the blue'; there is always a theory underlying data collection". The adopted theories that shaped this study were the symbolic interaction theory and the differential reinforcement theory. Thus, previously developed theoretical frameworks were aligned to criminal behaviour and used to complement, extend and verify the findings (Corbin & Strauss, 2008). Therefore, in the context of police torture and assault, the differential reinforcement theory emphasises how criminal behaviours such as torture and assault are maintained and why they remain persistent. The symbolic interaction theory emphasises the meaning that the police attach to the behaviour of suspects in relation to their interaction with such persons.

3.2 The Symbolic Interaction Theory

The symbolic interaction theory was developed by scholarly theorists such as Cooley (1902) and Mead (1934, 1938). The most important theorist of the symbolic interaction theory is George Herbert Mead. Aksan, Kisac, Aydin and Demirbuken (2009:902) state that the symbolic interaction theory "examines the meanings emerging from the mutual interaction of individuals in [a] social environment with other individuals". In line with the current study, the symbolic interaction theory emphasises that the meanings attached to the events of police torture and assault by police officers emerge as a result of the interaction of police officers with suspects. Therefore, it is theorised that the activities of the police and suspects occur predominately in response to one another or in relation to one another.

Kruger (1999:92) contends that symbolic interactionism is a social theory of philosophy that rests on four assumptions, namely that:

(a) people [re]act towards all things on the basis of the meanings that things have for them;
(b) those meanings are produced through social interaction between people in society;
(c) mutual role-taking is the mechanism of all social interaction and communication;
(d) the meanings of things are interpreted and modified by the individual person.

The discussion of this theory in relation to police behaviour resulting in torture and assault rests on these assumptions. Stryker (1959:113) expresses that humans do not respond to the environment as physically given, but to an environment as it is mediated through symbols such as facial expressions, words, gestures, sounds and actions, and that these symbols entail a plan of action, and they function in completing acts by reflecting the interests from which the acts stem. Blumer (1986) focuses on gestures as one of the symbols and provides the example that a gesture can be shaking of a fist as an indication of a possible attack. In the context of police torture and assault, a suspect may shake a fist at a police officer which, according to Beek and Gorfert (2012), signals a suspect's intended violence towards the police, and the police may then respond with acts of torture or assault.

Stryker (1959:113) argues that the individual who is the appropriate object does not "stand still when the two individuals interact but he, too, acts with reference to the first actor because people are active participants instead of being acted upon". In a case where a police officer initiates the interaction, a suspect as the appropriate object acts in response to police signals – i.e., based on the actions (or signals) of a police officer as the first actor when they cross paths. However, along the way in their interaction, a police officer may become the appropriate object that acts towards the actions (or signals) of the suspect. The interaction between the two (opposing) groups is therefore a social process in which people exchange symbols (Mead, 1938) that lead to particular responses.

Blumer (1986) further explains that gestures convey to the person who recognizes them an idea or intention of forthcoming action by the individual who makes these gestures. The person who then responds to these gestures organizes his/her response on the basis of what the gestures mean to him/her. This therefore means that, before a police officer acts or responds to a gesture made by a suspect (e.g., resisting an arrest or refusing to provide information), police officers must define the situation; that is, represent it to themselves in symbolic terms. Stryker (1959) terms the products of this defining behaviour as "definitions of the situations". The definition of the situation is derived from the gesture presented by the suspect that serves as an indication or sign of what the suspect is planning to do (e.g., fleeing the scene) as well as what he/she

wants the respondent (i.e., the police officer) to do or understand. The response of a police officer to the gestures of a suspect may be torture or assault based on the meaning or definition that the police officer attaches to the situation.

Thus, gestures have meaning for both the person who makes them and for the person at whom they are directed. Mead (1938) suggests a triadic nature of the meaning of gestures as they signify:

(a) what the person to whom they are directed is to do;
(b) what the person who is making the gesture plans to do; and
(c) the joint actions that are to arise by the articulation of the acts of both.

Stryker (1959:113) states that the human being is an actor as well as reactor and that, in this context, "symbols provide a basis for adjusting our activity before that later behaviour has occurred since [sic] they function in the context of the act in place of that which they symbolize, organize behaviour with reference to that which is symbolized [all sic]". In this way, the meaning that is attached to the gesture of the suspect which serves to symbolise the context of the act changes the behaviour that the police officer intends to do before the suspect behaved in a particular manner. For instance, the suspect may shake a fist (Blumer, 1986) as an indication of a possible attack. Therefore, social interaction between the police and the suspect shapes police conduct. Blumer (1986) states that social interaction is not just a means or a setting for the expression or release of human conduct, but it forms conduct.

Blumer (1986:8) also states that "the actions of other enter to set what one plans to do [sic], may oppose or prevent such plans, may require a revision of such plans, and may demand a very different set of such plans…one has to *fit* one's own line of activity in some manner to the actions of others". This is possible through the process of assuming the perspective of the other and then directing oneself accordingly, which is regarded in symbolic interactionism as a centrally important human process (Kruger, 1999). It may therefore be argued that this is how police conduct of torture and assault is formed. A police officer acts towards the suspect on the basis of the meanings that the suspect has for him/her, which may include everything that a police officer may note in his occupational setting. As Aksan et al. (2009:903) state, "meaning is created as a result of the interaction between people, and meaning allows people to produce some of the facts forming the sensory world". In cases of torture and assault, the meaning that

the police attach to the actions of a suspect results in the use of excessive force, abuse of authority and power of arrest by the police.

However, Kruger (1999) states that the meaning of things is interpreted and modified by the individual person. This means the meaning attached to suspects are modified through an interpretative process used by the police officer in dealing with the suspects that he comes across in the execution of his duties. For instance, through their interaction with suspects in a particular situation, the police may adopt the belief that a certain amount of violence is necessary to protect themselves. According to Simmons (2010:386), this belief is based on the assumption that the occupational surrounding of the police, where they interact with suspects, exposes them to potential dangers or physical harm as they work on the streets and they face the harsh reality that they may be killed or injured in the line of duty (Steyn & Meyer, 2007). Hence, Blumer (1986:8) states that "human beings in interacting with one another have to take account of what each other is doing or is about to do; they are forced to direct their own conduct or handle their situations in terms of what they take into account". In this way, the behaviour of suspects may play a role in the formation of police conduct or behaviour towards them, irrespective of whether it results in acceptable or unacceptable behaviour.

Furthermore, Stryker (1959:113) states that "an object becomes a stimulus when it serves to link impulses with satisfaction". For instance, by interacting with the police, a suspect links the desire of the police to arrest him or to obtain crucial information from him with the fulfilment of the expectation that the information will lead to the conviction of the perpetrators, and therefore, to oppose this desire, the suspect may refuse to comply. In this context Schiemann (2012:4) argues that a police officer may then torture a detainee (detainee is a stimulus) who fails to provide valuable information (impulse – the need to get information) in cases where innocent lives are threatened (police's satisfaction rely on the safety of the lives in danger). In this case, according to Stryker (1959:112), the human being does not simply respond to stimuli occurring outside himself, but to a stimulus that depends on the activity in which the organism is engaged. Aksan et al. (2009) highlight three assumptions of the symbolic interaction theory (see Table 3.1).

Table 3.1: Assumptions of the Symbolic Interaction Theory in Relation to Torture and Assault

Assumptions of the Symbolic Interaction Theory	Police Behaviour
Humans develop their attitude towards things according to the meaning that things propose to them.	Police officers develop their attitude towards torture and assault of suspects based on the meaning that the suspects propose to the police through their gestures (resisting arrest, confessing after being tortured or being violent towards the police).
These meanings are inferred from the interaction of one of them from its addresses.	The meaning is deduced from suspects' actions and police reasoning of those actions through interaction that takes place between the suspect and the police officer in the occupational setting.
Meanings of things are interpreted and modified by the individual person through an interpretive process.	The meaning of the 'gesture' of a suspect is interpreted and the meaning can also be changed by a police officer.

Source: Adapted from Aksan, Kisac, Aydin and Demirbuken (2009:903).

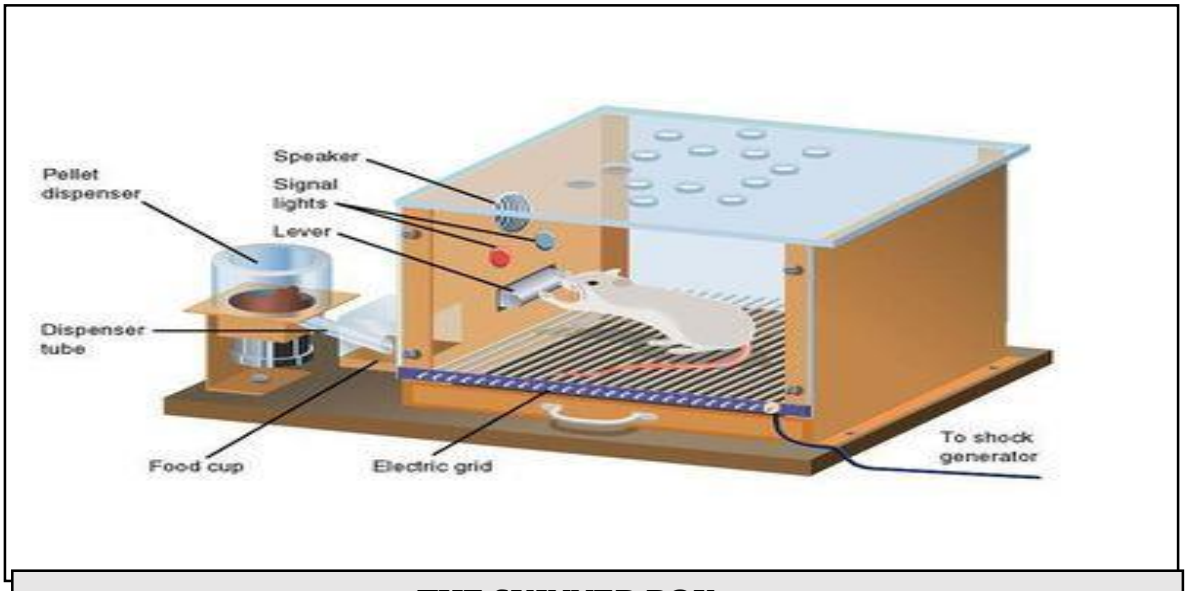
In summary, police officers engage in social interaction with suspects and these interactions occur characteristically and predominantly on a symbolic level, which means that, as the police and suspects encounter one another, they are inevitably required to take account of the actions of one another as each of them devises their own gestures and actions. These gestures and actions occur as a two-way process as one indicates to the other how to interpret and then act on the signals sent by the other.

3.3 The Theory of Differential Reinforcement

The differential reinforcement theory was first proposed by Robert Burguss and Ronald Akers in 1966. However, the theory's effect on behaviour stems from Burrhus Frederic Skinner (1953) operant conditioning model. Skinner's work was based on Thorndike's (1905) law of

effect, but Skinner introduced a new term into the law of effect, which is 'reinforcement'. Reinforcement was learned through a study of operant conditioning by Skinner (1948) when he conducted experiments using animals which he placed in a "Skinner box" (Figure 3.1). According to Newburn (2007:152), B. F. Skinner (1953) used the Skinner box because he believed that the best way to understand behaviour was to look at the causes of an action and its consequences. He therefore devised the Skinner box in which rat learnt to press a lever in order to obtain food. His study demonstrated how the consequences of particular actions shape future behaviour.

Figure 3.1: The Skinner Box



THE SKINNER BOX

Source: Adapted from Newburn (2007)

Newburn (2007:152) asserts that, "at the heart of operant learning theory, is the apparently simple idea that behaviour resulting in consequences felt to be desirable will tend to increase in frequency, whereas behaviour that results in undesirable outcomes will decrease". According to the differential reinforcement theory, criminal behaviour is operant behaviour; that is, there are behavioural patterns that take place in response to numerous rewards and outcomes. Jeffery (1965:295) states that criminal behaviour as an operant behaviour is maintained by the changes it produces in the environment. Criminal behaviour of police torture and assault can produce arrest, removal of a criminal from society, obtaining information and confession from a suspect, intimidation, or overcoming vulnerability (Parry, 2011; Reiss, 1968a).

The theory of differential reinforcement states that "a criminal act occurs in an environment in which in the past the actor has been reinforced for behaving in this manner, and the aversion consequences attached to the behaviour have been of such a nature that they do not control the response" (Jeffery, 1965:295). In relation this study, "if in the past a law enforcement official was reinforced for unlawful acts through praise for arresting an accused irrespective of the assault involved in that arrest, or if he was promoted for being able to control crime in a certain area irrespective of unlawful acts such as unnecessary use of force, even aversive consequences such as SAPS Disciplinary Regulations attached to the unlawful behaviour or misconduct may be of the nature that they no longer serve to prevent police officials from engaging in an unlawful behaviour. It is for this reason that the current study saw the potential of this theory to provide explanations for the ineffectiveness of the approaches/strategies implemented to prevent police officers from engaging in torture and assault.

Table 3.2: Environmental Consequences Relative to the Law of Operant Behaviour

Law of Operant Behaviour Processes	Law of Operant Behaviour Explanation
Positive Reinforcement	A behaviour may produce certain stimulus events and thereby increase in frequency.
Negative Reinforcement	A behaviour may be removed, avoided, or terminated due to certain stimulus events and thereby increase in frequency.
Aversive Stimuli or Positive punishment	A behaviour may produce certain stimulus events and thereby decrease in frequency.
Negative Punishment	A behaviour may remove or terminate certain stimulus events and thereby decrease in frequency.

Source: Burgess and Akers (1996:133).

The two underlying elements or concepts of the differential reinforcement theory can be either positive or negative (see Table 3.2), which means that reinforcement can be positive or

negative. Jeffery (1965:295) asserts that positive reinforcement "refers to the process whereby the presentation of a stimulus increases the response rate". This means that a presentation of a reward or positive performance evaluation (extrinsic stimulus) may increases the occurrence of incidences of police torture and assault (response rate). Newburn (2007:152) indicates that "positive reinforcement produces rewarding consequences, thereby encouraging similar behaviour in the future". Burgess and Akers (1966) state that a behaviour may remove, avoid, or terminate certain stimulus events and thereby increase in frequency, which is negative reinforcement.

In negative reinforcement, behaviour is encouraged by removing consequences that are adverse (Newburn, 2007). Elimination of disciplinary measures (extrinsic stimulus) supposedly taken against a police officer who tortured or assaulted a suspect increases the chance that the police will torture and assault suspects again (response rate), because reinforcement (whether negative or positive) means that the reinforcer wants that behaviour to occur again (see Table 3.3). In most cases, good behaviour is reinforced; however, in this study the argument is that the evident lack of police accountability means that police who torture and assault suspects are rarely punished but rather rewarded for their unlawful behaviour, which in turn perpetuates police brutality in the form of torture and assault.

Reinforcement is aimed at encouraging the behaviour to occur again and this may be done directly or indirectly. In the case of police torture and assault, reinforcement is done indirectly, in a sense that this behaviour is strengthened because the police management or supervisors focus on the outcome the behaviour produces instead of the effect it has on the victim. Jeffrey (1965) refers to this 'outcome' as the change that the unlawful behaviour produces on the environment, while Skinner (1937) avers that purpose attached to the organism is said to behave in a given way because it intends to achieve, or expects to have, a given effect, or its behaviour is characterised as possessing effectiveness to the extent that it maximises or minimises certain effects.

The second concept, which is 'punishment', can also be positive or negative. Jeffrey (1965:295) asserts that positive punishment "refers to the process whereby the presentation of a stimulus decreases the response rate; negative punishment refers to the process whereby the elimination of a stimulus decreases the response rate". In relation to this study, this means that the application of disciplinary and criminal conviction measures (presentation of a stimulus) as recommended by the IPID to the NPA and the SAPS, are applied every time when a police

officer tortured and assaulted a suspect. If applied consistently, this will decrease the desire (response rate) of the police to use violence in the execution of their duties (see Table 3.3). Therefore, for police torture to decrease, the focus is not reinforcement (i.e., to increase the likelihood that a police officer will engage in police torture and assault), but rather on punishment, because according to the section 12 (1)(d) of the Constitution (RSA, 1996), any person who commits torture is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life. Assault on the other hand is regarded as a criminal offence that is to be investigated by the IPID and is punishable by law.

Table 3.3: Delineation of the Influence of Reinforcement and Punishment on the Criminal Behaviours of Torture and Assault by the Police

	Reinforcement	Punishment
Positive Stimulus	Adding something to increase the desired behaviour *Example:* ▪ Promotion ▪ Praised ▪ Positive performance evaluation	Add something to decrease the desired behaviour *Example:* ▪ Impose a sentence such as imprisonment or a written warning
Negative Stimulus	Remove something to increase the desired behaviour *Example:* ▪ Avoid disciplining or terminate criminal conviction procedures against the police officer due to being able to arrest or obtain a confession	Remove something to decrease the desired behaviour *Example:* ▪ Fired - to take way the police officer's job

Source: Researcher's illustrations

Therefore, this theory was deemed suitable in relation to this study as it explains the criminal behaviour of torture and assault by police officers and how police accountability and impunity play a role in the problem of increasing incidences of police torture and assault in KwaZulu-Natal. According to Jeffrey (1965), criminal behaviour is under the control of reinforcing stimuli. If police torture and assault are reinforced as acceptable behaviour, these acts will

remain unabated. This may very well be the case when the police accountability is masked by approval for the outcome of police brutality, which are arrests and prosecution. Jeffrey (1965) further asserts that, if the aversive consequences of the act control the behaviour, then the behaviour will not occur. If police are punished, then incidences of police torture and assault of suspects will be reduced through accountability measures. Currently, as Muntingh and Dereymaeker (2013) argue, it is rare that police officials are prosecuted and convicted (punished) for assault and torture. This absence of punishment is further supported by Dereymaeker's (2015) argument that the police enjoy financial, disciplinary and prosecutorial impunity for their unlawful behaviour. This means that there are no adverse consequences for police torture and assault and, as a result, police torture and assault are not controlled. This is evidenced by IPID reports that reflect a high rate of complaints of torture and assault against police officers every year.

The above arguments suggest that the police culture of torture and assault of suspects has been reinforced. Simmons's (2010:389) study found that instead of the police being fired, demoted, or disciplined for their criminal offences, many of them who were the subjects of complaints had been promoted or received positive performance evaluation. Hence, Schein (1985) states that criminal behaviour is learned either through positive reinforcement of successful solutions to problems ('problem solving') or through successful avoidance of painful situations ('anxiety avoidance'). A reinforcing stimulus strengthens a response in the sense that the response or occurrence of the desired behaviour increases when a given stimulus is produced (Jeffrey, 1965:294). Being rewarded for torturing and assaulting a suspect due to the positive outcome these acts produce such as increase in conviction rates, it increases the chances that a police officer will torture and assault the suspect again, even though that behaviour is against the law. Therefore, it can be concluded that people are highly likely to engage in behaviour based on certain desirable results involving rewards or punishment (Nicholson & Higgins, 2017). Therefore, if there is no punishment, many police officers will view torture and assault as a coping behaviour that will produce results, even in democratic South Africa. This statement corroborates Kearns's (2015) view that democracies may also use torture when there is an opportunity to do so with impunity. Jeffery (1965:295) highlights four assumptions of the theory of differential reinforcement which are summarised in Table 3.4.

Table 3.4: Assumptions of the Theory of Differential Reinforcement that are Linked with Police Torture and Assault.

Theory of Differential Reinforcement	Police torture and Assault
The reinforcing quality of different stimuli differs for different actors depending on the past conditioning history of each.	The effectiveness of reinforcing a police officer's behaviour will depend of whether in the past the criminal behaviour of torture and assault was conditioned through reinforcement or punishment.
The behaviour of some individuals has been reinforced whereas that of other individuals has not.	Some police officers who have been subjects of complaints have been promoted and praised for their unlawful behaviour due to the positive outcome it produced, whereas other police officers have not.
Some individuals have been punished whereas other individuals have not.	Some police officers receive written warnings, imprisonment and pay fines for torturing and assaulting suspects, whereas other police officers have not been punished.
An individual will be intermittently reinforced and/or punished for criminal behaviour; that is, illegal behaviour will not be reinforced or punished every time he commits a criminal act	A police officer's illegal behaviour may be reinforced if the tortured or assaulted suspect did not endure severe pain and the police officer managed to obtain a confession or arrested a suspect who was proved to be a perpetrator. Or: the same police officer may be punished if he/she tortured the suspect to death or assaulted a suspect with the intent to do grievous bodily harm to serve a personal interest which is not related to the job − which means a negative income. There is irregularity in terms of punishment or reinforcement of torture and assault that can be given different explanations.

Source: Adapted from Jeffrey (1965).

3.4 Summary

The symbolic interaction theory and the differential reinforcement theory were elucidated as the predominant theory that addressed the main foci of the study. The theories aided in eliciting an understanding the problem of police torture and assault by highlighting the major areas within the police organisation that are to be amended to reduce the incidences of torture such as reinforcement of criminal behaviour, the absence of punishment, and police attitudes and rationalisation.

CHAPTER FOUR
RESEARCH METHODOLOGY

4.1 Introduction

The current study was founded on the identified problem, which was increasing incidences of torture and assault by police officers in KwaZulu-Natal. To address this problem, the researcher had to establish a scientific methodology that would produce rich and comprehensive data for analysis and evaluation in order to elicit scholarly findings. Maxfield and Babbie (2009) contend that every research project needs to have a clearly defined research design that seeks to explain how the data will be gathered and analysed. According to Bhattacherje (2012), social research is beneficial in that it provides contextualised and authentic interpretations of the phenomenon being studied by using a collection of methods that systematically produce new insight about the social world. This chapter outlines the planning of the researcher through the use of scientific methods for the collection and analyses of the data.

4.2 Qualitative Research Design

A research design is based on the purpose of the research, the paradigm chosen, the context in which the research is conducted, and the research techniques used to collect and analyse the data (Steyn, 2013). The aim of this study was to explore the experiences and perceptions of IPID investigating officers in relation to the problem of police torture and assault. According to Creswell (2007:37), a research problem may be assessed through the use of a qualitative approach because it seeks to inquire about the natural setting comprising human subjects and places that inform the collection of relevant data. A qualitative approach was therefore deemed appropriate to achieve the aim of this study which, according to Mason, (2002:1) enables a researcher to explore "a wide range of dimensions of the social world that includes the texture and patterns of interconnected elements of everyday life, people's understanding of their social world, their experiences and imaginings of our research participants, the ways that social processes, institutions, discourses or relationships work, and the significance of the meanings that they generate". Mason also asserts that this is possible "through the use of methodologies that embrace richness, depth, nuance, context and multi-dimensionality and complexity" (p. 1), which should be factored directly into analyses and explanations.

Hennink, Hutter and Bailey (2011) state that "one of the main distinctive features of a qualitative research is that the approach allows the researcher to identify issues from the perspective of [the] participants [and the researcher should also] understand the meaning and interpretations that they give to behaviour, events and objects". This distinctive feature rendered the qualitative approach a suitable approach for this research study. Ross (1999:7) further indicates that a qualitative approach in research is based on the world view "that holistically assumes that there is no single reality; that reality is based upon perceptions that differ from person to person that change over time and that what we know has [sic] meaning only within a given situation or context". This means that through a qualitative approach, this study was able to produce arguments on the nature and magnitude of police torture and assault as well as on the challenges in investigating such criminal behaviour. Moreover, the qualitative approach has the habit of closely connecting context with explanation; this means that qualitative research "is capable of producing very well-founded cross-contextual generalities" (Mason, 2002:1), which this study aimed to achieve.

4.3 Purpose of Inquiry - Exploratory Research

Gray (2014) states that research methodologies can be classified according to their purpose such as being exploratory, descriptive and explanatory. The purpose of this study's enquiry was to explore the perspectives and experiences of IPID investigating officers in terms of section 28(1)(f) of the IPID mandate, with specific reference to torture and assault cases in KwaZulu-Natal. According to Maxfield and Babbie (2014), exploratory research in criminological research is usually focused on crime, criminal justice policy issues and when policy change is considered. De Vos, Strydom, Fouché and Delport (2011) contends that exploratory research is often conducted in new areas of inquiry in order to get acquainted with a situation. This argument supports the approach of the current study, because the main objective of this study was to gain insight into the circumstances and situational characteristics that influenced police application of torture and assault through the lens of KZN IPID investigating officers.

An explorative research is applied where the goals of the research are to scope out the magnitude or extent of a particular phenomenon, problem, or behaviour, and to gain insight into a situation, phenomenon, community or individual (Blaikie, 2000; Bhattacherjee, 2012; Gray, 2014). An explorative research approach therefore enabled the researcher to identify

situational factors as well as other salient factors that influenced the police to commission the crimes of torture and assault in the execution of their duties. This type of purpose of inquiry or objective of professional research was suited to with this study as it was conducted with the aim of enquiring into the extent of the problem of police criminal behaviour and brutality, with specific reference to assault and torture. To commence the study, secondary data were obtained by measuring the extent of these phenomena by scrutinising publicly reported statistics by the IPID on criminal offences committed by members of the SAPS. Bhattacherjee (2012:6) suggests that assessing the extent of a crime may include an examination of publicly reported figures.

4.4 Research Paradigmatic Perspectives

Qualitative and quantitative approaches are grounded in different paradigms (Vishnevsky & Beanlands (2004:234). Babbie (2007:32) defines paradigms as "models or frameworks for observation and understanding which shape both what we see and how we understand it". In simple terms, paradigms are perspectives or ways of looking at reality (Hennick et al. 2002:11). Polit, Beck, and Hungler (2001, cited by Vishnevsky & Beanlands, 2004:234) define paradigms as "belief systems about the nature of reality that direct all decisions about the approach to a research question and guides [sic] on how to conduct research". In this research, the researcher was guided by the interpretive research paradigm. The definition of paradigms that are proposed by Denzil and Lincoln (2008b:31) is based on the definition of Hennick et al. (2002:11). This definition contains the said researchers' epistemology, ontology and methodology. The current study was framed within interpretive phenomenological research, where interpretive served as a paradigm and phenomenology served as a strategy of inquiry.

4.4.1 Interpretive paradigm

This study was framed within an interpretive paradigm (also known as descriptive-interpretive research or hermeneutics). According to Vishnevsky and Beanlands, (2004:234), qualitative research is "a way of knowing and learning about different experiences from the perspective of the individual". Therefore, using an interpretive approach in a qualitative study means that the researcher seeks to understand social members' definitions and understanding of situations; "hence it is not concerned with the search for broadly applicable laws and rules, but rather

seeks to produce [a] descriptive analysis that emphasizes [a] deep, interpretive understanding of social phenomena (Henning et al., 2004). In simple terms, the focus of this study was to gain a deeper understanding of the perceptions of IPID investigating officers on the topic under research. More specifically, the purpose was to understand the perceptions of IPID officials of police torture and assault and to see these phenomena from the viewpoint of their role as investigators within a unique context and background. According to Maree (2007:58), interpretivism has its roots in hermeneutics, which is the study of the theory and practices of interpretation that considers understanding to be a process of psychological reconstruction, where the reader reconstructs the original intention of the author.

Henning et al. (2004:21) contends that "ontologically, the interpretive paradigm denies the existence of an objective reality independent of the frame of reference of the observer. Rather, reality is mind dependent and influenced by the process or intentional reality, as it focuses on discovering the multiple perspectives of all players in a social setting". The role-players associated with the problem of police torture and assault are mainly law enforcers, the public, IPID investigators, police officers and their superiors, prosecutors and the judiciary. However, the researcher focused on the perspectives of IPID investigators as professional role-players within the criminal justice system whose reality of police torture and assault is individually mind dependent.

The interpretive research approach enabled the researcher to probe the everyday working experiences of IPID investigating officers. To make sense of their experiences, the researcher interacted with these study participants in order to capture the essence of their reality of police torture and assault. In support of this process, Hennink et al. (2011:15) and Prasad (2005:14) emphasise that, by using an interpretive paradigm, the researcher recognises that reality is socially constructed as people's experiences occur within social, cultural, historical and personal contexts. Therefore, even though as human beings "we are individually engaged in acts of making sense, we often do this from a wider social context and constructions and interpretations are usually shared and are inter-subjective" (Henning et al., 2004:22). Therefore, by employing the interpretive paradigm, the researcher was positioned within the context and realities experienced by IPID investigating officers and was therefore able to elucidate meaningful interpretations of what they said during in-depth interviews.

The value of conducting qualitative research that is framed within an interpretive paradigm is, according to Garrick (1999:149, cited by Henning et al., 2004:21) that its fundamental

assumption is "that individuals are not considered to be passive vehicles in social, political and historical affairs, but that they have certain inner capabilities which permit them to make their own judgements, perceive and understand … experiences differently (maltifaceted realities), and make their decisions [accordingly]". This means that by adopting an interpretative perspective the researcher was able to capture investigating officers' judgements of and perceptions regarding police criminal behaviour (torture and assault), and that their experiences of investigating this problem could be evaluated. The nature and causes of police torture and assault, including the investigative challenges associated with these acts, were explainable with reference to multiple interacting factors and processes. Denzin (2010:271, cited in Guest et al., 2013:06) argues that in-depth understating requires "the use of multiple validities, not [just] a single validity, [and] a commitment to dialogue [which] is sought in any interpretative study". The interviews, which were interactional procedures through dialogue, allowed the elicitation of rich, descriptive data. These data were attained from the personal perspectives and roles of IPID investigators as they were influenced by their unique circumstances of investigating criminal offences by members of the SAPS, and therefore diverse rationalities were obtained.

Henning et al. (2004:22) argue that the "notion of the researcher being separate from the subject of the research is not compatible with [the] interpretive philosophy". Hence, as the researcher was studying the perceptions and experiences of IPID investigators, she used the human mind achieve her goal. This process made it impossible for the researcher to completely separate herself from what was being investigated. Henning et al. (2004:22) argue that, if this is the case, the researcher is considered "as an 'insider' during the process if conducting the research". Gray (2014:23) states that there are five examples of the interpretive approach, namely: symbolic interactionism, phenomenology, realism, hermeneutics and natural inquiry. In this study, the researcher used a phenomenological inquiry.

4.4.1.1 Phenomenology as a strategy of enquiry

Operating at a more applied level are strategies or traditions of inquiry (Mertens, (1998, in Cresswell, 2003:13). These strategies of enquiry provide specific direction to procedures in a research design and contribute to the overall research approach. To this end, Heppner et al. (2008: 269) state the following:

> *"The purpose of phenomenology is to produce an exhaustive description of the phenomena of everyday experience, thus arriving at an understanding of the essential*

structures of the 'thing itself', the phenomenon…. The key subject matter studied by phenomenological researchers is the "lived world' of human beings."

The phenomenologist thus believes that people's lived experiences determine their subjective reality and that these experiences "ascribe significance to their understanding of specific events (Polit et al., 200, cited by Vishnevsky & Beanlands, 2004:236). The underlying philosophy of phenomenology is that humans are integrated with the environment; thus, "reality is a subjective experience unique to the individual" (Bums & Grove, 2003). Phenomenology is the study of subjective experiences in order to "understand the essence of experiences about a phenomenon, how people perceive or interpret the world in light of their own experiences, as well as how this affects patterns of human interaction" (Maree, 2007; Welman, 2005; Davies, 2007). The current study adhered strongly to these principles because its purpose was to capture the experiences, deeply held beliefs and worldviews as expressed by the language of the IPID investigators with specific reference to police torture and assault. According to Gray (2014:164), the aim of phenomenology is to understand the world from the participants' point of view while, in the process, the researcher brackets out his/her own preconceptions.

The main source of the primary data that were obtained for this study was in-depth discussions between the researcher and the informants who participated in interviews. Purposeful sampling (Polit et al., 2001) was used as individuals were selected based on their knowledge of police brutality (torture and assault). The researcher choses a phenomenological inquiry because, according to Vishnevsky and Beanlands (2004:236), reports of phenomenological studies provide a "rich description of the meaning of a lived experience as the researcher identifies the essence of human experiences concerning a phenomenon, as described by participants in a study". The researcher opted for the phenomenological strategy of inquiry because, in the view of Henning et al. (2004:38), the phenomenological researcher believes that the participants can give their experience best when asked to do so in their own words, in lengthy individual reflective interviews, and in observing the context in which some of this experience has been played out. This belief underlined all aspects of this research.

4.5 Strategy for Participant Recruitment

4.5.1 Gatekeeper permission and sample selection procedures

Any research involving human subjects at the University of KwaZulu-Natal (UKZN) requires the approval of the UKZN Research Ethics Committee. The committee in charge of the Discipline of Criminology and Forensic Studies is the Humanities and Social Sciences Research Ethics Committee (HSSREC). An ethical clearance application was forwarded to this committee and the UKZN HSSREC granted full approval (Appendix E). The researcher also obtained gatekeeper permission before conducting this study with IPID officials. Gatekeepers are people who have the power to grant or withhold access to the setting (Seidman, 2006; Hennick et al., 2011; Henning et al., 2004). According to Hennick et al. (2011:93), the researcher should meet with the local gatekeeper before data collection begins. This should be done to inform this person (or persons) about the study, to seek their endorsement, to discuss any concerns, and to request their assistance with various aspects of the fieldwork. All these elements were undertaken. For example, prior to conducting this research, the researcher had a meeting with the Deputy Director of IPID to obtain information about the organization. She was briefed about the number of investigators, different units and the different activities that they performed on a day-to-day basis. This furnished the researcher with valuable background information on section 28 (1) (a) to (f) of the IPID Act, which useful in narrowing the scope of the investigation and identifying the group of people could be interviewed.

At the time of the study, the IPID had only twenty (*n=20*) investigating officers in KwaZulu-Natal, of which fifteen (*n=15*) were based in Durban. The researcher selected ten (*n=10*) investigating officers from this contingent, focusing on those who were responsible for investigating cases that fall under section 28 (1)(f) of the IPID mandate. The Deputy Director of Independent Police Investigative Directorate in KwaZulu-Natal granted permission for the study to be conducted. A gatekeeper, namely the Deputy Director of the targeted organisation, played a pivotal role in ensuring that the researcher gained access to the research participants. Assistance from the Deputy Director also helped in securing appointments with each participant and to ensure that ethical issues were taken into consideration. According to Hennick et al. (2011:93), it is important that a researcher works collaboratively with a gatekeeper to recruit participants. This was achieved because a gatekeeper was used to elicit verbal co-operation from the participants and to schedule appointments for interviews. This

strategy was beneficial because it even enabled the researcher to build rapport with each participant through the help of the gatekeeper.

4.5.2 Sampling techniques

Neuman (2014:246) states that not all empirical studies use sampling. However, in this study it was deemed important to sample selected participants. Neuman, (2014: 246) further states that when we sample, we select some cases to examine in detail, and then we use what we learn from them to understand a much larger set of cases. In this study the researcher followed Neuman's (2014:247) logic of qualitative sampling where cases/units were selected and these cases/units represented a much larger population of cases/units. The researcher treated the sample as "carriers of aspects/features of the social world that highlights [sic] or 'shines [sic] light into key dimensions or processes in a complex social life", with the aim of picking a few participants to provide clarity, insight, and understanding about issues or relationships in the social world. The goal was to "create a rich description of the phenomenon of interest rather than choosing a sample that [was] representative of a given population" (Vishnevsky & Beanlands, 2004). In quantitative research, the concern is to include only those participants who possess rich experiences of the phenomena of concern in the hope that they will provide valuable information or contribute new aspects.

4.5.2.1 Non-probability purposive sampling

This study relied on a non-probability purposive sampling technique to select the participants. According to Bhattacherjee (2012:69), non-probability sampling is a sampling technique where some units of the population have a zero chance of being selected or where the probability of being selected cannot be determined. Within the realm of non-probability sampling, the researcher employed a purposive sampling technique, as Yin (2011) states that purposive sampling "employs a non-probability strategy which entails the selection of participants based on their anticipated richness and relevance of information in relation to the study's research questions". In support of this statement, Bhattacherjee (2012:69) states that purposive sampling is a technique according to which "respondents are chosen in a non-random manner based on their expertise on the phenomenon being studied". This was adhered to by selecting IPID investigative officers as participants who were chosen non-randomly because they were deemed to have extensive understanding of the cases of torture and assault from the perspective of the public and the police, and they were assumed to have had access to the evidence that had been collected during the investigation process.

The purposive sampling strategy was engaged to support the aim, objectives and research questions of the study, as Bhattacherjee (2012:69) explains that experts tend to be more familiar with the subject matter than non-experts, and that opinions elicited from a sample of experts are more credible than those form a sample that includes both experts and non-experts, although the findings are still not generalizable to the overall population under investigation. Patton (2015:264) further expands on the advantages of using purposive sampling by explaining that the logic and power of purposeful sampling lie in selecting information-rich cases for in-depth study where one can learn a great deal about issues that guide the research problem. In brief, such a sample yields data that generate rich insights and in-depth understanding.

4.5.2.2 Sample size

Smaller samples are generally used in qualitative than in quantitative research; this is because the general aim of sampling in qualitative research is to acquire information that is useful for understanding the complexities, depth, variation, or context surrounding a phenomenon, rather than to represent populations, as is the case in quantitative research (Gentles, Charles, Ploeg, & McKibbon, 2015: 1782). The researcher therefore selected ten (*n=10*) participants, also because she was limited by the number of available investigating officers who investigated cases in terms of section 28 (1)(f) of the IPID mandate. Some of the available investigating officers had not dealt with or investigated cases of torture and assault .ras they engaged with high profile cases in terms of section 28 (1)(a) to (e), while others were concerned only with section 28 (1)(g) of the IPID mandate. Therefore, ten suitable IPID investigating officers were available and volunteered to participate in this study that explored the issue of the commission of torture and assault by SAPS members in KwaZulu-Natal province.

4.6 Profile of the Kwazulu-Natal Province

This study was conducted in KwaZulu-Natal, South Africa. KwaZulu-Natal covers an area of 94 361 km2, which makes it the third smallest province in the country. The provincial capital city is Pietermaritzburg and the largest city is Durban, which is where one of the IPID offices is situated. It comprises four main ethnic groups, namely African, Indian, White and Coloured. Africans constitute 87.6% of the population, followed by Indians at 6.9%, Whites at 4.1% and Coloureds at 1.4% (KwaZulu-Natal Provincial Government, 2016:7). KwaZulu-Natal has one metropolitan municipality, namely the eThekwini Metropolitan Municipality, and ten district municipalities, as highlighted in Figure 4.1 below. These municipalities are further subdivided

Figure 4.1: **Map of the jurisdiction area of the IPID: KwaZulu-Natal Province**

Source: NASA, (2010)

into 43 local communities. KwaZulu-Natal province has a high rate of crime following the Western Cape and Gauteng (Statistics South Africa, 2015; SAPS, 2014). KwaZulu-Natal is the second largest populated province in South Africa, being a home to an estimated population of 5 228 062 males and 5 691 015 females with a total population of about 10 919 077 (Statistics South Africa, 2015). This figure accounts for 19.9% of the South African population. The crime rate closely follows the population percentage of this province.

In the financial year 2015/2016, there were 2 183 001 crimes reported in all nine South African provinces, with KwaZulu-Natal province reporting 353027 crimes in 2015/16. This equates to 15.6 % of the total crime rate in the country. It may be surmised that the large number of reported crimes in communities within this province increases the chances for higher frequencies of police torture and assault during the execution of their duties. The KwaZulu-Natal province is home to seventeen police clusters/regions, with 185 police stations that are situated in different locations within KwaZulu-Natal province. An estimated 24 155 members of the SAPS are employed in this province. Figure 4.1 presents a map that depicts the extent of the area that has to be covered by IP4ID officials in KZN.

Table 4.1: **Delineation of the Characteristics of KwaZulu-Natal**

Public, SAPS and IPID Population		
KwaZulu-Natal Population	**Number of SAPS members**	**IPID members**
10 919 077	24 155	20
Crime rate		
Crime rate (KZN) in 2015	**Criminal offences by police (KZN) in 2015**	
353 027	794	
Work place		
SAPS stations in KZN	**IPID offices in KZN**	
185	2	

Source: Researcher's illustration

Only twenty IPID investigators that are responsible for the jurisdiction area, as depicted in Figure 4.1. IPID KZN is the oversight body responsible for investigating criminal offences committed by members of the SAPS and MPS in their jurisdiction. AS was stated earlier, the

IPID was established in 2012 as an improved version of the Independent Complaints Directorate (ICD) after the ICD had proved to be ineffective. The IPID institution has only two offices in KwaZulu-Natal, one in Durban and the other in Empangeni. Table 4.1 above provides a summary of the main characteristics of the area of KwaZulu-Natal province.

4.7 Methods of Data Collection

4.7.1 In-depth interviews

The researcher conducted interviews to collect relevant and rich data. Maree (2007: 87) defines an interview as "a two-way conversation in which the interviewer asks the participant questions to collect data and learns about the ideas, beliefs, views, opinions and behaviour" of the interviewee. In this study, the research questions were addressed by posing related interview questions to the participants during in-depth one-on-one interviews. In-depth interviews were deemed suitable for this study because they permitted the researcher "to explore people's views, perceptions and understanding of an area, providing the researcher with rich and sensitive material" (Seale, 2012:163). The use of in-depth interviews was considered suitable for this study because the aim was to examine the perspectives and experiences of IPID investigating officers who were involved in investigating and solving cases of police torture and assault.

Maree (2007:87) sees an interview is a "two-way conversation", whereas an in-depth type of interview is, according to Hesse-Biber and Leavy (2006:128, cited in Hinnink et al., 2011:109) a "meaning-making partnership between interviewers and their respondents". This relationship makes an in-depth interview a "special kind of knowledge-producing conversation" (ibid). This means the interview session is not merely conducted to allow an interviewee to share a story while the interviewer listens; rather, it is an in-depth interview in which the interviewer asks questions and motivates and probes the interviewee to share increasingly deeper perspectives. By following this approach, the researcher was able to 'see the world' through the eyes of the participants. Rich descriptive information that would help the researcher to understand the participants' construction of knowledge and their social realities were therefore obtained.

According to Hennink et al. (2011), the purpose of in-depth interviews is to gain insight into certain issues from the perspective of the participants themselves, and for this purpose a semi-structured interview guide should be used. The researcher thus formulated a semi-structured

interview guide (Appendix C) based on the objectives and research questions. This guide proved to be effective in eliciting the required information on different issues pertaining to police torture and assault. Most importantly, the semi-structured interview guide enabled the interviewer to be flexible in terms of the order in which the topics were considered, and letting the participants develop ideas and speak more widely on the issues under study (Denscombe, 1998). A total of ten (*n=10*) IPID investigating officers purposely designated were thus engaged in these in-depth interviews. The suggestions by Hennink et al. (2011:109) were followed, and thus the researcher:

- used a semi-structure interview guide to prompt responses for data collection;
- established rapport between the interviewer and the interviewee in each interview;
- asked questions in an open, empathetic manner;
- motivated the interviewees to tell their perspective stories, and probed for deeper insight when necessary.

Rapport building between the interviewer and interviewee was achieved through the use of a gatekeeper who introduced the researcher to participants that were available on that specific day for interviews. Through small talk about academic work, research and current issues, the researcher managed to build rapport with each interviewee. However, the interaction between the interviewer and each interviewee differed in some ways due to differences in their backgrounds; for example, for one participants rapport was built through a discussion about the researcher's academic progress, while others had also been students at the University of KwaZulu-Natal. In this way the researcher was able to establish links and build rapport. The opening questions of the interview guide also helped to establish and maintain rapport between herself and the interviewee.

The use of a semi-structured interview guide facilitated the probing as a way to increase understanding of meaningful realities. Hennink et al. (2011:111) state that "a key characteristic of qualitative data collection is to use key issues that are identified in one interview to refine questions and topic probes in a following interview". This was done by writing notes on the interview guide as a reminder to add a certain probing question for the next interviewee. However, this did not change the interview guide but rather augmented it, as the small changes that were made such as refining a certain question and adding a probe did not deviate from the focus on the study objectives and research questions. Probing proved to be a useful technique to gain further clarity, depth and detail information from the participants (Hennink et al., 2011)

and elicited detailed information about their thoughts and behaviour (Boyce & Neale, 2006). For probing to be effective and serve as a motivating tool to make participants share their perspectives, the researcher transcribed each interview when it was completed with the aim of identifying key issues pertaining to certain questions and to make inferences that could be used in the next interview. The interviews were also voice-recorded for accuracy of the transcriptions and to avoid memory loss of certain details that might not have been captured in writing and that might impact the findings.

4.7.1.1 Administration of interviews

The Deputy Director of the KwaZulu-Natal IPID institute was reached and this official's help was asked and obtained telephonically. The researcher was introduced to the participants by the Deputy Director at the initial meeting that was held. During the meeting, the researcher briefly informed the participants about the topic and the objectives of the study. After having made the appointments with each of the available participants, the following procedures were followed:

a) The researcher informed the participants about the purpose of the study. Patton (2002:407) suggests that the researcher should communicate to participants that the information is important, which was done by giving them a brief overview of the objectives of the study, with particular reference to section 28(1)(f) of their IPID mandate.
b) The participants were then well-versed regarding the voluntary nature of their participation and they were made aware of the confidentiality of their responses as well as that the information was required for research purposes and would be used for that only.
c) Prior to the commencement of each interview, which took place in their respective offices, each participant was given a consent form to read and to ask for clarify where she/he did not understand. The participants willingly agreed to participate and each signed the voluntary consent form. The participants were asked in writing if they were willing to be recorded or not. This made them aware that they were not coerced into being recorded.
d) After signing the informed consent form and indicating whether they could be recorded or not, the researcher began with the interview, emphasizing again that the focus would

be on section 28(1)(f) and on torture and assault cases only. During the interview session, the researcher paid attention to Carpecken's (1996) advise and considered the following when conducting interviews:

- Generate content about an event from an insider;
- Check the honesty, the certainty and the exact meaning of the subject's reply in a face-to-face interview;
- Access a person's definitions and understanding of concepts and processes that are of interest to the researcher;
- Analyse both verbal and non-verbal responses;
- Give immediate clarity if the interviewee was uncertain in his or her reply;
- Ask follow-up questions to provide detailed and/or specific answers; and
- Tap into beliefs, values, worldviews and the like on the part of the interviewee.

e) Upon completion of the interview session with each participant, there was a debriefing session in which the researcher rectified any possible misperceptions that might have arisen during the interview session and also discussed their feelings about the project.

4.8 Data Presentation and Analysis

Maree (2007:100) states that the analysis of data must be guided by the rigour and procedures of the specific type of analysis that the researcher will follow. According to Heppner, Wampold and Kivlighan (2008:291), the choice of a specific type of analysis and interpretation of qualitative data depends on the particular qualitative strategy of inquiry that the researcher uses for the study. The current study used the interpretive paradigm that is rooted in hermeneutics, with phenomenology as its strategy of inquiry. A phenomenological strategy of inquiry provides thick descriptions and an adulterated and thorough presentation. Description consists of individuals' experiences, beliefs, and perceptions as the phenomenological techniques use textual information as a representation of human experiences (Guest et al., 2013). Therefore, because lengthy excerpts were made from the interview transcripts, thematic analysis was used to organize the data into themes. Five steps were followed to identify and analyse the patterns that were found in the qualitative data (Braun & Clarke, 2006), as indicated in Table 4.2. In this study, each step that is mentioned in Table 4.2 was followed in the process of data collection.

Table 4.2. The Six Phases of Thematic Analysis that were Utilised in this Research

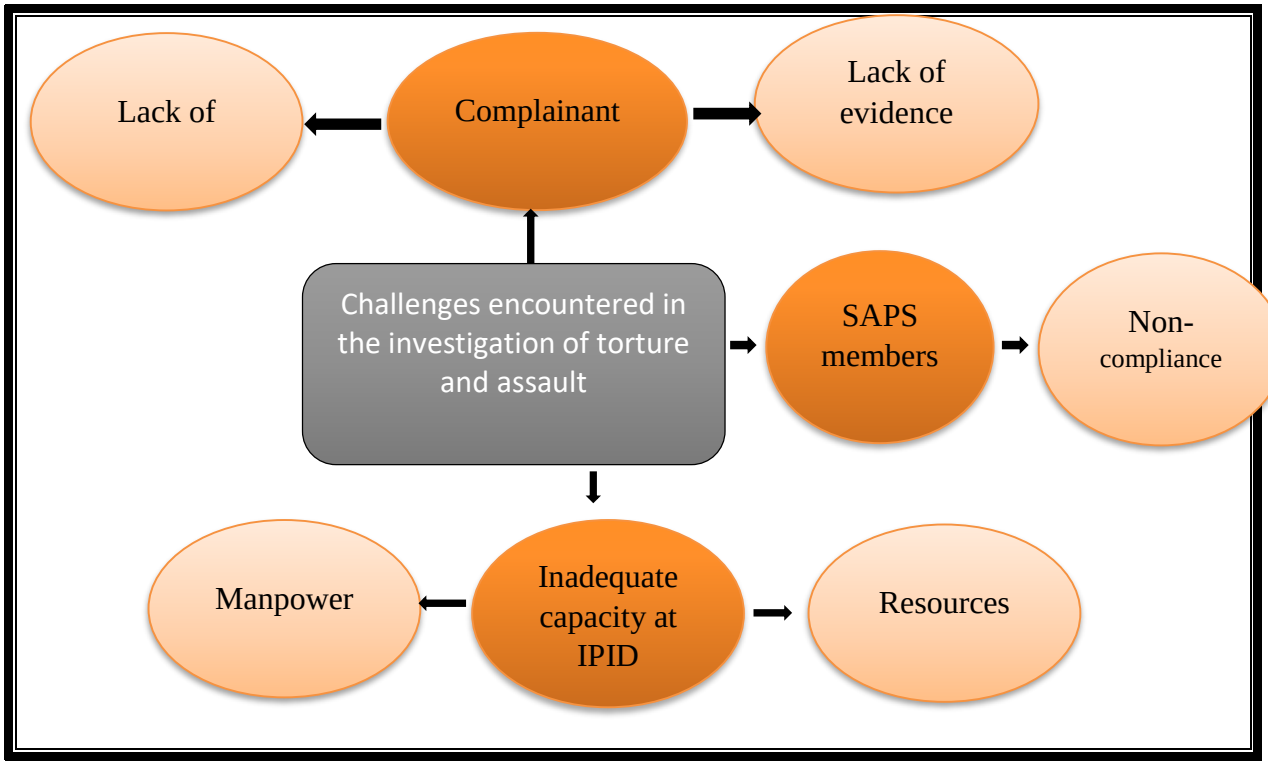
Phase	Description of the process
1. **Familiarise yourself with your data:**	The researcher transcribed the information provided by IPID investigators through interviews by reading and rereading the data, and noting down initial ideas.
2. **Generate initial codes:**	The researcher coded interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. **Searching for themes:**	The researcher collated codes into potential themes, gathering all data relevant to each potential theme.
4. **Reviewing themes:**	Then the researcher checked if the themes worked in relation to the coded extracts and the entire data set, thus generating a thematic 'map' of the data.
5. **Producing the report:**	This was the final opportunity for analysis. Vivid, compelling examples were extracted; final analysis of selected extracts; relating back in the analysis to the research questions and the literature; and finally producing a scholarly report of the analysed data and the findings.

***Source**:* Adopted form Braun and Clarke (2006:87)

The researcher transcribed the lengthy information that had been briefly noted and tape recorded during the interviews. During this process, the researcher became familiar with the data. Gray (2014) postulates that typing the transcript yourself may be time consuming but it does develop familiarisation with the data at an early stage. The researcher started the coding process with the first interview, doing it after every interview that had been conducted on a particular day. This allowed the researcher to become familiar with the issues emerging from the data. Guest et al. (2013:13) state that the thematic analysis process "consists [of] reading through contextual data, identifying themes in the data, coding those themes, and then interpreting the structure and content of the themes". In the process of coding, the researcher highlighted the key words and allotted a descriptive word that summarized or seemed pertinent to a particular passage. This means that, whenever the researcher found a meaningful part of text in the transcript that was being analysed, highlighters were used to indicate potential patterns with the aim of eliciting common denominators and differences within and across the

material. The data were therefore separated into labelled, meaningful pieces and these were clustered together under an emerging theme.

Figure 4.2: Example of a Thematic Map



Source: Adapted by author based on interview with KZN IPID investigating officers

Maree (2007:105) suggests that the aim of coding is to create codes that act as collection points for important information and labels that act as markers to the way in which the researcher rationalises what it is that appears to be happening. Codes also enable the researcher to continue to make discoveries about deeper realities in the data that are then referenced by the codes. However, to cluster all the pieces together, the researcher created a visual presentation of the themes which was done through the development of a thematic map (see Figure 4.2) for each section of the interview, which was divided according to the research objectives. The thematic map in Figure 4.2 is an example of how the themes were derived from the responses based on the four objectives of the study. Themes were generated from the codes and a full description of the themes related to each research question.

An independent researcher was asked to evaluate the coding scheme and to determine whether the labels had been correctly assigned to the material. This person also assisted in ensuring that each set of categories was comprehensive, mutually exclusive and exhaustive, and that together

these categories gave a descriptive overview of the data and that it meaningfully linked the original research question and the data. The analysed patterns formed themes which, according to Gray (2014:609), "capture something important about the data in relation to the research question, and represent a level of *patterned* response or meaning within the data". Before the researcher developed a written description of the participants from the IPID, an independent researcher explored each cluster in more detail to check for nuances and differences and to find out whether, in the original coding system, there were no alterations to be done or broadening of themes to include these nuances.

4.9 Ethical Considerations

Neuman (2014:145) defines ethical issues as "the concerns, dilemmas, and conflicts that arise over the proper way to conduct research [while] ethics defines what is or is not legitimate to do or what 'moral' research procedure involves". Gray (2014:68) states that "the ethics of research concern the appropriateness of the researcher's behaviour in relation to the subjects of the research or those who are affected by it". The researcher's behaviour is guided by "moral and professional obligations to be ethical even when the research participants are unaware of the ethics" (Neuman, 2014). As such, a researcher is obligated to conduct research in a way that goes beyond adopting an appropriate methodology, but to conduct research in a responsible and morally defensible way (Gray, 2014). Thus, the researcher took few important ethical issues into consideration when preparing and designing this study so as to build sound ethical practice into the design. The researcher took Neuman's (2014:145) advice by balancing two values: (i) the pursuit of scientific knowledge and advancing knowledge, and (ii) maintaining non-interference with the lives of the IPID investigating officers. The law and codes of ethics recognize a few clear prohibitions: Never cause unnecessary or irreversible harm to participants; secure prior voluntary consent when possible; and never unnecessarily humiliate, degrade, or release harmful information about specific individuals that was collected for research purposes (Neuman, 2014:147). All these ethical concerns were adhered to in this research and the researcher detected and removed all undesirable consequences to the research participants.

4.9.1 Permission letters

According to the ethical requirements of the university, a student needs to get ethical clearance from the Ethics Committee before conducting a study. The researcher requested and received a gatekeeper's letter of permission from the IPID institute which she emailed to the Ethics Committee and waited until permission by this committee had been grated before conducting the study. A clearance letter was received from the University of KwaZulu-Natal and another one from the IPID to interview their staff.

4.9.2 Affecting IPID investigating officers' careers

Social research can harm a research participant physically, psychologically, legally, and economically and affecting such persons' career or income (Neuman, 2014:147). By using IPID investigating officers, the researcher ran the risk of harming them in relation to their careers. Gray (2014) explains that research in the work place mostly requires the respondents to express their views on work-related issues, which may include criticizing the organization or its management. Therefore, to avoid the issue of disciplining and even dismissing participants by their managers, the researcher adhered to the request of the Deputy Director of the IPID to not include any demographic information in the research report. The proposed interview questions were sent to the Deputy Director to ensure that all the questions were in line with their ethical concerns. These questions were approved, but it was left to the individual participants to decide whether to participate or not and whether to answer all the question or not.

4.9.3 Legal harm

Neuman (2014:148) states that a researcher may be able to secure clearance from law enforcement authorities before conducting certain types of research. A letter of approval from IPID Head Office helped the researcher to minimise the risks of legal harm on the part of the participants. For example, if they shared confidential information they could be sued by the clients that the served. Furthermore, this could then, according to Neuman (2014:148), destroy trust in social scientific research, causing potential future participants to be unwilling to participate in studies. It was important for the researcher in this study to weigh the value of protecting the researcher-subject relationship and the benefits to future researchers against potential harm to innocent people.

4.9.4 Deception

A major ethical tenet is the principle of voluntary consent: never force anyone to participate in research. A related ethical rule is not to lie to research participants unless it is required for legitimate research reasons, because a researcher might misrepresent certain actions or true intentions for legitimate methodological reasons. If the participants had known the true purpose, they would have modify their behaviour, making it impossible to learn of their real behaviour or access to a research site might be impossible if the researcher told the truth (Neuman, 2014:151). The researcher avoided deception by briefing the participants about the study, especially the study objectives. Before the interviews commenced, the researcher gave the Deputy Director a letter from the University of KwaZulu-Natal Ethics Committee and one from the IPID Deputy Director which permitted the researcher to conduct the study. The letters were also shown to the investigating officers during the first meeting. In this case, the researcher followed Neuman's (2014:151) advice that deception is never advisable if we can accomplish the same thing without deception.

4.9.5 Voluntary consent form

Neuman (2014:151) states that a very serious ethical standard is that participants should explicitly agree to participate in a study. The researcher thus provided the participants with a consent form to read and sign as an indication that they agreed to participate in the study. However, Neuman (2014:151) further contends that it is not enough to obtain permission; people need to know what they are being asked to participate in, and only then can they make an informed decision. Thus, the informed consent form (attached as Appendix B) contained information such as the right to quit, anonymity and confidentiality, permission to tape record the interview, and the aim of the study. The researcher also adhered to Gray's (2014) suggestion that respondents must know that their participation is voluntary and that they have the right to withdraw at any time. This was indicated in the consent form and the researcher also explained this provision before the interviews started. In this way, the participants were made aware of their rights and what they getting involved in when they read and signed a statement giving their informed consent.

4.9.6 Anonymity

Neuman (2014:154) is of the view that because social researchers transgress in terms of the privacy of subjects in order to study social behaviour, they must take precautions to protect participants' privacy by not disclosing a participant's identity after information has been gathered. This takes two forms: anonymity and confidentiality. Neuman (2014:154) states that anonymity means that people remain anonymous, or nameless. The researcher therefore used fictitious names and did not provide information of their characteristics or background job experiences. Instead of using their names, the researcher used code names (e.g., P-Inv-1; P-Inv-2). In this way, the participants' identities are protected, and the individual remains unknown and anonymous.

Neuman (2014:155) contends that it is possible to provide anonymity without confidentiality, or vice versa, although the two usually go together. However, in the case of anonymity without confidentiality, this happens if a researcher makes details about a specific individual public but withholds the individual's name and certain details that would make it possible to identify the individual. With regards to confidentiality without anonymity, this happens if a researcher does not release individual data publicly but privately links individual names to data on specific individuals. Therefore, it is safe to say that the researcher provided both anonymity and confidentiality, because the participants' data are provided in Chapter five. The data are not presented in an aggregate form as Neuman (2014) indicates that confidentiality can be protected through their presentation in percentages or means form. In this way the researcher honoured this guarantee of anonymity. Also, no information is provided that a participant wanted to keep confidential. In this way the issue of confidentiality was adhered to.

4.10 Research Trustworthiness

Maree (2007) indicates that when qualitative researchers mention validity and reliability, they typically indicate that the research is credible and trustworthy. Ensuring trustworthiness of the research may take place at any stage of the research process; it can be in the literature review or methodology or findings. According to Shenton (2003), when addressing the trustworthiness of qualitative research, the researcher's focus is on attempting to demonstrate that a true picture of the phenomenon under scrutiny is being presented, on providing sufficient details of the context of the research, and on taking steps to demonstrate that the findings emerged from the data and not from the researcher's own predispositions. In this study, the researcher used four

strategies that are proposed by Lincoln and Guba (1999) as alternative constructs to internal validity, external validity, reliability and objectivity (De Vos, et al., 2011). These constructs were credibility, dependability, confirmability, and transferability.

4.10.1 Credibility

De Vos, Strydom, Fouché and Delport (2011:420) state that internal validity of a study is "to demonstrate that the inquiry was conducted in such a manner as to ensure that the subject has been accurately identified and described". The credibility of the current study was ensured in that its validity was derived from the strength of the study's aims to explore a problem, describe a setting, a process and a social group, which were IPID investigating officers. A research that is deemed credible is one whose findings are both substantial and plausible (Durrheim & Wassenaar, 1999). Researcher developed early familiarity with how the IPID operates through conversations with the Deputy Director of the IPID in the Durban office. The researcher was also aware of the culture of the police organization through a comprehensive scrutiny of the literature. The researcher ensured that the findings accurately recorded the phenomenon under scrutiny. The concept of credibility deals with the question, "How congruent are the findings with reality?" (Merriam (1998). To ensure compatibility of the findings with reality, the researcher adopted an interview research method as it is an appropriate and widely recognised method in addressing issues in policing. It also allows participants to share their experiences of reality in an authentic manner.

4.10.2 Dependability

Durrheim and Wassenaar, (1999:64) indicate that "dependability refers to the degree to which the reader can be convinced that the findings did indeed occur as the researcher says they did". Dependability addresses the question: "Are the findings stable and consistent?" (Stuwig & Stead, 2013:137), and "Is the research process logical, well documented and audited?" (De Vos et al., 2011). In order to address the issue of dependability, this research report included the research design, how that design was implemented, as well as the operational details of data gathering process.

4.10.3 Confirmability

The concept of confirmability is the qualitative investigator's comparable concern of objectivity and confirmability. The question is asked: "Are the findings confirmed by other data sources?" (Shenton, 2003). To answer this question, the researcher ensured that the findings were the result of the experiences and opinions of the participants. A detailed methodological description of the study is also recorded in the study report. According to Shenton (2003), this will enable the reader to determine how far the data and construct emerging from it may be accepted and it also allows the integrity of the research results to be examined. To confirm the overall findings, the findings from the participants were compared with those of similar studies that had been conducted in a similar field.

4.10.4 Transferability

Transferability examines whether the findings can be beneficial in a situation that is similar to that of the study (Struwig & Stead, 2013). To ensure transferability, the researcher provided background data to establish the context of the study. A detailed description of police unlawful behaviour was also provided to allow comparisons of instances of torture and assault with similar police behaviour in other instances. The importance of transferability is to demonstrate that the findings and conclusions are applicable to other situations and populations (Shenton, 2003). The researcher used different data sources such as legislations, journals, books, news reports and IPID and SAPS annual reports to corroborate, elaborate on and illuminate the findings, as De Vos et al. (2011) advise.

4.11 Summary

The significance of the adopted research method is that it served as a map that directed the course of this study. The use of a qualitative approach proved efficient to answer the research questions that guided this study within the realm of a descriptive-interpretive research paradigm using the phenomenology strategy of inquiry. A description of the area, that is KwaZulu-Natal, provided the study context. This chapter confirmed the importance of ensuring that ethical considerations were adhered to in order to ensure that the research was conducted in a way that went beyond adopting an appropriate methodology but that ensured that the research was conducted in a responsible and morally defensible way. It was also discussed how the researcher went about to ensure the trustworthiness of the study.

CHAPTER FIVE

DATA PRESENTATION AND DISCUSSION

5.1 Introduction

This chapter is the heart of the study, as it unpacks the aspects of criminal behaviour that were investigated, namely police torture and assault. Torture and assault have been persistently perpetrated by police as is evidenced by increasing numbers of reported cases yearly. Rajali (2009) states that torture is inflicted for three main purposes: to intimidate, to coerce false confessions, and to gather accurate security information. Rajali further argues that it relies on an organization's ability to apply these techniques scientifically and professionally to generate true and reliable information. Parry (2003) argues that the use of force may become a ritual if it is accepted as an effective strategy to solve problems and if the victim's suffering and pain run the risk of becoming irrelevant to the law, as the victim becomes isolated at the moment when s/he is in need of the law's protection. Cohen (1991) argues that the discussion of torture and assault is not merely about the pain endured by the victim, but that it enters into a complex discourse on morals and legitimacy.

The purpose of this chapter is to present a comprehensive picture of the collective experiences and perceptions of IPID investigating officers in KZN from their unique stance. Most importantly, the analyses of the data attempt to integrate corresponding and contradictory data from the findings with other scientific research findings from various other studies in the field. From its inception, and based on an extensive literature enquiry, four imperative research questions guided this study, namely:

- What is the nature and extent of the acts of torture and assault that are committed by SAPS officials in KZN?
- Which factors contribute to the commission of torture and assault by members of the SAPS in KwaZulu-Natal?
- Which challenges do the IPID face in investigating torture and assault cases against SAPS officials in KwaZulu-Natal?
- Are the IPID's strategies to investigate torture and assault cases against SAPS officials effective in ensuring police accountability in KwaZulu-Natal?

In order to answer these research questions, this chapter intends to unpack the issue surrounding police torture and assault, and this is accomplished through the collected qualitative data that were obtained during one-on-one interviews with selected IPID officials. In the presentation of the findings, the themes that emerged from the data are discussed and, where relevant, the identified themes are integrated with the literature to enrich the discourse on the phenomenon of police torture and assault as illegal acts of violence and police brutality.

5.2 The nature of police torture and assault in Kwazulu-Natal

5.2.1 Interrogation techniques that are applied as forms of torture

The participants shared their understanding of torture by proving a description of the techniques that the SAPS members used in incidences of torture. Based on their responses, torture is characterised by the harmful techniques that the police use to, for example, obtain information or a confession. Schiemann (2012:12) states that various debates have tried to unpack what constitutes torture. Nevertheless, the nature of torture in KwaZulu-Natal province is in line with the UN definition of torture, which emphasises that torture is pain that is inflicted on a victim to cause physical and mental suffering. Torture is therefore "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" (United Nations General Assembly, 1984). The argument by the United Nation's Code of Conduct for Law Enforcement Officials that the phrase "physical and mental pain" should be interpreted to include the widest possible protection against abuses, whether physical or mental (Parry, 2003:240), is an appropriate argument because the findings revealed that a wide range of techniques was used by KZN police to cause physical and mental pain to suspects. Parry (2003) provides a breakdown of what constitute "severe physical and mental pain" by listing the different techniques that police officers use when they torture suspects:

> "Being beaten, being given electric shocks, forced to stand, hooded, for long hours, where the victim then fell, broke his/her leg and denied medical treatment for a period of time, having one's hooded head put into foul water until nearly asphyxiated, having objects forced into one's anus, enduring a fractured jaw while being kept hanging for hours by the arms, thrown on the floor, rape, threats of physical mutilation" [all sic] (Parry 2003:240-241).

The forms of torture described by the participants also reflected severe physical and mental pain endured by suspects and their responses not only corresponded with the forms of torture mentioned by Parry (2003), but also elaborated on them. This is confirmed by the following

responses. The reader should note that the participants' responses were unedited and are therefore offered verbatim in the interest of authenticity. P-Inv-54 stated that:

> *"Torture is whereby a person is suffocated and when a person's face is covered with a plastics bag, the use of gloves placed around the person's mouth causing him not to be able to breathe. Strangulation also falls under torture."*

And P-Inv-53 said:

> *"Torture is more serious... it's assault but extreme. So, you will get your strangulation, suffocation of a person maybe tied up with cable tie, electrocution. All these things are classified as torture."*

P-Inv-46 responded to the question by providing the following illustration:

> *"I slap you, beat you and then I put handcuffs on you, restrict your movements and then cover your face with a plastic bag, put a tube [down your throat]. Now that's torture."*

P-Inv-46 provided another practical illustration of his understanding of the notion of torture:

> *"They (police officers) don't touch you, they don't do anything but then they don't give you water or food, they just keep on questioning you and if you are still denying any involvement they would leave you there and tell you, 'Don't move, don't do anything' or handcuff you to a certain object, they would leave you there for a day or two."*

P-Inv-51 shared his understanding of torture on the basis of the length of time that a person is subjected to any physical force. He defined torture as follows:

> *"…an action that occurs over a time of period, where they use certain instruments. You will find that a person has been subjected to suffocation where they put a plastic bag or cover his month with a glove, or beaten for hours and sometimes for days."*

All the interviewed participants shared their understanding of torture by mentioning that a suspect might be suffocated, or a plastic bag might be put over his or her head, restricting his or her breathing. A tube down the throat or strangulated may also be used. This means that the nature of torture is violent and often life-threatening, as breathing is mostly impeded and it occurs over a period of time. However, the participants also raised the point that torture is not limited to physical force, but that a person may be tortured by being denied food or water while being isolated in a room over a long period. All these appalling techniques undermine the Constitution and violate the human rights of the people that the police are tasked to serve and protect.

5.2.2 Torture as a method of extracting information

The participants understood that the different techniques of torture were used mainly to extract information from suspects. Their responses were again in correspondence with the UN definition of torture, i.e., "…for such purposes as obtaining from him or a third person information or a confession" (United Nations General Assembly, 1984). Similarly, South African (2013:4) states that torture may be intentionally inflicted on a person for the purposes of obtain information or a confession from him or her or any other person. Thus, legislation may have guided the IPID investigating officers to take on the view that a suspect could (should) be subjected to torture if the information that the suspect holds is vitally important. Parry (2003:246) contends that "the traditional connection between torture and the quest for information provides a formal motive for violence that, in Elaine Scarry's words, "…enables the torturer's power to be understood in terms of his vulnerability". Pressure to gather all the evidence and information thus seems to drive the police or detectives to the use of excessive force.

The definition of torture as the application of excessive force with the aim of extracting information was also confirmed by Beek and Golfert (2012:492), in whose study a police officer stated: "If you don't beat them, you will not get the information you need instantly, to move on it". It is this attitude that the police have towards suspects that has prompted the view that the use of force is an effective method to obtain information. The majority of the participants provided examples of police officers' brutal behaviour in response to the question: 'What is your understanding of torture?'

P-Inv-48 stated:

> *"It is when a police officer uses force to obtain certain evidence. Mostly torture happens when a police officer is using force against a suspect to gain evidence during an investigation of an offence. It is when a police officer subjects someone to undue pressure so that they can get whatever they want to obtain evidence from a suspect."*

P-Inv-50, P-Inv-47 and P-Inv-53 mentioned the different types of evidence that the police might be looking for that cause the police to torture their victims.

P-Inv-50 stated:

> *"If an police officer beats up a person looking for information, like let's say there are outstanding suspects, then you assault this person to get the remaining suspects, so then that is torture."*

A practical illustration was provided by P-Inv-50:

> *"So, now you are in a situation where someone has died and the information directly points to this person and this person is refusing to hand in the firearm. And when you look at it, when you are faced with such a situation, when you look at the entire information, it leads to this person, but the person is refusing to hand in the firearm, so this is one of the things that leads to torture."*

P-Inv-47 mentioned another form of information:

> *"When they want him [suspect] to say something, when they are looking for firearms that is when they are sometime electrically tortured."*

P-Inv-53 defined torture by drawing on different kinds of information that might lead to a member of the public being a victim of torture. P-Inv-53 stated:

> *"The majority of the time when it is torture related cases, you will find that the complainant will say a police officer came looking for drugs or looking for other suspects related to cases, or maybe that particular person is a suspect in a case. More for trying to get information from the person."*

The information provided by the participants under this theme clearly indicate that torture is applied in the quest for information and that the type of information that police officers require from the suspect may range from information about other suspects involved in a crime to unlicensed firearms. The use of torture as a method to extract information from suspects confirms Parry's (2003:247) assertion that "the impulse to torture may derive from the identification of the torture victim with a larger threat to social order or values". The presence of unlicensed firearms and elusive suspects within the society threaten the social order and the safety and security of other members of the public; hence Parry (2003) considers torture to function as a method to fulfil their obligation of maintaining order and protecting the public.

Although it can be argued that torture is an illegal and immoral behaviour towards the public, Rajali (2009) states that police use torture to create safe streets and to mend the perceived breakdown of the social order. This finding also supports Jeffery's (1965) assertion in terms of the differential reinforcement theory, that criminal behaviour is considered an 'operant behaviour' because it is maintained by the changes it produces in the environment. This means the criminal behaviour of police torture can result in the removal of criminals, drugs and firearms from a vulnerable society and in obtaining information and confessions from a suspect, and it is possibly for these reasons that the practice is escalating.

P-Inv-49 shared information on one of the cases that s/he had finalised with the aim of providing a clear example that illustrates how a suspect may end up being tortured in the quest for information:

> *"I have a case whereby the members (SAPS) got information that this person had a firearm, illegal firearm and also dagga. That case if you look at it, it started as a case of torture on a very serious level nature case, because that person, they never shot him or whatever, but what they did, they put plastic over his head until death; you know, just because the person was not giving them information about the firearm and dagga. The scene of the crime was his home and they left him there; they left him not dead yet but he died on the way to hospital."*

Similarly, P-Inv-46 also illustrated how a suspect can be tortured when a police officer is acquiring information. The illustration provided by P-Inv-46 confirms Reyes's (2007:591) explanation that torture during interrogation includes methods that do not physically assault the body or cause actual physical pain, but rather entail severe psychological or mental pain and suffering that profoundly disrupt the senses and personality. P-Inv-46 stated:

> *"It happens that an individual [police officer] commits torture like torture that is independent, whereby I don't assault you, I don't do anything I just keep you here in my office. 'Tell me the truth, tell me the truth, where is such stuff?' And then you don't tell me anything then I go out and I continue with my investigation outside, maybe be out for like four hours, then come back and you are still here; no food, no water. 'Ok, tell me the truth, where is the stuff that you stole in a particular place?' Maybe you give me an answer saying you don't know, then I go out again or sometimes I come back, I handcuff you to the side [participant moves towards the corner of the table], I'm torturing you, I'm not assaulting you, just pure torture."*

The illustrations provided by P-Inv-46 and P-Inv-49 relate to Schiemann's (2012:4) support for the application of torture which explains that torture is used on knowledgeable detainees who failed to provide valuable information when the police officer used other methods. This implies that, in Schiemann's perspective, police can use torture if they know that the suspect has important information about the whereabouts of other suspects or unlicensed firearms. Evidence based on the responses of the participants revealed that some members of the SAPS support Schliemann's justification for the use of torture. However, this suggests that the information held by the suspect is more important than upholding the law and it is more important than life itself. This further suggests that it is better to trade the life of a suspect (who

might be a criminal) to save the life of another person, which leaves the debate of human rights vs a community's safety wide open.

Jefferson (2009:13) argues that torture should not be understood as merely instrumental, but to accept the reality that it is born of genuine moral conviction, whereas Beek and Golfert (2012:489) argue that it is more instrumental than punitive. Nevertheless, based on the responses provided by the participants, torture is instrumental as it serves as a means of extracting information rather than to punish a suspect. Moreover, it is also shaped by a police officer's attitude about torture or the use of torture to extract important information from a suspect. It was probably the efficacious relationship between torture and the truth (Hajjar, 2009) that led to some of the responses by the IPID investigating officers in terms of their understanding of using torture in cases where a suspect refused to cooperate in an interrogation.

Some participants shared their views on the use of torture and assault by indicating that the use of force can be justified when a suspect refuse to cooperate in an interrogation. This view was held by P-Inv-49 and P-Inv-46. P-Inv-49 justified a police officer's actions of torture in a quest for information as follows:

> *"From an investigator's point of view and from my experience, I'm gonna be upfront and honest with you. You will never, never ever solve your cases if you don't turn on a little bit of heat on the suspect. You cannot take a suspect, sit him down and interview him like, did you kill so and so or did you steal this and that, people's belongings [participant lowering his voice and sitting up straight, in an attempt to show the formal way of conducting an interview]. They will never admit it so in order for you, I mean, to get information from that person, you have to turn on some heat a little bit."*

Similarly, P-Inv-49 justified the use of torture and assault in the process of an interrogation of a suspect when h/she stated:

> *"It's not easy as a police officer to come to you as a suspect after receiving a complaint that you are in possession of a firearm and say, 'Miss so and so, can you please give me a particular firearm?' Definitely you will not get such, and by the time they try to be violent, aggressive, then you as a suspect you will see that there is something coming."*

The above comments by P-Inv-46 and P-Inv-49 are in line with the findings of scholars such as Schiemann (2012), Bargaric and Clarke (2007), Koppl (2006), and Burchell and Milton (2007), who argue that a suspect can be assaulted and tortured in cases where s/he refuses to provide crucial information that may put an innocent life in danger. However, although suspects may be difficult when it comes to cooperating in investigations, it is unlawful to

intimidate and use force to compel a suspect to provide information, as it undermines Act No. 13 of 2013 section (4)(4) (RSA, Government Gazette, 2013) which states: "…no exceptional circumstances whatsoever, including but not limited to, a state of war, internal political instability, national security or any state of emergency may be invoked as a justification of torture". Moreover, IPID investigating officers' acceptance of police torture as a defensible action overlooks the pain inflicted on the victim and it suggests that the police only understand the use of force or violence when doing a difficult job.

5.2.3 Conceptualisation of assault

The description of assault that was provided by the participants highlighted their understanding that assault comprised the infliction of physical injuries by beating, slapping, kicking and punching a person in the execution of their duties. This finding corresponds with Burchell and Milton's (2007:682) assertion that a police officer is considered to have assaulted a suspect when a police officer's application of force causes bruising, wounding, breaking of bones and mutilation, and may also be committed indirectly by setting a dog on a person. The responses when asked about their understanding of assault were as follows:

> *"Assault… they just inflict physical injuries on your body. In some instances, a person might have bruises or some you will find that they have internal injuries. The doctor's report will show that they suffered internal injuries"* (P-Inv-55).

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

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

P-Inv-46 also defined assault by proving an example:

> *"Assault happens when …let's say you resist an arrest, then I slap you or hit you with a tonfa. That is assault…but sometimes you find that, like let's say for example they are coming to arrest me here in my office. Ok, Mr/Mrs so and so, we are here to arrest you for such and such a case, or they come kick the door without saying anything. They start assaulting me, beating me, handcuffing me, handcuffing me tight, in a way that I can't even move my wrists, then there are marks here [pointing at the wrist], or they start slapping me and everything, then I swell [pointing to the face, illustrating how swollen the face would be]. They could have easily come to my office and arrested me. It is when I'm not a threat to them but they continue to use force."*

P-Inv-54 provided an example of how a police officer might inflict physical injuries on a suspect:

> *"Assault is when a complainant complains that a person slapped me with an open hand on my face, a person punched me, a person kicked me, a person pushed me, when I was arrested the handcuffs were tightly, you know fastened, and things like that, that is assault."*

These findings relate to the findings of a study that was conducted by Phillips and Smith (2000) who referred to procedures such as punching, kicking, grabbing, pushing and baton-hitting as lesser degrees of force. The findings revealed that although these types of violence were not seen as being severe as those of torture, they also did not fall under minimum use of force, but were considered as a criminal offence. However, some participants defined assault as the intent to do grievous bodily harm (GHB), which they explained differed from the cases of assault mentioned above. However, few of the participants mentioned that there are two different types of assault, as they provided only one understanding of assault. P-Inv-54 was one of the respondents who expanded on the definition by explaining that there is also assault with the intent to do grievous bodily harm (GBH):

> *"There is assault, GBH, which is grievous bodily harm, whereby a person maybe sustained like an open wound. Let's say a person maybe was assaulted with a chair and it caused injuries, you understand."* (P-Inv-54).

Similarly, P-Inv-47 also mentioned GBH:

> *"Assault is when force is excessive. It's when the SAPS members assaulted a person, thereafter it resulted in assault. But once the blood comes out it is no more assault common, but assault GBH, because it is grievously bodily harm."*

The participants failed to mention two points that were raised by Bezuidenhout (2011:211). One is that if the perpetrator intended to cause grievous injuries but actually caused slight or no injuries, then the perpetrator is still guilty of assault with the intent to do grievous bodily harm. The other point is that assault also constitutes inspiring fear in the mind of a person who believes that s/he will suffer physical harm. This opens the question whether investigating officers consider such behaviour as a legitimate case of assault that is punishable by law, or whether they will shrug it off as harmless because there was not any injury or blood. P-Inv-54's understanding of assault was similar to Burchell and Milton's (2007:688) definition of assault. This definition contends that, in the context of assault with the intent to do grievous bodily harm, the victim has to suffer serious injuries that interfere with the health of the victim.

5.3 The Situational Context of Torture and Assault

5.3.1 Excessively volatile raids

The researcher asked the participants about some of the circumstances that they thought prompted members of the SAPS to torture and assault members of the public. The majority of the participants indicated that most of the incidences of torture and assault took place during police raids. In Balko's (2006:1) view, raids terrorise innocent people when police mistakenly target the wrong residence. Such raids have resulted in dozens of needless deaths and injuries, not only of drug offenders, but children, bystanders, and innocent suspects. Balko's assertion was confirmed by the statements of eight of the ten participants who clearly illustrated how torture and assault occurred when the police raided a home or building. For instance, P-Inv-48 stated:

> *"Based on the cases that I have dealt with since I have been here, most of the time it is when police are raiding that area…remember, police do not just raid, they are first informed of a crime in that area and also told that in a particular residence they will find unlicensed firearms or drugs, whatever, then they go and conduct a raid in that location."*

P-Inv-51 illustrated the point that was made:

> *"With regards to assault, it's when the police are doing their raids. The torture or assault comes in when there are firearms involved. It is more likely that the police will torture someone if there are firearms involved."*

P-Inv-47 agreed and added an appalling point:

> *"They are doing a raid, maybe for unlicensed firearms. So, they want those people to say they do have a firearm, whereas they don't. Some of them end up saying they do have a firearm because they fear for their lives."*

It was revealed that some police officers intimidated the public. According to Burchell and Milton (2007:680), intimidation is a form of assault because police officers inspire a belief in the suspect that force (and thus the infliction of pain) will immediately be applied to get what they want. P-Inv-47's assertion revealed that raids were conducted that led to false confessions of guilt which must have increases the rate of people who were wrongfully accused and even convicted. The above-mentioned incidences of torture and assault during police raids confirm Balko's (2006:1) assertion that raids bring unnecessary violence and provocation to non-violent drug offenders, many of whom were guilty only of misdemeanours. What makes raids excessively volatile is that the police intentionally inflict confusion and disorientation when they forcefully enter homes or other locations. It can be argued that, in the process of

conducting a raid, police officers have the responsibility to create a safe environment and protect the public, but in this process, they are also obliged to enforce and uphold the law. In terms of raids, the participants shared Parry's (2003) notion that, in the execution of police duties, the rights of raid victims are violated by the same people that they are supposed to call for rescue in their time of need.

5.3.2 The public's lack of understanding of police procedures in stop-and-search operations

The participants were of the view that one of the contributory factors to torture and assault was that members of the public were not familiar with police procedures. Forty percent of the participants stated that, in the line of duty during stop-and-search operations, unnecessary use of force was often provoked due to the public's lack of knowledge of police operational procedures. This was illustrated by P-Inv-54's example of how a suspect might be assaulted in a stop-and-search situation:

> "*A complainant will come and say, 'A police officer came and said, I'm searching you without explaining why', and the person would say 'Aybo, why are you searching me?', then a slap will come there and then. It starts like that. If the member resists, then the police get upset and then the assault starts. You people will ask 'Where is the search warrant?' and that would upset the police. 'What do you know about the search warrant?'*"

Similarly, P-Inv-50 stated:

> *"Complainants report lot of cases whereby a police officer stopped and searched the complainant. Sometimes the complainant is aware of the reason why the police stopped him, but he will ask the police officer to produce a warrant. As he is asking for a warrant, he is not cooperating or responding to any of the questions posed by the police. Sometimes a person will say, 'I will not say anything until you show me a warrant.' Surely the police officer will lose his temper and use force to make him respond to his questions. So, it's those kinds of situations where the police end up assaulting people."*

P-Inv-53 also illustrated how assault might take place in the process of a stop-and-search:

> *"With assault cases, what I have picked up through investigation is that the majority of those cases occur during the execution of their duties. You may find that it is unprovoked incidences where you are going to arrest a person for whatever reason or you stop and search a person and because they ask you why, not everyone understands the procedure that if you look suspicious, you can be stopped and searched without a search warrant. That kind of thing or maybe they are not comfortable with the way you are searching them, so you will find that the police officers smack them up or things like that."*

The examples provided by P-Inv-54, P-Inv50 and P-Inv53 suggest that there is lack of understanding of police procedure by the public and a lack of patience in explaining the procedure on the side of the police. These factors contributed to incidences of torture and assault of civilians during raids and stop-and-search actions. This finding suggests that the public's lack of understanding of police procedures is not to be evaluated in isolation, because it only results in torture or assault based on the response of the police officer to the questions raised by the person that is being searched. It is evident that torture and assault take place when the police are alerted about the presence of unlicensed firearms in a certain area and they have to conduct a raid in that residence in order to retrieve those weapons. Under such circumstances, the use of force is viewed as an effective approach to ensure that the suspects cooperate.

5.3.3 Suspects who resist arrest

The participants revealed that a suspect may be assaulted when he or she resists arrest. This finding is in line with Reiss's (1968a) explanation that, in the event of resisting arrest, police officers would assault rather than merely restrain the resisting suspect. In such an event the police officer is guilty of a criminal offence. Assault is a criminal offence if used when minimum force would have sufficed. Schiemann (2012:4) argues that force is only to be used as a last resort in a democratic state when a guilty detainee fails to provide valuable information. Even though the police are granted the authority to use force under section 49(2) of the Criminal Procedure Act No. 51 of 1977, an aspect under section 49 (2) of the Act is strategically undermined and overlook by the police, namely the issue of *resistance*: force is required only "…if a suspect *resists* the attempt at arrest and flees…" and "… is proportional in the circumstance to overcome *resistance* or to prevent the suspect from fleeing". The data clearly revealed that suspects were assaulted even when they were not resisting arrest. Moreover, the level of force used by the police appeared to be disproportional to the circumstances in which suspects had to be restrained.

A question that was posed to the participants was: "Based on your experiences, what are some of the circumstances that prompt members of the SAPS to torture and assault members of the public?" The participants' responses were varied. P-Inv-51 responded that assault occurred even in the absence of a threat:

> "*…others you find that a person was resisting an arrest but the police continued to assault the person while the person was handcuffed, even when the person was not*

causing any danger to the police, the police were continuing to assault him/her when he was handcuffed."

P-Inv-49 exemplified the description of assault by sharing a case that the participant investigated:

> *"…the one I just told you about, that person was handcuffed, leg irons on, she couldn't even defend herself or do whatever, whether by head, hands or legs, you know, she couldn't defend herself, whatever to try and avoid being assaulted, she couldn't."*

P-Inv-53 stated:

> *"Sometimes you will find that they resist arrest when they are confronted, or they are not willing to speak when they are asked questions which result in members using force against them."*

P-Inv-50 commented as follows:

> *"In some cases you will find that maybe a person tried to resist arrest which resulted in being assaulted. Where they could have used minimum force, they got a little bit excessive and it became assault common, or GBH or torture."*

The finding confirmed Grimaldi's (2011) assertion that the licence given to police officers to use force to arrest suspects who resist can at time be used for other purpose that are outside the mandate of the use of force. The use of force when a suspect is not a threat to a police officer or to society at large means that the police are abusing their authority and power by making an arrest for their own purposes or gain. This relates to the regional conference report by the European Centre for Constitutional and Human Rights (2012), which revealed that excessive use of force by the police was a recurring practice as it was reportedly used in the course of arrest or in response to demonstration. This finding also relates to Blumer's (1986:8) explanation of the symbolic interaction theory which proposes that "the actions of others enter to set what one plans to do may oppose or prevent such plans, may require a revision of such plans, and may demand a very different set of such plans…one has to *fit* one's own line of activity in some manner to the actions of others". This means the actions of a suspect who is resisting arrest may cause a police officer to change or revise his or her plan of arresting the suspect to a new plan of excessive use of force such as slapping, punching or kicking the suspect because he or she is now resisting arrest. However, the participants' comments revealed that the 'change of plans' by the police, to use Blumer's words, resulted in assault, which was

understood by the participants as unacceptable actions when a police officer was no longer using reasonable force to prevent a suspect from fleeing.

The majority of the participants provided similar responses, but also added additional information. But all the participant emphasized a point that was raised by Reiss (1968a) almost fifty years ago, which is that even though a person may resist arrest at first, if the use of force continues after the citizen has been subdued, this behaviour is assault and a criminal offence. For example, after a suspect has been handcuffed, s/he is no longer threat. If violent actions by the police then continue, it is assault as the police officer could have used other methods instead to further subdue the suspect.

5.3.4 Provocation of the police by the public

When the participants were asked if suspects had any characteristics that influenced police application of torture and assault, they provided contradicting views. Some indicated that members of the public might be assaulted if they provoked the police. This finding corresponds with a finding in a study that was conducted by Phillips and Smith (2000). The latter authors assessed non-lethal violence and found that members of the public were often disrespectful towards officers by swearing, fighting and physically provoking police officers, who then responded by using violence. The participants in the current study also mentioned certain behaviour by the public that provoked the police.

P-Inv-47 stated:

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

P-Inv-51 said:

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

P-Inv-50 elaborated on his response by proving an example:

> "*People irritate the police. For example, someone is arrested, so in the case of the police once they have arrested someone, automatically they have to handcuff that person, then you find that as he is seated at the back of the van he is busy swearing at the police. 'These handcuffs are tight, blah blah blah'. So, the police will smack them a little bit."*

P-Inv-56 and P-Inv-46 also explained that members of the public might provoke the police, but corroborated Beek and Golfert's (2012) assertion that citizens sometimes resist arrest by using violence. P-Inv-56 stated:

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

P-Inv-46 agreed, and provided an example:

> *"One example that you can possibly think of is service delivery protest and all of that; that on its own contributes a lot to assault because as you also know that most of the time it is always the case of the community against the police. They throw stones at the police and all of that and the police in retaliation would use rubber bullets, teargas and all of those things."*

Some participants believed that members of the public behaved in a manner that caused police retaliation such as torture or assault when the police were executing their duties. This finding is in line with a finding by Harris (2009), who revealed that improper use of force was more likely when a suspect was involved in a serious offense, was antagonistic towards the police or appeared agitated, and also when drunk.

Some of the participants indicated that even though complainants might have provoked the police, in most cases, the scale of violence tipped on the side of the police, whereas others argued that it was unlikely that a member of the public would instigate torture or assault. For example, two participants strongly argued against the notion that the public provoked police officers. P-Inv-49 stated:

> *"When it comes to him being assaulted, I don't think it's right at all from the start but not forgetting as per section 49 the use of minimum force. So from the get go, I don't think there is anything done by the victim that contributed to him or her being assaulted."*

P-Inv-48 agreed, adding the following:

> *"When someone comes here and says I have been tortured by a police officer, when I'm conducting my investigation, I will go to the person who witnessed that incident and the police officer who is involved in that incident and ask for the warning statement and also ask for the copy of a docket of where he was conducting that investigation because that docket needs to be attached for SPP to make a decision. You can't ask a victim, 'What did you do to make a police assault you?' You can't ask that question. It's like asking a rape victim 'What did you do to be raped?'"*

The participants who did not share the belief that the public at times provoked the police took the view that suspects might be non-compliant with instructions by the police, but that did not mean that they provoked the police. Harris (2009) states that some police officers use improper force in cases where the civilians defy police authority. This suggests that the problem lies with how a police officer responds to a person who defies his/her authority. A police officer could have used other legal methods to ensure suspect compliance. The illustrations by P-Inv-48 and P-Inv-49 can be adequately explained by the symbolic interaction theory, which proposes that, in an interaction between people and a suspect, the gestures (use of force) used by police officers convey to suspects the intention of forthcoming violent action by the police, and at this point suspect respond to these gestures and organise their responses on the basis of the meaning that these gestures conveyed to them (Blumer, 1968).

5.4 Organizational factors that contribute to police brutality in KwaZulu-Natal

5.4.1 Pressure to meet projected targets of weapons retrieval

Some participants indicated that police torture and assault occurred because of organisational pressure. For example, they have to retrieve firearms, drugs and other illegal goods in order to meet a specific target as required by management. The European Centre for Constitutional and Human Rights (2012) also revealed that law enforcement agencies "intimidated and ill-treated suspects in arrest situations … as a practical means of solving crimes and meeting quotas for the successful resolution of cases". This pressure to meet projected targets results in the use of excessive force, often ending in torture and assault.

The researcher asked: "*In your perspective, are there any organizational factors that influence the police use of torture and assault during the execution of their duties?"*

P-Inv-48 said:

> *"The problem is with the management in SAPS; they are more concerned about stats. There is this thing of baseline. They are putting pressure on members. For instance, last year you recovered this many firearms, this month you recovered this many of firearms, so if you don't meet that baseline you would be in trouble."*

P-Inv-49 agreed and further elaborated on the issue of meeting targets:

> *"The police officers are rushing for this thing of success. In the police service, if you don't do arrests, it's like you are doing nothing and there is this competition among them. For instance, they attend a case of stolen firearms, they want to recover it as of*

now, once they recover it, obviously, they will arrest the suspect because they have found the firearm that they were searching for or the money or stolen vehicle. So, it's success, they are rushing for success."

P-Inv-53 provided an illustration of how pressure from management influenced police interaction with the members of the public:

"The police are under pressure from the management, the management wants success, they want stats, they want to see that crime prevention is doing something, TRT is doing something, do you understand? So, they will go and just force people to say, 'I have a firearm', or 'No, I don't have firearm', 'I've got dagga', 'No, I don't have dagga'; you know, things like that. It's pressure from SAPS management that they want successes, they want stats as well. That's my thinking now. Because I think in a month they must also show target; they have to meet certain targets. So, without discovering anything, it's a problem. Hence, they go around forcing people to say yes, I have a firearm even though the person does not have a firearm and they end up assaulting that person."

The participants perceived that suspects would be assaulted and tortured when the police were under pressure from management, for example to retrieve a certain number of firearms. Beek and Golfert (2012) explain this problem by noting that the use of violence by police officers manifests in superiors' decisions or instructions that they give to rank-and-file police. They argue that these instructions are often vague, which means that police officers may interpret them in different ways. It can therefore be argued that, if management does not provide police officers with explicit instructions on how to meet projected targets without intimidating and using excessive force, the potential for 'going rogue' is very high. The media often reports on the retrieval of weapons, drugs and other equipment by the police. However, in operational situations such as raids and stop-and-search operations the police should be clearly instructed on the manner in which this target is to be reached. If not, they will revert to illegal methods such as torture and assault to force members of the public to admit to possessing firearms, even when they don't.

5.4.2 Inadequate training of police officers

In response to the question pertaining to organizational factors that influence police torture and assault, the participants were of the view that the training system of the SAPS, especially with regards to interviewing skills and the recruitment of new members, was lacking. Latham (2001) states that training is an art that requires not only the ability to perform tasks but the ability to explain why and how things are done. The participants perceived that the police were lacking

in the ability to explain to the members of the public why they were conducting raids or stop-and-search operations. This view was demonstrated by P-Inv-53:

> *"They [members of the public] might ask why you [police officer] are searching them or maybe they are not comfortable with the way you are searching them, so you will find police officers smacking them up or things like that."*

This comment implies that police officers may fail to explain to a member of the public why s/he was stopped and searched or why a raid had to be conducted. If the public were informed of the reasons for such actions, they may be more cooperative and understanding. P-Inv-55, P-Inv-49 and P-Inv-56 supported P-Inv-53's statement and mentioning three different problems with current training practices in the SAPS. P-Inv-55 stated:

> *"Probably they are not trained properly to deal with certain complains that do not require them to use excessive force. In some arrest incidences, police officers do not have to use force but because they are not trained properly, they use excessive force to ensure an arrest."*

P-Inv-49 agreed, and elaborated on the issue of police training:

> *"I think one of the main reasons is training. Because they are not trained, they exceed that force, they do not have interviewing skills because once you are good on one-on-one with a suspect, you get what you want."*

Similarly, P-Inv-56 shared this perspective on the issue of police training:

> *"I would say the training they are getting does not talk to what they are facing outside. Their training period is too short, whereas the demands are too much outside. So, the training does not relate to what they will be exactly doing when they are facing the public."*

The participants believed that current training programmes did not address the occupational challenges that the police encountered in their occupational settings adequately, particularly in terms of dealing with situations such as suspects who are not cooperative in an interrogation. In relation to torture, some participants indicated that the main organisational problem in the SAPS was limited interviewing skills. This problem is linked with the issue of training as students should acquire interviewing and interrogation skills during the training process. P-Inv-48 stated:

> *"They are lacking interviewing skills. If they were not they wouldn't use torture to force suspects to give them the information that they need or the firearm."*

P-Inv-50 agreed, and added:

> *"Interrogation is a skill, you don't just…not everyone can interrogate and be successful in doing it. So, they opt to use other methods such as being violent to that person. They need to be trained on how to interrogate suspects."*

Correspondingly, P-Inv-53 raised the issue of police recruitment as one of the organisational problems that contributes to the criminal behaviour of torture and assault by members of the SAPS:

> *"I think the problem is with the recruitment process because you will find that lot of the times, I think if they [selected] properly you would be able to pick out problematic people. They give them a lot of field training."*

Steyn (2013) states that it is confirmed across the globe that there is a need for improved recruitment and training approaches in order to reach a state where the police act professionally towards the public. Currently, with the high number of reported cases of torture and assault as well as the extreme application of methods that subject people to physical and mental pain, it is evident there is still a lack of police professionalism. One of the responsibilities of the IPID is to ensure that the police service is professional and demilitarised. However, the participants were of the view that the recruitment strategy is a serious problem. Police basic training was also fingered as an issue, as the lack of interrogation techniques is related to the training of police officers. Most importantly, they stated that training did not equip the police to deal with occupational challenges and situations that the police encounter in their occupational setting. These comments lead to the conclusion that the police methods of torture and assault are partly due to poor training.

The above finding confirms Nsereko's (1993) assertion that a police force whose members are lacking proper training is likely to encounter problems in obtaining the much-needed cooperation and support of the members of the community. Indeed, the lack of training, which relates to the occupational challenges that the police encounter, undoubtedly contributes to the increasing lack of cooperation by suspects with the police, particularly because the latter respond by torturing and assaulting suspects. In relation to the participants' perspective on the lack of interviewing skills, Latham (2001) states that investigations of human rights violations

require specific knowledge of legal standards and procedures and that a firm grasp of these concepts is of the utmost importance. However, based on the perspectives of the participants, many police officers do not apply these standards and procedures, which might be partly due to limited training on crime investigation techniques. This implies that the reduction of torture and assault partly depends on the effectiveness and comprehensiveness of police training.

5.5 The Extent of Incidences of Torture and Assault in KwaZulu-Natal

5.5.1 An influx of torture and assault cases

Recent literature on police torture has focused on the persistence of this phenomenon in the police context. In South Africa, increasing cases of high profile crimes have been revealed in the media, and the persistence of torture and assault is one objective that this study sought to illuminate through an analysis of the magnitude of these crimes. With regards to the question of the magnitude of torture and assault in KwaZulu-Natal, the majority of the participants emphasised that they did not deal with the statistics, so they could not state statistically what the precise rates of the increase or decrease of such cases were. Their responses were therefore not based on statistics, but rather on their perceptions based on cases that each individual had dealt with for the past three years (2014-2016). Some participants had an overall view of the cases dealt with by the KZN IPID office. Nevertheless, 90% of the participants indicated that incidences of torture and assault were increasing. This finding confirms that of Dissel et al., (2009), who assert that torture and CIDT have become routine occurrences. According data revealed by Cingranelli-Richards (Ciri) (2006), torture is one of the most frequently practised criminal behaviours by the police.

When the researcher asked: "*In the past three years, from 2014 to 2016, was the number of reported cases of torture and assault increasing?"* some participants responded with exclamation and emphasis. P-Inv-54 exclaimed in IsiZulu:

> *"Hawema, yes! They are increasing. We are getting an influx of those cases."*

P-Inv-46 stated:

> *"Assault and torture don't decrease, those cases do not decrease, their volume is always high."*

P-Inv-49 elaborated on the response, exemplifying the influx of torture and assault cases in KwaZulu-Natal province.

> *"Cases of torture and assault are increasing. Right now the members and the entire IPID is struggling and its struggling with regards to section 28(1)(f), that if you look from 28 (1)(a) to (h), our most intake is (f), whether its torture or common [assault], but each and every member here in the entire IPID nationally, most of our cases it's torture, assault, torture, assault each and every day. In this office each and every morning there is case intake committee whereby the new cases that you receive are being allocated to the members, others are being registered. If you can look at or have the minutes of those meetings, each and every day the intake of those cases are torture and assault, torture assault, so the number is not decreasing, it's increasing."*

These comments are in line with statistical reports by the IPID which indicate that, in KwaZulu-Natal province, there were 19 cases of torture and 368 cases of assaulted reported in the 2013/14 financial year. In the 2014/15 financial year, the cases of torture increased to 45 and to 467 cases of assault. However, in the 2015/16 financial year the cases of torture and assault in KZN decreased as 31 torture cases and 426 cases of assault were reported. These statistics and the responses of the participants support Muntingh and Dereymaeker's (2013:6) assertion that "in respect of the SAPS, its oversight body, the IPID, receives hundreds of complaints annually alleging assault and torture".

The reasons that the participants gave for the increase in cases of torture and assault in KwaZulu-Natal varied. Among their explanations was the issue of raids, which was once again highlighted. For example, P-Inv-47 said:

> *"…increasing because when the police are conducting a raid around the area definitely they end up assaulting."* (P-Inv-47).

Similarly, P-Inv-55 mentioned that cases of torture and assault had not been curbed:

> *"…are both increasing, but more assault with GBH. I think what causes the increase is because a large number of cases we receive is in relation to drug operation issues. Most of it stems from that.*"

IPID annual reports have shown that KwaZulu-Natal province has been experiencing an increase in the number of assault cases reported by the public. Although this increase may be understood as an escalation of criminal behaviour on the side of the police, there is a positive side, as Smith (2013:199) argues that this might be an indication that the system of reporting is bearing fruit, as complaints lodged against police officers enable the identification of rogue officers. This is an indication that the quest to maintain a disciplined and effective force by holding law enforcement officials accountable for their actions may be achieved to some extent. Thus an increase in the number of reported cases means an increase in the number of

police officers that may be held accountable for their actions. Smith (2013:13) further stipulates that an effective complaints system will improve trust and confidence in the police among members of the public. Therefore, the observed increase in the number of reported cases can be understood as improved trust and confidence in the IPID in terms of addressing citizens' grievances with SAPS members. An influx of cases of torture and assault also enables the initiation of investigations (UNODC, 2011), provides potential learning opportunities that could lead to an improvement in policing services, and also leads to avoidance of impunity for offenders and the eradication of a culture of impunity in the long term.

However, the participants' emphasis on an increase in cases of torture and assault argues against Newham's (2005:162) view that, if one compares the abuses committed by the apartheid police with those of the democratic SAPS, "it is clear that an extensive improvement has taken place, [as] police are no longer actively involved in a systematic use of brutality, torture or extra-judicial killings that characterised policing during the apartheid era". More than twenty years later, it is evident that the new South African police force is still engaged in criminal behaviour such as torture and assault in the execution of their duties. This statement supports the problem statement that led to the formulation of this study, as it emphasises that high rates of police torture and assault occur in the execution of their duties. This indicates that the main issue that the country is facing in terms of security and policing services is that of police officers becoming offenders (Harris, 2009) and applying torture and assault as their modus operandi.

5.5.2 High rates of cases that are declined by prosecutors

While there was evidence that reported cases of torture and assault in KwaZulu-Natal were increasing, a gnawing question was whether the number of successful convictions was also increasing. It was disappointing to find that, in the participants' experience, more and more cases were declined by the courts. This finding confirms Muntingh and Dereymaeker's (2013) assertion that the number of prosecutions initiated against law enforcement officials in South Africa is outweighed by the number of complaints lodged. Seventy percent (70%) of the participants in the latter study stated that cases of torture and assault were highly likely to be declined by the courts. According to Smith (2013:199), once police managers, prosecutors and the court have failed to take appropriate action against criminal or disciplinary offences committed by a police officer, it leads to a culture of impunity in the police force. In KwaZulu-

Natal, the participants and Dereymaeker (2015) were in agreement that police officers are enjoying impunity for the illegal acts they commit. Their comments imply that a lack of prosecution and discipline means that the police enjoy de facto financial, disciplinary and prosecutorial impunity for their behaviour.

In response to the question of whether they thought the number of successful cases of torture and assault was increasing or decreasing, the participants were generally negative. P-Inv-53 stated:

> *"It has decreased. We investigate but the prosecutors fail us."*

P-Inv-49 commented:

> *"To be honest, a lot of the cases are being declined. The number of the convictions in terms of the assault it's being over exceeded or powered by the number of the declined. The main reason is that indeed, as I said, the intake of assault is very high. You find that out of ten cases that I will send to court for decision, maybe thirty percent will be sent to prosecute; thirty percent."*

P-Inv-46 mentioned the following:

> *"Most of the cases of assault and torture that we investigate, and we take them to court for decision, they always come back declined, most of the time. I would say about eighty or ninety percent of those cases they come back declined. So, if the case is declined in court, that means there is insufficient evidence to continue and put that case on trial."*

The responses to this question were in line with the statistics provided by the IPID annual reports, which highlighted that in the 2013/14 financial year 251 cases of assault and 1 case of torture were declined. In the financial year 2014/15, 738 cases of assault and 2 cases of torture were declined by the courts. The number of declined cases of torture and assault increased in the following financial year to 789 cases of assault and 10 cases of torture. These responses confirmed Muntingh and Dereymaeker's (2013) assertion that it remains a rare event for South African officials to be prosecuted and convicted for assault, torture and actions resulting in the death of criminal suspects.

It is noteworthy that an increasing number of cases of torture is reported, but it is only a few of these cases that end in convictions. It is therefore not wonder that such cases continue to persist and escalate yearly. This is line with the principle of 'negative reinforcement' that is proposed by the differential reinforcement theory. This principle states that "behaviour is encouraged by removing consequences that are adverse" (Newburn, 2007). This means that criminal

behaviour such as torture and assault will be encouraged if adverse consequences such as convictions and imprisonment, warnings or suspension are 'removed' or absent.

In their elaboration of the reasons that cause a decline in assault cases tried by the courts, the majority of the participants highlighted the issue of lack of evidence. P-Inv-50 stated:

> *"Another problem is that I can investigate and then the court declines to prosecute. It depends on the evidence that is in my docket. For torture and assault there are not many dockets that are successful. There are more that are declined."*

P-Inv-47 provided the reason for the decline:

> *"No, no, no! Most of the time the police are unknown. Most of the time these assaults happen in the afternoon or evening, when they conduct raids in the middle of the night. They are not successful because of insufficient evidence. Some are a victim against the police and there is no independent witness."*

P-Inv-46 agreed, and added:

> *"More cases of torture are declined. You have to understand that usually it is not easy to prove torture and assault because if they are going to torture you, they always make sure that there are no witnesses. It is always your [complainant's] word against theirs [police officers']."*

P-Inv-54 also mentioned the aspect of evidence that is lacking:

> *"The successful complaints are decreasing, my dear, because you have a genuine case but can't place the suspect to say these are the people who did one, two, three because of lack of identification parade."*

When the participants were asked to elaborate on their responses in respect of the number of cases that are declined by the courts, the majority of the participants emphasised lack of evidence as the major reason for this fact. This finding confirms the observation by Dissel et al. (2009) that investigations into acts of torture and CIDT, as well as the prosecution of such cases, remain a problem in South Africa. The investigation process is one of the strategies the participants mentioned that they used to ensure that the police were held accountable for their actions. When asked about the strategies that they used to make sure that members of the SAPS accounted for their criminal behaviour of torture and assault, the majority of the participants emphasised that they conducted thorough investigations. This suggests that they felt that the problem rested with the complainants or the prosecutors, because they perceived that they were conducting their investigations meticulously. In this context, a clear delineation of the issue was impossible to draw in this study, as the investigation was one-sided and did not include

the views and perceptions of other role-players such as prosecutors, the judiciary, and even complainants.

However, what could clearly be established was that the role of the oversight body is to ensure that investigations into the police are carried out effectively, thereby making certain that cases where it is alleged that there has been criminality on the part of the police are investigated properly, as suggested by Bruce (2007). Moreover, it is possible that a lack of evidence may be due to some of the challenges that IPID officials encounter when they conduct their investigations. Be that as it may, it can be argued that participants' emphasis on the lack of evidence points to the fact the investigation procedures are not effective. This does not mean that they need to be changed radically; rather, strategies need to be improved in order to decrease the number of declined cases to ensure a higher conviction rate for police torture and assault.

According to P-Inv-49, one reason that torture and assault cases are declined by the courts is that even prosecutors justified the use of police violence during the execution of their duties. This is illustrated as follows:

> *"Most of our torture and assault cases which we are getting, happened when members were on duty. So prosecutors will look at whether force was necessary or not, so once they obtain the member's statement, the first thing they will write in the first paragraph is "on this date, while I was on duty…", and the moment "I was on duty" is there, the prosecutor gives him the benefit of the doubt. That person was on duty, performing his duties. So already … the issue of declining is there."*

However, the notion that torture and assault are acceptable in the execution of their duties undermines section (3) that relates to torture in the Act, because the perpetrator is a representative of the government (i.e., the police) which means that any act of violence is unjustifiable, particularly by prosecutors or the courts. This is reflected in Act No. 13 of 2013 section (3) which states:

> "Despite any other law to the contrary, including customary international law, the fact that an accused person (a) [I]s or was head of state or government, a member of a government of parliament, an elected representative or a government official; or (b) [W]as under a legal obligation to obey a manifestly unlawful order of a government or superior, [I]s either a defence to a charge of committing an offence referred to in this section, nor a ground for any possible reduction of sentence, once that person has been convicted of such offence".

The use of force when extracting information runs the risk that it will become a ritual. Parry (2003) states that once torture functions as a ritual, then the legal definition aimed at official state policies and goals will remain inadequate. This risk is evident in the increase in cases of torture and assault by members of the SAPS that are declined by the courts. Only 30% of the participants indicated that the number of successful convictions had increased, which means that 70% felt that this number had declined. The difference in the responses to this question may have been due to the fact that the respondents provided information based on their individual cases that they had investigated over the past three years. While some believed that the conviction rate had increased, others believed that it was declining. Participants who believed that the conviction rate was decreasing based their perception on various factors.

P-Inv-51 said:

> *"I don't deal with stats, so I'm not sure but I think we've got an increase in convictions."*

P-Inv-56 agreed, and added:

> *"Successful cases are increasing because most of the IPID members were trained on how to solve cases so they do their utmost to ensure that the conviction is secured."*

P-Inv-55 also agreed that convictions for cases of assault were on the increase:

> *"Yes, we are getting good conviction [rates] for assault. For torture I can't really say, my dear."*

These responses indicate that some of the IPID investigating officers were not aware of the conviction rate of the cases of torture and assault that their office dealt with. This suggests that the IPID neglects to include follow-up strategies in its operations and have therefore abdicated their responsibility in terms of the accountability of police officials. Nevertheless, an increase in conviction rates for assault is in line with the principle of 'positive punishment' that is proposed in the differential reinforcement theory, which states that "a behaviour may produce certain events and thereby decrease in frequency" (Burgess & Aker, 1966). This means that convictions, which impose sanctions on perpetrators of torture and assault, will cause such acts to decline. According to Jeffrey (1965), if the "adverse consequences of the act control the behaviour, then the behaviour will not occur". An increase in conviction rates therefore means that the police are punished and, as a result, fewer cases of torture and assault should occur due to the application of accountability measures.

5.6 Challenges encountered by KZN IPID investigating officers

5.6.1 Lack of evidence from complainants

The participants indicated that procuring evidence was vital, as it was the most crucial information that they needed to finalise their cases. However, one of the challenges that they encountered when investigating complaints of torture and assault was the lack of evidence from complainants. Stelfox (2009) considers that the aim of investigations and of investigators is not merely to generate knowledge, but to gather evidence. Moreover, investigations are not assessed in isolation, but in relation to police accountability. This means that if there is a lack of evidence, then the productivity of an investigation is affected, which in turn impacts the possibility of the perpetrator being held accountable for his actions.

Researcher: "*Can you tell me about the challenges that you encounter when dealing with cases of torture and assault by members of the SAPS?*" In response to this question, the participants mentioned different types of evidence that they might be lacking. P-Inv-48 and P-Inv-46 raised concerns regarding a lack of details of the suspect. P-Inv-48 said:

> *"The challenge is when the suspect cannot be identified, when the victim did not gather the details of the motor vehicle of the suspect because it happens in the night and they say 'so many police officers came that night'…."*

P-Inv-46 also mentioned a lack of identification of the perpetrators:

> *"…not enough evidence to work on, as I said before. You will find that it is one complainant against six suspects − police officers − and you find that we do not have enough evidence to conclude that case."*

Harris (2009) states that the numbers of officers and citizens that are present during an encounter also play a role in police use of improper force. More importantly, it becomes difficult for the complaint to point out the people that were present during the encounter or to even take note of the details of the police officers. Such cases are thus fraught with a lack of evidence when it comes to identification parades.

Another point raised by most of the participants is that the complainants lodge complaints without having visited a doctor. P-Inv-55 stated:

> *"Some of the clients don't go for medical assistance after they have been assaulted."*

P-Inv-56 agreed, and added that effect of the absence of the doctor's report is severe for a complainant:

"Sometimes they report the case and do not go to the doctor immediately, so that hampers the process of gathering evidence."

Correspondingly, P-Inv-49 explained the importance of a doctor's medical report as part of the evidence:

"Another one, you find that the person was assaulted but they never went to see a doctor, the clinic. Remember, with regards to torture and assault, the only evidence that indicates that you have been assaulted or tortured is the doctor's report. Even if there were witnesses, eye witnesses who witnessed you being tortured by the police but if you did not go to see a doctor, that is a problem, a serious problem. But that depends on whether the person is aware. When you ask why they didn't go to the clinic, they say no...there was no money. In those rural areas you find those kinds of excuses."

Rowe (2013) explains that many South African doctors are regularly exposed to victims of violent crime. They are responsible for the care of such persons and if victims of assault wish to make a case, the J88 is a crucial piece of medical evidence that highlights the findings that are potentially relevant for legal purposes. It is evident that one of the challenges that the investigating officers encountered was a lack of evidence that should have been provided by a medical report. Such a report assists prosecutors in determining the severity of the injuries, and provides identification of the suspect in terms of name, personal details and even the number plate of the vehicle.

5.6.2 Lack of cooperation from the complainant

The main function of the independent oversight agency is to give the public a chance to voice their complaints with regards to the manner in which the police interact with them. This means that the priority of investigators is to serve the public. Smith (2013:199) states that "complaints procedures serve to address citizens' grievances with the police…to protect human rights". In the process of fulfilling their duties as the voice of the public, IPID investigating officers experience challenges as complainants often do not fully cooperate with them. The first step in the process of investigation is for a victim to lodge a complaint to the IPID against a particular police officer who violated his or her rights. However, many challenges and frustrations were experienced by IPID investigating officers after a complaint had been lodged and an investigation had commenced.

The researcher asked: "*Can you tell me about the challenges that you encounter when dealing with cases of torture and assault by members of the SAPS?*"

As high as 90% of the participants admitted that they experienced challenges, particularly in terms of complainants' lack of cooperation in the investigation. Miller (2009) indicates that the success of any investigation depends, among other things, on the statements of victims and witnesses. In this regard, the participants were almost unanimous in sharing their frustrations regarding the complainants that they have to deal with. This is illustrated in their statements that highlight various reasons why complainants fail to cooperate. P-Inv-55 commented:

> *"The complainant opens the case, then he wants to withdraw, or sometimes in the middle of the investigation a complainant just disappears. You call him to set up a meeting but, they won't pitch up and you show up at their residence and then he will tell his family members to say he is not here. So, complainants give us problems at times, because they are not cooperative."*

P-Inv-46 provided a clear illustration of how the lack of cooperation on the side of complainants is a challenge in their investigation process:

> *"Our complainants will come and open a case against the SAPS, and you start investigating that case. You must understand that you don't just investigate a case for one week and then the next week it is completed. It requires a lot of effort. Let's say in the next two months when we get back to the complainant and you find that the complainant is no longer interested in the case anymore, and now the complainant is running away from you. So, that's one of the reasons why these cases are usually not successful."*

The problem of a lack of cooperation by complainants was not limited to a certain step in a process of an investigation. The participants indicated that complainants often refused to cooperate and tended to informally withdraw at any point when they felt that they were no longer interested in the case. P-Inv-49 explained that lack of cooperation was also experienced during a trial:

> *"Yoh, you will find that the victim when the case is still new he will be in and out of here in the office, asking about the progress, but when the matter is going to court and you need him to go and testify in court, you can't find him…the suspect was arrested, and charged and he is going to trial now, and this person is nowhere to be found."*

Similarly, P-Inv-54 explained:

> *"Even complainants at times do not come on board when you need them for this ID parade. Even now I've got a case of assault and I'm struggling to do an ID parade because I'm trying to chase one witness who is running around."*

A gnawing question is why a complainant refuses to cooperate after having been given an opportunity to voice his or her grievance and get justice. Most of the participants highlighted

that the answer to this question was found in the motive for opening the case. P-Inv-46 and P-Inv-53 summarised some of the reasons that the majority of the participants shared. P-Inv-46 commented:

> *"You find that a complainant opened a case when he was still angry or because he was pressured by his friends to open a case against the police."*

P-Inv-53 agreed, and added:

> *"Others will give you a run around, maybe because there was a case opened against them, now they open an assault case and then you find that cases against them were withdrawn because maybe there was insufficient evidence against them, so now they are no longer interested in our case and they won't tell us that, 'Listen I'm no longer interested in the case', and then come through and file a statement or let us meet them to take a statement. They will just give you a run-around."*

The findings indicate that IPID investigating officers are hindered in the execution of their tasks by complainants who do not cooperate. The reasons are multiple, such as they opened a case when they were still angry, they were pressured by friends, they were suspects in another SAPS case, they were afraid to testify, or the complainant did not want to (or could not) identify the suspect (SAPS member). When complainants withdraw in the middle of an investigation, the three objectives of a complaint are undermined, namely: (i) In the absence of a complaint, an investigation is unlikely to be initiated; (ii) if there is no complaint [or complainant], the police will miss a potential learning opportunity that could lead to an improvement in services; (iii) the lack of a complaint may lead to impunity for the offender and a culture of impunity in the long term (UNODC, 2011).

Even though it can be argued that the first objective is achieved when the complainant lodges a complaint, the following two objectives are never fulfilled in cases where the complainant fails to cooperate. Smith (2013:199) argues that the system of complaints is an accountability mechanism that was established with the aim of identifying rogue officers. This was done for the purpose of maintaining a disciplined and effective force by holding law enforcement officials accountable for their actions in criminal and disciplinary proceedings that are taken based on the evidence obtained in the investigation of a compliant. Therefore, lack of cooperation impacts the success of achieving police accountability as well as the thoroughness of any investigation.

5.6.3 Lack of cooperation from the police

IPID investigators are provided with sections 29 and 33 of the IPID Act, which obligate the police to cooperate in IPID investigations when needed. These two sections support and improve investigation processes in respect of police compliance. However, the participants indicated that they still encountered various challenges in terms of police cooperation, especially with regards to the provision of warning statements based on their version of the incident. This was confirmed by P-Inv-51, who stated:

> *"Members of the SAPS are not willing to give warning statements. Some of the members you make appointments with them, then set a date, then when you come on that date they booked off sick. Then you make another appointment and they might just tell you 'Ok, I'm on duty tomorrow you can come and meet me'. Others won't, they give you a run-around [i.e., they avoid the investigator]."*

P-Inv-46 added:

> *"You get there looking for your suspect at a certain police station and you find that he is not there. They are denying any knowledge of him. The police are not cooperative, and those are our challenges."*

Similarly, P-Inv-56 explained:

> *"Some police officers are still stubborn, but we deal with them, we sort them out. We have the law on our side to force them to give us what we want. We use their commanders, their commanders know they cannot withhold anything when we need it, so as much as they are trying to not give us what we need, they don't win."*

Even though P-Inv-56 stated that when the police refused to cooperate they could rely on their commanders, some participants were concerned about the cooperation of stations commanders, as they emphasised that police lack of cooperation was not limited to the members who had been involved in a particular case, but that even management at times refused to assist in ensuring that the police cooperated because they themselves were not cooperative. This point was confirmed by P-Inv-51's comment:

> *"…Commanders, also you make an appointment or ask for the person and they do not respond."*

Similarly, P-Inv-53 added:

> *"With SAPS members, they can sometimes give you a run-around. You find that in some rare cases, you will find that even their commanders are giving us a hard time to get to their members. SAPS is very protective of their members. You approach the*

commander and the commander will say, 'No that one is off sick, you can come next week', then when you come next week the commander will give you another story, so it depends."

P-Inv-50's comment suggested that members of the SAPS still functioned on the premise that was raised by Keenan and Walker (2005:190) that police officers "must be granted the widest latitude to exercise their discretion in handling difficult and often dangerous situations, and should not be second-guessed if a decision appears in retrospect to have been incorrect". This notion was evident in a point that was raised by P-Inv-50, which was cited as one of reasons why police officers were unwilling to cooperate with the IPDI:

"Police officers sometimes give me attitude because they believe that they were right at the time. It takes time to complete a case where the suspect gives you attitude because you will make appointments and on that date you agreed on you won't find him."

P-Inv-54 found that a lack of cooperation on the side of the police was not only limited to warning statements, but extended to resources as well. The functioning of the IPID is dependent on the SAPS to provide them with the resources needed to complete their investigations. P-Inv-54 commented about this as follows:

"The challenge with SAPS is that you will request for the venue and they will say no it's not available, you will request again and the SRC members will say no we are on call, you will have to reschedule the dates just to be accommodated by them."

The information provided by the participants revealed it was common practice among police officers to refuse to cooperate when they had to issue their warning statements. Even station commanders were obstructive and refused to cooperate by covering for their staff instead of making sure that they would be on board to facilitate investigations. The cooperation of the police also includes being able to provide the IPID with information. The participants emphasised the lack of information they received. According to Miller (2009), statements by suspects are among the most important information that investigators need in order to finalise their cases.

5.7 Inadequately capacity of the IPID

The IPID was established after the ICD had collapsed due to its ineffectiveness. The IPID was established with few changes to upgrade it from the ICD. In the context of section 28 (1)(f) of the IPID mandate, the IPID is required to be assessed in terms of its successes and challenges. A question was posed to the participants in this regard, and their responses varied. A few of the participants did not want to talk negatively about their organization, whereas others openly expressed their grievances with regards to the challenges they encountered when investigating cases of torture and assault. There was some convergence with regards to the responses about the challenges that were experienced.

The researcher asked the participants: "*Do you think IPID has adequate capacity to address the problem of torture and assault in KwaZulu-Natal?*" Some participants responded in an assertive manner, while others responded even before the interviewer could finish asking the question. All the participants indicated that the IPID institution was inadequately capacitated to address the huge number of criminal offences that it was tasked to investigate, and they further elaborated by mentioning different reasons as to why they thought the IPID was inadequately capacitated.

P-Inv-49 stated:

> "*No, not at all. When we are talking about resources at IPID, it's something else. Whether it's torture or any other criminal offence, there are no resources. Even with personnel, we are far, far, far behind. Unfortunately the intake of torture and assault cases is very high and there are no resources."*

P-Inv-54 stated:

> *"Oh no, IPID… I don't want to talk bad about IPID, but there is a problem with the budget, that is number one. So, yah… we don't have enough resources. The ideal situation would be, IPID has got their own resources, own photographer everything done at IPID, but unfortunately, because of the budget we rely on stakeholders."*

P-Inv-48 contributed to the types of resources that are lacking:

> *"For lots of things we are relying on SAPS, for ballistics we are using the SAPS ballistics for weapons used by the police officer we take it to the same SAPS members who are working there."*

A limited budget and few resources are not a new challenge. Based on the findings of a study that was conducted by Montesh and Dintwe (2008), it was revealed that some of the challenges

encountered by the ICD included lack of resources, lack of power to force institutions to comply and implement findings, limited policing power and a limited budget. Bruce (2006), Du Plessis an Louw (2005), and Berg (2013) all argue that limited resources result in a lower quality of investigation, a less thorough investigation, and a failure to adequately address issues that are far more prevalent than deaths in custody or as a result of police action (such as corruption and torture). Bruce (2006) and Berg (2013) state that under resourcing, lack of capacity and broader logistical challenges (for instance, travelling long distances to get to rural cases) mean that the oversight body cannot cope with its caseloads. P-Inv-49 emphasised the lack of a sound budget:

> *"Remember, the IPID is independent from the police, in this case the SAPS however, we are reporting to the one Minister of Police; we are all reporting to him, which means all our budgets are coming from the police. So, do you think if I'm investigating you, and you are the one responsible for giving me a budget and resources, that you would give me enough budget and resources to investigate you? We try by all means to work with the available budget. The budget is too small."*

The participants also indicated that there was a shortage of investigating officers responsible for investigating criminal offences:

> *"We are not adequately capacitated for anything that we are mandated to do. No, SAPS have, I don't know how many hundred thousand employees. We have I think 250 to 300, this includes your chief directors, assisting directors, the management level who are not investigators. The work load is not equally distributed amongst them. That makes the entire IPID…so you can see the ratio. There is a serious shortage of manpower, resources, proper management, infrastructure, IT, funding and poor salaries. We laugh about it, but those are the serious challenges that we encounter."* (P-Inv-53).

P-Inv-49 explained that the limited budget had to do with the dependence of the IPID on the SAPS as they still reported to the same Minister of Police as the people who were suspects in their cases. This challenge corresponds with a point that was raised by Montesh and Dintwe, (2008) who stated that the police oversight body in South Africa was not independent. They argued that the current arrangement where the SAPS and the oversight body, which at that time was the ICD reported to the Minister of Safety and Security did not support its independence. According Berg (2013:147), from 1997 to 2011 the budget increased eightfold and its staff almost tripled, yet it never attained a full contingent of staff despite these increases in personnel and resources. Hendricks and Musavengana (2010) state that the demand always seems to outweigh the capacity to deliver, particularly with the steady rise in cases received. The

majority of the participants complained about the distance that they had to cover to investigate cases, highlighting the impact that it had on their jobs:

> *"The main challenge is that we investigate the whole of KZN. We have this office, Durban office and another one at eMpangeni, but the total number of investigators that we have here is less than twenty, for the whole province. We deal with plus or minus 184 police stations the whole of KZN. The geographical area of KZN is huge. I will leave here tomorrow to go to Newcastle; that is like four, five hours' drive, and by the time you get there you are exhausted. When you get there, to a certain hotel, you sleep. You wake up the following day, you start looking for the people (complainants) you made arrangements with, only to find that you can't find them anymore. Like I said, they are now running away from you."*

P-Inv-47 illustrated the impact that long distances had on the cases that they had to gather evidence for:

> *"For us, we arrive when they have reported that there is a scene, we need to attend when someone has died by the hands of the police. Then from here due to jurisdiction, he has died KwaDukuza. By the time we reach there, it's after two hours and the scene is already contaminated. You know they have interfered with the crime scene. We as IPID we are a reaction unit, we come after everything has been done. As an investigator you need to work hard to determine the evidence because let's say they killed a person, and the person did not shoot back but by the time we reach the crime scene you will find that the police have put a gun in the person's hand, saying he first shot at them and they reacted to that."*

Clearly, the distances that the KZN IPID investigating officers have to cover challenge the effectiveness of the oversight body and result in a large number of pending cases. The participants raised the concern that it was difficult for them to attend to all cases. Based on the IPID Annual Performance Plan (2017:13), the geographical location of the IPID offices poses a challenge for IPID investigating officers, because it becomes difficult to reach victims as they have to travel long distances to reach crime scenes. As a result, they end up using a huge proportion of the already stretched budget for travelling and accommodation expenses.

5.8 IPID Organisational Strategies to Ensure Police Accountability

5.8.1 Investigation of cases of torture and assault

The IPID mandate specifies that the aim of the IPID is to ensure independent and impartial investigations of identified criminal offences allegedly committed by members of the SAPS and the Municipal Police Services (IPID Annual Report, 2015). However, with the increase of declined cases that is hampered lack of evidence, it is evident that the investigations are not carried out effectively.

Researcher: "*Can you tell me about the strategies that you use to ensure police officers are held accountable for their actions of torture and assault?*" In response to this question, the majority of the participants mentioned the following about their investigative strategies:

P-Inv-46 said:

> "W*e investigate cases to the best of our abilities just to make sure that we get the message across that we are here and you can do that and we will arrest you and take you to court."*

P-Inv-47 and P-Inv-51 emphasised the meticulous nature of conducting their investigations:

> *"We ensure accountability by conducting a full investigation, a full investigation."*

P-Inv-51 stated:

> *"We investigate the case thoroughly."*

Hopkins (2009) mentions that, whether by complaints or other means, the state has become aware of the possibility that the right to life or the right to freedom from torture, cruel, inhumane and degrading treatment is been violated by law enforcement officers. Therefore, an obligation rests on the shoulders of the state to conduct effective, unbiased investigations into the factors that hamper effective investigations into allegations of violations committed by SAPS members. The participants indicated that they took on this obligation to investigate such cases. Their responses supported Bruce's (2007) suggestion that members of the public need to be assured that investigations against the police are carried out properly.

P-Inv-54 provided a detailed description of the investigation process that was apply after a case had been lodged:

> *"What we do is, we investigate by getting witness statements, J88, on duty statements, warning statements from police officers, and we get all the other stuff [documentation]*

that will make a case. Then you submit it to the Senior Public Prosecutor who will then go through everything that is in the docket."

P-Inv-50 explained that even though the strategy of investigating cases was a standard strategy, each case that was investigated was different. This is confirmed by the following statement:

"We investigate and then we take the case to the NPA. But investigation is a flexible thing. You use different strategies for different cases because the cases are flexible. Even if you and I were assaulted by the same person, our assault might be different."

When the participants were asked if the strategies of investigating members of the SAPS were productive, they unanimously indicated that their processes were effective. However, this contradicted the information that was obtained from question four of the interview guide in respect to the rate of successful cases, as they indicated that most cases were declined because of a lack of evidence. In this context, the European Commission of Human Rights Rapporteur on Police Complaints states that an effective investigation is a state-initiated investigation that is independent, adequate and capable of resulting in discipline and prosecution of perpetrators. It is also prompt, transparent and open to public scrutiny and involves and protects the victim of the alleged abuse.

Miller (2009:23) emphasises that the aim of criminal investigations includes bringing offenders to justice. In this process crime prevention, intelligence-gathering, protection of witnesses, asset recovery, ensuring reasonable clear-up and conviction rates are important variables. In the absence of thorough investigations, the outcome of each case of torture and assault is affected. Hopkins (2009:23) states that throughout the process of investigation, investigators should be able to gather evidence to determine whether the behaviour that was questioned was unlawful in order to identify and punish those that were responsible. Based on the responses of the participants, the process of investigating cases of torture and assault is a crucial task that the IPID investigators have to perform. The New York American Civil Liberties Union notes that "[P]atterns and practices of police misconduct will not become apparent without the rigorous investigation of individual complaints. In the absence of thorough investigations, it is thus unlikely that the discipline of an individual police officer or reforms of lawed policing practices will occur" (Hopkins, 2009:20). Hence, 70% of the participants indicated that their cases of torture and assault were likely to be declined due to a lack of evidence. It cannot be

ignored that the effectiveness of investigations of police torture and assault is severely impacted by a lack of evidence, whether from complainants, suspects or witnesses.

5.8.2 The obligation to report police torture and assault and cooperation by SAPS members

One of the important aspects of the IPID mandate is to force the police to cooperate in the process of investigations. The main aim of the IPID institute is to ensure accountability and to fulfil that objective. The IPID therefore had to establish a way to ensure that the police were on board and would cooperate in investigations. During the ICD tenure, when it came to requesting information from the police, the Executive Director of the ICD was merely authorised to *request* and receive the co-operation of members, but there was no obligation on police members' part to co-operate (Bruce, Savage, & De Waal, 2000:76) and there was no sanction to ensure that the police did in fact co-operate (Berg, 2013). However, in the establishment of the IPID, one of the central changes was the incorporation of an Act that now obliges the police to cooperate. According to Act No. 1 of 2011 section 29 (1) and (2) (RSA, 2011), it is stipulated that any member of the South African Police Service or Municipal Police Service must notify the Directorate of any matters referred to in section 28 (l)(a) to (f) within 24 hours. This suggests that the IPID does not only receive complaints that are directly reported by the public to their offices, but they also investigate cases that are referred by the SAPS to them. Members of the SAPS or the MPS are obligated to provide their full cooperation to the IPID when they need assistance, for example with identification parades. They also have to be available for the taking of affidavits or an affirmed declaration and they have to give evidence or produce any document in their possession or under their control which has a bearing on the matter being investigated.

The majority of the participants emphasised this section as one of the implemented strategies that should aid in ensuring police accountability. This was confirmed by their statements:

P-Inv-48 stated:

> *"If a police officer fails to comply, then section 33 of the IPID mandate will be applied. So police officers are made aware of the need for full compliance. They have a legal duty to report to us all if an incident took place. Within 24 hours they must report to us, failure to do so will result in the police being held accountable through section 33."*

Correspondingly, P-Inv-53 commented:

> *"In terms of accountability, when it comes to us they've got reporting procedures. We've got section 29, with which they need to comply. Once they know of any matter reported to them related to section 28, they must immediately notify us and then send us a report within 24 hours and failure to do so, if we find out that now maybe a member of the public reported a case but it wasn't reported to us, we can then open up a section 33 cases against them for non-compliance with IPID."*

P-Inv-50 provided an illustration on how effective section 29 of the IPID Mandate is in terms of police correspondence with reporting obligations:

> *"IPID forces every officer to be accountable and to report any wrong doings to IPID and this strategy is working because you would even find them reporting what is not on the IPID mandate, because they are fearing now. They report even something that they should not be reporting, and they sometimes wake you up at 1 o'clock to report a case of assault, so they were told to report all cases."*

Based on the information provided by participants, it appeared that the strategy of section 29 which forces the police to report and cooperate is an effective strategy because it is supported by section 33 which imposes punishment for the police if they fail to cooperate. According to Act No. 1 of 2011 section 33 (3) (RSA, 2011), "Any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years". This section ensures that police officers, both those who were involved in cases of violence as well as those who were not physically involved but are aware of the incident, to provide the IPID investigating officer with valuable information that they might need in their investigation. The lack of cooperation whether by victims, suspects or witnesses affects disciplinary and criminal convictions which in turn affects the improvement of police accountability.

5.8.3 Recommendations for disciplinary measures

The main aim of the establishment of the oversight body was to ensure police accountability. Ward (2000:15) states that the police are accountable for how they attempt to protect the public, for how they respond to reports of crime, and the results they achieve in terms of public safety. The IPID investigating officers investigate cases of torture and assault that took place when a police officer should have been attempted to protect the public and respond to crime reports in an attempt to ensure public safety. Loader and Walker (2001) indicate that effective police accountability measures are pivotal in achieving the police goals of lawfulness and legitimacy. To ensure that the police are accountable, the majority of the participants highlighted that they had an obligation to write recommendations to the SAPS and the NPA for disciplinary and for

criminal prosecutions respectively. However, the IPID has no power to enforce the recommendations made either to the SAPS or the NPA. There is a provision in the Act that stipulates how the recommendations are to be addressed. Act No.1 of 2011 section 30 (a) to (c) (RSA, 2011) indicates that the National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred is obligated to initiate disciplinary proceedings in terms of the recommendations within 30 days. A written report must be submitted to the Minister of the outcome thereof and a copy must be submitted to the Executive Director and the Secretary. In support of this Act, 90% of the participants indicated that it proved to be an effective strategy. With supporting information for their effectiveness, the participants shared their experiences.

P-Inv-46 said:

> *"…we do departmental steps recommendations, and we submit those recommendations to SAPS stating that you (SAPS) must start with appropriate disciplinary steps immediately against police member so and so... I would say its effective, especially recommendations to SAPS because at SAPS if a member has a case against him, if that case falls under the SAPS regulation, they are obliged to immediately start with the disciplinary hearing against a certain member. So, with regards to recommendations to SAPS and the NPA, it is unlikely that a member will get away with both the criminal case and disciplinary case. They can get away with the criminal case, but they won't get away with the disciplinary case. It's always a vice versa."*

P-Inv-47 mentioned the following:

> *"You know, after the investigating officer has collected all the evidence, then he or she forwards the docket to SPP or DPP, and DPP looks at the evidence and comes up with a decision on whether to prosecute or not and within the time as I was conducting the investigation, I also recommended to SAPS for departmental [discipline]. Sometimes they win the case because of insufficient evidence from my side and sometimes they don't win the case. They call me and ask me for the copies of the very same docket, the IO (investigating officer) who is dealing with departmental [cases] to continue with his own investigation with regards to the case."*

P-Inv-54 agreed, and further stated:

> *"We are obliged to write recommendations, whether positive or negative recommendations to SAPS. We will get a subpoena and go and testify at an SAPS departmental trial. So yes, they will be found guilty at times, and at times they will be suspended maybe for a month or so as punishment."*

P-Inv-50 provided detailed information on the importance of the disciplinary and criminal recommendations, emphasising the value of the recommendations:

> *"I can investigate but if I did not make recommendations then how will NPA know that there is this case and how will the department know that there is this case? I make recommendations based on what I see on the case, and the person who will be making the decision uses the recommendations as guidelines. They are a reflection of how I as an investigator viewed this case. He may view it differently, so he will provide reasons as to why he will not prosecute this case, even though I stated that the perpetrator must be prosecuted. If I also don't agree with his reasons as to why he won't prosecute, I take the case for a second opinion."*

Similarly, P-Inv-49 stated:

> *"Remember, we do that process after we have finalised our investigation and that's where you give the prosecutor or the employer, SAPS, a full picture based on what evidence you have gathered, what are you recommending, and if he or she must be charged or not."*

One may look at the recommendations as a strategy that focuses on ensuring that the police are held accountable. However, the participants highlighted that the recommendations are a guideline and an indication that there is a case that was reported and that an investigation has been conducted. This therefore means that the effectiveness of the recommendations relies on one's understanding of the role of the recommendations.

However, regardless of the requirement for recommendations by IPID investigators and the fact that they do so with integrity, the many cases that were declined – and will evidently continue to be declined − suggests that the NPA is very cautious and selective in deciding which cases to prosecute. This may suggest that, because of a lack of sufficient evidence or the many complainants who withdraw their case, SAPS rogue officers will continue their nefarious practices with impunity. This does not augur well for a democratic and community oriented police structure in South Africa.

Prenzler and Ronken (2001) raise an important point, which is that an oversight body has the ability to penetrate police institutions and ensure the eradication of police brutality in the form of, for example, torture and assault. However, these authors argue that, "given the strength of the police culture and police knowledge of how to evade prosecution", the effectiveness of the strategy of recommendations seems to be undermined, as was evidenced by the participants' comments. This view was strengthened by the comments of P-Inv-53 and P-Inv-55, particularly with regards to the functions of the NPA:

> *"The NPA recommendations I see as paper work for us because all we do is summarise the allegations and then put it in to what evidence is in the docket and then we say make a decision. It's not saying prosecute this person or not to prosecute this person, we*

don't tell the prosecutor what to do. In fact, the prosecutor's job is to read the docket and to make a decision. Why then should we make a recommendation to the NPA, because we are not recommending anything, but we are saying make a decision." (P-Inv-53).

P-Inv-55 mentioned the following:

> *"The only problem we have with the NPA is the queries they put forward to us after we have sent them the report. Some of their queries I would say it's…huh what's the word, I would say it's just ridiculous queries."*

P-Inv-53 provided a detailed illustration in respect of the ineffectiveness of recommendations that are issued to the SAPS:

> *"It is not working, and I will tell you why. SAPS once they know that there is a criminal case against one of their members, they start with the disciplinary hearing. They start with whatever their disciplinary procedure is. So they start with the investigations, they might take just the A1 statement, that is the statement of the complainant and based on that they start working on it separate from us. And then they decide that they are going take action against this member, maybe give him a warning. But during that time we are doing our criminal investigations because we only do our recommendations at the end of our investigations. So, we are busy doing a criminal investigation, and in the meantime they are doing disciplinary investigations. They call it a disciplinary enquiry. They can find their member guilty or not guilty before we could even finalize our investigation. So sometimes, by the time our report gets to them, they've already made a decision or already taken action or decided not to take action against their member. So, our disciplinary recommendation is basically ineffective because it's not doing anything. We tell them, they failed to comply with, you know, section what what, which ever code of conduct, their code of conduct, section a, q or whatever according to their regulation 20, you know, this is where you failed to comply. But they've already reached a conclusion. We've had incidences where some of my cases I've had, based on recommendations I've made for disciplinary enquiries, the outcomes whether their members will take anything from it I don't know, because they are very lenient with their discipline."*

These findings are in support of Muntingh and Dereymaeker' (2013) assertion that the manner in which the NPA tends to deal with human rights violations that are perpetrated by law enforcement officials clearly indicates a reluctance to prosecute. This view was strengthened by the findings of the current study, because IPID investigating officers admitted that their recommendations meant very little, as they were only required to draft their findings and thoughts on the merits of the case, without any prosecutorial mandate. Moreover, their recommendations regarding the progression of cases were often rejected by prosecutors for

various reasons, such as a lack of evidence. Based on this finding, it can be concluded that the mandate by the IPID to draft recommendations to the SAPS and the NPA is often not worth the paper it is written on for two main reasons: (i) NPA prosecutors seem to have their own set of requirements and motivations whether to prosecute or not; and (ii) by the time the IPID recommendations reach the South African Police Department (SAPD), the matter has already been 'investigated' and the 'ranks have been closed', which typifies the existence of a police culture where police officers 'look after their own'. Clearly, the IPID recommendation strategy to bring rogue officers to book is, in its current form, ineffective in ensuring that the police are brought to account for acts of torture and assault.

5.9 Summary

The findings of this study shed light on the nature of police torture and assault with emphasis on torture being applied with the aim to extract information and assault to restrain a suspect who resists arrest. However, such acts seem to be perpetrated even when the suspect is no longer a threat. An analysis of the data illuminated situational factors that result in members of the public becoming victims of torture and assault. These factors include raids and stop-and-search operations which are ostensibly carried out by the SAPS to create a safe environment for the public. However, during these activities many police officers breach their code of conduct. The perceived lack of training when the police are under pressure to meet projected targets set by management was also identified as one of the problems that impact community policing objectives, and a lack of interviewing or interrogation skills was highlighted as a serious drawback. The participants shared the challenges they experienced with the police as well as with complainants and highlighted that a lack of cooperation and assistance with the identification of suspects or the provision of other relevant details are barriers in doing their work effectively. The findings also illuminated issues such as a lack of evidence, minimal resources, a low budget and the IPID's limited capacity to do what it is mandated to do, all of which were found to impact the effectiveness of IPID investigations into police brutality, with specific reference to torture and assault.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This study was based on the problem statement (see Chapter one) that was generated with reference to IPID annual report statistics. These statistics indicate that there is a high number of reported cases of torture and assault in South Africa, with an annual increase in KwaZulu-Natal. To articulate this problem, a research study was designed that would explore police brutality as a driver of torture and assault. The study was given impetus because limited literature was available on the role of IPID investigating officers in the investigation and prosecution of rogue police officials, and the researcher thus wanted to bridge this gap. It was also deemed important to augment the insufficient scholarly understanding of where to draw the line between minimum and excessive use of force by police officials, as insufficient studies had delved into the criminal behaviour of torture and assault by SAPS members in South Africa. The lack of insight into the effectiveness of IPID investigations also had to be addressed by assessing these investigators' successes in the context of section 28 (1)(f) of the IPID mandate. The researcher therefore derived four objectives, namely (i) to determine the nature and extent of torture and assault committed by SAPS officials in KwaZulu-Natal; (ii) to examine any underlying contributory factors that provoke police officials to torture and assault suspects during the execution of their duties in KwaZulu-Natal; (ii) to examine the challenges that IPID investigators face in their task of investigating complaints of torture and assault against SAPS officials in KwaZulu-Natal; and (iv) to assess the effectiveness of IPID strategies to ensure that SAPS officials are brought to account when they committed acts of torture and assault in KwaZulu-Natal.

In the second chapter of this study, a review of related literature and legislations shed some light on the issue of police torture and assault, providing both arguments and convergence in scholars' view on the problem of torture and assault. Furthermore, it provided an understanding of the IPID, which is the SAPS oversight body that is responsible for ensuring that the police are accountable for any criminal behaviour. The third chapter provided a theoretical framework that focused mainly of two theories, namely the theory of symbolic interaction and the theory of differential reinforcement. To achieve the objectives of this study, an appropriate methodology was selected and discussed in the fourth chapter. The qualitative research method

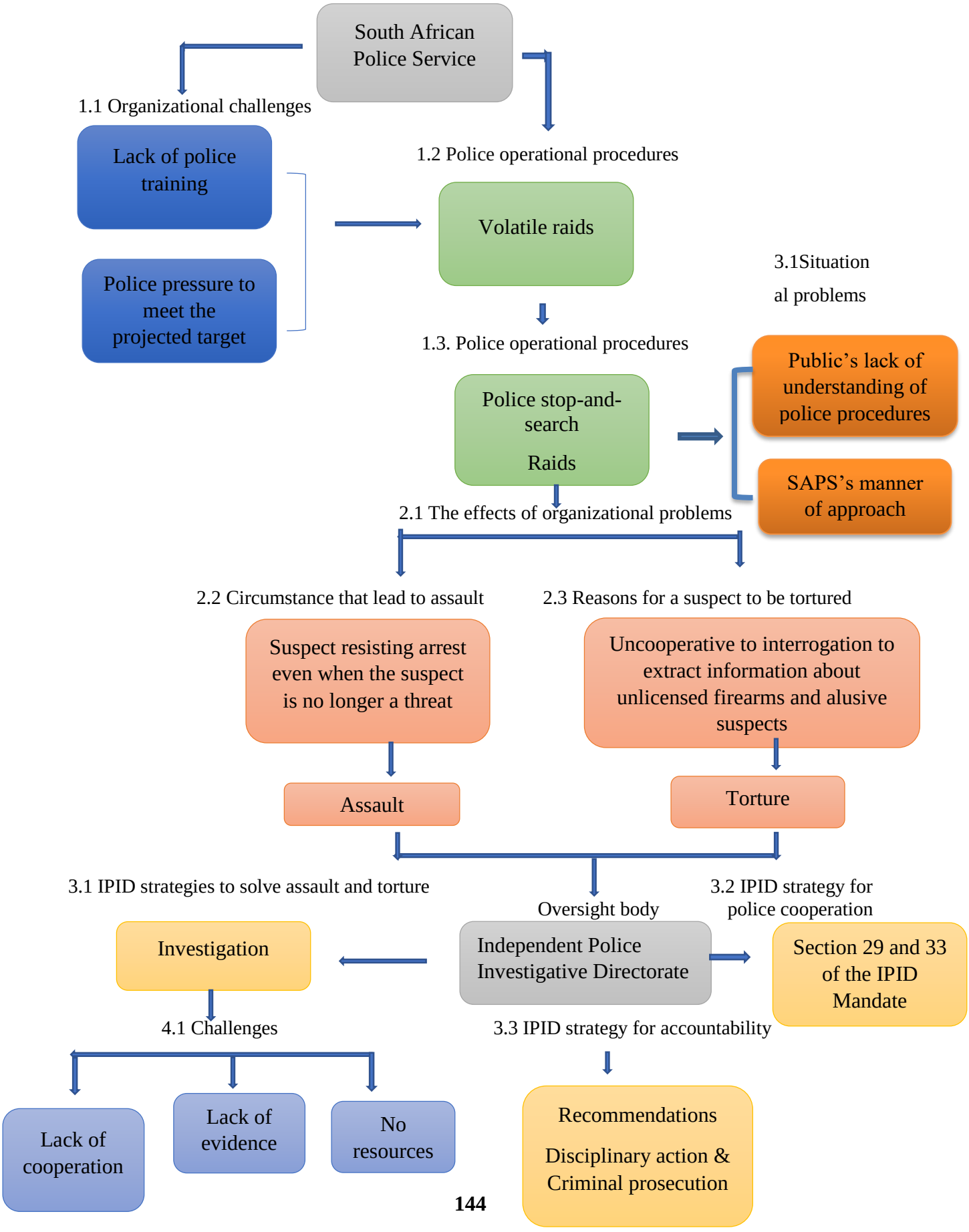
that was located within the realm of descriptive-interpretive research paradigm using the phenomenology strategy of inquiry was conversed. The information that was generated from in-depth semi-structured interviews with ten IPID investigating officers was presented in the fifth chapter the findings were discussed and integrated with other related scholarly literature and the theoretical framework. The main conclusions that were reached based on those findings are discussed in relation to the objectives of the study. The limitations that impacted the study are presented and recommendations that relate to the SAPS and IPID organisations, as well suggestions for further research, are offered as concluding sections to this research report.

6.2 Conclusion in Terms of the Findings of the Study

The problem statement that underpinned this study was confirmed by the participants who indicated that there was an influx of cases of torture and assault in KwaZulu-Natal province over a number of years. This implies that the criminal behaviour of torture and assault by police officers has become endemic in KwaZulu-Natal. Figure 6.1 presents a summary of the main findings of this research project. The diagrammatical presentation highlights the themes that emerged from the data that were presented in Chapter five. Figure 6.1 reveals that organisational problems such as pressure from management to meet projected targets by IPID investigations and inadequate training in the SAPS exacerbate the problem of torture and assault. It is mainly during police operational procedures such as raids and stop-and-search operations that members of the public become victims of torture and assault, regardless of their provocative attitude in many instances. To bring guilty officers to book and to curb the problem of torture and assault, the IPID institution uses strategies such as investigation, recommendations and sections 29 and 33 of the IPID mandate to ensure that the police cooperate with investigations and that they are held accountable for their unlawful behaviour. However, IPID investigating officers encounter challenges that are barriers to the effectiveness of the investigation process. Moreover, these challenges result in the ineffectiveness of accountability measures and also contribute to the perpetuation of torture and assault in KwaZulu-Natal province

Figure 6.1 A diagrammatical representation of the main findings

Source: Researcher's Illustration



6.2.1 Findings relating to the nature and extent of police torture and assault in KwaZulu-Natal

Assault was conceptualized as subjecting suspects to beating, punching, kicking and slapping when they resisted arrest, even after they had been handcuffed. These different forms of torture were considered to be common in arrest situations. The findings revealed that assault occurred during arrests in three predominant situations:

- after an arrest;
- when persons no longer resisted arrest or were no longer a threat to the police or society at large; and
- as a first resort, prior to an arrest, mainly to intimidate and instil fear.

Assault with the intent to do grievous bodily harm (GHB) was also identified. This category of assault occurs when a person is subjected to physical injuries that may result in open wounds or bleeding. It was revealed that the participants had investigated such cases, which means that some police officers abuse their power of arrest to a point that their intentions of arrest become intentions of inflicting severe injuries on a suspect. In this context the purpose of using force is no longer that of securing an arrest but, as Grimaldi (2011) stipulates, it is used for other purposes that are not within the boundaries of the police mandate.

The findings indicate that, in some cases, torture animated from assault, which suggests that acts of police torture and assault are intertwined. Torture was conceptualized as when a police officer subjected a suspect to electrocutions, strangulations, and beatings because a suspect refused to cooperate in an interrogation or to provide information. This illegal method of operation is used mainly by police officers with the aim of extracting information from suspects regarding unlicensed firearms, drugs and elusive suspects. Surprisingly, some IPID investigators held the view that this method of torture was necessary to ensure that the suspect cooperated and gave the necessary information as evidence. The findings suggest that police officers consider the extraction of information held by a suspect to be more important than the life or well-being of citizens. An alarming piece of information was that police officers sometimes inflicted pain on participants to the point of death. Suspects are subjected to severe physical pain and sustain injuries that are beyond endurance at the hands of the same people that the law has appointed as protectors of their safety and security.

It was noted that the IPID investigating officers were fully aware of the extent of police torture and assault in KwaZulu-Natal province. It was revealed that, based on the cases that they received every day, torture and assault were the most frequently reported cases that were allocated to the members of the IPID to investigate. It was further revealed that there had been an influx of torture and assault cases in KwaZulu-Natal to the point that IPID investigators were struggling to manage the caseloads. The conclusions that were reached based on this finding are twofold. (i) The methods used by the police to extract information comprise torture and assault, particularly when suspects resist arrest. This practice has thus become embedded in their operational style which, in turn, suggests that violence and brutality are endemic in police culture in KZN. (ii) It may also suggest that the system of lodging complaints with the IPID organisation has become progressively successful, and this may ensure that rogue police officers are identified and disciplined and held accountable for their actions (Smith, 2013). Essentially, an increase in number of reported cases of torture would mean that more police officers may be convicted for the criminal behaviour.

A surprising finding was that the majority of reported cases were declined by the courts. IPID annual reports and literature on police accountability and impunity indicate that, in South Africa, it is rare that the police will be prosecuted for violent behaviour. According to the IPID annual reports, the 2013-2016 statistics indicate that less than 3% of police officers who were tried for assault were convicted with a 0% conviction rate for torture, whereas 36% of the cases were declined. In the context of successful prosecution rates, it was found that the respondents held contradicting views, as most indicated that they investigated cases efficiently, but the courts decline to prosecute because of a lack of evidence, whereas others felt that had achieved good conviction rates in cases of torture and assault. However, a challenge was that comprehensive investigations had to be conducted under difficult circumstances before the prosecutor would be convinced to take the case to court. According to Matthews (2009), the prosecution authority has the responsibility to decide whether the police have fully and adequately investigated the case with sufficient evident for the case to be heard in court. One of the major obstacles in the prosecution of police perpetrators of assault and torture was found to be insubstantial and unsubstantiated evidence.

These findings remind us of the deep fear that a lack of convictions and police impunity may lead us to two places: (i) to be like a country of Israel, which is battling the aftereffects of having adopted a policing style in which the suspect or offender is treated as the enemy (Hill

and Berger, 2009); (ii) that torture will gradually become a ritual and, once it functions as a ritual, then legal definitions aimed at official state policies and goals will remain inadequate (Parry, 2003). If the problem of torture and assault as well as holding perpetrators accountable for their criminal behaviour is left unchecked, it will reach a point where it will be difficult to eradicate the problem or deal with its repercussions.

6.2.2 Factors contributing to police torture and assault

Police raids and stop-and-search operations give effect to torture and assault. This was explained by emphasis on the public's lack of understanding of police procedures during these operations. It was conversed that police officers conduct raids when they have identified an area where there is a high rate of crime and, in most cases, when they were alerted by the members of the community that crime was rife in that area. This partnership between the police and the community in identifying problems within the community has had an adverse effect on police operational procedures, because police officers turn these investigations into volatile raids by using torture and assault to force community members to hand in their firearms or drugs or to provide evidence. Balko (2006) states that, during police raids, it is not only the suspects who are subjected to unnecessary pain, but even the people who are not involved in that situation.

Because members of the public are not aware of the rules and procedures that guide official raids and stop-and-search operations, their attitude is often uncooperative and provocative and they then become victims of assault, as the police are pressured to achieve targets and thus do not tolerate any resistance. However, regardless of the public's ignorance of police procedures, the manner in which the police respond to the public is the main problem that results in torture and assault. This suggests that the lack of knowledge of police procedures is defined by the police as provoking them, and therefore violence erupts when the public responds with statements such as, 'You do not have a warrant to search me'. Police raids and stop-and-search practices thus create a platform for police officers to torture and assault the public.

Another contributing factor that was identified and that related to the above finding was that the public would provoke the police. Scholars such as Phillips and Smith (2000) and Harris (2009) found that members of the public provoked the police by disobeying their instructions,

often in a disrespectful and challenging manner. These findings were corroborated by this study, as the respondents admitted that members of the public often reacted violently towards the police as they disrespected them, swore at them and often pelted them with stones, particularly during strikes. However, the findings suggest that it is the police who instigate acts of torture and assault by using excessive force to restrain and extract information from suspects. It was noteworthy that some of the IPID investigating officers took the stance that no person is to be subjected to any form of violence at the hands of the police, irrespective of whether the suspect was disrespectful towards the police or provoked the police in any way, as they did not consider provocative behaviour by the public in their investigations.

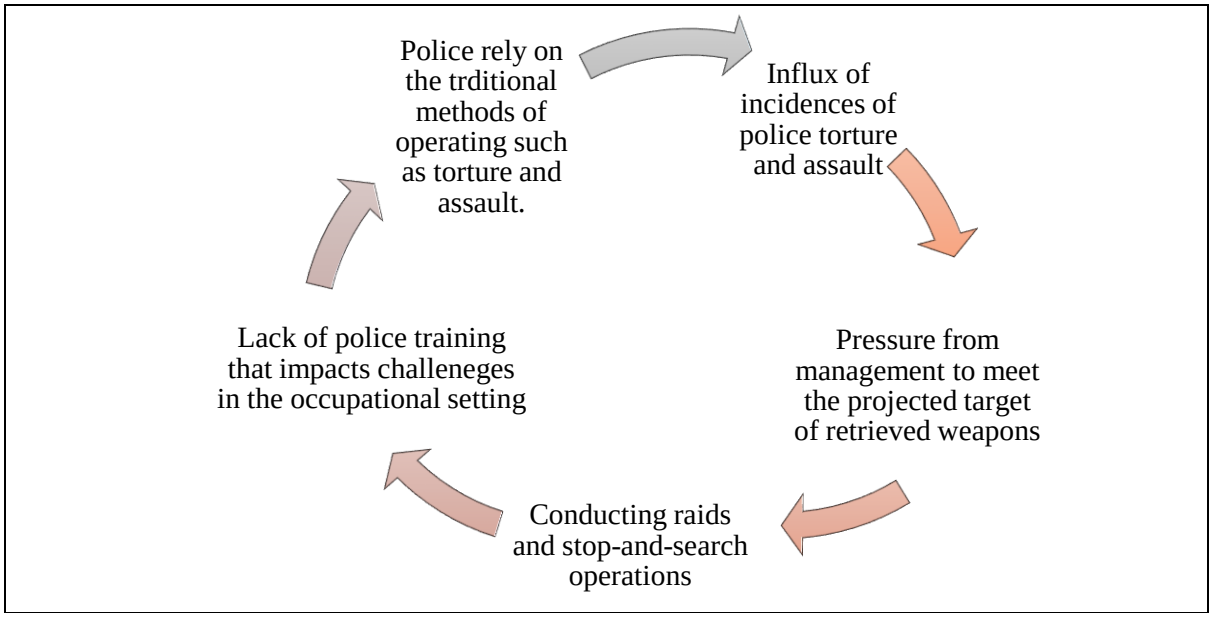
The IPID investigating officers had some suggestion for the causes of the increasing number of cases of torture and assault. One suggestion was that the perpetuation of torture and assault was rooted in the lack of comprehensive training to equip members of the SAPS with skills and strategies in dealing with challenges such as suspects' lack of compliance and dealing with them in accordance with the Criminal Procedure Act No. 51 of 1977, section 49 (2). It was revealed that their training was lacking in two areas, namely interviewing skills and a legal approach to restraining a suspect. It was also revealed that the absence of an appropriate approach to certain crime situations resulted in the adoption of illegal methods of restraining and arresting as well as in banned methods of interrogating that are against the law and a violation of the human rights of suspects. It was perceived that there are gaps in the police training curriculum which has resulted in the police not being fully equipped to deal with suspect when they are conducting raids or stop-and-search operations.

Additionally, management's pressure on the police to meet projected targets for the retrieval of illegal weapons and drugs was identified to be another contributing factor to torture and assault of suspects. The IPID investigating officers indicated that if the police did not meet the projected targets, then they accused of not doing their job. It is alarming when considering the effect of such pressure on the police as well as on the public. For instance, due to the pressure to meet projected targets, police officers rely on illegal methods of operating such as aggression, beatings, strangulation, suffocation, and slapping and kicking to coerce suspects to hand over illegal weapons or drugs. Such actions cannot be condoned under any circumstances, because there are other more appropriate and legitimate methods that the police can apply to ensure that members of the public cooperate in crime prevention. In essence, the pressure on police officers to meet targets gives context to the problem of torture and assault. This notion

is a matter of concern because it suggests that the effectiveness of the police service is measured by the number of the retrieved weapons or drugs, and whether their operational mandate equates to a projected statistical target each year. In this context, the national goal of a community policing service is marginalised and even completely ignored. Another disturbing finding was that the pressure to meet targets often resulted in police officers forcing suspects to admit they had what the police were looking for, even when they didn't. Such intimidation of 'suspects' is illegal and violates human rights.

It was thus evident that factors that contribute to police torture and assault range from lack of training and pressure by management to meet targets, to raids and stop-and-search operations. The argument that suspects and even the general public are uncooperative and provocative and often 'deserve' to be manhandled by the police must be rejected, as the legal framework that governs police procedures and behaviour adamantly protects the basic human rights of all citizens. Figure 6.2 below illustrates the problems related to the contributory factors that influence police torture and assault as they emerged from the data.

Figure 6.2: Illustration of the causes of torture and assault in the SAPS organization



Source: Researcher's illustration

United Nations (2002:12) explains that "torture may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration". It may thus be concluded that difficulties are experienced in controlling police behaviour in the field, as their behaviour is entrenched in a traditional police culture that

embraces violence and control and results in inconsistencies with the Criminal Procedure Act No. 51 of 1977, section 49 (2). This culture has a negative effect the professionalisation and demilitarisation of the police, as it undermines the democratic policing principles that govern the desired policing style in South Africa. Moreover, a police 'brotherhood' that is often supported at the highest levels often underpins police officers' disregard for the legislations that argue against torture and assault and seek to protect the public against the misuse of authority and power by the police. Most importantly, entrenched police attitudes and behaviour result in the persistence of torture and assault of members of the public by police officers.

UNODC (2011) indicates that most of the problems that are experienced within police services internationally are due to failure to find a balance between serving the state, serving the public and being professional in the execution of their duties. It can be argued that to some extent, UNODC's argument is true, because police torture and assault are the outcomes of the challenges experienced by the police with regards to finding this balance, particularly in terms of finding a balance between:

- serving the State or an organisation that expects its officials to meet statistical targets without regard for the realities on the ground. A state that grants its police force permission to use force but scrutinises them in terms of how they do their work and exercise their power, and then holds them accountable for any errors during the execution of their duties, is waiting for a disaster to happen. In the South African context this disaster happened in the highly publicised events that occurred at Marikana on 16 August 2012 (Marinovich, 2012).
- serving the public with its potentially varying community needs and high levels of violence. This paradoxical position poses a potential danger to the police, as violence breeds violence and defiance of authority has become entrenched in many South African societies as a legacy of its volatile past;
- being professional while having to deal with violence-ridden communities that generally mistrust and disrespect the police. It is in such communities that they have to forge police-community bonds while maintaining order and preventing crime.

The failure to balance their role in such paradoxical circumstances has left the gap wide open for the preservation of unwarranted operational methods such as torture and assault. Clearly, the findings suggest that many members of the police force in this country are torn between their mandate to fulfil their duties within a human right legal framework, and maintaining order

and enforcing the law under the threat of meeting targets and dealing with uncooperative and violence-ridden communities whose only means of survival are often vested in criminal activities.

6.2.3 Challenges encountered by KZN IPID investigating officers

The IPID organisation has the mandate to question the discretion of police officers if their decisions, in retrospect, were incorrect. The findings revealed that IPID investigating officers fulfilled their obligation as an independent oversight agency to conduct effective investigations into allegations of police torture and assault. However, the findings suggest that the strategies they employ in investigating cases of police brutality with the aim of ensuring police accountability may be considered ineffective to a large extent due to the challenges they encounter in the investigative processes. Klockars and Mastrofski (1991) argue that police investigation occurs only when at least one of three elements is present, namely (i) a witness − someone who can identify the offender; (ii) physical evidence − trace evidence that links the offence to the offender; or (iii) a confession − an admission of guilt by the offender. Most of the participants shared their grievances with all three elements. For example, they experienced a lack of cooperation from complainants, suspects (police officers), station commanders and witnesses. It was found that a complainant would lodge a complaint against a police officer and when case was in motion, the complainant was no longer interested in the case based on four reasons:

- interested in financial gain;
- pressure from friends to open a case;
- fear of testifying in court; and
- being a suspect in an SAPS investigation; thus a case of assault against the police may result in closure of the case against him/her.

A severe challenge that was mentioned was that complainants often did not submit a statement indicating that they were no longer interested in the case; instead, they absconded and left investigators high and dry. It was indicated that police officers also refused to cooperate when they were requested to provide a statement. They would take sick leave or simply did not pitch for appointments with IPID investigating officers. Station commanders also adhered to the elusive ‘brotherhood’ trend by covertly protecting their members. They might compromise investigations by not assisting in ensuring that the suspects cooperated with the IPID

investigating officer. Witnesses would also at times refuse to give their statements did not pitch for their appointments or for identification parades.

Another challenge encountered by the IPID investigating officers was a lack of evidence provided by complainants. Medical reports had often not been obtained to assist the investigating officer in determining whether excessive force or minimum force had been used in the incident, as stipulated by section 49. Many complainants could also not produce adequate information about the police officers who had assaulted or tortured them. The absence of crucial information was a challenge that hindered the effectiveness of investigations, because investigators had to rely on this kind of information to ensure that the case would result in the conviction of the perpetrator.

Other factors that were found to limit case progression logistical issues such as inadequate resources, manpower, and infrastructure. More specifically, the IPID investigators stated that their organisation lacked the following:

- investigating officers;
- infrastructure;
- equipment for identification parades, photographs and ballistics investigations;
- limited resources to deal with the influx of assault and torture complaints;
- vehicles and manpower to cover the wide area of operations; and
- an adequate budget.

It was also elucidated that even though the IPID organisation is regarded as an independent oversight body, its investigating officers felt that their organisation was still dependent on the SAPS, because in the final analysis they still reported to the same Minister of Police as the police officers who were suspects in their investigations. Moreover, they also relied on the same Minister of Police for their budget and resources. The argument was strong that limited resources would continue to force the SAPS and NPA to refuse cases, encourage victims to withdraw their complaints, and investigations that will not lead to a positive outcome (Artz & Symthe, 2008).

6.2.4 The effectiveness of IPID strategies to ensure police accountability

Three strategies were mentioned by the IPID investigating officers, namely: (i) investigations; (ii) recommendations for disciplinary and/or criminal procedures; and (iii) adherence to sections 29 and 33 of the IPID mandate. It was discovered that problems associated with

inadequate capacity and lack of cooperation by police officers, complainants, witnesses and station commanders, as well as a lack of evidence from complainants, had an adverse effect on the investigation of cases of torture and assault. It was also revealed that the investigators relied on the availability of resources and evidence to ensure the effectiveness of their investigation strategies, but that a lack of information hampered this process. It was thus concluded that IPID strategies to investigate cases of torture and assault were ineffective in ensuring that rogue police officers were held accountable for their actions.

The issue of IPID recommendations for disciplinary measures and criminal prosecution was also unpacked. A investigator would issue a recommendation report to a prosecutor to:

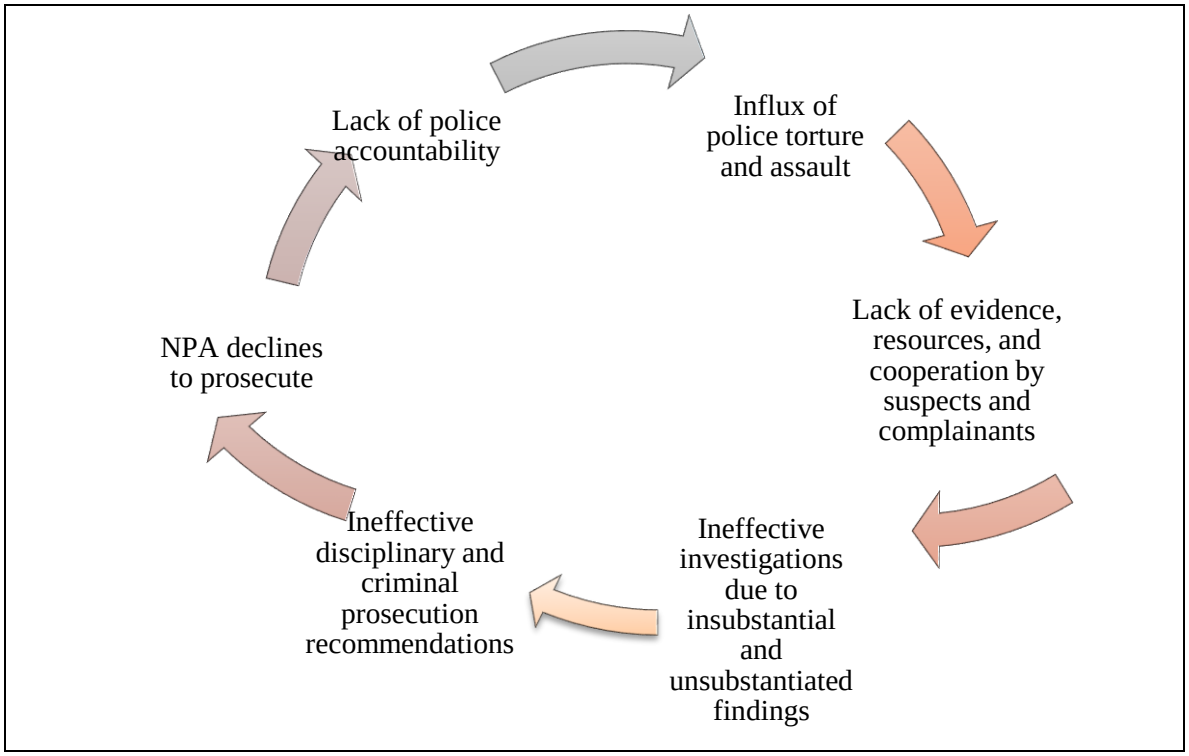
- indicate that the investigation was conducted;
- serve as guidance for the prosecutor in his or her decision whether or not to prosecute; and
- offer the investigating officer's opinion on the desired outcome of the case.

However, all of these depend on the thoroughness of the investigation, because an investigation has a huge impact on the decision whether disciplinary and criminal procedure actions will be taken. However, some IPID investigations admitted that they were often unable to provide strong evidence or arguments that would ensure the prosecution and conviction of a police suspect, regardless of the fact that they might sense that this person was guilty of the crime. In terms of ensuring police accountability, this has weakened the effectiveness of the strategy of disciplinary and criminal recommendations drafted by investigating officers once they have finalised their investigations. However, this finding does not discredit the importance of the strategy of recommendations, but it indicates that the challenges that result in the ineffectiveness of this strategy are to be addressed and not overlooked. It is evident that the IPID investigating officers overlooked the importance of their recommendations in relation to police accountability. It was revealed that this strategy might be ineffective because prosecutors' assessment of the evidence often took into consideration the fact that the police officer was executing his or her duties during the offence, and thus it was argued that prosecutors requested 'ridiculous' information from IPID investigators pending their decision to prosecute or not.

To ensure the effectiveness of the recommendations and of the oversight body as a whole, it is important to address the issues that are summarised in Figure 6.3 below. This figure shows that an influx of cases of torture and assault obligates the IPID to investigate this problem, but the

challenge is that the IPID is inadequately capacitated and the productivity of its investigations is jeopardised as a consequence. The lack of evidence produced by complainants, such as failure to identify suspects and no medical reports, also contributes to the weakness of the investigation. The outcomes of these challenges result in ineffective investigations and hence in the dismissal of disciplinary and criminal prosecution recommendations by prosecutors. These dismissals in turn result in a high rate of declined cases of torture and assault by the NPA, which means a low rate of conviction for torture or assault.

Figure 6.3: Factors that contribute to the cycle of police brutality (torture and assault) in the IPID organisation



Source: Researcher's illustration

Thus, police officers enjoy impunity in that many escape being held accountable for their actions, which amounts to a lack of accountability. In a vicious circle, this leads to an influx of cases of torture and assault that occur in an upward spiral. Manby (2000) states that "for an oversight body to be really effective in bringing about the desired changes in police culture and practices, it is essential that it also have [sic] the capacity to identify the underlying systemic problems". This means that the problem of torture will only stop when both the IPID and SAPS organisations acknowledge their challenges and solve them in a practical manner.

However, the findings revealed that one strategy that was employed by IPID investigators was effective, which was the application of sections 29 and 33. Act No. 1 of 2011 section 29 (1)

and (2) as well as section 33 (3) (RSA, 2011) assists IPID investigating officers in solving the issue of a lack of cooperation and compliance by members of the SAPS. Although the findings indicated that the police at times eluded investigators and delayed cooperation, it was stated that investigators were able to enforce cooperation by reminding SAPS officials, regardless of rank, of section 29 which obligates them to comply with requirements and cooperate in the investigation. If officers still failed to do so, then section 33 would apply and such persons would be punishable for failure to cooperate. This strategy proved to be effective, because after having eluded investigators for a while, warning statements were issued, whether the police officer was a suspect or a witness in the case.

6.2.5 Drawing the line between minimum force and excessive use of force by the police

A rationale for conducting this study (see sub-section 1.4) was the observed lack of understanding of where to draw the line between minimum use of force and excessive use of force. Beek and Gopfert (2013:482) indicate that "the distinction between legitimate violence and illegitimate violence − that is, excessive violence − is much harder to draw…". The IPID investigating officers provided insight into how they managed to draw this line by emphasising the illegitimacy of the following actions:

- the application of strangulation, suffocation and beating for the purpose of extracting information;
- beating a suspect after having handcuffed the person who was then no longer a threat to the police officer or society; and
- using results from the medical report which determines the severity of the injuries sustained by the complainant.

The IPID investigating officers measured the reasonable necessity to use force against the circumstances as presented in section 49 of the Criminal Procedure Act. By checking for the above-mentioned indicators of excessive use of force in cases of torture and assault incidences, they were able to determine whether police actions fell within the reasonable excessive categories. This suggests that police officers need to be educated and re-trained about these situational factors during their initial training and during regular in-service follow-up training sessions.

6.3 Contribution of the Study Findings

The findings of this study will potentially benefit society, law enforcement agencies and academics in the long term. In essence, the findings highlighted the connection between three problems, namely (i) lack of training and pressure to meet statistically projected targets; (ii) challenges in investigating cases of torture and assault; and (iii) lack of police accountability which is associated with a police culture of violence and force that is juxtaposed against the provisions of the law. The findings suggest that we have figured out the core problem in the SAPS, which is ineffective and incomplete training. This strongly mandates the organisation to review its training curriculum *and* scope and to ensure that the instructions given by management to police officers in the field are framed within legal provisions.

The findings further indicate that we have figured out the barriers to police accountability. These challenges mainly occur in investigative processes such as lack of evidence, complainants not going for medical treatment after having been tortured or assaulted by a police officer, and lack of resources in the oversight organisation. It is a matter of urgency that these challenges are addressed and that strategies are established that may work better to minimise and slowly eradicate the policing style of torture assault that is so readily adopted by some (if not many) SAPS members. The findings revealed persistent barriers in both the SAPS and IPID organisations that result in acts of torture and assault. This information should be utilised by the government through its policy makers to ensure improvements in the policing sphere. This information should also be used to remind police officers of where to draw the line between excessive and minimal force. The problem that was identified in relation to the public's lack of cooperation and their provocative and disrespectful attitude should serve to educate communities in terms of their role in relation to community policing principles. They should also be assisted in what to do in cases of torture and assault to ensure that their complaints are handled efficiently and successfully.

6.4 General Conclusion

More than twenty years ago Brogden and Shearing (1993) stated that the question with regards to the new transformed South Africa was not whether there will be policing, but rather what shape it will take, which ways of doing things will be promoted, and whom it will empower. In Chapter one the researcher pondered the question of what was to be done with the legacy of violent policing in a democratic South Africa – i.e, the legacy of "electric shocks, suffocation,

torture, forced painful postures, suspension from moving vehicles and helicopters, and severe and prolonged beatings" (Joshi, n.d). However, it has become increasingly evident that a transformed SAPS has continued to build on the legacy of police brutality in the form of assault and torture. Hajjar (2000:108) refers to this as a "cultural inheritance" or "a political culture" that we have been bequeathed. The findings of this study lead one to agree with Nigel Rodley (cited in Parry, 2003:240) that "to characterise the behaviour of strangulation, suffocation, beatings and electrocution as torture is uncontroversial", as these forms of subjugation are classical and have been used for centuries across the world.

South Africa is a country that is notorious for its history, because throughout the apartheid period the police and security forces gained a fearsome reputation as the brutal enforcers of the regime as their tactics involved extreme violence, torture and other methods used to destroy the enemies of apartheid (Petrus, 2014). However, current information and statistics have shown that the new South Africa is replicating one of history's worst mistakes, as the influx of cases of torture and assault against police officers in KwaZulu-Natal confirms that South Africa has not learnt from its history. The findings of this study revealed that members of the public are still subjected to torture to extract information from them. Grimaldi (2011:249) states that "torture is not merely the infliction of severe pain to gather information or punish, but rather is also the infliction of potentially escalating pain for purposes that include dominating the victim and seeking to make the victim − and not the torturer or the state – responsible for the pain incurred". Suspects are electrocuted, strangled and suffocated for information, whereas others are slapped and beaten for resisting arrest. Some suspects are beaten even when they have been handcuffed and arrested. Similar to the past, police subject civilians to these forms of abuse not only to fulfil their duty, but to dominate civilians.

The findings generated from this study can help to answer a question that was raised by Adejumobi (1999) and the Tanzania Conference Report (1998). This question asked whether a "democratic re-orientation of a state and civil society can be engineered in a country that has a long history of police use of force and violence as the appropriate way of solving problems and in a country which was badly devastated by ruthless military dictatorship, domination and savagery for years". South Africa, but mainly the KwaZulu-Natal province, inherited a long history of police use of excessive force to solve crime problems have been inherited in the new reformed police service as the police still torture and assault members of the public with low chances that they will be held accountable for their actions. South Africa is slowly failing to

adhere to the democratic principles that were developed to shape South Africa; rather, the SAPS is following in the footsteps of its SAP ancestors.

6.5 Limitations that impacted the research

6.5.1 Language barrier

The interviews were conducted in English, but the participants were welcome to elaborate their points in their native language, which was IsiZulu. This decision was taken after the researcher had noted that the emphasis on responding in English limited elaboration on some responses. Some participants stated before the commencement of the interview that they preferred to respond in both English and IsiZulu because they believed that the discussion would be more comprehensive and informative when they conversed in both the interviewer's and their own native languages. This proved to be true because it helped to form a positive relationship and allowed the conversation to flow. However, the challenge was when the participants respond with expressions and words that were difficult to translate into English, because the idiomatic usage of the two languages differs. The researcher therefore translated these expressions as authentically as possible to avoid losing the expressions in translation. In this way the voices of the participants were not compromised or omitted.

6.5.2 Participants' demographics

The researcher encountered a few challenges in the data collection phase. The gatekeepers' letters and the Deputy Director of the IPID requested the researcher not to mention the demographics of the participants in the study. This was a challenge because some of the participants shared information of their backgrounds as an explanation for their response to a question. The majority of the responses were shaped by the particular demographics of the participants, which was confirmed by their justification of certain responses such as experience, position or race. The elimination of such information had an effect on the evaluation of the findings, but the researcher was unable to provide the context of some of the responses. Even though the participants were not aware of the impact of mentioning some information of their demographics in their responses and the impact it might have, the researcher avoided using such particular information. The researcher is of the view that the safety and confidentiality of the participants are more important than generating information at the expense of compromising their position.

6.5.3 Sample presentation

The initial number of participants that the researcher aimed to interview was twenty (*n=20*), but later found out that the twenty participants would include investigating officers that were located in the eMpangeni office. Two of the investigating officers who were working in Durban had been relocated to Pretoria, and one of the investigating officers did not deal with cases of torture and assault. Three members of the management team only dealt with cases that they referred to as serious offences, which excluded section 28 (1)(f). Two of the investigators were on leave. Therefore, this limited the sample size to ten (*n=10*) KZN IPID investigating officers that were available and willing to participate. Among the available investigating officers, not all investigated crimes in terms of section 28 (1)(f), as they investigated misconducts only, which pertained to section 28 (1)(g) of the IPID mandate. This is a limitation in terms of sample size and scope of the study.

6.6 Recommendation Pertaining to the Findings of the Study

The recommendations are drawn from the problems that were identified by the participants in revealed in the findings as indicated in Figure 6.1 and Figure 6.2. It is evident that the eradication of the crimes of police torture and assault will depend exclusively on the changes that are effected in the operational practices of SAPS as well as IPID officials, because both these organisations need to work together to solve the problem of police criminal behaviour and brutality. Most importantly, each of these organisation needs to take cognisance of its internal problems and address them.

6.6.1 Recommendations pertaining to the SAPS

6.6.1.1 Improve Police Training

Two main concerns were raised by the participants, namely police training that does not speak to the challenges that the police encounter in their occupational setting and a lack of interviewing skills. Based on these concerns, it is clear that the SAPS training curriculum needs to be reassessed and improved to incorporate emphasis on how the police are to behave in situations such as raids and stop-and-search operations. A module should be included in the curriculum that addresses situations that the police might encounter in their occupational setting and realistic and appropriate ways of responding to such situations should be provided. The first step is to identify how members of the public respond to police raids and stop-and - search operations and then train the police to respond according to public response because it

is difficult to change the behaviour of the public. Acquiring interrogation skills is as important as learning how to deal with violent suspects. The police training curriculum needs to also include a step- by-step interrogation procedure, where the police will be given a chance to learn appropriate skills in dealing with suspects who are difficult or who refuse to cooperate in an interrogation.

6.6.1.2 Disregarding information extracted by torture

Information that was obtained through intimidation of a suspect or torture of the suspect should not be used as evidence in a court of law. This might help to reduce the use of torture to make suspects confess and extract information because once the police know that the use of torture may jeopardise their case, they might refrain from using force from the start, but instead rely on other legitimate methods of gathering information and evidence from suspects.

6.6.2 Recommendations pertaining to the IPID

6.6.2.1 Public awareness regarding important procedures for investigation

The participants raised the concern that many complainants did not visit doctor after they had been assaulted or tortured. They emphasised that a doctor's report is one of the most important pieces of evidence that is used to prove that the police used excessive force in the execution of their duties. To avoid this challenge in the future, the public needs to be made aware of the importance of a medical report (J88). It is evident that the public is not informed about the importance of getting treatment after an incident of assault by the police. The public also needs to note the number plate of the vehicle that the police were driving on that day and, if possible, note the names of the police officers and the police station where they were based.

6.6.2.2 Screening of assault cases

The participants indicated that they dealt with both legitimate and false cases. They recommended that cases be screened to reduce the workload. One of the participants indicated that the majority of cases were reported at police stations. Therefore, because such a case is submitted to the IPID offices in the form of a report, the IPID institute needs to screen the complaints based on their perceived legitimacy. This does not mean that the cases that are assumed to be false should not be investigated, but with the shortage of manpower and the influx of reported cases of torture and assault, screening should be applied in a manner that ensures division of labour based on the perceived legitimacy of a complaint. This means that

some investigators will deal with cases that are assumed to be false complaints and others with legitimate complaints to save time and limit the required resources.

6.6.2.3 Policy on public compliance and case withdrawal

Because it is at times difficult to identify the motive of the complainant when a case is lodged, it is deemed necessary to have a policy that will consider failure to submit a statement for the withdrawal of a case as an offence punishable by law. However, this should depend on the reason for withdrawal. This will allow the IPID office to identify challenges that the complainants deal with once they have opened a case against a member of the SAPS, and this will in turn improve the operational system of the IPID. The Act will also have to be applied to complainants who withdraw because they were involved in other cases. Complainants will need to be informed about this Act when they are opening a case against the suspect. They should be compelled to sign a form indicating whether or not they still wished to continue with the complaint. This will aid in minimising the number of pending cases due to a lack of cooperation from complainants and it will save time for the investigating officer to focus on processing other cases which, in turn, will increase the number of cases that will be investigated yearly.

6.6.2.4 Improved strategy for disciplinary measures and criminal prosecution recommendations

It was revealed that the strategy to submit disciplinary and criminal procedure recommendations by investigating officers to the SAPS/NPA once they have completed the investigation is not effective. Therefore, guidelines need to be designed for the SAPS and the NPA in order to properly scrutinise, approve and implement the recommendations. Even though the nature of assault and torture may be different in each case, basic standards should be established to ensure that the police are accountable for their actions and to improve the strategy of recommendations, especially in relation to ensuring convictions and police accountability.

6.6.2.5 Improve IPID capacity

All the participants indicated that the IPID is not adequately capacitated for what it is mandated to do. It was evident that a lack of resources, budget, and manpower affects the effectiveness and efficiency of the IPID, especially with regards to their investigative processes. It is noteworthy that the issue of IPID capacity was raised by studies that evaluated the capacity of

the ICD. The IPID therefore needs to be viewed as just as important as the SAPS and other law enforcement institutions. The first step is to increase manpower, because the workload of IPID investigating officers is increasing and will soon be beyond their reach. The IPID organisation needs to have its own resources and budget. The budget should fall under the auspices of the top hierarchy of the IPID and not the Minister of Police to ensure full independence of the IPID organisation.

6.7 Suggestions for Further Research

6.7.1 Research on members of the SAPS who have been suspects in cases of police torture and assault

Even though the IPID investigating officer were able to provide information on the circumstances that influence police use of torture and assault, it is important to get information from the police who are the ones who have to deal with members of the public. A research project might focus on the following aspects:

- A qualitative study that includes an evaluation of the challenges that the police encounter when doing raids, stop-and-search operations as well as interrogation of suspects.
- A quantitative/qualitative study that assesses the attitude of police officers on the use of force in the execution of their duties, as well as where to draw the line between minimum and excessive use of force in the execution of their duties.
- A study that will seek to analyse the effects of torture on the rule of law and the impact of police torture on the future of legal liberalism.

6.7.2 Public awareness of the role and functions of the IPID

It can be argued that there are numerous members of the public who are not aware of the IPID and its role. A study that assesses whether the South African citizens are aware of the oversight body that was created for them to convey their grievances with the police is important. The study should aim at:

- assessing whether the public is aware of what to do once they have been assaulted or tortured by the police;
- assessing the public's attitude towards the IPID. Its current effectiveness in terms of its performance as well as its perceived effectiveness should be investigated. This will

enable the researcher to identify the challenges and fears the public experience when they are lodging complaints against police officials; and

- assessing public understanding of the role of the IPID organisation.

6.8 Summary and Concluding Remarks

The acts of police torture and assault were assessed in relation to three actors: the public, the SAPS and the IPID. All three actors contribute to the persistence of torture and assault in KwaZulu-Natal province. The public fails to fully cooperate and provide adequate evidence to substantiate their complaints if violations occurred. The SAPS inadequately train their police officers, pressure them to meet certain operational targets, and hide their offending officers behind a screen of a 'police brotherhood', whereas the IPID is inadequately capacitated which hinders the effectiveness of their investigations. These findings were generated from data provided by the study participants. It is suggested that there is a connection between three overriding problems: inadequate SAPS training and pressure to meet statistically projected targets, IPID challenges in investigating cases of torture and assault, and lack of police accountability coupled with the persistence of torture and assault in KwaZulu-Natal in the presence of laws that fight against it. This therefore means that the main areas of concern that were highlighted by this study are inadequate SAPS training curriculum and solutions to the challenges encountered by IPID investigating officers in order for the IPID to fulfil its obligation to improve police accountability.

In conclusion, the scourge of police torture and assault that still plagues KZN communities is clearly 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. To address this problem, the SAPD has gone a long way in introducing the democratic principles that are entrenched in the Constitution and the Bill of Rights in its legal framework. However, a true democracy does not reside in its laws only, but is embedded in the hearts and minds of its people. The public, police officers, and SAPD and IPID investigators and managers will therefore do well to heed the words of former President Nelson Mandela: ″For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others.″

REFERENCES

Adejumobi, S. (1999). Demilitarization and the search for democratic stability in Nigeria. Republic of Nigeria.

Advocacy Forum Nepal. (2011). Held to Account: Making The Law Work to Fight Impunity In Nepal. Redress: Ending Torture, Seeking Justice for Survivors.

Aksan, N., Kisac, B., Aydin, M & Demirbuken, S. (2009). Symbolic interaction theory. *Procedia Social and Behavioural Science*. 1(1), pp. 902-904.

Amnesty International (2015). Police Oversight. Amnesty International Dutch Section Report. London.

Andersson, N. & Mhatre, S. (2003). Do unto others and pay the price: combating sexual violence in the south of Johannesburg. *SA Crime Quarterly,* 3, 5-9.

Babbie, E. (2007). Paradigms, theory and social research. *Practice of social research* (11th ed.). Belmont, CA: Thomson Wadsworth, 30-59.

Baker, J.D. (2016). The Purpose, Process, and Methods of Writting a Literature Review. AORN Journal. 103(3), pp. 265-269.

Bagaric, M., & Clarke, J. (2007). Torture: when the unthinkable is morally permissible. Albany, NY: State University of New York Press.

Balko, R. (2006). Overkill: the rise of paramilitary police raids in America. *White Paper,* s.l.: Cato Institute.

Bayley, D. H., & Shearing, C. D. (1996). The future of policing. *Law & Society Review,* 30(3), 585–606.

Beek, T., & Gopfert, M. (2013). Police violence in West Africa: perpetrators' and ethnographers' dilemmas. *Ethnography,* 14(4), 477-500, CA: Sage.

Behrends, U. (2003). Zwischen Gewaltgebrauch und Gewald tm/.s.vbrauch: Anmerkungen eines polizeilichen Dienststellenleiters. In: M. Herrnkind, Herrnkind-Scheerer (Eds.). *Die Polizei als Organisation mit Gewaltlizenz: Moglichkeiten und Grenzen der Kontrolle*.

Berg, J. (2013). *Civilian oversight of police in South Africa from the ICD to the IPID: police practice and research*. Routledge: Taylor and Francis Group.

Bezuidenhout, C. (2011). A South African perspective on Fundamental Criminology. Cape Town: Pearson.

Bhattacherjee, A. (2012). *Social science research: principles, methods, and practices*. Florida: University of South Florida.

Bitter, E. (1974). Florence nightingale in pursuit of Willie Sutton: a theory of the police. In: H. Jacob (Ed.). *The potential for reform of criminal justice*, 17-44. Beverly Hills, CA: Sage.

Blaikie, N. (2000). *Designing social research.* Cambridge: Polity.

Blumer, H. (1986). *Symbolic interaction*. California: University of California Press.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77-101.

Brown, M. K. (1988). *Working the streets: police discretion and the dilemmas of reform*. New York: Russell Sage.

Bruce, D. (2006, February). Staggering under the burden: ICD policies on the receipt of complaints and on investigations and their negative impact on the ICD, on public confidence, and on police discipline. Paper presented at the meeting of the Independent Complaints Directorate, Pretoria.

Bruce, D. (2007). Area 4: Proper police conduct. In: D. Bruce, G. Newham, & T. Masuku (Eds.). *Service of the people's democracy: an assessment of the South African Police Service*, 114–147. Johannesburg: Centre for the Study of Violence and Reconciliation.

Bruce, D., Savage, K., & de Waal, J. (2000). A duty to answer questions? The police, the Independent Complaints Directorate and the right to remain silent. *South African Journal on Human Rights*, 16, 71-96.

Burchell, J., & Milton, J. (2007). Cases and materials on criminal law. 3rd ed. Landsdowne: Juta.

Burgess, R. L., & Akers, R. L. (1966). Differential association-reinforcement theory of criminal behavior. *Oxford Journal*, 14(2), 128-147.

Burns, N., & Grove, S. K. 2003. *Understanding nursing research.* (3rd ed.). Philadelphia: Saunders Company.

Carpeken, P. (1996). *Critical ethnography in educational research: a theoretical and practical guide.* New York: Routledge

Cingranelli, D. L., & Richards, D. L. (2006). The Cingranelli and Richards (CIRI) Human Rights Data Project. *Human Rights Quarterly*,

Chan, J. B. (2000). Backstage punishment: police violence, occupational culture and criminal justice. In: T. Coady, S. James, S. Miller, & M. O'Keefe (Eds.). *Violence and police culture*, 85-108. Melbourne: Melbourne University Press.

Cock, J. (2005). 'Guards and Guns': Towqards Privitised Militarism in Post-Apartheid South Africa. Journal of Southern African Studies. (31(4_, pp 791-803.

Cohen, M. Z., Kahn, D. L., & Steeves, D. L. (2000). Hermeneutic phenomenological research: a practical guide for nurse researchers. Thousand Oaks, CA: Sage.

Cohen, S. (1991). Talking about torture in Israel. *Tikkun*, 6, 23-30.

Cooley, C. H. (2002). *Human nature and the social order*. New York: Scribner.

Corbin, J., & Strauss, A. (2008). *Basic of qualitative research.* (3rd ed.). Thousand Oaks, CA: Sage.Crank, J. P. (1997). Celebrating agency culture: engaging a traditional cop's heart in organizational change. In: Q. C. Thurman, & E. McGarrell (Eds.). *Community policing in a rural setting*. Cincinnati, OH: Anderson.

Crank, J. P. (1998). *Understanding police culture*. Cincinnati, OH: Anderson.

Creswell, J. W. (1998). Qualitative and research design: choosing among five traditions. Thousand Oaks, CA: Sage.

Creswell, J. W. (2003). *Research design: qualitative, quantitative and mixed method research approaches*. (2nd ed.). Lincoln: University of Nebraska. London: Thousand Oaks; Delhi, CA: Sage.

Creswell, J. W. (2007). *Qualitative inquiry and research design: choosing among five approaches.* London: Sage.

Creswell, J. W., & Plano Clark, V. L. (2011). *Designing and conducting mixed methods research*. (2nd ed.). Thousand Oaks, CA: Sage.

De Vos, A. S., Strydom, H., Fouché, C. B., & Delport, C. S. L. (2011). Research at grass roots: for the social sciences and human service professions. (4th ed.). Van Schaik.

Dean, G. (1995). Police reform: rethinking operational policing. *Journal of Criminal Justice*, 22, 337-347.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopeted by General Assembly Resolution 3452 (xxx) of 9 December 1975.

Den Boer, M. & Fernhout, R (2008). Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies. Asia Europe Foundation.

Denscombe, M. (2012). *Ground Rule of Good Research – a 10 point guide for social researchers.* Open University Press: Celtic Court.

Denzin, N. (2010). On elephants and gold standards. *Qualitative Research*, 10, 269–272.

Denzin, N., & Lincoln, Y. S. (2008b). Introduction: The discipline and practice of qualitative research. In: N. K. Denzin, & Y. S. Lincoln (Eds.). *Landscape of qualitative research*. (3rd rev. ed.), 1−44. Thousand Oaks, CA: Sage.

Dereymaeker, G. (2015) Making sense of the numbers: civil claims against the SAPS.

Dissel, A., Jensen, S., & Roberts, S. (2009). *Torture in South Africa: exploring torture and cruel, Inhuman and degrading treatment or punishment through the media.* Centre for the Study of Violence and Reconciliation.

Du Plessis, A., & Louw, A. (2005). Crime and crime prevention in South Africa: 10 years after. *Canadian Journal of Criminology and Criminal Justice*, 47, 427–446.

Durrheim, K., & Wassenaar, D. (1999). Putting design into practice: writing and evaluating research proposals. In: M. Terre Blanche, & K. Durrheim (Eds.). *Research in practice: applied methods for social sciences*, 54−71. Cape Town: University of Cape Town Press.

eNCA news (2016). Mistaken identity leads to deaths of man at hands of police. Retrieved from:https://www.enca.com/south-africa/hostel-residents-deny-atm-bombing-claim-police-torture [Accessed date: 8 September 2017].

European Centre for Constitutional and human Rights (2012). Torture in Europe: The Law and Practice.

Feinberg, J. (1984). *Harm to others*. New York: Oxford University Press.

Fernandez, L. (2003). Optima Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as adopted in 2002 by the UN General Assembly 57/1999: Implications for South Africa.

Fielding, N. G. (1988). *Joining forces: police training, socialization and occupation competence*. London: Routledge.

Garcia, M. J. (2009). *UN Convention against Torture (CAT*): overview and application to interrogation techniques.

Garrick, J. (1999). Doubting the philosophical assumptions of interpretative research. *International Journal of Qualitative Studies in Education*,

Gentles, S. J., Charles, C., Ploeg, J., & McKibbon, K. (2015). Sampling in qualitative research: insights from an overview of the methods literature. *Qualitative Report*, 20(11), 1772−1789.

Goldsmith, A. (1990). Taking police culture seriously: police discretion and the limits of law. *Policing and Society*, 1, 91−114.

Gray, D. E. (2014). Doing research in the real world. Sage.

Greene, J. R. (2000). Community policing in America: changing the nature, structure, and function of the police. In: J. Horney (Ed.). *Criminal Justice 2000: Policies, processes, and decisions of the criminal justice*, 3, 299−370). Washington, DC: National Institute of Justice.

Grimaldi, C. (2011). *Why not penal torture?* Georgia: State University of Georgia.

Guest, G., Namey, E. E., & Mitchell, M. (2013). *Qualitative research: defining and designing*. Sage.

Hajjar, L. (2000). Does torture work? A socio-legal assessment of the practice in historical and global perspective. *Law and Society*,

Harris, C. J. (2009). *Police use of improper force: a systematic review of the evidenc*e. Routledge.

Hendricks, C., & Musavengana, T. (2010). The security sector in Southern Africa. *ISS Monograph*,

Henning, E., Van Rensburg, W., & Smit, B. (2004). Finding your way in qualitative research. Van Schaik.

Hennink, M., Hutter, I., & Bailey, A. (2011). *Qualitative research methods*. Los Angeles, London, New Delhi, Singapore, Washington DC: Sage.

Heppner, P. P., Bruce, E. W., & Kivlinghan, Jr., D. M. (2008). *Research design in counselling*. (3rd ed.). Belmont: Thomson Higher Education.

Hesse-Biber, S., & Leavy, P. (2006). *Practice of qualitative research*. Thousand Oaks CA: Sage.

Hill, S., & Berger, R. (2009). Paramilitary policing juggernauts. *Social Justice*, 36(1), 25-40.

Hills, A. (2001). Inherent limits of military forces in peacekeeping operations. *Third World Quarterly*, 27(4), 79−98.

Hirschfield, P. J., & Simon, D. (2010). Legitimating police violence: newspaper narratives of deadly force. *Theoretical Criminology*, 14(2), 155–182.

Hughes, O. E., & Cox, J. W. (2010). Accountability in a policing organization. Council Chamber Meng Wah Complex.

Independent Police Investigative Directorate. (2015). Independent Police Investigative Directorate Strategic Plan 2015−2020. Pretoria: Government Printer.

Independent Police Investigative Directorate. (2016). Independent Police Investigative Directorate Annual Performance Plan. Pretoria: Government Printer.

Independent Police Investigative Directorate. (2017). Independent Police Investigative Directorate Annual Performance Plan. Pretoria: Government Printer.

Independent Police Investigative Directorate. (2013). Independent Police Investigative Directorate Annual Report 2012/13. Pretoria: Government Printer.

Independent Police Investigative Directorate. (2014). Independent Police Investigative Directorate Annual Report 2013/14. Pretoria: Government Printer.

Independent Police Investigative Directorate. (2015). Independent Police Investigative Directorate Annual Report 2014/15. Pretoria: Government Printer.

Independent Police Investigative Directorate. (2016). Independent Police Investigative Directorate Annual Report 2015/16. Pretoria: Government Printer.

Jackson, J. & Sunshine, J. (2007). Public confidence in policing: a neo-Durkheimian perspective. British Journal of Criminology, 47(2), pp. 214-233.

Jefferson, A. M. (2009). On hangings and the dubious embodiment of statehood in Nigerian prisons. In: A. M. Jefferson, & S. Jensen (Eds.). *State violence and human rights: state officials in the South.* New York: Routledge.

Jefferis, E. S., Kaminsk, R. J, Holmes, S., & Hanley, P. E. (1997). Effect of a videotape arrest on public perceptions of police use of force. *Journal of Criminal Justice*, 25(3), 381−395.

Jeffery, C.R. (1965). Criminal Behaviour and Learning theory. Journal of Criminal Law and Criminology. 56(3), pp. 294-300.

Joshi, G. P. (n.d.). Police brutality in South Africa.

Kappeler, V. E., Sluder, R. D., & Alpert, G. P. (1998). *Forces of deviance: understanding the dark side of policing*. (2nd ed.). Prospect Heights: Waveland Press.

Keenan, K., & Walker, S. (2005). Impediment to police accountability? An analysis of statutory law enforcement officers' bills of rights. *Public Interest Law Journal*, 14, 185-204.

Klockars, C., & Mastrofski, S. (1991). *Thinking about police: contemporary readings*. New York: McGraw-Hill.

Koppl, R. (2006). Epistemic systems. *Episteme,* 2, 91−106.

Krantz, D. L. (2008). Politics and photography in apartheid South Africa. *History of Photography*, 32(4). Taylor & Francis.

Kraska, P. (2007). Militarization and policing: its relevance to 21st century police. *Policing*, 1, 501−513.

Kruger, A. (1999). Deinstitutionalization: symbolic interactionist approaches for the individual. *International Journal. International Review of Modern Sociology*, 29(1), 89−95.

Kumar, R. (2005). *Research methodology*. City: Sage.

Langbein, J. H. (2006). *Torture and the Law of Proof: Europe and England in the ancient regime*. Chicago: University of Chicago Press.

Latham, E. J. (2001). Civpol certification: a model for recruitment and training of civilian police monitors. *World Affairs*, 163(4), 192−203.

Lincoln, Y., & Guba, E. (1999). Establishing trustworthiness. In: A. Bryman, & R. G. Burgess (Eds.). *Qualitative Research.* London: Sage.

Loftus, B. (2010). Police occupational culture: classic themes, altered times. *Policing and Society*, 20(1), 1−20.

Luhmann, N. (2000). *Die Politik der Gesellschaft*. Frankfurt am Main: Suhrkamp.

Manby, B. (2000). South African Independent Complaints Directorate. In: A. Goldsmith, & C. Lewis (Eds.). *Civilian oversight of policing: governance, democracy and human rights*, 195–222. Oxford: Hart Publishing.

Manning, P. K. (1989). Police occupational culture in Anglo-American societies. In: L. Hoover, & J. Dowlings (Eds.). *Encyclopaedia of Police Science*. New York: Garland.

Manning, P. K. (1995). Police occupational culture in Anglo-American societies. In: W. Bailey (Ed.). *Encyclopaedia Of Police Science*, 472−475). New York: Garland.

Maree, K. (2007). *First steps in research*. Pretoria: Van Schaik.

Marinovich, G. (2012). The Murder Field of Marikana. The cold murder fields of Marikana. The Daily Maverick, Retrieved from http://www.dailymaverick.co.za [Accessed date: 29 September 2017]

Marshall, G. (2015). Writing a literature review. Synergy: Imaging & Therapy Practice.

Marriam, S. B. (1998). *Qualitative research and cases studies application in education*. San Francisco: Jossey-Bass.

Mason, J. (2002). Qualitative research. (2nd ed.). London. Thousand Oaks; New Delhi, CA: Sage.

Masuku, T. (2005). Strengthens Democratic Policing in SA: Enhancing amd Coordinating the Internal and External Accountability System of the SAPS. Centre for the Study of Violence and Reconciliation. Criminal Justice Programme.

Matthews, I. (2009). *National Prosecution Authority: criminal (in)justice in South Africa*. Pretoria: Institute for Security Studies.

McNarama, J. H. (1967). Uncertainties in police work: the relevance of police recruits' background and training. In: D. Bordua (Ed.). *The police: six sociological essays*, 163−252. New York: John Wiley.

Mead, G. H. (1934). *Mind, self, and society*. Chicago: University of Chicago Press.

Miller, S. (2011). Torture. *Stanford Encyclopaedia of Philosophy*.

Miller, S. (2014). Police detectives, criminal investigations and collective moral responsibility. *Criminal Justice Ethics*, 33(1), 21−39.

Montesh, S. I., & Dintwe, S. I. (2008). How independent is the Independent Complaints Directorate? *Acta Criminologica*, 21(2).

Muir, W. K. Jr. (1977). *Police: street corner politicians*. Chicago: University of Chicago Press.

Muntingh, L., & Dereymaeker, G. (2013). Understanding impunity in the South African law enforcement agencies. Civil Society Prison Reform Initiative.

Neuman, W. L. (2014). Social research methods: qualitative and quantitative approaches. (7th ed.). Essex: Pearson Education.

Newburn, T. (2007). Criminology. Cullompto: Portland

Newham, G. (2005). Strengthening democratic policing in South Africa through internal systems for officer control. *South African Review of Sociology*, 36, 160–177.

Nicholson, J., & Higgins, G. E. (2017). Social structure and social learning theory: preventing crime and violence. In: B. Teasdale, & M. S. Bradley (Eds.). *Preventing crime and violence advances in prevention science.* Switzerland: Springer International.

Nsereko, D. D. N. (1993). Police, human rights and the Constitution: an African perspective. *Human Rights Quarterly*, 15(3), 465−484. The Johns Hopkins University Press.

Paoline, E. A. III (2001). *Rethinking police culture: officers' occupational attitudes*. New York: LFB.

Paoline, E. A. III. (2003). Taking stock: towards a richer understanding of police culture. *Journal of Criminal Justice*, 31, 199−214.Parry, J. (2009). Torture nation, torture law. *Georgetown Law Journal*, 97, 1 001−1 056.

Patton, M. Q. (2002). Designing qualitative studies [excerpt: Purposeful sampling]. *Qualitative research and evaluation methods*. (3rd ed.), 230−247). Thousand Oaks, CA: Sage.

Patton, M. Q. (2015). *Qualitative research & evaluation methods: integrating theory and practice.* (4th ed.). Thousand Oaks, CA: Sage.

Pelser, E. (1999). The Challenges of Community Policing in South Africa. Institute for Security Studies.

Peters, E. (1996). *Torture*. Philadelphia: University of Pennsylvania Press.

Petrus, T. (2014). Enemies of the People: Reflections on the South African Police Services (SAPS) as a Symbol of Repression and Oppression Post-1994. *International Journal of Humanities and Social Science.* 4(2), 68-79.

Phillips, T., & Smith, P. (2000). Police violence occasioning citizen complaint: an empirical analysis of time-space dynamics. *British Journal of Criminology*, 40(3), 480−496.

Pigou, P. (2002). Monitoring police violence and torture in South Africa. Centre for the Study of Violence and Reconciliation.

Pillay, P. (2001). *South Africa in the 21st century: some key socio-economic challenges*. Johannesburg, South Africa: Friedrich Ebert Stiftung.

Polit, D. E, Beck, C. T., & Hungler, B. P. (2001). *Essentials of nursing research: methods, appraisal, and utilization.* (5th ed.). New York: Lippincott, Williams, and Wilkins.

Prasad, P. (2005). *Crafting qualitative research: working in the post positivist traditions*. New York: M. E. Sharpe.

Prenzler, T., & Ronken, C. (2001). Models of police oversight: a critique. *Policing and Society*, 11, 151–180.

Redpath, J. (2012). *Failing to prosecute? Assessing the state of the National Prosecuting Authority in South Africa*. Pretoria: Institute for Security Studies.

Reemtsma, J. P. (2004). Gewalt: Monopol, Delegation, Partizipation. In: W. Heitmeyer, & H. G. Soeffner (Eds.). *Gewalt: Entwicklungen, Strukturen, Analyseprobleme.* Frankfurt am Main: Suhrk.

Rejali, D. (2009). *Torture and democracy*. Princeton: Princeton University Press.

Reiss, A. J. (1968). Police brutality: answers to key questions. *Trans-Action*, 5, 10–19.

Republic of South Africa. (1995). *South African Police Service Act (No. 68 of 1995)*. Pretoria: Government Printers.

Republic of South Africa. (1996a). *Constitution of the Republic of South Africa (Act 108 of 1996)*. Pretoria: Government Printer.

Republic of South Africa. (1996b). *South African Police Service Act (Act 68 of 1995)*. Pretoria: Government Printer.

The Bill of Rights of the Constitution of the Republic of South Africa. (1996). Government Gazette (No. 17678).

Republic of South Africa. (2011b). *Independent Police Investigative Directorate Act (No. 1 of 2011)*. Pretoria: Government Printers.

Republic of South Africa. (2015). *Independent Police Investigative Directorate Annual Report 2014-2015*. Pretoria: Government Printers.

Reyes, H. (2007). The worst scars are in the mind: psychological torture.

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

Republic of South Africa. (1998).*Prevention of Organized Crime Act, No.121 of 1998.* Pretoria: Government Printer.

Republic of South Africa. (1995). *South African Police Service Act, No. 64 of 1995*. Pretoria: Government Printer.

Republic of South Africa. (1996). *Constitution of the Republic of South Africa Act, No. 108 of 1996.* Pretoria: Government Printer.

Republic of South Africa Government Gazette (2013). *Prevention and Combating of torture of Persons Act, No. 13 of 2013.* Pretoria: Government Printer.

Republic of South Africa. (1993). *Constitution of the Republic of South Africa Act, No. 200 of 1993.* Pretoria: Government Printer.

Republic of South Africa, Department of Police. (2016). White Paper on Policing. Pretoria: Government Printer.

Republic of South Africa. (2012). *Prevention and Combating of torture of Persons Bill.* Pretoria: Government Printer.

Republic of South Africa. Government Gazette. (2011). *Independent Police Investigative Directorate Act, No.1 of 2011*. Pretoria: Government Printer.

Republic of South Africa. Department of Police. (2015). *National Development Plan-2030.* Pretoria: Government Printer.

Ricoeur, P. (1976). Interpretation theory: discourse and the surplus of meaning. Fort Worth: Texas Christian University Press.

Roberg, R; Crank, J., & Kuykendall, J. (2000). *Police and society*. (2nd ed.). Los Angeles: Roxbury.

Rodley, S. N. (2010). Integrity of the person. In: D. Moeckli, S. Shah, S. Sivakumaran, & D. Harris (Eds.). *International Human Rights Law.* Oxford, UK: Oxford University Press.

Ross, J. I. (1999). Ways of approaching research: quantitative designs.

Ross, J. I. (2011). Policing issues: challenges and controversies. Johens and Barlett.

Rowe, K. (2013). Justice Through the J88: The Doctor's Role in the Criminal Justics System. The South Africam Medical Journal. 103(7).

Rubin, A., & Babbie, E. R. (2005). *Research methods for social work*. New York: Thomson Brooks/Cole.

Schiemann, J. W. (2012). Interrogational torture: or how good guys get bad information with ugly methods. *Political Research Quarterly*, 65(1), 3–19.

Seale, C. (Ed.). (2012). *Researching society and culture.* (3rd ed.). London: Sage.

Seidman, I. (2006). Interviewing as qualitative research: a guide for researchers in education and the social sciences. New York: Teachers College Press.

Schein, E. (1985). Organizational Culture and Leadership. San Francisco: Jossey Bass.

Shearing S., & Brogden, M., (1993). *Policing for a New South Africa*. London, Routledge.

Shenton, A. K. (2004). Strategies for ensuring trustworthiness in qualitative research projects. *Education for Information*, 22, 63−75.

Simmons, K. C. (2010). Cooperative federalism and police reform: using congressional spending power to promote police accountability.

Skinner, B. F. (1953). *Sciences and human behaviour*. New York: MacMillan.

Skinner, B. F. (1948). Superstition in the pigeon. *Journal of Experimental Psychology*, 38, 168−172.

Skogan, W. G., & Hartnett, S. M. (1997). *Community policing, Chicago style*. New York: Oxford University Press.

Skolnick, J. H. (1994). *Justice without trial: law enforcement in a democratic society*. New York: Macmillan.

Skolnick, J. H., & Fyfe, J. J. (1993). *Above the law: police and the excessive use of force*. New York: The Free Press.

Smith, D. (2008). Sector Policing tto Improve Community Policing. University of Western Cape.

Smith, G. (2013). Roundtable Discussion on the "State of implementation of the Law of the Republic of Azerbaijan on ensuring the rights and freedoms of individuals held in detention facilities and enhancing the complaint review procedures"

Sparrow, M. K., Moore, M. H., & Kennedy, D. M. (1990). *Beyond 911: a new era for policing*. United States: Basic Books.

Statistics South Africa. (2015). Crime statistics simplified. Available at: http://www.crimestatssa.com/provinceselect.php [Access date: 20 June 2017].

Stelfox, P. (2009). *Criminal investigation*. Cullompton: Willan Publishing.

Steyn, J. (2013). Investigative Criminology. CRIM 305. Department of Criminology and Forensic studies, University of KwaZulu-Natal, Durban. July-November 2013.

Steyn, J. & de Vries, I. (2007). Exploring the Impact of the SAPS Basic Training Institutes in Changing the Deviant Police Culture Attitudes of New Recruits. Acta Criminologic. 20(1), pp1-34

Stone, C. E., & Ward, H. H. (2000). Democratic policing: a framework for action. *Policing and Society*,

Struwig, F. W., & Stead, G. B. (2013). Research: planning, designing and reporting (2nd ed.). Cape Town: Pearson Education South Africa.

Stryker, S. (1959). Symbolic interaction as an approach to family research. National Council on Family Relations. *Marriage and Family Living*, 21(2), 111−119.

Tankebe, J. (2010). Public Confidence in the Police: testing the Effects of public Experiences of Police Corruption in Ghana. The British Journal of Criminology. 50(2), pp. 96-319.

Tanzania Conference Report. (1998). *Leadership challenges of demilitarization in Africa*. Arusha.

Technical Working Group on Crime Scene Investigation. (2013). Crime scene investigation: a guide for law enforcement. National Institute of Justice.

Terpstra, J., & Schaap, D. (2013). Police culture, stress conditions and working styles. *European Journal of Criminology*, 10(1), 59−73. Thorndike, E. L. (1905). *Elements of Psychology*. New York: A. G. Seiler.

Tilly, C. (2003). *Politics of collective violence*. Cambridge/New York: Cambridge University.

Tulloch, M. H. (2017). *Report of the Independent Police Oversight Review*. Ontario: Queen's Printer.

Twenty (20) Years of policing in a democracy. (2015). *Your Official Free SAPS Magazine.* [Accessed date: 16 September 2017].

United Nations Convention against Torture and other Cruel, Inhuman and Degrading treatment or Punishment (UNCAT), adopted and opened for signature, ratification and accession by General Assembly Resolution 39146 of 10 December 1984.

United Nations. (2002). Torture and other cruel, inhuman or degrading treatment or punishment. In: *Human Rights Fact Sheet*. Geneva: United Nations Office.

United Nations Office on Drugs and Crime. (2011). Handbook on police accountability, oversight and integrity: http://www.unodc.org/documents/justice-andprison-

reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf [Accessed date: 10 June 2017].

Vetten, L. (2005). Telling us what counts in rape statistics. [Accessed date: 16 September 2017].*Mail & Guardian*,

Vishnevsky, T., & Beanlands, H. (2004). Interpreting research in Nephrology Nursing: qualitative research. *Nephrology Nursing Journal*, 31(2).

Walker, S. (2005). *The new world of police accountability*. Thousand Oaks, CA: Sage.

Westly, W. A. (1970). *Violence and the police: a sociological study of law, custom, and morality*. Cambridge, MA: Harvard University Press.

White, S. O. (1972). Perspective on police professionalization. *Law and Society Review*, 7, 61−85.

Wren, D. A. (2005). *History of management thought.* (5th ed.). Danvers, MA: Wiley.

Wyrick, P. (2013). *Police militarization: attitudes towards the militarization of the American police*. Tennessee: East Tennessee State University.

Yin, R. K. (2011). *Qualitative research from start to finish*. New York: Guilford Press.

Appendix A: Complaint Reporting Form by Member of Public

FORM 2

COMPLAINT REPORTING FORM BY MEMBER OF PUBLIC

(Regulation 2(4))

Complaint Details			
CAS/CR No/ In uest No		Province	
Date of Incident		Time of Incident	
Reported to SAPS?	Yes] No	Date Reported to SAPS	
Name of SAPS station			
Protection Order issued?	I No Yes	Protection Order e	Interim [Final
Date Issued			

Incident relates to :
[Death in police custody
[ ] Death as a result of police action
[ ] Discharge of firearm by police officer
[ ] Rape by police officer on Duty [ ]
OffDuty [1
[ ] Rape of person in police custody
[Torture/assault by police officer
] Corruption within the police

Complaint description (use additional folios if necessary):

Complainant Details (includes third party com lai nts)			
Role in the case	l] Complainant [I Third Pa		
ID Number		Pass rt Number	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Fax		Email	
Nationality		Gender	[I Male [ ]Female
Disabled status			
Address			
Count		City	
Suburb		Postal Code	
Preferred contact Method E.	. E-mail, SMS, Post)		
Victim Details			
Passport Number			
First Name		Middle Name	
Surname			
Gender	[ ]] Female Male	Race	
Age			
Service Member's Details			
Identified	[ ] Yes	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	Female	Race	
Duty Station		Duty Station unit	
Identified	[ ] Yes No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	] Male [Female	Race	

Duty Station		Duty Station Unit	
Identified	Yes NO	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	(l Male Female	Race	
Duty Station		Duty Station IJnit	
Contact Number			
On Duty	Yes No		
Vehicle Registration Number			
Details of Witnesses to Incident			
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Title		First Name	
Middle Name		Last Name	
Landline		Mobile	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Title		First Name	
Middle Name		Suname	
Landline		Mobile	

COMPLAINANT'S FULL NAMES:

COMPLAINANT'S SIGNATURE;

DATE:

Appendix B: Informed Consent Form

Social Sciences, College of Humanities,

University of KwaZulu-Natal,

Howard College,

Dear Participant

INFORMED CONSENT LETTER

My name is **Philisiwe Nicole Hadebe**. Student no: **211511097.** I am a Criminology and Forensic Studies Masters candidate studying at the University of KwaZulu-Natal, Howard College campus, South Africa.

I am interested in investigating your experiences and perception on Section (28)(1)(f) torture and assault against the South African Police Service. I am interested in asking you some questions.

Please note that:

- Your confidentiality is guaranteed as your inputs will not be attributed to you in person, but reported only as a population member opinion.
- The interview may last for about 60 to 90 minutes and may be split depending on your preference.
- Any information given by you cannot be used against you, and the collected data will be used for purposes of this research only.
- You are allowed to withdraw in the middle of the interview if you feel uncomfortable or do not want to continue.
- Data will be stored in secure storage and destroyed after 5 years.
- You have a choice to participate, not participate or stop participating in the research. You will not be penalized for taking such an action.
- The research aims at knowing your perceptions and experiences on cases of torture and assault by SAPS during the execution of their duties.
- Your involvement is purely for academic purposes only, and there are no financial benefits involved.
- The researcher request to use an audio recorder for the purpose of ensuring trustworthiness of the study.
- If you are willing to be interviewed, please indicate (by ticking as applicable) whether or not you are willing to allow the interview to be recorded by the following equipment:

	Willing	Not willing
Audio equipment		

I can be contacted at:

Email: lihlubipn07@gmail.com; 211511097@stu.ukzn.ac.za

Cell: 072 271 1978

My supervisor is **Dr. Nirmala Gopal,** who is located at the School of Criminology and Forensic studies, Howard College campus of the University of KwaZulu-Natal.

Contact details: email: Gopal@ukzn.ac.za

Phone number: 031 260 5803

You may also contact the Research Office through:

Full Name: Prem Mohun

HSSREC Research Office,

Goyan Bheki Building

Westville Camp

Tel: 031 260 4557

E-mail: mohunp@ukzn.ac.za

Thank you for your contribution to this research.

DECLARATION OF CONSENT

I_____ (Full Name of partcipant) hereby confirm that I have read and understand the contents of this letter and the nature of the research project has been clearly defined prior to participating in this research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

Signature of Participant: _____

Date: _____

Day/months/year

A copy of this informed consent form has been provided to the participant.

Name of Researcher/ person taking the consent _____

Signature of Researcher/ person taking the consent _____

Date: _____

Day /month/ year

Appendix C: Interview Schedule Guide

INTERVIEW SCHEDULE GUIDE

Introduction

This research being conducted to get to know the experiences and perceptions of Independent Police Investigative Directorate (IPID) investigating officers about Section 28 (1)(f) torture and assault by members of the South African Police Service (SAPS) in KwaZulu-Natal. I am conducting this research for my master's course at the University of KwaZulu-Natal in Howard College. The questions I would like to ask you are based on the topic of police criminal behaviour of torture and assault. Everything you tell me will only be used for this research project, and will not be shared with anyone outside the research team. Instead of using your name, I will use (P-Inv-1; P-Inv-2) to ensure that no one can identify you with any answer. You have already consented to the interview with the consent form. Do you have any questions before we begin?

Opening Questions

1.1. Can you tell me about your job?
1.2. What are your daily tasks?
1.3. Do you enjoy your job?
1.4. What is it that you like the most about your job?
1.5. What is it that you like least about your job?

Questions about the nature and extent of torture and assault cases by members of the South African Police Service (SAPS)

1.6. What is your understanding of torture and assault?
1.7. Where do you draw the line between appropriate/reasonable use of force and a case of torture or assault?

1.8. In the past three years, (2014 – 2016)
    1.8.1.1. Was the number of torture and assaults cases by members of the SAPS increase or decrease? (Please motivate your answer)
    1.8.1.2. Was the number (decreasing or increasing) of successful complaints on torture and assaults cases against the SAPS official (Please motivate your answer).

Questions about the factors that influences police officials to torture and assault law abiding citizens.

1.9. Based on your experience, what are some of the circumstance that prompt members of the SAPS to torture and assault law abiding citizens?

1.10. Do you think there are any organizational factors that influence the police use of torture and assault during the execution of their duties? Please elaborate.

1.11. Do you think there are any suspect characteristics that influence the police use of torture and assault during the execution of their duties? Please elaborate.

Questions about the IPID strategies used to ensure SAPS officials accountability on cases of torture and assault.

1.12. Can you tell me about strategies that you (as investigators) use to ensure police officials are held accountable for their torture and assault actions?

1.13. How have these strategies been productive in dealing with police torture and assault to ensure police accountability?

1.14. Do you think the strategy of disciplinary and criminal recommendations made by the IPID to the SAPS and NPA have been an effective method to ensure SAPS accountability?

1.15. What changes have you noticed since the establishment of IPID with regards to police and public relationship?

Questions about the challenges in investigation of torture and assault against the SAPS officials.

1.16. Can you tell me about the challenges that you encounter when dealing with cases of torture and assault by members of the SAPS?

1.17. Do you think IPID has adequate capacity to address the issue of torture and assault by members of the SAPS? (Please elaborate)

Closing questions

1.18. Any other comments you would like to make, regarding torture and assault.

Appendix D: Gatekeepers Letter

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X54303 DURBAN, MARINE BUILDING, 22 DOROTHY NYEMBE STREET, DURBAN
Tel: (031 3101300 . cvandersandt@ipid.gov.za

Enq: CP VAN DER SANDT
031-3101311
031-3101300

Ms. P Hadebe
Student : 21151197
KZN- UNIVERCITY
DURBAN
4000

Good day Ms. Hadebe

PERMISSION TO INTERVIEW INVESTIGATING OFFICERS WITH REGARD TO IPID MANDATE AND SECTION 28(1) OF THE IPID ACT, ACT 1 OF 2011

1. Kindly be advised that this office received authorization with regard to your request in order to interview investigating officers with regard to the IPID mandate and investigations conducted on Sec 28 (1)(f) Assault and Torture cases.

2. Due to confidentiality and the Promotion of Access to Information Act, Act 2of 2000, it should be borne in mind that all information received may only be utilized for the purpose of your research paper, it is also requested that interviewed candidates remain anonymous on your questionnaire and that their name, surnames and positions are not used. They could be referred to as investigating officers.

3. IPID KZN wish to convey our sincere wishes to you, we believe that you will successfully graduate.

[redacted]
.....
DEPUTY PROVINCIAL HEAD
MS. C VAN DER SANDT

IPID
KZN

Page **1** of **1**

Appendix E: Ethical Clearance Letter

UNIVERSITY OF KWAZULU-NATAL
INYUVESI YAKWAZULU-NATALI

5 October 2017

Ms Philisiwe Nicole Hadebe 211511097
School of Applied Human Sciences
Howard College Campus

Dear Ms Hadebe

Protocol reference number: HSS/1423/017M
Project title: An analysis of Independent Police Investigative Directorate investigator's experiences on Section 28(1)(f) torture and assault against the South African Police Service in Durban Metropolitan area

Full Approval – Expedited Application

In response to your application received 14 August 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL.**

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

[redacted]

Dr Shenuka Singh (Chair)
Humanities & Social Sciences Research Ethics Committee

/pm

cc Supervisor: Professor Nirmala Gopal
cc Academic Leader Research: Dr Jean Steyn
cc. School Administrator: Ms Ayanda Ntuli

Humanities & Social Sciences Research Ethics Committee
Dr Shenuka Singh (Chair)
Westville Campus, Govan Mbeki Building
Postal Address: Private Bag X54001, Durban 4000
Telephone: +27 (0) 31 260 3587/8350/4557 **Facsimile:** +27 (0) 31 260 4609 **Email:** ximbap@ukzn.ac.za / snymanm@ukzn.ac.za / mohunp@ukzn.ac.za
Website: www.ukzn.ac.za

1910 - 2010
100 YEARS OF ACADEMIC EXCELLENCE
Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville