

Custody-Related Deaths in Durban, South Africa 1998–2000

Babita D. Bhana, MBBCh, Dip ForMed, FCFForPath

Abstract: Custody-related deaths have become a major human rights issue in South Africa since the 1994 democratic elections and led to the formation of the Independent Complaints Directorate who, in April 2000, had recorded 2174 custody-related deaths since their inception. A 3-year retrospective descriptive study on all custody-related death cases at a Durban Medico-legal mortuary from January 1998 to December 2000 was undertaken. The study included deaths that occurred during arrest and deaths within the South African Police Services holding cells. Deaths of prisoners within the Correctional Services and psychiatric institutions were excluded. A total of 117 cases were reviewed, of which 88 (75.21%) were due to police shootings, 11 (9.40%) were due to assault by the police during arrest, and 3 (2.57%) were due to assault by police dogs. There were 102 (87.18%) "police action" related deaths and 16 (13.68%) police custody deaths, of which 7 (5.99%) were due to suicide by hanging and 2 (1.71%) due to natural causes. The results from this study differ significantly from published reports from other countries, with respect to the high numbers of deaths caused by police action. Prevention of custody-related deaths should be recognized as an area of concern and should be given greater priority by the government and the South African Police Services.

Key Words: police action, custody, police shootings, deaths in custody, custody deaths

(Am J Forensic Med Pathol 2003;24: 202–207)

Custody-related deaths have become a major human rights issue in South Africa since the 1994 democratic elections. A report compiled by the Centre For The Study Of Violence and Reconciliation gave a conservative estimation (based on data provided by the South African Police Service, or SAPS) that from 1996 through 1998, members of the

SAPS were involved in an average of 6225 shooting incidents yearly. During this period, an estimated average of 467 people were killed annually by the police. Of the fatal police shooting incidents, 41% were judged to be illegal.¹

The establishment in April 1997 of the Independent Complaints Directorate (ICD) marked a high point of optimism regarding the future of investigations into unnatural deaths, especially deaths that occurred while people were in the custody of the security forces.² The ICD is a statutory body designed to function independently of the SAPS. It was established to investigate complaints against members of the SAPS. The SAPS Act³ imposes a statutory obligation on the police to notify the ICD in all cases of deaths occurring while people are in police custody or as a result of police action.

The ICD makes a distinction between police-action and police-custody deaths. Police action deaths are those that occur as a result of the actions of the police before the person is taken into custody. Police-custody deaths are those that occur when a person is in police custody but are not due to injuries caused by the police before custody.

Since April 1997, more accurate statistics were available for the first time on the real number of police-action and police-custody deaths in South Africa. In a 3-year period since then, the ICD recorded an average of 725 of these deaths yearly.⁴ A 3 year retrospective study was therefore undertaken to investigate the incidence and circumstances of custody-related deaths at the Medico-legal Mortuary in Durban, South Africa.

MATERIALS AND METHODS

This was a retrospective descriptive autopsy study of all custody-related death cases at a Medico-legal mortuary in Durban, South Africa, from January 1998 to December 2000. The Research Ethics Committee of the University of Natal approved the study. Departmental postmortem records were perused, and data on all custody-related deaths were extracted.

The study comprised deaths of prisoners that occurred during arrests and deaths that occurred within the SAPS holding cells. Deaths of prisoners within the South African Correctional Services and psychiatric institutions were excluded from the study because prisoners in these institutions

Manuscript received December 27, 2002; accepted March 10, 2003.

From the Department of Forensic Medicine, University of Pretoria, South Africa.

Address correspondence and reprint requests to Dr. BD Bhana, Department of Forensic Medicine, University of Pretoria, Institute Pathology, PO Box 2034, Pretoria, 0001, South Africa; E-mail babita@med.up.ac.za

Copyright © 2003 by Lippincott Williams & Wilkins

0195-7910/03/2402-0202

DOI: 10.1097/01.paf.0000069849.70216.4b

were not under the SAPS custody. No ethnic, gender, or racial distinctions were made.

Demographic data, history of the circumstances surrounding the death, autopsy findings, and the cause of death were extracted from the postmortem records. In most cases, the autopsy was attended by a police photographer, SAPS investigating officer, and members of the ICD, and further history on the events leading up to the death was often obtained from these people.

The circumstances of the death were further categorized according to history or autopsy findings as follows:

- Police shootings
- Assaulted by police
- Assaulted by police dogs
- Died during arrest from other causes, e.g., a fall
- Assaulted by others
- Suicide
- Natural causes
- No specific cause of death (as determined after a complete postmortem examination and performance of ancillary tests)

All deaths were then categorized as either a police-action death or police-custody death.

RESULTS

General

An average of 3500 autopsies was performed annually. A total of 117 cases fulfilled the inclusion criteria. Excluded from this study were 8 cases of fatal shooting or assault in January 1998 by members of the SAPS, the South African National Defense Force, and the resident community at the Lesotho Border. The 8 deceased were allegedly involved in the theft of livestock across the border.

The case distribution throughout the 3 years is depicted in Figure 1. There appears to be a decrease in the number of cases throughout the 3 years, from 53 cases in 1998 to 30 cases in 2000.

Population Demography

The age of the study population ranged from 10 to 60 years, with a mean of 28.6 years (Fig. 2). There were no

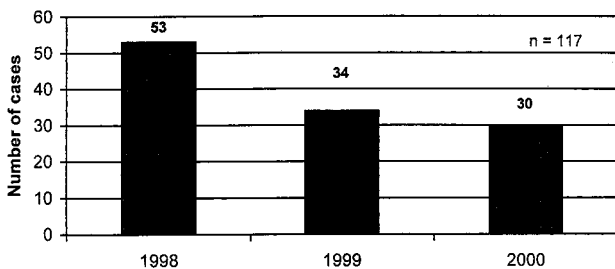


FIGURE 1. Total number of cases of custody-related deaths from 1998 to 2000.

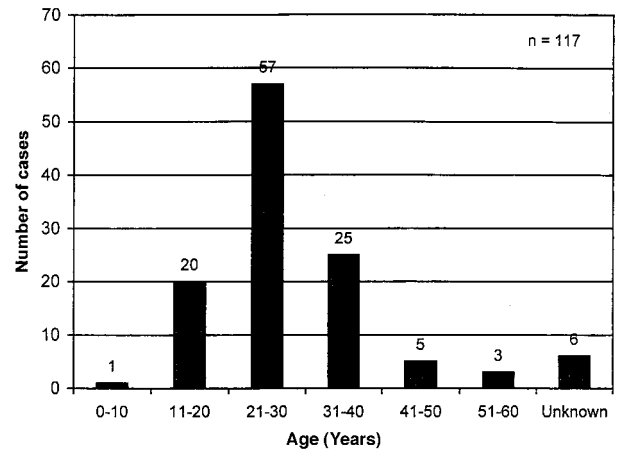


FIGURE 2. Age distribution of custody-related deaths.

female victims. The ethnic composition of the study population was 91.5% black (Fig. 3). The predominant racial population group in South Africa is black. Figures published in a report by the Bureau of Market Research released by the University of South Africa indicated that Kwazulu-Natal has a population of 9.6 million, of which 8 million are blacks.⁵

Circumstances of the Deaths

Table 1 shows the number of cases in each category according to history or autopsy findings. In a few cases, death was ascribed to physical assault and gunshot wounds. There were 102 (87.18%) cases of police-action deaths as compared with 15 (12.82%) police-custody deaths.

Police-Action Deaths

Police Shootings

In the 3-year period, there were 88 cases (75.2%) of fatal police shootings. Although the absolute number of police shootings appears to have declined (Fig. 4); the per-

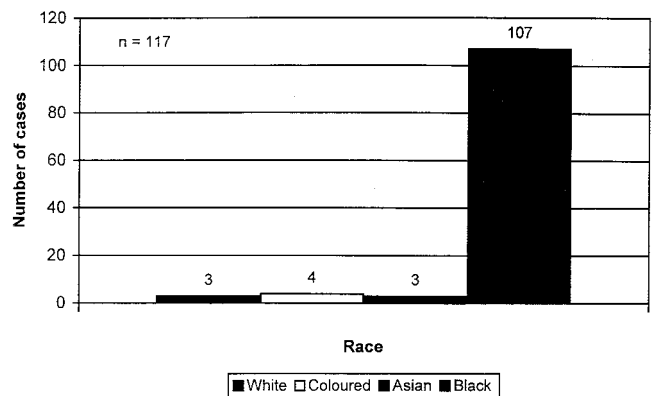


FIGURE 3. Race distribution of custody-related deaths.

TABLE 1. Categories and Numbers of Police-Action Versus Police-Custody Deaths

Totals	No.	Percent
Police-action deaths	102	87.18
Police shooting	88	75.21
Assaults by police	11	9.40
Assaults by police dogs	3	2.57
Police-custody deaths	15	12.82
No specific cause	4	3.42
Natural causes	2	1.71
Suicides by hanging	7	5.98
Assaults by others	2	1.71
Number of cases	117	100.00

centage of custody-related deaths caused by police shootings is on the rise, as illustrated in Figure 5.

Multiple (>2) gunshot wounds were more commonly seen than single wounds, as indicated in Table 2. In 1998, 38% of the victims had multiple fatal gunshot wounds. In 1999, this figure rose to 53%, and in 2000, it was 33%. On average, in 26.67% of the cases the cause of death was attributed to a single gunshot wound. There was only 1 case of death caused by a shotgun wound. Handguns and high-velocity rifles were used; however, handguns were by far the commonest weapons used.

Table 3 shows that the body regions predominantly injured were the chest, head, and abdomen. In 1999, fatal head and chest firearm wounds significantly predominated over other body regions injured. In 5 cases, firearm wounds were restricted to the lower limbs and resulted in fatality caused by injury to the femoral blood vessels.

The criminal profiles of those fatally shot included suspected armed robbers, hijackers, and murderers. In most cases, the SAPS members reported that the deceased resisted arrest by fleeing or assaulting the SAPS members with a

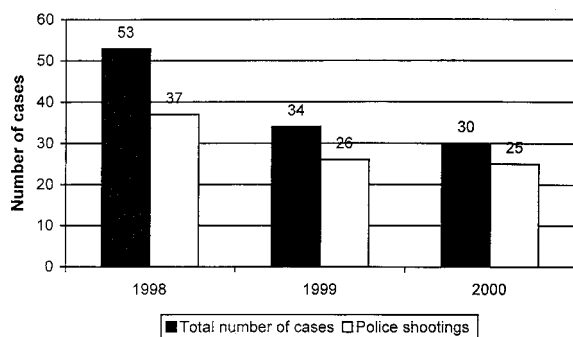


FIGURE 4. Annual deaths caused by police shootings during the 3-year period.

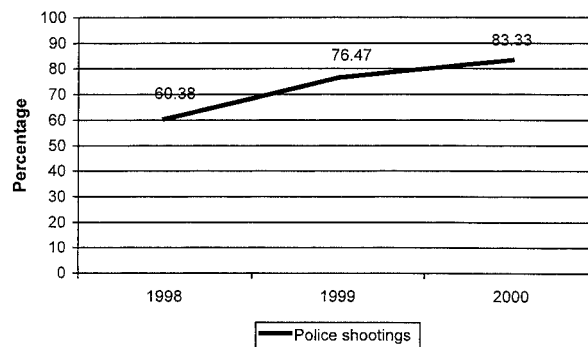


FIGURE 5. Trend in the incidence of police shootings throughout the study period.

weapon (firearm, knife, etc). There were 5 cases involving SAPS members fatally shooting prisoners who had escaped from custody. Two of these cases received significant publicity and involved the fatal shooting of 2 detainees outside the High Court in Durban in May 1998. High-velocity assault rifles were used in both these cases.

Assault by the Police

There were 11 cases of fatal assault of prisoners by members of the SAPS. The assault occurred either during the arrest or during interrogation. The detainee was in most cases found dead in the SAPS holding cell sometime after being arrested. External injuries sustained had not been attended to, despite visible bruising and swelling. The assault in most cases resulted in blunt force injuries to the head (including face), abdomen, or multiple soft tissue areas. The oldest victim in this study was a 60-year-old white man who was arrested for driving under the influence of alcohol. He was physically assaulted by members of the SAPS and then placed in the holding cell. He was later taken under police guard to a hospital, where he died a few days later as a result of extensive soft tissue injuries.

Assault by Police Dogs

Assault by police dogs accounted for 3 deaths. The bite wounds were documented and confirmed at autopsy, and death was ascribed to complications of wound sepsis. There was no evidence of other physical assault in these 3 cases.

TABLE 2. Number of Gunshot Wounds

	1998	1999	2000
Single fatal shots	10	8	10
2 Shots	13	8	10
>2 Shots (multiple)	14	18	10
Total	37	34	30

TABLE 3. Anatomical Distribution of Fatal Gunshot Wounds

	1998	1999	2000
Head	14	4	7
Neck	5	3	-
Chest	13	5	13
Abdomen	9	7	4
Lower limbs only	1	2	2

Death From Other Causes During Arrest

There were 2 deaths caused by multiple blunt force injuries sustained after a fall from a height during pursuit by the police. The injuries sustained were not inconsistent with the supplied history. In 1 case, there was a nonfatal gunshot wound to a lower limb in addition to blunt force injuries.

This study therefore highlights the fact that there is a high incidence of precustody deaths caused by police action. The absolute numbers over the 3-year period may appear to be decreasing, but when compared with the annual total number of custody-related deaths, police-action deaths are on the rise (Fig. 6). Deaths caused by police shootings have increased from 60.38% in 1998 to 83.33% in 2000.

Police-Custody Deaths

Deaths Caused by Assault by People Other Than the Police

The actions of so-called community justice resulted in police-custody death in 2 cases. The first case involved a 60-year-old adult black man who had allegedly raped a child. He was assaulted by members of the community and subsequently arrested by the police. The second case involved a 36-year-old black man assaulted by the public, who accused him of being a thief. Both these men were arrested and placed in a police holding cell at the local police station, where they died as a result of their injuries. No medical treatment was given to either of these prisoners while in custody.

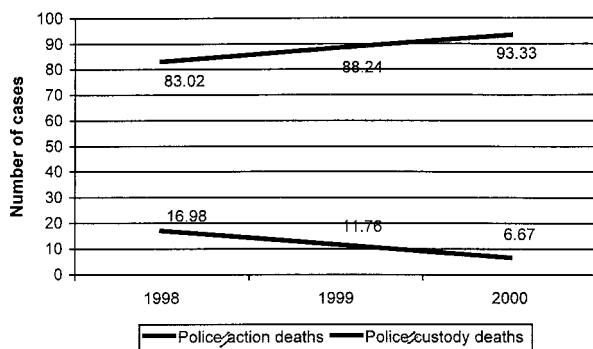


FIGURE 6. Trends in the incidence of police-action versus police-custody deaths.

Hangings

There were 7 cases of hanging. The racial composition was 3 Asians, 2 of mixed race, and 2 blacks. A forensic pathologist had examined the scenes of death before the removal of the bodies from the cell. Partial suspension of the body was documented in all 7 cases. The ligatures used included a shoelace and bed linen (sheets, etc.). The deceased was alone in the police cell at the time of death in all 7 cases. Suicide notes were not found at the scenes.

The families of the deceased in most cases suspected foul play. A private forensic pathologist was appointed by the family in 2 of these cases to attend the autopsy and submit his own report. Autopsy examination in all cases failed to find any external or internal injuries suggestive of assault or the application of other blunt force.

Postmortem femoral vein blood samples were submitted to the forensic toxicology laboratory for quantification of the blood alcohol level in all 7 cases and drugs of abuse analysis in 2 cases. In 6 of the 7 cases, no alcohol was detected. In 1 case, the blood alcohol level was 0.19 g/dL. No drugs of abuse were detected in the 2 blood samples.

There was 1 case involving a 38-year-old Asian man who allegedly hanged himself after being arrested for drunken driving. No drugs of abuse were found in his possession, and postmortem toxicology results were negative for alcohol and drugs of abuse.

Natural Causes

One case of a large basal subarachnoid hemorrhage from a ruptured berry aneurysm and 1 case of extensive disseminated tuberculosis with tuberculous bronchopneumonia accounted for deaths as a result of natural causes.

There were no deaths associated with substance abuse, the use of choke holds, or other restraint positions.

DISCUSSION

The Oxford Dictionary defines custody as guardianship, care, or imprisonment. A person in custody (with respect to prisoners) can be defined as a person who:

- is deprived of his or her freedom of movement by a member or any other person by means of arrest,
- is in the custody of the service, and
- has not been lawfully released, handed over, or handed back to the Department of Correctional Services or any other institution for detention.

People held in custody by the police or by prison authorities retain their basic common law⁶ and personal Constitutional⁷ rights, except for their right to liberty and a qualified right to privacy. The occurrence of such deaths therefore arouses great public interest and raises volatile emotions among family and friends of the deceased and among the media, politicians, and the general public.

The classification of a death in custody varies considerably within the literature worldwide because of an absence of an established, accepted, and universal definition,⁸ which makes comparison of studies published from various countries difficult. We chose to adopt the classification of custody related deaths into 3 phases:

1. Precustody deaths, which include all deaths that occur during the commission of a crime; during flight, chase, or apprehension; during a siege or hostage situation; and during restraint or submission.
2. In-custody deaths, which occur after a prisoner has been formally arrested. This includes deaths that occur soon after the prisoner is admitted to jail, during interrogation, and during incarceration.
3. Postcustody deaths, which include revenge killings by police or rival criminals.

A literature search on the topic revealed numerous published studies on custody-related deaths, focusing primarily on deaths within the correctional services,^{9,10} police-custody deaths associated with the restraint position, or deaths as a result of fatal drug-induced excited delirium during or soon after arrest.^{11,12} Few studies have either specifically looked at¹³ or included police shootings or custody-related deaths as a result of police action.^{8,14,15}

The study on police-custody deaths by Segert¹⁶ in Denmark from 1981 through 1985 documented 19 deaths in the 5-year period. The most frequent cause of death according to that study was asphyxiation as a result of aspiration of gastric contents during alcohol intoxication, drug poisoning, and intracranial hemorrhage. There was 1 case of homicide and 2 deaths by natural causes. There were no suicides and no documented deaths caused by police action.

Our study found no deaths directly ascribed to the effects of alcohol. The postmortem femoral blood sample of the 1 case involving an Asian man arrested for drunken driving and who subsequently hanged himself in the police cell revealed no evidence of alcohol or drugs of abuse.

The ICD annual reports¹⁷ from April 1997 to March 2001 investigated police-action deaths and the circumstances surrounding these deaths in the 9 provinces in South Africa. Although the total number of police-action deaths for the country decreased from 518 in 1997 to 432 in March 2001, there was an increase from 88.42% to 93.06% in the percentage of such deaths caused exclusively by police shootings. The results of the present study in Durban are similar to the national statistics.

Copeland¹³ documented 194 police shootings in a 27-year period from 1956 to 1982, which constituted 3.14% of the homicides investigated in metropolitan Dade County. In 61.3% of the cases, a single gunshot wound was the cause of death. Multiple gunshot wounds were found in 21.6% of cases. In the present study, 53% of fatal police shootings were due to multiple gunshot wounds in 1999.

Copeland's study also examined reasons for police presence, reasons for shootings, whether the victim was armed, and whether the deceased had a criminal record. In 33.3% of the cases, police were present at a scene because a crime had just occurred or was occurring. In 48.5% of the cases the criminal had first shot at or aimed at a police member or pulled out a gun or other weapon. The criminal was armed in 69.6% of these cases, and 57.7% had a criminal record.

The only history available to the forensic pathologist at autopsy is that supplied by the SAPS member or the ICD member attending the postmortem. Further history is sometimes available from the news media; however, the accuracy of such information is uncertain. The history given by the investigating officer attending the autopsy is often scant because he or she is seldom the police officer who attended the scene of death and often assigned to the case only on the morning of the postmortem. The police docket therefore has little to no useful information regarding the circumstances. The pathologist is often told that the deceased fired at the police member or was fleeing from the scene. The history given by the ICD member also attending the autopsy sometimes conflicts with that given by the police officer.

The ICD reported¹⁷ that between 38.89% and 54.44% of police shootings occurred during the course of the arrest. Between 2.5% and 4.63% of police shootings were found to be due to police negligence. The other circumstances surrounding the police shootings, as noted by the ICD, were shootings during the course of the crime, shootings during investigation, and shooting because of negligent handling of the firearm.

These statistics raise the question of whether South African police are using excessive deadly force. The media and members of the public often make allegations of police brutality. According to Bittner,¹⁸ the central thread that runs through police work is that it frequently consists of coping with problems in which force may have to be used. Police should wherever possible avoid unnecessary force.

Police need to be aware of the difference between force and lethal force (a force that is likely to cause a fatal injury). The powers of members of the police service are to some extent defined by section 13 of the SAPS Act.¹⁹ The issue of the use of force is referred to explicitly in subsection 13(3)(b) of the SAPS Act,¹⁹ which provides that "wherever a member who performs an official duty is authorized by law to use force, he or she may use only the minimum force that is reasonable in the circumstances."

There is currently an impasse about the legislative framework dealing with the use of lethal force for the purposes of arrest, as provided for in the amendment to Section 49 of the Criminal Procedure Act.²⁰ Section 7, which was intended to amend section 49 of the Criminal Procedure Act, was passed by parliament as part of the Judicial Matters

Second Amendment Act in November 1998.²¹ The SAPS and the Minister of Safety and Security have, however, resisted the implementation of this act. Section 7 has not as yet been implemented, and the old section 49 is still in force. The controversy surrounding Section 7 is that it places restrictions on the power of the police and regulates the use of lethal force for purposes of arrest. Police safety has been the focus of concern in debates on the implementation of Section 7.

For members of the SAPS, the high risk of fighting violent crime in South Africa is leading to a death rate among SAPS members that is ranked among the highest in the world. South Africa's murder rate in 1997 was 57 per 100,000. For police, however, it was 183 per 100,000 in the same year.²² Thirty percent of these fatalities took place in the course of fighting crimes such as robbery, car hijacking, and burglary.²²

Thus, while it appears that the recorded number of deaths as a result of police action in South Africa is relatively high by world standards, meaningful comparisons of differences in rates can be made only if factors such as overall crime statistics for this country, legislature, and police death and murder rates are taken into consideration.

ACKNOWLEDGMENTS

The author wishes to acknowledge Miss N. Myxoteni, a technologist in the Department of Forensic Medicine at the Nelson R. Mandela School of Medicine, University of Natal, Durban, South Africa, for her assistance in the data collection.

REFERENCES

- Bruce D, O'Malley G. In the line of duty? Shooting incident reports and other indicators of the use and abuse of force by members of the SAPS: October 2001. Available at: <http://www.wits.ac.za/csvr/papers/papdb&go.htm>. Accessed September 6, 2002.
- Powell JA, Dada MA, Naidoo SR. Investigation of unnatural deaths: justice or travesty? *SAMJ*. 1999;89:246–248.
- Section 50 of the South African Police Services Act 68 of 1995.
- Bruce D. The prevention of police action and custody deaths: April 14, 2000. Available at: <http://www.wits.ac.za/csvr/papbruc3.htm>. Accessed December 15, 2000.
- Bowden C. SA population hits the 46-million mark. *Pretoria News* August 20, 2002:3.
- Minister of Justice v Hofmeyer*, 1993(3) SA 131 (A).
- The Constitution of the Republic of South Africa Act 108 of 1996.
- Petschel K, Gall JA. A profile of deaths in custody in Victoria, 1991–1996. *J Clin Forensic Med*. 2000;7:82–87.
- Frost R, Hanzlick R. Deaths in custody: Atlanta City Jail and Fulton County Jail, 1974–1985. *Am J Forensic Med Pathol*. 1988;9:207–211.
- Lanphear BP. Deaths in custody in Shelby County, Tennessee, Jan 1970–July 1985. *Am J Forensic Med Pathol*. 1987;8:299–301.
- Karch SB, Stephens BG. Drug abusers who die during arrest or in custody. *J R Soc Med*. 1999;92:110–113.
- Chan TC, Vilke GM, Neuman T. Re-examination of custody restraint position and postural asphyxia. *Am J Forensic Med Pathol*. 1998;19:201–205.
- Copeland AR. Police shootings: the metropolitan Dade County Experience from 1956 to 1982. *Am J Forensic Med Pathol*. 1986;7:38–45.
- Copeland AR. Deaths resulting from police pursuit. *Am J Forensic Med Pathol*. 1988;9:228–232.
- Biles D, McDonald D, Fleming J. Australian deaths in police custody, 1980–1988: an analysis of Aboriginal and non-Aboriginal deaths. In: Biles D, McDonald D. *Deaths in Custody in Australia, 1980–1989*. Canberra: Australian Institute of Criminology; 1992:191212.
- Segert E. Police-custody deaths and medical attention. *J Forensic Sci*. 1987;32:1694–1703.
- Annual ICD reports: 1998/1999, 1999/2000, 2000/2001. Available at: <http://www.icd.gov/reports>. Accessed August 22, 2002.
- Bittner E. *Aspects of Police Work*. Boston: Northeastern University Press; 1990.
- The SAPS Act; 65 of 1995.
- The Criminal Procedure Act; 51 of 1977.
- Section 7 of the Judicial Matters Second Amendment Act; 122 of 1998.
- Gun control alliance: facts and figures. Available at: <http://www.gca.org.za/facts/pamphlets/police.htm>. Accessed October 14, 2002.