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Police- Public Encounters, the Inevitability of Use of Force

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Abstract:

During their everyday interactions with the public, police officers often encounter situations in which they will be expected to use force. The dangerous occupational environment, coupled with the legal authority to use force makes the use of force by the police inevitable. However, negative consequences such as injuries and deaths to members of the public have often been caused by police use of force. Several police officers have also been injured while some have died during confrontations with the public. On numerous occasions, the Zimbabwe Republic Police (ZRP) has had to contend with allegations of excessive use of force by various non- governmental organisations and media houses. There have often been counter-accusations between the police and the public, yet these counter- accusations do not solve anything. This paper, which is based on literature and documentary survey, highlights key aspects on the concept of use of force, with a focus on the ZRP.

Keywords: Use of force, dilemma

1. Background

In their day to day policing activities, police officers encounter numerous situations in which they will be required to use force. Police may be called in to use force when making an arrest, breaking up an altercation, dispersing an unruly crowd, or performing a myriad of other official activities during their daily routines (McEwen, 1996:1). Arguably, the most defining characteristic of police work is their ability to use force to enforce the law; they are uniquely situated and authorised to employ various levels of force to compel specific responses from citizens (Klahm & Tillyer, 2010). Harmon (2008:1119) also highlights that police officers use force as an authorised form of state coercion, but they do so in tense and often emotionally charged interpersonal encounters. It can thus be implied that use of force by the police is inevitable.

Use of force by police is also critical to the relationship of the state to its citizens in a democracy, and in particular to the legitimacy of the state in the eyes of its citizens (Stenning, 2002). Bruce (2006) opines that in some of the situations, the police officers' ability to use force properly may make the difference between whether they survive or not, or whether they are able to carry out their duties effectively. Citizens also call the police because the police can use force (Payne, 2012:6).

As a way of curtailing improper use of force by the police, various standards have been set at international, regional and national levels. The most notable international standard is the Code of Conduct for Law Enforcement Officials which highlights, among other issues, the proper use of force by police officers. At regional level, The Southern African Police Chiefs Organisation (SAPCO) has also set guidelines for police officers. At the national level, various pieces of legislation, the most notable being the Criminal Procedure and Evidence Act [Chapter 9:07], have been promulgated to curb excessive use of force by the police. Policy documents such as the Public Order Strategy have also been penned by the Zimbabwe Republic Police (Z.R.P), with the aim of instilling professionalism on police officers pertaining to the use of force.

The use of force in most African countries dates back to the colonial era when the settler forces, armed with draconian laws, used excessive force on Africans as a way of both exploitation and prevention of Black Nationalism. The ZRP was formed at independence in 1980 after the amalgamation of the colonial British South African Police (BSAP) and two liberation movements namely ZANLA and ZIPRA. The organisation was created in terms of section 93 (1) of the then Lancaster House Constitution of 1980, which provided that: "There shall be a police force which, together with such other bodies as may be established by law for the purpose, shall have the function of preserving the internal security of and maintaining law and order in Zimbabwe."The new Constitution of Zimbabwe which was promulgated in 2013 provides for the creation of a police service on Section 219. It is interesting to note that prior to the new Constitution, the Z.R.P was referred to as a force rather than a service. The term "force" had negative connotations as it could imply that all policing activities always had an element of force- legitimate or illegitimate.

On several occasions, the Z.R.P had been on the spotlight on allegations of excessive use of force- a scenario which is not only peculiar to the Z.R.P but other police organisations around the world. In 1998, eight people lost their lives as the Z.R.P tried to deal with nationwide food riots that had gripped Zimbabwe (Zimbabwe Independent, 1998). It is important to note that two police officers lost their lives as they tried to quell the food riots. In 2000, thirteen soccer fans lost their lives during a football match when police officers fired tear gas into a restive stadium crowd (Vhiriri, 2011). Several fatal encounters between the police and the public have been reported in the media, with most of the blame having been levelled against the police. The question however to be asked is, “who is to blame?”

1.1. Statement of the Problem

Lives are being lost and injuries are being inflicted countrywide during the day to day encounters between the police and the public, especially as the police try to use force. Typical cases are the already mentioned National Sports Stadium disaster (Vhiriri, 2011) and the loss of lives during the 1998 food riots (Zimbabwe Independent, 1998).

In March 2012, residents of Shamva area in Mashonal and Central were brutally assaulted by junior police officers on instructions from a senior police officer after an alleged case of a wallet belonging to the senior police officer’s wife. One person, who was taken from his home in a state of semi- nudity died whilst eight others sustained serious injuries (Kachere, 2012). Another culpable use of lethal force is the killing of Gift Tandare, Youth Chairman of the National Constitutional Assembly during a rally on 11 March 2007, yet no official investigation surrounding the circumstances of his death has been carried out (Makwerere et al, 2012: 133).

Police officers have also been on the receiving end during their encounters with the public through loss of lives, injuries to police officers on duty and damage to property. In June 2011, a police Inspector Mutedza was killed in the Glenview area of Harare by suspected opposition activists (Bulawayo news, 2011). On the 30th of May 2014, scores of unruly members of the Johanne Masowe Apostolic Sect attacked anti- riot police officers in Budiriro surbab of Harare. Three police officers were seriously injured while three others escaped with minor injuries (Matenga, 2014).

On the 1st of August 2014, Chingwizi holding camp dwellers in Mwenezi (Masvingo Province) turned violent and torched two police vehicles in protest against plans to relocate a clinic. The 30 police officers at the camp had to flee after throwing teargas (Maponga, 2014).

Several civil suits have been brought before the courts against the police for injuries that would have been suffered as a result of excessive use of force by the police. In the case of *Mugadza v Minister of Home Affairs and Another 2001 (2) ZLR134 (H)*, the plaintiff won a civil suit after suing for a gunshot injury that he had sustained during food riots. The court held that the shooting was wrongful and culpable. In the case of *Musadzikwa v Minister of Home Affairs and Another 2000 (1) ZLR 405 (H)*, the plaintiff was shot by a stray bullet when police used automatic weapons to quell a riot. The court ruled that it was unreasonable for police officers to use automatic weapons in an urban environment.

In light of this background, it is evident that the use of force by the police results in undesirable consequences. The public blame the police for their heavy-handedness whereas the police blame the public. These counter- accusations do not however solve the problem. There is therefore need to carry out a thorough investigation on the concept of use of force, clearly analysing the context in police use of force.

2. Brief Literature Review

2.1. The Dilemma of Police

The occupational environment of police officers, which comprises interactions with citizens, includes the physical danger of police work and unique coercive authority that officers wield (Terrill et al, 2003). The dangers associated with the occupational environment forces the police to distance themselves from the chief source of danger- citizens (Terril et al, 2003: 1006). However it would not be desirable for the police to run away from the danger as Payne (2012:6) highlights that citizens call the police because the police can use force. While police officers are granted the right to use legitimate force, which is accompanied by legal protection (Terril et al, 2003), use of force- be it legitimate or illegitimate, may evoke a variety of responses from the public or community (Bruce, 2006). Where members of the public are direct witnesses, or where incidences are reported in the media, community members may respond with anything from admiration to revulsion, depending not only on what is directly witnessed or reported on but also on their broader perceptions and the reputation of the police (Bruce, 2006).

The unpredictability, urgency and the split of a second syndrome to police use of force also brings dilemma to the subject of police use of force (Bruce, 2006). Harmon (2008:1119) contends that police officers use coercion in tense and often emotionally charged interpersonal encounters with the public. The police are thus caught up in a situation in which they have to address “something-that-ought-not-to-be- happening-and-about-which-someone-had-better-do-something-now” (Bittner, as cited by Klahm & Tillyer, 2010: 215). A single decision to use force may lead to multiple decisions on the continued use of force. Goldstein as cited by Terril (2003) asserts that discretionary decisions regarding when, how, and how much force to use is a cumulative process; once a course of action is decided upon, additional discretionary choices follow that may lead an officer to either increase or decrease the level of force. Bruce (2006) sums it up when he opines that the options available to the police may be more limited and split second decisions may make the difference between life and death.

2.2. Nature of Force

Deadly force is used to define force that is likely to cause death or some serious bodily injury (Fyfe, 1988). On the other hand, non-deadly force is the application of force that is not likely to result in death or other serious bodily injury (Klinger, 1995). Authors also categorise different types of non-deadly force. Garner et al, (1996) identify physical force as implying the touching, prodding, redirection or physical manipulation of a subject to comply with demands. Non physical force implies the use of threats or other verbalisation techniques to gain compliance (Terril, 2003). The most ideal force, reasonable force, is applied force which is necessary to achieve a legal goal, while excessive force is applied force which is disproportionate to what is necessary to achieve a legal goal (Petrowski, 2005). On the issue of verbal commands being a form of force, Terril (2003) interestingly noted that this form of force occurs in half of the police public encounters, thus showing why use of force is inevitable.

2.3. Use of Force Continuum

To appreciate the complexity of situations where police utilise force, one must conceptualise force not as a static concept but rather as a continuum of responses, ranging from verbal commands to deadly force (Mesloh, Henych & Wolf, 2008). These continuums propose that police officers should progressively examine and react to each situation, de-escalating once resistance has declined or stopped (Terril & Paoline, 2007). However, there are no universally accepted standards among police organisations regarding the concept of use of force continuum. This is supported by Garner et al (2005), who assert that use of force continuums are not universal in law enforcement agencies and they rely on legally and publicly acceptable standards.

2.4. Legal Framework for the Use of Force by Police in Zimbabwe

Adebowale et al (2000) opines, "The use of force by the law enforcement officials is strictly regulated or limited, or ought to be, by domestic laws. Such laws may differ from one country to the next". In this vein several statutory provisions have been put in place to control the use of force by law enforcement agents in Zimbabwe. The Constitution is the Supreme law which defines the functions of the police. The power to use force can be inferred from the bill of rights. Section 52 (a) of the Constitution provides for the freedom from all forms of violence from public or private sources. This constitutional force indirectly confers the police with the power to use all means available, including force, to protect people from violence. Interesting though, the Constitution also attempts to curtail the use of unnecessary force by the police by providing for the freedom of assembly and association (Section 58) and the freedom to demonstrate and petition (section 59). Most of the alleged heavy-handedness of police officers' dispersal of public gatherings emanate from the exercise of these important rights (Human Rights Forum, 2005). However it should be noted that these rights should be exercised peacefully (Section 59). The Criminal Procedure and Evidence Act [Chapter 9:11] provides that police officers are required to use force in instances where suspects resist arrest (Section 42) and the use of force even extends to killing of a person who is fleeing from lawful custody.

2.5. Empirical Studies

Avdi (2013), in his research on factors affecting police use of force highlighted suspect factors and police factors as the two broad factors. Findings were that suspect's resistance during police-suspect encounters is the strongest predictor of police use of force. The research also showed that officers who are exposed to job-related stress are more likely to use force (Avdi, 2013:2). Garner et al (2002) supported Avdi's view by suggesting that disrespect towards the engaged officer increases the chances of force being used during the encounter. This research however, though important, however failed to incorporate the policing environment.

Several researches (Gau, Mosher & Pratt (2010), Terril & Mastrofski (2002), Garner, Maxwell & Heraux (2002), all carried out in the developed world, have found a relationship between suspect's race and police use of force, highlighting that police are more likely to use force against African Americans and other minority suspects compared to white suspects. Kuckey, Glen and MacLean (2012) in their report on human rights violations in the United States of America during the Occupy Wall Street protests highlighted aggressive, unnecessary and excessive police force against peaceful protesters, bystanders, legal observers and journalists. This shows that the issue of police use of force is a challenge not only to the developing world but also to the developed world.

The literature on suspect injuries, police officer injuries, and the environmental and situational factors leading to police use of force is limited (Mesloh, Henych & Wolf, 2008: 8). The legal framework in Zimbabwe (The Constitution and the Criminal Procedure and Evidence Act) does not provide clearer situations on which police officers may use force and the definition of reasonable force may be subject to different interpretations. Thus it is not hard to see why there is virtually no information on how and under what circumstances force is used, given the limited amount of data that we have detailing police-citizen encounters (Mesloh, Henych & Wolf (2008:12).

Omar (2012), in a study conducted in Egypt highlighted the effects of use of force by the police during the 2011 revolution. Police incurred heavy losses after their actions resulted in spiral violence by members of the public. More than 95 police stations and over 4000 police vehicles were torched during the 18 days of the uprising. It is thus evident that the effects of police use of force are double-pronged; the society suffers harm and the police organisation also suffers heavy losses.

Payne (2012) also highlights the shortcomings of the previous studies on police use of force when he asserts that any use of force is a rare event hence collecting data from rare events is time consuming and expensive. He thus highlights that many studies rely on views of police reports, raising concerns about objectivity of the source of data (2012:1).

3. Concluding Remarks

From the available literature on the topical issue of police use of force, it is an undisputable fact that police are expected to use force. Without this power to use force, their constitutional mandate would almost become impossible to execute. The media - both print and electronic, has often been inundated with news of incidences of 'alleged' excessive use by the police. However, the questions to ask are;

How do we define excessive force?

Who defines excessive force?

To what extent does the general public appreciate the context in which force is used?

Who is to blame for incidences of police use of force?

A comprehensive research, therefore, has to be carried out to answer some of the above questions, as well as to clear the air on the unending dilemma regarding police use of force.

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