

Police accountability: Your rights while engaging with police in South Africa

The police are supposed to protect the public from crime and violence, but they sometimes engage in unlawful behaviour such as corruption, brutality and torture. Holding police accountable for wrongdoing is essential. This factsheet is intended to help you to understand police powers, your rights when you encounter police and your options for reporting abuses of power by the SAPS.

When can police make arrests?

Police can make arrests to prevent a crime or to put a suspect before court.

A warrant of arrest may be issued by a judge or magistrate on written application by a prosecutor or police officer with the rank of captain or higher.

An arrest can be made without a warrant if:

- The suspect commits an offence in the presence of police
- Police reasonably suspect a serious crime was committed
- A police officer is obstructed in execution of their duties

The officer must inform the person of the reason for arrest, read their rights and provide the warrant. Police may use reasonable force if a person does not submit to arrest. To understand "reasonable force", see "When can police use force?" below. For more information on legal arrests, visit the Institute for Security Studies' website [here](#).

Rights of arrested persons

- to remain silent and not be forced to confess
- to communicate with their partner, family, religious counsellor and doctor
- to be brought before court as soon as possible
- conditions of detention must be consistent with human dignity
- to consult a lawyer of their choice
- physical searches may only be done by somebody of the same gender

What happens during an arrest?

- The police must give people who are arrested a notice of their rights in terms of section 35 of the Constitution, explaining that they have been arrested and what their rights are.
- The police will verify the identity of anyone who was arrested by asking them their names and addresses. The police will also take the fingerprints of anyone who has been arrested.
- After a person has been charged, they may be able apply for police or prosecutorial bail, otherwise they will have to wait until their first court appearance to apply for bail.
- Police are only allowed to detain a person for a maximum of 48 hours (excluding weekends) before they either have to appear in court or be released.
- The court may extend a detention for no more than seven days after the 48-hour arrest period for further investigations.

What about protests?

The [Socio-Economic Rights Institute of South Africa \(SERI\)](#) has compiled a guide for students to understand their rights during protests. Click on the image for information on:



STUDENT PROTESTS
A legal & practical guide

When is a protest considered lawful? (p14)

What legal processes protestors must follow when organising a protest? (p18)

What are the consequences of an unlawful protest? (p15)

SERI has outlined the gradually escalating steps police must follow before force can be used. Protesters must be given a reasonable amount of time to respond to each. These include:

- Negotiation** - Police must ask the protest convener to convince protesters to disperse
- Defensive measures** - Undertaken to prevent harm to people or property, and may include erecting barriers
- First warning** - A loud hailer used indicate strong measures will be used. The warning should be in two official languages
- Setting up offensive measures** - These include search and seizure, pushing protesters back and encircling. These must be visible
- Second warning** - Another warning must be issued in two official languages
- Commanding officer authorises use of force** - The minimum amount of force necessary to disperse protesters may be used.

To read more, see p46 of SERI's [student protest guide](#).

When can police use force?

The law allows the SAPS to use force in certain circumstances, including:

- for self defence
- to search a person or premises
- to arrest somebody
- to overcome resistance
- to protect people
- to prevent a person fleeing
- to prevent damage to property
- to disperse crowds*

*in specific circumstances

Police may only use the minimum force reasonable in the circumstances, and must be able to defend their use of force in court.

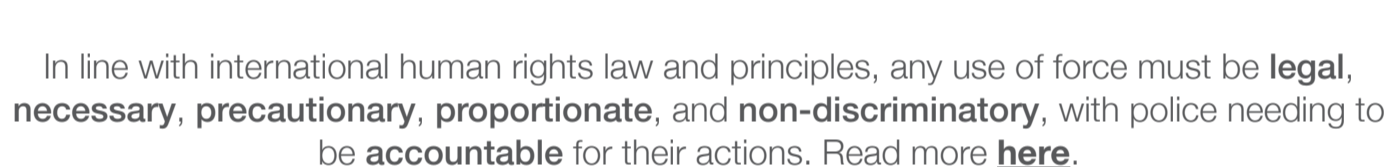
Use of unnecessary force can result in disciplinary action or criminal sanction.

Force may not be used to intimidate or punish an arrested person or force them to answer questions.

Use of deadly force is legal if there are no other options and a person poses a threat of serious violence. For more information on the legal use of force, visit the Institute for Security Studies' website [here](#).

What weapons can police use?

The [C-19 People's Coalition](#) has developed resources on the use of less lethal weapons by the SAPS. Click on a weapon to find out whether its use is legal - and under which circumstances, the risks, and how to report improper use:



In line with international human rights law and principles, any use of force must be legal, necessary, precautionary, proportionate, and non-discriminatory, with police needing to be accountable for their actions. Read more [here](#).

Legal resource for police torture

TORTURE DEFINITION

The Prevention and Combating of Torture of Persons Act, 2013, and the Convention Against Torture states that: torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by a public official or other person acting in an official capacity, for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person has committed or is suspected of having committed.

Torture is a form of police brutality, which is the excessive use of force and other forms of cruel and inhumane treatment.

Find out more about torture in this [video](#) from the [Legal Resources Centre](#).

Police corruption

Along with police brutality and torture, another serious crime committed by some police is corruption. Police corruption often involves paying money to the police in return for favourable treatment. For instance, the police may agree not to arrest or charge you for a crime you are accused of committing. You may be falsely accused of a crime and be threatened with arrest if you refuse to pay money. Police corruption should also be recorded and reported. If you are afraid of repercussions for reporting you can allow police corruption anonymously. Platforms such as [Corruption Watch's Veza](#) allow for anonymous reporting of police corruption.



Recording and reporting illegal police activity

The public are encouraged to report illegal police activity such as assault or corruption.

- Record as much detail as possible:**
- Witness details**
- Date, time and place**
- Description of incident**
- Name, rank and description of officers**
- Photos or videos**
- Vehicle registration**
- Information about injuries***

*All formal complaints must be accompanied by the Department of Justice's J88 form, filled out by a medical practitioner.

The [Institute for Security Studies](#) and [C-19 People's Coalition](#) have additional advice available on reporting illegal police activity.

Reporting police misconduct: Below is a list of reporting options for brutality, torture and other crimes by security forces

Serious allegations against SA Police Service and Metro police	Independent Police Investigative Directorate (IPID) 012 399 0000 / complaints@ipid.gov.za
Police corruption	SAPS Anti-Corruption Internal Unit 082 828 5778 SAPS Service Complaints Centre 0800 333 177
Abuses by Metro Police	Anti-corruption hotline for that police department
Corruption Watch	0800 023 456 / www.veza.org.za
Free legal advice about violations during COVID-19 lockdown	066 076 8845
Western Cape Police Ombudsman	021 483 0669 / ombudsman@wcpo.gov.za
The African Policing Civilian Oversight Forum (APCOF) has developed a guide to the complaints process	
Crimes by SA National Defence Force members	South African Military Ombud 012 676 3800 / 080 726 6283 / intake@milombud.org
Illegal activity by military or traffic police	Report to nearest police station
Report incidents of torture and ill-treatment	Legal Resources Centre 011 836 9831 / lrc.org.za/stop-torture/
Public Interest Legal Services, which includes a location-specific directory of organisations to contact	www.pils.org.za/contact/

Organisations such as [Viewfinder](#) and [C-19 People's Coalition](#) provide unofficial platforms to report unlawful behaviour by the SAPS and other law enforcement agencies. These platforms seek to collect evidence to build a publicly held record of abuses, which can be used when advocating for policy changes.

#VukaniMaAfrika

Police brutality is worst in black communities.

IT'S TIME SPEAK UP!

Viewfinder Accountability Journalism has asked how SAPS protest officers accused of killings and abuse. Now, we are asking you to join our investigation by speaking up and sharing your experiences. By doing so you can help deliver justice for the victims and SA's black communities, including your own.

WHERE IN MZANSI DO YOU LIVE? WHAT ARE YOUR EXPERIENCES OR QUESTIONS ABOUT POLICE BRUTALITY AND NON-ACCOUNTABILITY?



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Reach us directly on our WhatsApp hotline

[📞 | 066 533 5142](https://wa.me/0665335142)

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VIEWFINDER

SECURITY FORCES VIOLENCE TRACKER

The Security Forces Violence Tracker is a platform created to record and monitor abuses committed by members of security forces, such as the SAPS, Army, Metro, Law Enforcement, Police as well as private security companies.

This platform was created by a civil society coalition as a tool to increase accountability by collecting evidence in an attempt to prevent such abuses.

If you know of a specific case of abuse committed by members of security forces and you wish to submit the evidence to us, please begin by choosing your province from the list below. You will be asked a few basic questions on that case and you may also submit videos or images of the case if you have them.

Learn more about police brutality in SA

Click on each of the below topics:

[Police killings happen every day in SA](#)

[Repeat SAPS offenders go unchecked](#)

[Police protect their own from consequence](#)

VIEWFINDER

It's important for the public that police be held accountable, but also for the SAPS. Police won't be able to investigate acts of brutality if people don't feel comfortable enough to report them.

In partnership with the [Institute for Security Studies](#), the [African Police Oversight Forum \(APCOF\)](#), the [C-19 People's Coalition](#), [Corruption Watch](#), the [Legal Resources Centre](#), the [Socio-Economic Rights Institute \(SERI\)](#) and [Viewfinder](#).

