ABSTRACT

Police cannot operate without information from and on the community. This is why the birth of Intelligence Led Policing (ILP) was so significant to the police. ILP is a concept that is widely used but the operational definition of the full meaning of the concept is still vague. For the purposes of this contribution ILP refers to a recent shift or change in crime control thinking and the related policing practices. Intelligence gathering by means of different tactics and the proactive strategies designed around the gathered information explains the basic meaning of ILP. This new era of proactive and ILP is also known as the police revolution. Although ‘intelligence-led’ policing can officially be traced back to the 1830s where evidence exists that the warranted tampering with mail in the name of intelligence gathering and safety was condoned, a clear demarcation of its boundaries and substance does not exist. It can be argued that ILP is important in order to monitor airports and ports and to infiltrate terrorist groups or syndicates for national security (e.g. to avoid a duplication of the 11 September 2001 terrorist attack in the USA). Proactive policing involves community policing (CP) and voluntary community involvement with greater emphasis on crime prevention and problem solving. The main difference between CP and ILP is the typical absence of voluntary consent in the case of ILP. As noble as CP or partnership policing may seem, both are not doing well, especially in South Africa (SA), since communities still do not trust the police. The South African Police Service (SAPS) and other police agencies globally are therefore forced to use ILP and other techno tactics to gather information on the populace. The question one needs to ask, with cognisance of the fact that police and community relations are in trouble, is: Is the intention of ILP political or in all honesty to police pro-actively?

INTRODUCTION

Adoption of the Constitution of the Republic of South Africa (1996) has resulted in the previous police force becoming redundant and being replaced by a police service. In becoming a “service” the way was paved to offer a service of excellence to all South African citizens. The South African Police Service (SAPS) is nonetheless finding it difficult to make any significant inroads into the crime problem. Furthermore the populace usually views members of the police in a negative light. One of the key elements of proactive policing and crime prevention is intelligence that is divulged by the community to the police to be able to react to a situation before a crime is committed. However, the SAPS is finding it arduous to get information from the community as the community still deem the SAPS as either corrupt or the pawns of the government. Before 1994 - when SA became a democracy - the majority of the population also shared this view (Stevens & Yach, 1995:76). It is therefore important that the police start using other tactics to gain information to enable them to police SA effectively, as they are not getting the necessary information from the community. The community policing (CP) approach
was introduced as a mainstream policing approach in SA after 1994 and is entrenched in the Constitution. At the time it was thought that the communities would embrace this new approach and would the SAPS with enough information to make pro-active and problem-orientated policing a success. CP unfortunately does not live up to this expectation. The introduction of several complaints and oversight mechanisms also did not result in a sudden change in community and police relationships.

The negativism towards the SAPS and the non-embracement of CP by the population are indirectly contributing to the high crime rate in SA. If the community reacts and divulges all the information they have on criminal activities taking place in their neighbourhoods, the police will be able to react pro-actively and prevent crimes before they are committed. The author presented a five-day workshop in June 2007 to 250 male and female nursing students and opened up a general discussion every day after the workshop content was covered. The focus of the workshop was on violent crimes and the role of the Criminal Justice System (CJS). During these discussions the students indicated that they did not trust the police and that some police officers are involved in crime. One student made the following remark: “You cannot trust the police because they are in ‘cahoots’ with the serious criminals”. Another student commented: “I know of a lot of criminals and what they do in my area but I won’t say anything to the police. The criminals will kill me if I talk to the police. I don’t think the police are doing their job”. When I probed the student about this state of affairs, more students in the group reacted with similar observations. With this paper in mind I asked them the following question: If you know of a person who is committing or are involved in crime will you inform the police? Only five of the students indicated that they would divulge this information to the police. When I probed the rest of the group, the students were adamant that the police will not do anything with the information and that they will put themselves and their families in danger if they were police “impimpis” \(^2\) (informants). The different responses ranged from “it is not worth the effort” to “you will be crazy if you do that” and were time and again supported by different audible reactions from the larger group – almost like a group of supporters at a sporting event.

Two important themes emerged during the discussions with the group, namely:

− A lack of trust in the SAPS; and
− The majority of the group would not divulge information to the police.

The focus of this article is largely on the latter theme. If the police are having difficulty in gathering crime intelligence from the community the following questions arise:

− What are they doing to get information in their different areas of policing?; and
− Who are monitoring the techniques they are using in their intelligence gathering efforts?

Moreover, in motivating why the contribution of this article is considered important the following: During a community project at a school in the Tshwane Municipal District in
Pretoria, SA, during September 2006, grade 8-10 pupils also aired their concern about the lack of trust in the police. The project was initiated in order to improve community and police relations in the area. The aim was to inform the pupils about the different telephone help lines they could use to seek help if needed and to encourage them to share information with their local police station regarding drug-related problems in the area. However, the pupils found the initiative humorous and made audible gestures during the presentation. The author asked them why they were reacting negatively towards this police outreach initiative. The pupils replied by declaring that the police were corrupt and dishonest. Some pupils informed me that police officers drink alcohol while they were on duty and did not care about the problems in the community. A few pupils said that they actually saw policemen that specific morning who were driving around in their area in a marked police vehicle whilst they were consuming beer. Others reacted in a similar fashion as the student group above. They also believed that the police in their area are corrupt and did not really deem their jobs as serious and important. It was clear that the majority of the group also did not trust the police enough to divulge crime-related information to them. To focus on the issue more broadly one should look at the historical position of Intelligence Led Policing (ILP) and problems that also contributed to the lack of trust between the police and the community. In the next section ILP in Britain and SA will be discussed and some of the techniques intelligence agencies and the police use to gather information (sometimes illegally) will be investigated. This contribution will also focus on the police oversight bodies.

**CONTEXTUALISING INTELLIGENCE LED POLICING, PRO-ACTIVE POLICING AND COMPLAINTS AGAINST THE POLICE**

British thinking has influenced policing in SA from the time when SA was a colony of Britain. Furthermore, consultants from Britain and other parts of Europe have spearheaded modern policing ideas in SA such as CP since the early 1990’s (Stevens & Yach, 1995:xii). It is therefore appropriate that the British version of a complaints system and ILP are discussed, as the British history will serve to highlight important lessons for the SA version (1994 to date).

**British version**

The problems between the community and the police that were highlighted in the introduction are not unique to SA. In Britain similar problems were experienced since the introduction of formal policing in 1829. These problems are still part and parcel of British policing today. To understand the almost universal problem global police agencies experience one should contextualise intelligence gathering, pro-active policing and the complaints that are documented against the police. The art of intelligence gathering aimed at deterring potential criminals can be traced back to the thinking of the Classical deterrence theorist Jeremy Bentham and the police reforms of Sir Robert Peel in 1829. By creating an impression of omnipresence (e.g. regular foot patrols) it was believed that potential criminals would be deterred and information would be supplied by co-operative local communities for policing purposes. Despite these expectations the same antagonistic feelings that existed towards watchmen (guards before the introduction of
formal policing) also existed towards the formal police. With regard to formal policing in Britain, Brown, Esbensen and Geis (2007:184) postulate that:

Widespread resistance had to be overcome because English citizens had a marked distrust of centralized government. … This profuse mistrust of police authority continued after Peel’s new police, dubbed ‘Bobbies’ and ‘Peelers’ … took the streets.

Primarily allowing them the freedom to act almost as they desired exacerbated the problem of the police not being accepted with the anticipated societal admiration. No significant system was in place to monitor police behaviour and accountability. A problem that is still noteworthy in many policing and intelligence agencies in the world. Furthermore the police are still the only officials with the legal power of arrest. In Britain police accountability was for the first time addressed by the Royal Commission on Police during 1962. This led to the promulgation of the UK Police Act of 1964. The Police Act of 1964 did not protect citizens as such and most complaints against the police were dealt with internally (Maguire, 1991:177-178). It appears that the different complaints systems that were used in Britain since 1964 such as the Police Complaints Board (PCB) – very similar to the Independent Complaints Directorate in South Africa) failed to protect citizens against police officials who abused their powers. Gradually it became more evident to the populace that police officers were abusing their powers (e.g. the way they obtained forced statements/confessions or the way they gather crime intelligence). The complaints system in Britain was inadequate to cope with public demand and this, amongst other factors, contributed to citizens’ concerns about the abuse of power by the police. In this era (1970s-1980s) relations between the police and the public reached an all time low in certain areas and overt hostility was growing daily. This led to a number of clashes between the British Police and the public (Governments on the WWW, 2004). It is important to note that, until recently, the complaints processes in Britain did not include an independent oversight element. An investigation of police misconduct was therefore completed without an independent arbiter. These in-house actions paved the way for corruption and unethical behaviour or cover-ups to safeguard the police image (Hall in Jewkes & Letherby, 2002: 225-234).

A clash that took place in Brixton between the police and the citizens served as the watershed for the revision of complaint structures in Britain against police abuse. After the rioting between 10 and 12 April 1981 the then Home Secretary, the Rt Hon William Whitelaw, appointed Lord Scarman to conduct an inquiry into the riots. Scarman (1981:I-VII) recommended a change of the system for handling complaints against the police and to rekindle public and police relations. Lord Scarman emphasised that complaints against police who abused their powers on the street caused a ‘dangerous’ (McLaughlin & Johansen, 2002:635-653) lack of confidence in police actions such as stop and search practices. It was also established that some population groups (e.g. young black males) are more likely to be stopped because they represent a significant group of the prison population. In this regard it was argued that the police use their powers ‘intelligently’ to prevent crime proactively. Stop and search policing led to arrests in approximately 10 percent of the cases and many arrests were for public-order offences arising from antagonism to the group concerned (Waddington, 1999: 50-51). Scarman reported that a
breakdown existed between the community and the police and that these problems had to be addressed (Hall, 2002:225-234). He wrote his report in a time when the community were pleading for change in respect of fair and accountable police practices. Scarman pointed out that the police should take some responsibility for the disorder that occurred and for the lack of trust in their accountability. This made a significant inroad in the authoritative image of the police that was constructed over many years (Brake & Hale, 1992:38).

Major changes were evident and new stop-and-search legislation was developed taking into account the defects of the pre-existing stop and search powers. The recommendations made by the Royal Commission on Criminal Procedure (1981) was that the new legislation the Police and Criminal Evidence Act (PACE) of 1984 should incorporate certain safeguards against abuse, stipulate the reasons for the specific police action and a written record of any searches should be available on request (Brown, 1997). Although more effective scrutiny of the investigation conducted against a police officer was intended, it is important to note that senior police officers still conducted the enquiry internally after a citizen lodged a complaint (Maguire, 1991:177). Another important outcome of PACE was the replacing of the PCB by the Police Complaints Authority (PCA) that was established and became fully operational on 29 April 1985. The PCA gained the power to supervise investigations into serious cases of police who abuse their powers. It was anticipated that complaints against police who misuse their powers would be effectively regulated with PACE. An important aim of PACE was to reduce tough street policing or in other words to reduce overt brutal behaviour. Furthermore, introducing the use of compulsory video recording of interviews in interview rooms promised to reduce sinister practices to obtain confessions. Comparison of statistical (Cotton & Povey, 1998-1999:1-15) data on complaints regarding police abuse of power show that the average number of cases reported stayed consistent during the mid 1980s and 1990s (20 000+ registered cases per year). Less than 50 percent of the cases were formally investigated and less than three percent of the cases that were substantiated were handled by means of disciplinary charges. A reason for this being that the police are controlling the system therefore many complaints are not recorded. Victims are usually labelled as complainants and are never given the morally validated status of victim. This underlines that the existing complaints process is being used as an instrument of police management (Smith, 2001:372-392). Hearings take place behind closed doors and the chief officer concerned keep all the documentation relevant to the cases. In disciplinary cases ‘proof beyond reasonable doubt’ is usually the yardstick. Contrary to citizens not being allowed to have legal representation, police officers are permitted to have a lawyer present (McLaughlin & Johansen, 2002:635-638). The deduction that can be made is that the complaints process is being used to the advantage of the police administration to identify malpractice and to ‘prepare’ for citizens who lodge complaints. Absolution of the police officer is given priority, while the victim’s complaint and reparation is awarded a secondary position. Efforts are made to have Crown Prosecuting Service personnel in police stations improve general legal advice to police officers (Dixon, 1997:278). An informal rule within the police culture, namely the practice that police officials should back each other up, also complicates matters. The few citizens who are aware of a
complaint structure therefore find it extremely difficult to lodge a complaint against the police in cases where human rights are breached.

The police reacted to the PACE pressures and demands by developing their capacity to respond with a stronger intelligence capacity and to rely more heavily on para-militaristic covert techniques (Brake & Hale, 1992:38). The expected immobilizing effect of PACE therefore never reached its potential. To highlight this statement a police officer responded as follows during an interview regarding the neutralising effect of PACE: ‘… We’ve got enough authority now. There’s not much we can’t do now’ (Dixon, 1997:277).

The limitations of the altered complaint structure and the lack of ‘limitation’ placed on police powers and freedom became more evident with the passing of time. Police for example adapted their interviewing strategies from a more physical approach (e.g. torturing a suspect) to a more psychological approach (e.g. lying during an interview). Police also increasingly started making use of paid informants to build up evidence for cases (Dunnighan & Norris, 1999:67-86). Some police officers even circumvented PACE to get to a favourable end result in a case. This implies that the police strategy (means) to get information had to be changed (e.g. informants) to prove that someone is guilty (end) of an offence. At this point it is safe to argue that PACE and PCA did not have the desired effect on citizens’ concerns about unacceptable police actions in Britain. These concerns were highlighted and reached a pinnacle after the death of Stephen Lawrence on 22 April 1993 and the subsequent Macpherson Report that followed. Once again the limitations of the existing structures highlighted the public’s concern and placed full responsibility on the style of policing. Macpherson accentuated that at that time the existing laws dealing with police misconduct were inadequate. He also made several recommendations (for which certain groups in the community had long campaigned) concerning police accountability (Bridges, 1999:298-322).

Although many uncertainties existed in respect of policing methods used at that time significant changes in the criminal world (e.g. crime syndicates that operated globally using advanced technology) were taking place challenging global policing structures. These changes could not be ignored because crime trends were changing rapidly and threatened social stability in many countries. The British Police had to address a significant increase in crime rates from the 1980s as well as respond to the new challenges in global crime patterns. Parallel to these crime issues the nucleus of police longevity was challenged by local negativity from the citizenry. The police were therefore forced to adapt because externally they were loosing public support and internally they were challenged by the private sector (e.g. private security companies that thrived on a new wave of security services) (Ratcliffe, 2003:1-6). They realised that they had to adapt because they became marginalized in certain areas of policing. During the 1980s and 1990s all these changes overlapped with the calls from the Home Office for the police to be more effective and cost efficient.

The British Police were facing two major challenges: Firstly to address the changing patterns of crime and secondly to win back public support by being accountable for their actions. The second challenge implied that the police had to adhere to certain legal constraints regarding their behaviour. The police culture that usually does not welcome
restrictions on its freedom opted to prioritise the changing patterns of crime and adapted its actions accordingly. This choice demanded of the police to change their policing style to cope with technological advances (e.g. methods of intelligence gathering that were already used by the military and private security companies) and techno-crimes (e.g. computer fraud schemes) being committed by a ‘new’ breed of criminals. In effect the hi-tech advances and the focus on intelligence led-policing, favoured the police as they now also had the means to police the community without the community knowing that they were being policed 24 hours a day. This contributed to the police shifting their focus from reactive to proactive policing because they had the means and they could break away from a problem that had been haunting them for a very long time, namely accountability to citizens. Meanwhile the Government was trying to find answers to the poor police-citizen relationship that existed in Britain.

In an attempt to answer these questions, namely, of why poor relations existed and whether the police complaints process enjoyed public support, four inquiries were given Governmental approval during the 1990s to investigate these issues. These inquiries were: the Royal Commission on Criminal Justice inquiry, the Home Affairs Committee inquiry, the Stephen Lawrence inquiry and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment inquiry (Smith, 2001:372-392). The recommendations made by Macpherson following the Stephen Lawrence inquiry were the yardstick that prompted the implementation of new changes in the complaints system. Changes were, however, taking place too slowly and this led to legal firms encouraging complainants to take civil action against the police. Financial settlements were becoming the rule and not the exception with the proviso that no publicity came out of the action and that the officer’s identity was not disclosed (McLaughlin & Johansen, 2002:635-638). In many cases police officers therefore get (and are still getting) away with serious breaches of human rights. They do not have to take any responsibility for it because a culture of non-accountability has become institutionalised in the existing complaints structure. Information is often gathered illegally and by means of dubious methods. This emphasises that the police culture is inflexible towards incursions of law and administrative policies (Ericson & Haggerty, 1997:33).

In view of the abovementioned it is evident that the complaints system in Britain is working in favour of the police and that citizens’ concerns do not occupy a priority position within their daily operations. Instead the police prioritised their style of policing and how they were going to adapt to the policing of the risk society. The Home Office Minister, Lord Faulkner stated in The Guardian of 29 July 2002 that “people really like to have CCTV cameras because the police and the people … believe it brings greater security” (Coleman, 2004:13). However, a dearth of research exists regarding the impact of CCTV monitoring and other intelligence gathering techniques (Brown, 1995). The populace are also increasingly complaining about the invasion of their privacy. People are being watched in almost all aspects of their lives – in shopping malls, while they are driving, in the streets, in taxicabs and trains as well as during social events (e.g. soccer; dance clubs; pubs etc.). It seems that the more they are being watched the more difficult it is to complain about misuse of surveillance and intelligence gathering because most
people did not know they are being watched. This makes it almost impossible to know in what way you are being scrutinised, watched and discussed (e.g. a lady in a miniskirt). It is unclear how one can lodge a complaint against the “invisible” big brother? Bearing in mind that the UK is the “largest market for CCTV in Europe and accounts for one-fifth of all CCTV cameras worldwide” (Coleman, 1994:6) one could question the existing complaints and monitoring structures in Britain. The question also arises whether it is a political strategy to regain some form of sovereign governance over the whole populace?

**South African version**

After democratization in April 1994 it was expected that the SA public would change their negative perception of the police. It was also envisaged that the people would start to trust in the police and that they would divulge information to the police without any reluctance (Stevens & Yach, 1995:6). The actual nature of CP is the involvement of the community in policing. After democratisation CP became the buzzword in policing (Kempen, 2006b:39). The South African Police (SAP) was changed to the South African Police Service (SAPS) and this new service was demilitarised. Furthermore, organisational decentralisation, an expansive problem-oriented police mandate and a commitment to consultation with, responding to as well as a priority to work alongside the public to set priorities, develop tactics and co-producing safety were some of the outcomes that were expected from CP (Dixon, 2004:252). It was thought that the community would get involved in policing matters and that the police would provide a service to the community. In doing this it was hoped that the community would get involved with the police in problem solving in their different areas. However, it is becoming clearer that there are unmistakable implications of the rise of proactive (CP & sector policing) and intelligence-led policing for the public’s perception of police accountability. In an update report the police magazine *Servamus* informed its readers that “the concept of community policing was never embraced by the community, or there were problems regarding the powers and responsibilities of community police forums” (Kempen, 2006b:39).

On the one hand citizens have concerns about police competency and the police abusing their powers but on the other hand police complain that the community does not want to become partners in the combating of crime. The author has served many years on the executive committee of a CP forum and one of the biggest problems that were raised at every meeting was the unwillingness of the community to get involved in crime prevention and their reluctance to divulge information to the police officials in their area. This problem was also raised at the CP area board meetings that the author attended. Most of the Community Police Forum (CPF) chairpersons raised similar issues about the police and the police raised similar issues about the community. The CPF chairpersons usually blamed the police for their poor performance, a lack of skills and also insisted that the police did not really care about the problems that the community is experiencing. The SAPS members at the meetings usually blamed the community for a lack of dedication to crime prevention efforts. Furthermore, police officials were frustrated with the non-involvement of the community. Police officials were of the opinion that the community had a great deal of information on crime, criminals and other problems in their area, but was not willing to divulge the information. Private security initiatives were
sometimes blamed for the lack of interest in public policing matters. Arguments such as: “We are paying double for security, namely our tax money are paying the police and then we have to hire private security as well” were usually vented. Kempen (2006b:39) states in this regard that “the community does not feel safe and often feel that police officials are not reliable and accountable in the fight against crime”.

Although the SAPS was demilitarised (e.g. change in rank structure; change of insignia and the change in the powers to shoot at criminals who are fleeing a crime scene) recent media reports show that the opposite of demilitarisation, namely “tough policing” actions are once again favoured by police management. The National Commissioner of the SAPS, Jackie Selebi, made it known in the media that the police will use force to counter the serious criminals in the country. He even declared that the SAPS would shoot back at the thugs in SA. Such declarations hardly reflect a service-orientated approach. The police are therefore in a paradoxical position. They were demilitarised and they were advised to involve the community in their policing initiatives. However, it appears that demilitarisation has caused a lack of respect for management from subordinates. Several initiatives were put in place to accelerate promotion of previously disadvantaged police officers to police managers. In lieu with this an exodus of many skilled police officers are taking place. They either go on early retirement or they search for greener pastures in the private security industry. The SAPS are therefore in a very difficult position at present. South Africa is experiencing the same problems as Britain - albeit different crimes, namely an increase in crime (e.g. crimes against the person; armed house robberies; farm killings etc.) since 1994 and an onslaught of global crime syndicates (e.g. drugs; motor vehicle hijackings; abalone pilfering; fraud etc.). Although the government has announced that more police officers will be trained especially with the 2010 Soccer World Cup in mind, serious issues regarding trust, skills and the generating of crime information are limiting the effectiveness of the SAPS. Increasing numbers of police malpractice are being reported in the media (Lambrechts, 2005:73). Dockets are being sold or lost; reports of police officials who are being bribed are on the increase; cases are being thrown out of court because of improper evidence collection; motivated police officials are sometimes forced to use unethical tactics to generate crime intelligence and poorly trained police officials have to face highly organised as well as well armed criminals on a daily basis (Kempen, 2006a:18-19).

The above problems (e.g. bribery) can only take place in a society that presents these opportunities to police officers. If a whole community is involved in their own policing sector and if they develop a relationship of trust, corruption and bribery should decrease drastically. The community generates crime and the community should therefore assist the police in preventing crime to reclaim the streets. Several oversight mechanisms in SA are in place to monitor accountability. The Department of Safety and Security is a government department with a police oversight responsibility. Furthermore, CP was introduced with the idea to ensure transparency and civilian involvement in policing practises. The Independent Complaints Directorate (ICD) is a government department that was established in April 1997 to investigate misconduct against members of SAPS and the Municipal Police Service (MPS). It operates independently from the SAPS and
investigates any complaints from society regarding alleged misconduct and criminality by a police officer [www.icd.gov.za].

Police officials are also inclined to act under internal regulations namely the South African Police Service Discipline Regulations, 2006. These regulations specifically address offences such as aiding an offender to escape, bribery, corruption and extortion. These regulations also provide that an employee of the SAPS may be suspended by the National or Provincial Commissioner on reasonable grounds if the employee committed any misconduct. In serious misconduct cases criminal cases are lodged against police officers. In such serious cases officials are usually suspended pending the outcome of their trial (Lambrechts, 2005:70; Lambrechts, 2006:70-75).

Research has shown that the majority of people who laid a complaint at the ICD are not satisfied with their service. Their dissatisfaction is based on a variety of factors such as:

- Complainants view ICD investigations as biased in that they mainly favour the perpetrators (police) (a similar problem that is encountered in Britain);
- The ICD does not regularly communicate the progress of their investigation process to the complainants;
- The ICD does not communicate the status of the case to the complainants – the complainants are not informed whether their case have been finalized or not, they only discover about the status of their case during their own follow up about the case;
- The investigation process takes long to such an extent that the complainants forgets that they have lodged a complaint with ICD;
- The ICD focuses mainly on high profile cases and put little effort in investigating other complaints that are low key; and
- The statistics (number of complaints) regarding successes are also questioned by opposition political parties (Burgener, 2008; Complainants’ level of satisfaction report, 2006; Mistry, & Lue-Dugmore, 2006; Proactive Research Unit, 2006).

From the foregoing one can expect that SAPS members who are guilty of misconduct will be dealt with harshly. They face criminal charges, possible disciplinary charges and possible suspension. Still it seems that current mechanisms and initiatives have failed to restore the necessary trust in the citizenry of SA to partner with the SAPS in the fight against crime. In addition the objectivity of the ICD are being questioned. In a South African Press Association (SAPA) article titled “Police watchdog overworked” (SAPA 2000) the Committee chairman Mluleki George stated that “there had always been a general feeling that the ICD's independence was "questionable" and that it was too closely associated with the police”. The proper functioning of the ICD is also in doubt. In the same article it was stated that the safety and security portfolio committee informed Parliament that “a mounting workload and lack of funds have compelled police watchdog Independent Complaints Directorate (ICD) to refer most of its cases back to the police for investigation” (SAPA, 2000).
Despite these monitoring initiatives in SA and possible complaints against police misbehaviour, the SAPS are compelled to gather information to enable them to successfully execute their task as law enforcement officers. The SAPS cannot wait until relationships are positive between them and the community before they can police their area. Other intelligence agencies also face this challenge and are also forced to gather information by means of various other techniques. Recently initiatives to generate crime information such as the joint Primedia / SAPS venture “Crime Line” has been hailed as a great success in generating crime information. After only seven weeks operating 83 persons were arrested and close to R1.5 million worth of stolen property, drugs and other items were seized and arrests were also made for minor offences. These arrests were possible because of the anonymous information that was forthcoming from the community (file:///E/CRIME LINE Your anonymous crime tip-off line.htm). However, if one considers the magnitude of crime and its related problems in SA this initiative hardly addresses the serious lack of communication between the police and the community. Furthermore, this initiative does not really address the current breakdown in police and community relations, as it is anonymous and faceless. The police cannot react pro-actively if they do not have the community to supply them with enough information to fulfil their policing task, namely ensuring a safe and secure SA. The question that one should address now is: What other means are available to gather crime intelligence?

**PROACTIVE INTELLIGENCE-LED POLICING BY TECHNO POLICE**

Proactive policing involves community policing (CP) and voluntary community involvement with greater emphasis on crime prevention and problem solving. However noble it may seem, CP or partnership policing is not doing well because the community still does not trust the police. In an utopian society the community will trust its police service, will work in a partnership with it and will spontaneously divulge information that will enable the police to act proactively and prevent crimes. This ‘trust-relationship’ between the police and citizens does not exist in most societies. Police cannot operate without information from and about the community. This is why the birth of intelligence-led policing (ILP) is so significant to the police. Although the concept ILP is widely used its operational definition or full meaning is still vague. For the purposes of this contribution ILP refers to a recent shift in crime control thinking and the related policing practices. Intelligence gathering by means of different tactics and the proactive strategies designed around the information explains the basic meaning of ILP. This new era of proactive and ILP is also known as the police revolution. Although ‘intelligence-led’ policing can officially be traced back to the 1830s when according to existing evidence the Home Secretary in Britain warranted tampering with mail in the name of intelligence gathering and safety, a clear demarcation of its boundaries and substance does not exist (Manwaring-White, 1983:84). It can be argued that ILP is important to monitor airports and ports and to infiltrate terrorist groups or syndicates for national security [e.g. to avoid a duplication of the 11 September 2001 terrorist attack on the Twin Towers in the USA, the terrorist bombings of trains in Spain (2004) and the bus bombings in the UK (2005)]. The main difference between CP and ILP is the typical absence of voluntary participation by the public in the case of ILP.
The question one needs to ask is: How far can the police go in breaching citizens’ rights of privacy with ILP and still be accountable? Before addressing this section of the article it must first be noted that that complaints systems and oversight bodies with regard to the police are not yet functioning in favour of the community, few community members have knowledge of the existing complaint structure and now new police practices that are even more difficult to detect or prove are being implemented and used at a rapid pace to police the community. These practices in some instances breach all the rights citizens have to privacy. In this regard Ashworth (1998:108-140) questions the ethical grounds of deceptive practices in policing. These deceptive practices include strategies such as the use of under cover police officers, paying informants for information, lying to deceive a person, spying, covert observation, the use of infra-red and telescope lens cameras, tapping mobile and landline telephones, face detection computer software and closed circuit television cameras (CCTV) in shopping malls and on roads. Practises such as these invade the ordinary citizens’ living space and right to privacy. Norris and Armstrong (1999:205-230) refer to the intensified technological surveillance of the community as the ‘maximum surveillance society’ or ‘total panopticanisation’. Citizens are being watched and monitored without their consent in order to prevent crime. This is in line with the government’s request that the police should be more effective and creative. The positive side of ILP is that the police can get away with almost anything under the provision that they are doing it for community safety and that they are monitoring streets and crime hot spots to prevent crime.

CCTV is one of the most well known forms of surveillance and information gathering in the world. Success stories with CCTV monitoring also enjoy widespread media coverage. In Britain footage from CCTV cameras was used to identify Anthony Harding, a multiple murderer as the person who dumped body parts in a dustbin. Single incidents like these may cause people to overreact regarding the effectiveness of ILP. Maguire (2000:315-336), however, warns against this and argues that there is a dearth of clear research evidence pertaining to the effectiveness of ILP techniques such as CCTV monitoring. To support Maguire’s argument viewpoints of critics will be highlighted. In the May 2006 Servamus Safety and Security magazine it is reported that: “opponents of CCTV point out the loss of privacy of the people under surveillance, and the negative impact of surveillance on civil liberties. Furthermore, they argue that CCTV displaces crime, rather than reducing it. Critics often dub CCTV as ‘big Brother Surveillance’” (ONIKA, 2006:34). Manwaring-White (1983:84) reports on cases where the police use ILP strategies such as bugging devices outside the guidelines provided by the British government. The Home Office’s thinking on bugging and surveillance seems to be paradoxical. For example, the bugging of a Post Office phone requires ministerial backing whilst this is not required in any other methods of bugging and surveillance. Tapping is approved when the person under surveillance is suspected of a crime that could carry a prison sentence of three or more years. The implication of this is that a network analysis can be initiated. This means that any individual the person under surveillance talks to over the telephone becomes part of the investigation. Furthermore, British Telecom (BT) developed a system, using the BT network, which can switch on telephones in all houses to listen to conversations in the vicinity of the telephone (Uglow, 1999:287-299). The author attempted to set up meetings with members from the Police
Intelligence Service and the National Intelligence agencies to compare these issues with
the strategies that are commonly used in SA but without any success. As a result the
author was only able to have informal discussions with active police officials, detectives,
retired police and intelligence officials, in which he was informed that “creative tactics”
without the knowledge of the Director of Public Prosecution’s (DPP) consent do take
place in SA. In certain situations video recordings are made or pictures are taken of
specific actions or behaviour. Furthermore, individuals are sometimes bugged or
informants are allowed to involve themselves in wrongdoing as long as they provide
information that outweighs their own misdemeanours. Although they usually decline
from using the information in court, they use the information to understand the
perpetrator better. Furthermore, the current legislation regulating tapping and bugging is
confusing. The Regulation of Interception of Communications and Provision of
Communication-related Information Act 70 of 2002 deals with tapping, bugging,
interception of postal articles and the monitoring of e-mails via the Internet – lawful as
well as unlawful. According to the Government Gazette Number 28075 (30 September
2005) this Act came into operation on 30 September 2005 except for certain sections.
One section is of particular interest, namely Section 62(1), which repeals the previous
Interception and Monitoring Act 127 of 1992. Section 62(1) of Act 70 of 2002 is not yet
in operation. This implies that Act 127 of 1992 and Act 70 of 2002 exist in conjunction
with each other. Lambrechts (2005:71) also feels that it is very confusing to use or
interpret this legislation.

In addition to the difficulty in the interpretation of legislation, technological
advancements do not stagnate in the fight against crime. Massive millimetre wave
detectors can scan through walls and clothes to detect items such as firearms. Mobile
telephones can be used as tracking devices and signals can be enhanced while individuals
are working on their computers to extract information from it. A question that arises from
this is: How much protection or privacy does a citizen have in these situations? Current
readings on this issue paint a bleak picture for citizens. In the USA courts have developed
an exclusionary rule that prevents the prosecution from relying on evidence that has been
obtained in violation of constitutional protection. Due process prioritises the rights of the
accused over the public interest during the hearing of a crime. However “in the United
States there is no such data protection mechanisms, it has been questioned whether
CCTV evidence is allowable under the Fourth Amendment which prohibits ‘unreasonable
searches and seizures’. The courts have generally not taken this view” (ONIKA,
2006:35).

Uglow (1999:287-299) postulates that in Britain it will be difficult ‘to envisage that this
dilemma would ever trouble the English courts’. Traditionally the British courts have
only asked whether the evidence is relevant to the case and reliable without questioning
the source and whether any fundamental rights had been violated. With limited legal
regulation it is understandable why the police are increasingly changing their police
practise and targeting sections of the community where their actions are less visible.
Many loopholes exist in current legislation leaving citizens vulnerable to ILP. The police
can, for example, deny citizens access to their intelligence files and under the current
British Data Protection Act 1998 the Registrar has no statutory powers of review over the police (Maguire, 1998:232).

Some writers (Dunnighan & Norris, 1999:85) observe that police are moving towards less visible practises because of the regulations that were put in place with PACE on the stop-and-search strategies and the difficulty to obtain information from the community. Another issue that needs clarification is the cost-effectiveness of certain practises such as the real costs in using informants (paid with tax payers’ money). In Britain the Audit Commission is supporting the use of informants and are encouraging the police to use them. Calculations made by Dunnighan and Norris (1999:69) show that the total costs involved in the day-to-day use of informants are high. Other issues that they raise are: The time officers spend to recruit informants; the disregarding of criminal offences some informants have committed in order to facilitate the flow of information; and that sometimes non-financial reinforcement is used to motivate individuals to become informants (e.g. the promise of non-prosecution). These activities breach citizens’ rights as they are being misguided on the use of informants and the unlawful actions of some police officers to solve cases. It is therefore out of kilter to think that the use of informants is profitable and effective. Ashworth (2002:161-179) also refers to certain problems or ‘dilemmas’ that should be taken into consideration when informants are used such as guaranteeing their safety after they have divulged information, the use of children as informants and the impact on them, and accountability issues with regard to police corruption to support evidence in a case. During the author’s discussions with police members’ similar issues were raised. It was, however, clear from these discussions that those police officers believed that it was almost impossible to use evidence in court that was gathered unlawfully. They all believed that the courts would not listen to a case if the correct procedures with the DPP were not followed. In contrast to this they did declare that they sometimes “turn a blind eye” on informants’ wrongdoing if they get worthwhile tip-offs and information.

In concluding the discussion on ILP it is important to note that technology and new ways of obtaining information have definitely enhanced the capacity of the police to “… collect, retrieve and analyse information” (Chan, 2003:673). Policing and its reactive character have at its disposal a powerful resource to change policing forever provided it is used in acceptable ways within the boundaries of clear and uncompromising guidelines. The capacity of this new trend in policing has not been explored fully as technological progress is taking place too rapidly. Then again if the community is not willing to co-operate to divulge information freely, the police have no choice but to adapt their intelligence gathering in the community. A logic issue that neutralises this argument is the privacy concern. The moral issue of citizens’ fear that their every move is being spied on and their privacy jeopardised is a matter of concern. It can be argued that the utilisation of ILP techniques are morally acceptable if substantial proof exists that the police will prevent serious crime from being committed or if considerable suspicion exists that a serious crime is to be committed and that ILP is the only means to prevent it. The motivation must be based on the argument of whether or not it will contribute to the greatest happiness of all citizens. In this regard police integrity and professionalism plays
a fundamental role. Although guidelines do exist it is still unclear which forms of deception should be permitted and which not within an accountable policing structure.

REGAINING CITIZENS’ SUPPORT OF COMMUNITY AND POLICE INTERACTION

An effective transparent police oversight and complaints system is fundamental in the guaranteeing of accountable policing and in ensuring public support for the police (Cooper, Hoyle & Young, 2003:1). Past undertakings by the British Government, specifically the Police Act 1964, the Police Complaints Board, the Police and Criminal Evidence Act 1984, The Police Complaints Authority, and the Data Protection Act 1998 did not succeed in guaranteeing citizens a fair opportunity to have those police officials who abuse their powers called to task. The current structures in SA (e.g. ICD) are also finding it difficult to win back the trust of the community and for the latter to divulge information freely. Although the British model is not very successful, the ICD has entered into partnerships with Scotland Yard to deliver training for their investigators with specific reference to capacity building and strengthening of investigative skills. The British High Commission is funding this project, which commenced in September 2002. Bearing in mind that only a few cases of police misconduct against the citizenry were reported in the beginning (1997), 2913 cases of police misconduct were reported in the seventh annual report of the Independent Complaints Directorate during 2002-2003 (Independent Complaints Directorate - Annual Report 2002/2003). This report is clear and shows the progress that has been made from 1997-2003. However, the latest Annual Report 2005-2006 is a 50-page explanation of the financial expenditure of the ICD. It does not give the reader any idea of the latest successes of the ICD and one gets the feeling that a lot of excuses are forthcoming in this document (www.icd.gov.za).

For example, Mr. L Xinwa, the Acting Executive Director of the ICD had the following to say in the Annual Report about the ICD’s performance during 2005-2006: “the capacity constraints experienced by the ICD necessitate the urgent intervention from the relevant decision-makers. The eventual shift away from the monitoring of certain complaints of police criminality and misconduct, to the active investigation of all these complaints, has not only negatively influenced the ICD’s performance levels but the continued increase in the number of complaints received for investigation necessitate an urgent reconsideration of the active investigation of all complaints” (www.icd.gov.za). No mention is made of the number of complaints against police misconduct they have received and the successes that they have achieved during the 2005-2006 timeframe. It is clear that the ICD is experiencing problems and that the way forward looks bleak for the one police oversight body that is strategic in the building of positive relations between the community and the police.

Since the inception of policing citizens were faced by an isolated establishment that in many instances operated above the law. Policing was originally intended to protect the interests of the ordinary citizen. In this paper it was shown that a citizen who currently complains about police abuse is usually seen as troublesome and not as a victim. The complaints system and oversight body in SA is not functioning properly after 10 years
(1997-2007) of business and it leaves the author with an uncertainty about its future role. In Britain, who is at present assisting and training SA ICD officials, complaints can only be lodged against misconduct of an individual officer and not against the Force implying that Britain lacks a general law to protect citizens. In this regard Maguire (1998:230) states that “… the UK lacks a general law … for individual citizens”. Demands from the community but also from the European Convention for the Protection of Human Rights and Fundamental Freedoms forced the British Government to comply with international trends to protect citizens against police misconduct. The Police Reform Act 2002 (Ormerod & Roberts, 2003:141) is the latest effort of the Government to address police abuse of power. A new addition in the complaint structure is the Independent Police Complaints Commission (IPCC). The IPCC replaced the PCA, and became operational 1 April 2004. The aim with IPCC is to recruit and train civilians that will investigate allegations of serious police misconduct. The primary responsibility of recording complaints is still in the hands of the police. IPCC is a Non-Departmental Public Body (NDPB), funded by the Home Office, but by law entirely independent of the police, interest groups and political parties and whose decisions on cases are free from government involvement. It needs to be highlighted that the Secretary of State will exert powers over the appointments and dismissals of the civilians and that the police will still investigate most cases internally with the IPCC operating as the ‘watchdog’ (Laughlin & Johansen, 2002:635; Hill, Cooper, Hoyle & Young, 2003:iii; www.ipcc.gov.uk). The IPCC has the specific task to ensure that cases are handled efficiently and effectively. More avenues to initiate complaints are envisaged thus making access more citizen-friendly. They must also “… establish and maintain public confidence” (Ormerod & Roberts, 2003:147).

While it seems as if Governments are still grappling with their complaints and oversight structures, Restorative Justice (RJ) techniques are being employed to address citizen complaints. Informal approaches (e.g. a restorative conference between the complainant and the policeman) are being used more frequently. However Hill and co-workers found that police officers usually did not attend these conferences, as attendance was voluntary (Hill et al., 2003:28). This contributed to a large number of the citizens expressing their dissatisfaction with the RJ conference. In this regard it was found that 72 percent research participants felt that the entire British complaints structure and oversight body needed upgrading. Informal resolution in resolving complaints did not notably support the argument that this should be the way forward and the answer to an ineffective complaints structure in England. If SA is following the same trend as in Britain and bearing in mind that Scotland Yard officials train our ICD officials, similar problems can be expected. In the 2005-2006 Annual Report it was reported that the British High Commissioned paid a secondment for an official from Scotland Yard to assist in the investigative training of ICD officials (www.icd.gov.za).

A possible solution may be found in the redesigning of future complaint mechanisms and proper evaluation and monitoring thereof. Elements of RJ as well as rigorous formal processes need to be integrated to address police misconduct with more vigour as it undermines police legitimacy and increase citizens’ concerns regarding the abusive image of the police (Mawby, 2002:53). This image is reinforced by every police act that
is unacceptable and in violation of basic human rights (e.g. corruption or unnecessarily invading citizen privacy). With the dawn of ILP and the dearth of research regarding its impact it can be hypothesized that the existing complaints and oversight structures are not on par with current policing trends. The following aspects need to be addressed without delay: A structure that functions independently from any governmental or police influence; Police diversity and sensitivity training across the board; An intensive marketing campaign to inform the community of the existence and functioning of the complaint structure; and The promulgation of clear and understandable legislation that will stipulate the acceptable use of ILP to the community. An increase in poorly trained police officers that are not loyal to their creed will only increase police misconduct. The current trend in SA is to put more unskilled and under trained police officials on the streets. This will only exacerbate the current disparity between the community and the police. This indirectly favours criminals as the community distrusts the police and the police view the community as negative and uncooperative. An ineffective complaints and oversight structure ultimately also contributes to the infringement of human rights in our democracy. The government should refocus unnecessary energy that is being spent on lip service and empty promises and embark on relationship building between the police and the community. A significant number of police officials take their jobs seriously and would do anything in their power to stop crime. Citizens should support these officials unambiguously. If the citizens feel safe and if they see crime in general and corruption by CJS officials are being addressed with vigour by the government, they will probably change their negativity and contribute more wholeheartedly in the fight against crime and the supplying of information.

CONCLUSION

The lack of proper complaint mechanisms, the absence of comprehensive legislation to protect citizens and the tendency to treat complaints as hampering issues in the fulfilment of policing duties need to be addressed comprehensively by the Government. The government should treat the right to safety that is a Constitutional guarantee with more accountability. Uncertainty about the impact of ILP on crime and the invasion of privacy beyond acceptable boundaries as well as the elusiveness of its existence are intimidating to ordinary citizens’ liberty. ILP is at present somewhat of a phantom to the government and the populace and need to be formalised and addressed thoroughly. Adequate legislation and effective police training could be utilized to reform existing police practices. Any breaches of human rights should be punished severely. Citizens should be informed (e.g. rigorous marketing campaigns) of their rights, the existence of complaint structures and oversight bodies as well as the procedures to be followed if they become victims of police exploitation. Transparency regarding governments’ motivation to monitor the populace and the almost clandestine matter in which it takes place makes one wonder whether this is a brilliant ploy to regain a sense of governance over the populace.

REFERENCES


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Note: Certain official websites that were accessed can be found in the text.

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1 For the purposes of this contribution “crime intelligence” and “crime information” will be used as parallel concepts.
2 Before 1994 an impimpi was a person who compromised the struggle against apartheid by being a police spy – they were often killed either by necklacing (a burning tyre around the neck/body) or stoning.
3 Stephen Lawrence was an 18-year-old sixth form student who was stabbed to death in Eltham, south London, on the night of 22 April 1993. The murder was motivated by racism. No one has been punished for the murder.