

Workshop 4

19 September 2016

PURPOSE/AIM:

- To engage with LEA on the changing policy context, specifically the implications of the recent ConCourt Ruling on the policing of drugs in the City

PROCESSES:

- Local representatives from SAPS, the Metro Police, the Hawks, the KZN PHQ, Border Security, and Crime Intelligence attended the meeting, as well as two representatives from the National Prosecuting Authority (NPA), a representative from the University of Cape Town (UCT), and a representative from the Institute of Security Studies (ISS) [35 participants]
- Topics Discussed:
 - Realignment of policy / ConCourt decision (Kunjana Ruling) and its implications for the policing of drugs
 - Sasha Jacobs (NPA) began with a Powerpoint presentation to explain the changes to Section 11, 21 and 22 of the Act
 - Open discussion on implications of these changes for policing

KEY POINTS:

- Kunjana Ruling: Section 11 of the Act was deemed too broad. Previously officers were able to conduct searches easily without obtaining search warrants. There were limited restrictions to privacy, and in some instance this infringed on the personal rights of citizens as outlined in the Constitution. Under Section 11, officers could enter a premises, for example, on suspicion. Now one needs to act within certain perimeters, and if a search warrant is obtainable, it needs to be obtained.
- Section 21: The changes in Section 21 require the names of the police officers who will be conducting the search to be mentioned on the search warrant list. Some officers raised concerns that this could be time consuming and in some cases it would be difficult to know exactly who would form part of the team, especially the names of officers who would only be used to secure the premises. If forensics staff members are part of the team, then their names also need to be listed on the warrant. The NPA noted that if there is a reasonable reason to have extra officers present then this shouldn't be a problem in court. What is important is that officers record everything correctly and meticulously, justifying all their actions. The NPA advised officers to secure statements from those who enter the premises. Some officers were also concerned that the ruling may mean that they will now spend more time in

court after being subpoenaed. The NPA advised that certain officers be put on standby. In situations where you need to act quickly, officers can consider applying Section 22.

- Section 22: Police can search a premises without a warrant if the owner consents, or if the officer has reasonable grounds to believe that they would be able to obtain a search warrant in reasonable time but the urgency of the situation does not allow it (e.g. crime is taking place / vehicle is on the move). The NPA advised the officers to use their discretion at the time, but within the perimeters of the law. The NPA also warned against misleading a suspect. Police need to rather record their intentions for a search honestly in their statement and record the search results. Again, it was stressed that officers need to justify their actions. Furthermore, to use Section 22 an officer needs to act of a reasonable suspicion. For the suspicion to be reasonable, an attempt must first be made to verify some of the facts before searching without a warrant. This is particularly important if your informers are unreliable.
- A J50 is needed to conduct an arrest. If an officer enters a premises on suspicion of something illegal and something illegal is happening, they may read the person his/her rights and make an arrest.
- It is important that Section 22 is not abused as the resulting search will be under intense scrutiny in court. If you are keeping surveillance, then you have time for a warrant and Section 22 may not apply.
- According to a communication from the National SAPS, the first prize is to issue a search warrant and officers need to be very careful in using Section 22.
- The NPA have seen search warrants that have been seriously questioned in court and they argued that Section 22 is going to face even more challenges in court. If an officer has time to get a warrant, then this is advisable. Best practice would be to collect information systematically and record and justify all decisions made.
- Some concerns were raised around how long it takes to secure a warrant. It takes time to verify information, then create a statement and reformat it to the correct search warrant format. Now you will also need to include the names of everyone involved in the search. After the warrant has been drafted, it is taken to the courts. If there are questions raised, an officer may need to address these and resubmit. This can take a couple of hours. The most time consuming part is sometimes mobilising police officers and lab staff who are available to be part of the search.
- Lower level police officers need to be trained on these changes so that they are able to defend their actions and so that they are confident to use Section 22.
- The discussion also touched on the broad spectrum of drugs that the police are responsible for e.g. over the counter medications too.
- Issues are sometimes raised whereby drugs need to be tested before charges can be laid. The NPA have argued previously that this testing is too onerous a

burden to be placed on the state. In Cape Town you need a forensic report before a case goes onto court roll. This can lead to high level dealers escaping whilst lower level drug users are being charged.

- The group also discussed the contradictions between performance expectations and targets and Constitutional restrictions. Further debate is needed to think critically about the value of the KPIs e.g. keeping a drug den open so that you can obtain your monthly target
 - Performance management: how do we define police success?
- There was also some debate around who we search/target and why e.g. more visible or vulnerable groupings. The big dealers are never seen in court.
- National Drug Master Plan: Issues to be included a) inclusion of active drug users in planning 2) introduction of Harm Reduction 3) framework of decriminalisation of users and low level crime
- At what point do drugs become problematic? The conceptualisation of drug use is problematic?
- The difficulties of being a police officer in a complex environment were highlighted e.g. within a context of changing policy, and with demands made by social activists, vulnerable groups, the City etc.
 - Police scapegoating and limitations on policing: How do we operate within this environment and develop efficient policing practices?

RECOMMENDATIONS:

- Develop a new app for all police officers to be used on smart phones. This could include a basic checklist of how to act in certain situations and templates for statements. See Police Pad in the US as an example.
- Ensure that police at all levels have access to knowledge about important changes in legislation that impact on practice.
- Challenge the current performance indicators in line with the human rights framing of the police landscape.
- Take up the Prosecuting Authorities offer for training sessions to specialised and uniform officers.
- We need to rethink how police training is done. It should be done in the field with field officers. Simulations are useful in training. Learn from existing resources in the more specialised units of the police e.g. border police; public order; crime intelligence/detectives; etc.
- Police need to find ways of holding themselves accountable at an individual and an organisational level. A system needs to be in place.
- Police need to be trained in how to argue and defend themselves. Training should be happening on an ongoing basis again. Should be a balance between training and operations. Our police agencies need to be learning organisations. Once trained you can then be held accountable. There needs to be recourse and have corrective measures.

- Let police do what they need to do – ensure that diversion and social development institutions are operating properly.
- We need to make sure that the issue of dereliction of duty are not a constant worry for the police resulting from a confusing policy landscape. More dialogues required.
- We need to think about whether the decriminalisation of drugs may make policing of drugs easier for the police because it will be in the open and easier to regulate.
- The upcoming ISS and SAPS Forensic Conference are potential forums to present today's debates to higher level persons.