

Police accountability:

Your rights while engaging with police in South Africa

The police are supposed to protect the public from crime and violence, but some officers engage in unlawful behaviour such as corruption, brutality and torture.

We need police officers to adhere to high standards of conduct. Holding these police officers accountable for wrongdoing is therefore essential.

This factsheet was designed by a group of organisations advocating for human rights and justice for all people, including informal traders, students, immigrants, artisanal miners and people living in informal settlements. It 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 South African Police Service (SAPS).

This factsheet provides information on:

- Recording and reporting illegal police activity
- When can police make arrests?
- What happens during an arrest?
- Immigrants and asylum seekers – what the law says about detention and deportation
- Informal trading and by-laws
- Rights of protesters
- Artisanal mining - abuse and violence experienced at the hands of police
- When can police use force?
- What weapons can police use?
- Gun-related offences
- Police corruption
- Police brutality in South Africa
- Police brutality against informal traders

To find out about reporting police corruption, brutality and torture go to the 'Recording and reporting illegal police activity' section.

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*

* If you are injured your complaint should include details of the injury on the Department of Justice J88 form, filed 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.

Report.org.za, developed by the C19 People's Coalition, is a platform for the public to report violation of human rights by law enforcement officials.

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 0699 / 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 6263 / intake@mlombud.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 8631 / 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 exposed how SAPS protects officers accused of killings and abuse. Now, we are asking you to join our investigation by speaking up and sharing your experience. By doing so you can help deliver justice for the victims and SA's black communities, including your own.

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

Join the conversation on Twitter & Facebook using [f | #VUKANIMAAFRIKA](#)

Reach us directly on our WhatsApp hotline
☎ 066 533 5142

FOLLOW US
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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.



Report.org.za, developed by the C19 People's Coalition, is a platform for the public to report violation of human rights by law enforcement officials

The platform allows users to provide all necessary details about an incident including:

- Date
- Location
- Type of incident
- Type of weapon used
- Videos or photos of incident

Report.org.za is a platform created to record and monitor abuses committed by state and corporate Security Forces

Click Here To Report

State and Corporate Security Forces include:

South African Police Service (SAPS) | Army | Metro Police | Law Enforcement | Private Security Companies

Report.org.za serves as a guide for everyday citizens and organisations, providing important contacts in order to:

1. Assist with Cases
2. Inform on Issues
3. Educate About Rights
4. Connect with Support

When can police make arrests?

Police can make arrests to prevent a crime or to bring 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 will be 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.

The African Commission on Human and Peoples' Rights has compiled a set of guidelines on the conditions of arrest, police custody and pre-trial detention in Africa. Read more [here](#).

What about immigrants and asylum seekers?

Foreign nationals experience a disproportionate amount of abuse from the SAPS. Lawyers for Human Rights (LHR) has compiled A Practitioner's Guide to Immigration Detention in South Africa, which outlines the law on immigration, detention and deportation. These include:

- Detention for the purposes of identification (p61)**
 - An immigration/SAPS officer may interview and/or detain a person if they believe – on reasonable grounds – that the person is not legally in South Africa. However, the officer may not hold a person for more than 48 hours for the purpose of verifying their identity or status.
- Detention for the purposes of deportation (p62)**
 - Detention for the purposes of deportation should only occur if a person cannot provide officers with a valid identification document.
- Detention permissible under the Refugees Act (p62)**
 - Asylum seekers and refugees may be detained in some circumstances, but, no person may be detained in terms of this Act for a longer period than is reasonable and justifiable. Any detention exceeding 30 days must be reviewed without delay by a court.
 - The length of a person's detention (at a detention centre) includes the time they were detained at a police station before they were moved to a detention centre.

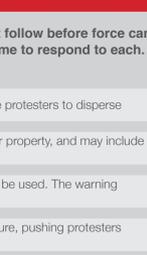


- The process of detention and deportation (p92)**
 - Minors may only be detained as a measure of last resort. Where their detention is unavoidable, they must be detained separately from adults.
 - If a foreign national's visa has expired and they have applied for its renewal (but are awaiting the outcome of the application), their detention is unlawful and the court must order their release.
 - If a foreign national is seeking asylum, they cannot be detained and the court must order their release.

Informal trading and by-laws – Know your rights

Asiye eTafuleni has produced six booklets on the rights of informal traders when interacting with the police. [Here](#) are links to the six booklets:

- Right to trade
- Rights relating to the impoundment of goods
- Right to a permit
- Right to information on policy adoption, amendments and implications
- Rights on infrastructure development and demolitions
- Rights when goods have been destroyed by municipal officials



The booklet outlines rights versus responsibilities, obligations for both traders and the municipality and the progressive realisation of legislative rights accorded to informal workers:

- When can goods be impounded?**
 - When trading in illegal goods
 - When the trader flees and abandons goods when approached by metro police
- Rights of traders after impoundment has taken place**
 - Right to return of goods immediately after payment of impoundment fee
 - Right to make representations prior to the sale of impounded goods
- What to do when a trader is arrested in the process?**
 - Report police abuse, as discussed in this factsheet (see the section on 'Recording and reporting illegal police activity')
 - Seek medical assistance immediately. The medical officer in attendance will record the injuries in a J88 form
 - Photograph evidence of the injuries
 - Report the matter at your nearest police station

Important steps to take when goods are being destroyed by municipal officials

- Obtain details of the impoundment vehicle used by the officials
- Immediately get other informal traders as witnesses

Legal remedies available for traders

- Civil claim for damages against the SAPS
- Criminal proceedings against the municipal officer for vandalism of property

SERI has produced a [research paper](#) to clarify the rights of local and foreign informal traders, and to assist local government and municipalities to better understand their legal and constitutional obligations when formulating and implementing municipal by-laws governing informal trade. These include:

- Impoundment and administrative law (p24)**
 - Municipal officials are required to comply with the Constitution, the Businesses Act, 71 of 1991 (see [page 11 of the SERI booklet](#)) and the relevant municipal by-laws governing informal trade.
 - Before law enforcement officials takes a final decision that is likely to affect the rights of informal traders, the informal traders should be given an opportunity to be heard.
 - If a municipal official makes a decision to impound or confiscate goods in terms of the municipal by-laws or the Businesses Act, that official makes an administrative decision and must comply with the requirements of administrative law. Administrative decisions need to be lawful, reasonable, and procedurally fair.
- Impoundment and the rights of traders (p28)**
 - Once a trader's goods have been impounded, the trader has the right to access to courts for fair resolution of the matter.
 - Traders have a right to equality before the law and have a right to equal protection and benefit of the law, which may not unfairly discriminate directly or indirectly against anyone.



Read more about principles on the decriminalisation of petty offences in Africa [here](#).

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:

- When is a protest considered lawful? (p14)
- What legal processes protesters 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](#). Find out [here](#) what injuries occurs due to disproportionate and unlawful use of force by police officers when dispersing student protest.

The Right to Know campaign (R2K) has also produced a guide on protest and the law. The guide outlines the steps protesters must follow when organising a protest, the rights of protesters during a protest and what the law says about protests. Click on the image for information on:

- Relevant regulation of the Gatherings Act (p4)
- How and when to give notice about a protest? (p6)
- Can the authorities 'ban' a protest? (p9)
- How do authorities abuse the Gatherings Act? (p11)



In 2018, the Constitutional Court held that failing to give advance notice of a gathering of more than 15 people is not a criminal offence. Organisers of gatherings/protest should still give advance notice of the gathering in terms of Section 12(1)(a) of the Gatherings Act - but if they fail to do so they cannot be convicted of a criminal offence. Read more [here](#).

You can learn more about policing of gatherings/protest by law enforcement officials in Africa [here](#).

Artisanal mining

Are you an artisanal miner who has experienced abuse and violence at the hands of police? Use the tools provided in this factsheet to assist in reporting your experience.

You can also learn more about artisanal mining by getting in touch with the National Association of Artisanal Miners (NAAM) [here](#).



Artisanal (informal) mining

Instead of targeting and supporting their work, the law treats artisanal miners as criminals. They are also protected by corrupt police who want to take advantage of the work that artisanal miners are doing for their own benefit. As a result artisanal miners are victimised by police and their right to dignity is infringed. An appropriate policy and legislative framework must be developed that enables them to carry out their work without unnecessary interference by the police.

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, proportionate, non-discriminatory, and adhere to the principle of precaution, with police needing to be accountable for their actions. Read more [here](#).

Gun-related offences

Chapter 16 of the Firearms Control Act lists the offences committed by a gun owner, including a police officer, when they:

- Negligently shoot or handle a gun in a way that could injure someone or damage property
- Handle a gun when under the influence of alcohol or drugs
- Point a gun at any person without a legally permissible reason
- Shoot a gun in a built-up area without good reason
- Fail to lock a gun in a safe when it is not being carried on their person

Any gun owner who commits any of these offences can be fined, imprisoned, or be declared unfit to own a gun.

You can report any gun owner who has committed any of these offences at your local police station. If the gun owner is a police officer, use the information in the section on 'Recording and reporting illegal police activity' in this factsheet to guide you in making a report.

Your voice can stop a bullet.

Gun Free SA is a national NGO, which is committed to reducing gun violence through public policy advocacy, education and raising awareness and community mobilisation.

Legal resource for police torture

TORTURE DEFINITION

The Prevention and Combating of Torture of Persons Act, 2013, and the United Nations 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 committed or suspected of having committed.

Torture, excessive force, and other forms of cruel and inhuman treatment, are forms of police brutality.

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 also 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 report police corruption anonymously. [Corruption Watch's Veza](#) tool allows for anonymous reporting of police corruption.

Learn more about your rights when interacting with SAPS [here](#)

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

High standards of police conduct are important both for the public and police. If members of the public trust the police they will assist them and cooperate with them. This will enable them to do their work more effectively.

Learn more about police brutality against informal traders

- [A track record of violence against informal traders](#)
- [Informal traders demand an end to police brutality](#)

StreetNet International on violence against women street vendors and how to combat it

- Women street vendors face violence and harassment daily and from a variety of sources, and often have to pay bribes or provide sexual favours for authorities to leave them alone.
- The stigma of informal economy work hurts women street vendors' possibilities to achieve justice, but the International Labour Organisation Violence and Harassment Convention, No. 190 (2019) can be a powerful tool to fight against it.
- Mobilisation and coalitions are essential to combat violence and harassment.

StreetNet International is a global alliance of membership-based organisations of informal traders, which aim to promote the exchange of information and ideas on issues facing its constituency.

In partnership between the Institute for Security Studies, the African Policing Oversight Forum (APOF), Asiye eTafuleni, the C-19 People's Coalition, Corruption Watch, Gun Free South Africa, Lawyers for Human Rights, the Legal Resources Centre, National Association of Artisanal Miners, the Socio-Economic Rights Institute (SERI), StreetNet International and Viewfinder.

