

3/34/2

## INFORMATION NOTE

To: The National Commissioner

### **NEW ISSUE: NATIONAL INSTRUCTION #/2015: THE USE OF FORCE IN EFFECTING AN ARREST**

1. During the latter part of 2012 section 49 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) was amended. Section 49 of the Criminal Procedure Act regulates the use of force to effect the arrest of a suspect. In order to ensure that members of the South African Police Service apply the section correctly, it is necessary to issue a National Instruction in this regard.
2. The National Instruction deals with the general principles relating to the use of force during arrest. The wording of section 49 of the Criminal Procedure Act deals with the requirements for the use of force, minimum force and proportionality, the use of lethal force, commanders' responsibilities (in relation to training of members and ensuring that contingency plans are in place to minimize the use of force) and the reporting of incidents where a person dies as a result of police action.
3. The draft National Instruction was circulated for comment to the Divisions: Visible Policing, Detective Service, Inspectorate and Operational Response Services, the Directorate for Priority Crime Investigation, the provincial heads of Legal Services and the component Heads of Legal Services: Head Office. Comments were received and, where appropriate, were included in the draft National Instruction.

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4. The draft National Instruction was previously submitted to the National Commissioner for consideration and has not yet been approved. In the light of the high number of police officials already killed during 2015, the Police are at risk without a proper policy relating to the use of force in effecting an arrest. This omission may be viewed as a failure by the Police to ensure that members are fully aware of their powers in terms of section 49 and measures that they may take to protect themselves against criminals.
5. The recommendations of the Marikana Commission were considered and it is apparent that the recommendations do not affect the content of the draft National Instruction. The recommendations relate specifically to the use of force in the management of crowd by the Public Order Policing units. In this regard, the policy relating to the management of crowds during public gatherings and demonstrations will have to be revised, as recommended by the Farlam Commission. This is however a separate matter that does not affect the legal principles addressed in this draft National Instruction.
6. The draft National Instruction is attached hereto for the consideration of the National Commissioner.



**BRIGADIER**  
**ACTING HEAD: GOVERNANCE, POLICY AND LEGISLATION MANAGEMENT**  
**PR LESESE**

Date: 2015-08-13

Recommended / ~~Not recommended~~

 : MAJOR GENERAL  
P.P. RAMATSOELE

7/ DIVISIONAL COMMISSIONER: LIEUTENANT GENERAL  
V MOONOO DETECTIVE SERVICES (A02)

Date:

2015-08-19

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Recommended / ~~Not recommended~~



**MAJOR GENERAL  
ACTING DIVISIONAL COMMISSIONER: VISIBLE POLICING  
MM MOTHLALA**

Date:

Recommended / ~~Not recommended~~


**P.C. JACOBS MAJOR GENERAL  
OPERATIONAL LEGAL SUPPORT  
0527373-1**



**LIEUTENANT GENERAL  
EXECUTIVE LEGAL OFFICER: SOUTH AFRICAN POLICE SERVICE  
JT MOLEFE**

Date: 2015/11/13

Approved / ~~Not approved~~



**LIEUTENANT GENERAL  
ACTING NATIONAL COMMISSIONER SOUTH AFRICAN POLICE SERVICE  
JK PHAHLANE**

Date: 2016-01-12

Information note compiled by:  
Telephone number:

Brig M van Rooyen  
012-393 7158

