

**Proposed Standard on the Use of Rubber Bullets in line with the Panel  
of Experts Report**

**23 March 2021**

## Contents

Proposed SAPS standards regarding use of rubber bullets.....	3
Principle of differentiation.....	3
Standard for the use of rubber bullets.....	4
Implications of adoption of these standards.....	5
Implications for dispersal of crowds.....	5
POP weaponry.....	6
Standards regarding the use of other less-lethal weapons .....	6
Other agencies using rubber bullets.....	7

## **Proposed standard for the use of rubber bullets (in line with the recommendations of the panel of experts)**

The following recommended standard is intended to serve as an immediate response to concerns regarding the use of rubber bullets by the SAPS. The approach is based on current international good practise for crowd management as reflected in the report of the panel of experts. This document contains:

1. The proposed standard (paragraph number 1 and 2);
2. A brief discussion of some of the implications of introducing the standard (paragraphs 3-8).

Should there be any aspects of this proposal that require further discussion or clarification please get in touch with us in this regard.

## **PROPOSED SAPS STANDARDS REGARDING USE OF RUBBER BULLETS**

It is proposed that the Minister should, either by a written direction to the National Commissioner<sup>1</sup>, or by Regulation<sup>2</sup>, instruct that:

### **Principle of differentiation**

1. The definition section of National Instruction 4 of 2014 should be amended to include reference to the principle of differentiation where **differentiation** is understood to mean that:<sup>3</sup>
  - a. Police should not treat members of a crowd as a single entity.

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<sup>1</sup> Section 207(2) of the Constitution;

<sup>2</sup> Section 24(1)(1) of the SAPS Act, 68 of 1995.

<sup>3</sup> In the panel report the principle of differentiation is discussed as part of the discussion of 'de-escalation' (pages 252-258) and specifically within this section at pages 256-258.

- b. Police should distinguish carefully between people who are involved in violence and other participants in a public gathering or demonstration.
- c. People who are participating peacefully in a gathering should not be regarded as acting unlawfully because others are engaged in violence.<sup>4</sup>

### **Standard for the use of rubber bullets**

- 2. Rubber rounds pose a risk of serious, permanent injury and death when used at short range. At longer ranges they also carry a risk of serious injury (notably if the eye is hit). Rubber rounds may only be used subject to the following requirements:
  - a. The use of rubber rounds must comply with the principle of differentiation:
    - i. In situations where it is necessary for police to use rubber ammunition this must be subject to principles of necessity and proportionality. It should only be directed at individuals who are involved in violence against the police or other people, or the destruction of property.
    - ii. The use of rubber rounds in an undifferentiated manner must be avoided. It may only be used against a crowd as a whole if the crowd is generally involved in violence or this is justified on urgent grounds for protecting life.
  - b. Rubber rounds should be fired directly at the person targeted.
    - i. In general they should be aimed to strike directly (i.e. without bouncing) the lower part of the person's body (i.e. below the rib cage).

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<sup>4</sup> *South African Transport and Allied Workers Union and Another v Garvas and Others* (CCT 112/11) [2012] ZACC 13, para 53.

- ii. Skip firing ('ricochet fire') must be discontinued as it decreases accuracy and increases the risk for undifferentiated use.
- c. Unless there is a serious and immediate risk to life including a risk of life threatening injury, which cannot be prevented by less serious means, it is prohibited to target rubber ammunition:
  - i. Against a person or persons at very short range (10 metres or less); or
  - ii. Against the upper body (at or above the rib cage).<sup>5</sup>

## **IMPLICATIONS OF ADOPTION OF THESE STANDARDS**

### **Implications for dispersal of crowds<sup>6</sup>**

- 3. Undifferentiated use of force against members of a crowd is generally counter-productive for crowd management purposes. It creates unnecessary antagonism by the members of the crowd against the police and authorities generally by members of the crowd who had been acting peacefully. In so doing it unifies the crowd against the police, escalates the situation and reduces the scope for negotiated management of gatherings.
  - a. Application of the principle of differentiation implies that rubber rounds will in general not be used to disperse crowds unless the crowd is generally involved in violence or this is justified on urgent grounds for protecting life.
  - b. It should also be recognised that dispersal of crowd members involved in violence may also be counterproductive as it may simply disperse the violence. Arrests of violent individuals should therefore be the preferred tactic for controlling violent behaviour in crowd situations.

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<sup>5</sup> The proposed standard carries forward the recommendations made in Panel recommendation 98 (pages 313-314 of the panel report).

<sup>6</sup> Dispersal and its relationship to de-escalation is discussed over pages 252-255 of the panel report. The report indicates that 'dispersal' may sometimes be ineffective in de-escalating a violent situation.

4. As it currently stands NI4 of 2014 links the use of force directly to the 'dispersal of crowds'. Adoption of the principle of differentiation implies that:
  - a. Police use of force should wherever reasonably possible only be directed against violent persons who cannot otherwise be discouraged from violent behaviour.
  - c. Dispersion of members of a crowd that are not involved in violence should in general only be carried out by negotiated management or by the arrest of non-cooperating individuals.

### **POP weaponry**

5. It is widely acknowledged, including by many members of the SAPS, that the current rubber bullet weapons (the combination of shotgun and double ball rounds) suffer from serious limitations in terms of accuracy, except when they are used at short range (20 metres or less). The implication of adoption of the principle of differentiation is that the SAPS must urgently investigate options for alternative weapons that can perform the function for which rubber rounds are intended.
6. Considerations relating to adoption of a new weapon should include:
  - a. Considerations of safe and effective use including requiring a much higher level of accuracy than the current weapons;
  - b. The ammunition should use a single projectile. Multiple projectile ammunition like the current double ball rounds are intended to disperse during flight and are not designed for accuracy. Their continued use will limit the ability of police to give effect to the principle of differentiation in an optimum manner.

### **Standards regarding the use of other less-lethal weapons**

7. The panel of experts report also makes a range of other proposals for strengthening national instructions governing public order policing. In addition to proposing a new crowd management doctrine (Panel recommendation 68) the report also makes other proposals regarding standards for the use of other less-lethal weapons.

## **Other agencies using rubber bullets**

8. It is proposed that the National Commissioner should issue instructions requiring compliance by municipal police with these standards. In addition, the Private Security Industry Regulatory Authority should also issue a notice to its members requiring or motivating for compliance with this standard.