



DIALOGUE ON PUBLIC ORDER POLICING IN SOUTH AFRICA

11–12 July 2017
Johannesburg, South Africa

Hosted by
African Policing Civilian Oversight Forum
Legal Resources Centre
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Published by African Policing Civilian Oversight Forum, September 2017

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Acronyms and abbreviations

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| ACHPR | African Commission on Human and Peoples' Rights |
| ACHPR Guidelines | ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa |
| African Charter | African Charter on Human and Peoples' Rights |
| APCOF | African Policing Civilian Oversight Forum |
| AU | African Union |
| CATs | Counter-Assault Teams of the SAPS |
| CCWs | crowd-control weapons |
| CPA | Criminal Procedure Act, 1977 |
| CSO | civil society organisation |
| ICCPR | International Covenant on Civil and Political Rights |
| INCLO | International Network of Civil Liberties Organizations |
| IPID | Independent Police Investigative Directorate |
| IRIS | Incident Registration Information System of the SAPS |
| ISS | Institute for Security Studies |
| K9 | SAPS dog units |
| KIP | kinetic impact projectile |
| LRAD | long-range acoustic device |
| LRC | Legal Resources Centre |
| MEC | Member of the (Provincial) Executive Council |
| NATJOINTS | National Joint Operational and Intelligence Structure |
| NIU | National Intervention Unit of the SAPS |
| PHR | Physicians for Human Rights |
| POP | Public Order Policing unit of the SAPS |
| POPIA | Protection of Personal Information Act, 2013 |
| PROVJOC | Provincial Joint Operations Centre |
| R2P | Right to Protest, legal advice and support hotline |
| RGA | Regulation of Gatherings Act, 1993 |
| SAHRC | South African Human Rights Commission |
| SAPS | South African Police Service |
| SCRU | Social Change Research Unit, University of Johannesburg |
| SJC | Social Justice Coalition |
| TRT | Tactical Response Team of the SAPS |

1 Introduction and opening

The number of assemblies and protests across the world has been growing, and there is a great need for policing them in a way that both gives effect to the right of assembly, and mitigates the risk of violence. The newly adopted African Commission on Human and Peoples' Rights (ACHPR) Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa¹ provides an important reference point for discussing best practice.

The Dialogue on Public Order Policing in South Africa was held with the objectives of reflecting on the country's regulatory framework and practice of policing assemblies in line with the ACHPR Guidelines. Moreover, the event was convened with the purpose of providing a conducive environment for stakeholders with different perspectives to constructively engage on the best way of policing assemblies in South Africa.

The dialogue was held in Johannesburg from 11 to 12 July 2017 as a joint initiative of the African Policing Civilian Oversight Forum (APCOF), the Legal Resources Centre (LRC) and the Institute for Security Studies (ISS). The event brought together a wide variety of role-players in public order policing, including the South African Police Service (SAPS), statutory oversight bodies, Chapter 9 institutions including the South African Human Rights Commission (SAHRC),² the academy and civil society organisations (CSOs).

Manson Ngwanyanya of the LRC, **Sean Tait** of APCOF and **Gareth Newham** of the ISS jointly hosted the dialogue and chaired the engagements.

2 Keynote Address

Policing Assemblies in South Africa: A perspective from the South African Human Rights Commission

SAHRC Commissioner Chris Nissen said the 1996 Constitution is focused on ensuring human dignity, the achievement of equality, the advancement of human rights and freedoms, accountability, responsiveness and openness. The Constitution marks the transition of a society from one based on division, injustice and exclusion from democratic process to one which respects the dignity of all people and the inclusion of everyone in governance. Section 17 provides that everyone has the right to assemble, to demonstrate, to picket and to present petitions peacefully and unarmed. Section 181 establishes the SAHRC and five other state institutions to strengthen constitutional democracy in South Africa.

Section 184 provides that the SAHRC must:

- Promote respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and assess the observance of human rights.

The Commission does this by:

- Investigating and reporting on the observance of human rights;
- Taking steps to secure appropriate redress where human rights have been violated;
- Carrying out research; and
- Carrying out education on human rights.



Commissioner Chris Nissen

The SAHRC is independent and subject only to the Constitution and the law. Other organs of state such as the executive and the legislature have a duty to assist the SAHRC to execute its mandate, to protect it, and to cooperate with it as it works to strengthen and support South Africa's fledgling constitutional democracy.

The Regulation of Gatherings Act (RGA)

During the various states of emergency in the 1980s, protests and marches against the apartheid regime were often broken up by the police using teargas, rubber bullets, water cannons and live ammunition. In 1993, as part of normalising political activity in the run-up to South Africa's first democratic election, Parliament passed the Regulation of Gatherings Act. The RGA was South Africa's first Act of Parliament to affirm the right of every person to assemble with others and express his or her views freely and in public with the protection of the State, provided that this is done peacefully and with due regard to the rights of others. The Act provides procedures for the authorities and organisers of a march or demonstration to ensure that these events take place in an orderly fashion with the least disruption to members of the public. 'Demonstration' in the RGA means any demonstration by one or more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action. 'Gathering' means any assembly, concourse or procession of more than 15 persons in or on any public road or any other public place or premises wholly or partly open to the air.

Section 3 of the RGA requires the convenor to give notice of any intention to hold a gathering. Section 4 provides for a meeting to discuss the contents or amended contents of the notice. The main actors (the 'golden triangle' of the convenor, the SAPS and the municipality) are expected to work together, consult with one another and negotiate to ensure that a public gathering takes place peacefully and without incident. The notice contains binding conditions for the gathering, and the convenor is required to take all reasonable steps to ensure that participants comply with the agreed conditions.

The SAPS has a duty to enforce compliance with the conditions of the notice. Police may use force for crowd control where there are apparent intentions to kill or to seriously injure persons or to seriously damage or destroy property. However, such use of force must be moderate and proportionate to the circumstances. Section 12(1)(c) of the Constitution imposes positive duties on the State to protect all persons and ensure that they are free from all forms of violence from public and private sources, including protection against police who use an unconstitutional degree of force. Community protests are to be expected, given the systematic failure of the provision of basic services to the entire populace, particularly to impoverished members of society. Whilst the SAHRC acknowledges that causing and participating in riots is the antithesis of constitutional values, it is necessary that police members using the provisions of the RGA to quell protests and outbursts of violence use the minimum amount of force, an amount that is proportionate to the prevailing circumstances. If the use of force is not proportionate, its use may fuel further protests.

There has been criticism of the way the RGA is being applied in practice. An unpublished report on protests, the right to assembly, and freedom of expression says:

There is a growing perception that the authorities have used the RGA, particularly section 3(2) to deny activists their basic civil rights. The RGA, according to activists, is used by the ruling elite to criminalise genuine grassroots political actions, delegitimise and discredit civil society organisations and social movements. Activists further caution that the RGA's provisions might seem harmless – but in essence pose a serious challenge to the poor – who might not be able to comply for a variety of reasons. At the same time, basic freedoms of association, expression and assembly are seriously and adversely affected by the onerous regulations, which some activists argue might be unconstitutional.³

Commissioner Nissen said the SAHRC welcomes the debate on, and review of, the RGA, and the education of the SAPS and municipalities throughout the country about the appropriate and constitutionally permissible application of the RGA.

Current concerns about the SAPS

The United Nations Human Rights Committee has expressed concern about the number of cases of violence (including sexual violence), excessive use of force, torture and other forms of ill-treatment of detainees, and deaths at the hands of SAPS and Department of Correctional Services officials. The United Nations has also noted how few of these cases have been investigated, and how few offenders have been prosecuted and punished.

The SAHRC has conducted a number of investigations and sent a number of letters to the SAPS regarding alleged violations of human rights. These have, in some cases, gone unanswered. The Commission has issued reports and recommendations about policing and related matters which require compliance by the SAPS. However, many of these have gone unheeded.

An example is the 2011 SAHRC investigation into Andries Tatane's death,⁴ which recommended that the:

1. SAPS should provide effective and comprehensive training to police officers engaged in managing public gatherings;
2. SAPS should develop an improved training manual for training its Public Order Policing (POP) component within six months and submit a copy to the SAHRC for oversight;
3. SAPS should put more focused attention on specialised and focused training for the POP and to equip POP members to comply with human rights norms;
4. SAPS should engage with communities where there are high levels of public protests; and
5. Minister of Police and Minister of Cooperative Governance and Traditional Affairs should report every six months on the measures they have collectively put in place to address the phenomenon of increasingly violent community protests, including measures to ameliorate systemic failures in local government that often lead to service delivery protests.

These have not yet been fully implemented.

The relationship between the SAHRC and the SAPS

During July 2017, Songezo Ndude died after police action during a protest in Imizamo Yethu, Hout Bay. Commissioner Nissen said it is encouraging that a prompt police response to this incident brought calm to this community within a few days.

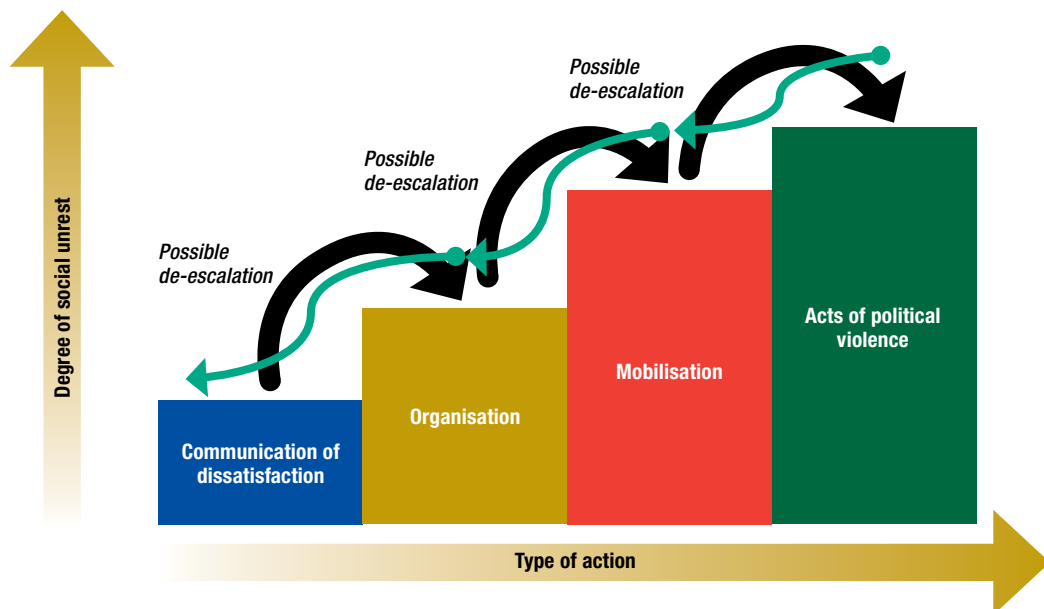
A memorandum of understanding between the SAHRC and the SAPS lapsed in 2016. The Commission has met with SAPS management and joint consideration of a new memorandum of understanding which will set out protocols for engagement on policing in South Africa. The SAHRC is looking forward to better collaboration with the SAPS to ensure the fulfilment of the hopes and aspirations of the Constitution, which include the improvement of the quality of life of South Africa's people. The formation of alliances between communities and the SAPS is vital for people to be aware of their human rights and their responsibilities. The SAHRC has a responsibility to mobilise communities to join hands in the fight against crime and educate them about the criminal justice system. The Commission is committed to work with the police to support adherence to the highest standards of conduct and professional services. Commissioner Nissen committed the SAHRC to engaging with all stakeholders to protect the right to gather, demonstrate, protest and picket, and to protect the right to freedom of expression.

3 Policing assemblies in South Africa: A civil society perspective

Understanding and responding to social unrest

Gareth Newham claimed that it is important to understand the phenomenon of violent or disruptive assemblies if we are better able to make sense of them and respond appropriately. We can quite confidently say that while policing can provide a short-term solution towards restoring order where there is public violence and disruption, it can never be a long-term or sustainable response. Ultimately, the extent to which protests are disruptive or violent, is determined by the extent to which the broader political and governance system is effective and responsive to people's needs. The less responsive the political system is, the more likely there will be protests. Indeed, spontaneous social unrest is very rare. Typically, violence tends to occur sometime after grievances have emerged. Specific cases of unrest often have very complex causes. The Organisation for Economic Cooperation and Development (OECD) has developed a 'Ladder of Social Unrest'⁵ (Figure 1) provides a model for a better understanding of the stages of social unrest, as well as the points at which de-escalation can be done to mitigate the risk of violence.

Figure 1 The ladder of social unrest



The first stage is when people **communicate their dissatisfaction** about poor physical or social well-being. Social mobilisation theory says that individuals express their dissatisfaction in social arenas if the costs of going public are low and their expectations of a response are high.

Organisation: If issues causing dissatisfaction are not addressed, people may organise themselves. The group of dissatisfied people must be large enough for there to be a good chance that its goals can be reached, its members must be able to communicate with each other, and they must be motivated enough to invest the necessary time and other resources in action. If a group has little access to resources or is not allowed to use its given reservoir of resources, the likelihood that it will use illegal and/or unconventional modes of action will increase. Resource mobilisation theory predicts that groups with highly motivated individuals will retreat to unconventional forms of protest if other channels for influencing public decision-making are not available or if they are simply ignored.

Mobilisation: This is the stage when the group mobilises large numbers of people to protest in public. Occasional uncontrolled violence is always a risk when large masses of people take their grievances to the streets. In most cases, acts of violence are isolated. Most protest organisations distance themselves from outbreaks of violence if these were not planned or secretly tolerated.

Acts of political violence occur when activists and their sympathisers believe they have:

1. A major cause;
2. Broad-based support; and
3. A common conviction that conditions will only change if violence is used.

If no authority responds to resolve the grievance around which the protest is organised, groups may recruit members for their cause and use the media for legitimising their actions. If the actions of groups start to get broad media coverage, the sudden prominence may encourage groups to become more active in their public communication and more radical in their demands. Violence that may occur is then later reported on as 'spontaneous' outbursts of public frustration.

The 2011 publication *The Smoke That Calls*⁶ suggests that organisers of protests are often political leaders who use community frustrations to mobilise supporters to take up popular causes. Their true motivation is often political or economic gain such as access to positions of power or 'lucrative council business'. Community members participating in protests like this often strategically use the ambitions of these political opportunists to take their grievances 'to relevant offices because [politicians understand] local politics'. Marginalised youth may initiate and participate in the protest action including becoming involved in violence and looting. Such actions can give them a voice and an outlet for their despair and temporary relief from 'unfulfilled expectations' and the poor living conditions in which they may feel trapped.

The three parties in a protest are the protestors (the organisers), the law enforcement agencies and the target of the protest (the place or an institution to which the protestors may want to deliver a memorandum). The target of a protest (e.g. a municipality) might not want to accept a memorandum, or the local authority might not want to allow a protest. This does not mean that the protest will not take place, it just means that it is less likely that the authorities will know about it until it happens. The first signal might be when the police are advised that people are blocking roads, throwing stones, or burning barricades.

Potential factors that contribute to protest violence include: 1) failing infrastructure and services; 2) high expectations of a response; 3) high youth unemployment; 4) a large enough group; 5) a low level of access to resources; 6) inequality, injustice and perceived marginalisation; 7) highly motivated individuals; 8) trust/distrust in authorities; 9) a resonance in the larger population about the cause of action; 10) the attitude of leaders towards violence (latent or patent tolerance of violence); 11) responsiveness to grievances; 12) media interest in the issue; 13) the nature of the police response; and 14) official responses after violence has erupted.

If public authorities ignore a protest or employ harsh counter-measures, the conflict is likely to escalate. However, given that political authorities eventually do respond and engage with communities, particularly if there is a substantial destruction of property or a prolonged period of disruption, this sends out a signal that violent and disruptive protests are an effective method for forcing responses.

Key de-escalation responses include:

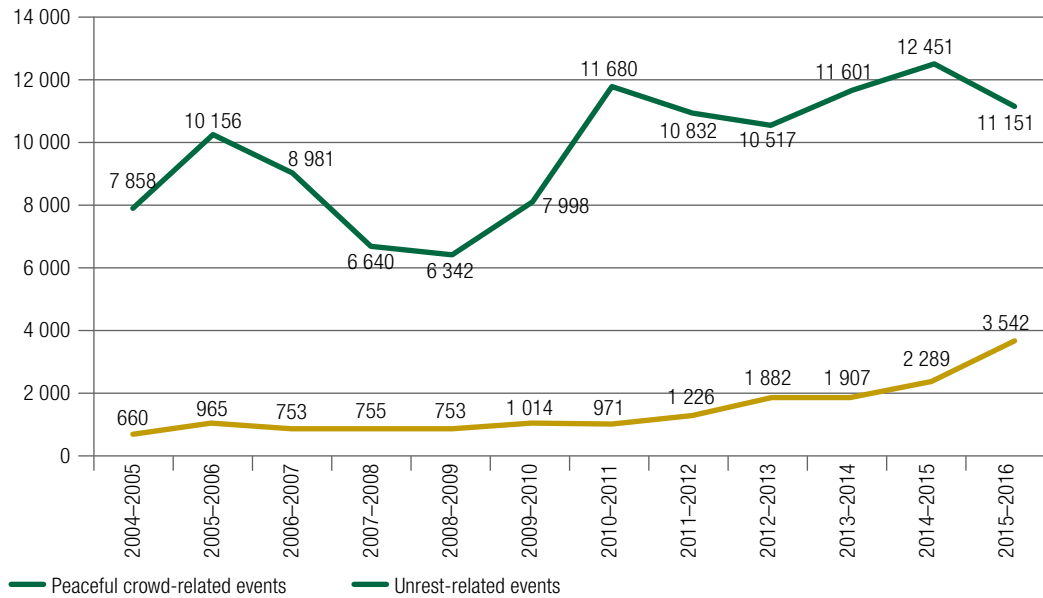
1. Accepting notice given by protestors and ensuring appropriate responses;
2. Finding new ways of communicating rather than following a top-down approach when implementing policy or delivering services;
3. Finding new ways to participate, interact and communicate with aggrieved persons.

Agencies other than the SAPS should play a proactive role in addressing the issues that give rise to assemblies that may become disruptive or violent. For example, local government has an important role to play. The South African Local Government Association has recognised this and is working on this matter.

Trends in crowd events and public unrest

SAPS Incident Registration Information System (IRIS) records show there has been a steady increase in the number of unrest-related events. These have increased by 264% in five years from 971 in 2010/11 to 3 542 in 2015/16 (Figure 2).

Figure 2 IRIS data 2004/05–2015/16 (SAPS Annual Reports)



IRIS data in the SAPS Annual Report about responses to assemblies uses two very broad categories: peaceful crowd-related events, and unrest-related events. It is not clear to what extent various crimes are linked to these events. In 2015/16, there were 11 deaths and 127 people (five of them SAPS members) sustained serious injuries. These numbers seem high, because previously for long periods of up to ten years during the early time in our democracy, no deaths were recorded in relation to the policing of assemblies.

However, IRIS data is not an accurate record of the extent and nature of violent or disruptive protest action for a variety of reasons. There is a need to improve SAPS and other data systems for measuring assemblies. These should be linked to better monitoring and evaluation systems.

Figure 3 Trends in types of protests January 1997–May 2013

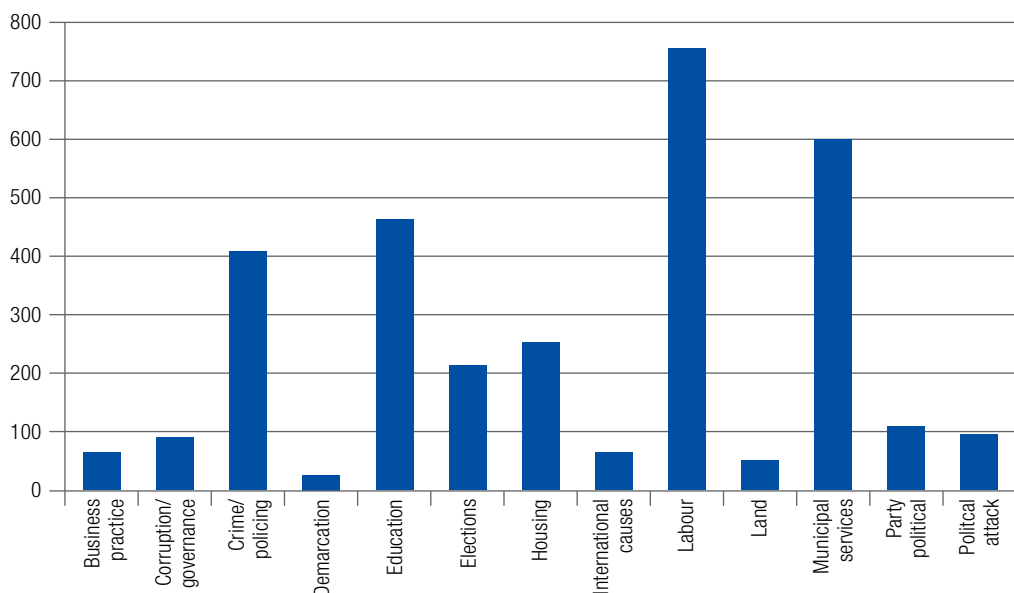
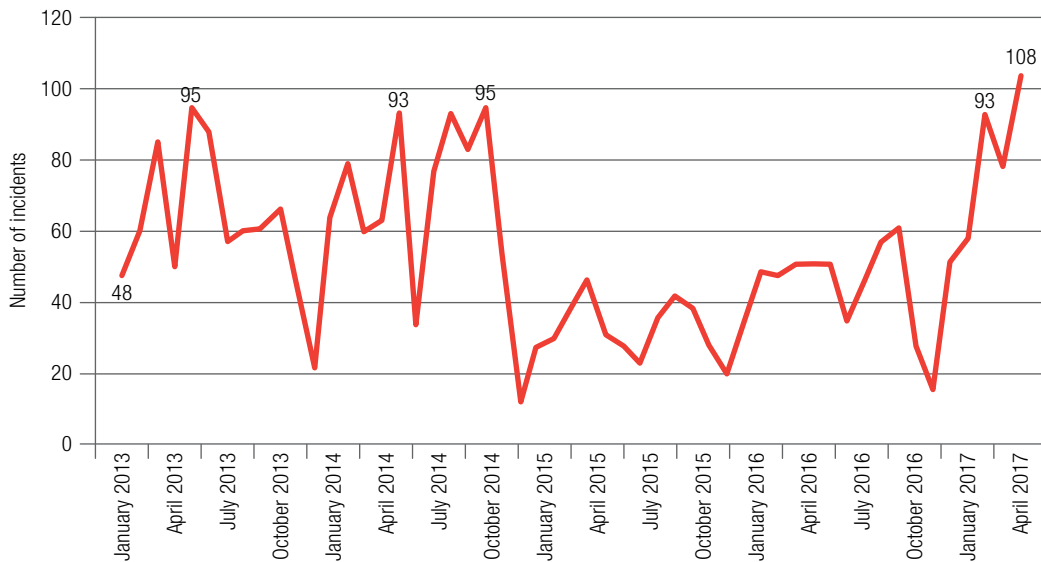


Figure 4 Number of protests Jan 2013–May 2017



An analysis of thousands of IRIS data points for the period 1997 to 2013 by the Social Change Research Unit (SCRU) of the University of Johannesburg shows that IRIS data is not a reflection of all the protests that occur. A total of 10% of protests were violent, 10% were disruptive and 80% were peaceful. When POP was restructured in 2006, there were fewer POP units to record data. There are now more POP units, and it is possible that some of the increases recorded by the police since 2006 are because there are more POP units to record data. Another factor influencing the number is that there have to be more than 15 people before a gathering is counted as an assembly or a protest. IRIS has the capacity to record 23 different types of incidents, but over a third of incidents in the data examined by SCRU were not assigned a motive. Crowd incidents that last more than one day are recorded as multiple incidents (i.e. a community protest that lasts for three days is counted as three incidents). Also, the nature of an incident may change from being, for example, a peaceful protest about water and sanitation to one in which there are incidents of looting.

An ISS public violence monitoring project shows that incidents of public violence increased by 82% over the last ten years, and 45% in the last two years, to an average of five per day. The SAPS reported that, between April 2015 and March 2016, there were 3 542 incidents of public 'unrest'.

The way forward for public order policing

While 80% of protests are not violent, many South Africans tend to think of protest as generally violent. This is because the public get their information on protests from the media, which usually only reports on protests where there have been acts of violence. However, there are indications that violent and disruptive protest action is increasing. The root causes behind the protest action (i.e. poor or unresponsive governance, declining economic situation, etc.) are unlikely to be addressed in the near future. Although the SAPS is planning for increased POP capacity in order to respond to growing incidents of public unrest, this is not a phenomena that the country can police its way out of.

Nevertheless, as part of efforts to improve public order policing in South Africa, the following sections of the AU Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa could be useful for consideration:

- Section 4: Regulatory framework governing the policing of assemblies: Law enforcement agencies should have in place, make available, and promote, in the public domain, enforceable standards of conduct for law enforcement officials.
- Section 6: Information, communication and facilitation mechanisms: Law enforcement agencies must allow for and facilitate the involvement of third parties in dialogue and mediation with assembly organisers – even where the protest takes place outside of the RGA.

- Section 7: Training should be undertaken in understanding participant behaviour, minimising conflict, and de-escalating tension. SAPS POP training should be benchmarked against best practice, and should include training in crowd behaviour and the psychology of crowds.
- Section 8: Accountability mechanisms should be put in place to provide an adequate, effective and prompt remedy to persons who experience human rights violations; to monitor and report on the preparation and execution of all law enforcement operations, including recording and tracking complaints and abuses and maintaining comprehensive records; and to publicly disseminate disaggregated data and other information about the policing of assemblies. Good policies and laws may be in place, but their implementation is often weak or uneven. Without effective accountability, operating outside the law and operating standards might be regarded by police members as normal, regardless of what the law or policy says. Investigations into police misconduct take too long, so accountability is weak. Enquiries should be speedily concluded in the interests of justice where rights have been violated and in the interests of clearing the names of innocent officers who may be wrongly accused.
- Section 9: Preparation for assemblies: law enforcement officials should identify and communicate with assembly organisers and/or participants; and information collected by law enforcement agencies must not be used to harass, intimidate or discourage persons from exercising their right to assemble.
- Section 14: Deployment: law enforcement officials deployed in an assembly operation should be overtly deployed with visible identification.
- Section 21: Use of force and firearms: The use of force is an exceptional measure; weapons that cannot be used safely and effectively must be prohibited; law enforcement officials must exercise particular caution when using crowd-control devices which are indiscriminate in their effects. When considering the use of force against a crowd, police should consider whether there are certain individuals in a crowd that may be more violent than others and respond appropriately. Where the use of force is unavoidable, law enforcement officials must minimise damage and injury, respect and preserve human life, and ensure at the earliest possible moment that assistance is rendered to any injured or affected person and that their next of kin is notified. The intentional use of lethal force by law enforcement officials and others is prohibited unless it is strictly unavoidable in order to protect life, thus making it proportionate, and all other means are insufficient to achieve that objective, thus making it necessary. Assessment of legality, necessity and proportionality should be based on the relevant facts with a requirement for reasonable grounds, rather than mere suspicion or presumption, of risk or harm. On paper, South Africa is well advanced in terms of regulations and guidelines on the minimum and proportional use of force. Among other things, when dispersing protesters, police must make sure there are escape routes.
- Section 24: Debriefing and review: Any use of force by law enforcement officials during the conduct of an assembly operation should be subject to an automatic and prompt review by a competent and independent authority. Law enforcement officials who are the subject of a review must not be deployed to assembly operations until the conclusion of such review.

Discussion points

Maj-Gen Zephania Mkhwanazi said the use of force must be a measure of last resort, in line with the RGA, and lead to the intended goal, for example to arrest people. Any weapons used must be used with a proper understanding of their use and impact.

Prof. Lillian Artz noted that South Africa's regulations on crowd control are strong, but its regulations preventing human rights violations after arrest have little substance.

A member of the audience claimed the ACHPR Guidelines requirement that any use of force should be subject to automatic review could not possibly be implemented. There could be dozens, or even hundreds of events in a day that would need to be reviewed. The SAPS is often called to intervene in situations when things are already out of control.

Gareth Newham acknowledged that it could be too resource-intensive to review every act of force by every member, but said that collecting data about a set of actions could reveal whether, for example, some POP units use more force than others.

Sean Tait noted that the purpose of review in the ACHPR Guidelines is to emphasise the importance of debriefing sessions when things go wrong, in order to do things differently in future. Reviews of the times force was used could be restricted to when firearms were used.

Louise Edwards said the ACHPR Guidelines have a temporal (before, during and after) approach: preparation and planning for the policing of assemblies (Part 3); policing during assemblies (Part 4); and policing after an assembly (Part 5). The emphasis is on prevention, de-escalation and minimising the need to use force. Debriefing and review is intended to look back at what steps law enforcement officials took in the lead-up to an assembly to avoid using force, and to learn from experience.

4 Policing assemblies in South Africa: An SAPS perspective

Background to the POP

SAPS National Head of Public Order Policing **Maj-Gen Zephania Mkhwanazi** said after 1994, the 71 riot control units in the South African Police and the independent homeland police departments were amalgamated into the newly established SAPS POP component. In 1995, the POP consisted of 42 units across the country with approximately 11 000 members in total. A training curriculum was developed with Belgian government assistance and all POP members received human rights training. The requirement for public order policing steadily declined. In 2006, there were 43 units with 7 227 personnel, and in that year, the POP was restructured into 23 area crime-combating units with a total of 2 595 personnel. Since then, new units have been established and the current number of POP units stands at 28 with a total of 4 222 personnel.

POP's goals are to:

1. Establish standardised crowd management procedures that conform to democratic values and accepted international standards; and
2. Instil an approach in POP that is in accordance with the values of the SAPS – acting in a professional, effective and community-orientated way, and being accountable for every action.



Maj-Gen Zephania Mkhwanazi

Ongoing training takes place at unit level to develop the capacity of members to respond in the most appropriate way in crowd-control situations. For example, the SAPS expects POP members to be able to restrain themselves when people are throwing stones at them. Debriefing takes place after crowd-control action to review what happened, to determine whether anything went wrong, and to plan for better action in future.

Legal instruments

Under section 2 of the RGA, the organiser of a planned gathering is required to give notice to the responsible officer of the municipality where the gathering is due to take place. The SAPS is represented by an authorised member in negotiations about any planned gathering. The carrying of dangerous weapons at gatherings is regulated by the Dangerous Weapons Act, 2013. SAPS crowd-management actions take place in terms of SAPS National Instruction (NI) 4/2014 (which replaced SAPS Standing Order 262). A panel of experts is considering how NI 4/2014 can be improved with regard to, for example, debriefing, capturing information and reporting.

The National Joint Operational and Intelligence Structure (NATJOINTS) brings the SAPS together with a number of other relevant role-players to monitor instability and protests, and to deal with large-scale events involving many people, (e.g. elections.) NATJOINTS Instruction 35/2012 describes operational arrangements regarding the management of national stability. There are 28 Supplementary Instructions to NATJOINTS Instruction 35/2012 that cover specific role-players, for example, the National Disaster Management Centre. The SAPS may issue instructions to Provincial Joint Operations Centres (PROVJOCs) regarding matters that may have provincial implications (e.g. the recent taxi strikes in Gauteng).

Managing gatherings

If a gathering is planned and notice has been given under the RGA, a convenor is identified and negotiations about the course of events take place between the three parties of the 'golden triangle' (the convenor, the local authority and the authorised SAPS officer). The parties must jointly ensure compliance with the agreement. This may include marshals using defensive modes of action. Recently, Save South Africa, the Democratic Alliance, the South African Communist Party and the Economic Freedom Fighters all wanted to engage in a protest march at the same time. The SAPS tried to bring the organisers of all these marches together to ensure that all the events were policed, and to minimise the risk of clashes between these different groups.

If a gathering is taking place without notification but is peaceful, SAPS police station members and Metro Police will be the first responders. The POP will be deployed as a visible presence, negotiations will be initiated with convenors, and there will be monitoring of the event. Defensive action modes may be used. A criminal case may also be opened for contravening section 12 of the RGA. However, negotiation is the best way to deal with an unplanned gathering if it is peaceful. For example, during recent protests in Eldorado Park, POP members were preparing to disperse an unplanned, peaceful gathering of people blocking a public road. The SAPS negotiator asked the leaders of the gathering to identify themselves, and two ministers of religion and two councillors stepped forward. The leaders said the group wanted to pray in the street for 15 minutes. They were given permission to do so, provided that they kept one lane clear for traffic to pass, and provided the gathering peacefully dispersed when the prayer was over. The group adhered to the agreement, there was no need for the POP to disperse the crowd, and no section 12 charges were laid. Maj-Gen Mkhwanazi said the RGA should be reviewed to permit spontaneous gatherings to be more effectively managed.

In the case of an unrest situation, the POP will be deployed to contain the event, using progressive use of force, if necessary, and it may use offensive action such as dispersing protestors and making arrests. A case may be opened of contravening section 12 of the RGA and charges of public violence may be laid.

IRIS categories for recording events are: 1) crowd peaceful; 2) crowd unrest; 3) unrest other; 4) support; and 5) crime prevention.

When the number of protests in a particular province exceeds the capacity of its provincial POP units to respond, the national head of POP requests provincial commissioners to make POP members available. If POP members are made available for redeployment in another province, head office must grant permission for the necessary funds to transport, accommodate and pay these officers overtime.

Mitigating risks to public order

Government aims to mitigate risks to public order through:

1. Engaging with communities and stakeholders in order to influence disgruntled groups and peacefully resolve points of dissatisfaction;
2. Encouraging compliance with legal and regulatory frameworks and intervening peacefully;
3. Gathering information about threats in order to proactively and visibly deploy security forces in identified hotspots;

4. Deploying POP and, where possible, Metro Police and local crime prevention members as first responders;
5. The management and analysis of all criminal cases generated during unrest incidents by stakeholders (dedicated investigation teams, the National Prosecuting Authority, the Department of Justice and Constitutional Development, the Department of Home Affairs, and the Department of Correctional Services) in order to enable successful prosecution and conviction of offenders; and
6. An integrated communication strategy developed by the Government Communication and Information System.

Current risks to public order are, for example, highlighted by the #Fees Must Fall protests, where SAPS members are engaging with students, university management wants the police on campus, and students want to keep police off campuses. Students who want to protest have the right to protest, and the rights of students who want to continue participating in university activities must also be protected. Multidisciplinary and multi-sectoral approaches to addressing community challenges should be strengthened. Communities should be encouraged to oppose public violence, intimidation and the destruction of property in the strongest possible terms. Better engagement between stakeholders to address grievances will assist police by reducing the likelihood that an event will become violent, so reducing the possibility that force will be used.

The planned expansion of POP

Maj-Gen Mkwazi reported that plans are in place to increase the number of POP units from 28 to 54 by 2020, and to increase the total number of POP members from 4 648 to 11 807 over the same period. The SAPS must be ready for the national elections in 2019.

Discussion points

A member of the audience opined that public order policing is inherently dangerous and international experience suggests that the average length of time public order police officer stays in the field is three to six years. Younger people are more likely to make themselves available than older people who are married and have children. Good vetting of POP recruits is essential.

Maj-Gen Mkhwanazi said there is a perception that young people are better suited for crowd management, but young officers are more likely to react impulsively. Older people are often more able to contain themselves, and may respond more compassionately to children because they have their own children.

Responding to a question about POP benchmarking, **Maj-Gen Mkhwanazi** said that after Marikana, benchmarking was done against public order policing units in Belgium and France. The POP training curriculum is reviewed every three years to keep it up to date and to respond to new needs (e.g. the safety of members around burning barricades).

Responding to a question about how frequently rubber bullets are used, **Maj-Gen Mkhwanazi** said they are only used after people have been warned to disperse and against those who refuse to disperse. Rubber bullets are dangerous. During unrest in Vuwani, protesters used metal sheets as shields, so rubber bullets were ineffective there. The POP learned important lessons from its engagement in Vuwani.

Responding to a question about the circumstances in which the South African National Defence Force can be called in to help the SAPS with crowd control, **Maj-Gen Mkhwanazi** said the army will never be brought in to deal with crowd management because its soldiers have not been trained for that.

5 The ACHPR Guidelines on Policing Assemblies in Africa



Adv. Pansy Tlakula

Outgoing ACHPR chairperson and Special Rapporteur on Freedom of Expression and Access to Information in Africa **Adv. Pansy Tlakula**⁷ said the Commission is the oldest organ of the African Union and it derives its mandate from the African Charter on Human and Peoples' Rights ('African Charter'). As its name suggests, it is responsible for the promotion and protection of human rights on the African continent. The ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa ('ACHPR Guidelines') was drafted with the assistance of APCOF and other CSOs. There was extensive consultation in all five regions of the continent. There are 54 countries in Africa – Lusophone, Anglophone, Francophone and Arabic – so, in the process of consulting, the end result of the Guidelines may represent a minimum threshold rather than an ideal. Guidelines of this nature are 'soft law', so they do not have to be ratified by State Parties. However, judges can draw inspiration from soft law in their judgments. For example, the judgment of a Zimbabwean court on the mandate and powers of public broadcasters relied on the ACHPR Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa. The ACHPR Guidelines describe the principles and norms that should apply to law enforcement officials before, during and after an assembly.

The right to freely assemble

Article 11 of the African Charter provides that every person has the right to assemble freely with others. The exercise of this right is subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

AU states cannot just pass any laws which limit or restrict the right to assemble. Limitations or restrictions on the right to assemble must: be in accordance with limitations on the right to assemble in terms of regional and international human rights standards; comply with the principles of legality; be in pursuit of a legitimate interest as defined by regional and international human rights instruments; be a necessary and proportionate measure to achieve that end within a democratic society; and adhere to the rights of freedom from discrimination and equality before the law.

Organisational and operational requirements

Part 2 of the ACHPR Guidelines deals with the organisational and operational requirements for a rights-based approach to the policing of assemblies. Law enforcement officials are defined as all officials or other competent persons or authorities directly or indirectly authorised by the State to exercise policing powers in the context of an assembly operation. The Guidelines say military personnel should not be deployed in assemblies except under exceptional circumstances, and they must be under the command of the police. Police officers should communicate regularly with people who will be assembling, and they must establish a clear chain of command.

Access to information

All regulatory instruments and information about law enforcement procedures relating to assemblies must be made accessible in accordance with the right of access to information. The right to information permeates the ACHPR Guidelines, for example, Paragraph 4 (the regulatory framework), 6 (information, communication and facilitation), 10 (information gathering by law enforcement officials), 11 (communication and facilitation with assembly organisers and other stakeholders) and 13 (communication).

Training and oversight

Law enforcement officials must be adequately trained to facilitate the exercise of the right to assemble freely with others. There must be a police oversight mechanism to receive complaints about police

misconduct during assemblies, investigate and act on findings. The Independent Police Investigative Directorate (IPID) plays that role in South Africa.

Risk assessment and contingency planning

Law enforcement agencies must have in place processes and procedures to ensure the facilitation of spontaneous assemblies, and they should be able to assess risk and make contingency plans. The right to information plays an important role here too. Law enforcement officials have the right to gather information to facilitate the right to freely assemble with others. However, they must ensure that the right to privacy and the presumption of innocence is protected. In South Africa, the Protection of Personal Information Act, 2013 (POPIA) protects the right to privacy.

Gathering and retaining information

Law enforcement officials collecting information, taking photographs and documenting assemblies must comply with regional and international human rights standards. Information gathered during a process should not be retained longer than is necessary. Such records must be destroyed after the purpose for which they were gathered has been served. POPIA has exceptions regarding the processing of personal information such as public safety, investigating a crime and prosecuting offenders. The right to collect and access information on assemblies must be limited by protestors' right to privacy.

Deployment, stop, search and arrest

The minimum number of law enforcement officials necessary in the circumstances should be deployed visibly, and officials should be identifiable. The principle of legality limits the use of stop, search and arrest. First aid and other essentials must be provided free of charge.

Simultaneous assemblies and counter-assemblies

Simultaneous or counter-assemblies remain part of the right to freely assemble with others. However, if it becomes difficult to facilitate them, preference should be given to the first notified assembly and alternatives provided to the others. If assembly organisers or participants do not comply with the conditions imposed on an assembly, law enforcement responses must be legal, proportionate, necessary and non-discriminatory.

The use of force

Inappropriate use of force is one of the main cause of human rights violations during assemblies, and the ACHPR Guidelines provide that force may never be used except to stop an imminent threat, in accordance with the principles of necessity and proportionality. The use of lethal force by law enforcement officials is prohibited unless it is strictly unavoidable in order to protect life and all other means are insufficient to achieve that objective. Dispersal of an assembly must be a measure of last resort and firearms may never be used simply to disperse an assembly. Law enforcement officials must differentiate between peaceful participants and those engaging in violent acts. Law enforcement agencies should provide their officials with appropriate personal protective equipment. The use of remote-controlled, less-lethal weapons for the policing of assemblies is discouraged, and their procurement by State Parties must comply with regional and international human rights standards.

Law enforcement officials must receive appropriate training for the use of force including on how to facilitate and manage a crowd. The use of force and firearms must be regulated under national laws in conformity with the ACHPR's General Comment No. 3 on Article 4 of the African Charter (the right to life), and other relevant regional and international human rights standards.

Arrest and detention

Detention by law enforcement officials in the context of assemblies should only be used as a measure in application of criminal law. The rights of persons arrested or in police custody, particularly vulnerable people (women, people with disabilities, sexual orientation minorities) must be observed

in line with the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa ('Luanda Guidelines').

Debriefing, monitoring and evaluation

Law enforcement agencies should have debriefing process after an assembly to encourage monitoring and evaluation, learning and the identification of good practices. State Parties must conduct a thorough investigation and account of circumstances surrounding every case of death or serious injury of persons in the context of assemblies. Law enforcement agencies should publicly communicate the findings of debriefings and investigations resulting from each assembly operation. Public officials hold information, not for themselves, but for the public, and they should proactively disclose it. The right-to-know principle provides that all information, with the exception of information that affects national security (and here national security must be very narrowly defined) must be made proactively available so that people do not have to ask for it. This should have happened with #Fees Must Fall and Marikana.

Implementing the ACHPR Guidelines

The implementation of the ACHPR Guidelines involves:

1. Adopting or reviewing existing legislative, administrative and other provisions to comply with the Guidelines;
2. Dissemination of the Guidelines;
3. Training of law enforcement officials in the Guidelines; and
4. Effectively applying the Guidelines during the policing of assemblies. State Parties are very good at adopting guidelines, but implementation is always a problem, nationally, regionally and internationally.

In terms of Article 62 of the African Charter, State Parties are required to report every two years on what they have done to implement the Charter, and they are also now required to report on their implementation of the ACHPR Guidelines. South Africa's Minister of Justice recently presented the official country report to the ACHPR on progress with implementing the African Charter. CSOs with observer status in the ACHPR can present a shadow report that the Commission can use to interrogate the official report.

Adv. Tlakula concluded by saying 'when policing of assemblies goes wrong, no one wins: police officers become victims, protestors become victims, and the country is the ultimate victim'.

Discussion points

Responding to Adv. Tlakula's comment about the apparent lack of public information about police action during the #Fees Must Fall protests and Marikana, **Maj-Gen Mkhwanazi** said IPID investigated every case, and the case management system manages information about which cases are open and which are closed. He acknowledged that the information may not have been made public. Students arrested during #Fees Must Fall who were still in custody were permitted to write their exams.

Brig. van der Walt of the SAPS said police officials ask SAPS Legal Services whether certain confidential information should be confidential. If the information is not disclosed, an appeal can be lodged with the Minister of Police. There are information officers in every province.

Adv. Tlakula reiterated that information which is in the public interest must be disclosed, even if there is a national security concern. She expressed her concern about the SAPS holding information confidential in the 'right-to-know' era. Although the ACHPR has taken a strong stance

on access to information, there is still official secrets legislation in many African countries that hinders access to information.

Lawson Naidoo said that a decision on whether information should be classified at the time, not after an access to information request has been filed.



Judge David Ntshangase, Gareth Newham, David Bruce and Maj-Gen Mkwanzazi

6 A constitutional challenge to section 12(1)a of the RGA

Chumile Sali of the Social Justice Coalition (SJC) said his organisation is challenging the constitutionality of section 12(1)(a) of the RGA in the Western Cape High Court. The section provides that any person who convenes a gathering in respect of which no notice or no adequate notice was given is guilty of a criminal offence punishable by imprisonment of up to a year, or a fine, or both. Section 17 of the Constitution provides that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions. Some municipalities want protesters to apply for a permit to assemble, but the RGA speaks about a notice, not a permit. Ten SJC members who engaged in a peaceful protest in front of the Cape Town Civic Centre against poor sanitation in Khayelitsha were arrested and convicted. They now have a criminal record and the papers in this matter ask the court to set aside their convictions.

The Right2Know Campaign has done a study on how local authorities are using the RGA to limit the right to protest rather than using it to facilitate the right of people to freely assemble. The RGA says that notice must be given, but certain municipalities are treating this as a permission-seeking exercise. Certain municipal by-laws are out of step with the intention of the RGA. If



Chumile Sali

notice is given and there is no response from the municipality within 24 hours, the gathering may automatically go ahead. The City of Cape Town did not respond to a notice about a protest about bucket toilets within 24 hours, and then the protestors were arrested anyway.

Some municipalities will only allow assembly conveners to hold an assembly if the person to whom the group wants to hand over a memorandum is willing to accept the memorandum. They may say a permit is required, which they may or may not grant. In fact, no permission is required, only notice. In Johannesburg, assembly conveners have to pay an administrative fee because the municipality says assemblies are creating an administrative burden. Some municipalities say that groups can only protest on certain days. In some instances, conveners have been asked to meet with the mayor before they protest or picket. The space to protest in South Africa is limited because of the way that municipalities treat gatherings. Some young people are afraid to participate in the activities of CSOs because, if they are charged with infringing the RGA, even if the protest is peaceful, they can be sentenced to a year's imprisonment.

In Cape Town, the RGA is strictly applied whenever a group wants to protest in town. Protests are more easily allowed in the city's townships, even without notice. Certain SAPS stations are willing to accept memoranda from groups protesting in townships. It looks as if politics is being played with regards to allowing public protests in Cape Town. Marches on Parliament are quickly granted permission, but protests against the City of Cape Town's sanitation service delivery are frustrated.

People keep protesting because they are not seeing any solutions to unemployment and serious service delivery shortcomings. Police are being forced to deal with the impact of politicians not doing their work. Police should try to facilitate discussions with municipal officials about real service delivery grievances so that the problems can be resolved.

7 A model law for the use of force in South Africa?

Michael Power⁸ said that, against the background of Marikana, #Fees Must Fall, the killing of Andries Tatane and Mido Macia, and signal jamming in Parliament, it could be time for drafting a model law to harmonise the use of force provisions in various laws.⁹

There is no single, universally agreed-upon definition of use of force. The International Association of Chiefs of Police has described use of force as the 'amount of effort required by police to compel compliance by an unwilling subject'.¹⁰ However, this definition does not take into account the use of online force (e.g. a hostile takeover of an email domain and its addresses). The use of force by law enforcement officials must be in accordance with the principles of legality, precaution, proportionality, necessity and non-discrimination. In *R vs. Nasogaluak*, the Canadian Supreme Court summarises the responsibility of police officers as follows:

Police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

The principles of acceptable use of force

Legality: The use of force must be sanctioned by domestic law, which must comply with international standards. Situations where force may be used must be expressly identified and applicable laws must make provision for disciplinary and criminal sanctions.

Precaution: Feasible steps must be taken in planning, preparing and conducting policing operations to avoid the use of force. Appropriate command and control measures must be in place.

Proportionality: The force used by a law enforcement officer to protect himself or herself must be proportionate to the threat at all times.

Necessity: The use of force is only acceptable where it is necessary to attain a clear and legitimate objective. To be permissible, the use of force must be strictly unavoidable. Firearms may only be used where there is a grave threat of death or serious injury. The 'protect life' principle applies to any use of force.

International law on the use of force

International law on the use of force comprises binding and non-binding treaties, general comments, principles, and guidelines, including the United Nations Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Code of Conduct for Law Enforcement Officials, reports of the UN Special Rapporteurs, and the ACHPR Guidelines for the Policing of Assemblies.

South African law on the use of force

Various South African laws have different, and sometimes conflicting, provisions for the use of force. The SAPS has a duty to uphold and enforce the law in accordance with the constitutional protections of human dignity, life and freedom and security of the person. The South African Police Service Act, 1995, permits a member performing an official duty who is authorised to use force only to use the minimum force which is reasonable in the circumstances.

Section 9(2) of the RGA provides that the degree of force used to disperse a gathering may not be greater than what is necessary, and must be proportionate to the circumstances of the case and the object to be attained. Force, including the use of firearms and other weapons, may be used against a person who kills or seriously injures a person, or shows a manifest intention to kill or seriously injure a person. Such force may also be used against a person who destroys or does serious damage to valuable movable or immovable property, or who shows a manifest intention of doing so. A key shortcoming here is that it is not clear how any officer can reasonably determine how valuable property is in order to authorise the use of force.

Section 49 of the Criminal Procedure Act, 1997 (CPA), permits the reasonable and necessary use of force to arrest a suspect who is resisting arrest or attempting to flee. It permits the use of deadly force if the suspect poses a threat of serious violence to the arrestor or any other person, or the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later. A key shortcoming here is that using force on the basis of a suspicion does not meet the duty of precaution.

Section 32 of the Correctional Services Act, 1998, provides that a correctional official may use all lawful means to detain inmates in safe custody, and may use force to achieve this objective where no other means are available. A minimum degree of force must be used and the force must be proportionate to the objective. A correctional official may not use force against an inmate except when it is necessary for self-defence; the defence of any other person; preventing an inmate from escaping; or the protection of property. A key shortcoming here is the use of force to protect property.

Discussion points

Current legislation permitting the use of force under certain circumstances does not explicitly address the need to assess the risk to innocent third parties and the use of potentially lethal force against suspected wrongdoers. The RGA also provides for the use of firearms in defence of property. There is a need for: a system of accountability for the use of force; a duty to provide post-force support such as medical assistance; and a comprehensive articulation of the principles of the use of force. Prof. Christoff Heyns¹¹ has been working a draft model law which proposes to harmonise the use of force provisions in all applicable South African legislation into a single set of internationally acceptable standards on the use of force.

Brig. van der Walt of the SAPS reported that the police would support a model law on the use of force. Currently, commanders are trained to deal with different laws that apply to different sets of circumstances.

Sean Tait noted that the use of potentially lethal force to protect property under the RGA seems to be unconstitutional.

Michael Power claimed that many pieces of legislation are constitutionally deficient, and interested parties should not wait for a declaration of unconstitutionality before taking action to remedy deficits. Constitutional Court certification can be a final step in the process. He suggested establishing a coalition of CSOs, SAPS managers, and legislators to review the RGA and bring it up to date. The RGA was quite a progressive piece of legislation when it was passed in 1993, but it needs to be updated. For example, the seven-day notice period of a planned gathering specified in section 3 of the RGA is no longer in compliance with international law. The current international standard for notice is 48 hours.

Prof. Lillian Artz pointed out that CSOs are often excluded from the policy development process in spite of making substantive submissions to portfolio committees in Parliament.

One of the participants said police may not be able to protect property in a crowd-control situation if they cannot use lethal force.

8 The health impact of crowd-control weapons (CCWs)

Manson Gwanyanya presented a 2016 research report published by Physicians for Human Rights (PHR) and the International Network of Civil Liberties Organizations (INCLO) entitled *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*.¹² PHR is a group of physicians using science and medicine to document mass atrocities and serious human rights violations. INCLO is a network of 12 independent, national human rights organisations working to promote fundamental rights and freedoms. INCLO's African members are the LRC (South Africa), the Egyptian Initiative for Personal Rights, and the Kenya Human Rights Commission.

Background to the study

There has been an increase in protest action all over the world, coupled with the rapid development, manufacture and trade in CCWs. The number of unwarranted, inappropriate, or disproportionate uses of force has also increased. The objectives of the study were: to protect and promote the ICCPR; to foster global debate on the development of international and domestic standards and guidelines on the proper use of CCWs; and to promote the establishment of regulations for manufacturers of CCWs.

The research took place from September 2014 to May 2015. It is an in-depth study of the use of six commonly used CCWs: kinetic impact projectiles, chemical irritants, water cannons, disorientation devices, acoustic weapons and directed energy weapons. It was based on: 1) a survey of INCLO members; and 2) a literature review of 2 666 publications on the health impacts of CCWs over the last 25 years. Limitations of the study are an absence of systematic reporting requirements for deaths and injuries from CCWs. The publication is illustrated by 14 case studies from nine countries (Egypt, South Africa, Israel, Argentina, Kenya, Hungary, England, Canada and the United States). Two case studies from South Africa are included in the report: the death in April 2011 of Andries Tatane after he was shot at close range with rubber bullets, and the use of stun grenades at Marikana in August 2012.

Kinetic impact projectiles (KIPs)

KIPs are rubber/plastic bullets or balls, sponge rounds and attenuated energy projectiles. A systematic review of medical literature found that KIPs can cause serious injuries, disability and death. The study identified 1 952 people with injuries from KIPs, 53 of whom died from their injuries, and 294 of whom suffered permanent disabilities. Of the injuries, 70% were considered severe. Severe injuries are more

likely when KIPs are fired at close range. Some types of KIPs have the same ability to penetrate the skin as conventional weapons, and can be just as lethal. They are difficult to deploy safely and effectively. Indiscriminate KIPs that fire multiple pellets, such as shotgun pellets, and rubber-coated metal bullets should be prohibited. They should not be fired from less than 9 to 14 metres away, or at vital organs. Skip firing can be indiscriminate.

Chemical irritants (teargas)

These are chemical compounds that irritate the eyes, cause dermal pain, cause respiratory distress, and the psychological effects of disorientation and agitation. A systematic review of medical literature documenting the health impact of chemical irritants identified 5 131 people who suffered injuries, two of whom died and 70 of whom suffered permanent disabilities. Out of 9 261 documented injuries, 8.7% were severe and required professional medical management, 17% were substantial and 74.2% were minor. Tear gas is inherently indiscriminate when deployed using canisters or grenades. Caution should be used during deployment to stop the effect from spreading to unintended targets and to minimise risk of overexposure and unnecessary injury. Law enforcement officials must not exceed the minimum amount of chemical irritant necessary to achieve the effect of irritation and transient incapacitation. Firing multiple canisters at once can cause serious injury or death. The use of chemical irritants in closed spaces should be prohibited and contextual factors (e.g. wind, nearby schools) must be considered. Firing canisters directly towards individuals should be prohibited because injuries are often caused by canisters.

Water cannons

There is a scarcity of medical literature about water cannons. They are inherently indiscriminate, particularly at long distances. Direct impact may cause trauma or internal injuries. Practically, water cannons can make communicating with protesters very difficult, and their intimidating size and appearance may cause panic and lead to stampedes. The use of coloured dyes or malodorants in conjunction with a water cannon is a form of collective punishment that highlights the potential abuse of these weapons. Contextual factors (e.g. cold and exposure) must be considered when deploying water cannons.

Disorientation devices (stun grenades)

Stun grenades (flash-bangs) are made of metal and plastic parts that may fragment when they explode, carrying a disproportionately high risk of blast injuries. There is very little quality control in their manufacture and few guidelines on their use. Explosions at close proximity can lead to amputation, fractures and other serious injuries. There have been 50 reported cases of severe injuries and death. There are frequent news reports and anecdotal evidence of injuries and deaths from these weapons, including reports of injuries to military, correctional and police officers while handling them. Firing stun grenades directly into crowds or towards individuals should be prohibited. These weapons have no place in effective crowd management, intervention and control.

Acoustic weapon

These are also known as sound cannons, sonic cannons, or long-range acoustic devices (LRADs). They emit painfully loud sounds that have the potential to cause significant harm to the eardrums and delicate organs of the ears, and may cause hearing loss. LRADs may also be used non-offensively to amplify voice communication over a long distance. Infrasonic weapons emit low-frequency inaudible sounds that are painful. There is little medical literature on the effects of acoustic weapons, and serious questions remain about their safety and efficacy in crowd-control contexts. There are serious concerns about acoustic weapons' potential to cause permanent injury. In the absence of proper research, the use of acoustic weapons should be suspended until independent medical testing has taken place.

Directed energy weapons

These are electromagnetic heating devices that deliver very high-frequency millimetre wavelength electromagnetic rays that heat skin on contact and cause a painful, burning sensation. These have not been used in practice, and there has been no assessment of their safety in crowd-control settings. Existing information identifies concerns about tissue injury, particularly with prolonged exposure or

exposure to vulnerable organs such as eyes. There are serious concerns about prolonged exposure and the risk of high-degree burns. There is no documentation about their use for crowd control. The sale of these devices for crowd-control purposes should be prohibited until further independent testing has taken place.

The use of CCWs for crowd control

The role of police should be to facilitate freedom of assembly and ensure public safety. The use of CCWs cannot be justified on the basis that a protest is unlawful. Negotiation and open dialogue with protestors is the most effective method. CCWs should only be used as a measure of last resort after exhausting all other measures. The goal should be to de-escalate the situation and any police actions should be necessary as well as proportionate to the threats faced at a particular time. CCWs are inherently inaccurate and indiscriminate in their effects, and they have limited utility in safely dispersing crowds. The presumption that CCWs are non-lethal means that there is often a lack of training for police in how to use them safely, and it means that CCWs are not subject to as many controls and regulations as they should be.

Pre-deployment: Weapons designed for military use should never be used for crowd control, and trade controls should be adopted. Procurement should be done based on operational needs and in light of domestic context. The selection of weapons should be based on environmental factors specific to the situation. Governments should independently test new and existing CCWs. The testing process should also inform regulations and guidelines for the lawful use of CCWs. The results of the testing should be made available to the public.

Post-deployment: Medical assistance should be made available when CCWs are used. There should be accountability for the use of CCWs. The use of CCWs should be regulated.

Discussion points

Sean Tait said the value of this type of research is to raise issues of the design, use, deployment, testing and suitability of CCWs. Weapons technology keeps developing and there are lots of new merchandise on the market. Police should be prudent and cautious about acquisition and deployment. Remotely controlled weapons will be available on the market soon.

Maj-Gen Mkhwanazi explained that the SAPS has procured LRADs for the provinces. It is aware of the risk of LRADs being used as weapons, so the instructions are that they may only be used to amplify voice communication over a distance.



Mbalenhle Matandela, Sherilyn Naidoo and Manson Gwanyanya

9 Providing assistance and securing the right to protest

Mbalenhle Matandela of Right2Protest (R2P) said her organisation is a coalition based at the Wits Law School that advances the constitutionally protected right to protest. R2P provides legal representation for communities wishing to exercise their right to protest, especially poor and marginalised communities. The R2P hotline provides toll-free telephonic support¹³ on protest-related matters. The organisation also challenges attempts to stifle the right to protest; collects and analyses data and resources on protest; works with other CSOs to advocate for the right to protest; holds state and private actors accountable for meeting their obligations regarding the right to protest; organises protest-related legal education and training workshops (e.g. bail training for legal professionals); and produces pamphlets on protest.

R2P does not assist protestors during the course of a protest. However, it participates in section 4 RGA meetings to help mitigate the risk of conflict on request, and it responds immediately to bail applications when people are arrested, either with its own attorney, or through its network of pro bono attorneys. When it receives a request for intervention, R2P gathers information on how many people have been arrested, what their names are, where they are being held and what they have been charged with. Between October 2016 and July 2017, the R2P hotline recorded 500 arrests, most of them during the #Fees Must Fall protests. R2P ran a police brutality clinic with Probono.org after these protests.

Geographical hotspots of rural protest where R2P has worked include the Northern Cape, Northern KwaZulu-Natal and Limpopo. R2P did two interventions at mines in Newcastle where people had been protesting for two months, but no owners came to receive their memorandum. In Limpopo, people were being kept in custody to stop the protest. In the Northern Cape, people were arrested for participating in an illegal protest, even though they had given notice in terms of the RGA and two weeks had passed without a response.

There are three types of protest: protest as an option, protest as the last resort and protest as the only option. People who have protest as an option can also engage with other parties in other ways to attend to a grievance. With this group, the authorities are less likely to behave in heavy-handed ways. Protest may be the last resort when a grievance has not been resolved despite attempts to deal with it through other channels. When protest is the only option, the authorities are likely to be heavy-handed. Advancing the right to protest means advancing the right of everyone to protest, not only the people who have no other option.

Protest in South Africa tends to be heavily racialised and class-specific, whether it is #Fees Must Fall, Save South Africa, or protests in rural areas about locally specific issues. Protests in townships are different to protests in town. Younger protestors are more likely to cause harm, and they are often subjected to being held in custody as a form of punishment, which traumatises them. Rural protestors have less access to sources of help than their urban counterparts, and are less likely to enjoy attention from the media. Media attention helps to ensure accountability, but there is often a lack of media coverage of protest events in rural areas.

There is a need for legal reform. R2P is involved in the SJC case challenging the constitutionality of section 12(1)(a) of the RGA. The RGA is restrictive and burdensome. Municipal officials and police are intimidating protestors; they are heavy-handed and view protestors as a nuisance. The RGA requires notices to be written, so it assumes that people are literate. Authorities are using section 4 meetings to identify and intimidate protestors. State intelligence structures are being used to monitor communications in communities to track mobilisation patterns. Police are randomly arresting people on their way to a march to keep them away.

R2P wants to change societal perceptions of protestors. They are perceived as violent and unthinking. Protestors don't just wake up one day and decide to protest. Their protests are a response to the lack of engagement and communication around their grievances. Attention must be given to restore engagement and communication, and protest management should be improved. Unless the right to protest receives facilitation and support, the voiceless will be even more voiceless.

R2P is planning to do mediation training in areas where protest is the only option. It wants to run education and training on the management of gatherings for all stakeholders – municipal officials, police and the parties who are targets for memoranda.

Discussion points

Prof. Lillian Artz said the injuries of victims of excessive use of force should be documented when they go for treatment in health and mental facilities.

Brig. van der Walt said the SAPS was in favour of work to train protestors in how to go about protesting, and in what they may or may not do, because that will reduce the risk of violence. He pointed out that section 3(1) of the RGA provides that if a convenor is not able to reduce the notice of a gathering to writing, the responsible officer must, at the convenor's request, reduce it to writing. He agreed that local authorities would benefit from training on how to manage protests more effectively.

Lawson Naidoo claimed Save South Africa experienced attacks by people who set out to disrupt protests, once during a camp-out in Church Square in Pretoria, and the other during the real State of the Nation Address where banners and placards at St George's Cathedral were torn down, but the police did nothing. The fundamental role of the police is to protect protestors, and they are failing, he said. During #Fees Must Fall, university managers used interdicts to prevent the right to protest, and the Council for the Advancement of the South African Constitution (CASAC) is investigating whether that is constitutionally permissible.

Louise Edwards asked whether protestors being arrested and held in custody are being held under section 12 of the RGA, or under the CPA (bail decisions depend on which laws are being used). She also asked whether charges are going through to trial, or whether arbitrary arrest or detention are being used.

Mbalenhle Matandela reported that the #Fees Must Fall police brutality clinic provided medical assistance, legal assistance and psycho-social support. Private attorneys provided pro bono assistance. Collecting evidence required collaboration between doctors, psychologists and lawyers. A small number of police officers have received training in dealing with criminal activity like arson and sexual violence during the protests. She said that while the RGA provides for the responsible officer to assist convenors to put notices in writing, in practice they are not willing to do so when the level of trust is low. Authorities try to stifle the protest then and there.

Judge David Ntshangase said the blame too often falls on the police, but if the parties take action to resolve a conflict in good time, conflict can be prevented. The parties to a dispute cannot take a back seat. In the Marikana matter, the mine owners refused to meet the striking miners at a critical point in the course of events.

10 Emerging trends in the policing of assemblies

Independent researcher **David Bruce** said a lot of government statements strongly condemn violent protest. Some CSOs also reject violent protest, but CSOs tend to regard violence as someone else's problem. *The Smoke That Calls*¹⁴ shows how the dynamics of violent protests are partly shaped by political contestation for power in local councils. Research shows that when people have been unable to get authorities to resolve their grievances, when they have been ignored, they turn to violence, and only then do the authorities take action. Violent protest creates opportunities for criminal activity such as looting and attacks on foreigners. Peaceful protest can be effective at resolving grievances and should be encouraged at all times.

Fewer deaths in spite of more violent protests

There was sustained civil society criticism of POP between 2009 and 2014. Key events in this period were: increased involvement of paramilitary units and use of R5 rifles in policing of crowds between 2009 and 2011; POP officials killing Andries Tatane on 13 April 2011;¹⁴ the killing of 34 striking miners on 16 August 2012 at Marikana by the SAPS (TRT, NIU, K9 dog unit and POP members);¹⁶ and a number of killings in crowd management incidents early in 2014, including four people killed at Mothutlung.¹⁷ Since 2014 there has been a decline in the number of deaths at the hands of police

during protests, even though there have been relatively high levels of violent protest. Deaths have been relatively rare and widely dispersed, possibly as a result of the police using less-lethal weapons. However, some incidents of heavy-handed policing continue to be reported (e.g. incidents during the #Fees Must Fall protests).

The experience of young people in violent protest

Violence is partly a manifestation of marginalised youth taking inspiration from the involvement of young people in battling police during the struggle in the 1970s and 1980s. A large number of young people are very willing to engage in violent confrontation with police. This may be a way to achieve recognition among their peers. It is not just about anger, it is expressive in nature, and exciting in a context of generalised poverty and high youth unemployment. Some violent protests are associated with criminal activity. One of the legacies of putting young people in the front line in the 1990s was their brutalisation, and we may be seeing another generation of young people being brutalised.

The experience of public order police

When police experience crowds of people throwing stones or petrol bombing them, one of the questions that they might reasonably have is whether this is motivated by a desire to kill or injure them. They are vulnerable to violence, and experience high levels of fear and anxiety. Sometimes people in the crowds laugh when police get injured. While there is legitimate concern about the misuse of weapons, some POP members believe their weapons have limited effect. Protestors pick up teargas canisters and throw them back at police, and some know the difference between less damaging white rounds and more damaging blue rounds. There is not much of a sense among POP members of being able to deal with violent protests with the weapons they have at their disposal.

Accountability for the use of force

Improving accountability for the use of force in public protests is difficult. When the media is present, accountability is better, but the media is often not present. Police camera operators are supposed to record police behaviour, but they are often inclined to focus on the crowd because they are subject to informal social pressure not to focus their cameras on their colleagues.

Collecting evidence for prosecutions

Police film protest action to gather information and evidence for possible prosecutions, sometimes on the ground, and sometimes from helicopters. It would be cheaper to do these recordings using drones, require less training, and be less dangerous for operators. There are questions about what police do with the images they collect. There may be prescribed standards for the retention of images (how long, and for what purpose), but these standards are difficult to enforce. For as long as there is a problem of violent protest, it is reasonable for police and government to collect evidence to prosecute offenders for unlawful conduct.

Improving the quality of IRIS data

Good decisions about resource investments in POP require good data about protest. IRIS contains a lot of data, but it is not very useful for understanding protest because it cannot provide clear answers to questions, for example about overall levels of protest; the proportion of protests that are violent; the proportion of protests that follow notification; the proportion of notified protests that result in violence; and the proportion of non-notified protests that are violent). A team of University of Johannesburg researchers went through a sample of IRIS data and showed that the data does not mean what SAPS says it means. Some relatively small adjustments could be made to improve the system.

Addressing capacity and resource constraints

It seems clear that SAPS crowd-management capacity (POP and at station level) is inadequate for current levels of protest and violent protest. While it may not be necessary for POP units to be responsible for policing peaceful protests, many violent protests start off peacefully and become violent later. The current default position is that POP deals with violent protest.

POP officers are trained to carry out interventions in platoon formations (32 or 36 members), but evidence seems to show that intervening POP groups are deployed in groups of less than platoon strength (one, two, or three sections of eight members each). Because they cannot apply the platoon techniques in which they have been trained, they tend to rely on the standard 'RTS' repertoire, (i.e. rubber bullets, teargas and stun grenades). POP vehicles need to be replaced – the mobility of POP units relies on an aged fleet of 'hard top' vehicles.

The approach in the SAPS seems to be simply increasing the number of POP members by a factor of two and a half times. With such an increase in the number of members and units, there should be a matching increase in equipment, vehicles and bases, but it seems there is no budget available for this.

In addition to, or instead of, increasing the number of POP units and officers, consideration should be given to improving the quality of local government responses to grievances, training authorised officers and local authorities to engage in a better way with protest convenors, and training highly skilled negotiators to deal with potential conflict (the ones used in Sweden are a good example).

Suggestions for improving public order policing

Areas where public order policing can be improved are: 1) supporting peaceful protests; 2) supporting communities to get their legitimate grievances addressed; 3) supporting effective crowd management by police through: optimising the space for and likelihood of peaceful protest; de-escalating situations of potential violence; improving the command and control skills of commanding officers so that they take better decisions about when to intervene; only using the level of force that is reasonable, necessary and proportionate; and effective law enforcement against perpetrators of violence; and 4) ensuring the safety of police officers.

Areas of potential concern are: 1) the risk of political interference in notification processes; 2) the risk of political interference in police responses to protest (e.g. pressure on police to disperse peaceful protests); 3) the risk of repressive anti-democratic agendas being imposed on protests and protestors; and 4) the risk of punitive arrest, wrongful arrest and unfair denial of bail is effectively addressed.

11 Key discussion points

POP facilitates protest, where possible

A SAPS official said convenors of protests do not always know about the RGA, so POP engages with and educates them about the RGA, gives them a copy of the Act, and tells them what to do. Cooperation with convenors of planned gatherings is good. Sometimes they say they gave notice but did not receive a response. Sometimes they don't want to accept the conditions. They might want to take routes that are not operationally recommended (e.g. walking towards one-way traffic). Sometimes they change the route because of pressure from other march participants.

Maj-Gen Mkhwanazi said a section 4 meeting is there for the purpose of logistical planning. The authorised SAPS member and responsible person should already have agreed, the station precinct must be represented, and POP and planning must be put in place to mitigate risk.

A SAPS official opined that section 4 meetings must be undertaken in good faith. Political leaders do not always accept memoranda, in spite of SAPS efforts.

Balancing the right to protest and the right to counter-protest

Eldred de Klerk said the right to protest for a cause and the right to counter-protest are equally legitimate. The SAPS effectively protected both of these rights during the President's State of the Nation Address.

Should the targets of protest be compelled to engage with protestors?

Gareth Newham asked whether consideration should be given to amending the RGA to compel the targets of protest to engage with protestors to mitigate the risk of violent protest, and/or to hold them vicariously liable for damages caused by a failure to engage, and/or for police to instruct a party to be part of a meeting.

Maj-Gen Mkhwanazi pointed out that sometimes there are cases where notice has been given and the marchers arrive at the point where the memorandum is due to be handed over but nobody is available or the person refuses to accept it. Nobody can be compelled to accept a memorandum.

Brig. van der Walt confirmed that nobody may be compelled to accept a memorandum, and said the introduction of such a provision could be challenged on constitutional grounds. The notification phase is very important. It should say what type of memorandum will be handed over, and the SAPS can make arrangements for that handover to take place. Notification creates contact points to the target organisation, to the local authority and to anyone else who needs to be involved.

Should SAPS have to deal with the underlying causes of protest?

Andrew Faul asked whether POP commanders have mechanisms to solve larger governance problems, or whether they are just there to put out fires; also, whether POP engages in sector-based policing.

A conference participant said that the National Crime Prevention Strategy is clear that the SAPS is there to manage crime and the problems it may cause, not to deal with the underlying causes of protest. Some protests just require traffic management. When there is the possibility of violence because of who is involved in a particular protest, then POP has to become more closely involved.

Maj-Gen Mkhwanazi maintained that only service delivery authorities can deal with service delivery issues, but that the SAPS is engaged in wider joint government initiatives to mitigate risks to public order, as described in his presentation. It is difficult to use a sector-based policing approach in public order policing.

A SAPS official said the most difficult part of POP managing protests is to get local councillors involved. They are often not accepted by the community.

A SAPS official referred to a case where electricity was cut off and there was protest action with barricades every night to demand reconnection. POP set up a communication channel with Eskom and City Power to stabilise the situation. He said police are often used as a tool to compel authorities to address a concern. The most difficult cases are those where there are political agendas and the real cause of a protest is not clear.

Mbalenhle Matandela pointed out that the police are being asked to do the job of people who are responsible for a grievance. Section 4 meetings can restore communication channels with communities and reduce the risk of violence. Sometimes they are used to postpone a protest by making a promise that might not be kept. They should not be used for this purpose. The purpose of a section 4 meeting is to plan what will happen during a protest.

Crowd-management training in SAPS

Lt Col Govender said all new SAPS trainees undergo a four-week POP training programme, as do designated Metro Police members. POP platoon commanders and operation commanders undergo further specialised training. The level of training for members depends on the risks they face. Level 1 officials (e.g. visible policing officials, station staff and dog unit staff) face relatively little risk because the types of crowds they deal with are peaceful. Level 2 officials (POP) deal with crowds that may become violent, so the risks they face are higher, and they receive more training. Level 3 officials counter-assault teams, (CATs) are trained in tactical response that may involve facing live fire, so they

receive appropriate specialised training. Peaceful protests (Level 1) are usually handled by station-based SAPS officials and designated Metro Police. Where there is the potential for violence (Level 2), station SAPS members and trained Metro Police members are put in place, and POP is put on standby. Where violence is taking place (Level 3), POP takes command, and TRT and CATs are called in if necessary.

Should the police respond aggressively to the destruction of property?

David Peddle said police should respond aggressively when a protestor is setting fire to something, but this sentiment was strongly rejected by **Eldred de Klerk** who said that police must act to prevent crime, investigate crime and prepare dockets. At no point can the SAPS be permitted to act aggressively, he said, but rather within the laws governing the use of force.

Maj-Gen Mkhwanazi said no march starts violently, but it may become violent, depending on what is happening, and whether police are successfully defusing tension. There are clear processes that need to be followed before POP may use force.

Crowd psychology and the psychological health of POP officers

Prof. Eirena van der Spuy said the most recent work on crowd psychology in South Africa was done in the 1980s by Don Foster of the University of Cape Town. POP officials need a good understanding of crowd psychology respond to appropriately in the heat of the moment.

A member of the audience claimed that having to deal with crowd control situations every day has a cumulative psychological impact on POP officials. The threat level of crowds in Europe and North America is very different to the threat level in South Africa.

The right to information

A SAPS official said social media can very quickly fuel violence and keep criminals in contact with one another. He said it is dangerous to say that police must make all information about tactics and resources publicly available.

Bail for arrested protesters

Responding to a question about how cooperative SAPS officials regard bail for arrested protesters, **Sherilyn Naidoo** of R2P said that it differs from location to location. Sometimes SAPS officials are willing to give bail, but they receive instructions from the prosecutor not to release certain detained persons.

An NPA official said that if there are no consequences for violent protest, this will just encourage further protest.

CCWs used by POP

Lt Col Govender said the 37mm rubber ammunition that POP uses carries a reduced charge. White rubber bullets are intended for training. They carry a lower charge and have less impact. Blue rubber bullets have more impact, but still carry a reduced charge. They have a safe firing distance of 20m. In addition, POP officers are trained to skip-fire (ricochet) to further reduce the impact of a round. Water cannons are directed at a crowd from a minimum of 25m away. LRAD is currently only used for public announcements up to 600m away, and for search and rescue operations. The LRAD deterrent mode is subject to testing. Teargas may not be used in confined spaces like stadiums. Pepper spray may be used for arrest purposes, not crowd management purposes.

Andrew Faull pointed out that shotguns are associated with apartheid-era policing and consideration should be given to using other weapons instead.

POP vehicles

A **SAPS official** pointed out that the POPs Casspirs and Nyalas are ageing, and the unit is considering acquiring APC personnel carriers that are suitable for live fire. There are very few Nyalas. These are used to extract important people, victims or POP members from dangerous situations. POP is hoping to procure 25 new-generation Nyalas (currently under testing) to replace the old ones.

Career-pathing for POP members

A **SAPS official** said the average age of a POP member is 52 and there is an effort to bring in new blood. Members should have a career path.

Sean Tait said that SAPS career pathing might include the possibility of being trained as an expert negotiator whose job it is to defuse tensions in a protest situation.

12 Closing

Gareth Newham said he hoped that any future SAPS decisions will be taken by a National Commissioner of Police with impeccable credentials and integrity, given that the past three permanent SAPS National Commissioners terms of office ended in disgrace. Furthermore, that decisions related to public order policing should be undertaken in consultation with experienced operational officers who are able to think through the consequences of their decisions very carefully. There should also always be broader consultation with key stakeholders outside of the police before the SAPS embarks on large scale restructuring that will impact on how it engages with communities. **Sean Tait** thanked the speakers and participants for participating in the event and invited participants to send any case studies to him for possible inclusion in a publication about public order policing in South Africa.

Endnotes

1. Available at http://www.achpr.org/files/instruments/policing-assemblies-in-africa/achpr_guidelines_on_policing_assemblies_eng_fre_por_ara.pdf
2. State institutions supporting constitutional democracy listed in Chapter 9 of the Constitution of the Republic of South Africa, 1996.
3. Hlatshwayo Z (2006) *Intabazwe: A Portrait of a Revolt*, p. 11. Cited in SAHRC report in the matter between the Council for the Advancement of the SA and the SAPS on the death of Andries Tatane, file ref FS/2011/0009 <https://www.sahrc.org.za/home/21/files/Report%20Comm%20%20SA%20Police%20Service%20301012.pdf>
4. <https://www.sahrc.org.za/home/21/files/Report%20Comm%20%20SA%20Police%20Service%20301012.pdf>
5. Renn O, Jovanovic A & Schröter R (2011) *A Theoretical Approach towards Understanding Social Unrest*. Stuttgart: European Virtual Institute for Integrated Risk Management. p. 22.
6. Vvon Holdt K, Langa M, Molapo S et al. (2011) *The Smoke That Calls: Insurgent Citizenship, Collective Violence and the Struggle for a Place in the New South Africa: Eight Case Studies of Community Protest and Xenophobic Violence*. Johannesburg: Centre for the Study of Violence and Reconciliation.
7. Adv. Tlakula has been appointed as Chairperson of South Africa's Information Regulator.
8. From Applied Law & Technology (ALT).
9. Power's presentation was based on a legal opinion prepared by Adv. Matthew Chaskalson, SC, Adv. Le Roux, and Adv. Linda Dandadzi-Dyirakumunda.
10. International Association of the Chiefs of Police (IACP) (2001) *Police Use of Force in America*. Alexandria, VA: IACP.
11. Prof. Heyns was the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions between 2010 and 2016, where he dealt extensively with the right to life, the death penalty, deaths in custody, and the use of force. He is currently a member of the UN Human Rights Committee, a body of independent experts that monitors the implementation by State parties of the International Covenant on Civil and Political Rights.
12. Written by Rohini J Haar and Vincent Iacopino. Available at: <https://www.aclu.org/report/lethal-disguise-health-consequences-crowd-control-weapons>
13. Toll-free number 0800 212 111.
14. Von Holdt K, Langa M, Molapo S et al. (2011) *The Smoke That Calls: Insurgent Citizenship, Collective Violence and the Struggle for a Place in the New South Africa: Eight Case Studies of Community Protest and Xenophobic Violence*. Johannesburg: Centre for the Study of Violence and Reconciliation.
15. For which seven SAPS members were acquitted in March 2013.
16. One of the 34 fatalities was the result of a shooting with a 9mm weapon by POP members. The killings were preceded by various acts of violence including killing of two SAPS members by strikers on 13 August.
17. For which one SAPS member was convicted and sentenced to 20 years' imprisonment.

Participants

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|---|---|
| Mr Eldred de Klerk | AFRICA Analysis |
| Adv. Pansy Tlakula | African Commission on Human Rights and People – Chair |
| Mr Sean Tait | African Policing Civilian Oversight Forum |
| Ms Louise Edwards | African Policing Civilian Oversight Forum |
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| Mr Stephen Heyns | Consultant |
| Mr Lawson Naidoo | Council for the Advancement of the South African Constitution |
| Mr David Bruce | Independent researcher |
| Mr Gareth Newham | Institute for Security Studies |
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| Adv. Maseyani Chauke | National Prosecuting Authority |
| Mr Chumile Sali | Social Justice Coalition |
| Commissioner Nissen | South African Human Rights Commission |
| Brigadier Johannes van der Walt | South African Police Service |
| Brigadier Ellah Nomalanga Binqela | South African Police Service |
| Brigadier Ameliah Mashego | South African Police Service |
| Colonel Alfred Ratema | South African Police Service |
| Lt Colonel Nndanduleni Samuel Mudua | South African Police Service |
| Colonel Johannes Beeslaar | South African Police Service: Public Order Policing |
| Maj-Gen Zephania Mkhwanazi | South African Police Service: Public Order Policing |
| Lt Colonel Intheran Govindasamy Govender | South African Police Service: Division HRD |
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| Mr Musa Mgenge | Western Cape Police Ombudsman |

The African Policing Civilian Oversight Forum

The African Policing Civilian Oversight Forum (APCOF) is a not-for-profit trust working on issues of police accountability and governance in Africa. APCOF promotes the values which the establishment of civilian oversight seeks to achieve, namely: to assist in restoring public confidence; developing a culture of human rights, promoting integrity and transparency within the police; and good working relationships between the police and the community. While APCOF is active in the field of policing, its work is located in the broader paradigm of promoting democratic governance and the rule of law.

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The Legal Resources Centre

The Legal Resources Centre (LRC) is South Africa's largest public interest, human rights law clinic. Established in 1979, we use the law as an instrument of justice for the vulnerable and marginalised, including poor, homeless and landless people. The LRC has four offices in Cape Town, Durban, Grahamstown and Johannesburg.

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The conference and this publication received financial support from the Open Society Foundation for South Africa.

