

YOU STRIKE A GATHERING, YOU STRIKE A ROCK

Current debates in the policing of public order in South Africa

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This article aims to reopen the debate about public order policing in South Africa. Rising levels of violent localised protest and increased brutality in policing such events, as well as recent draft policy guidelines on restructuring public order policing by the Ministry of Police, necessitates informed debate. Protest events, in particular violent and localised protests, are likely to increase in the years to come; it is thus an appropriate time to engage in a serious reconsideration of the best approaches to policing these events. This article offers recommendations for a model of public order policing in South Africa that is more effective and respectful of human rights.

The right to freedom of assembly was one of the earliest and among the most significant victories of the democratic transition in South Africa. This right holds an important space in the psyche of South Africans and is protected by the Bill of Rights and the South African Constitution. Like all rights it is subject to limitation, most notably that it must not infringe on the rights of others. The Regulation of Gatherings Act (205 of 1993) balances these demands.

In recent years, there has been a noticeable increase in community protests.¹ The protests and xenophobic violence that swept across South Africa between 2008 and 2009, preparations for

the FIFA World Cup, and the widespread service delivery-related protest action in 2010 and 2011 have shifted our attention back to how we police public order. This refocused attention comes at a time when the policing of gatherings and protests has taken on an increasingly violent and seemingly uncoordinated form, and is in need of review.

While in the mid-1990s it seemed that South Africa was headed toward internationally acceptable modes of policing public order, the ugly face of past methods of 'crowd control' have again come to the fore in recent years. According to the Independent Complaints Directorate (ICD) there has been an upsurge in cases of police brutality since 2006, reaching its zenith in 2009.² The ICD recorded a year-on-year increase of alleged cases of brutality in relation to public order policing from five cases in 2006, 16 in 2007 and 25 in 2008,

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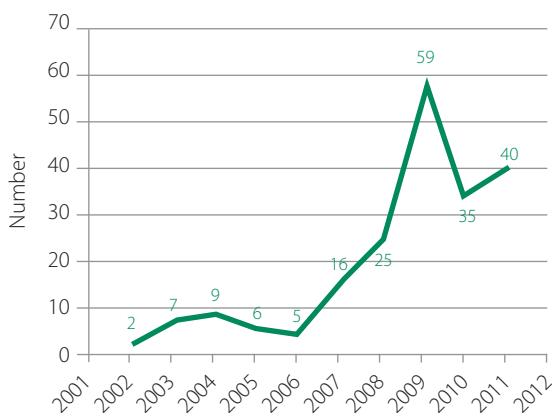
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to 59 cases in 2009 (see Figure 1).³ The overwhelming majority of cases were assault with intent to do grievous bodily harm, attempted murder and murder.

The Public Order Policing (POP) Unit is a specialised competency largely located in the Crime Combating Units and Tactical Response Team established within the South African Police Services (SAPS) to deal with crowd management situations. Police stations are expected to deal with localised crowd management situations and to call for the assistance of the POP should the situation become difficult to manage. All station members who engage in crowd management activities are supposed to be trained in this specialised form of policing, but this is generally not the case.⁴

Most police members accused of brutality while responding to public protests were from 68 stations, followed by allegations of 45 incidents that involved both POP and station members.⁵ Forty per cent of the victims were not involved in the protest marches or demonstrations taking place at the time, but were bystanders or onlookers. This is an indication of poor public order policing, as both protesters and onlookers should be protected by the police according to legislation governing the policing of gatherings, and in accordance with international standards of such policing.

Figure 1: Allegations of police brutality per year



Source: Independent Complaints Directorate, Briefing on crowd management. Presentation to the Portfolio Committee on Police, 30 August 2011, Cape Town.

As Figure 1 shows, the radical shifts that took place in public order policing in the mid-1990s, the effects of which were felt up until 2006, seem to have been reversed.⁶ The policing of public order is again in the front pages of the media with widespread condemnation of the slide back to the use of ‘unnecessary and provocative violence.’⁷ In many instances when the police have responded to public disorder and protest, police action has led to an escalation of confrontation, and even to street battles.⁸

Concomitantly, there has also been criticism of the police for neglecting their duty to create spaces for public order and social harmony, as required by the Regulation of Gatherings Act (205 of 1993). The Centre for the Study of Violence and Reconciliation (CSVR) conducted research that indicated that there was a noticeable absence of policing of violent protests.⁹ This has also been noted by community organisations and community policing forums, as well as political and corporate entities.¹⁰

Meanwhile, the principles and processes outlined in the Gatherings Act are no longer consistently being adhered to, which has serious negative consequences for police legitimacy and support. The strong-arm approach of the police to such events, as well as the relatively high levels of arrests of ‘instigators’ of protest action¹¹ lend credence to allegations that the democratic right to peaceful protest no longer appears to be guaranteed, and that demonstrations and protest have been criminalised.

The pressures on the provisions of the Gathering Act are complex. Recent research reveals that much of the protest action, while cast within a veneer of citizens’ access to rights and as protest against corruption, is actually far more ambiguous and contradictory, often pitting factions of the ruling elite against each other in violent political struggles for dominance and access with subaltern masses, such as shack dwellers.¹²

It is important to understand why protest action has increased and why the policing of public order has reverted to brutality. In this article we

examine what has happened to public order policing, and suggest some potential remedies. Many of the observations and comments made in this article are based on informal discussions or email conversations with high ranking police officers who have been involved with public order policing over many years. The authors also draw on information gleaned from participating in meetings held by government about public order policing. Lastly, one of the authors (Marks) has conducted an extensive ethnography of the Public Order Police over a period of three years. She maintains contact with individuals from this unit and has regular discussions about what has occurred within the arena of public order policing over the past 17 years.

UNDERSTANDING THE RECENT RESURGENCE IN PROTEST ACTION

There has been a dramatic increase in public protest in South Africa in the post-apartheid period, particularly in the last ten years. Most of these protests and demonstrations are a response to particular manifestations of exclusion, poverty and marginality. The protests are pragmatic responses to everyday hardships and are likely to escalate further with the continued absence of concrete measures to address problems of service delivery, inequality and poor governance.¹³

The majority of service delivery protests are localised and contained in rural townships and informal settlements on the margins of towns and cities, with unrest rarely spilling into the city centres.¹⁴ The form that mobilisation has taken is described by Ballard *et al*, drawing on the work of Raymond Williams, as ‘militant particularisms’, aimed at opening up new terrains of political and social struggle. Having said this, there are also frequent protests and demonstrations organised by trade unions in city centres. Many of these are poorly planned and managed, and have led to battles between police and union supporters.

Given the militarism of these largely localised, collective actions, protest action has become more violent and is marked by confrontation between police and protesters.¹⁵ In 2010-11, for example, the

police responded to 11 681 gatherings. Of these 972 resulted in some form of violence and 629 were classified by the police as unplanned.¹⁶ In a dynamic unnervingly similar to the apartheid days, ‘the arrival of police from outside the local precinct signalled a shift to violent repertoires usually in response to police violence.’¹⁷ This point is made clearly by Karamoko and Jain who document the frequency and nature of service delivery protests in South Africa in the past five years, using newspaper reports.¹⁸

Deaths of protesters have become a feature of public protest, with the violent death of Andries Tatane at the hands of the police in Meqheleng outside Ficksburg in April 2011 becoming a symbol of problematic public order policing.¹⁹ The Tatane incident is not isolated, but received more public attention than other similar instances as it was recorded live, and carried by all major newspapers and television channels. The extreme use of force by the police in this case led to condemnation of the police by the press, human rights groupings and politicians. Tatane’s death was widely viewed as a symbol of injustice, poor policing and the lack of responsiveness by government.

It is important to reflect on why public protests and demonstrations have become so disorderly. We would like to suggest three reasons:

- Firstly, service delivery failures have led to widespread discontent, especially within very poor communities, at the local level²⁰
- Secondly, many protests are characterised by groupings mobilised in a fairly *ad hoc* way around issues, often in opposition to authorities²¹
- Thirdly, local civil society groups lack the support of established entities such as political parties or unions, which in earlier times provided various forms of ‘capital’ for these groups to function effectively.²²

The seeming incapacity of state and public institutions to respond proactively to public concerns and needs, and government’s reluctance to take decisive action, has diminished the public’s faith in government and state institutions. This

leads to rising levels of dissatisfaction and anger among those receiving poor services and observing corruption (whether real or perceived). As a result, as Malaquais puts it, 'for many average citizens, the sense is that the only way to get attention of government is by burning tires, barricading roads and engaging in other forceful displays of frustration'.²³

In addition, many 'organic' community groups fail to apply for permission to protest in accordance with the Regulation of Gatherings Act 205 of 1993 (RGA). Public protest thus takes on a spontaneous form that the police consider to be 'illegal' as it does not conform to the requirements of the law.

As protests have become increasingly violent and haphazard, so too has the policing of these events.²⁴ Police often no longer adhere to the principles or procedures of the Regulations of Gathering Act (RGA). The RGA was drafted to give effect to the right to protected and democratic policing of demonstrations and protest, making a clean break from the draconian apartheid jurisprudence which severely limited the rights to protest, demonstrate and gather collectively. According to the RGA, local authorities, police and the convenors of gatherings should work together to plan and manage public gatherings.

The role of local authorities (usually municipalities), according to the RGA, is to confirm the parameters of time and place within which demonstrations will take place in exchange for guarantees by the organisers that measures have been put in place to ensure the demonstrations are peaceful and orderly. Such permission should only be denied in exceptional circumstances. The police are expected, according to the RGA, to protect the rights of protesters and demonstrators. The police may disperse a gathering if they have reasonable grounds to believe injury to persons or damage to property is likely or has occurred. Proportional and reasonable force may be used after sufficient time has passed following an order to disperse, and after negotiations between the police and the organisers. For a number of years

after the Act was promulgated, violence associated with mass demonstrations was reduced to virtually nil. Yet this is no longer the case.²⁵

There are many explanations for why this shift has occurred. These include the way in which gatherings are managed; deficits in the system of notification; the role played by the police; the lack of capacity of local authorities; the way intelligence is monitored; and the lack of capacity of the police responsible for public order policing to negotiate with protestors.

THE POLICE IN PUBLIC ORDER POLICING

Soon after the democratic elections in 1994 the SAPS began to address the need to ensure democratic policing of public order. The tarnished Internal Stability Division that was created in 1992 was renamed the Public Order Police (POP) unit in late 1994, and all members of this 'new' unit were retrained and instructed to follow new policy guidelines. Their training, largely designed by the Belgian police, was geared toward the policing of protest in line with international standards.²⁶ POP training focused on a shift from the 'control of crowds' to the 'management of crowds'. POP members were required to think about ways of policing crowds that resulted in minimal use of force, to negotiate with convenors and authorisers about policing plans and outcomes, to employ policing tactics that demonstrated tolerance, and to make use of weapons and equipment that fitted the new framework for crowd management. The primary function of the highly centralised POP unit was public order policing. The secondary function was crime prevention and combat.²⁷

However, even whilst this unit was being restructured, there was a longer term plan in the mind of police leaders to decentralise public order policing. In a second round of 'restructuring' most of the newly retrained POP members were deployed to stations where they were meant to guide local visible police in the policing of public order events. However, the required in-service training did not occur, leaving the stations ill-prepared as first responders to crowd events.²⁸

In addition, the significantly reduced POP unit itself was also restructured and renamed the Crime Combating Unit (CCU) in 2006. This unit's primary function was no longer crowd management, but crime control. Its original core mandate was watered down, while ongoing training in crowd management philosophy and strategy fell away.

These restructuring processes have proven very disruptive of public order policing capacity.²⁹ The result has been a loss of capacity, morale and the *esprit de corps* that once existed. This restructuring process shifted focus away from the specialist skills developed so painstakingly in the mid-1990s and is reason for concern given the increases in (volatile) protest action.

An additional problem confronting those police responsible for public order policing has been the introduction of additional layers of 'paramilitary' police, such as the Tactical Response Units (TRU), into public order management. Many of the members of these units lack training and skills in the democratic policing of public order events.³⁰ This has led to problems with co-ordination during public order events. The CCU was mandated to co-ordinate the actions of the stations and the Tactical Response Unit at protests. Members from the stations who are deployed to public order events are generally not provided with appropriate briefing, equipment or training. The result is that they tend to resort to heavy-handed tactics very rapidly. They do not display commitment to the principles of minimal or proportional use of force, tolerance or negotiated arrangements. Lines of accountability have also become blurred and it has become difficult to identify which units and individuals have been unnecessarily violent or rough with protesters.³¹

In 2011 the CCU's name was changed to the Public Order Police, signifying an attempt to once again assert the primary function of the unit as the management of crowds. The POP carries with it the same limitations of the CCU, and as a result this new phase of restructuring requires careful attention.

THE NEXT STEP IN PUBLIC ORDER POLICING

The organisation and structuring of public order policing in South Africa is in a state of flux. The Minister of Police publicly acknowledged this at a recent conference on public order policing in South Africa hosted by the Defence Web at Gallagher Estate in October 2011. In his presentation he stated that public order policing has been under review since August 2011.

The Ministry is now proposing to revert to having a sizeable specialised public order unit whose primary function is crowd management. In September 2011, the Ministry of Police devised a (draft) policy document aimed at re-establishing a dedicated and well-trained national public order police capacity.³² According to this document, the Ministry seeks to organise such a dedicated unit along the lines of the 'French Model' of public order policing that was used during the preparation for the FIFA World Cup.

The French model is preferred because it allows for 'closer contact' between police and protesters, thus providing the 'opportunity to restrain forward movement of the crowd and the possibility for snatchers to pick on certain individuals who are thought to be the most provocative within the crowd.'³³

In rethinking the organisation and strengthening of public order policing, the Ministry recognises the need to develop enhanced and on-going training; deepen an appreciation of the legislative and rights-based framework within which protests occur; and strengthen command and control. Such a public order police unit, the document posits, must be prepared for both planned and spontaneous public protests and must adhere to the procedures laid out in the RGA at all protest events. Contingency plans must be developed for spontaneous protests so that confrontation does not escalate between the police and protestors, and public order is restored as quickly as possible.

The authors of this article welcome the openness with which the Minister and his policy advisors have approached the the debate on the restructuring of

public order management. We would like to offer a few observations in this regard. In the authors' view, South Africa should be wary of adopting the French model in its entirety. While the French Gendarmerie is viewed as highly professional they have also been the subject of serious criticism. The Gendarmerie police who are involved in public order and riot control operations are geared to intervene rapidly, ensuring physical control of any urban territory. They rely heavily on space saturation techniques, employing the symbolic use of force. When public disorder occurs, they make use of a massive and intimidating police presence in order to confine protesters or rioters to a particular urban zone.³⁴ While they are no doubt effective, they are criticised as being 'paramilitary' and very distant from the communities they serve.³⁵ They operate on a strict system of command and control and apply quasi-military training, equipment, philosophy and organisation to difficult public order policing situations. They tend to prepare for the worst possible circumstances/outcomes, frequently resorting to strong-arm tactics.

These tactics are simple and effective in the short term, but have resulted in an uneasy relationship, in France, between the Gendarmerie and marginalised communities.³⁶ Tensions at the local level have been aggravated by saturation and targeted police tactics. The achievement of order maintenance objectives has created a 'smoke-screen' for hiding deeper, underlying social and political problems.³⁷

While paramilitary units are effective in controlling crowds and restoring 'order', the dangers of a paramilitary approach to demonstrations and protests is that 'group tactics, automatic weapons, and infrared scopes all displace and preclude the social skills, forbearance, and individual discretion essential to accountable and effective civilian policing'.³⁸ Strong-arm tactics by the police, while effective at stopping physical disorder in the short-term, are likely to reinforce the alienation and mistrust that certain more marginalised sectors of the public feel toward the police.

In choosing to move forward with a unitary, specialised, paramilitary public order police unit,

we need to be cautious of the effective containment of public protest being weighted more heavily than socially just outcomes.³⁹ A paramilitary approach is, for the most part, more interested in state protection than in upholding the rights and civil liberties of citizens. The SAPS needs to identify useful techniques and tactics from a range of international models that have proven to be effective, while bearing in mind the longer term principles of democratic policing.

The model that is developed for public order policing in South Africa should be determined by a careful consideration of the relevant legal framework and local social context. This uniquely South African model must be underpinned by respect for human rights and an acknowledgement of the dire circumstances that the majority of South African residents find themselves in. Police engaged in the policing of gatherings or public disorder need to be trained (or retrained) in crowd management, in much the same way that the Public Order Police Unit was trained after 1995. New training should be interactive and geared toward producing professional police officers who are familiar with relevant legislation and policy geared toward the democratic and peaceful policing of gatherings and protest.

A clear line of command needs to be outlined, agreed upon, and set in place so that the management of public order is smooth and efficient. Those that do not adhere to procedures, policies, principles and command structures need to be monitored and disciplined by the relevant police monitoring bodies. All members involved in the policing of public order must be issued with appropriate, non-lethal equipment. A small back-up unit should be available to the POP units when crowds become uncontrollable and dangerous. Drawing from the French model, this unit would be trained in more interventionist models and techniques. Systems for proper and effective reviews, debriefings and monitoring of performance need to be established and commanders need to ensure that they can account for the planning and outcomes of all public order events. This requires commanders, particularly at the middle management levels, to be present during public

order operations. At present, this is not the case.

In taking the next step in recreating public order policing in South Africa, the SAPS management needs to recognise that protests and demonstrations are likely to increase and that SAPS resources should be allocated to (re)training courses, facilities, and policy making.

CONCLUSION

A clear understanding by the police of the tasks and challenges they face will have a strong influence on when or even whether to resort to strong-arm tactics in complex public order situations. Appropriate training of the relevant police, however structured, is essential, as are ways of shifting the mind-set of police with regard to the right to protest and demonstrate. Heavy-handed responses to gatherings and protest need to be carefully monitored. In order for there to be a positive shift police members and units involved in public order policing need to feel safe and secure. This requires an effective management and accountability structure, and action to ensure that all members engaged in such policing are appropriately equipped. During the actual protest, a preoccupation with law and order should, as far as possible, give way to the narrower focus of preserving the peace, and protecting people and property against harm.⁴⁰

In addition, it is imperative that the existing Regulation of Gatherings Act be reviewed in the light of the current manifestations of protest and assembly. At the same time a national campaign is needed to inform citizens about the legal framework and acceptable procedures for conducting protests and demonstrations. Citizens and civil society groupings need to be aware of their own rights and responsibilities with regard to protest and demonstration, as well as the rights, mandate and responsibilities of the police in public order situations.

In making choices about how public order policing is structured, and in particular in evaluating the French model, we need to take heed of the warning given by Alice Hills.⁴¹ Para-military

solutions do assist with dealing with 'security gaps'. However, Hills warns, in post-conflict and newly democratising countries, the presence of paramilitary forces may be seen as reminders of political repression, thus creating more problems than they solve.⁴²

Before engaging in yet another restructuring process, it would be wise for the police's political masters and managers to engage in public discussions about the relative merits of the different models and techniques that are available to them. The scholarly community should be called upon to provide a theoretical framework for such deliberations. Ultimately what we want are public order police officers who are deeply conscious of citizens' constitutional and other rights, are firm and impartial, and operate in ways that are professional. The best that we can hope for is a contextually and situationally appropriate South African model of public order policing. We suggest that police should be informed (in their ongoing training and in briefing meetings) about the motivation behind protests and why they are (at times) violent in nature. Such an understanding would assist to make police members sympathetic representatives of a democratic state. In so doing, police may become advocates for social justice who are concerned with creating a society based on the principles of equality and solidarity, underpinned by the values of human rights, and recognising the dignity of all human beings.

This in turn is likely to reduce the potential for violent protest, thus rendering the job of the police less delicate and controversial. Such an approach fits well with a more community-oriented approach to policing and it provides police commanders with a framework for devising a range of tactical options available to them in developing operational plans.

The police cannot 'fix' the underlying problems that result in public protest and demonstration. But, as Peter Manning reminds us, the police can put in place a 'set of routines intended to produce a degree of certainty in managing fundamentally problematic yet recurrent situations'.⁴³ At the very

least, in a democracy, the strategies and techniques of the police need to be in line with the constitution and with legislation that upholds basic rights to protest and demonstrate without infringing on the rights of those who are not involved. Police engaged in public order policing must adhere to the 'rules' of democratic policing, which include embodying values respectful of human dignity, adhering to due process, intervening in the life of citizens only under limited and carefully controlled circumstances, operating in equitable ways, and being publicly accountable. As Jean-Paul Brodeur puts it, the police need to demonstrate to society that there are systems for dealing with conflict in a systematic, reasonable and transparent manner.⁴⁴



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