A REVIEW OF PUBLIC ORDER POLICING IN SOUTH AFRICA: REFLECTIONS AND CONSIDERABLE INTERVENTIONS

Abstract

Protests are considered an avenue for people to be heard by their governments. In South Africa protests occur quite often perhaps indicating that citizens make frequent demands. There is considerable agitation for the safety of lives during protests. Therefore, to ensure that protests are peaceful, the police are frequently called in. Sadly, during the so-called peaceful protests, lives are often lost. This research is triggered by the need to understand why many lives are lost in the hands of the police during protests in South Africa. The essence of this is to see whether there are interventions that need to be in place so as to curtail the high rate of casualties during protests. The study was qualitative adopting a documentary analysis approach. The study found among others that there is a need to review public order policing in order to eliminate the killing of protesters and or those charged with policing them. Some interventions are also discussed.

Keywords: Public order policing, Marikana massacre, Apartheid, Mine workers’ protest, South Africa Police Services, the French model of public order policing, Farlam Commission of Inquiry

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1. Introduction and Background

On August 16 2012, the Marikana mineworkers’ protest ended tragically. This assertion is based on news reports that the police shot and killed 34 of the miners. Public opinion has referred to that incident as probably the worst since Apartheid, comparing it to the Sharpeville and Soweto police shootings of that era. Criticism of the South African police has gained traction in recent years given its characterization as users of ‘undue’ force against unarmed citizens. According to the South African Constitution (Act 108 of 1996), the public has the right to protest while the police are obliged to ensure safety. It is therefore not abnormal for the public to expect a sympathetic police force to provide security at such times. The police form part of the security services, therefore one of their key functions is to provide security and protection to the public of South Africa, even during protests. Unfortunately, South Africa is considered an unequal society (Hearn, 2000; Ashman, Fine, and Newman, 2010) and those who feel marginalised protest to get their voices heard (Li, Liu and Li, 2012). Sadly, significant literature confirms that the relationship between the public and the police is tumultuous (Sunshine and Tyler, 2003) owing to distrust of the police by the public.

There are policies in place pertaining to police functions and conduct in terms of public order policing (POP); however, one questions whether these policies are adhered to given the intensity and frequency of riots as well as the deaths that occur. It is against this background that this article sets out to study public order policing in South Africa.

This research will endeavour to further previous studies with the goal of understanding the problems facing the police in terms of protests and whether new policies can improve the Public Order Policing Service (POPS) during protests so as to reduce casualties. This study is limited to the timeframe 2009 to 2014, because we believe that the use of force by police during protests seem to have escalated during this period. In fact, Bruce (2012) gives an instance where “two people were also killed during a demonstration in Thandakukhanya Township near Piet Retief in Mpumalanga in 2009.” He further asserts that “There was … an escalation from 2010, with three people killed by police in that year. During a period of less than five months, from the middle of February 2011 to the beginning of June 2011, eleven people were killed in demonstrations. The killing of Andries Tatane on April 13 2011 was part of this pattern of killing.” On January 23, 2014, Timeslive reported a major incident involving the killing of a protester by the police. The paper also noted that that was the sixth person to have been killed by the police since the year. The same paper also presented what it a called timeline of South African police shootings. Here, it chronicled among others, a protester that was killed by the police during a protest by farm workers in De Doorns. There was a report of a protester who was killed in Brits by police because he was protesting the lack of running water. Till date, the Marikana incident of 2012 is considered an event with the highest number of deaths caused by police during protests.

Next, we review literature on POP and police use of force in order for us to understand what these terms truly mean. We also examine the necessity for use of force during POP and thereafter we question policies and legislation relating to POP since 2009. We adopt the Marikana massacre as our case example. The research method is discussed afterwards as well as our findings. This led us to a few interventions followed by our concluding remarks.
2. Literature review

2.1. Public order policing and police use of force

Loosely put, public order policing (or policing of public order) refers to the management of a crowd in order to prevent harm to the crowd or a member of the crowd and or to those usually entrusted with upholding law and order (such as the police or law enforcement agents). de Lint (2005) describes it as ‘the use of police authority and capacity to establish a legitimate equilibrium between governmental and societal, collective and individual, rights and interests in a mass demonstration of grievance’. On many occasions however, POP has resulted in deaths. In South Africa, examples include Andries Tatane [2011]; the Marikana incident [2012]; Letsekang Thokoene [2013] and many others. The incidents listed above are attributed to undue use of force during POP.

Several calls have been made for a review of public order policing both in South Africa and many parts of the world (Ndlovu and Bruce, 2011; Bruce 2012). There is no doubt that these calls are on the strength of the mass killings of civilians during protests. However, in places such as the United States of America, public views about law enforcement have changed in the era of counterterrorism that has followed the attacks it has witnessed (Sunshine and Tyler, 2003). While law enforcement agents may be in agreement that POP is necessary, they nonetheless battle to draw the line between when to use force during POP and when not to. This question boggles the minds of many, including the authors especially when one considers that often, lives – those of officers and civilians - are lost during POP. To reduce and or significantly eliminate this, especially from the police’s side, force is applied. The question therefore is what is the reasonable level of force to use in POP? This is difficult to determine considering Wittie’s (2011) submission that ‘the term reasonable, when used to justify the use of force, is sometimes difficult to interpret’. Although Wittie agrees that the use of force is inevitable in police work, he laments the determination of the ‘reasonableness’ of the use of force by a distrusting public whose perception of the police is negative. Given this, Wittie reminds police officers that “… public perception of what is reasonable is extremely important’.

Wittie’s thesis therefore begs a further question: What is required during POP?

2.2. Enforcing use of force during protests?

The South African Constitution stipulates in Section 205 (3) that the “functions of the police include: to prevent, combat and investigate crime; to maintain public order; to protect and secure the inhabitants of the Republic and their property; and to uphold and enforce the law.” In view of this, in a number of incidents of protest, it is arguable that the police have not been complying with its function to uphold public order by ensuring the safety and protection of the citizens of this country. This is against the backdrop of the lives that are lost during protests.

The right to public gatherings is stipulated in the Regulation of Gatherings Act (205 of 1993) that was promulgated “to regulate the holding of public gatherings and demonstrations at certain places”. The Act clearly indicates the public's right to protest when they have grievances to get government's attention and to get it to respond to their demands. The Act likewise stipulates that its basic premise ‘is that every person has a right to peaceful participation in gatherings – with the protection of the police.” This reiterates the police’s mandate to protect people during protests, which in some
instances have not been the case, as protesters have been fatally shot and even killed by the police.

The *SAPS Standing Order No. 262 states that the use of force must be avoided at all costs and members deployed for an operation must display the highest degree of tolerance. This suggests that use of force and dispersal of crowds must comply with the requirements of Section 9 (1) and (2) of the SAPS Act which refers to allegations of misconduct by officers. The standing order further puts in place the procedure(s) to be followed by the police if negotiations fail in a public gathering which exposes the lives of people and property to danger. The standing order also prescribes the requirements to be followed by the police if the use of force becomes unavoidable. Our assessment is that the police did not adequately perform this function during those instances where a number of protesters were injured. Instead, the police’s recourse to the use of force as a method in dispersing crowds exposed the protesters’ lives to danger.

2.3. Interrogating POP policies and legislation

While there is the public order policing policy (refer to DefenceWeb, 2011), it is unclear whether the policy has the potential to address the issue of the use of force during protests by the police. This is against the backdrop of the statement of the Ministry of Police (2011, p. 9) who questioned whether the “current training of SAPS is still relevant and appropriate, whether training is done in the context and understanding of the Gatherings Act and whether the SAPS training manuals support the background of the public order policing.” This is a significant admission that the police are not equipped to deal with the present form of protest experienced in South Africa.

As POP and police use of force occupy the minds of many, several workshops have been staged to try and understand how best to manage POP. For instance, at a workshop in Johannesburg, a ‘use of force policy” was discussed. Ndlovu and Bruce (2011) saw that as an opportunity to ensure that “ethical practices, higher levels of accountability, effective monitoring, issuing of appropriate equipment, proper training and improved community relations” were upheld among members of the police services. It is again unclear why this policy has not been considered since the workshop, as there has been no further development subsequent to the workshop of any authority exhibiting an interest in this policy, which according to the authors would be valuable to SAPS performance.

3. A case example: The Marikana protest

The Marikana tragedy of August 16, 2012 remains a day many South Africans will not forget in a hurry. It was a day several mineworkers were shown on national television protesting and later gunned down by the police.
According to Alexander (2013), this incident was described by many in several forms ranging from ‘the turning point’ (Legassick 2012; Pityana 2012); a ‘tipping point’ (Gumede 2012), and as a ‘tectonic shift’ (Smith 2012). The notable George Bizos also described it as a ‘watershed moment’ in South African history (Tolsi, 2012). In fact, Peter Alexander (2013) aptly labelled it ‘The Marikana Massacre’. Some commentators have even gone as far as saying that had it not been for the attention the killings received in the media the government may have swept it away with a lacklustre panel of investigators. Thus, a Marikana Commission of Inquiry was born.
The Marikana Commission of Inquiry was set up by President Jacob Zuma to investigate the deaths of 44 mineworkers; 34 at the hands of the police (Justice and Constitutional Development of the Republic of South Africa (JCDSA) (2012, p. 1). The JCDSA also indicated that the inquiry would be conducted to investigate the roles played by Lonmin, the South African Police Service (SAPS), the Association of Mineworkers and Construction (AMCU), and the National Union of Mineworkers (NUM) before and during the strike and what measures could have been in place to prevent the tragedy (2012, p. 2).

The retired judge Farlam was appointed to chair the inquiry, which was termed the Farlam Commission of Inquiry. It was pointed out by Evans (2013) that the judge would examine the “nature, application and extent of standing orders, policy and other relevant legislation that gave rise to the events at Marikana.” The judge was to determine whether those in charge of executing the standing orders indeed implemented them prior to and on the day the miners were killed. The judge was also to establish which of the commanding officers gave the instructions to shoot using live ammunition (Evans, 2013). Interestingly, the police admitted to parliament a year prior to the Marikana incident, that there was need to review the standing order which they felt did not assist them during protests (Evans, 2013).

Having sat for three years, the findings of the Farlam Commission of Inquiry were finally released in June 2015. In the main, the findings point to a weak POP structure that needs serious overhauling.

4. Methodology

4.1. Research design

The study took a qualitative approach. Marshall and Rossman (2006) assert that qualitative research design has progressively developed more significant methods of review for the social sciences and applied fields such as community development, management and social work. Daymon and Holloway (2005) also describe the qualitative method as helpful for grasping and making meaning of participants' experiences. There is therefore an indication that the qualitative method seeks to determine the meanings that participants attach to their behaviour, what their perceptions are on specific issues, and how they interpret situations. Consequently, a qualitative approach is vital in realising things in their most natural state. Given the above, this study considered the qualitative approach as a more suitable research design.

4.2. Documentary analysis

This is a method of analysing documents that comprise ideas about the phenomenon one wishes to research (Bailey, 1994). The documentary analysis approach is a technique used to study, classify, construe and recognise the boundaries of physical sources, most frequently written documents, whether in the public or private sphere (Payne and Payne, 2004). Dey (2005) argues that “in documentary analysis, the criteria for selecting documents, or for focusing on particular extracts, should reflect the issues on which the researcher is seeking evidence.” This study sourced documents, such as legislation, government reports, government reviews, policy documents, the Constitution of the Republic of South Africa, Acts of Parliament and media reports. The use of these documents allowed the researchers to understand this study from the perspective of scripts that were written with a purpose. Moreover, we considered these
sources because of our view that they contained reliable information therefore suggesting sufficient authenticity.

5. Findings

The findings are discussed within the context of use of force during public order policing but more specifically the Marikana saga.

5.1. Key problems facing the police regarding protests

The study identifies three major challenges that the police face regarding protest management.

5.1.1. Inadequate public order policing

Adequate public order policing entails a number of important elements. Firstly, a skilled police force with the necessary paraphernalia could have averted the massacre of the miners. Inadequate POP has been attributed largely to incapacity; in terms of poor training and implementation of the policy on POP. Mandy de Waal (2012) writing for the Daily Maverick said “Marikana is about public order policing and about how you go about policing a violent crowd. It has to do with a very specialist function, and what happened to that.” It makes one wonder the reasons behind SAPS leaders not seeking alternative interventions prior to the Marikana incident. One of the reasons could be that the police were not equipped to deal with such a situation. Tait and Marks (2011) were of the opinion that a “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.” ‘Paramilitary’ methods are repressive in nature and could possibly not be the ideal approach when controlling or managing community protests. Tait and Marks further claim that the existence of paramilitary forces may be perceived as reminders of political suppression, therefore generating more problems than they resolve (p. 21). They went on to add that these units do not possess the relevant training to police protest situations and create problems in facilitating these occurrences when it happens.

5.1.2. Lack of police accountability

Lack of accountability deprives enforcement of discipline. Watson’s (2013) claim that SAPs leadership is dominated by political appointments is testimony to this claim. When things go wrong it is expected that someone be held accountable so that appropriate interventions can be established to deal with whatever it may be. Thus, deficient accountability may lead to unnecessary force and Tait and Marks (2011, p. 19) assert that “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.” Thus, when police are not held accountable for their wrongdoings, such as using force unnecessarily during protests it may prove to be difficult to identify who the perpetrators of misconduct are. It may also lead to police abusing their power in protest.
5.1.3. Police legitimacy negatively impacted

Police legitimacy as an institution is also impacted when the police perpetuate use of force during protests in communities. Faull and Rose (2012) gave evidence to this and highlighted “the importance of police–community interaction in building trust and legitimacy, arguing that police could best improve their image and effectiveness through dialogue with the community.” Police and community interaction are important aspects and a lack of trust can create a barrier during protests. An effective police contributes great value by displaying interest through dialogue with communities and by reinforcing decorum and human dignity. In some instances the police’s image has been tarnished by their actions during protests which negatively impact police legitimacy. If the police were engaging with communities, it could encourage less violence from the public. It was also indicated by Faull and Rose that “effective policing requires building trust and legitimacy”, which “depends heavily on fairness and decency.”

5.2. Interventions

5.2.1. Professional training for police and capacity building

Referring to a former police minister, Martin (2011) said “in order to ensure an adequate level of training”, the SAPS introduced a refresher course training course. A refresher in our view may not be adequate for police officers to do well in policing crowds. It would also probably be crucial for SAPS leaders to be experienced so that they are better able to make proper judgment when recruiting and appointing officers with the specific skills relevant to crowd management. Watson (2013) also added that “SAPS leadership has been dominated by political appointees who have had limited experience and/or understanding of what needs to be done to create an efficient, accountable police service.” This is again another proof that police leadership may not have made knowledgeable operational decisions in certain instances of protests and may not have been aware that their officers were incompetent in their duties towards the public. The above points to massive compromises in terms of discipline and subsequent accountability for wrong doing. Having said this, it is imperative that police members possess a certain degree of skill as well as the right environment to make the appropriate choices.

5.2.2. Policy review/new policy?

Policies are essential instruments for the police to use as guidelines as the need arises. The public order policing policy was introduced in 2011 specifically for the police to use during protests. In spite of this, this policy has not proven to be adequate considering the fatalities and casualties during protests. Additional intervention necessitates government to consider an appropriate ‘use of force policy’. This could be the kind of policy the police needs in order to perform their functions effectively and thus create an environment conducive to SAPS as well as the communities. Would it be presumptuous to say that should SAPS in exercising and being responsive to high standards of ethical practice, embrace overall professionalism? How about adopting the French model of crowd control whereby the police maintains ‘closer contact’ between them and the protesters as opposed to the ‘fencing off’ of the protesters in Marikana as though they were animals? The argument is that the French model could provide the police with 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’ (Tait and Marks, 2011). Lastly, how about considering other models contained in the POP policy?

6. Conclusion

Public order policing policy was introduced in 2011 to provide guidelines to SAPS on how to perform with regard to the use of force during protests. This policy requires the police’s operational strategy to be in accordance with the Constitution of South Africa which upholds citizens’ right to dignity and safety during protests.

Professional specialised public order policing requires effective training so that the police can successfully manage crowds during protests. The refresher training course in collaboration with the SAPS University in Paarl where police officers can obtain a Bachelor’s degree can improve professionalism in the current SAPS. In addition to the use of firearms, the police have to be trained in the art of negotiating and mediating with leaders of protests in order to make informed decisions to avoid violence which could lead to injuries and death. Negotiation and mediation skills are essential tools to possess and it is imperative for the police to receive training in this respect to engage with community leaders before they embark on protest actions.

The SAPS and the government have a daunting challenge to re-establish or perhaps develop rapport with its citizens who seem to distrust the police, the institution tasked with ensuring safety during protests. Many protests take place in poor communities with high rates of unemployment and dissatisfaction due to inadequate service delivery. The engagement of issues such as this is necessary especially in a country such as South Africa where there is frequent agitation for public utilities. Therefore sustained studies in this in this area are encouraged.

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References


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Apstrakt


Ključne reči: javni red, masakar Marikana, aparthejd, protest rudara, policijska služba Južne Afrike, francuski model politike javnog reda, Farlam istražna komisija