



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

RESEARCH UNIT

PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27 (21) 403 8273 Fax: 27 (21) 403 8118
www.parliament.gov.za

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ANALYSIS OF THE PUBLIC ORDER POLICING UNITS

1. INTRODUCTION

As South Africa's democracy has been maturing, public spaces for aggregation and articulation of popular interests and discontent have been opening up. Though these two parallel developments have great prospects for the advancement of civil liberties and consolidation of the country's democracy, the latter brings serious challenges with it. These challenges manifest themselves differently. But it is mainly through violent and intermittent public protests that these challenges become discernable.

Indeed, it is a public knowledge that, off late, the country has been playing host to a number of violent service delivery protests. A growing number of protest actions and unrests which, in some instances are accompanied by serious provocation, intimidation, public violence and even elements of criminality- have come to be a prominent feature of the country's public discourse. In particular, a spate of service delivery protests around the country has stretched South African Police Service's (SAPS) capacity to maintain order as mandated by section 205(3) of the Constitution.¹ In fact, different media houses reported that, in the past few months, approximately 13,575 community-related protests (of which 1,907 turned violent) due to dissatisfaction with service delivery by local municipalities and labour disputes in the mining, education and transport sectors were responded to by the SAPS.²

In South Africa, as is the case in other parts of the world, control and management of protesting crowds is a task that the police have repeatedly, albeit sporadically, been called upon to fulfill over the years.³ Within the SAPS, the task of crowd control and management has always been a preserve of the specialized unit that, over the years, has been a subject of a number of transformation processes. The history of what is now known as Public Order Policing Units (POPs) has been characterized by discontinuities as well as continuities, and has been marred by controversies associated with perceived indiscriminate and disproportionate use of police force; arbitrary "riot control" practices and erosion of civil liberties.

These perceptions have not disappeared over the years; instead, they kept on resurfacing. In recent years, centrally amongst these were an array of discomforting issues raised about POPs, (which is seen by many observers as brute enforcers of state power) which questioned the

¹ Christopher McMichael. The South African Police Service and the Public Order War: Has the remilitarisation of the police led to an attitude of seeing public order maintenance as a form of warfare? Think Africa Press, 3 SEPTEMBER 2012

² Ibid

³ Waddington P. A. J. Towards Paramilitarism? Dilemmas in Policing Civil Disorder. The British Journal of Criminology, Vol. 27, No. 1, (Winter 1987), pp. 37-46



methods used in policing violent protests.⁴ The methods (which might include use of live ammunition in some instances) used in these public protests attract great controversy given numerous allegations of bias and brutality and perceived incompatibilities with civil liberties.⁵

Incidents like the killing of Ficksberg service delivery activist Andries Tatane and the shooting of 34 striking miners at Marikana are seen by some sections of the society as a reflection of an imaginary “war on poor” by a coercive state that is engaged on deliberate institutional violence.⁶ Police are seen as generating the very violence they seek to control during public protests.⁷ They are, supposedly, not adhering to a tradition of 'impartial' policing by 'consent'.⁸ Consequently, their impartiality and effectiveness are always questioned and/or challenged. This comes as no surprise because policing public disorder is “a task that poses a dilemma for the police, significantly challenging the twin bases of their legitimacy: impartiality and restrained use of force”.⁹

To this end, it suffices to say that, as acknowledged by the Civilian Secretariat for Police, “the main challenge for the SAPS is to respond to these manifestations within the spirit and context of a human rights orientated democratic policing and the Bill of Rights”.¹⁰ There is an increasing realization that, in carrying out its legislative role of facilitating peaceful protests, the SAPS needs to strike a good balance between respecting the rights of citizens to demonstrate versus the police’s need to ensure peace and stability.¹¹

Informed by this background, this brief seeks to provide an analysis of the role of POPs in democratic policing in a modern day South Africa. The aim is to ascertain whether the accusations or criticism against SAPS’s POPs are really justifiable and whether there are some triumphs to be celebrated. The questions that frame the discussions in this brief include, but are not limited to the following:

- What implications did the metamorphosis of Internal Stability Units (ISUs) and Area Crime Combating Units (ACCUs) into POPs heralded in the practice of policing public disorder in the country?
- In what way do the historical legacies and memories impact on attempts at police reform?
- What mechanisms would be most effective in bringing about meaningful and sustainable police organizational change?
- How can a lasting police cultural change be brought about so as to erase the perceptions, real and/or imagined, of police brutality?

⁴ Waddington (1987)

⁵ Waddington (1987)

⁶ Christopher McMichael. The South African Police Service and the Public Order War: Has the remilitarisation of the police led to an attitude of seeing public order maintenance as a form of warfare? Think Africa Press, 3 SEPTEMBER 2012. Also see Wyndham Hartley. SAPS upgrading public order policing. Mail and Guardian, 21 July 2014, 15:35

⁷ Poor State Of Public Order Policing Gives Rise To More Brutality

⁸ Jefferson T.. The Case Against Paramilitary Policing. Open University Press, 1990. 161 pp

⁹ Waddington (1987)

¹⁰ Policy Guidelines

¹¹ Policy guidelines



- Can the promises of demilitarizing, improving the police's crowd control skills and tools of trade and reducing police violence against protests¹² made by Police Minister Nathi Nhleko during his maiden budget speech be realized soon?

The structure of the brief is as follows:

- Section 1: introduction
- Section 2: Historical Background. This section provides a brief background on the historical trajectory of POPs in South Africa.
- Section 3: Legislative Frameworks. This section looks at relevant pieces of legislation that govern and/or regulate matters relating to public order policing in the country.
- Section 4: Role of the POPs. This section looks at the legislative mandate and responsibilities of the POPs.
- Section 5: Recurring issues and Questions. Amongst others, this section highlights a number of issues that have been raised by the Portfolio Committee on Police during the 4th democratic Parliament.
- Section 6: Conclusion and Recommendations. This section concludes the brief and provides some recommendations.

2. PUBLIC ORDER POLICING: A BRIEF HISTORICAL BACKGROUND

2.1 Pre-1994 Period

Throughout the history of modern nation-states, police forces have long been tasked with maintaining, and at times, restoring public order. The policies and practices of police designed to meet this goal, however, are not formed in a vacuum, but are the result of historical, political, and economic forces that shape the context of police action.¹³ This is the case with SAPS's POPs- to understand this specialist unit one has to locate it within a historic political and social context.

In the South African context, the creation of a specialized riot control function within the country's policing agencies was essentially a reaction to the disorder and political unrest associated with resistance to apartheid.¹⁴ According to Rauch and Storey, "historically, although the name and structures of the units tasked with this specialist function changed a number of times during decades, and the functions were devolved to the various other policing agencies in homeland and self-governing territories, their essential roles remained the same - the enforcement of apartheid laws, the suppression of political protest and the prevention of 'unrest, intimidation and unrest-related crimes'.¹⁵

¹² Jane Duncan. The long-arm of the law is a deadly dance. Mail and Guardian, 08 Aug 2014

¹³ Willem de Lint and Alan Hall. Intelligent Control: Developments in Public Order Policing in Canada. Contemporary Sociology, Vol. 39, No. 5 (September 2010), p. 625, Published by: American Sociological Association

¹⁴ Rauch, J. & Storey, D. (1998). The Policing of Public Gatherings and Demonstrations in South Africa 1960-1994. Paper commissioned by The Commission on Truth and Reconciliation (TRC) Research Department, May.

¹⁵ Rauch, J. & Storey, D. (1998).



Under the apartheid government, the units started off in the form of a Riot Unit, and in 1992 became the Internal Stability Units (ISU). From the heavy-handed crowd control under apartheid to the abusive actions of the ISU during the early 1990s, public order policing in South Africa was steeped in controversy.¹⁶ However, the National Peace Convention was held on 14 September 1991, resulting in the National Peace Accord, the purpose of which was to bring an end to political violence in [the] country and to set out the codes of conduct, procedures and mechanisms to achieve this goal¹⁷ The signatories to the Accord had to “agree to a code of conduct for political parties and organisations, as well as for police officials – something that up to this point was absent in the police”. Chapter 6 of the Accord addressed the issue of public gatherings by calling for the establishment of a commission of enquiry into the prevention of violence and intimidation.¹⁸

As established by the Prevention of Public Violence and Intimidation Act of 1991, the purpose of the Commission was “to investigate and expose the background and reasons for violence, thereby reducing the incidence of violence and intimidation”. The Goldstone Commission was tasked with this investigation in October 1991.¹⁹ The Goldstone Commission also recognized the necessity to legislate public gatherings, given the forthcoming democratic elections.²⁰ The outcome was the Regulations of Gatherings Act 205 of 1993. The Act aims “to regulate the holding of public gatherings and demonstrations at certain places; and to provide for matters connected herewith”.²¹ According to Bruce, the basic premise of the Act is that every person has a right to peaceful participation in gatherings – with the protection of the police. This was a significant step for public policing in South Africa.

2.2 Post 1994 Period

During the apartheid era, some of the most notorious instances of police brutality were the killings of demonstrators involved in peaceful protests. Their central function at that time was “the enforcement of apartheid laws, the suppression of political unrest and the prevention of unrest, intimidation and unrest-related crimes”. In this sense, policing was political and the institution was thoroughly politicized by the old National Party government. It therefore made sense that one of the issues that received concerted attention during the police reform process of the 1990s was public order policing.²² For policing, that meant transforming from repressive apartheid-style police force to a police service willing to serve the people. As a result, the South African Police Service (SAPS) was created in 1995 after an amalgamation of 11 police agencies made up from the old homeland Bantustans, the South African Police Force and the liberation movement security sections.²³ Given the role played by the ISUs under the previous government, these units were in need of a major overhaul.

¹⁶ Ibid

¹⁷ Bilkis Omar. Crowd Control: Can our public order police still deliver? SA CRIME QUARTERLY No 15 MARCH 2006

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ David Bruce. The Road to Marikana: Abuses of Force During Public Order Policing Operations. 12 Oct 2012

²² David Bruce. The Road to Marikana: Abuses of Force During Public Order Policing Operations. 12 Oct 2012

²³ Ibid



The reconfiguration of the policing architecture and establishment of the SAPS heralded a number of far reaching changes. For instance, in post 1994 South Africa, the right to freedom of assembly and freedom of expression was entrenched in the Constitution²⁴. More so, in 1997 the POPs was formed “in order to conform to the country’s newly adopted democratic values; emphasis was placed on crowd management as opposed to crowd control”.²⁵ In 2002, they were transformed to become the Area Crime Combating Units (ACCUs). The units’ mandate made an about-turn as reflected by the change in name from POPs to ACCUs²⁶, with public order police being tasked to do crime prevention and crime combating. According to a number of policing experts such as Rauch and Bruce, the change reversed the core functioning of the units, with public order and crowd management becoming secondary functions.²⁷

In 2002 the units were further refined when the SAPS Standing Order 262 on Crowd Management during Gatherings and Demonstrations was introduced.²⁸ This document details the regulation of crowds in accordance with the principles of the Constitution. Despite the many changes, the units’ sole function continued to be the policing of major events and protest marches.²⁹ However, in 2006 there was another restructuring of the ACCUs. The policing areas were disbanded and policing resources “released” to supplement much needed capacity at station level and again the ACCUs was affected and the name was changed to Crime Combating Units (CCUs).³⁰ The restructuring also had the effect that the CCUs were incorporated as a section under the division Operational Response Services. The 2006 restructuring and institutional re-alignments provoked serious criticism since it was indicative that specifically from this period, a remarkable increase occurred in the number of service delivery protests. However, as per the National Civilian Police Secretariat:

“the reasons advanced for the transformation of the initial POP unit and the subsequent rationalization of the ACCUs was: Firstly that the functions of the unit could not be justified since they did not had much duties to perform and thus not “value for money” (in line with the PFMA); Secondly that the skills and experience of members of the POPs unit were deemed necessary in creating capacity to boost police station crime combating initiatives.

The conclusion is that the current Operational Response Services operates as a division which includes the CCUs as a unit. Although the CCUs are still utilized for crowd management, its primary function remains crime combating.³¹

Unfortunately, during the subsequent restructuring of the SAPS, the Area offices were closed down and CCUs significantly downsized and this meant that POPs unit did not exist anymore as “a specialized (dedicated) public order policing function” as envisaged in the SAPS Act. According to Burger, “the ‘restructuring’ of the Public Order Policing (POP) unit in 2006 was particularly

²⁴ But though the Constitution protects the rights of members of the public to protest ‘peacefully and unarmed’ it must be acknowledged that between them the Constitutional, legislative and policy provisions are somewhat blurry in some respects. This applies in particular to demonstrations where there is violence, including violence against property, by demonstrators.

²⁵ Omar(2006)

²⁶ Ibid

²⁷ Ibid

²⁸ Ministry of Police. Policy and Guidelines: Policing of Public Protests, Gatherings and Major Events.

²⁹ Ibid

³⁰ Ibid

³¹ Ibid



problematic".³² To him, this is so because, during the 2004/05 financial year, there were 43 specific POP units, consisting of 7 227 trained members spread out across the country. But in 2006, "the police recorded 562 incidents of public violence and in the following year, public violence incidents escalated by 66% to a total of 932 cases and yet, against the advice of more experienced senior officers, the then National Police Commissioner Jackie Selebi decided to close down 20 of the 43 units and to reduce their trained members by 64% to only 2 595".³³

A few years later in 2008, the remaining POP units were quickly overstretched and the military had to be deployed to provide support during xenophobic attacks in a number of townships. It was subsequently decided to rebuild the POP units, but the latest figures show that there are still only 27 regional units and one national (reserve) unit, with a combined strength of 4 700 trained members.³⁴ According to Burger, "this is still 35% below the 2006 staff levels, but by now the number of public violence incidents has increased by 235%, from 562 to 1 882".³⁵

3. LEGISLATIVE FRAMEWORK AND REGULATORY INSTRUMENTS GOVERNING PUBLIC ORDER POLICING

Public Order Policing in South Africa is governed by the following Legislative frameworks and regulatory instruments:

- Regulation of Gatherings Act No.205 of 1993
- Constitution of the Republic of South Africa No.108 of 1996
- South African Police Service Act No 68 of 1995
- Standing Order on Crowd Management
- Public Order Policy

3.1 Regulation of Gatherings Act No.205 of 1993

The Goldstone Commission found that violence and police brutality were widely prevalent at mass marches and demonstrations in the early 1990s and it recommended that citizens be accorded the right to participate in peaceful public gatherings, and that the role of the police in these gatherings be changed.³⁶ In April 1993, the Goldstone Commission proposed a Draft Bill to address the civil liability of organisers of gatherings, the prevention and prohibition of gatherings, and demonstrations near courts, Parliament and the Union Buildings.³⁷ Passed in 1993, the Goldstone Bill became the Regulation of Gatherings Act, but it was only enacted after the 1994 election.³⁸

³² Johan Burger. The South African Police Service must renew its focus on specialised units . ISS Today, 31 March 2014

³³ Selebi argued that the specialised POP members should rather be used to strengthen local policing.

³⁴ Burger (2014)

³⁵ Ibid

³⁶ Bilkis Omar. SAPS' Costly Restructuring: A review of Public Order Policing Capacity. ISS Monograph No 138, October 2007

³⁷ Rauch, J. & Storey, D. (1998). The Policing of Public Gatherings and Demonstrations in South Africa 1960-1994. Paper commissioned by The Commission on Truth and Reconciliation (TRC) Research Department, May.

³⁸ Rauch, J. & Storey, D. (1998).



The Regulation of Gatherings Act was passed "to regulate the holding of public gatherings and demonstrations at certain places".³⁹ It repealed the following legislation; No. 52 of 1973 Gatherings and Demonstrations in the Vicinity of Parliament Act, 1973, No. 71 of 1982 Demonstrations in or near Court Buildings Prohibition Act, 1982, Gatherings and Demonstrations at or near the Union Buildings Act, 1929 and Sections 46(1) and (2), 47, 48.⁴⁰ This Act provides a new legal framework, which entrenches the right to peaceful public expression and peaceful assembly and the right to State protection in the enjoyment of these rights.⁴¹ It sets down a new procedure for the management of public gatherings, of which a cornerstone is the appointment of a "convenor" of the gathering who must notify a responsible officer in the local authority that a gathering is planned. Negotiations may then be instituted with other interested parties, notably the police, to ensure the peaceful progress of the gathering and the protection of both participants and non-participants. The circumstances under which dispersal and use of force may occur are laid down in the Act. Provision is made for civil liability and for other penalties for infringement of regulations and agreements. The Act, most notably in sub-section 9(2) the Act provides a framework for the use of force by the police in situations, inter alia, where a gathering poses a "danger to persons or property" which cannot be averted by other steps (detailed at 9(1)), or where the gathering is prohibited.⁴²

Some experts are of the view that the Act needs to be updated. It is argued that, "while the two decade old Act is a most useful piece of legislation, practical experience in the management of events has shown that there is a need to more clearly define the role and responsibility of march organisers and marshals".⁴³

3.2 Constitution of the Republic of South Africa No.108 of 1996

The Constitution of the Republic of South Africa (Section 205 sub-section (3)) clearly defines the functions of the police. According to section 205(3) of the Constitution, the mandate of the South African Police Service is to⁴⁴:

- To protect and secure the inhabitants of the Republic and their property
- To maintain public order
- To uphold and enforce the law
- To combat and investigate crime
- To prevent crime

3.3 South African Police Service Act No. 68 of 1995

Policing occurs at three levels within the country. The SAPS is a national competency and is a unitary structure that operates at the national, provincial and local levels. Section 17 (Chapter 6) of

³⁹ The Regulation of Gatherings Act (Act 205 of 1993)

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid. Also see David Bruce. The Road to Marikana: Abuses of Force During Public Order Policing Operations. 12 Oct 2012

⁴³ Omar (2007)

⁴⁴ Constitution of the Republic of South Africa, 1996



the South African Police Service Act provides that a public order policing unit shall be established and maintained by the National Police Commissioner whom may deploy the national public order policing unit, or any part thereof, at the request and in support of a Provincial Commissioner.⁴⁵ The Act further states that, “where the national public order policing unit or any part thereof is deployed to a Province the unit shall perform its functions subject to the directions of the Provincial Commissioner concerned”.⁴⁶

The powers of members of the police service are to some extent defined by section 13 of the SAPS Act. The issue of the use of force is referred to explicitly in subsection 13(3)(b) which provides that “Where a member who performs an official duty is authorized by law to use force, he or she may use only the minimum force which is reasonable in the circumstances”.⁴⁷

3.4 Standing Order on Crowd Management

In implementing the Regulation of Gatherings Act, the SAPS developed and implemented Standing Order 262 on Crowd Management and The National Municipal Policing Standard for Crowd Management.⁴⁸ The purpose of the Standing Order No. 262 is “to regulate crowd management during gatherings and demonstrations in accordance with the democratic principles of the Constitution and acceptable international standards”.⁴⁹ The Standing Order No. 262, in a clear and coherent manner, states that the use of force must be avoided at all costs and members deployed for the operation must display the highest degree of tolerance. The use of force and dispersal of crowds must comply with the requirements of section 9 (1) and (2) of the SAPS act.

Amongst others, the Station Order makes provision for pro-active conflict resolution that stresses intelligence driven policing and the designation of authorized members at a station or area level and duties and responsibilities of authorised members (which include receiving notices or information of a gathering).

3.5 Public Order Policy⁵⁰

During the 4th Democratic Parliament, the Portfolio Committee on Police welcomed the approval of the Public Order Policy by the then Minister of Police, Mr Nathi Mthethwa.

The policy aims to provide a framework with guidelines for the SAPS in reviewing and aligning its operational strategies and instructions applicable on policing of public protest and related major events with a view of minimizing provocation, intimidation and violence. The objective(s) is to

- Promote ideal crowd control and management capacity within the police in order to secure public trust and maintenance of safety during public gatherings;

⁴⁵ SAPS Act NO.68 of 1995

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ministry of Police. Policy Document on the Policing of Public Protest (Riots) and Major Events.

⁴⁹ Standing Order No 261. Crowd Management during Gatherings and Demonstrations

⁵⁰ This is contained in a document called Policy and Guidelines: Policing of Public Protests, Gatherings and Major Events



- Provide a framework and facilitate the development of appropriate guidelines by the SAPS on the use of force in relation to crowd control and management that adheres to international accepted standards;
- Establish the principle of intervention in controlling public protest in order to proportionate the means of force that can be applied by the police;
- Facilitate the introduction of appropriate training initiatives which must, amongst others, address the principle of “first responder”, guide SAPS operational planning and response, resource deployment and physical execution.

4. CURRENT SIZE, SCOPE AND THE ROLE OF THE POP UNITS⁵¹

As alluded to above, the POPs derive their mandate from the Constitution of the Republic of South Africa (Section 205 sub-section (3) in particular), the South African Police Service Act no 68 of 1995 and The Regulation of Gatherings Act 205 of 1993.

The following is a summary of the current structure and staff complement of the POPs:

- There are 27 existing Provincial POP Units;
- There is 1 existing POP Reserve Unit; and
- The actual total staff compliment of POPs is 4 721

The Table 1 Below shows a provincial breakdown of POPs.

Province	Size and Staff Complement
Eastern Cape	605
Free State	507
Gauteng	568
Kwa-Zulu Natal	944
Limpopo	484
Mpumalanga	221
Northern Cape	233
North West	525
Western Cape	352

⁵¹ Given difficulties in accessing data on POPs, much of the information in this section was extracted from the Department's Presentation to be presented before the PC on Police on 3 September 2014



Head Quarters (Pretoria)	282
TOTAL:	4 721

Source: SAPS Presentation to the PC on Police, 03 September 2014

As far as tools of trade (equipment) are concerned, the POPs are provided with the following:

- Armoured Fleet - 561 (200 Nyalas at national)
- The Average Age of the Armoured Fleet is 20.7 years for Nyalas and 27.9 years for the Casspir
- In terms of Armoured Fleet to be boarded, POPs have a total of 7 ready for boarding with 192 ready for tender to be boarded
- Water cannons -10
- Soft Top Vehicles - 973
- There are 63 old Video and 23 old Digital cameras and 12 Professional video cameras)
- Ammunition and firearms:
 - 9mm side arms with 9mm ammunition;
 - 12 Gauge Shotgun with blue double ball and white reduced rounds;
 - 40mm Launcher and Long and short range CS rounds;
 - R5 Rifle and 5.56mm rounds; and
 - R1 Rifle and 7.62mm rounds.

In order to enhance the capacity of the POP units, a turn-around/expansion strategy was developed. The strategy (set out over two MTEF Cycles, over four (4) years and entails the following:

- Establishing of additional capacity at POP Units;
- Re-establishing of previously-existing POP Units;
- Establishing of new POP Units; and
- Enhancing operational support capacity.

In terms of this turn-around/expansion strategy, the number of official provincial POP Units will increase from twenty-seven (27) to fifty (50) provincial POP Units and the one POP Reserve Unit will also increase to four POP Reserve Units. In order to provide additional capacity, there would be re-establishment of previously-existing POP Units, which were closed during various restructuring processes. The proposed expansion strategy will see the number of POP units increasing to reach 50-due to 8 new established units; 15 re-established units which existed previously and 3 proposed new reserve units.

Table 2 below illustrates proposed changes in personnel as per the expansion strategy.



Unit	THRR	Actual Personnel	Planning figure	Additional posts	YEAR 1	YEAR 2	YEAR 3	YEAR 4
POP HQ	1050	282	851	569	431	138	0	0
Eastern Cape	1302	605	876	271	46	67	88	70
Free State	1166	507	771	264	0	46	132	86
Gauteng	1803	568	1241	673	288	201	92	92
KwaZulu-Natal	1899	944	1378	434	50	221	163	0
Limpopo	978	484	630	146	70	0	6	70
Mpumalanga	1182	221	793	572	46	116	162	248
Northern Cape	936	233	557	324	0	14	110	200
North West	1282	525	829	304	68	54	86	96
Western Cape	1181	352	833	481	0	70	186	225
TOTAL	12779	4721	8759	4038	999	927	1025	1087

Source: SAPS Presentation to the PC on Police, 03 September 2014

Furthermore, at the moment the POPs do not have capacity as far as investigating officers, information gatherers and legal officials. As shown in table 3 below, the Department plans to have 204 investigating officers, 507 information gatherers and 52 legal officials.

Unit	THRR	Actual Personnel	Planning figure	Additional posts	YEAR 1	YEAR 2	YEAR 3	YEAR 4
Investigating Officers	387	0	204	204	153	51	0	0
Information Gatherers	1005	0	507	507	156	102	109	140
Legal Officials	52	0	52	52	52	0	0	0
TOTAL	1444	0	763	763	361	153	109	140

Source: SAPS Presentation to the PC on Police, 03 September 2014

According to the Strategy, enhanced operational support is needed in order to effectively roll-out the strategy. As a result, pursuant to the implementation of the strategy, a dedicated investigating capacity will be allocated to each of the POP Units which will investigate all case dockets that emanate from unrest related or protest action incidents and all other cases that emanates from NATJOINTS operations, e.g. major events, elections etc. On the other hand, Information gatherers will be responsible for the provision of forewarning intelligence is of critical importance, therefore dedicated information gatherers are required for planned as well as unplanned violent protest actions. To another end, legal officials will be involved during Section 4 meetings of the Regulations of Gathering Act, so as to eliminate any legal discrepancies which may occur.



5. INDICATORS AND TARGETS AS REPORTED IN THE 2014/15 ANNUAL PERFORMANCE PLAN AND THE MEDIUM TERM STRATEGIC FRAMEWORK 2014-15

The table below shows 2014/15 performance indicators and targets relating to the public order policing work of SAPS.

Strategic Priority		Performance Indicator	2013/14 Target	2014/2015 Target
Police Incidents of a public disorder or security nature which are not deemed to be normal crime	Percentage of medium to high risk incidents stabilized in relation to requests received	100%	100%	

Sub-outcome 5: Ensure Domestic Stability: To examine violent service delivery protests and violent industrial action so as to understand its root causes, manifestations and design measures to address them. In particular the aim should be to ensure that the constitutionally guaranteed rights to protest action relating to service delivery and industrial action are exercised in a peaceful and non-violent manner.

Action	Minister	Indicator	Baseline	Target
Stabilise public protests	Police	Percentage of medium to high-risk incidents stabilized in relation to requests received	100%	100 percent stabilised per annum
Capacitation of the Public Order Policing environment	Police	Number of personnel recruited for public order policing additional to the current	4 721	5 720 (4721+999) 2014/15 Increased to 9 500 by 2018/19
Improve investigation and prosecution of criminal and violent conduct in public protests	Police/ Justice & Correctional Services	Detection rate	New indicators	New indicator
		Trial ready rate	None	
		Conviction rate	None	Baseline for all three indicators to be determined by March 2014/15

Source: Medium Term Strategic Framework 2014-15



6. SAPS PUBLIC ORDER POLICING DELIVERY REPORT FOR 2012/13

In terms of the 2012/2013 Annual Report, delivery issues relating to public order policing were reported as follows:

- From 1 April 2011 to 31 March 2012, the SAPS policed a total number of 1 194 unrest-related incidents and 10 744 peaceful-related incidents in relation to request received. This amounted to an attainment of 100% target.
- From 1 April 2012 to 31 March 2013, the SAPS received policed a total number of 1 182 unrest-related and 10 517 peaceful-related incidents in relation to request received. This also amounted to an achievement of 100% target.

The report from the Independent Police Investigative Directorate (IPID) revealed the following in terms of cases related to the work of SAPS:

- A total number of 431(7%) deaths as a result of police action (Section 28 (1)(b)) cases were received during 2012/13 financial year;
- A total number of 50 (1%) torture cases were received during 2012/13 financial year and;
- A total number of 4 131(61%) assault cases were received during 2012/13 financial year; and Of the 1088 recommendations generated, 545 recommendations were referred to the NPA, of which 384 recommendations were for assault.

6.1 VIOLENT PUBLIC PROTEST RELATED STATISTICS IN SOUTH AFRICA

The recorded incidence of crowd management (peaceful and unrest related) shows that public protests in the country declined from 1998 to 2002 (see below).⁵² There was no significant increase in killings by police during demonstrations during this period. Over roughly five years, between the beginning of 2000 and the end of 2004, four people were killed by police during demonstrations.⁵³ However, that decline was short lived. From around July 2004 onwards, South Africa experienced a series of community and labour demonstrations that involved significant levels of violence.⁵⁴ These included sporadic protests against the provision of housing, service delivery and local council corruption, a municipal workers' strike in July – August 2005, various protests over the demarcation of provincial boundaries and a major strike of security guards over April–June 2006.⁵⁵

⁵² Omar (2007)

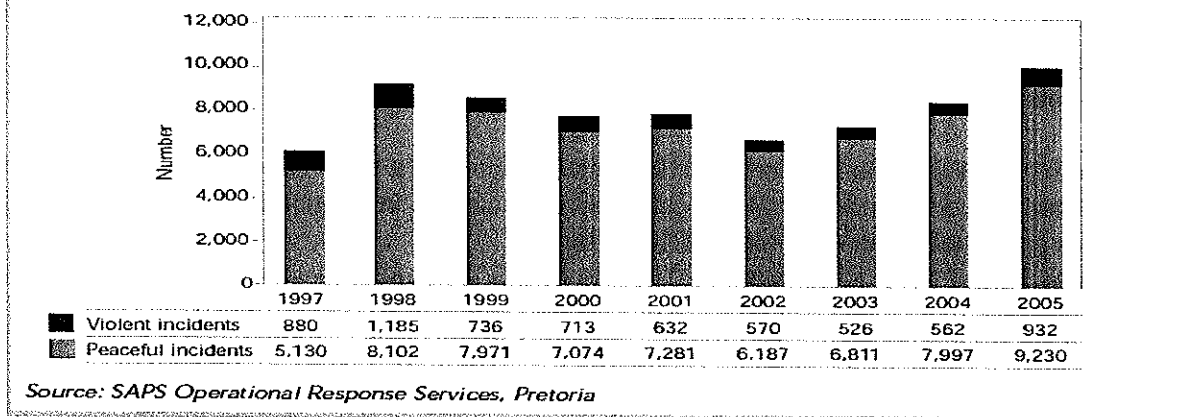
⁵³ Mwanajiti, N., Mhlanga, P., Sifuniso, M. Nachali-Kambikambi, Y., Muuba, M and Mwananyanda, M (eds). *Police Brutality in Southern Africa – A Human Rights Perspective*. Inter-African Network for Human Rights and Development (Afronet), 2002.

⁵⁴ Ibid

⁵⁵ Ibid



Figure 1: Total violent and peaceful crowd management incidents, 1997–2005



This pattern of violent protest has continued up to the present. According to Omar, ironically, "since the formation of the ACCUs in 2002, with their focus on crime prevention over crowd management, the number of public protest incidents has increased steadily.⁵⁶ Of even more significance is that the rate of increase in the last three years has been faster for violent incidents than for peaceful ones: violent or unrest crowd incidents increased by 64% between 2002 and 2005, compared to a 49% increase for peaceful events.⁵⁷

According to figures from the IPID up to 2011, the number of complaints of brutality by the police has soared since 2007.⁵⁸ In 2007, fewer than 16 cases were reported. Two years later, 59 complaints were laid against police officers. Most of the complaints were filed against members of the unit for public order policing, which is in charge of crowd control during protest.⁵⁹ Police Minister Nathi Mthethwa said early this year that there were more than 13 000 protests last year (2013) in which police were involved and 1 882 of them were violent protests.⁶⁰ Fast forward to 2014, the City Press reported that "SAPS this year, on average, allegedly shot and killed one protester every four days in South Africa."⁶¹

According to Gareth Newham from the Institute for Security Studies (ISS) "In 2011/12 there were 1 194 incidents of public violence and 10 744 other gatherings that demanded the attention of the police.⁶² "There were 11 938 public order-related incidents a year that 4 197⁶³ POPs officers had to respond to, 33 a day, of which at least three were violent."⁶⁴

⁵⁶ Omar (2006)

⁵⁷ *ibid*

⁵⁸ James-Brent Styan. 1 protester shot dead every 4 days. City Press, February 2014

⁵⁹ James-Brent Styan (2014)

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² Kristen van Schie. Public order in the spotlight. Independent Online, October 4 2013 at 02:30pm

⁶³ "There is never a full complement of 4 197 on duty at any one time due to many being on leave," he says.

⁶⁴ Kristen van Schie



7. OBSERVATIONS ON RECURRING KEY ISSUES AND QUESTIONS

The following is the list of observations and recurring key issues around POP in South Africa:

- **Personnel Shortages:** One of the key reasons for police are struggling to control protests is because of a critical shortage of human resources in public order policing.⁶⁵ There are currently only 4 197 POPs officers, while in 2006 there was almost double the amount. For instance, within POPs, in line with the turn-around strategy, 204 vacancies for investigating officers need to be filled; 52 for legal officials and 507 for intelligence gatherers.
- **Training:** The research conducted during the policy formulation of the Public Order Policing Policy indicated that the current level of training to SAPS members in crowd management and control (public order policing) lacks content. Basic and refresher training for police and others involved in law enforcement should include courses not only on human and constitutional rights, but also scientific techniques and other best practices for the professional discharge of their functions within the public protest environment.⁶⁶ It has been argued that a loss of vital crowd-control skills during previous restructuring processes resulted to an escalation of police violence against protests. For so long, there was a skills vacuum. Deploying untrained, ill-equipped, often unsupervised officers, with neither a coherent strategy nor tactics has frequently produced both ineffectual policing and encouraged the use of excessive force. "If those police officials are not properly managed, not properly trained and they do not have the correct equipment and they are not hold accountable when things go wrong, and if they are not properly rewarded and recognized, then you are going to have problems." But the current SAPS leadership should be commended for filling that gap currently through training interventions.⁶⁷ According to the Minister of Police, one of the critical and fundamental changes around improving training is that all new entry level police members will in future during basic training undergo basic crowd management training as part of their curriculum.
- **Cultural factors, organizational factors and operational factors:** these factors do matter and should receive policy attention. Failure to transform and change the organizational culture inherited in the old SAP has had disastrous consequences for the policing institution. Police officers have been responsible for more deaths since the militarization, and the Independent Police Investigative Directorate (IPID) is already reporting that the deaths as a result of police actions have increased.⁶⁸ This is to be expected in the absence of accountability and police immunity. There is a need to entrench a culture of responsible and accountable policing that is predicated on ethos of democratic policing.
- **Demilitarisation:** In his budget speech last month, Police Minister Nathi Nhleko promised to demilitarize the police, as proposed by the National Development Plan, improve the police's crowd control skills and equip them with less lethal crowd-control equipment. He

⁶⁵ Mia Lindeque. Phiyega: Shortage of public order officers.

⁶⁶ PMG

⁶⁷ ibid

⁶⁸ Jane Duncan . The lang-arm of the law is a deadly dance. Mail and guardian
08 Aug 2014



made these promises to reduce police violence against protests, which had led to several protester deaths.⁶⁹

- **Crowd Management:** There is a need to focus on upgrading equipment for the POP unit with a specific focus on the following: the designing and procurement of new operational vehicles. There need to ensure effective crowd management that is informed by constitutional and legal imperatives will be dependent on a number of factors. This includes continuous training and education which hinges on effective knowledge management systems within the police.
- **Command and Control:** The success of effective response by the SAPS with regard to public order policing is dependent on a strong line of command and control. It has been proved that command and control has different meaning to different people. Within the context of policing public policing, command and control simply means that certain people must know that they have different roles to play.

The following are some of the questions and issues the Committee could pay attention to:

Questions and Comments

- 1) The Committee should ask the SAPS whether the POPs Turnaround Strategy was costed. If so, the SAPS should be requested to share the budgetary implications with the Committee.
- 2) The Committee should request the SAPS to explain the uneven distribution of POP unit's personnel across the country and what informs the distribution of these units? Is it the population size, intelligence-driven identification of "protest hot spots" or is it due to resource allocation?
- 3) The Committee should request the Department to state how many out of the 1 1601 peaceful protests and the 1 907 unrest protests were video-recorded as per the policy guidelines and regulations? And how many arrests and successful prosecution were affected from the 1907 unrest protests using video footage?
- 4) The Committee should request the SAPS to indicate the number of females employed in POPs units.
- 5) The Committee should ask the Department to explain the cost implications for running the reserve POP units?
- 6) The Committee should ask the Department to explain the provincial allocation/breakdown of armoured vehicle fleets?
- 7) The Committee should request the SAPS to indicate whether the 10 Water Cannons are adequate for the whole country, more especially in light of the increased incidents of violent protests?
- 8) The Committee should find out whether there are professional photographers within each provincial POP unit?
- 9) The Committee should request the SAPS to indicate whether photography/video taking is part of the generic training?

⁶⁹ ibid



- 10) The Committee should ask the Department to state the allocated budget for procurement of new and additional equipment, especially in light of the re-establishment and upgrading of the POPs.
- 11) The Committee should ask the Department to explain in detail the 'model approach' to the establishment of POP units.
- 12) The Committee should seek clarity on the factors that informed the decision to choose the seven (7) identified towns and one (1) city for establishment of new POP units.
- 13) It is clear that the roll out strategy is dependent on the allocation of additional funds. The Committee should find out whether that has been communicated with the National Treasury?
- 14) The Committee should request clarity on the current state of the following: dedicated information gatherers, legal officers and investigating officers in POP units across the country? Does this capacity exist as of now?
- 15) The Department reported that 1826 POP members completed crowd management refresher training (2275 still to receive refresher training). The Committee should find out, when is the refresher training going to be organized for the remaining 2275?
- 16) According to the department, 56 Video camera operator posts were advertised during May 2014. The Committee should find out whether the processes completed? How many positions have been filled?
- 17) According to the Department, the total Cost requirement for recapacitation strategy (70%) over four years is R3,3 billion. The Committee should find out whether this has been communicated with the National Treasury?
- 18) The Department also reported that purpose-built POP vehicles are in design phase. The Committee should find out who are the designers? What are the rough estimates and why is this planned expenditure a funding concern?
- 19) The Department reported that it is planning to build accommodation for new units (26) to be planned for and costed. A question then is why this has not been planned for and costed? Who is going to build the accommodation? SAPS or Public Works? Are these included in the SAPS Capital Works Programme. Is the planning for these units part of the 53 reflected in the Capital Works Programme, which are still under planning and design?
- 20) The Department also indicated that there would be training of additional capacity (at a cost of 7.7 m). The Committee should find out who are the training service providers, is this an internal service or an outsourced service? What does the curriculum contain?
- 21) The Committee should find out what strategy is in place to bring on board experienced POPs officers who left SAPS during the closing down.
- 22) The Committee should ask the department where it is in terms of developing use of force policy.
- 23) There is only one target in the APP for public order policing unit- why is that the case?
- 24) According to the SAPS Human Resource Development plan in the APP, 2000 members are supposed to be trained on crowd management. The Committee should find out how many have been trained?
- 25) Crowd management related deaths by police during 2012/13 are 15. The Committee should find out what happened to the police officers involved.



- 26) During the 2013 SONA, there was a call for JCPS to prioritise investigation of public unrest cases (and dedicated courts). The Committee should find out whether that has been done?
- 27) It was reported by the department that it was going to be mandatory for all students to receive Basic Crowd Management training during the Basic Police training cycle, commencing with the class of 2013. The Committee should follow up on whether that has that been done
- 28) The Department reported that it was going to revise the curriculum to include generic negotiation skills as part of Crowd Management training. Has that been done?
- 29) The Department reported that it was going to establishing a dedicated detective team at each POP Unit. The Committee should follow up on the progress in that regard.
- 30) The Committee should request the Department to elaborate on the establishment of a dedicated capacity of Legal Officers to advise and assist POP Units.
- 31) The AG included the refurbishment of the Nyala's in its performance audit regarding the use of consultants and found serious irregularities. The Committee could request the Department to report on this issue

8. CONCLUSION

The right to peaceful assembly forms a cornerstone of our democracy; built on the principles of collective expression in whichever form they may occur. To this end, public order policing in South Africa needs to reflect the ethos of human rights based democratic policing. Therefore, this necessitates re-alignment of priorities. The SAPS should really prioritize the issue of upgrading both the training and the equipment in the field of public order policing in line with the National development Plan (NDP) vision of the professionalization and demilitarization of the police service. Training, which is at the centre of improved public order policing, should be robust and innovative enough to include other elements such as technologically empowered policing.

On the other hand, whilst the police have a responsibility to police gatherings within the framework of the law, the Gatherings Act confers considerable responsibilities on conveners or organisers of events to ensure that such events are carried out in an orderly and peaceful manner. This goes without saying that, public awareness campaigns are needed to educate citizens and protest conveners about their rights and responsibilities. It is also important for policy makers and the Police Management that there are a number of interacting socio-economic factors that give rise to public unrest and disorder. The SAPS need to work closely with relevant stakeholders to address the root causes of public protests that turn violent and not merely address the symptoms.



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