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Violence and Reconciliation

Disaster-Appropriate Policing in South Africa: Protests and state violence in the COVID-19 era



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Introduction

This policy brief examines South African Police Services (SAPS) responses to public protests since the onset of the COVID-19 pandemic in South Africa. It highlights an increased use of state violence and excessive force in response to such protests. The brief argues that the use of state violence undermines our ability to address the root causes of such protests, as well as erodes the trust and social cohesion required to effectively manage the COVID-19 pandemic. It suggests several factors that may have contributed to this increased state violence and provides recommendations as to how such violence may be reduced or prevented.



Image: Ashraf Hendricks/GroundUp

Law enforcement officers clear charred rubble and tyres from Swartklip Road after residents of nearby Ndlovini informal settlement in Khayelitsha protested

Background

The struggle for equality and basic human rights has a long history in South Africa. This includes centuries-long labour protests for better wages and working conditions as well as decades of protests by communities and political organisations. This history of mainly peaceful protest is intertwined with state violence, with the Sharpeville and Marikana massacres being emblematic of many examples of the use of excessive force in response to protests or collective action.

Protests remain a key tool in the struggle for a better quality of life in the post-1994 era. This trend is highlighted by the Institute for Security Studies' Protests and Public Violence Monitoring Project, which has noted consistently high levels of protests and public violence over the past eight years. Public protests, marches and demonstrations are a key part of our democratic culture and the right to protest is embedded in our constitution¹. Protests are how South Africans speak out against corruption and state capture. It is also how individuals or communities express and draw attention to their basic needs and rights to basic services – such as access to water, sanitation and adequate housing. Research by the Centre for the Study of Violence and Reconciliation has highlighted how communities may view protest as a more direct and effective political tool when electoral democracy and local participatory governance systems processes fail to deliver.² Thus, how we protect or limit the right to protest during a national emergency requires careful consideration.

State violence is the use of legitimate governmental authority to cause unnecessary harm and suffering to groups, individuals, and states. State violence stems from the desire of official state actors to reach the organizational goals of a state or governmental agency (Ranzetti & Edleson, 2008, *Encyclopedia of Interpersonal Violence*).

For many living in South Africa, the realities of the COVID-19 pandemic have been most noticeable since the 23rd of March 2020. On this date, President Cyril Ramaphosa announced a national level lockdown, which subsequently eased in various phases from the 1st of May 2020. Efforts to enforce these regulations were supported by the deployment of over 70 000 South African National Defence Force (SANDF) soldiers across the country.³

It did not take long for issues with the enforcement of COVID-19 regulations, primarily by the SAPS and SANDF, to be noted. This included the gross use of excessive force by the SAPS in the death of Petrus Miggels (27 March 2020) as well as the SANDF in the death of Collins Khosa (10 April 2020). The extent of this problem was also highlighted in the number of complaints against the SAPS and metro

1. Section 17 of the Bill of Rights states that "everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions." It is recognized that this is not an absolute right in that exercising this right, even when peacefully and unarmed, may infringe upon the fundamental rights of other people.
 2. Von Holdt et al. (2011). *The smoke that calls: Insurgent citizenship, collective violence and the struggle for a place in the new South Africa. Eight case studies of community protest and xenophobic violence*. Johannesburg: Centre for the Study of Violence and Reconciliation & Society, Work and Development Institute.
 3. It is noted that the actual number of SANDF soldiers on the ground may have been less than the number of soldiers authorized for deployment.

police services between March and June 2020. The Independent Police Investigative Directorate (IPID) noted that 1,647 cases were opened during this period, with 1,180 reported assaults and 77 deaths attributed to police action.⁴ This represented a spike of 200 cases when compared to the same period in 2019.⁵

An international analysis of policing responses to COVID-19 also highlighted how the increased use of force, during the pandemic, was a pandemic in itself. This increased use of force was highlighted in Kenya, where the country's Independent Policing Oversight Body investigated 87 complaints and 15 murders attributed to police action between March and June 2020. In Nigeria, security forces were reported to have killed at least 28 civilians, while 873 cases of police brutality were documented between April and June 2020.⁶ Reports by the United Nations' Human Rights Council also highlighted disturbing militarised responses to the COVID-19 pandemic in countries such as the Philippines, Sri Lanka, Iran, and Hungary.



Residents in South Africa are asked to stay indoors to prevent the spread of Covid-19.

4. Gerber, J. (2020, July 10). 1 647 cases reported to IPID between March and June, of which 249 were completed. Johannesburg: News24.

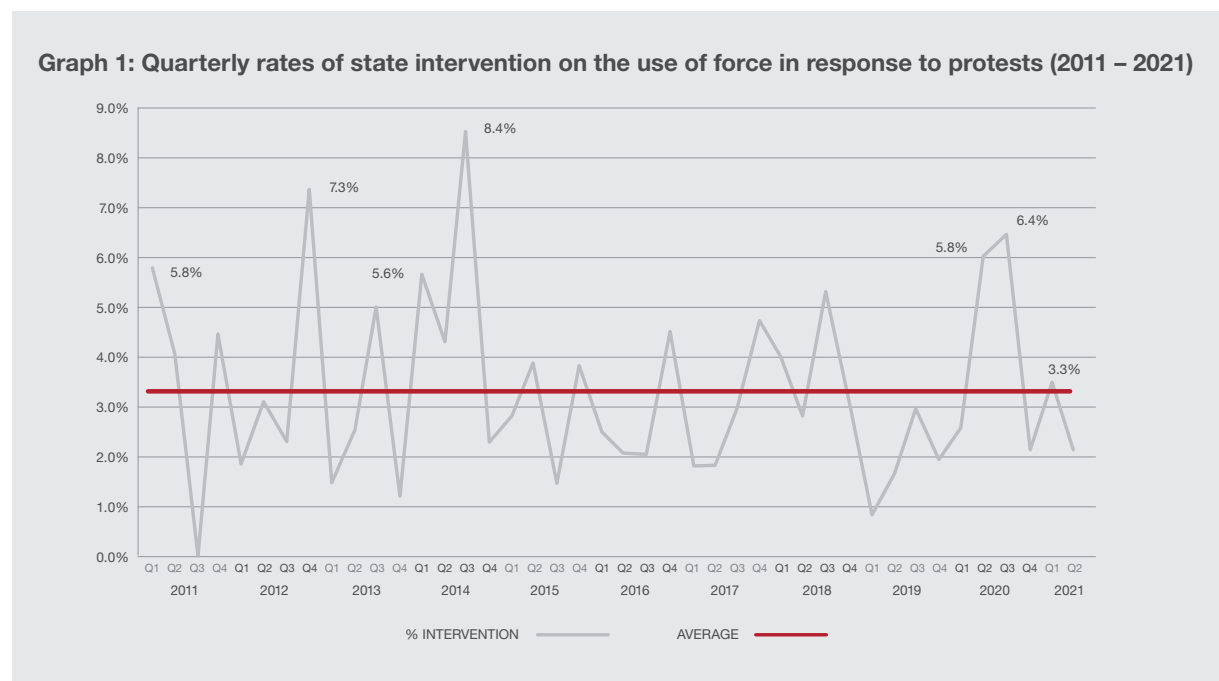
5. Knoetze, D. (2020, May 20). IPID reopens Miggels case as police brutality complaints spike during lockdown. Cape Town: GroundUp.

6. Trippe, K. (2020, June 24). Pandemic policing: South Africa's most vulnerable face a sharp increase in police-related brutality. Atlantic Council.

Indications of increased state violence in response to protests

State responses to protests over the past ten years were analysed by consulting country specific Armed Conflict Location & Event Data project (ACLED) data.⁷ ACLED maintains a database that captures, describes, and analyses instances of conflict, including instances of peaceful protests, violent protests, as well as the use of force to disperse or suppress protesters.

Graph 1 (below) provides an overview of rates of state intervention in protests on a quarterly basis over the past ten years. There was a noticeable spike in the percentage of state interventions between the second and third quarters of 2020 (5,8% and 6,4% respectively). Where the highest spike in interventions (8,4% in Q3 -2014) was largely due to tertiary student protests, this spike largely coincided with the onset of the country's COVID-19 regulations. Most protests during this period were related to basic service delivery – water, electricity, and housing.



An example of excessive state interventions in such protests happened on the 14th of July 2020, in the small town of Peddie and surrounding villages, where the SAPS dispersed peaceful protestors with rubber bullets and used excessive force in arresting protestors. This part of the Eastern Cape has been experiencing issues with undrinkable water and water shortages for close to ten years.⁸

7. ACLED provides a disaggregated data collection, analysis, and crisis mapping project which provides the highest quality and most widely used real-time data and analysis source on political violence and protest around the world. Further details are available at <https://acleddata.com/>

8. Majavu, A. (2020, July 14). *Police respond to rural water protests with bullets*. Johannesburg: Mail & Guardian.

Factors that contribute to increased state violence

The first factors that may have contributed to this increased use of state violence, in response to protests during the COVID-19 pandemic, is state securitisation or militarisation. Within these institutions, the use of violence is legitimised by the collective sense of anxiety provoked by the pandemic.

President Cyril Ramaphosa's initial COVID-19 national addresses conveyed the sense that the pandemic would overwhelm the country's healthcare system and economy if difficult, firm and swift decisions were not taken. Through this discourse, protests can easily become viewed as threats to a carefully managed crisis situation and as potential 'super spreaders' of the virus – situations that had to be confronted with great urgency. This was despite indications that many protestors adhered to COVID-19 regulations whilst protesting.



Residents from several informal settlements in Khayelitsha gathered on the steps of the Civic Centre in Cape Town to demand that they be supplied with water during the 21-day lockdown

A second factor is that of the centralised, top-down, paternalistic response that the state adopted in response to the pandemic. This response positioned state representatives and medical experts at the centre of the response to COVID-19 and characterised residents of South Africa as naturally disobedient and childish, requiring instruction or discipline from the parent-like state. Criticisms of this top-down approach have been noted, with some suggesting that it undermined and missed the opportunity to build on a rich tradition of social cohesion, community assets and resilience.⁹

A third factor that may have contributed to the increased use of force is the lack of clear legislation or guidelines on policing or the enforcement of regulations during states of disaster. Specifically, there is no reference to policing or the enforcement of regulations during a state of disaster within the Disaster Management Act (No. 57 of 2002), the South African Police Service Act (No. 68 of 1995), National Instruction on Public Order Policing (2012) or any other act. This lack of clear guidelines was highlighted as a serious weakness and factor that likely contributed to enforcement officer misconduct and state violence during the COVID-19 pandemic.¹⁰

A fourth factor that likely contributed to increased state violence in response to protests includes the unresolved legacy of police abuses, and a failure of effective oversight and accountability mechanisms particularly during states of disaster. The Independent Police Investigative Directorate (IPID) is the agency responsible for investigating complaints against the South African Police Service. Multiple reports highlighted how IPID was already greatly stretched, in terms of resources, prior to the COVID-19 pandemic.¹¹

In addition to pre-existing resource constraints, the accountability journalism organisation Viewfinder, noted several legal loopholes that make it close to impossible for IPID to conduct thorough, independent investigations. This includes limitations with IPID's mandate, where it can only provide recommendations to SAPS officials in terms of suitable disciplinary measures. Moreover, SAPS has the authority to reinvestigate IPID cases and make different findings and recommendations. Essentially, IPID's reports are not legally binding and many of its findings are not enforced. This is highlighted in the fact that less than 1% of IPID cases, between April 2012 and March 2020, resulted in dismissals (194 dismissals from 47,984 cases).

Multiple commissions and reports have put forward numerous recommendations on ways of reducing state violence or the use of excessive force by the SAPS more particularly. These recommendations include those in Chapter 12 of South Africa's National Development Plan – Vision 2030 as well as the recommendations on policing and crowd management emanating from the Farlam Commission of Inquiry.¹² These include recommendations around the need to demilitarise and professionalise the SAPS.

9 ACLED provides a disaggregated data collection, analysis, and crisis mapping project which provides the highest quality and most widely used real-time data and analysis source on political violence and protest around the world. Further details are available at <https://acleddata.com/>

10. Majavu, A. (2020, July 14). *Police respond to rural water protests with bullets*. Johannesburg: Mail & Guardian.

11. See, for example, Mlamia, S. (2020, May 15). *IPID budget constraints a big worry for MPs*. Johannesburg: IOL.

12. Marikana Commission Panel of Experts. (2018). *Panel of experts report on policing and crowd management*. Pretoria: Ministry of Police.

While some have suggested that the lack of accountability for change within the SAPS should be located within the top-ranks of the SAPS, the issue should be viewed as being broader or more systemic in nature. Organisational or institutional change within the SAPS requires a broader recognition of the role of the SAPS within a militarised state, where the SAPS is responsible for maintaining a longstanding social order (or disorder). Furthermore, as noted in research on collective violence by the Centre for the Study of Violence and Reconciliation, there is a risk of scapegoating the SAPS or neglecting the issues that often underlie protest or social discontent. This includes breakdowns in formal participatory governance processes, breakdowns in social cohesion, as well as trust deficits between the state and communities.

The trust deficit between the SAPS and many communities is one that originates from the apartheid era, where the SAPS was viewed as serving the state or apartheid system rather than black communities. While the factors that contribute to crime in South Africa are beyond the SAPS' control, issues with crime and service delivery at a local level can perpetuate this view of the SAPS. Research has also suggested that SAPS officers who work in environments where they feel overworked, overwhelmed, and undervalued, may also be prone to utilising violence and excessive force as a means of gaining respect or a sense of legitimacy.¹³ Hence, trust deficits between the SAPS and communities may contribute to cycles of violence.



Image: Ashraf Hendricks/GroundUp

The Portfolio Committee on Police has heard that discipline management needs reform to address loopholes and the conflicts of interest which protect police officers accused of violence from facing consequences.

13. Faull, A. (2013). Fighting for respect: Violence, masculinity and legitimacy in the SAPS. *SA Crime Quarterly*, 44(1), 5-14.

Why the South African state should be concerned about increased state violence during the COVID-19 pandemic

As noted, community protests and social unrest are often symptoms of underlying issues such as poverty, unemployment, inequality, access to basic services, crime and so forth. The COVID-19 pandemic has greatly intensified the seriousness of these underlying issues, with South Africa experiencing its highest unemployment rate in over ten years. Issues of poverty, unemployment and access to basic services are also likely to be hampered by the country's growing budget deficit and austerity measures. These socioeconomic conditions are likely to increase social unrest and protests as communities seek to voice their concerns around the state's failure to address their basic needs. Particularly, where the state has failed to communicate and consult with communities during this crisis, these protests are volatile and need to be handled with great care and with the aim of de-escalation. A belligerent and increasingly militarised response is likely to further erode the relationships between the SAPS, the state and communities across the country.



Image: Zoë Postmar/GroundUp

Protests by Alexandra residents in April 2019. A report from the Public Protector and the South African Human Rights Commission (SAHRC) following the devastating 2019 protests has revealed persistent failures by the City of Johannesburg and the Gauteng Provincial government.

Recommendations

Several recommendations are put forward based on the challenges discussed in this policy brief:

1. Greater attention should be paid to guidelines around policing or the enforcement of regulations during states of disaster. Any state of disaster is likely to elicit various anxieties and disruptions. Policies and guidelines that recognise the challenges associated with states of disaster and prioritise citizen participation and rights will assist in fostering social cohesion, cooperation, and economic recovery.
2. A review of the SAPS Act (No. 68 of 1998), Criminal Procedure Act (No. 51 of 1977) as well as the National Instruction for Public Order Policing (2012) suggest that there is a need to offer greater attention to the concept of “public order” and the SAPS’ role in the maintenance thereof. There is nothing orderly about communities lacking access to basic services such as sanitation or clean, running water. The state and other actors should endeavor to ensure that community protests, related to access to basic services, are framed as rights-based rather than criminal issues.
3. Legislative loopholes contribute to issues with accountability within the SAPS. It is recommended that the way in which SAPS and officials are allowed to challenge IPID findings should be reviewed. Revisions could include creating more open and transparent disciplinary hearings that allow for independent observations and reviews of such processes.
4. Calls to professionalise and demilitarise the SAPS have been made for over two decades. This policy brief recommends that there is need for a broader recognition of how militarised responses to community protests and other issues are tacitly supported by factors at multiple levels beyond that of the institutional (SAPS) level. This includes support for militarised responses to protests by the broader state, South Africans, the media, and other actors.
5. Similarly, the issue of accountability within the SAPS speaks to a broader concern regarding accountability and good governance. An important aspect of building or maintaining good governance includes advocacy and public pressure to address issues such as state violence and the use of excessive force. This is an issue that has not gained much public attention or support. It is important for civil society and other stakeholders to raise awareness around this issue and highlight its pertinence.
6. All levels of government need to engage more seriously with communities during times of crisis such as the Covid-19 pandemic. Sudden changes in poverty and hunger will lead to protests and increase the risk of public violence. This requires pro-active engagement rather than reactive coercive security responses.



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