

MINISTRY OF POLICE



POLICY AND GUIDELINES: POLICING OF PUBLIC PROTESTS, GATHERINGS AND MAJOR EVENTS

POLICY DOCUMENT ON THE POLICING OF PUBLIC PROTEST (RIOTS) AND MAJOR EVENTS

1. Introduction

The dynamics in the policing of public protests in South Africa after 1994 have undergone a major shift. Prior to 1994, the police, supported by the military, were tasked to suppress and use force to control unrests flowing from political opposition. The early 1990s experience increased political activities that resulted in key control challenges for “riot control” within the police force. Political marches and rallies that characterized the early 1990s could not be managed with the same repressive style as was the case prior to democratic negotiations. Policing measures against public protest was generally characterized by arbitrary “riot control” and abusive actions of the Internal Stability Division (ISD) which brought controversy into public order policing.

Given several incidences of police clashes with protesters (Sebokeng, 1990 & Daveyton, 1991), the ANC led government after 1994 noted that the South African Police required transformation from the repressive style of policing to a police service for the people. This brought a challenge of introducing a policy framework in the approach to policing of public protests and riots and clear guidelines for the use of force by SAPS.

The Bill of Rights in the Constitution provides that “*everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions*”. Equally, so, the South African Police Act 68 of 1995 attempted to bring about a change in our policing approach with the introduction of community based policing and the need to expunge the apartheid policing style and stigma.

Due to a lack of clear policy and guidelines, the SAPS reacted with operational policy based on lessons learned from a number of notable incidences involving the police and the public.

Transformation in the SAPS required the rationalization of public order policing units, but has also exposed a serious gap within the policy environment. Post 1994, the SAPS

have faced another type of public unrests and protests, only this time it has centered on public service delivery, predominantly in the local sphere..

More recently, the country has experienced a growing number of protest action and unrest which, in some instances are accompanied by serious provocation, intimidation, public violence and even elements of criminality. The main challenge for the SAPS is to respond to these manifestations within the spirit and context of a community orientated policing model and the Bill of Rights. This requires a realistic balance between acknowledging the rights of citizens to demonstrate versus the police's need to ensure peace and stability. These challenges require us to assess the effectiveness of public order policing, especially with regard to its practice and response.

Post 1994 public order policing was located at SAPS area offices as part of Area Crime Combating Units. Unfortunately, during the subsequent restructuring of the SAPS, the Area offices were closed down and ACCUs significantly downsized. In view of recent increase in public protests and gatherings it is important to determine whether public order policing conforms with the constitutional and legal imperatives and whether the operational policies and strategies of the SAPS allows for appropriate planning, interventions and/or responses in respect of public gatherings to deal with current and future challenges brought about in the process of policing public protests.

2. SCOPE AND OBJECTIVES

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;

- 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.

3. METHODOLOGY

In drafting this policy, several approaches were combined to ensure maximum collation of information and verification of facts.

- Desktop research and literature review of case studies and international and regional country perspectives on the use of force;
- Interviews with relevant stakeholders (Academics, Researchers and SAPS with special focus on the subject;

Research conducted on the policing of public protests (by ISS – Omar; Minnaar; Mistry) used case studies, specifically focusing on the Gauteng Provincial dynamics.

Some researchers engaged, were able to relate to specific areas relevant to this policy where they were either exposed to or provided the opportunity to observe and evaluate.

In terms of verifying the current status of POP in South Africa, a physical scrutiny of all relevant legislation and operational policies (National Instructions, Standing Orders, SAPS strategic plans, etc.) has been conducted and analysed.

4. POLICY STATEMENT

One of the key areas is to consider whether the policing of public protests in its current occurrence are consistent with the fact that police operations have to be undertaken within the context of people's right to protest. This does not diminish the threat to public order which some public protest may bring about. This can go beyond law and order which if the current policing of public events is to go by is often applied loosely on any day that the police are confronted with protesters.

In developing policy and guidelines for the policing of public protests and gathering, we need to ensure our policing approach is consistent with:-

- Constitutionally accorded rights for all individuals
- Effective and peaceful crowd control demands
- An approach that does not impact negatively and enhances tensions between the police and community at the time of protest, this has potential to continue even beyond the protest
- Our policing approach not generating the very violence it seeks to control in public protests

The policy aims to outline the standards and policy guidelines for SAPS to ensure proper handling of gatherings and conduct by police officers in protest situation.

5. LEGISLATIVE AND POLICY FRAMEWORK

The Constitution of Republic of South Africa

Since 1996, unresolved social issues have resulted in some members of the public to expressing themselves through structured and non-structured public gatherings, marches and sometimes public protests. However even where the underlying causes of public protest actions are meritorious, the government has a residual effect to maintain

public order. In addition there are some instances where organizers responsibilities are abdicated which led to criminality and criminal elements who have been able to make use of public gatherings and protests to serve their own narrow objectives and purposes.

The Constitution of the Republic of South Africa (Section 205 sub-section (3)) clearly defines the functions of the police to 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 respect of the vested rights granted by the Constitution, of note is that not all public protest can proceed unrestricted because the merits of public protest actions are not always clear-cut. Thus South Africa has also developed domestic laws, policies and regulation(s) within the framework of international laws on the “right to public gatherings” including human rights standards.

The challenges of effective implementation, monitoring and evaluation of these during public protest however remain. Although the current legal framework makes provision for some negotiation and application procedures to hold a public protest, gathering or march, it happens frequently that some of these public protests starts spontaneously. The latter raises serious challenges since the SAPS are not afforded the opportunity to plan in advance and thus have to respond in a reactive manner.

The Regulation of Gatherings Act 205 of 1993

The Regulation of Gatherings Act was enacted “*to regulate the holding of public gatherings and demonstrations at certain places*”. It repealed the following legislations; 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, 49, 51, of the Internal Security Act. The basic premise of the Act is that every person has a right to peaceful participation in gatherings – with the protection of the police. The Act also set out clear procedures and guidelines regarding

applications to conduct public gatherings and identify key role-players who must make inputs towards a final decision for approval.

The Regulation of Gatherings Act places considerable emphasis and obligations on organizers and conveners of gathering to compile with all sections of the Act and to take responsible steps to ensure the gathering occurs in an orderly and peaceful manner. Under section 12 of this Act the organizers can be held liable for failure to take adequate steps to control participants of the gathering and to ensure compliance with all conditions set out in the approval of the gathering. The Act allows for criminal prosecution of organizers/conveners if they failure to meet their obligation.

The South African Police Service Act 68 of 1995

Section 17 (Chapter 6) of the South African Police Service Act no 68 of 1995 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. 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.

In implementing this the SAPS developed and implemented Standing Order 262 on Crowd Management and The National Municipal Policing Standard for Crowd Management

SAPS Standing Order No. 262 on Crowd Management and the National Municipal Policing Standard for Crowd Management

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. 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. At the same time the standing order also prescribes the requirements which are to be followed by the police if the use of force becomes unavoidable.

Peace and Security Protocol (PSC)

South Africa has ratified the Peace and Security Protocol (PSC). This protocol emphasizes commitment of the AU in observing the human rights of all citizens, international humanitarian law, as well as the sanctity of human life, as enshrined in Article 4 (o and m) of the AU Constitutive Act and Article 4 (c) of the Protocol Relating to the Establishment of the Peace and Security Council of the AU.

Intergovernmental Relations Act

The Intergovernmental Relations Framework Act, 2005 to enhance integration of government programs and planning in all spheres of government on policy development and implementation.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The UN basic principles provide that law enforcement officials may only use force when strictly necessary to do so.

While a precise set of domestic and international human rights law has been developed in respect of the use of force by the police in general including during public protests, there has been diverging standards applied by the police in respect of the use of force in the country and many of these do not meet the international standards which the government is signatory to.

During public protests/marches, the right to life of protesters, the police and the general public may be at stake. The right to life sometimes described as the “supreme human right” constitute an international law that is central in the recognition of the rights enshrined in international human rights treaties.

6. CURRENT POLICING ENVIRONMENT /KEY ISSUES AND IMPLICATIONS

The current norms regarding the rights and regulations in policing public protests are covered by international law, regional and national laws. While international law may primarily make a distinction on the level of protection provided in peaceful and violent protests, the national laws still draws the line between lawful and unlawful protests. Thus the implications in the policing of public protests vacillate from one point of handling the protest to the next with potential spill-over effects of many being disruptive and thus compromising legitimate state and social interests.

Therefore key questions raised in addressing the implications of the police use of force in handling public protest are:

- is the current training of SAPS still relevant and appropriate (theoretical and practical and do they have proper equipped training centres),
- is training done within the context and understanding of the gatherings act,
- does the SAPS training manuals support the background of the public order policing

One challenge facing the police is that the policing of public protests, demonstrations and gathering draws the police away from their normal policing activities and forces the police to redirect resources from their normal day to day policing activities. This can lead to gaps in normal policing which are sharpened when the police personnel deployed to the policing of such events are drawn from local stations.

7. INTERNATIONAL PERSPECTIVE AND COMPARISON

According to the United Nations (UN), governments and law enforcement agencies can adopt and implement rules and regulations on the use of force and firearms but keep the ethical issues associated with the use of force and firearms constantly under review. Although the specific country's dynamics may dictate which approach is suitable for the

police in crowd management, it is imperative to look into what other practices countries use in the policing of public events.

Current international research supports continuous police training in crowd control and management. Education and training in crowd control depend on a *knowledge management system* available within the police, which capture operational reports on successes and failures. Knowledge management system is an organization's ability to capture lessons-learned, and best and worst practices in the context of crowd control operations. The greater challenge in this area is that crowd control and management training appears by all intentions to be an internal police matter to benefit all citizens. This requires clear and comprehensive police leadership to ensure that such training actually occurs within all appropriate police structures. In principle every law enforcement agency is required to conduct and document semi-annual training for all officers on the lawful and appropriate or professional use of force and deadly force.

This training must be designed to reflect current standards established by statutory and law, as well as state wide, county and individual agency policy. It should include, but not necessarily be limited to; the use of force in general, the use of physical and mechanical force, the use of deadly force, and the limitations that govern the use of force and deadly force. The international perspective on the broader aspects of police training in crowd control and management for all police personnel at all levels highlight that training should include: a review and reinforcement of applicable laws, state statutes and department policies; a review of civil rights issues inherent in mass demonstration events; a uniform understanding of rules of engagement, use of force policies and mass arrest procedures; clear instruction on the need for self-control, teamwork and adherence to commands; stated expectations for highly disciplined behavior, self-control and restraint; and a strong statement that any officer's failure to comply could result not only in failed police tactics, but also employee discipline.

For countries such as Canada, a committee on the use of force recommended that police officers should undergo training in Crisis Resolution/Officer-Safety Course. The committee also highlighted some of the content for the course based on empirical

evidence in the United States and Australia. The committee indicated that among the training topics: rule interpretation and compliance, along with all use of force options, the dynamics of officer fear, and diversity awareness need to form part of training. In addition, emphasis should be placed upon the meaning of the police service's rules and, within the context of the scenario, the identification and transition from one force option to another with special emphasis on achieving an appropriate balance between de-escalation and escalation responses. As well, recognizing that officers' response to fear influencing their reactions, the course should also examine this phenomenon and offer appropriate coping mechanisms for police offers.

Most police departments in Australia have a use of force policy which addresses operational plans and issues, including crowd management. Police are generally guided by section.462A of the Crimes Act 1958. Outlining procedure and guidelines, one specific department of police, the Victoria Police Department, have adopted what they call a Tactical Option Model designed to assist members in understanding that they have a range of tactical options and that these options must be considered with communication and safety central to their decision making. The model indicate that prior to choosing an option, members should conduct a risk assessment of the situation, prepare a plan, make all possible inquiries about the subject and request any assistance deemed necessary. In critical situations where operational equipment was deployed and resulted in injury, after care and medical attention must be provided. To ensure that police members fully apply this model, training in operational safety tactics is provided by the Centre for Operational Safety.

In Chile when mass protest was launched by students protesting against high education fees the police used non lethal means to disperse crowds of students in the city of Santiago water cannon were brought in as used to disperse these crowds.

In Senegal police normally wear full riot gear and apply methods similar to the French approach. It makes use of shields and batons. In order to disperse violent crowds and demonstrators, tear gas and water cannons are utilized. The country subscribes to the use of force (lethal) and uses firearms but only where situations dictate such.

In Zambia the use of lethal force and the fatal shooting of unarmed civilians has become an embarrassment to the authorities and has resulted in the police recently taking delivery of new riot-control equipment that includes, for the first time, rubber bullets and bulletproof vests. Receipt of the equipment, particularly rubber bullets, has raised hopes that the security services will no longer have reason to resort to live ammunition to quell civil disorders. .

The police in Ghana are guided by their police act and makes provision for the use of lethal force in controlling riots. In practice, the police had been severely criticized since most of the violent riot situations have been coupled by incidents of fatalities. Many at times warning shots fired by the police to scare away a group/crowd have resulted in the death of one person. Ghana police seem to prefer using warning shots, which in most of the cases result in deaths. As a result of this situation the Ghana Police are now reviewing their approach to policing of crowd control situations.

In Botswana police usually use teargas and rubber bullets to control public protest action.

8. POLICY IMPLEMENTATION ENVIRONMENT

This policy is aimed to provide a framework and guidelines for the police in policing public protests and to introduce stringent measures around the use of force linked to public gathering and protest. The policy and guidelines must guide the SAPS in developing appropriate and effective operational strategies and systems in the policing of public protests while which must restore and enhance trust and confidence of the communities.

The current environment leans too easily towards intimidation and violent conduct which too often result in unnecessary casualties and fatalities. .

A number of public protests are the subject of perceived poor public service delivery which generally targets municipalities and their office bearers. It is also noteworthy that, whilst the Public Gatherings and the SAPS Acts introduced ample procedures and

mechanisms to negotiate and consider all applications for public protests, gatherings and marches (planned), a new phenomenon has developed where protests are breaking out spontaneously (unplanned). These instances normally leave the SAPS off-guard and make it very difficult to plan for proper contingency measures. However, the Act needs stricter application in terms of imposing the sanctions contained in it.

While the Police have a responsibility to police public protest, gatherings and events, the Gatherings Act confers considerable responsibilities on conveners or organizers of events to ensure that such events are carried out in an orderly and peaceful manner.

The organizers must be able to clearly indicate, during the pre-meeting (section 4), that they have arranged sufficient capacity to be deployed as Marshalls and provide name(s) of a person or persons with whom the police commanders must liaise during the public gathering/event. In the case where the duration of a protest or gathering is planned to extend over more than one day, the organizers of the gathering must avail themselves to meet with SAPS commanders in order to constantly review whether additional Marshalls and planning is required. The SAPS commander must meet with all the relevant role-players at the end of each day to debrief and reflect on the days actions and to assess if there is a need to change contingency plans.

9. THE POLICING OF PUBLIC PROTESTS

In order to give impetus and ensure compliance with the Bill of Rights, the Constitution, national legislation and international standards, the SAPS must urgently review its current dispensation and operational approach to the policing of public protests and riots. While experiences from the operational planning of SAPS relating to major events like the 2010 FIFA Soccer World Cup are not specifically related, it does provide some platform and opportunities towards addressing training gaps in strengthening crowd management approaches. Similarly, the involvement of the SAPS in peace keeping operations towards a peace accord in Sudan, can serve as basis for enriching training initiatives towards effective crowd management.

In addition, the SAPS decided to replicate the French model around the policing of crowd management, which direction have not been formalized yet. However, it is evident from recent experiences that the policing of public gatherings are still biased towards the Belgium approach.

In the South African context, any operational policing strategy must take into account the operational environment and should be based upon sound democratic principles, which do not infringe on the human rights of citizens, whilst simultaneously protecting innocent citizens against any threat which might be posed by the public protest. Such strategy must be supported by enabling factors and capacity in order to ensure its success.

It is acknowledged that the recent past has exposed serious gaps in the existing operational policies, strategies and approaches applied by the SAPS during the policing of public protests. These gaps widens when SAPS responses to unplanned protests is contextualized.

It thus imperative that the SAPS must urgently align itself with the following issues as crucial areas for intervention and redress:

Establishment of a dedicated Public Order Policing (POPs) Unit

In terms of the SAPS Act the National Commissioner is obliged to establish a national public order policing unit and maintain the same (Section 17). Such a unit was indeed established during 1996. During 2002 the POPs unit was subject to the SAPS restructuring and aligned to function at policing area level as the Area Crime Combating Units. As the latter name suggests, the functions also changed to include crime combating. Unfortunately, this relegated the crowd management function into a secondary function. During the subsequent restructuring process in 2006, the policing areas were disbanded and policing resources “released” to supplement much needed capacity at station level. Again the ACCUs was affected and the name was changed to Crime Combating Units (CCUs).

The restructuring also had the effect that the CCUs were incorporated as a section under the division Operational Response Services. The ACCUs was drastically rationalized and more than half of its members seen deployed to police station level to strengthen the “local crime combating” initiatives. The remaining half of members found themselves in a situation where they had to cover bigger areas with lesser resources. *(I.e. in Gauteng there were 7 units operating in 7 areas. After restructuring, the 7 areas were rationalized into only 3 areas. The result was that only 50% members of the initial ACCU had now to cover bigger areas with fewer resources; from “A Case Study conducted by the Crime and Justice Programme”).*

It is indeed the 2006 restructuring of the ACCUs which provoked serious criticism since it was indicative that specifically from this period, a remarkable increase occurred in the number of service delivery protests. However, 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.

Technically it is thus argued that the POPs unit does not exist anymore as “a *specialized (dedicated) public order policing function*” as envisaged in the SAPS Act. Until Section 17 of the SAPS Act is amended accordingly, the POP unit must be re-established, maintained and capacitated to execute those functions the Act confers upon it. Due to changes, demands and an increase in public protests and demonstrations (especially incidences with a violence nature) since 2006, the need for a specialized public order policing unit becomes more and more justified. This notion is strengthened by the constant negative public scrutiny of current policing methods and

approaches applied during such protests and gatherings, which in some incidences had already resulted in unnecessary casualties and fatalities.

The National Commissioner must ensure that sufficient appropriate capacity is created (whether by transferring back previous experienced and skilled members or building capacity through effective and focused training to other members deemed fit) and must ensure that the unit is appropriately resourced. These deliberations must be based within the context of current international trends, developments, norms and standards.

Training of members attached to public order policing unit

Comparative research (Rauch, 1992 & Mistry, et al, 2001) has shown 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. Policing is often regarded as a function requiring highly discretionary activity since there is no single standard prescription in doing policing during a public protest. Thus the police officer (especially unsupervised) would be perpetually called upon to make decisions and take appropriate action.

Any training which can emphasize legal knowledge and "law enforcement" will be missing the point that action will always be the product of judgments made in concrete situations that cannot be submitted to rules. What is needed is a training manual which aims to equip police members with appropriate skills and information for the exercise of such discretion in a complex and changing external environment.

This view is supported by the Final Report of the Stage II Review of Police Probationer Training in England and Wales which recommended for a much longer period of initial probationer training, for training in the prevention and handling of disorder and in an understanding of multi-ethnicity.

Previously all the POP training was of a specialized nature. In joining the crowd management unit a SAPS member was obliged to attend a three-week formal training course. The course consists of Platoon Members Training (PMT-previously known as 'POP Entry Level') and Platoon Commander Training (PCT) which is a course for commanders and captains. More advanced operational courses is targeting the First line Operational Manager and Operational Commander Training

The courses consist of both theoretical and practical work and cover a rigorous program of physical training, classroom work and practical simulations. Shooting practice also forms part of this crowd management training.

Since 2007, the training in public order policing was watered down and became more generalist towards crowd management. Currently no distinction is made between training for non-commissioned officers and commissioned officers, at least to the level of colonel. Only members from the level of Brigadier and upwards are provided separate training. It also appears that lower ranking officials are nominated for training which means, when a public protest takes place within a station precinct such a member must take control as platoon leader and issue instructions to his or her station commander or supervisor. This does not suggest that such a situation is unbearable, but simply indicate that conflict may arise in the normal course of executing duties at the station.

It is imperative that a review should be undertaken of the existing training modules to ensure it is on par with international norms and standards. The South African Police were complimented on the training provided to police forces in Sudan, Liberia and the Congo which should serve as basis for the review of training methods and technique. Trainees should also be exposed to appropriate domestic case studies and simulations to understand the context within which public protests takes place. The training module must include a compulsory section aimed at preparing members for the psychological challenges and demands required in policing public protests.

The POP training must be re-introduced as specialized training in line with the spirit of the Constitution and the SAPS Act. The current generalist training can be retained to

equip visible policing members since they normally serves as the “first responder”. Some elements of the crowd management training should be summarized and included in regular station lectures to provide members with a basic understanding in approaching public protest situations.

The policing of public protests and gathering does not necessarily occur on a daily basis and the members of the POP units must be able to be deployed to other visible policing activities. The specialized skills of such units, in fact, could assist the police in some of their visible policing activities such as road block and cordon and search operations.

Command and Control

The success of effective response by the SAPS to any public protest situation 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 protests, command and control simply means that certain people must know that they have different roles to play. Ordinary members in the platoon are to execute getting instructions from the platoon leader. The platoon leader is guided by the operational commander who is normally situated some blocks away in a mobile or permanent command centre (this can create serious repercussions in cases where communication is lost and the platoon is left on its own). It therefore stands to deduct from the command and control in this hierarchy that each member has certain responsibilities and should be held responsible for decisions taken by them.

SAPS Commanders must have negotiation skills and be able to use these skills during gatherings. In the case of a planned gathering, the commanders must be able to negotiate with the organizers of the gathering, or the person nominated for this purpose, as and when required or necessary.

In the event of an unplanned gathering, commanding officers must be able to identify key leaders from the group with whom they can negotiate.

It should be noted that the metro police service does not have powers to police public protests. In terms of their mandate their functions is limited/restricted to crime

prevention activities, enforcement of by-laws and traffic policing. This suggests that once the SAPS arrive at a public protest scene, they must take full control. This includes command and control and where further assistance is required from the metro police members, the SAPS command and control will supersede. The SAPS shall ensure that such metro police members are in full compliance with all the requirements within this policy.

If one looks at video footage of the policing of public protests one can be excused for thinking that the policing of such events is uncoordinated and lack planning. There is no clear police line and police are deployed sporadically around the gathering. In contrast, if one looks at some of the international footage of how other police deploy at similar gathering it is clear that they have a planned line as opposed to scattered sporadic deployment.

The POP unit should be able to effect rapid deployment in the case of public gatherings or protest action and once on the scene must be able to take command and control of the event without interference from other policing structures.

While the guidelines and procedures for the policing of public protests and gatherings must be clearly understood and implemented during such events, the guidelines must allow local commanders to take initiative when the situation arises. However the taking of such initiative must be done by the commanders and adhere to lines of command and control

Operational planning and Types of Public Protests

In the current South African context, public protests can take shape as either planned protests or the more controversial unplanned (spontaneous) public protests. The former is planned formally and provides opportunity for operational planning according to prescribed guidelines. Section 4 of the Regulation of Gatherings Act requires a meeting with conveners/organizers of gathering and the provision of details on number of participants; the number of marshals to be utilized; anticipated routes; imposing of certain requirements and conditions; etc.

The SAPS can thus proactively do proper assessment and plan for contingencies and weigh options. Operational planning must also take into account the deployment of resources and where necessary, call for reinforcements. It is thus imperative that a member of the POP unit must attend the Section 4 to interpret submissions and make informed inputs.

Spontaneous public protests, on the other hand, does not provide the luxury of planning and sometimes call for immediate reaction. Such situations call for sound judgement and correct assessment of the situation. In order to ensure the right responses, it is required that each Province must facilitate the development of contingency plans up to police station level or at least cluster level to provide minimum guidance to respond should any of the public protest types manifests.

An observation from previous experiences is that the reaction of the police, in both categories seems to lack proper structure and formation. There is no coordination while there seems to be no purpose on the side of the SAPS but solely to guard the protest. Firstly, the SAPS must introduce measures to ensure cordoning off of certain areas and restrict the protest to routes and areas less significant and minimum opportunity for damage to property or threats to the person. Secondly, the SAPS must employ the best possible formation to prevent provocation; target leaders of the pack for later interrogation and ensure that each protest is covered by video recording. This might come in handy during case investigation or for identifying possible perpetrators in criminal cases. Compulsory briefings must take place before the activity and later closed with a debriefing. This will ensure that members of the platoon are fully conversant as to what to expect and it also create opportunity to identify members for counseling who might have been traumatized by anything during the execution.

Use of force

In line with the international instruments, many countries do not subscribe to the use of lethal force during public gatherings and demonstrations. It has always been perceived that a similar approach is followed in South Africa. Unfortunately the contrary has been proved over the past few years which reached a climax during the first quarter of 2011.

Relevant legislation, including the Constitution (Bill of Rights) and standing orders appears to re-affirm the international position on the use of lethal force. In fact the standing order goes so far in prescribing the kind of weapons and ammunition allowed to be used during public protests or gatherings.

To understand police use of force is necessary to also understand types of force associated with the police in the context of their daily operations. Various distinctive, but similar types of police use of force can be identified in different countries. These consist of: *physical force* which involves contact with a subject beyond that which is generally utilised to affect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the law enforcement officer's authority, or to protect persons or property. Examples include wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation. *Mechanical force* involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the law enforcement officer's authority. Examples include the use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying. These kinds of police use of force appear to be the most commonly applied forces by police across countries such as Britain, France, Belgium, Malaysia, USA, Canada and South Africa, to name but a few.

All along the SAPS policing was aligned to the Belgium model which seemed to be a more narrow approach. This model is based on distant policing of crowds and would include discussions, negotiation and persuasive methods. It is obvious that the distance approach provides more room for protesters to provoke and throw objects which could cause injury to people and damage to property. The model also provides that the police may negotiate with for example a small delegation from the crowd. Unfortunately this distant approach leans too easily in resorting to the use of force especially where crowds would overstep boundaries set by the police which in most instances construed as posing a threat to the Police.

In planning towards effective crowd control during the 2010 FIFA Soccer World Cup Tournament, the SAPS conducted research on different models and decided to engage on the French model which is underpinned by a wider approach than the Belgium model. The French model drastically cut down on the distance and requires that the police should be literally a few meters in front of the crowd. This provides the opportunity to restrain forward movement of the crowd and the possibility for snatchers to pick on certain individuals who are ought to be the most provocative within the crowd. This model also provides better formation and positioning of platoons in crowd control and redirecting a protest to lesser significant areas. Training on this model were since introduced but never formalised.

It is not certain why, after opting for the French training technique, the SAPS kept on applying the Belgium approach. The simple logic appears to be that no formal approval for the exclusive implementation of the French model by the SAPS has been made by the SAPS management. In fact the merit of the model is that public protests can be better controlled at short distance, the route of the protest can be easily diverted and it provides for snatching and close surveillance.

On the other hand, *coercive and deadly force* involves force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing death or serious bodily harm. Examples include purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which there are people. This kind of force normally occurs as a measure of last resort and in very few cases. Very often the indiscriminate application of deadly force by police in many developed countries such as the USA and Canada, evoke public protests on police use of force, which in turn results in public discourse on police policy reviews. However, it cannot be argued with certainty that the frequency of the indiscriminate use of deadly force seem to be more in one country compared with other countries; it is largely a rare phenomenon and should be understood within the broader context of violence in a particular locality and country.

In order to ensure compliance to the Constitution and obligations under the international instruments, the current operational strategies and/or policies guiding the use of force by the SAPS during public protests must be subject of urgent review to reduce the use of force to a minimum. This review must ensure strict measures and guidelines are adopted and implemented to reduce the risk of casualties and fatalities associated with the use of firearms during public protests.

Currently the use of lethal force is guided by Standing Order 262 which prescribes the kind of weapons and ammunition allowed to be used during public protests or gatherings and must be adhered to. A decision to discharge a firearm should be on the orders of the commanders. Any decision or instruction to discharge a firearm must be subject to review and investigation, which does not preclude disciplinary and criminal sanctions in cases resulting in casualties or fatalities caused by the use of such firearms.

Equipment

In order to give effect to the implementation of this policy, it is incumbent on the SAPS management to kick start procurement processes in ensuring all the required and necessary equipment is procured, evenly distributed and allocated and that proper maintenance.

The minimum equipment which will be required is:

- Body armour and Helmets;
- Shields;
- Batons;
- Water cannons (some already procured for crowd control during the 2010 FIFA World Cup
- Armoured vehicles (some of the current fleet needs replacement)

- Specified Caliber Firearms and ammunition
- Communication and Video equipment
- Mobile operational centers (supplementing the current fleet)

A commander must do an appreciation of the situation and utilize available information to inform the deployment of resources. Unit Commanders must ensure that the SAP 15's are completed before every intervention by the Public Order Policing Units including the serial number of firearms, shotguns, the amount of ammunition, etc. Members must have all the necessary equipment and in the case of the issuing of firearms, the serial number of the firearm must be linked to a specific member's name. Commanders must certify the issuing of such equipment. During the protest or event, each member shall at times display their name tags.

A key area of procurement is the availability of video equipment during public protests and demonstrations. Working video equipment must be deployed to and used at all public gatherings and protests. The use of such video equipment will not only assist the police in securing prosecutions where criminal acts occur but will also allow the police to make use of material gathered during the videoing of such events for training and debriefings. This video material can also assist in the conviction of conveners/organizers of gathering who fail to comply with the requirements of the Act by failing to control participants in such gatherings.

Use of Intelligence

A threat analysis must be conducted by the intelligence fraternity throughout the whole country to identify hotspots which must be considered and provide guidance for the deployment and/or allocation of equipment

The use of intelligence as part of policing of public protests and gathering is essential. The relationship between the POP units and crime intelligence can not only assist in the planning of deployments at protests and gatherings but also assist the POP unit to identify possible threats and targets proactively. In the UK the police make use of

intelligence operatives to identify particular trouble makers in the crowd. Then through a process of planned police interventions by the POP Unit they develop a strategy to isolate such individuals from the main crowd.

Responsibility of Conveners/organizers

The conveners/organizers of gatherings and public protests, who fail to comply with provisions of the Regulation of Gatherings Act, should be prosecuted under section 12 of the Act.

To ensure this section is effectively utilized, as intended in the Act, it is essential that section 4 meetings (held with authorities to consider and plan the gathering) be thoroughly managed. Such meetings must place strict conditions on the approval of gatherings and public protests.

Section 11 of the Act also makes conveners liable for damages that arise as a direct consequence of the gathering. This section also needs to be utilized together with section 12 of the Act.

Section 11 and 12 of the Act have not been effectively utilized and going forward, more focus must be placed on these sections as part of the policing of public protests and gatherings

Signed by:

Minister of Police

29 August 2011