



Briefing Paper 341

February 2014

A Crisis in the Police Service?

1. Introduction

In August 2012, at Marikana, the police killed 34 miners. This was probably the lowest point in South Africa's post-apartheid history. When placed on the stand at the Farlam Commission, police leadership, as represented by Police Commissioner Riah Phiyega, has circled the wagons and either 'does not recall', or insists that they did nothing wrong. Advocate Dali Mpofu, representing the miners, has argued that the police responsible for the deaths are murderers, and should be charged as such.

Eighteen months after Marikana, how are the police doing in handling other protests? Service delivery protests continue to convulse the nation, and every week seems to bring news of more fatal shootings by the police at these protests. This pattern is clearly problematic, but where does the fault lie?

At the outset, it is necessary to make the point that protestors are not entitled to use violence to address their grievances, and that burning houses and attacking police officers is unacceptable. Having said that, the desperation and anger of protestors is often entirely justifiable, and it is not surprising that violence breaks out at these protests.

2. The Police under Pressure

Before hurrying to blame the police for the recent spate of shootings, it is important to note that they operate under continuous and immense pressure – both in terms of traditional policing and crowd control functions. Every day, protests

break out in one municipality or another¹. The vast majority of them go unreported, but where order breaks down, news headlines soon follow.

Johan Burger, an expert on policing from the Institute for Security Studies (ISS), makes the point that the police are effectively caught between a dysfunctional state and an angry population². Following on from this thought, it is worth bearing in mind that when service delivery protests break out due to government dysfunction, it is not the inept mayors or the corrupt ward councillors who have to confront a violent crowd and convince or force them to disperse – it is the police. They are in a situation not of their making, with options not necessarily to their liking. Gauteng Police commissioner Lesetja Mothiba is quoted as making a similar point, saying: "We wish and hope that as a matter of urgency government will address all these issues of service delivery, that government will engage these people and find amicable solutions³."

3. Mothutlung and Relela

Recently, four people were killed by police at Mothutlung, near Brits, during protests over the failure of the water system, which was caused either by the failure of the municipality to maintain the pumps (if you ask the opposition), or by sabotage by shadowy water-tanker operators (if you ask the now-fired mayor). Reports suggest that, contrary to procedure, the police in Mothutlung used shotgun shells in their crowd control efforts, which led to the fatalities. Police Minister Nathi Mthethwa reacted strongly, announcing that 14 police officers had been

suspended, and that murder cases were being investigated by the Independent Police Investigative Directorate.

In a separate spate of violence, three people, including a 15-year-old bystander, were shot dead by police in Relela, Limpopo province, in late January. The narrative in Relela is hotly contested. The initial trigger for these events was the murder of a schoolgirl. The police took two suspects into custody, and after questioning, released them – presumably due to a lack of evidence. Outraged, members of the local community torched the houses of the two men, and then marched upon the police station. According to the police, a crowd of up to 2000 people attacked the police station, throwing stones and petrol bombs. They responded, initially with tear gas and rubber bullets, but then resorted to live ammunition, in fear for their lives.

Community members dispute this account, and claim that they were marching peacefully to the police station in order to get answers when the police began firing upon them.

These two incidents stand out due to the numbers of people involved and the levels of violence displayed, but they cannot be seen as isolated. There has been a very clear trend of both an increase in violent protests, and in fatal police shootings at these protests. Several issues stem from this general trend, all of which deserve some consideration.

The first is whether the police are responding appropriately to these protests. Assessing this question in depth is beyond the scope of this paper, although it is important to understand that the answer is not as obvious as it may initially appear. Considering the levels of violence displayed in the Relela protest, it is quite possible that the police did legitimately feel threatened. Thousands of protestors who have already shown the ability and will to commit arson are not an insignificant threat. On the other hand, the continuous trend of fatally shooting protestors is clearly unacceptable.

4. Police Training and Procedure

Minister Nathi Mthethwa insists that the police have undergone all the necessary training, and that their manuals and procedures are in line with international guidelines. On 31 January

2014, at a conference on policing, Mr Mthethwa outlined how the Public Order Policing policy of the SAPS is intended to be consistent with “constitutionally accorded rights for all individuals” and “effective and peaceful crowd control”⁴. At the same conference he went so far as to claim that South African riot police are “among the best in the world.”⁵

Mr Mthethwa’s response to the shootings in Mothuthlung appears vigorous, although it is too early to say whether the investigations and disciplinary action will bear any fruit. If he is telling the truth about the SAPS’ crowd control manuals and procedures, then it is easy to see how his work could be frustrating. After all, he cannot personally control the actions of every police officer. If the procedures are clearly established and the police have been trained in them, then to a certain extent Mr Mthethwa has discharged his duties. However, the question of implementation is very important. Excellent theoretical training and procedures do no good if they are not carried out in practice, and in this area Mr Mthethwa needs to do better.

Few independent analysts are as generous as the Minister in their assessment of the police. Many commentators, such as Professor Rudolph Zinn from the UNISA School of Police Practice, have argued that the police are severely dysfunctional, and that their training is utterly inadequate to the situation. Professor Zinn further argues that public order training needs to be given to the ordinary police officers at the stations, who often are the first police on the scene. Apparently, it can take up to 48 hours to deploy specialised public order policing units. In the case of spontaneous or sudden demonstrations and protests, this is far too slow.

5. Leadership Failures in the SAPS

Institutionally, the SAPS has suffered under long-term mismanagement. As Gareth Newham of the ISS points out, former police commissioners Jackie Selebi and Bheki Cele were both inadequate to the task of managing the SAPS. Under Mr Selebi, the SAPS bled experienced management staff and disbanded specialised units (including public order policing). The disbanding of the specialised units was premised on a notion of dispersing specialised skills to local police stations, and helping the SAPS transition to a community policing model, but it has widely been panned as a dismal failure.

Although some of these decisions have since been reversed – most notably with the reintroduction of some specialised units – rebuilding institutional capabilities and the relevant skills base will take a long time indeed.

Part of the difficulty may lie in the fact that under Mr Selebi large numbers of police officers were recruited, but may not have been adequately trained. It is worth recalling that, while this expansion was generally applauded at the time, little public discussion was had around the challenges involved in training police officers in such numbers.

It is hardly a coincidence that both former commissioners left under a cloud, with Mr Selebi serving jail time for corruption and Mr Cele being found unfit for office⁶. The future of Ms Phiyega is also questionable, although her biggest problems relate specifically to the Marikana shootings rather than to any findings of impropriety⁷.

Moving beyond institutional issues, training manuals and crowd control practices, it appears that there is another, deeper issue at hand. This relates to the question of the culture of policing, and the relationship of the police to the communities that they work in.

6. Demilitarization and Remilitarization – the Debate.

In mid 2009 Commissioner Cele became well known for his ‘shoot to kill’ comment, in which he urged the police to not hesitate to use violence against dangerous criminals. Then, in 2010, the police ranks were remilitarised. Inspectors, superintendents and commissioners became warrant-officers, colonels and generals, and so on. This change was controversial, with voices from various sectors of government and civil society arguing that such a shift would result in additional fatalities and in police being more likely to use deadly force. The argument for demilitarising the SAPS was premised on the necessity of creating a break with the old, militaristic mentality of a police *force*, rather than a police *service*. In the past, the SAPS acted as a *de facto* occupation army, with a strong focus on using violence and intimidation to maintain order. The logic of de-militarization was predicated on shifting to a civilian policing mode in which community policing and a civilian police force would serve a ‘civil’ society. Consequently,

reintroducing the old military ranks was seen as a step backwards, towards the old apartheid-era style of policing.

On the other hand, ISS analyst Johan Burger argues that the remilitarization of the ranks was not a significant factor. Titles in themselves are not, he argues, particularly relevant. In addition, elements of discipline and centralised command-and-control structures are, while ‘militaristic’, not necessarily a bad thing when it comes to policing. Increased discipline and centralised control of the police can have value, by increasing morale, maintaining order and improving the ability of the SAPS to provide effective services to the people of the country.

Dr Burger argues that “claims, such as that by the Democratic Alliance’s Dianne Kohler-Barnard, that ‘civil claims against the police [can be] directly linked to the militarisation of the police’ or that police brutality is a result of the tough talk by Cele, are not supported by the available facts⁸.”

Despite Dr Burger’s assertion to the contrary, it is fairly intuitive to believe that statements around ‘shooting to kill’ could be perceived by members of the SAPS as license to use deadly force when confronted with aggressive protestors. It is not possible to prove in an absolute sense that Mr Cele’s comments affected the conduct of police officers on the ground, but it is quite plausible that they did.

However, while Bheki Cele’s comments were no doubt unhelpful, it is worth reflecting on the fact that they probably mirror public opinion, and express a very real frustration with a stubbornly high crime rate.

7. The People and the Police – a Troubled Relationship

Putting aside Mr Cele’s comments, and the question of military ranks, the relationship of the police to the people they serve is clearly a major problem. The recent hearings on the policing situation in Khayelitsha have revealed a situation that can only be described as dismal. The community has no trust in the police. Locals claim that police response times range from terrible, to non-existent; sometimes, they simply never arrive. Vigilante justice appears to be the norm, with the community convening kangaroo courts that summarily beat or execute suspects. Khayelitsha may be unusually bad, but it is

almost certain that the same pattern persists in other underserved regions of the country.

This has grave consequences for policing in general, and for public order policing in particular. If the police are seen as legitimate and helpful maintainers of law and order, then handling protests becomes a much easier matter. However, if police are seen as the gauntleted fist of the state, things become far more fraught. Why should a community respect police orders to disperse when the police are never seen helping them? One can scarcely wonder if communities do not see the police as guardians of a legitimate state, but mere thugs who appear when the community attempts to air its legitimate grievances, if they are never seen when people suffer the depredations of criminals. And this alienation is a double-edged sword: a mutual spiral of distrust between the police and the communities they work in will end in bloodshed, which will reinforce the hostility and alienation.

Dealing with this is a complicated matter. Strong leadership by the Minister is an essential ingredient in any solution. His recent action over the situation in Mothutlung is commendable, although he appears to be rather too generous in his estimation of the abilities of the public order policing unit. An urgent review of the current state of public order policing is in order. If the policies are as excellent as Mr Mthethwa claims, then why are they not bearing fruit?

In addition, showing that police are accountable is critical. Rebuilding trust between the police and the communities is also important. To this end, community relationships via smoothly functioning Community Police Forums should be a high priority for the SAPS. Oversight, through an effective Independent Police Investigation Directorate (IPID), is another key element. In this respect, the recent nomination of Robert McBride to head the IPID is a missed opportunity. Regardless of Mr McBride's personal merits or demerits, it would have been a good time to make a point of selecting an apolitical, uncontroversial

technocrat. This would have helped to build public confidence in the police's independence and its oversight functions. Unfortunately, in recent years the upper echelons of the police service have been riddled with controversial, politically-motivated appointments which have hindered moves to create a professional, neutral service that can be relied upon to effectively enforce the law without fear or favour.

8. Conclusion

Forums and oversight structures aside, the police simply need to do better. They need to be present in the communities that they serve, and they need to respond to the calls they receive. Where there are resource constraints, solutions need to be found. Where police officers, including station commanders, are failing in their duties, they need to be replaced. It is critical that the police are credible, impartial and effective in discharging their duties.

The police could absolutely do a better job of responding to protests in a fashion that does not result in needless bloodshed. Revisiting the training regimes and equipping police officers effectively for crowd control is very important. Improving community policing and maintaining good relationships with the community are essential. However, as long as millions of people remain dispossessed, suffering and disillusioned with their government, all of this will have a limited effect. Commentators from across the political spectrum have long warned that South Africa's inequalities and lack of services are unsustainable. If we take this proposition seriously, the implications are worrying. The police are effectively engaging in damage control, and can never really address the underlying causes of the service protests. By way of analogy: If South Africa is a ship in trouble, the police need to do a better job of bailing out the water, but it is for government to patch the gaping hole in the hull.

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¹ According to figures released by Mr Nathi Mthethwa, there were about 13 000 “crowd-related incidents” in 2013, and 1 882 were violent.

<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=520852&sn=Detail&pid=71654>

² Dr Johan Burger made this point in an interview with Stephen Grootes on 702 Radio.

<https://soundcloud.com/primediabroadcasting/dr-johan-burger-of-the-iss-on>

³ Bonfires of Discontent in horrifying numbers. Alex Eliseev, *The Daily Maverick*.

http://www.dailymaverick.co.za/article/2014-02-05-analysis-bonfires-of-discontent-in-horrifying-numbers/#.UvNQB7S_C3o

⁴ Remarks by Nathi Mthethwa.

<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=530524&sn=Detail&pid=71654>

⁵ <http://news.iafrica.com/sa/896753.html>

⁶ Mr Cele was initially suspended after an investigation by the Public Protector into improprieties surrounding the acquisition of a police headquarters. His employment was then terminated by President Jacob Zuma, in a statement that cited administrative “deficiencies”, as well as the adverse findings of both the Public Protector and a special Board of Inquiry that had been convened to look into the matter. <http://www.thepresidency.gov.za/pebble.asp?reid=6204&t=79>

⁷ According to newspaper reports Ms Phiyega is under investigation by IPID for tipping off Western Cape provincial commissioner that the police were investigating him. At this stage, however, little is known beyond allegations.

⁸ Blaming militarisation for police brutality is aiming at the wrong target. Dr Johan Burger, *ISS Africa*.

<http://www.issafrica.org/iss-today/blaming-militarisation-for-police-brutality-is-aiming-at-the-wrong-target>