



## **WORKSHOP REPORT**

*17 April 2019*

# **STRENGTHENING THE ROLE OF CIVIL SOCIETY IN HOLDING THE POLICE ACCOUNTABLE FOR HUMAN RIGHTS VIOLATIONS**

This report sets out the outcomes of a workshop hosted by the Socio-Economic Rights Institute (SERI), the Institute for Security Studies (ISS), the African Policing Civilian Oversight Forum (APCOF), the Omega Research Foundation and the Right2Protest. The report has been developed as a resource for civil society and community-based organisations in their efforts to hold officials accountable for the policing of protests. All documents and tools referenced in the report and additional background materials and tools can be found in a Google drive folder linked in the “resources” section (7), and were distributed to all workshop participants on flash disks.

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## 1. Summary

On 18 and 19 March 2019, the [Socio-Economic Rights Institute \(SERI\)](#), together with the [Institute for Security Studies \(ISS\)](#), the [African Policing Civilian Oversight Forum \(APCOF\)](#), the [Omega Research Foundation \(UK\)](#) and the [Right2Protest](#) hosted a workshop for civil society and community-based organisations from around the country on the role of civil society in holding the police accountable for human rights violations. The workshop was attended by approximately 50 participants including researchers, activists and individuals working in the contexts of policing, law, human rights, forensic medicine, social research and policy, weapons control and accountability systems. The two-day workshop included three expert panels with question and answer sessions and a fourth training session on the identification of typical weapons used by law enforcement agencies and on patterns of injuries from the misuse of such weapons. These sessions were followed by break-away group discussions on each afternoon.

The first panel, through the presentations of South African Human Rights Commissioner Chris Nissen, Adv Kathleen Hardy and Attorney Zamantungwa Khumalo (SERI), highlighted the confluence of South African, Africa regional and international human rights law in emphasising the obligations of States to uphold the right to peaceful assembly and ensure that any police use of force should occur only in compliance with the principles of legality, proportionality and necessity.

The second panel, through the presentations of Prof Kate Alexander ([University of Johannesburg](#)), Gary White (Independent Expert on policing 'best practice' in the context of assemblies) and Adele Kirsten (Director, [Gun Free South Africa](#)) focused attention on the frequency and characteristics of protests in South Africa over the past decade; on critical principles in the policing of assemblies to ensure protection of the right to peaceful assembly and avoiding the use of force unless justifiable under law; and on weapons permissible under SAPS regulations, noting the potential risks of harm from their misuse in crowd management.

The third panel, through the expert inputs from David Bruce (Independent Researcher on Policing and Criminal Justice issues), Gary White, Dr Andrew Faull (Senior Researcher ISS), and Atty Wayne Ncube ([Lawyers for Human Rights, LHR](#)), described between them a range of challenges: the risks arising from the marginalisation or misdirection of public order policing resources; the critical importance of effective internal accountability systems within the police; data-based analysis of the marked deterioration in the internal SAPS disciplinary processes and outcomes; the lack of capacity and sufficient independence in the external oversight body, and the prolonged processes and sometimes risks to the safety of those seeking redress through civil litigation for damages.

The final panel involved training by two expert speakers, Neil Corney (OMEGA's Research Associate) and Dr Steve Naidoo (a forensic medical expert on injury identifications). The first speaker identified typical weapons manufactured and traded for "law enforcement" and Public Order purposes globally, noting some as completely unsuitable due to potential harm they may cause, and indicating how activists could gather information and identify them accurately and report to monitoring organisations. Dr Naidoo provided information from international medical sources and from local case investigations he had undertaken from the student and other protests and incidents, showing evidence of injuries, some fatal, caused by the indiscriminate or other misuse of "less than lethal" weapons permitted for use by SAPS. Dr Mary Rayner spoke briefly on the application of international human rights law to the student cases and using a range of evidence confirming the unlawful use of force; and journalist Sumeya Gasa closed the session with her experience of seeking information through the Promotion of Access to Information Act (PAIA) process on weapons used by SAPS and her experience of monitoring, reporting and filming the police response to the [Westbury protests](#) in 2018.

Participants then shared experiences and expertise, exchanged strategies, and developed recommendations for actions to be taken going forward in working groups. Some of the key advocacy points to emerge from the working group sessions included, among other actions:

- Advocating for the report, compiled by the post-Marikana Panel of Experts on Public Order Policing that was submitted to the Minister of Police in April 2018 to be urgently considered by the Cabinet and released publicly for engagement by the parliamentary Portfolio Committee on Police and the public at large.
- Placing on the agenda of the new Parliamentary Portfolio Committee on Police a focus on practical interventions for enhancing police accountability and transparency and in the context also of the intended reform of the South African Police Service Act; and additionally to address the reform of the Regulations of Gatherings Act in the aftermath of the Constitutional Court ruling in 2018.
- Forming a network of organisations that will engage with the newly appointed National Director of Public Prosecutions on criminal justice concerns.
- Ensuring that arrested individuals following a protest are given access to independent medical examination and treatment.
- Hosting a workshop for members of the media on reporting on protests to encourage the use of a human rights lens.
- Advocating to build partnerships and facilitate dialogues between protesting communities and public order police before and beyond protests.
- Conducting and sharing research on the details from civil litigation cases where the Minister of Police is ordered by the courts to pay claimants damages as a result of police misconduct and poor policing.

## **2. Context**

South Africans continue to face significant challenges in realising their constitutional rights, applicable to everybody living in the country. Structural inequality remains deep and intact, and access to affordable well-located housing, basic services and the ability to make a living remain significant challenges for the poor.

The build up to the 2019 elections occurs in a context affected by increased political tensions and ongoing public inquiries into alleged large-scale mis-governance and corruption. Substantial evidence exists of ways in which the independence and leadership of law enforcement institutions whose roles include the investigation and prosecution of crime, have been undermined.

The South African Police Service (SAPS) remains obliged to act impartially to fulfil its mandate to maintain “public order” under section 205(3) of the Constitution. The National Commissioner of Police in turn is obliged under the South African Police Services Act 68 of 1995 (SAPS Act) to establish and maintain a national public order police unit,<sup>1</sup> which is obliged to act in manner prescribed by law and includes the principle that the use of force is “avoided at all costs”.

Properly managed, equipped, trained, commanded and accountable public order police units can play a vital role in the protection of a range of constitutionally guaranteed human rights. These include the right to peaceful assembly, the freedom of expression, and the rights to life and to bodily integrity,

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<sup>1</sup> See Sec 17(1) and (2) of the SAPS Act, read with Sec 218(k) of the Interim Constitution (the Constitution of the Republic of South Africa Act 200 of 1993).

and, under international human rights law, to an effective legal remedy to those affected by the unlawful use of force. However, this aspiration is challenged by multiple pressures on the police service. These include the politicisation of the organisation resulting in poor leadership appointments and ill-considered strategic decisions (i.e. the re-militarisation of the SAPS). The 'legacy of Marikana' continues in that there has been no accountability for the senior and operational officers involved in the mass casualties arising from their unjustified use of lethal force. Since the 2012 massacre, the state of policing has arguably deteriorated with the weakening of internal and external accountability structures. Consequently, there have been substantial increases in the amount of money paid to victims of police misconduct as a result of proven civil claims in court and a measurable decline in public approval and trust in the police. Unfortunately, despite these challenges, there remains an absence of a clearly, publicly available strategy for police reform. The recommendations for improving policing contained in the National Development Plan and the White Paper on Police remain unimplemented.

In this context, civil society activism in conjunction with advocacy and the support of experts and practitioners working in a variety of sectors, remains vital for securing the protection of human rights and access to justice for those whose rights have been violated.

### **3. Purpose and objectives**

#### **Taking into account:**

- The potential impact of the Constitutional Court ruling on 19 November 2018 affecting the 'prior notification system' in the 1993 Regulation of Gatherings Act (RGA) governing the holding of gatherings;
- The lack of official consideration and movement of the report of the Panel of Experts on Public Order Policing, set up in terms of recommendations made by the Marikana Commission of Inquiry; and
- The political volatility prior to the national elections in May 2019, as well as possible changes in the policing and justice fields after the elections.

#### **The workshop objectives were:**

- To strengthen the capacity of civil society and community-based organisations to hold the police to account for human rights violations, especially those arising from the unjustified use of force, and to ensure non-repetition of such violations.
- To identify and contribute to advocacy strategies, through civil society channels and in the parliamentary context, for reforms aimed at improving the conduct of public order policing to ensure it is compliant with South African and international law on the use of force, consistent with international policing best practice, and accountable and protective of the right to peaceful assembly and associated rights.
- To produce a pack of resources and tools to assist civil society/community groups to hold officials to account for human rights violations in the context of policing of assemblies and protests.

### **4. Expert panel discussions**

There were four main themes evident in the expert panels:

- **The law is clear** on the right to peaceful assembly and the State's obligation at all levels to protect and facilitate that right.
- **Policing to uphold the right to peaceful assembly:** The State's obligation is to facilitate the realisation of this right and to ensure a culture of best practice in policing of assemblies, avoiding the use of force unless strictly necessary, and then proportional to the threat posed.
- **Promoting police accountability** to change police practice and to ensure non-repetition of human rights violations in the context of protests.
- **Documenting the misuse of force:** Methods to document evidence of the unjustified use of force and to identify weapons which should be excluded from public order policing contexts.

#### 4.1 The law is clear

##### South African law and the state's obligations to protect the right to peaceful assembly:

*"An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions and behaviour".<sup>2</sup>*

South Africa's Constitutional Court in 2012 provided crucial protection against the possibility of an entire protest group being declared violent, or liable for damages caused, and at risk of enforced dispersal as an "unprotected" gathering. As noted during the workshop's first panel by SERI's Attorney **Zamantungwa Khumalo**, the Constitutional Court upheld the right to peaceful assembly by differentiating the motives of participants involved in an assembly and not allowing the Regulation of Gatherings Act (RGA) of 1993 to implicate all members of an assembly in acts of violence including property damage.

In a later case, in 2018, the Constitutional Court confirmed the ruling of the High Court that section 12(1)(a) of the RGA is constitutionally invalid to the extent that it makes the failure to give notice or the giving of inadequate notice by any person who convened a gathering a criminal offence.<sup>3</sup> The High Court had earlier upheld the appeal against criminal conviction of ten individuals who had been involved in a peaceful protest called by the Social Justice Coalition (SJC). The High Court had also declared section 12(1)(a) of the RGA unconstitutional.<sup>4</sup> The protest had been about the authorities' repeated failure to address poor sanitation conditions in the Khayelitsha area in Cape Town.

In the Constitutional Court's ruling, it confirmed that the RGA provision was not appropriately tailored to facilitate peaceful protests and prevent disruptive assemblies. "The right entrenched in section 17 is simply too important to countenance the sort of limitation introduced by section 12(1)(a)...[and] the nature of the limitation is too severe."<sup>5</sup> As the Constitutional Court had noted earlier in its ruling, apart from the "internal qualifier" that the exercise of the right must be done peacefully and unarmed, "whatever their station in life, everyone is entitled to exercise the right in section 17 to express their frustrations, aspirations or demands".<sup>6</sup>

Commissioner **Chris Nissen**, from the South African Human Rights Commission, observed in his opening comments at the workshop that the State is the primary guarantor of all human rights, and is

<sup>2</sup> *South African Transport and Allied Workers Union (SATAWU) and Another v Garvas and Others* 2013 (1) SA 83 (CC) (Garvas), para 53

<sup>3</sup> *Mlungwana and others V State and Another (with Equal Education, Right2Know Campaign and UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association as Amici Curiae)*, CCT 32/18, para.112

<sup>4</sup> High Court of South Africa (Western Cape Division, Cape Town), In the matter between Mlungwana and others and State and one other, Case No: A431/15

<sup>5</sup> *Mlungwana and others*, para.101

<sup>6</sup> *Mlungwana and others*, para.43; and as emphasised in *Garvas* (note 2 above) by Chief Justice Moeng, paras 61-63

under an obligation to take steps to respect, protect and fulfil human rights. Where it ignores such an obligation the people must hold it to account.<sup>7</sup> In both these cases, there had been a process of legal accountability and the reaffirmation by the Constitutional Court of the right to assemble, demonstrate, picket and present petitions peacefully and unarmed under Section 17 of the Constitution.

It was however noted several times by participants during the workshop that access to justice remains difficult for activists in more remote, particularly rural areas. Examples were given of local magistrates and police officials appearing to collude in their responses to protests, with a chilling effect, including in some cases with direct threats and violence against activists. Attorney **Khumalo** highlighted the 2018 case of 16 women, from the town of Colenso in KwaZulu-Natal, who had staged a peaceful demonstration across a local highway to highlight failures by the local authorities to deliver services. The women, ranging between early 20s to mid-60s years of age, were arrested and detained for 60 days in police cells awaiting bail. They were then persuaded to pay an admission of guilt fine; released and later convicted in the magistrate's court for the common law offence of public violence. The incident for which they were convicted involved no acts of violence. They were sentenced to house arrest and 200 hours of community service, and faced a five years custodial sentence (suspended for three years) if they "repeat offended". Their legal representatives at SERI have lodged a notice of intention to appeal the ruling of the magistrate's court. In Attorney Khumalo's opinion the police conduct and the criminal justice proceedings illustrated a pattern of collusion by officials for a deterrent effect on activists.

#### **International human rights law and the state's obligations to protect the right to peaceful assembly:**

*"Assemblies can be instrumental in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests."*<sup>8</sup>

In addition to South African constitutional law, which protects the right to peaceful assembly and associated rights such as the freedoms of expression and association, South Africa's obligations also arise through its membership of the United Nations and of the African Union. Key human rights standards have been developed in these contexts, relating to both protecting the right to peaceful assembly and on necessary reforms to the conduct of law enforcement in response to assemblies, as well as obligations to "facilitate at all levels of government" the right to peaceful assembly.

Panellist, Advocate **Kathleen Hardy**, described to workshop participants her involvement in the process leading to the adoption by the United Nations Human Rights Council in 2016 of the [Joint Report on the proper management of assemblies](#) (UN Joint Report).<sup>9</sup> The process included regional consultations with civil society, experts and state officials. One such consultation was held in South Africa. The resulting UN Joint Report emphasised a crucial government obligation: namely "... not only to refrain from violating the rights of individuals involved in an assembly, but *to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment*", including in both public spaces and in privately owned spaces open to the public. Here the speaker noted that interdicts or other measures, including by private security companies, taken by institutions or businesses to prevent assemblies in areas open to the public, would oblige a State to take appropriate

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<sup>7</sup> See presentation by Chris Nissen, "Strengthening the role of civil society in holding the police accountable for human rights violations", (18 March 2019), available at: <https://drive.google.com/open?id=1YRF6Jt0GeN8Ty87NUVwn0gNtvmGT7PR>

<sup>8</sup> United Nations Human Rights Council, Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (4 February 2016), UN Doc A/HRC/31/66, para. 6 (UN Joint Report)

<sup>9</sup> UN Joint Report, paras.1-4.



measures to prevent, investigate and provide effective remedies for relevant misconduct by business enterprises.<sup>10</sup>

The UN Joint Report confirmed that the notion of Assemblies covered a wide diversity of situations, including “an intentional temporary gathering for a purpose”. As noted in Adv Hardy’s presentation, the UN Joint Report stated that within international human rights law there was no concept of an “unprotected assembly”. Each participant in an assembly holds the right to freedom of peaceful assembly. Any acts of violence during an assembly lay with those involved in those acts and do not characterize the entire assembly.<sup>11</sup>

**Louise Edwards**, APCOF’s Programme Manager, contributed further aspects of the developing international consensus by highlighting the [African Commission on Human and Peoples’ Rights Resolution](#) taken in 2016:

*“Recognizing that the right to assemble freely with others is a cornerstone of democracy and provides individuals and groups with a platform to express civil, political, economic, social, cultural and environmental rights, to hold government to account, and to raise and defend issues of common interest.”<sup>12</sup>*

The ensuing [Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#) (the Guidelines) shows a similar breadth of meaning to the right to peaceful assembly and in a diversity of contexts as the UN Joint Report.

Section 1.1 of the *Guidelines* affirms that “... the right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins and funerals, through the use of online platforms, or in any other way people choose.”<sup>13</sup> Any restriction on this right, the Guidelines stated, must be “consistent with the principles of legality, necessity, proportionality, freedom from discrimination and equality before the law... and reviewable by competent, independent and impartial administrative and judicial authorities” (Sections 2.1.3 and 2.1.3.3).<sup>14</sup>

## 4.2 Policing to uphold the right to peaceful assembly

The state is obliged to ensure that the police are trained, equipped and lawfully instructed to protect and facilitate the right to peaceful assembly.

Law enforcement officials/ police have a crucial role in protecting the right to peaceful assembly and associated rights. Commissioner **Chris Nissen** described the underlying context of risk broadly when he suggested that the state should put in place “early warning systems” that can identify the needs of people before “they become more urgent and unbearable” and to “address them with a measure of care and diligence as envisaged by the Constitution”. While the police have a constitutional obligation to maintain public order,<sup>15</sup> it would not be “morally permissible” for a democratic state to use police services “to silence voices of dissent through excessive use of force”. Instead, the SAPS were obliged

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<sup>10</sup> Speaker citing UN Joint Report, paras.83-88; see also a report criticising the conduct of the private security guards contracted by universities in response to the #FeesMustFall protests <https://www.iol.co.za/the-star/news/security-guards-acted-illegally-during-feesmustfall-protests-psira-report-20619845>

<sup>11</sup> UN Joint Report, para. 20.

<sup>12</sup> Cited in African Commission on Human and Peoples’ Rights (ACHPR), *Policing Assemblies in Africa, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (Guidelines), p. 06.

<sup>13</sup> *Guidelines*, p.8

<sup>14</sup> *Guidelines*, p. 9

<sup>15</sup> Section 205(3), which directs that the South African Police Service prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law (<http://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf>).



to follow Constitutional requirements and those in their regulations,<sup>16</sup> and use “soft skills” to identify and diffuse possible conflict before it escalates to violence. If the use of force is unavoidable (justified), the Commissioner noted, it must be consistent with the principle of necessity and be proportionate to the threat posed in the specific circumstances.<sup>17</sup>

Speaker Professor **Kate Alexander**, from the University of Johannesburg, provided detailed analysis of broadly defined contexts of protests in which the police had been responding since the late 1990s. Prof Alexander and her colleagues at the Centre for Social Change (CSC) analysed a sample of 4,520 of incidents from SAPS information on over 156,000 “crowd incidents” (as documented by the SAPS Incident Registration Information System (IRIS) database between 1997 and 2013).<sup>18</sup> Sixty-three percent of the sample had been classified on the SAPS database as “peaceful” in outcome and thirty-seven per cent as “unrest”. In her references to “protests”, Prof Alexander and colleagues defined them as: “a popular mobilisation in support of a collective grievance”,<sup>19</sup> and included “labour”, “community”, “education” and other areas of focussed protest. The speaker noted that both the SAPS data and media-reported data showed a surge in protests around the period 2010 – 2012; and observed that the SAPS data recorded a higher number of incidents than the “media reports” database.

Through their analysis of the SAPS data, Prof Alexander and her colleagues concluded that the binary “violent” or “peaceful” classifications used in many media and other reports did not reflect the complexity of the recorded incidents. Instead it would be more fruitful to see that some protests involved “disorderly or disruptive” conduct, such as occupying a road, but without involving incidents of violence. This different lens, which is consistent with the international human rights standards referred to above, was applied by the CSC researchers to SAPS incident data and indicated that:

- Between 1997 and 2013, of the “police-reported incidents”, 80% “should be regarded as orderly, 10% as disruptive and only 10% as violent”.
- In the same period, and using the SAPS IRIS data on “eventualities” (peaceful/unrest outcomes), 93% of protests classified by the police as ‘peaceful’ and requiring no police intervention were orderly, while 6% were disruptive and 1% were violent. Of those classified as having an eventuality of ‘unrest’, 12% were ‘orderly’, 36% were ‘disruptive’ and 52% were ‘violent’.

However the protest data may be defined, South Africa occupies fourth highest place amongst 49 African countries for the per capita number of protests. Nevertheless, if a significant proportion of these protests are either “orderly” or “disruptive” and therefore entirely lawful under human rights law, this should impact on the police response to protests - their legal obligations, instructions and tactics deployed.

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<sup>16</sup> As for instance, SAPS National Instruction 4 of 2014, Public Order Police: Crowd Management during Public Gatherings and Demonstrations. See also Socio-Economic Rights of South Africa (SERI), A Double Harm: Police misuse of force and barriers to necessary Health Care Services (2017), p.14.

<sup>17</sup> See presentation by Chris Nissen, “Strengthening the role of civil society in holding the police accountable for human rights violations”, (18 March 2019), available at: <https://drive.google.com/open?id=1YRF6Jt0GeN8Ty87NUVwn0gNtvmGT7PR>

<sup>18</sup> Access to the database was provided through a successful Promotion of Access to Information Application (PAIA) and Prof Alexander and six co-authors from the University of Johannesburg’s Social Change Research Unit describe their management of the SAPS data and analysis of the protests trends and characteristics in *Counting Police-Recorded Protests: Based on South African Police Service Data*, Carin Runciman & six others, University of Johannesburg, 2016, Report #2, available at: [https://www.researchgate.net/publication/304076282\\_Counting\\_Police-Recorded\\_Protests\\_Based\\_on\\_South\\_African\\_Police\\_Service\\_Data](https://www.researchgate.net/publication/304076282_Counting_Police-Recorded_Protests_Based_on_South_African_Police_Service_Data)

<sup>19</sup> See presentation by Kate Alexander, “Protests: Police Data, Concepts and Frequencies”, (18 March 2019), available at: <https://drive.google.com/open?id=1YRF6Jt0GeN8Ty87NUVwn0gNtvmGT7PR>

Other inputs in this panel theme highlighted the clear convergence on human rights and policing standards in relation to the use of force and ‘best practice in the management of assemblies’. The convergence is evident between the UN Joint Report on the “proper management of assemblies” (incorporating the UN Basic Principles on the Use of Force and Firearms); the African Commission on Human and Peoples’ Rights’ (ACHPR) “Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa”, and the [Organisation for Security and Co-operation in Europe \(OSCE\)](#) and their [Office for Democratic Institutions and Human Rights](#), as discussed further below.

Convergence points between the UN and ACHPR standards include:<sup>20</sup>

- The use of force [is permissible] only if “strictly unavoidable” and in accordance with International Human Rights Law and its principles of legality, necessity and proportionality, and, additionally with the ‘principle’ of precaution and prevention (that is, all possible measures have been taken to avoid the use of force or to minimize harmful consequences if the use of force is necessary and justifiable);
- Human rights obligations permeate the purpose and conduct of police operations in response to assemblies and they must be trained accordingly, particularly in relation to the avoidance of the use of force;
- The obligation to “facilitate the right to peaceful assembly” through processes involving planning, information gathering, risk assessments and other measures; through communications, building of trust, deployment of “soft skills”, engaging with organizers, participants; and the management of external factors (such as traffic and medical access for the public for instance);
- The safety and rights of participants, monitors and bystanders must be protected; and
- Law enforcement officials should observe the prohibition against arbitrary arrest and detention, which effectively criminalises assemblies and dissent.

As noted by Commissioner Chris Nissen, some of the above standards are reflected in current SAPS Standing Orders governing public order policing.<sup>21</sup>

Speaker **Gary White**, a former police officer who assists the OSCE’s Office for Democratic Institutions and Human Rights with training courses for police commanders,<sup>22</sup> noted that the general principles and approaches are not in disagreement across the different regional contexts; they arise from convergent processes and forms of cooperation and collaboration in the UN, Africa regional and European contexts to reinforce human rights-based policing.

Mr White presented a series of slides intended to highlight this convergence of initiatives around the core human rights principles and the practicalities of managing assemblies, in particular to re-affirm and uphold the right to peaceful assembly and aspects of police practice to achieve this result. He highlighted four key principles in the police management of assemblies: *facilitation*, *knowledge*, *communication* and *differentiation*.

The overriding principle is *facilitation* of the right to assemble, with other principles enabling its achievement. Facilitating assemblies is the key aim, achieved by using the other three principles. In this respect, he said, the police role is not to dispute the existence of an assembly, but to recognise their responsibility to create an enabling environment for it. He noted that the importance and

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<sup>20</sup> UN Joint Report, sections 37-42; 45; 50-67; 68-71; ACHPR Guidelines, Parts 2-3, pp.10-16.

<sup>21</sup> Including the obligation to engage, negotiate, de-escalate conflict and avoid the use of force (SAPS NI 4 of 2014)

<sup>22</sup> The OSCE’s remit covers 57 countries from Europe, Central Asia and North America.

acceptance of this principle of *facilitation of the right to assemble* by law enforcement officials is emphasised in the OSCE Commanders Course, the ACHPR Guidelines and the UN Joint Report.<sup>23</sup> The starting premise, noted Mr White, is that *the right to assemble is a right – not a privilege*. It is an obligation on the part of the State to fulfil.

The extent to which the police can achieve this is reflective of a government's tolerance of dissent and the operational independence of the police from the government.

Through this process of re-conceptualising their response to gatherings as described by the speaker, the police task is to gather information and intelligence, conduct risk assessments, understand the legal and policy framework within which they are operating and identify available tactical options. Throughout this process they must be involved in continuous communications with participants and identified assembly leaders. There must be “no surprises” and clear warnings given before any use of force.

Crucial to assessing if force is needed is the principle of *differentiation*, identifying which particular individuals may be posing a threat, and how can this threat be managed. The use of force must always be the absolute last resort, and if necessary it must be proportionate to the threat posed.

He closed by noting from his experience as an expert witness for the Marikana Commission of Inquiry, that the policing operation at Marikana was in violation of all the above principles, with the resulting horrific outcome.

The following speaker, **Adele Kirsten**, commented on the weapons which the SAPS are permitted to use, in particular by the Public Order Police (POP) units, in response to crowd management situations, including protests. She briefly reflected on the Marikana Commission of Inquiry's recommendation that automatic weapons had no place in public order policing and such rifles should be prohibited. The speaker, who is Director of Gun Free South Africa, noted, however, that so called “less lethal weapons” were also of concern. This is because, even “less than lethal” weaponry and equipment can cause severe injuries and death.

POP Unit members are required to be clearly identified and must be provided with protective body armour, helmets, shields, tonfa (baton) and pepper spray. The last item, the speaker noted, must be restricted in use unless ordered by the commander to use it. Teargas is permitted but only under direction of the operational commander. Firearms and sharp ammunition, including birdshot and buckshot, are prohibited.

Under the SAPS National Instruction 4 of 2014, Section 12(5), the POP units are permitted to use shotguns and approved rubber rounds, but only as “offensive measures to disperse a crowd” in “extreme circumstances if less forceful methods have proven ineffective”. Stun grenades are also permitted, but only by designated members and under command. The speaker raised concerns about this weaponry, sometimes referred to as a “less lethal weapon” (LLW). The speaker also included CS teargas grenades in this same category of “less lethal weapon”. LLWs, such as shotguns and rubber bullets, the speaker noted, were difficult to use in a crowd management context; in fact they were indiscriminate in their effects in such situations. In addition these weapons could be “misused” deliberately to cause harm.<sup>24</sup> In the speaker's view, there were also significant challenges in the training currently provided to police on these weapons.

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<sup>23</sup> See above note 20 and *Human Rights Handbook on Policing Assemblies*, published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), (2016), available at: <https://www.osce.org/odihr/226981?download=true>

<sup>24</sup> See examples in *A Double Harm* at pp. 20-24; 33-43; 51-55; and see final session in this workshop report.

In her final comments the speaker encouraged activists to develop skills in recording and documenting weapons used by police in protest situations; to analyse SAPS records of weapons used (including through PAIA applications); and to lobby for changes in policy and practice on the part of the authorities.

### **4.3 Accountability to change police practice and to ensure non-repetition of human rights violations in the context of protests**

The following session began with **David Bruce**, Independent Researcher, of the risks arising from the marginalisation or misdirection of public order policing resources. The challenge, he noted, is to both reduce incidents of misuse of force and to improve and sustain the ability and capacity of these specialist police officers to undertake “crowd management” lawfully. Nationally in 2014 the number of POP officers was at just under 5,000 personnel and involving 28 units, all but one of which was at the provincial level. Despite the SAPS’ call to parliament in 2014 for POP personnel to be doubled by 2018,<sup>25</sup> the numbers had increased by only around 500 personnel by 2017/18.

In addition to this apparent marginalisation of resources for POP units, amidst other national level policing priorities in particular resourcing the ‘combatting of serious and violent crime’, the speaker raised another area of concern:

- that the SAPS National Instruction 4 of 2014 on public order policing allowed for POP units to be used for “policing of public gatherings” and “the combatting of serious and violent crime” (or “intelligence driven crime combatting and prevention operations”). The combination of these policing functions, the speaker noted, are incompatible and may lead to ‘contamination of mind-sets’, undermining the POP training intended to inculcate a commitment to ‘negotiated management of protest and minimizing the use of force’;
- POP commanders complain that POP units in the provinces are used to ‘stop gap’ crime combatting operations, leaving “understrength” POP units deployed to manage crowd events, or supplemented by under-trained police station-based units.

In closing, Mr Bruce noted that while in practice most POP units are viewed as provincial level resources to be deployed where and for whatever purposes as may be judged as priorities, there remained some support at the parliamentary level for sustaining POP units as a national-level properly trained resource for crowd management.<sup>26</sup> Four reserve units which fall under the national operational response services division are regarded as national POP units.

The remaining members of this panel then all addressed aspects of the key importance of, but evident crisis in, ensuring internal and public accountability for police operations. Ensuring accountability is both a state obligation and a necessary condition for preventing repetition of abuses in policing contexts. **Gary White** explored this dynamic under the heading: ‘Policing Accountability: Failure has consequences’.

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<sup>25</sup> A report of the September 2014 hearing by the parliamentary committee on police on POP, its personnel resources, budget (just over 7% of the SAPS budget for visible policing) and its relative importance in the context of increased protest incidents, available at: <https://pmg.org.za/committee-meeting/17473/>

<sup>26</sup> See presentation by David Bruce, “The Mandate and Management of POP: Aspects of the Current Regulatory Framework”, (19 March 2019), available at: <https://drive.google.com/open?id=1YRF6Jt0GeN8Ty87NUVwn0gNtvmGT7PR>



Figure 1: Slide from Gary White's Presentation on Policing Accountability

In the virtuous and interactive triangle of Public Confidence-Legitimacy-Police Effectiveness, the speaker argued that Accountability is the driver of these interactions. No matter how good policies might be – for example, the existing Public Order Policy 262 prior to Marikana, or 'Community Policing' for Ferguson in the United States, the failure to address a culture of impunity within police forces lead to a 'blue wall of silence', and repeated human rights violations. Citing an American policing colleague, the speaker commented that "the primary determinant of police behaviour is the culture they find themselves in". The speaker noted, in this regard, the stark illustration of what was a culture of impunity then existing in the SAPS: the conduct of SAPS officers during the Marikana Commission of Inquiry, with senior officers lying to absolve themselves of responsibility; frontline officers changing their statements on rounds fired; and no records kept of the operation planning notes.

Mr White finished his comments by noting that values-based leadership, internal mechanisms of control and accountability to the community are key antidotes to the culture of impunity, and with reference also to the process of transformation of the Northern Ireland police after the political settlement agreement ended a long period of conflict.

Speaker Dr **Andrew Faull** then presented a series of slides analysing the data on SAPS disciplinary hearings from 2007/8 to 2017/18.

During this period the number of disciplinary hearings per year peaked around 2013/14 and then declined by 2017/18 to a level 44% lower than the initial period of examination 11 years earlier. In the period 2012/13 to 2017/18 an average of 62% of SAPS disciplinary cases were withdrawn on a finding of not guilty. He contrasted this with the disciplinary outcomes in the Department of Correctional Services (DCS) from a study undertaken by Dr Lukas Muntingh.<sup>27</sup> The DCS result showed a much lower figure of withdrawn cases. The speaker concluded that SAPS disciplinary cases were not being effectively investigated.

Dr Faull's data showed that the number of dismissals in SAPS during the 11-year period averaged 406 per year, with a slow rise from 228 in 2007/8 to 537 in 2013/14, then a decline to 220 by 2017/18. Approximately 40% of these disciplinary cases related to criminal offences, the remaining cases were based on internally generated complaints. From the 2017/18 figures he noted that the following

<sup>27</sup> Africa Criminal Justice Reform (ACJR), *Fact Sheet 9: Failing to discipline in SAPS, Fostering a culture of impunity*, Dullah Omar Institute, (February 2019) <https://acjr.org.za/resource-centre/fact-sheet-9-failing-to-discipline-v-3.pdf>



alleged offences dominated amongst the “serious” reasons for the conduct of disciplinary hearings: corruption (44), defeating the course of justice (25) and assault/GBH (19).

The speaker noted that from a quarter of the way into this period and onwards, there occurred a number of possibly relevant developments behind this trend: in 2010/11 a shift in rhetoric from ‘police service’ to ‘police force’; Marikana took place towards the middle of the period of review; and Phiyega, Ntlemeza and Phalane were successive National Commissioners during this period of decline in the number of hearings held and of dismissals. The speaker noted that these events may be indicative of changes in internal SAPS culture, but he could not definitively link them through his own study.

In 2016, the SAPS instituted new disciplinary regulations, and also a “management intervention project” to address the root causes leading to civil claims for damages against the police, in response to a range of plaintiff causes of action. The list included unlawful arrests, unlawful detentions, assault and shooting incidents, poor command and control and “political condonation of police violence”. Three years earlier the then Minister of Police informed parliament that no police member had been [disciplinarily] charged for misconduct as a result of civil claims against the police.<sup>28</sup>

Dr Faull briefly considered the range of complaints against the police received by the external oversight body, IPID, for investigation in the 2016-2018 period. In 2017/18 they included serious alleged criminal offences such as rape (105), torture (217), assault (3,661) and discharge of a firearm (677). The IPID records show that for the 2017/18 reporting year, 90 percent of complaints were dismissed as unsubstantiated (although it was not clear how much of this was due to IPID’s investigative capacity). At the same time IPID in 2017/18 was awaiting responses from the National Prosecuting Authority to their criminal recommendations on 1428 cases.

In light of Mr White’s perspective on the critical importance of stamping a culture of accountability onto policing practices, Dr Faull’s analysis of the SAPS disciplinary processes does not present an encouraging picture of imminent transformation. IPID’s reports also evoke concern, including the NPA delays in their responses to the IPID recommendations for criminal prosecutions.

Attorney **Wayne Ncube** from [Lawyers for Human Rights](#) concluded the session with reflections from his experience of representing clients, including in one case involving junior SAPS officers seeking a disciplinary remedy to racist abuse within the SAPS, with justice obstructed by the role on the disciplinary panel of an officer implicated in the alleged offences. Attorney Ncube recognised the evidence described by preceding speakers and is talking here from his direct experience of representing clients seeking remedies and having to walk long journeys with them.

In a particularly egregious case, a police officer had taken his service pistol with him when off-duty and visiting his family north of Johannesburg. He shot his wife in front of other family members at an outdoor event and fled the scene with his young children. The family secured the safety of the children. Despite witness evidence and having committed a serious crime, he was allowed to return to duty with his service pistol after a night in detention. LHR were approached and initiated a legal process to ensure that the police officer would be charged with murder. All the while he had remained armed

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<sup>28</sup> Gwen Dereymaeker, “Making sense of the numbers, Civil Claims against the SAPS”, *South African Crime Quarterly*, No.54 (2015), pp.29-41, analyzing the trend in civil claims between 2007/08 to 2014/15 against the SAPS, with ‘assaults’, ‘police actions’ and ‘shooting incidents’ constituting over 80% of claims made annually and 86% of all claims paid out by SAPS. By the end of the 2014/15 financial year the total amount incurred from civil claims was R 9,589, 568. Available at

[http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/2205/Dereymaeker\\_Making%20sense\\_2015.pdf?sequence=1&isAllowed=y](http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/2205/Dereymaeker_Making%20sense_2015.pdf?sequence=1&isAllowed=y)

and on duty. Attorney Ncube had to make various approaches to ensure that the matter would be put on the court roll. In due course he was convicted of murder.

Attorney Ncube also referred to cases in which LHR sought to assist a group of refugees and migrants whose shops in the greater Johannesburg area had been looted. The victims had alleged that when they asked for police intervention and protection from further incidents, certain police officers refused to assist unless the shopkeepers paid “protection money”. The shopkeepers in the area had apparently suffered before from local police officers raiding their shops. They approached LHR for advice. Attorney Ncube consulted with them on legal options including by assisting them with laying a complaint with IPID. However the complainants were then subjected to further harassment and they withdrew their complaint. In LHR’s experience, it is very difficult to properly protect clients from reprisals. In protracted civil damages suits, the option of going into witness protection is too drastic for most clients to consider seriously. These cases are also difficult for clients because “the police have no problem with blatantly lying on record with no repercussions”.

**Gareth Newham** from the ISS, in response to the evidence presented by the panel, noted the following trends:

- The culture of impunity has not changed since Marikana: while there has been a decline in the number of people killed in crowd incidents, the overall pattern of misconduct has not changed;
- Agreeing with Dr Faull’s observations he noted the fall in disciplinary proceedings annually down to below 2000 hearings in 2018/19 which is a 54% decline on the previous year. Furthermore, that far fewer police officers are dismissed than those presented in the disciplinary statistics. These outcomes are only recommendations. ‘Guilty’ officers may appeal the sanction and often the recommendation for dismissal is overturned and converted to a “suspended dismissal” or a final written warning.
- On the level and costs of civil claims to the public: annually R 300 million representing an almost 800% increase in 10 years; some kind of campaign is needed to raise awareness of the terrible cost of impunity to the public.

In response to Gareth’s query as to the fundamental requirements for police reform, panellist Gary White commented that the Northern Ireland reforms oblige the police to be answerable to a “representative board” and the equivalent to the IPID works because it is properly resourced.

#### **4.4 The misuse of force**

Methods to document evidence of the unjustified use of force and to identify weapons which should be excluded from public order policing contexts.

The final session brought together two experts focused on weapons used by Law Enforcement Officials and their consequences, in South Africa and globally: Neil Corney, from the OMEGA Research Foundation ([ORF](#)), and Dr Steven Naidoo, an independent forensic pathologist and forensic injury assessment expert.

**Neil Corney** noted the role of ORF as a research-based organisation involved in identifying the manufacture, related trading patterns and the use of military, security and police (MSP) equipment. ORF also partners with other organisations globally to advocate for increased controls over certain weapons and the exercise of greater accountability by States and private actors involved in the manufacture, distribution and use of certain weapons. Their work is embedded in the [United Nations \(UN\) Principles on the Use of Force and Firearms](#); and the UN call on states to ensure that law enforcement officials are equipped to allow for differentiated use of force and firearms, including non-



lethal weapons, and with self-defensive equipment to decrease the need to use weapons. The OMEGA work is linked to human rights based principles and 'best practice' in policing of assemblies, themes already explored during this workshop. It additionally campaigns against the manufacture and trade in equipment used for purposes of torture.

The speaker then took participants through a series of steps to assist monitors to document the shape, dimensions, markings, mechanism of use and other characteristics of weapons which they may encounter in a policing situation. He gave guidance on the safe photography of specific weapons or vehicles; and with sufficient other information to fully identify the size, shape and markings of those items.

Mr Corney then spoke about the specific SAPS equipment, including so-called Less Lethal Weapons (LLWs). A critical section of this part of his presentation was focused on the commonly used 'double ball rubber bullets'. He raised a number of concerns about the weapon:

- These types of "kinetic energy devices" must be accurate to avoid unintended injuries;
- Multi-ball rounds are indiscriminate; tests have shown that they spread considerably and are very inaccurate, increasing risk of eye penetration and body wall perforation;
- To meet international standards a "kinetic impact projectile" should be accurate and capable of striking an individual to within a 10 centimetre diameter of the targeted area when fired from the designated range;
- Skip-firing of rubber bullets should be prohibited as the ricochet effect does not mitigate harm, and the unpredictable pathway and velocity can increase harm;
- The Musler 12 gauge shotgun is a "pump-action" weapon resulting in multiple injuries which are evidence of unjustified, excessive and unlawful force; the POP pursuit 'chase and fire' operation should be prohibited as it involves indiscriminate firing;
- Each projectile should be uniquely identified for accountability purposes.

The speaker then provided activists and human rights monitors with a series of questions they could use to observe and record relating to the police use of rubber bullets in a crowd situation after an operation has taken place.

His final intervention concerned stun grenades. He was emphatic that they are not suitable for crowd management situations. They are of military origin and are not a less lethal weapon. The risks of misuse include blast injury, pressure wave-hearing loss, shrapnel penetrating injury, heat-burns or fire. Any injury to head or torso would suggest inappropriate use (such as the device being thrown or fired into a crowd). The speaker then provided guidance on key questions and observations, which they could use for monitoring in relation to this weapon.

Dr **Steve Naidoo's** presentation focussed on specific cases, illustrating the specific harm caused to individuals by the characteristics of certain weapons and the specific conduct of the police involved in the incidents. His medical observations were corroborated by cases reported from other jurisdictions and in the medical literature. The cases below primarily illustrated the harm arising from the use of rubber bullets, for the reasons noted by Neil Corney above, and in incidents involving deliberate misuse of the weapons by police. There were other cases he presented visually during his presentation, but are not included in this summary. Cases analysed included<sup>29</sup>:

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<sup>29</sup> See *A Double Harm*

- Case 1: Permanent injury to a bystander during the 2016 student protests – he was hit directly in his right eye by a ricochet rubber bullet while trying to walk away to safety from the area of police dispersal of protestors; he suffered permanent loss of his eye, diminished sight, traumatic stress and a long-term impact on his working life;
- Case 2: During a forced dispersal of a peaceful assembly of student protestors, the police fired multiple direct shots at close range to the back of one of the student leaders, as she and others turned to flee, resulting in her hospitalisation for the shotgun injuries and a painful long period of recovery. The police unit involved continued to ‘chase and fire’ indiscriminately at the fleeing students, causing one of them to suffer a traumatic fall leaving her with a permanent disability with life-long consequences for her health;
- Case 3: In an instance of deliberate misuse of a shotgun, three police officers attacked a female student in her campus accommodation room during the night; two of them assaulted her and a third police officer shot her at near contact range (within 1.5 – 2 meters),<sup>30</sup> with all of the components of the rubber bullet casing penetrating the wound through the jeans material; she required intensive wound care and eventually surgery for the wound, and suffered prolonged traumatic stress; and
- Case 4: In a case from the Marikana area in the months after the massacre, Dr Naidoo undertook a post-mortem inquiry into the death of a woman activist shot by police on patrol in her area. She sustained a rubber bullet injury to her knee, which affected her veins and led to the development of a blood clot in her lungs, causing her death.
- Case 5: Dr Naidoo noted that similar cases as those mentioned above have been reported in different regions, with the same predilections for bodily injuries. He commented that a systematic review study attributed 3% of deaths, 15.5% of permanent disabilities and 71% of serious injuries to kinetic impact projectiles. The same study found that greater than 50% of the deaths and more than 85% of the permanent disabilities were caused by strikes to the head and neck areas.
- Case 6: In a case illustrating the consequences of the mis-use of stun grenades, Dr Naidoo took the history from the affected victims, their hospital documentation and assessed the injuries suffered by two students who had fled from a police dispersal line. While running they experienced “a flash burn”, burning heat, excruciating pain, facial bleeding and one of them sudden deafness. The injury evidence indicated that that the device must have been thrown over the crowd and exploded between the two women within several centimetres of each other’s’ faces. They required prolonged treatment and care.

Speaker Dr **Mary Rayner**, a co-researcher with Dr Naidoo in *A Double Harm* commented on aspects of the legal analysis relating to the police actions in some of the above cases:

- Case 1: This incident is evidence of indiscriminate firing of weapons by police and the unnecessary and disproportionate force used by POP conducting their dispersal operations in general. The case is also evidence of the devastating consequence for the individual affected, including evidence of the risks from ricochet fired rubber bullets.<sup>31</sup>
- Case 2: This matter involved a forced dispersal of a peaceful assembly with excessive force, despite the protestors appealing to negotiate. Footage and testimony confirm that the crowd

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<sup>30</sup> *A Double Harm*, p.55.

was peaceful and attempting to negotiate when the police opened fire on them. Although SAPS regulations require the police to negotiate, use de-escalation tactics and to avoid the use of force, the police commanders refused to negotiate and moved rapidly to the highest permitted level of force, rubber bullets, and within seconds exploded a stun-grenade, causing additional panic. Although the crowd was fleeing from the police line, the police pursued them and continued to fire at them, causing a range of injuries to the protestors. The immediate reliance on rubber bullets not only breached the SAPS own regulations, but their use against a peaceful assembly involved unnecessary and disproportionate force, violating the principles of necessity and proportionality.

- Case 3: The violence used against the victim in this case bore no relationship to policing of any kind. It involved the unjustified use of force against a person posing no threat, and violated the principles of legality, necessity and proportionality.
- Case 6: The device appeared to have been used contrary to instructions (it is supposed to be rolled on the ground away from the crowd); the incident revealed a profound deficit in “correct weapon usage” and deployment on the part of the officer involved; an absence of appropriate command and control, with deliberate misuse remaining a possibility. There was furthermore no relationship between any threat posed by the two victims who were unarmed and fleeing from the dispersal scene. It therefore violated the principle of necessity; and in the excessive harm caused, the force used violated the principle of proportionality.

Speaker **Sumeya Gasa**, a journalist, spoke about her and her colleagues’ prolonged effort to obtain a Promotion of Access to Information (PAIA) response from the SAPS regarding the weapons used during the period of the student protests. The eventual reply confirmed the SAPS reliance almost solely on shotguns and rubber bullets.<sup>32</sup> The speaker also shared with the workshop participants her film footage, which she had taken of a SAPS response to protests in the Westbury area near Johannesburg. The police were using shotguns and rubber bullets along with teargas in a densely populated area. The footage indicated that the police were using indiscriminate and disproportionate force against small handfuls of protestors armed mainly with stones, affecting also individuals attempting to hide in their homes. The speaker also reflected on some of the challenges in fulfilling the professional role solely in the face of such conduct by the police. She later returned to the community to assist in their efforts to obtain some accountability.

## **5. Civil society advocacy strategies and actions**

The main outcomes from the working groups were as follows below.

### **5.1 National level advocacy strategies and actions**

Key areas of national concern include the need for wholesale police reform in line with the recommendations of the post-Marikana Expert Panel Report on Public Order Policing, the National Development Plan and the White Paper on Police. In addition there is the need for a thorough revision of the Regulation of Gatherings Act and considered engagement with the proposed new Protection of Critical Infrastructure Bill.

Unless, there is fundamental reform of the SAPS, passing new laws will have little impact on protecting Human Rights as the police routinely break law due to poor leadership, the absence of accountability and inadequate training and supervision. The first step for effective police reform is a clear process

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<sup>32</sup> The SAPS response acknowledged discharge of 2,624 rubber bullets; 72 stun grenades; 2 CS teargas grenades; 17 40mm launcher and rounds; 6 CS cannisters; and zero use of water cannon, during the protests at Wits University in 2015 and 2016.

of overhauling the senior management of the SAPS in line with the recommendations of the National Development Plan. National and Provincial Commanders should only be appointed following a merit-based and transparent process overseen by an independent National Policing Board. This same board should also evaluate the appointments and performance of each member of the senior management component of the SAPS (i.e. the 30 Lt-Generals, 199 Major-Generals and 677 Brigadiers.) Those that were irregularly appointed or are failing to fulfil the requirements of the posts that they hold must be re-deployed and the vacant post filled only through a competitive merit-based process. Only once the SAPS top management consists only of skilled, experienced and capable women and men of integrity, can there be the chance for meaningful improvements in policing in line with the requirements of the Constitution and international Human Rights law.

Regarding the post-Marikana Expert Panel's Report on Public Order Policing, there is need for public mobilisation to pressure the government to consider the report's findings, start implementing its recommendations and make the Panel Report public. This secrecy contrasts poorly with the Khayelitsha Commission of Inquiry process, including its prompt publication of the findings and recommendations, and so enabling advocacy work for implementation of the Commission's recommendations. There may, also be need to for a PAIA application or other processes to compel the publication of the Marikana Panel report and its consideration by the new Parliament and portfolio committee on police.

The Protection of Critical Infrastructure Bill has been in Parliament, with the Portfolio Committee on Police, since 2018 and is intended to repeal the pre-1994 Key Points Legislation. The Bill is 'driven' by the police with the aim is to protect identified infrastructure (very broadly defined). The Bill if passed may have significant impact on the exercise of the rights of peaceful assembly and expression. The Bill hearing process may continue into the next Parliament. Possible actions could include encouraging increased familiarization with the contents of the Bill through public education, media commentary; raising counter-calls for fully upholding the Promotion of Access to Information Act (PAIA) and the protection of the rights of peaceful assembly and expression.

Following key rulings in the higher courts affecting provisions of the 1993 Regulation of Gatherings Act (RGA), a thorough review of the RGA at the legislative level must be done to ensure that any amended or replacement legislation on the management of assemblies strengthens the protection of the right to peaceful assembly.

Civil society and community-based organisations could engage in a review of provisions of the RGA which, in their experience, have been used to create barriers to the holding of gatherings or harassment of participants in gatherings. The new parliament, when convened, should be lobbied to prioritise the holding of a hearing on the amendment bill and to receive written and oral submissions from members of the public

## **5.2 Local level advocacy strategies and actions**

The work of local government is to deal with the immediate needs of and services to communities including the provision of housing, water and sanitation services. Although medical support is a provincial competence, this is included in the broad definition of "local" or non-national. Civil society and community-based organisations, where possible, could monitor the work done by councillors in fulfilment of their local responsibilities and hold public officials accountable where they fail to complete their duties. Community-based organisations could adopt the following strategies:

- Build relationships with local councillors - develop strategic/ friendly alliances with councillors who appear motivated to promote access to basic services and to fulfil the municipality's responsibilities
- Have campaigns to have ineffective office-bearers recalled from office;
- Work to bring traffic departments and medical care on board in the preparation for local protest gatherings - this can be done through campaigns that raise awareness about rights to assembly, local concerns and encourage the building of solidarity;
- Community-based organisations also hold individuals accountable through the use of the court system with the support of public interest legal organisations. This work does need to be taken on case by case basis. Engage in litigation in partnership with legal organisations to compel the local government to carry out their duties;
- Use PAIA to access the Integrated Development Plans, budgets and other publicly accessible information from local government authorities, if they are obstructive, for relevant local government authorities and compare financial reports with the content and promises made through the IDP processes.

### **5.3 Strategies and actions to shift the public narrative**

The key principle is that protest is a legitimate and credible form of public participation. The public, the police and the state's perceptions need to recognize and accept this as a starting point. Civil society and community-based organisations should invoke dialogue aimed at shifting the perception and role of the police to one that is facilitative and respectful of human rights as well as shifting the public narrative on protest. This should be done by:

- Encouraging protesting groups and communities to engage with public order police before and during and after a protest to build understanding of their local grievances and to work to ensure that the protest can be managed peacefully by the police and participants.
- Developing knowledge on the structure of and legal responsibilities of the public order police units
- Build relationships with the media. The more informed the media is, the more responsible they can become. Community media is also an important avenue for improving and shifting the narrative e.g. community radio. This could be done through engaging with media editors to promote citizen journalism. Offering the media some training on reporting on protests with a human rights lens.
- Collecting and disseminating data and evidence to dispel misconceptions around protest.

### **5.4 Documenting and reporting evidence on: weapons, injuries and seeking accountability**

Documentation on the use of weapons can be used in improving and tightening existing regulations on their use, as a way of improving the conduct of public order policing and the safety of participants in gatherings. This approach may be more effective after a relationship has been established. However, sharing this information and developing an exchange with the police could serve as a way of building that relationship to begin with. Developing partnerships with the police to share this information and discuss documentation may be a valuable way of gradually minimizing the risk of escalation in future protests.

Documentation should take place from the earliest point in the process leading up to the protest i.e. from the RGA notification right up until after the protest. Community-based and civil society organisations, or protest organisers should seek to legitimise the documentation work by identifying monitors who come from outside of the communities and can act independently, and informing the police about the presence of monitors as early as possible. And documentation should be as comprehensive and as detailed as possible, consisting of a range of sources. The information gathered could include:

- Police data on their use of weapons, including ammunition, collected through PAIA applications, as an option;
- Data on injuries;
- Gathered protestors' reports on how the police behaved during a protest particularly in the process leading up to the use of force.

In terms of holding the police accountable for the direct harm that they cause through misconduct, excessive use of force, misuse of weapons etc. then documentation and collecting evidence around the weapons used and the injuries caused becomes a crucial part of seeking accountability. Cases and complaints can be reported to the police themselves through the management intervention unit, IPID, the Civilian Secretariat for Police. In the event that attempts to hold the police accountable through these bodies is unsuccessful, then there are the following options: the Public Protector, the South African Human Rights Commission, and civil claims through the private law firms.

Information and evidence should be documented and collated in the form of written statements and affidavits, and photos. Some of the important things to report that one needs to look out for when encountering the police are the following:

- Police rank, is it located on their shoulders (high ranking) or upper arms (lower ranking). Name of the police officer if they are wearing their name badge or making a note of the names the officers call each other
- Gender, race, language and other physical descriptors
- Vehicle registration and markings
- Time and place
- Medical report or J88 form or a medical report that clearly indicates the diagnosis and descriptions of injuries.
- Written statements from other witnesses. If possible this should be accompanied with a name and contact details should it not endanger the witness. These details are especially helpful for seeking damages through a private firm.

Other longer-term strategies for improving police accountability that civil society and community-based organisations should take up include:

- Lobbying the Minister of Police and in the near future, the new Parliamentary Portfolio Committee on Police, as well as the Public Protector, on police reform aimed at enhancing police accountability and transparency, and drawing on the National Development Plan.
- Looking into the police recruitment process. Currently the requirements for becoming a police officer are very low, calling into question the calibre of candidates being drawn into the police service.

- Advocating for greater alignment of success measures across the police, magistrates and prosecutors, amongst others. A valuable overarching measure should be improving levels of public trust.
- Advocating for improved impartiality of IPID by including amongst its staff victims of police violence and members of the public who are often affected by poor policing, and for a budget independent of the SAPS budget.
- Advocating for a shift away from political appointments of the national commissioner of police.
- Efforts to shift the legal understanding of protest as a crime towards a form of political action protected by international and South African law.

## **6. Recommendations**

### **6.1 The law is clear on the right to peaceful assembly and the state's obligation at all levels to protect and facilitate that right**

- International and Africa regional human rights law and South African law, including through recent court rulings, are in agreement that the right to peaceful assembly is a right not a privilege and a cornerstone of democracy.
- The South African government at all levels must not only refrain from violating the rights of individuals involved in an assembly, but act to ensure the rights of those involved and to facilitate an enabling environment for exercising that right.
- All levels of government, including authorities at the provincial and municipal level, must act on that basis, in respect of acknowledging the right, allowing the police to conduct their operations professionally in managing gatherings;
- Officials must not misuse the Regulation of Gatherings Act nor the criminal justice system to deter people from expressing their right to peaceful assembly in protest over local grievances;
- Assemblies, as acknowledged by the United Nations Human Rights Council, can happen in a variety of forms and can be instrumental in amplifying the voices of people who are marginalised or whose narrative is different from established political and economic interests.

### **6.2 Policing to uphold that right**

- The state has an obligation is to facilitate the realisation of this right and to ensure a culture of best practice in policing of assemblies, avoiding the use of force unless strictly necessary, and then with proportionality.
- Government is obliged to ensure that the police are trained, equipped and lawfully instructed to protect the right to peaceful assembly; their operational independence must be respected;
- Given the structural shortcomings of the SAPS that undermine leadership and accountability resulting in routine police abuses of Human Rights in South Africa, there is a need for a clear police reform programme. This must start with an overhaul of the Senior Management Structure of the SAPS as a necessary first step. Only skilled, experienced and capable women and men of integrity should become senior managers and commanders in the SAPS.
- Police training in the management of assemblies should be based on human rights principles and the practicalities involved in achieving the protection of the right to assemble. Training programmes should emphasise the core principles in managing assemblies: facilitation,



knowledge, communication and differentiation. Facilitation of assemblies is the purpose for the policing operation, with knowledge (information and intelligence gathered) and communication (with participants) at the core of the process. Police must refrain from the use of force until justified according to the principle of necessity and proportional to the threat at hand. They must differentiate among those in the assembly and respond only to a person/persons who pose a threat.

- They should have self-protection equipment.
- The government must ensure that any weapons permitted for use offensively in public order policing is not indiscriminate in its effects and can be used without causing harm.

### **6.3 Accountability to change police practice and to ensure non-repetition of human rights violations in the context of protests**

- The government has a legal obligation to ensure accountability for human rights violations occurring in the context of the policing of assemblies or in other responses to protests. It should along with parliament urgently address the crisis in ensuring effective accountability. The trends over the last decade in the SAPS internal disciplinary system show a decline in hearings and effective outcomes. The Independent Complaints Directorate (IPID) appears challenged in its resources, insufficient independence and by the lack of responsiveness from the prosecution authorities to their recommendations in police cases.
- Complainants in cases of misuse of force and injury related cases from police public order operations should be treated with respect and urgency, and not as criminal suspects;
- Failing accountability systems are not only a violation of the government's legal obligations but entrench a culture of impunity which can only lead to an increase in human rights violations and other abuses by the police.

### **6.4 The misuse of force: Methods to document evidence of the unjustified use of force and to identify weapons which should be excluded from public order policing contexts**

- The equipment provided to police units who are responsible for managing assemblies currently include non-lethal weapons, but capable of causing significant harm, as confirmed by independent medical experts;
- It is urgent that the government and police authorities review and end the use of certain 'public order policing' weapons for law enforcement purposes where evidence strongly indicates risk of serious harm:
  - Shot guns firing multi-ball rounds appear to be the first line of response, despite SAPS regulations; they are difficult to control, firing indiscriminately in a crowd situation, including when protestors are fleeing from the police line; ricochet firing into the ground can also be unpredictable in its effects; harm can arise from the unsuitable nature of the weapon or from deliberate misuse; serious injuries including loss of an eye have been documented;
  - Stun-grenades should be prohibited in crowd-management context; there are high risks of harm especially if the weapon is misused, from blast injury, heat burns, loss of hearing and other injuries which have been recorded.

There was consensus that civil society and CBOs:

- Familiarise themselves with the contents of the new Protection of Critical Infrastructure Bill through public education, media commentary.
- Mobilise the public to pressure the government to release the post-Marikana Expert Panel's Report on Public Order Policing.
- Influence the agenda of the new Parliamentary Police Portfolio Committee to focus on systems for enhancing police accountability and to ensure that the revision of the Regulation of Gatherings Act enhances the protection of the right to peaceful assembly.
- Engage the media for more responsible and human-rights based reporting on protest through engaging with media editors and offering training on protests.
- Influence the public narrative.
- Collect and disseminate data and evidence to hold the police and POP accountable and to challenge various misconceptions about protest.

**All resources** presented at the workshop including additional background information can be found here: <https://drive.google.com/open?id=1YRF6Jt0GeN8Ty87NUVwn0gNvmGT7PR>

## 7. Resources

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## **Guides**

African Commission on Human and Peoples' Rights, *Training Manual: Based on the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, African Commission on Human and Peoples' Rights, (2017), [http://www.achpr.org/files/special-mechanisms/human-rights-defenders/policing\\_of\\_assemblies\\_training\\_manual.pdf](http://www.achpr.org/files/special-mechanisms/human-rights-defenders/policing_of_assemblies_training_manual.pdf)

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## **Court Judgements**

*Mlungwana and Others v The State and Another* 2019 (1) BCLR 88 (CC) <http://www.saflii.org/za/cases/ZACC/2018/45.html>

*South African Transport and Allied Workers Union and Another v Jacqueline Garvas and Others* 2013 (1) SA 83 (CC)

## **Appendix: Working group discussion notes**

Full record of working group discussions from 18 and 19 March 2019 are follows:

### **Day 1: 18 March 2019 - Civil society advocacy strategies and actions**

#### **Group 1: Advocacy Target: Police and the courts**

This group began its discussion by a prefacing the challenges around accountability through the police and the courts.

- It is important to recognize, when engaging the police, they tend to not see themselves as a part of policymaking. They see themselves more as the body tasked with carrying out orders and complying with the law.
- Very weak internal and external accountability measures. Police officers facing disciplinary action can simply opt to resign in which case no record is kept of what they were accused of. That same police officer can then, at a later stage, rejoin a different police department and there will be no record of their past alleged misconduct.
- There is a lack of implementation.
- The Independent Police Investigative Directorate (IPID) faces challenges of capacity and time constraints. IPID measures its success in terms of the number of cases it closes meaning that investigators have little incentive to actually investigate and instead close as many cases as possible. The body has also lost a lot of public trust and is ridden in political scandal.
- For protestors, the judiciary and police are often seen to work together against identified 'trouble-makers' and community leaders. Protestors are also often left without adequate legal representation. Community protests and efforts to mobilize around their interests are often frustrated by various tactics employed by the police.
- The lack of separation between the prosecution, the police and the public defense created by the reality that they work together institutionally but also grow to know each other personally. This often works against protestors who find themselves with very little options. Seeking accountability under these circumstances proves to be very difficult.

The group identified the IPID, the Civilian Secretariat for Police Service as avenues that are supposed to open to members of the public who seek accountability. It was noted, however, that these bodies are not seen as having their independence severely compromised. They are not seen as a legitimate avenue for seeking redress against the police. However, these bodies exist and should still be targeted for reform. Other measures should include:

- Lobbying the Minister of Police, the Parliamentary Portfolio Committee on Police as well as the Public Protector for police reform and thereby accountability.
- Looking into the police recruitment process. Currently the requirements for becoming a police officer are very low, calling into question the caliber of candidates being drawn into the police service.
- Advocating for greater alignment of success measure across the police, magistrates and prosecutors, amongst others. A valuable measure should public trust.
- Advocating for the improved impartiality of IPID by including victims of police violence and members of the public who are often affected by poor policing.
- Advocating for a shift away from political appointments of the police Head.
- Efforts to shift the legal perception and treatment of protest as criminal activity towards an understanding of protest as political action.

## **Group 2: Advocacy Target: National government and commissions**

Group 2 focused their discussion on **The Critical Infrastructure Bill** and the **post-Marikana Expert Panel's Report on Public Order Policing**.

In terms of the Critical Infrastructure Bill, the Bill has been in Parliament, with the Portfolio Committee on Police, since 2018. It is intended to repeal the pre-1994 Key Points Legislation. The Bill is 'driven' by the police and falls within the JCS cluster. Its apparent aim is to protect identified infrastructure, limit access to perimeter of that infrastructure. The Bill hearing process may continue into the next Parliament. Concerns raised during the working group included:

- It will affect the right to peaceful assembly and related rights, such as freedom of expression, through the intended provisions defining certain entities to be protected by perimeter guarding; potentially the net of protected buildings could be defined broadly to include hospitals, schools, mines; that capacity is in the Bill; being near or photographing the perimeter of a declared infrastructure could be an offence; the bill will allow for State and private entities can make declaration of infrastructure as "critical infrastructure"
- The further concern relates to potential prohibitions on certain grounds to access to data, in conflict with PAIA, including data defined in the legislation or held by listed institutions; criminal sanctions could apply with potential sentences to imprisonment;
- The draft legislation is open to abuse; protection of rights are not in the foremost in this Bill; the just ended PPF Committee was not overly concerned with this aspect;
- It will allow for State and private entities can make declaration of infrastructure as "critical infrastructure"
- Police and private security personnel would become involved in implementing the potential law;
- Remaining time frame for the Bill? [Sean commented – no note taken]
- If it is passed by Parliament, the legislation will change the face of protest action and will be an impediment to freedom of peaceful assembly; and could cover a wide range of infrastructure;
- Possible actions could include encouraging increased familiarization with the contents of the Bill through public education, media commentary; raising counter-calls for fully upholding the Promotion of Access to Information Act;
- In terms of advocacy and mobilization targets, who would be motivated/concerned enough to be mobilised to speak out on this issue - churches, COSATU/ labour organizations, social/ community-based movements, R2P, R2K?

### **Regarding the post-Marikana Expert Panel's Report on Public Order Policing:**

The Panel members completed their work in 2018; the Chair of the Panel handed the report to the Minister of Police in April 2018, in the presence of other members of the Panel. It is said to contain over 100 recommendations on policing, in particular public order policing. The report had still not been released as of March 2019.

- The impact of this delay in release includes the reported reluctance of the parliamentary portfolio committee to consider reforms of the Regulation of Gatherings Act until the Panel Report is released.
- There is need for public mobilization to pressure the government to make the Panel Report public.

- This secrecy contrasts poorly with the Khayelitsha Commission of Inquiry process, including the publication of the findings and recommendations, enabling advocacy work for implementation of the recommendations.
- There may be need to for a PAIA application or other processes to compel the publication of the report and its consideration by the new Parliament and portfolio committee on police.

### **Group 3: Advocacy Target: Local government**

The work of local government is to deal with immediate needs of communities including housing, water and sanitation. Local councillors are the closest state representatives to communities and they are tasked with overseeing the delivery of these services. Civil society and community-based organisations should monitor the work done by councilors and should hold public officials accountable for failing to complete their duties.

Protests aimed at local government are often the result of people challenging the state to keep to their promises made in public at community meetings or in the municipality's Integrated Development Plan for the respective communities. A few important points regarding protests at the local government level:

1. Protests are costly on communities – They require intensive planning and demand a lot of emotional, intellectual and physical labour to execute.
2. Very often these protests are met with violence from the state and have become a platform for police brutality.
3. Local councilors should be in a position to monitor signs of agitation within the community and respond to the issues raised In order to limit the number protests taking place.

The group also noted a few concerns with how protests are managed within the local government sphere and the various roles the municipality plays in a protest:

The responsible officers in Section 4 meetings are the promise-makers people who have been appointed by the municipality and are very often loyal to the municipality. They are then the very people who determine when a protest can take place.

- The municipality employs various tactics are employed to scare and intimidate people before, during and after protest action.
- In some cases the faulting councilors are the Safety and security officers tasked with overlooking protests in the municipality.
- Demanding that protest organisers pay fees in order to protest;
- Use appeals as a delaying tactic during the planning process of a protest
- Municipalities are responsible for generating and enforcing the municipal by-laws however these tend to operate by overriding the constitutional rights of protestors
  - The public must be allowed to comment on by-laws that are often forcefully promulgated. The municipal Structures Act may offer a solution for this problem.

Community-based organisations could adopt the following strategies:

- Befriend 'friendly' councilors because they have access to information that the community might not;
- Take advantage of divisions in party politics;
- Have campaigns to have ineffective office-bearers recalled from office;
- Engage in litigation to enforce the local government to carry out their duties;
- Work to bring traffic departments and medical care on board



- This can be done through campaigns that raise awareness and encourage the building of solidarity

One party dominance has presented many communities with challenges that include:

- A top-down approach to working with the community and delivering of services
- Leaders tend to not listen to the community and are not open to being questioned
- In community meetings, mayors are always in a rush often leaving community members with unanswered questions and little space for engagement

Community-based organisations have done some work to hold individuals accountable through the use of the court system with the support of public interest legal organisations. This work does need to be taken on case by case basis.

- The value of visibility through things like organisation t-shirts
- Strengthening the links between Civil society organisations
- Contacting local legislations
- Use PAIA to compare financial reports with the IDPs

Group 3 also emphasized that corruption is a big hindrance for communities and is in many ways a part of the reasons behind the need to protest. There is are too many commissions of inquiry and they speak to the dichotomy and inequality in treatment because activists that are arrested get dealt with through the criminal justice system but corrupt official and others accused of serious crimes get commissions of inquiry.

#### **Group 4: Advocacy Target: “the public”**

This group discussed how to change the public narrative particularly about protest. The key principle is that protest is a legitimate and credible form of public participation. The public, the police and the state’s perceptions need to recognize and accept this as a starting point.

- The police, protestors, and government and general members of the public. The approach should be that we want to help protestors and police to be more effective.
- Civil society should invoke dialogue that is aimed at shifting the perception and role of the police to one that is facilitative and respectful of human rights.
- Civil society should do aim to do this by:
  - Encouraging protesting groups and communities to engage with public order police before and after a protest.
  - Building a relationship between the police and civil society organisations, protesting groups and communities.
  - Collecting and disseminating data and evidence.
  - Developing knowledge on the structure of the public order police unit.
  - Build relationships with the media. The more informed the media is, the more responsible they can become. Community media is also an important avenue for improving and shifting the narrative e.g. community radio. This could be done through engaging with media editors to promote citizen journalism. Offering the media some training on reporting on protests with a human rights lens.
- Working to dispel misconceptions about protest through the use of evidence. Busting myths should serve as a way of nuancing the conversation around protest. There are some misconceptions around some of the following issues:

- The conflation of disruption and violence. The relationship between the two is complex. However, it is also important to note the media and government respond to these circumstances and often the peaceful and consistent efforts to engage are never seen.
  - Who protests and the assumption that protestors are simply an “unthinking mob”.
  - Characterizing all protest as ‘service delivery protest’.
  - Ultimately, the key message to disseminate is that protest is a legitimate method of political activism and is not the only form of political activity that communities and groups.
  - Protest is often turned to as a last resort. It is usually a conscious and planned effort at the end of numerous failed attempts to engage with local state leadership and representatives. There is research that shows this. But communities should develop well documented evidence of their efforts to engage.
- It is also important to have government structures and the work that they do publicized as a matter of interest.
  - It is also worth unpacking who ‘invited’ participation works for because children and learners are finding that their rights to protest are being curtailed in interesting ways on this basis.
  - Inequality is violent and the challenges that impoverished communities face should not be misunderstood as making the communities the problem. That is often the way that their protests and demands are met with.

## **Day 2: 19 March 2019 - Working Groups: Documenting and reporting evidence**

### **Group 1: Accountability**

This group’s discussed the range of actors that could be held accountable in protest contexts. These range from private security, universities, in addition to the police themselves.

1. In terms of holding the police accountable for the direct harm that they cause, there are a few stages and options for holding them accountable to varying degrees:
  - The starting point could be opening a case with the police themselves, however, because of the challenges within the police service, this may be very difficult.
  - One can also seek to hold the police accountable through the management intervention unit within SAPS.
  - IPID is the next body that can be turned to given that their mandate has been expanded by the IPID Act of 2011.
  - There is also the Civilian Secretariat for Police Service which is a body that is replicated at the provincial level.

In the event that attempts to hold the police through these bodies is unsuccessful, then there are the following options:

- The Public Protector.
- The South African Human Rights Commission.
- Seek legal aid.
- Civil claims through the private law firms that may take it up pro bono or on a ‘no win, no fee’ basis. These claims for damages require that the costs incurred are collated as best as possible. These include medical expenses (past and future), loss of earnings (past and future), in addition to the violation of freedom, dignity, cause of pain etc.

Holding the police accountable does require that a lot of information and details are documented and collated in the form of written statements and affidavits, and photos. Some of the important things report that one needs to look out for when encountering the police are the following:

- Police rank, located on their shoulders. It is helpful here to note that it is worth learning the badges for this purpose.
  - Name of the police officer if they are wearing their name badge.
  - Gender, race and other physical descriptors that stick out.
  - Vehicle registration and vehicle markings.
  - Medical report or J88 form. In the absence of a J88 form, the medical report should clearly indicate what the diagnosis is and descriptions of injuries.
  - In terms of written statements, it is always best to get at least more than one person to write a written statement and where possible, they should provide their name and contact details. This is especially helpful for seeking damages through a private firm however, discretion should be exercised as this could also put the witness at risk with the police, depending on accountability route been taken.
  - We should also look into getting data from the police through PAIA.
2. In terms of holding the police accountable in the general sense of demanding improvement in the performance of the police, civil society should:
- Work on informing the public about how much of the police budget gets spent on claims and how much gets spent on legal fees. It could be argued that they have gradually moved towards settlement given the exponential increase in the amount of money spent on claims. In 2018, the police spent around R345 million. About 80% of the civil claims paid out are for unlawful arrests.
  - Targeting prosecutors as an important area with great potential to reform the police. There may be a 'strategic innovation unit' set up by the NPA so this is something that civil society should look out for.
  - Various civil society organisations are to meet in June to discuss working with the newly appointed NDPP.
  - Influence the agenda of the new Parliamentary Portfolio Committee on Police also presents civil society with renewed opportunity for engagement.

## **Group 2: Weapons**

Group 2 began by prefacing why documenting weapons is important and what information should be sought in the process:

- Documentation of weapons used can help to assess compliance.
- To identify what weapons are being used and how they are being used. This requires an understanding of what the spectrum of weapons includes as well as the regulations around the use of such weapons.
- Who is using the weapons is also important e.g. private security, the police. Are the regulations for the use of weapons being followed by all parties that use these weapons?
- Understanding what SAPS can use and what the differences in weapons available to different police units may be.
- Understanding what process is used and what can be used.
- Understanding what different weapons are used and what circumstances, as well as the deployment technology.

- Understanding whether or not and under what circumstances other weapons can be brought into protest situations.

In terms of documenting the use of weapons, it is important to be aware of the risks involved in documentation. Activists documenting the use of weapons could become targets and at risk of retaliation.

It is worth asking whether or not documentation can assist in improving existing regulations and if so how. This involves determining the usefulness of the information gathered and how it can be used. Here, things like police data on their use of ammunition and collected data on injuries incurred can form part of the information gathered. Other information that could also be collected is gathering protestors' reports on how the police behaved during a protest particularly in the process leading up to the use of force. Documentation should take place from the earliest point in the process leading up to the protest i.e. from notification right up until after the protest. This could, however, make some protestors targets thereby making them vulnerable. Documentation should also be as comprehensive and as detailed as possible, consisting of a range of sources.

Developing partnerships with the police to share this information and discuss documentation may be a valuable way of gradually minimizing the risk of escalating violence in future protests. From this established partnership, activists and protestors could and should try to assess the documentation of the police as well.

This group emphasised the importance of legitimising the documentation through the use of monitoring. A potentially valuable tactic could be to notify the police of the monitoring process very early on, from the notification stage. It would also be helpful to identify monitors who come from outside of the communities and can act independently.

The group also emphasized the importance of building relationships that can allow protesting communities to exchange information with the police; disclosing the documentation process could encourage the police to engage with civil society organisations and protestors and allowing all parties to learn from each local protest to look out for risks that escalate to tensions and lead to an excessive use of force by the police.

### **Group 3: Injuries**

This group began their discussions by looking at some of the difficulties around the documentation of injuries. These included:

- The cost of medical care, particularly in the J88 process following release from jail. One may choose to go to private doctors for this because of the poor state of the healthcare system.
- Difficulty of getting the police to attend to injuries while in custody as well as the strategically inflicted physical violence by the police. They often beat people in obscure and hidden areas where injuries are not easily visible.

The group also discussed some of the injuries that protestors can incur sometimes as a result of the weapons used by the police:

- The damage caused by tear gas to the eyes and the risk of infections, damage caused by stun grenades to hearing, rubber bullet and shotgun injuries, razor wire injuries; pepper spray risks,
- Incidental injuries caused by falls from stampedes triggered by forced dispersals;
- In the event that protestors get injured, proximity to hospital facilities and access to medical attention becomes critical. The police are required to have first aid capacity and should ensure that those badly harmed should get access to medical attention. The various national, regional and international regulations around this are clear.