

This paper was presented at the 21st International Conference on Sustainable Development, held at the Faculty of Social Science and Humanities, University of Ottawa, Ottawa, Canada, on July 15-16, 2025.

Employees protest actions: Policing dilemmas in Southern African countries

Godfrey Thenga

University of South Africa, South Africa.

Corresponding author: tshabg@unisa.ac.za

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OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada.

ISSN 1923-6654 (print) ISSN 1923-6662 (online) www.oidaijdsd.com

Also available at <https://www.ssm.com/index.cfm/en/oida-intl-journal-sustainable-dev/>

Abstract: The right to protest is one of the fundamental rights that democratic countries guarantee their populace. In South Africa, the right to protest is enshrined in the Constitution and labour laws. Some protests and riots in this country have turned violent, and the policing of these was met with the use of maximum force and unwarranted abuse of power by the police. This study explored the policing of employees' protests in South Africa, and assessed the capabilities and abilities of law enforcement to police protests and riots. In this study, a qualitative desktop perspective was adopted, utilising a literature review. The increasing number of protests in South Africa makes a case for immediate increased policing. Private and public law-enforcement officials are overwhelmed and struggle to maintain law and order. The study revealed that the policing of protests often becomes violent, and private and public law enforcement members are not sufficiently well trained to control and manage riots. By identifying gaps in current policing strategies on policing protests and strikes, and proposing potential solutions, this research will contribute to reforms aimed at addressing the policing of protests and strikes. The police should use intelligence sources to assist in policing, and strive to defuse tensions rather than fomenting violence.

Keywords: employees, human rights, intelligence, policing, protest, technology

Introduction

South Africa has been dubbed the protest capital of the world (Runciman, 2018). The word 'protest' is synonymous with a word coined in Zimbabwe, namely '*toyitoyi*', a dance where dancers display their feelings through dancing or jubilation. *Toyitoyi* is a colloquial word used to refer to people protesting, striking, demonstrating or picketing.

Protest action is one of the fundamental rights that democratic countries guarantee to the populace (Tenza, 2021: 279-280). Protest actions can be carried out by employees who demand a solution to issues raised with their employers, by community members seeking the attention of government in order to address service delivery-related issues, or even by interest groups agitating for political or socioeconomic reforms to be effected by the government (Volk, 2021:437). Oftentimes, protests waged by members of the public are related to service delivery, political discontent, social and environmental issues, even human rights violations (e.g., the Palestine–Israel war, Rohingya community oppression and maltreatment, or even the United States' aggression towards Iran). In the United Kingdom the Palestine Action – a protest group was proscribed and declared a prohibited group under the Terrorism Act, 2000.

A protest involves a demonstration or an expression of dissent on a plethora of issues related or unrelated to labour matters, and can be organised by labour unions or individuals who are dissatisfied with specific issues in the workplace, or in public spaces. By contrast, strikes are a form of industrial action taken by workers or their trade union to protest labour-related matters such as salaries, dismissals, poor working conditions, and maltreatment by supervisors or managers (Maringe & Budeli-Nemakonde, 2022:28). In sum, protests, strikes, demonstrations and pickets involve a collective action, where a group of people express their dissent or support for a cause or societal issues of concern to them, and if it is in the workplace, it could be a labour issue.

All countries in the South African Development Community (SADC) have, in their constitution, the right to protest, whereas some countries do not have the right to strike in their constitution. Similarly, in South Africa, both the right to protest and the right to strike are featured in the constitution. Section 17 of the Constitution (RSA, 1996) grants everyone the right to assemble, demonstrate, picket and present petitions in a dignified manner. It recognises collective

bargaining in these terms: “everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to protest, and to present petitions”.

To ensure decorum, protest action must be managed and controlled so it does not disturb others who are not part of said protest. Municipalities may rely on law enforcement to ensure that no inconvenience or obstruction is caused on the road. That is when law-enforcement agencies exhibit their efficiency and uphold the rule of law by conducting policing activities (Maquire & Oakley, 2020: 25-28 and Smit, Alemika, Botha, Ngantweni, & Van Mollendorf, 2022:23-27.). Protesters and law-enforcement agency members alike, must maintain decorum and manage the crowd. Protesters have the right to protest, and with it comes the responsibility to maintain law and order. In the SADC countries, protest action is often disorderly, with protesters destroying the property of employers and other non-protesting workers. Some protests in South Africa have turned violent, leading to the killing of innocent people by law-enforcement agencies, even for voicing their disapproval with their employer. A case in point is the Marikana Massacre of 2012. Some protest actions are labelled insurrections, caused by rival political parties, such as the mass looting of shops in 2021. Some of these protests became riots and involved disturbances, agitation involving demonstration or disorder, with people losing their lives in the crossfire during confrontations with law-enforcement officers (Kanamugire & Mello, 2023:364).

Problem statement

Fundamental workers’ rights are the first group of rights amongst other rights, such as the right to establish and join a trade union, the right to collective bargaining, and the right to protest and strike (Manamela & Budeli, 2013). The employer–employee working relationship is reciprocal and beneficial to both, based on service and reward. With such an arrangement comes an uneven and imbalanced bargaining power, as an employer provides work to the employee at agreed-upon terms and conditions (Volk, 2021: 453-454). The situation is analogous to collective bargaining between employers and trade unions. Protest action and strikes are the most common in collective actions, as workers engage in them in order to resolve labour-related issues and happen to be the last resort after negotiations have stalled. The pattern of failures to manage protests and riots in South Africa makes a mockery of policing. Even though protesters may not carry dangerous weapons during protest actions, some marchers carry pangas, assegai spears, shields, knobkerries, stones, firearms and knives, under the guise of these being traditional weapons.

Many protest actions are peaceful, yet some escalate and get out of control as workers vent their anger at supervisors and managers (Kgasimore, 2007: 61 -82). When tensions are high and the situation is volatile, employers turn to law enforcement such as the police, metropolitan police and security officers, to protect their property and non-protesting workers. If the situation is volatile, law-enforcement officers should ease tensions and ask the protesters not to express their aggression by throwing stones or even charging at managers.

Historically, South Africa is known to have had several political protest actions where many people were killed: consider the June 16, 1976 massacre, the Bisho massacre of 1992, Sharpeville in 1960, Langa in 1985, the Boipatong Massacre of 1992, the Phoenix massacre of 2021, and the Marikana Massacre of 2012. The latter happened during the democratic dispensation, when striking miners were shot at and killed by the police. The Marikana miners’ massacre highlighted the use of a paramilitary-style policing, in a democratic dispensation where the police used excessive force instead of defusing a volatile situation in exercising their duties as police. Disparities in the use of force demand that police retraining in the use of force during policing activities, especially crowd control (Magadla-Mateyise & Sensile, 2024).

The South African Police Service (SAPS) recruits untrained station-based police members to learn on the job in doing public order policing, whereby members ignore instructions and commit errors and even use excessive force when conducting crowd control and management duties. Some protest actions are hijacked by vagrants and rogue criminals who are not part of the protesters, and seek to commit crimes such as robbery and theft from non-protesting passers-by, especially during public marches. Some protesters go to the extent of mobilising unruly unemployed crowds to join in the protest action.

Oftentimes, problems are caused by market greed, when politicians show an interest in business dealings, whereby they force the police to protect their businesses at all costs. Their business interests become intertwined with political office occupancy. The police are overstretched and there is a shortage of over 20 000 police officials, as many have been dismissed, resigned or retired. Polity (2024:1) asserts the gravity of the problem by indicating that in 2010, the ratio of police to population was one for every 250 people and in 2022 it is one police member to 450 people. The situation is exacerbated by the sprouting informal settlements and unemployment, as well as poverty, which contribute to social ills. Most of the informal settlements are hotspots for criminal activities and social ills. Operational

intelligence within the police, the State Security Agency, and the military is limited, as law enforcement is often ignorant about many of the serious crimes being committed. There seems to be less use of crime mapping and analysis on the part of the SAPS and crime intelligence, to thwart crime due to poor use of Geographic Information Systems technology (Edelstein, 2019: 1-3).

Research questions

In this study, the following research questions were formulated, to guide the investigation:

- How are employees' protests and strikes policed in Southern Africa?
- Under what circumstances do the police use force when conducting policing duties?
- What causes the police to use force on protesters?
- What are the consequences of using maximum force against protesters?

Methodology

A non-empirical desktop qualitative research approach was used for this study. Babbie (2021:77) describes qualitative research as the quest for data that possesses traits which are observable and can be documented, as opposed to quantifying variables or measuring outcomes. Qualitative research attempts to pose questions about the way in which people experience a phenomenon, and the significance they attribute to it. Cohen, Manion and Morrison (2020:54) are correct in their assumption that, through qualitative research, the researcher is able to mine information and reuse the research findings in other research studies. The study current was exploratory in nature, and descriptively inclined. Exploratory research is used when a researcher wants to learn about a subject that has not been studied to a great degree, or where little information is known (Losch, Rambo & Ferreira, 2023:1-4). A descriptive study provides an account of a phenomenon or event, without necessarily explaining why it occurs.

According to Kabir (2016:57), data collection is the process of acquiring information about the topic under study, and it needs to be done in a systematic way, and planned in harmony with the purpose of the undertaking, in order for the collected data to be useful and credible. In this instance, data were collected through a literature study, and were drawn from secondary sources on protests and strike actions, violence, the policing of protest action, surveying and profiling technologies and human right abuses. To that end, statistics, peer-reviewed academic books and journals, government websites and policy documents were consulted. Documented information is more reliable than information relayed by people, who tend to make errors.

Data analysis is defined as “the process of converting the gathered data to meaningful information” (Taherdoost, 2020:28). The researcher employed thematic analysis to analyse the data. This involved working reflexively and methodically through raw data, to obtain useful results (Yeng, 2021:16). Shaw (2020:44) asserts that once the researcher is familiar with the data, the second stage involved the interpretation of data by facilitating a deeper understanding of the concepts presented.

Literature Study

Theories of strikes and protest actions

There are three forms of protest action, namely civil disobedience (which covers simple acts of defiance that demonstrate opposition toward an unjust law, the ill-treatment of people, or cultural norms, and can be waged by an individual or group of people), non-violent protest and violent protest action (Mottiar, 2025: 4-7).

Rational choice theory is a framework that suggests that people weigh the potential outcomes of different activities or actions, and choose those that best serve their goals (Masiloane, 2010:32). Protesters are assumed to be rational beings who participate in a protest action when they perceive the benefit as being beneficial to them, and far outweighing the risk. Protest action has been described as social theatre and is a means of addressing conflict and seeking redress in a volatile situation (Mottiar, 2025: 1-2). Often, protest action is carried out by a group whose members encourage others to join in. Emotions are involved, and people's behaviours can lead to collective action. Others can be encouraged to participate in collective action when they see evidence of group solidarity, as advocated by contagion theory (Lu & Hong, 2022: 2-3). Its repertoire of contentions includes rallies, sit-ins, blockades and boycotts.

According to Marxist Theory of protest, the protest actions are brought about by a manifestation of inherent conflict between the owners of production and the working class. Protest actions are caused by class conflict, and are a collective bargaining mechanism through which workers challenge capitalist systems of control over the means of production and distribution (Volk, 2021: 444). Protest actions and strikes are a 'school of war', as workers unite their

collective force to fight for economic emancipation against their employers (Atzeni, 2022: 137-138). Protest actions and strikes have a tendency to reflect communist ideologies, and involve the penetration and subversion of the workplace. It has the consequence of causing unrest from within the workforce (Darlington & Ralph, 2006:2).

Systems Theory, by contrast, views protest actions and strikes as a breakdown in the normal functioning of the industrial relations system, and emphasises the importance of institutions' rules and processes in managing labour disputes and preventing protest actions. Systems theory views protest actions as a disruption of normal industrial relations in the workplace, and thus aims to restore balance between the employers and employees by addressing the root cause of the problems (Kusche, 2016:1).

Agitator Theory views protest action as unnatural acts caused by the influence of outside agitators, such as labour unions. Agitator theory holds the popular (often media-induced) view that industrial militancy is the work of a few hard-core militant shop stewards and/or left-wing political agitators (Darlington, 2006).

Structural strain theory argues that social problems and tensions within a society create strain or pressure on the individual (inequalities, injustices, economic hardship or a sense of relative deprivation). Strain stemming from perceived inequalities, injustices, or unmet needs can motivate people to organise and act collectively, to address issues (Crossman, 2019:1-4). If people feel that the existing social structures are not meeting their needs or are causing them harm, they might experience strain. In a private business, protest action is intended to hurt the business so it can be pushed to address the workers' grievances. A strain carries a negative evaluation of a situation, and demands redress to satisfy the people concerned.

According to Social Movement Theory, protest actions are influenced by political, economic and social conditions, such as a faction within the ruling political party, unfavourable economic conditions that do not create jobs and entrench conditions where employment is scarce, or political opposition. Social solidarity and collective identity motivate workers to engage in protest actions. Three popular Social Movement theories explain why people form or belong to social movements, and how they might behave as members of that movement: 1) Deprivation Theory states that feelings of relative deprivation prevail among groups who perceive a significant gap between their expectations and actual circumstances. This injustice is a motivating factor for collective action to address the perceived inequalities; 2) Mass Society Theory thrives in a society where individuals feel isolated and disconnected from traditional social structures (Pirone, 2019: 107-108). Those disconnected individuals are more susceptible to the appeals of the social movement, which offers a sense of belonging and comfort as well as purpose that is lacking in their lives. (Modern industrialised society tends to weaken traditional social ties, leading to a feeling of isolation, alienation and a lack of belonging among individuals) (Kusche, 2016: 1-3).

Drawing from their mandate, the police are responsible for protecting people and property and maintaining law and order. In 2018, the Constitutional Court decriminalised peaceful protests by confirming that section 12(1)(a) of the Regulation of the Gatherings Act 205 of 1993 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. The court emphasised the need to interpret Section 17 of the Constitution, the right to freely assemble, broadly, with the only qualifier being that the assembly must be peaceful and unarmed (Legal Resources Centre, 2018).

Overview of protests and strikes

South Africa signed and ratified the International Covenant on Civil and Political Rights (ICCPR) in 1998, and it protects civil and political rights and protects peaceful assembly and protest action in terms of Article 21, whilst the International Covenant on Economic and Social, and Cultural Rights signed in 1994 and ratified in 2015, protects socioeconomic rights. Labour rights are protected in terms of Article 8 (1)(d) that states that the Parties to the present Covenant undertake to ensure the right to strike, provided that it is exercised in conformity with the country's law.

Protests and strike actions are often waged after a deadlock in negotiations, and they are part of a collective bargaining process (Manamela, 2024:46). They often follow suit when a deadlock has been reached with employers or service delivery is not provided, or for the demand for political order and the restoration of normal processes in society, collectively dubbed a web of socio-economic and political factors.

The term "assemble" as featured in section 17 of the Constitution (Constitution of the Republic of South Africa, 108 of 1996) has been interpreted by the court to cover meetings, pickets, protest marches and demonstrations aimed at expressing a common opinion. In South Africa, Section 17 of the Constitution grants everyone the right to – peacefully and unarmed – assemble, protest, picket, strike and present petitions. The right to freedom of association is guaranteed by section 18 of the Constitution, while section 23 makes provision for strike action. Similarly, drawing from the

Constitution, the Labour Relations Act (LRA), No. 66 (1995), sec 23 defines a strike as “the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to "work" in this definition includes overtime work, whether it is voluntary or compulsory (LRA, No. 66 (1995) sec 64(1)). The same Act, however, defines protest action as “the partial or complete concerted refusal to work, or the retardation or obstruction of work, to promote or defend the socio-economic interests of workers, but not for a purpose referred to in the definition of strike’. The purpose of protest action is to promote or defend the socio-economic interests of the workers, in terms of section 213 of the LRA, No. 66 (1995). Protest actions are, in general, regulated by the Regulation of Gatherings Act, No. 205 (1993), which is an important statute regarding the regulation of public assemblies and crowd management in South Africa.

Based on these constitutional provisions, employees can therefore use economic power to support their various demands. In terms of section 1 of the LRA, No. 66 (1995), one of the aims of the Act is to advance economic issues. Protest action is covered by section 77 of the LRA, No. 66 (1995). Peaceful protest actions assist in the attainment of progressive social justice, labour peace and the democratisation of the workplace.

Consequences of protest in the southern African context

Section 77 of the Labour Relations Act, No. 66 (1995), requires a notice period of at least 14 days to the National Economic Development and Labour Council before protest action can begin. The National Economic Development and Labour Council is a vehicle by which government, business, labour and community organisations seek to cooperate by resolving problems and negotiating on economic, labour and development issues.

In a protest that disturbs normal production, employers can utilise replacement (scab) labour while workers are on a protest action or strike action (Tenza, 2021: 256-258). Protest action is protected under Section 77 of the LRA, No. 66 (1995), and employees are shielded from dismissal for participating. However, this protection does not extend to misconduct during the protest.

Protected strikes are generally undertaken in compliance with the provisions of the LRA, No. 66 (1995), whereas unprotected strikes fail to comply with the procedural requirements of the Act. The LRA, No. 66 (1995), makes provision for a dispute resolution mechanism before employees can engage in protest actions.

Oftentimes community protest actions are caused by government corruption whereby leaders siphon off funds intended for service delivery, where there is poor consultation with the community to update them about service delivery progress, where rampant corruption by civil servants see them stealing money from government coffers, and where political leaders have private businesses interests and participate in tendering and procurement processes, or instances of police brutality where community members voice their disapproval at law enforcement. Employees' protest actions stem from working conditions that are not conducive to operations, and these can range from low wages being paid to workers, to the maltreatment of workers, through victimisation and intimidation (Kanamujire & Mello, 2023:359; Abahlali base Mjondolo, 2010:1-2). The Regulation of Gatherings Act, No. 205 (1993) is the critical legislation that regulates the holding of public gatherings and demonstrations at certain places.

In South Africa, many community and workers' public protests and strikes are characterised by turmoil. Intimidation and violence by protesting workers towards non-protesting or non-striking workers happen all too often, as there is a limitation of policing to protect non-protesting or non-striking workers. The vulnerability of non-protesting workers robs them of their entitled rights of freedom to choose what is best for them. This often leads to opportunistic offenders taking advantage and committing crimes, which aligns with Rational Choice Theory that posits that people make choices based on logical reasons and interests, aiming to maximise their benefits and minimise the costs/their losses (Masiloane, 2010: 31-32).

In most instances of protest action, not all employees join in support of a work slowdown. In the majority of protest actions and strikes, employees who do not participate are labelled ‘*impimpi*’ or anti-progressive agents of the enemy. Many are intimidated, if not physically attacked. The officials could be co-workers, supervisors or even managers who live and socialise in the vicinity or townships where some of the protesters reside. Their physical property might be damaged: stones might be pelted at their homes or cars, business vehicles might be torched and pelted with stones, for instance at the mines. Some protesters go so far as to obstruct traffic or preventing vehicles from conveying workers to their respective workstations. Similar situations obtain with community protest action on service delivery, where councillors might be attacked physically and emotionally. There have been instances of private property being petrol-

bombed and set fire to. Damage to property, intimidation, victimisation, assault, harassment, and acts of discrimination all border are criminal acts.

The employer has some remedies in terms of the Criminal Procedure Act, No. 51 (1977), such as obtaining an order restraining a party/parties from any act of misconduct. The LRA, also makes provision for employers to apply for an interdict at the Labour Court. Moreover, in terms of section 68(5) of the LRA, No. 66 (1995), employees may be dismissed for engaging in unprotected protest actions, if their conduct was unbecoming.

An organisation responsible for ordering the gathering of protesters, which consequently resulted in damage and violent conduct took place during that protest action, shall be held jointly and severally liable in terms of Section 11 of the Regulation of the Gatherings Act, No. 205 (1993). A protected strike that complies with the stipulations of section 64 of the LRA, No. 66 (1995), means employees will not be liable for any breach of contract, and cannot be dismissed for their participation in such a strike.

Legislative framework on protests and strikes in selected southern African countries

In terms of section 21 of the Public Service Act, No. 1 (2005), public service workers enjoy the right of freedom of association in line with section 16(1) of the Constitution, No. 108 (1996). Section 17 of the Public Service Act, No. 1 (2005), established the Conciliation Board to conciliate disputes of interest in the public sector. Lesotho applies restrictions to public servants wishing to join trade unions, and attempting to strike without exception or justification. Notably, there is no dispute resolution mechanism to protect the interests of public sector workers. This is in breach of International Labour Organisation (ILO) obligations. Section 6 of the Labour Code Order (1992), regulates the private sector, stating that all employees and employers have the freedom of association and in terms of section 168 of the Code, and the right to establish or join trade unions. There is no right to strike in the Constitution of Lesotho.

In Botswana, the right to strike is not included in the Botswana's Constitution of 1966 with Amendments through 2022 (BWA-010). In terms of section 13(1) of the Bill of Rights, everyone has the freedom of assembly and association. The inference can be drawn that it includes the freedom to form and join a trade union. However, for workers to exercise these rights, it should not inhibit others from enjoying their rights. Omitting to exclude the right to strike from the Constitution represents a failure to comply with the provisions of International Labour Organisations Convention No. 87.

In Zimbabwe, protest actions are regulated by the Maintenance of Peace and Order Act (MOPA) (RoZ, 2013), which outlines the processes for organising and conducting protest actions. Notice must be given to the police in advance, to arrange the logistics and prevent public disorder. Section 58 of the Zimbabwean Constitution 1 of 2013 (RoZ, 2013) makes provision for the right to freedom of assembly and association. The right to strike and engage in protest actions is further captured in section 65(3) of the Constitution of Zimbabwe Amendment Act, No. 20 (2013) (RoZ, 2013), which states that 'except for members of the security services, every employee has the right to participate in collective action, including the right to strike and protest'.

Section 104 of the Zimbabwean Labour Relations Act (chapter 28:01) provides for the right to resort to collective job action to resolve disputes of interest. The concerted actions of employees should be geared to persuade the employer to agree to their demands. Protest actions and strikes are meant to facilitate collective bargaining and social justice, so that employees' reasonable demands may be addressed by the employer (Maringe & Budeli-Nemakonde, 2022:3). Collective action must fall within the ambit of the Act. Section 2A (1) (f) the Labour Relations Act Zimbabwe (Chapter 28:01) outlines the purpose of the Act as providing a legal framework for addressing labour-related issues, and ensuring the fair treatment of employees.

The 'no-work-no-pay' principle during strike action or protest action is prevalent in both South Africa and Zimbabwe. In Zimbabwe, there is no right to strike over a dispute in issue; similarly, in South Africa, employees may only lawfully strike over disputes of interest. Labour rights in South Africa are protected under section 23 of the South African Constitution, No. 108 (1996), which stipulates that every worker has the right:

- (a) To form and join a trade union
- (b) To participate in the activities and programs of a trade union
- (c) To strike and engage in protest actions

Section 12(1) states that 'everyone has the right to freedom and security of the person which includes the right (a) not to be deprived of freedom arbitrarily or without just cause; [...] (c) to be free from all forms of violence from either public or private sources; and [...] (e) has the right not to be treated or punished in a cruel, inhumane or degrading manner'.

Sec 17 of the Constitution, No. 108 (1996), provides for the right to assemble and the right to engage in protest action LRA, No. 66 (1995), sec 77; COSATU v BUSA 2021, South Africa has a 'no work no pay' principle during strike or protest actions as held in the case of *Ekurhuleni Metropolitan Municipality v South African Municipal Workers Union*.

Policing protests actions and strikes

The South African Police Service is the main law-enforcement agency tasked with policing at the national level. Section 205(1) of the Constitution, No. 108 (1996), provides the mandate of the national police as being to (1) prevent, combat, and investigate crime, (2) maintain public order, (3) protect and secure inhabitants of the Republic and their property, and (4) uphold and enforce the law. Section 205 (3) of the 1996 Constitution, provides the function of the police as multifaceted, and sums it up as the maintenance of law and order, and the protection of property and people from harm. In terms of section 5 of the SAPS Act, No. 68 (1995), drawing from the Constitution, it stipulates that the function of the police is to maintain public order, protect and secure the inhabitants of South Africa and their property, and uphold and enforce the law. The SAPS should be a proactive force for preventing crime, a responsive force for investigating crime and combatting it, and a stabilising force for maintaining law and order, and safety.

Sec 12 (1)(a) of the Regulation of Gatherings Act, No. 205 (1993), was declared unconstitutional and ruled to be in conflict with sec 17 of the Constitution, No. 108 (1996), which guarantees is freedom of assembly. This means community protesters do not have to request permission from authorities such as the municipality and the police before engaging in a protest action, as only a notice is sufficient (Legal Resource Centre, 2018). The matter arose as a result of a protest action for service delivery towards the City of Cape Town. Upon police intervention, 21 protesters were arrested and charged under section 12(1)(a) of the Gatherings Act, No. 205 (1993), for unlawfully and intentionally convening a gathering without providing the relevant municipal authority with any notice that the gathering would take place. In the alternative to the main charge, the accused were charged under section 12(1)(e) of the Gatherings Act, No. 205 (1993), for unlawfully and intentionally attending a gathering without notice and the required permission from the relevant authority. In 2018, the matter was heard in the Constitutional Court, and the United Nations Special Rapporteur had an interest based on an international law perspective, and urged the court to have regard for international law standards and principles when considering the constitutionality of section 12(1)(a) of the Gatherings Act, No. 205 (1993), as holding organisers criminally liable for failing to notify the authorities about a protest is a restriction to the right to freedom of peaceful assembly. Municipalities may only prevent or prohibit a gathering when 'credible information on oath' is presented that it poses a threat of serious traffic disruption, of injury to participants and others, or of extensive property damage, and that the police and traffic officers cannot contain the threat.

However, employees who engage in protest actions in terms of the LRA, No.66 (1995), should still comply with the procedure before engaging in such a protest. According to Section 49(2) of the Criminal Procedure Act, No. 51 (1977), lethal force may only be used in arrest situations where it is necessary to protect life (the officer's or others'), or to prevent a suspect from committing a crime involving serious physical harm. Section 50 of the Criminal Procedure Act, No. 51 (1977), specifically subsections (1) and (2), provide that "[a] police official may, regardless of the fact that the person is not in his or her presence, arrest such person without a warrant if – (a) such person is about to commit an offense; or (b) such person is committing an offense; or (c) such person has committed an offense'. There are gross disparities that demand that police retrain in the use of force during policing activities, such as crowd control (Magadla-Mateyise & Sensile, 2024:199-203).

South African Commission reports on the Criminal Justice System and policing

The Goldstone Commission of 1991, also known as the Commission of Inquiry into the Prevention of Public Violence and Intimidation, recommended banning dangerous weapons, in public gatherings and protest actions, when disguised as traditional instruments and improving police crowd control in protest actions. The Farlam Commission, also referred to as the Marikana Commission of Inquiry, in 2012 recommended policing reform and addressing the socioeconomic factors that contributed to unrest. They also recommended that the police be trained on crowd control, community engagement and labour relations, as well as on human rights, conflict resolution and public order. Another recommendation was for strengthening policing oversight to hold errant members accountable through oversight structures such as the Independent Police Investigative Directorate (IPID). The Khampepe Commission, also known as the Judicial Commission of Inquiry of 2005, investigated the agencies responsible for tackling organised crime. Although organised crime poses a formidable threat to the image of the country, it was found that the police and elite law enforcement do not cooperate and share critical resources to fight crime. The commission recommended the integration of the elite investigation agency, the 'Scorpions', into the SAPS. Organised crime can be tackled by running a golden thread through the whole tapestry of the law-enforcement/prosecutorial and intelligence structures. The Mufamadi Commission of 2018, also known as the High-level Review Panel on the State Security Agency,

recommended transparency and accountability in intelligence operations as it found that there was poor documentation of the financial transactions with no accountability within the intelligence Agency. It recommended that there be oversight of intelligence operations and the eradication of systemic corruption and covert operations in support of politicians. The State Capture Commission of 2018, also known as the Zondo Commission of Inquiry, was established to address state capture and corruption in the public sector. This was because of weak governance and accountability in the public sector, especially in terms of supply chain management.

International instruments on protest action and strikes

The ILO, as a special agency of the UN, was created amongst others to manage workers' rights and unrests in the workplace. In South Africa, the right to protest action is guaranteed to everyone, and the right to organise in the workplace and bargain are tenets of the ILO, in terms of its conventions 87 and 98 of 1948. South Africa was a member of the ILO from 1919–1966 and, because of the apartheid regime, withdrew its membership but rejoined in 1994 when the country became a democracy (Manamela, 2024:47). ILO Convention 87 of 1948 guarantees employers and workers' rights and liberty to become members of a trade union or employers' union, in terms of Article 3. Employers should conduct their union activities in respect of the country's laws (Article 8 of ILO Convention 87 of 1948). Moreover, ILO Convention 98 of 1949 protects workers and their officials against discrimination and victimisation, and guarantees them the right to collective bargaining, including to join trade unions

Gernigon, Odero and Guido (1998:441-444) assert that the 1957 ILO Resolution concerning the abolition of Anti-Trade Union and the 1970 ILO Resolution on Trade Union rights and civil liberties practices, underscore the right to strikes and protest actions for both employees in the public and private sectors, as well as community protests.

United Nations Convention Art 20 of the Universal Declaration of Human Rights (1948) indirectly guarantees the right to strike and protest actions. The Universal Declaration of Human Rights regulates human rights as inalienable rights of humanity, in alignment with Article 20. The International Covenant on Civil and Political Rights protects these rights. The same can be stated of Article 21 of the International Covenant on Civil and Political Rights, which makes provision for peaceful assembly for protest action.

The African Charter on Human and Peoples' Rights was adopted in 1981, and deals with human rights violations that must be respected at all times. Article 11 of the Charter makes provision for human rights and the freedom of others.

Findings

The police struggle to defuse tensions through negotiations when there are protest actions and strikes, and this is seen by violence being used towards protesters. Out of panic and a feeling of being overwhelmed, they end up reacting in a manner that is extraordinary – so called “panic policing”. Limited theoretical and physical training is given to the police on controlling crowds, and managing volatile strikes and protest actions. Only a few Public Order Police (POP) members have attended and completed crowd control training. Low police numbers across the country exacerbate this problem, as only a few police officers can be sent to control a protest at a time. The SAPS unit in charge of this responsibility only has a limited number of trained personnel. The situation can be problematic to manage if many marchers congregate at a given time – estimates are that the SAPS is short of more than 20 000 staff. The police make use of deadly artillery/weapons when they are deployed, and it might be that some protesters are armed, hence this situation can be remedied by deploying sufficient manpower to assist in crowd control.

There are not sufficient consultations between the police, community leaders, and union organisers and leaders before protest actions, to maintain law and order during protest marches.

Law enforcement does not conduct crime mapping and/or record keeping of protests at every march. Law enforcement officials in SADC need to be retrained on crowd control and management. There is no scenario planning being done, to study future risks and threat analysis is not conducted properly. There is limited to no use of intelligence products, this is backed up by frequent warnings about the country's exposure to threats issued by other countries. The attrition of experienced members is a major problem for law-enforcement agencies. This means that in a situation where skills transfer has not taken place for a long time, the members who resigned or retired leave the organisation with valuable skills on how to effectively conduct crowd control.

The politicians and government officials are actively involved in business dealings, turning to compromise their office by doing favours for businesses they have interest in. This turns to fuel unrest by community members and workers.

The POPs members do not involve local police in defusing tension, they end up taking over the situation and do as they see fit and in the process end up messing the scene. This is problematic, as local police members are familiar with the area and know who to liaise with.

There are inactive community policing groups in many areas. When these are active, rogue criminals would be known and monitored. In the event of unrest, community policing groups should be the first contact to assist in directing the investigation during the protest that is uncoordinated or poorly managed. They might provide intelligence before POPs members are deployed to an unrest, and may even be deployed alongside community policing members.

Recommendations

Law enforcement should rely heavily on the use of intelligence sources before attending to events or crime scenes. Intelligence sources should be their first point of contact. Law-enforcement officers should use surveillance technologies (e.g., deploy aerial recording drones, aerial video cameras, and signal devices) to spot and identify unruly people in the locality of protest actions. Law-enforcement officers should be equipped with body video cameras so they can record their interactions with potential suspects.

The use of operational intelligence cannot be overemphasised, as new agents might be recruited in the vicinity of the crowd (e.g., paid and unpaid informers). The involvement of community policing members in the fight against local crime and protest actions in the area where they work is crucial, as they most likely know the protesters, and can establish a rapport with them. Local police can assist in providing information and defusing tensions. Law enforcement should liaise with the conveners, leaders or organisers of protests, prior to deploying their members.

Members should be educated about the constitution of this country, and regulations pertaining to crowds gathering before they are deployed to a scene or a protest action march. Training should include the Regulation of Gathering Act, No 205 (1993), the Dangerous Weapons Act, No. 15 (2013), the LRA, No. 66 (1995) and the Constitution, No 108 (1996).

Management should establish a team to conduct scenario planning, so as to avert potential problems. Law-enforcement agencies should allow government officials to address the community on service-delivery issues, while managers should address them on workplace protest actions. Law-enforcement agencies should not interfere in matters that do not involve policing and the enforcement of the law.

A lack of uniformity complicates compliance and community safety plans. Law enforcement should invest in continuously training officials on the requirements of the Regulations of Gatherings Act. The responsible officers must be made aware that the right to protest is based on giving notice, not on an application for permission. Municipal laws and bylaws should be harmonised to enable the officers responsible to implement them, without leaving room for ambiguity. Notice forms should be standardised across the country.

The SAPS and SADC law enforcement should introduce reverse mentoring, whereby experienced retired employees or people with expertise are contracted to train new members. Law enforcement in the SADC region should be retrained on crowd control and management and the policing of protest actions. The law-enforcement agencies of SADC countries should create specialised units which are trained to handle strike action without using maximum force on protesters.

Conclusion

Southern African countries continue to experience protest action, strikes and riots. Law-enforcement entities face challenges in policing protests and riots in South Africa, owing to their limited training and a skills shortage. POPs members should be provided with frequent training on crowd control legislation, as well as physical training. Training should be locally tailor-made by experts who consider the unique social context of each country. Community members and community policing forums must be involved in policing protests and strikes in their area. The police should deploy a range of technologies, as this could assist in tracking rogue criminals. Government should provide services to communities, while employers should treat workers fairly, to prevent protests and strikes.

The SAPS should use an integrated strategy to monitor protests; they should rope in private security personnel who man businesses and recruit them as intelligence sources to assist in their investigations, without divulging their details post-protests and strikes.

While this research addressed a gap in the literature, further research is needed to better understand the motivating factors behind using maximum force in policing protest actions in developing countries.

Sustainable Development Goals

This study is linked to the following SDGs: Poverty and hunger (SDGs 1 & 2), health (SDG 3), Education (4), decent work and economic growth (SDG 8), Industry, innovation and infrastructure (SDG 9), reduced inequalities (SDG 10), and partnerships for sustainable development goals (SDG 17).

Data Accessibility Statement

The datasets used and/or analysed during the current study are available from the corresponding author on reasonable request.

Ethics And Consent

Ethical approval through the author's Research Ethics Committee (University of South Africa College of Law Ethical Clearance Review Board) was sought and obtained before beginning this project.

Acknowledgements

The author is grateful to those organisations and government departments that made literature freely accessible. The author received financial support from the University of South Africa's Research and Innovation Committee (CRIC). The university is exonerated from any gross findings and conclusions reached in this publication.

Competing Interests

There were no ethical conflicts or competing interests in completing this research.

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