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South Africa: Investigate excessive use of force against “fees must fall” protesters

Authorities must launch a prompt, independent and impartial investigation into the conduct of South African Police Service (SAPS) for the excessive use of force against students protesting across South African Universities.

Since August 2016, students have been protesting at various universities for “free”, “quality” and “decolonised” education. In many instances, the protests have ended in violence. While in some situations students acted violently, there are many reports of police resorting to excessive use of force in situations in which either there was no reason at all to use force, or in which the amount of force was not justified in the circumstances.

International human rights law protects the right to peaceful assembly. Public authorities including the police have a positive duty to facilitate and protect peaceful assemblies and to enable people to exercise their right to peaceful assembly. This means at the outset taking positive measures to ensure that an assembly can take place smoothly and to prevent problems so as to avoid situations arising in which police might have to resort to the use of force. Furthermore, police should first approach any situation with non-violent means such as de-escalation, negotiation and mediation. Dispersal of an assembly should be the last resort, when it is no longer possible to address problems in some other way; even then, police must first seek to obtain voluntary dispersal before they resort to using force. As a rule, there is no reason to use force against people who are not engaged in violence.

When the policing of an assembly ends in violence, it is to some extent a failure of the state. The state has failed to facilitate the assembly, failed in preventing violence, failed in protecting those who wished to exercise their right to peaceful assembly, and failed to effectively engage in a conflict resolution process with those likely to engage in violence. This is also implicitly recognized by the National instruction 4 of 2014 for the Public Order Police, section 14(3)a: “*the success of*

the actions will be measured by the results of the operation in terms of loss of life, injuries to people, damage to property and cost”.

By this measure, the South African Police Service (SAPS), has seriously failed in this responsibility in many respects and situations, and they have used excessive force in violation of international law and standards, as is illustrated by the cases below.

Incidents:

A student leader was shot 13 times with rubber bullets in the back on 20 October at Wits University in Johannesburg. She was part of a group of students who were on their way to a mass meeting at the Science Stadium on the WITS campus, when police obstructed their path. The student leader walked ahead of the group to explain to police where the students were heading. The student leader held her hands up in the air to indicate she was not armed, as she approached to speak to the police. The police were not interested in what she was trying to say, and pushed her away. The student leader turned around, and walked back toward the group of students. Police threw a stun grenade towards her, and then began firing shots of rubber bullets. The student leader was about 2-3 metres away from the group of students when she was hit by rubber bullets in her back. She was taken to hospital where it was discovered that she had been shot with rubber bullets in her back thirteen times.

Three other students were also injured in the same incident. A student was also hit by rubber bullets while trying to help the injured student leader. Another student leader was struck by a stun grenade, and a student dislocated her knee and tore ligaments while running away from the police.

The student leader was not armed or posing any threat to any persons when she was hit in the back with thirteen rubber bullets. The police gave no warning to the crowd to disperse before deploying two stun grenades and firing rubber bullets. The overall approach chosen by the police in this situation was in clear violation of international human rights law and contrary to international law enforcement standards on the policing of assemblies. Instead of engaging in dialogue with the protesters in order to facilitate the assembly and maintain public order, the police resorted to force at a moment when there was no need to do so, an approach which actually caused disorder, harm and injury, instead of preventing it.

A policeman shot a student with rubber bullets at close range in her residence room at Wits University in the early hours of 15 October 2015. Two rubber bullets were later removed from her thigh at Helen Joseph Hospital in Johannesburg.

In the week leading up to this incident, according to WITS management, petrol bombs were found at several locations on the WITS campus and classrooms and other campus buildings were damaged, and on the night of 13 October at least four fires were started on the campus, with fire engines stoned when they tried entering the campus. In response, as a measure to curb violence, WITS management imposed a 10pm-6am curfew on the night of 14-15 October. Students who disagreed with the curfew were singing outside the residence in defiance. After police fired rubber bullets, the students retreated into the residence. The students stayed awake, and sang throughout the night in protest against the curfew.

The third-year WITS student was in her David Webster Hall residence room on West Campus, in the early hours of Saturday 15 October, when police entered the residence. After she heard a noise and opened her door, she saw three SAPS policemen in the corridor. When they saw her, the policemen demanded to know why she was still awake. The three SAPS policemen came into her residence room and began kicking and punching the student. One of the policemen fired at the student at point blank range. Two rubber bullets were released and lodged in the student's thigh. Police later denied the incident, according to media reports. A medical student in the residence attended to the injured student, until an ambulance was allowed onto the campus after the end of the curfew (6am). The student was treated at the Helen Joseph hospital where the two rubber bullets were removed, and has subsequently undergone reconstructive surgery.

The purpose (or objective) for the police entering the residence remains unclear, in particular if it was a response to any unlawful acts earlier on (such as seeking to arrest students defying the curfew outside, or in connection with setting a building alight). In any case, the student being awake in her private residence room, during a curfew was not committing any unlawful act, and she was certainly not posing any threat to any other persons when the policemen entered her room and shot her. Thus there was no legitimate reason for the police to resort to the use of force and even less to fire rubber bullets, which should only be used to stop individuals engaged in violence against persons, and should never be fired at such close range. This student was not engaged in any violence against any persons at the time she was shot. The use of force by the police against her was clearly unlawful, arbitrary and abusive.

A mediator from the Holy Trinity Catholic Church in Johannesburg was shot in the face by the police with a rubber bullet on 10 October next to Wits University's Braamfontein campus.

Earlier that morning, there was unrest at Wits University. The church is located adjacent to the University, with the back gate of the church separating it from the campus. After the mediator heard loud bangs that morning, students started

running toward the church. The mediator unlocked the back gate of the church, providing the students with shelter. A SAPS Warrant Officer arrived and asked the mediator to close the gate. The mediator refused. The mediator and Warrant Officer came to an agreement that students would be allowed entry from the university into the church grounds, but no one would be allowed to enter the university via the gate. Later that morning, WITS Campus Security arrived and padlocked the gate, preventing anyone passing in either direction between the university and the church.

Students gathered on the road in front of the church, with some of them obstructing traffic. Armoured police vehicles drove slowly down the street, firing rubber bullets into the peaceful crowd on the road. Screaming students ran up the street toward the church grounds, seeking refuge. The mediator allowed students to take shelter in the church grounds as a safe space, provided they brought no weapons (including sticks and stones) with them. At no point were any stones thrown out of the church grounds by the students.

The mediator, dressed in his white robe, indicating he is a religious leader, stood in the middle of the front church gates. He was shot by a rubber bullet in the leg, but his clothing prevented injury. Later, an armoured vehicle drove straight towards him, stopping two to three metres away from him. The vehicle then reversed and drove away. The mediator maintained his position in the centre of the church gates. Police fired rubber bullets from an armoured vehicle driving slowly down the road, hitting the mediator's mouth. He was bleeding profusely, and was treated by a doctor from Campus Health before being taken to the Charlotte Maxeke Hospital where he underwent plastic surgery. The SAPS apologised to the mediator the following day.

The dispersal of the students who gathered in front of the church by means of rubber bullets was unnecessary and disproportionate: As shown throughout the different incidents highlighted in this paper, rubber bullets can cause considerable harm and injury; therefore, their use can only be justified in response to violent acts against persons. Though there was some obstruction of traffic, there were no signs of violence. Police fired rubber bullets in a generalised way against students who were not violent. In this situation, police should have sought to deal properly with the traffic situation (such as by diverting the traffic, or calling on the students to leave at least part of the road open for traffic, while assuring them that they would be allowed to continue their protest). Instead of such a constructive and de-escalating approach that might have allowed them to control the entire situation, the police chose a way forward that led to escalation, panic, fear and chaos. And the students who were seeking refuge in the church's courtyard were not posing any threat to other people, or to the police. It therefore appears that the police firing rubber bullets was not necessary, nor was it proportionate to any threat posed by the students at that time.

A student at Howard College in Kwa Zulu Natal was shot in the leg by a rubber bullet after she filmed a police officer assaulting a student on 6 September. She received medical treatment and laid a charge against the police officer at the Umbilo police station.

A student from Howard College in KwaZulu Natal, and who was not taking part in protests, was returning from a meeting with her class mates. She decided to take a route where police were gathered because she thought it was safer, to avoid being caught in clashes that were taking place elsewhere on campus. When she approached the location where the police and other students (who were not protesting) were gathered, she saw a police officer assaulting a student with a baton a few metres away. She told a police officer that police can't attack a student so violently, and then she began filming the incident. A SAPS officer approached her and told her to go away. She complied with the instruction and began walking away. She was then shot by the SAPS officer with a rubber bullet.

A policeman pointed a 9mm pistol at three students at Nelson Mandela Metropolitan University on 20 October while they were having lunch on the campus grounds. He instructed them to lie down on the ground and continued pointing the gun at them before leaving the scene after the students questioned his reasons.

Earlier that morning, students at Nelson Mandela Metropolitan University were protesting in the permitted designated area (as stipulated by a court interdict) on the university campus. Public Order Police dispersed the protest using rubber bullets, stun grenades and tear gas. Students ran to another location, and started throwing rocks towards the police armoured vehicles, in response. The group of three students moved away from the protesting students and decided to have lunch behind the Human Movement Sciences building on campus, when the policeman came up to them pointing a 9mm pistol.

Amnesty International calls on the SAPS to fundamentally change their approach in dealing with protests, in particular the current student protests. Police must exercise restraint when policing assemblies and they should seek dialogue with those protesting and prioritise the peaceful resolution of disputes. They must comply with domestic and international law and standards governing the use of force by law enforcement officials, including full respect for the principles of necessity and proportionality. In particular:

- They should differentiate between individuals using violence and those who are not, and should respond to isolated incidents of violence by dealing with the individuals concerned; they should not immediately resort to generalised use of force against violent and peaceful individuals alike.
- They should not disperse an assembly unless there are compelling reasons to

do so, such as widespread violence during which it is no longer possible to address such violence by dealing with the individuals concerned.

- In dispersing assemblies, they should seek to obtain voluntary dispersal first before considering the use of force.
- Rubber bullets can cause considerable harm and injury and therefore should only be used in a targeted way against persons who are acting violently against other persons. They should never be used as a means to disperse people who are assembling peacefully, and should never be fired at close range.
- The use of weapons that have indiscriminate effects, such as stun grenades or tear gas, can result in serious injury even of uninvolved persons and should - in respect of the principles of necessity and proportionality - only be used in case of widespread violence that cannot be dealt with otherwise. They should never be fired directly against persons.
- All acts of excessive or otherwise unlawful use of force, in particular those that were clearly of punitive character only with no legitimate objective at all to justify them, must be thoroughly investigated and followed by appropriate criminal and disciplinary proceedings.
- Those who have been harmed by unlawful use of force by police must have an effective remedy and reparation, including compensation.

Background

Students across South African universities have been protesting against proposed fee hikes for the 2017 academic year since August. They are demanding “decolonised” and “free quality” education. Police have used teargas, rubber bullets and stun grenades against protesting students at various institutions.

According to international human rights law and standards, police may use force only when strictly necessary and to the extent required for the achievement of a legitimate law enforcement objective.

Note

International law enforcement standards on the use of force by police are contained in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Amnesty International has published detailed Guidelines for the implementation of these Principles;¹ Chapter 7 of these Guidelines deals with the use of force in public assemblies.

¹ Amnesty International Dutch Section, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2015, https://www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force_0.p

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df. The Guidelines are intended as a practical and authoritative guide to support authorities in the implementation of the UN Basic Principles in domestic legislation, in the operational set-up of law enforcement agencies (i.e. in their regulations, procedures, training, equipment, and command and control structure), and in the overall system of accountability.]