



Exploring the Impact of Arrests and Prosecution on the Perpetrators of Service Delivery Protests Crimes in South Africa

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Abstract

This article explores the impact of arrest and prosecution on the perpetrators of service delivery protests crimes in South Africa. To date, most service delivery protests turned out to be violent and destructive to properties as well as posing a threat to the livelihood of ordinary citizens. This is because most of these service delivery protests are spontaneous and put the security and economy of the country at risk. Citizens are not conscientious by government, civil society, community organisations and leaders regarding the role of the police during the protests which makes it difficult for the police to manage these protests. The researchers followed a descriptive research approach to gather data. Data was gathered from media reports, parliamentary reports, articles, journals and statistics reported by the South African Police Service and National Prosecuting Authority (NPA). Data was purposively identified from primary sources to achieve the study purpose. The study found that criminal activities derived from service delivery protests and the challenges faced by both the SAPS and NPA in relation to arresting, charging and prosecuting the perpetrators of service delivery protest crimes in South Africa. The study found that the arrest and prosecution of service delivery protest criminals have no impact on reducing violent service delivery protests in South Africa. There is also inconsistency with regard to the number of completed (enrolled and prosecuted) cases by the NPA and the number of arrests effected by SAPS, despite that the NPA reported a successful conviction rate. The NPA is perceived to be enrolling and prosecuting easy-winnable cases related to protest crimes. Furthermore, most of the arrested protesters are either released with a warning or left off the hook without being charged by the police due to the failure to secure proper evidence. The study recommends that both the data presented by the SAPS relating to the number of arrests made and cases prosecuted by NPA must be thoroughly interrogated by responsible oversight bodies including civil society organisations due to its discrepancy.

Keywords: *National Prosecution Authority; South African Police Service; Violent Protests; Service Delivery Protests Crimes; Public Violence*

Introduction

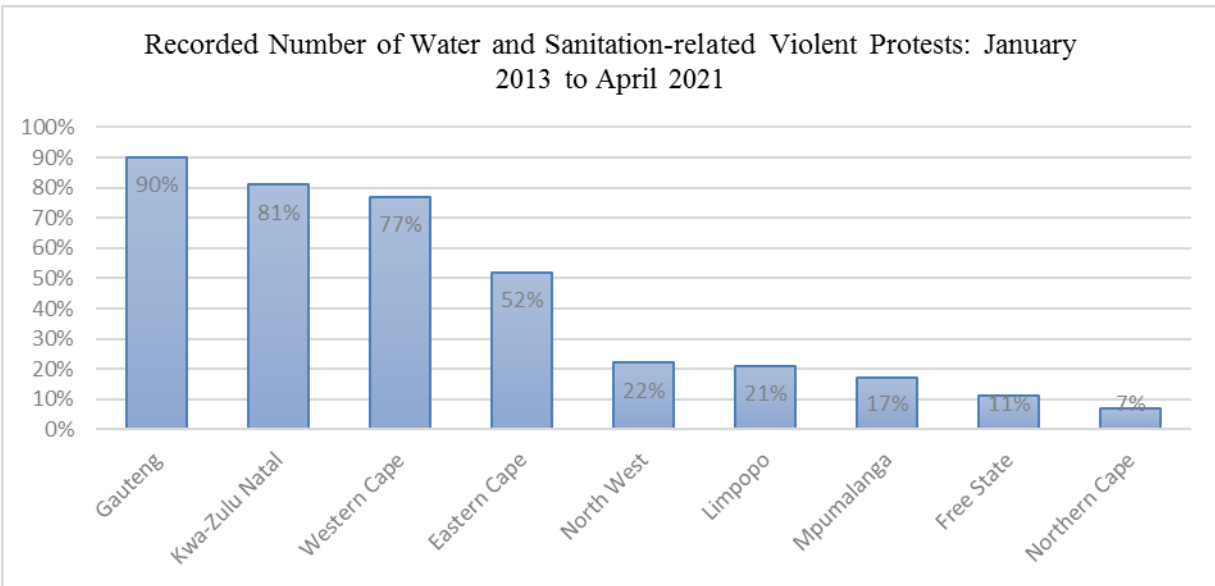
Service delivery protests and criminal activities involved were identified as day-to-day activities in South Africa. This is because many of these service delivery protests are reported to be spontaneous, violent and resulted into confrontations between protesters and the police as compare with those of other countries in the globe (Municipal IQ, 2019). Section 205(3) of the 1996 Constitution of South Africa requires the police to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law. Despite that, citizens have the right to demonstrate, pickets, assemble and petition in terms of Section 17 of the 1996 Constitution of South Africa, it is further stipulated that such actions should be executed peacefully and unarmed. However, Section 17 have been disregarded by many protesters as most of service delivery protests in South Africa are reported to be violent, disruptive and continue to infringe the right of other citizens who are not part of protests (Buthelezi, 2019).

Municipal IQ (2019) share the same sentiment with Buthelezi (2019) that most of service delivery protests are likely to result in anarch, violent and malicious damage to property and threat to by-standers. Regulations set out in the Regulation of Gatherings Act, 205 Of 1993 (RGA) are disregard by most of the protesters in South Africa. For instance, the RGA require the conveners of any protests to serve a seven (7) day notice to any member of the Golden Triangle (namely the Magistrate, the designated member of the SAPS and Municipality within the demarcated area where the protests will be taking place). In the Tshwane Metropolitan Municipality, for instance, such notice should be given to the Tshwane Metropolitan Police Department (TMPD) and permission should be granted thereof for the protests to be regarded as lawful. Thus far, such notice is not served in most of the service delivery protests as these protests erupt from nowhere.

The worrying factor is the continuous acts of criminality associated with service delivery protests in South Africa whereby protesters normalised the vandalism of public infrastructure such as road and traffic signs, libraries and looting of shops which has nothing to do with their discontent (Lancaster, 2016:2). There is a narrative in South Africa that government listen and attend to protesters discontent and grievances only when such protests are disruptive and violent nature. Van Rooyen and Pooe (2016:138) cited the existing socio-economic conditions amongst South Africans as the cause of service delivery protest crimes. (Lancaster, 2016:1) indicates that service delivery protests and related crimes in South African are driven by inequality, poor service delivery of basic services to marginalised communities in informal settlements and townships, corruption, unemployment, poverty, political conflicts, poor governance and leadership and as well as the leaving socio-economic conditions.

Gould (2021) highlights that from January 2013 until April 2021, South Africa recorded 585 number of public protests related to the failure of the government to deliver water and sanitation as a basic service to the citizens. Gould (2021) further indicates that 65% (378) of the 585 reported protests resulted in violence. Moreover, 57 000 people were reported to have been directly affected by these protests.

Below is the statistical charts highlighting the recorded number of Water and Sanitation-related Violent Protests across all nine provinces in South Africa from January 2013 to April 2021.



[Source: Institute for Security Studies’ Public Violence and Protest Monitor (2021)]

The statistical charts translate that on average, most of the violent protests occurs in four (4) provinces where most of the economic activities takes place in South Africa. Gauteng is the leading province as it is known to be the economic powerhouse and administration province of South Africa, contributing 34% of the Gross Domestic Product (GDP) to the economy (Statistic South Africa, 2022). Gauteng is then followed by Kwa-Zulu Natal, Western Cape and Eastern Cape with all three provinces contributing a combined 38% to the GDP, focused mainly on the coastal (ocean) economy, trade, agricultural production and manufacturing industries (Stats SA, 2022).

Despite violent protests relating to Water and Sanitation occurred in all nine provinces of South Africa, four (4) out nine (9) provinces recorded higher percentages of those violent protests. These four (4) provinces are known to be key to the economy of South Africa, as they attract more migrants to seek for great opportunities and better livelihood. As a result, the delivery of water and sanitation gets stretched due to higher demands which leads to these four provinces crumbling with meeting the demands, resulting in violent service delivery protests.

Despite that South Africa is commonly known for violent protests which derived from apartheid struggle. Citizens continue to normalise violent service delivery protests and related crimes and confrontations with the police due to the absence of punishment against this lawlessness by the South African Criminal Justice System through the NPA (Madero-Hernandez, Lee, Wilcox, Fisher, 2022). The NPA has been accused of pursuing easy-winnable cases across all forms of crimes in the expenses of vandalism, traffic law infringements through road blockade and burning of tyres and malicious damage to property by protesters during service delivery protests. Lack of prosecution of those who breaks the law during the service delivery protests create a vacuum including normalising vandalism, malicious damage to property and road blockades by protesters every time when they are discontent with services provided by the government (Davis, 2022).

Literature Review

From 01 October 2016 to 30 September 2017 period, the Right2Protests Project (R2P) (2016-2017:9) reported having received 820 cases of protests through their hotline. The R2P states that they have obtained legal assistance for nearly 547 arrested people and managed to help almost 981 people. Of the 547 arrests, the R2P indicates that 430 arrests were linked to protests situated at various university campuses while 117 arrests were linked to community protests.

Martin (2021) indicates that from 01 August 2020 to 31 January 2021, the SAPS recorded a total 909 number of protests action that occurred on their Incident Registration Information System (IRIS). During this period, the SAPS arrested 657 individuals for various incidents ranging from the unlawful barricading of roads during service delivery protests. This is because the actions of these individuals were regarded as a violation of the constitutional rights (freedom of movement right) to those who were non-participants in these protests' actions.

According to the 2019/20 crime statistics, the SAPS characterised public or service delivery protests crimes as contact crimes (or crimes against the person). Below are the crime statistics related to service delivery protests for 2019/20 financial year:

| Category of Contact Crime | Common Assault | Assault with GBD | Attempted Murders | Murders | Total |
|----------------------------------|----------------|------------------|-------------------|---------|-------|
| Public/ Service Delivery Protest | 230 | 63 | 51 | 9 | 353 |

Source: **SAPS Crime Statistics** – Crime Situation in Republic of South Africa Twelve (12) Months (April to March 2019_20)

Of the nine (9) murders reported, six (6) murders were reported to have occurred in Gauteng Province while Limpopo, North West and Western Cape Province each share casualty. In Quarter three (3) of 2020, the SAPS recorded six (6) malicious damage to property and zero (0) arson crimes under service delivery protest.

Section 205 (3) of the 1996 Constitution of South Africa require the police service (SAPS) to combat and prevent crime as well as enforcing the law. White Paper on Safety and Security (1998) makes provision that local government was given substantial authority to carry out both by-law enforcement and social crime prevention through the Metro Police Department (MPD) in collaborations with the SAPS, Community Policing Forums and other law enforcement agencies partners such as Traffic Police.

Legal Framework

Section 17 of the 1996 Constitution makes provision for that everyone has the right to demonstrate, assemble, picket and present petition peacefully and unarmed. In researcher's views, Section 17 translate that such demonstration, picket, assembly and presentation of petition must be performed without violent and infringing the rights of other citizens.

Over and above Section 17 of the 1996 Constitution, is there Regulation of Gatherings Act (RGA) which regulates the protests in South Africa. The RGA thoroughly articulates on procedures to be followed when demonstration, picket, assemble and presentation of petition unfold. One of the main requirements is for the convener of the gathering or protest to serve a notice to the responsible officer and/ or authorities earlier than seven (7) days or not less than seven (7) days before the start of the protests or

gathering. In the event that such notice is serve to the responsible officer and/ or authorities less than 48 hours before the commencement of the gathering or protests, the responsible officer and/ or authorities may forbid such gathering or protests to happen without providing reasons.

The RGA makes obligations and necessitates that all organisers and conveners of any gathering or demonstration to comply with all regulations of the Act. The main purpose of the RGA is to regulate gatherings including appealing to the citizens, conveners and organisers of the gatherings and protests actions to exercise caution as well as being responsible during the gatherings and demonstrations The regulation also makes provision for “criminal prosecution of organizers/conveners if the failure to meet their obligation” as outline in the Act (Ministry of Police, 2011:7).

Section 1(1) of the Intimidation Act, 72 of 1982 stipulates that ‘any person who -

(a) Without lawful reason and with intent to compel or induce any person or persons of a particular nature, class or kind or persons in general to do or to abstain from doing any act or to assume or to abandon a particular standpoint –

(i) Assaults, injures or causes damage to any person; or

(ii) In any manner threatens to kill, assault, injure or cause damage to any person or persons of a particular nature, class or kind; or

(b) Acts or conducts himself in such a manner or utters or publishes such words that it has or they have the effect, or that it might reasonably be expected that the natural and probable consequences thereof would be, that a person perceiving the act, conduct, utterance or publication –

(i) Fears for his own safety or the safety of his property or the security of his livelihood, or for the safety of any other person or the safety of the property of any other person or the security of the livelihood of any person; and

(ii) ...

shall be guilty of an offence and liable on conviction to a fine not exceeding R40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

Section 2 of the Act states that ‘in any prosecution for an offence under subsection (1), the onus of proving the existence of a lawful reason as contemplated in that subsection shall be upon the accused, unless a statement clearly indicating the existence of such a lawful reason has been made by or on behalf of the accused before the close of the case for the prosecution.’

Section 3(1) of the Criminal Matters Amendment Act, 18 of 2015 stipulates that ‘any person who unlawfully and intentionally –

(a) Tamper with, damages or destroys essential infrastructure; or

(b) Colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a),

and who knows or ought reasonably to have known or suspected that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years or, in the case of a corporate body as contemplated in section 332(2) of the Criminal Procedure Act, 1977, a fine not exceeding R100 million.’

Manyathi-Jele (2016) points out that the purpose of Criminal Matters Amendment Act was to “amends the –

- Criminal Procedure Act 51 of 1977, so as to regulate bail in respect of essential infrastructure-related offences;
- Criminal Law Amendment Act 105 of 1997, so as to regulate the imposition of discretionary minimum sentences for essential infrastructure-related offences and create a new offence relating to essential infrastructure; and
- Prevention of Organised Crime Act 121 of 1998, so as to insert a new offence in sch 1 to the Act and to provide for matters connected therewith.”

Causes of Service Delivery Protests

The R2P (2016-2017:9) point out unemployment, lack of delivery of basic services (such as water, electricity and roads), lack of public participation in consultative programmes (such as municipal Integrated Development Planning (IDP), councillor’s meetings and Imbizos), rising corruption by politicians and public servants and misallocation of government build (Reconstruction and Development Programme (RDP)) houses as a main cause of service delivery protests by many communities in South Africa for the period of 01 October 2016 to 30 September 2017.

Saul (2021) cites amongst other things political infightings at the expense of the public and lack of accountability and mismanagement of public funds which are behind rampant corruption and nepotism at the local government level, which then lead to poor service delivery. For instance, a case study of the infighting amongst African National Congress (ANC) council members in Ditsobotla Local Municipality, failure by political parties in council to pass budget due to indifferences and unstable coalition in the City of Tshwane, Johannesburg, Ekurhuleni, Nelson Mandela Bay and Mangaung Metropolitan which resulted in residents being subjected to poor service delivery.

Managa (2012:2) cites overpromises made by politicians during electioneering while not delivering thereafter due to the limited resources, corruption and mismanagement of resources by municipalities at the local level. South African News (2018) mentioned corruption by public officials, poor governance within the public sector institutions and municipalities, lack of public consultation in relation to municipal and government services as well as detachment of public representatives from their constituency as contributing factors to service delivery protests directed to the government.

Martin (2021) cites the failure of the government to implement key socio-economic policies as well as elected politicians who are disconnected from the reality and living conditions of ordinary citizens in townships, rural areas and informal settlements as the cause to service delivery protests. The living condition of these communities were brought into the spotlight during the Covid-19 pandemic, as some of the communities were either giving up on the government and politicians or never voicing out their daily frustrations through demonstrations.

Saul (2021) makes reference to socio-economic conditions facing the country such as the high rate of unemployment and poverty which place the ANC-led municipalities in a difficult position including heighten poor service delivery.

Aphiri (2016:37) point out that low economic growth led to less tax collection which resulted in budget cuts across the spheres of government. Budget cuts hold back economic growth and have adverse impact on government to deliver the services to the communities. Poor economic growth means less employment and income gains for the poor, which lead to service delivery protests and related crimes.

Criminality Derived from Service Delivery Protests

Malematja (2021) suggests that violent service delivery protests create a vacuum for government to circumvent accountability as its focus will be on arresting those who broke the laws. Despite that the protesters will be making a genuine call of receiving basic services from the government as enshrined in the constitution, the blockages of roads with burning tyres, rocks, and rubble will delegitimise the cause of protests as it interfered with the rights of the other people.

The NPA (2020-2025) defined violent protests as any offence originate from or related to violent public protests regardless of the validity of such protests. Violent protests is regarded as one of the violent crime in South Africa. The NPA admitted that they have “suffered a serious reputational damaged” including losing its credibility and public trust as the institution was infiltrated, captured and weakened by President Zuma led administration.

Moreover, the NPA (2020-2025) acknowledge that within the Justice, Crime prevention and Security (JCPS); there are “bond to make bold and innovative efforts to enhance its efficiency, to effectively address the unacceptably high levels of serious crimes.” The JCPS is constituted by the Department of Police, Home Affairs, Justice and Correctional Service, Defence and Military Veterans ministries, State Security Agency, and Finance. Vandalism of state infrastructure such as traffic signs, library, torturing of schools, municipal properties and other assets belonging to the state, burning of tyres and blockade of roads with rubbles are regarded as economic sabotage in that ordinary citizen including goods and service will not able to move and delivered. The destruction of these infrastructure is unacceptable and the crime itself is regulated in terms of essential infrastructure-related offences in South Africa.

Public Violence

In the South African context, public violence is defined as “unlawful and intentional performance by a number of persons of an act or acts which assumes serious proportions and are intended to disturb peace and order by violent means or to infringe the rights of another” (Milton, 1996:89). In South Africa, public violence is believed to be driven by easy access to weapons, the environment which tolerates violence and lawlessness associated with service delivery protests or any public protests, corruption within the police and criminal justice system. During service delivery protests or any public or industrial action, members of the public, some businesses, and schools opt to shut down their daily activities, fearing for their lives and livelihoods as these protests are no longer safe as stated by section 17 of the 1996 Constitution of South Africa (Heinecken, 2020).

Withdrawal of Charges Against Those Who Were Arrested During Service Delivery Protests

R2P (2016-2017:18) states that fifteen protesters were arrested in May 2017 at Eshowe, Kwa-Zulu-Natal province during the service delivery protest over corruption and lack of service delivery. The arrested fifteen protesters were not charged as the police wanted to use their arrests to get hold of the conveners (leaders) of the protests. The fifteen protesters were released by the police without being charged after being held in the police station for several hours with the fear that they (arrested protesters) may institute a civil action against the police for arrest without being charged.

In Douglas town of Northern Cape province, nine protesters were arrested and charged with illegal protesting outside the Douglas Magistrate Court on May 2017. The charges were since dropped since the RGA regulates the gathering of fifteen or more people which translates that any gathering of less than fifteen people is not well-defined or regarded as a gathering according to the Act (R2P, 2016-2017:18).

In Warden town of Free State province, the police arrested seven protesters who were peacefully protesting for poor governance and service delivery matters by Phumelela Municipality. However, some community activists argue that police use arrests to silence the protesters (R2P, 2016-2017:18). The arrested protesters “were accused of trespassing and charged with public violence.” The Warden community activist also views police arrests as an abuse of the criminal justice system and the deployment of unethical legal tactics against those who want to continue with their discontent against Phumelela Municipality (R2P, 2016-2017:19).

In the case of the Tsakane Service Delivery Protests, 15 protesters were arrested, some were released the same day without being charged and the remaining protesters were freed the following day. However, the eyewitness news argued that the police were randomly arresting individuals from their homes, streets including school children and charged them with intimidation and public violence (R2P, 2016-2017:20). This translates that somehow the police might have arrested innocent citizens without exercising caution. This often resulted in more legal claims instituted against the Minister of Police for wrongful arrests or detained without evidence that individuals were involved in illegal protests, public violence and/ or that they have committed the crime.

Some of these arrests against protesters, according to R2P (2016-2017:18-22) were reported as purely abuse of power by the police as well as part of police tactics to “intimidate protesters and stifle their protest.” The police use arrests to scares protesters that them partake in any illegal gatherings, they will be arrests.

Research Method

The descriptive research approach is commonly known to be applied in social science research. Descriptive research and qualitative research approach are often applied similarly because these two types of research methods focus on real-life data. The descriptive research approach is commonly known to be used by researchers in social science research (Nassaji, 2015:129).

Atmowardoyo (2018:198) defines descriptive research as a research approach utilise to describe the current study (the impact of arrest and prosecution on the perpetrators of service delivery protest crimes in South Africa) as precisely as feasible. The adoption of descriptive research focuses mainly on better characterisation of violent/ service delivery protest crimes and measurement of arrests by the SAPS and convictions secured by the NPA. More importantly, the study is conducted to diagnose the impact of arrest and prosecution on the perpetrators of service delivery protests crimes in South Africa as well as challenges facing both the SAPS and NPA when dealing with violent protest and prosecution thereof in South Africa using both Thematic and Textual Content Analysis (TCA) (Millner, Robinaugh & Nock, 2020:10).

For the application of descriptive research in this study, data was gathered through observations, published articles and reports including surveys or statistics recorded by SAPS and NPA or presented to the Standing Committee on Public Accounts (SCOPA) or Justice and Correctional Service Committee in Parliament of South Africa by SAPS and NPA (Nassaji, 2015:129). Themes were identified from the evaluated textual data (Heigham & Croker, 2009:70-71 & 204). This translates that the application of TCA in this study was limited to textual data contained on documents, communication and graphics visited and secured.

The researchers are of the view that the outcomes of the study will help to explore the impact of arrest and prosecution on the perpetrators of service delivery protests crimes in South Africa as well as suggest ways to improve the performance of both the SAPS and NPA in relation to arrests, charging and secure prosecution which could send a strong message to perpetrators of these protests. This is because

the aim of the study objectives is to explore the impact of arrest and prosecution on the perpetrators of service delivery protests crimes in South Africa including the failure of SAPS to thoroughly probe and arrest those who were found to be perpetrators of public violence during the protests

Nassaji (2015:129) further emphasise that although data can be gathered qualitatively, however, the researcher is often analysed it quantitatively utilising prosecutorial percentages of culprits of service delivery protest crimes including presented and/ or reported statistical analyses to indicate the relationship between numbers of arrests and types of crimes committed during protests as well as the number of suspects prosecuted successfully. Descriptive research was utilised into this study to describe the impact of arrest and prosecution on the perpetrators of service delivery protests crimes in South Africa

The study also followed purposive sampling to describe and highlights key issues behind the impact of arrest and prosecution on the perpetrators of service delivery protests crimes in South Africa (Doyle, McCabe, Keogh, Brady & McCann, 2020:446). This is because purposive sampling refers to the selections of articles, journals and reports presented by both the SAPS, NPA and/ sometimes by the Portfolio Committees that speaks to the study purpose as well as containing the statistics of arrests made, prosecutorial decision taken and conviction secured against perpetrators of service delivery protests crimes (Doyle et al., 2020:446).

To provide a comprehensive and valuable data to this study, prosecution results, reports and arrests made for certain service delivery protests crimes were purposively identified, selected and described by the researchers as the considered to be suitable to address the objectives of the study (Doyle et al., 2020:446).

Results and Discussions

The selected media reports, parliamentary portfolio committee report(s), articles, journals and statistical reports presented by the SAPS and NPA in this study provided the results on the impact of arrest and prosecution on the perpetrators of service delivery protest crimes in South Africa. Below are the discussion and results of the study.

Theme 1: Service Delivery Protests Crimes

The most likely crimes to be committed during service delivery protests are looting, malicious damage to property, assaults, arson, extortion, sometimes robbery, murder and xenophobic attack and/ or attempted robbery and murder, squabbles and confrontations between police and protesters and violation of traffic laws. These are reported to be the most dominating crimes during the service delivery protests (Mokhomole, 2021:188-189).

Service delivery protest crimes are looting of shops, intimidations, assault on other members of the public, vandalism and malicious damage to property (Abrahams, 2010:514-515). The throwing of rocks and stones at police, and the torching of schools, shops and public buildings were highlighted by (RDM News Wire, 2015); Lancaster, 2016:2) as other acts of criminality associated with service delivery protests. Burger (2014) suggests that nowadays communities use disruptive violence such as barricading roads with rocks and burning tires and destroying public property in order to draw the attention of the government.

The researchers share the same sentiments with Burger (2014) that there is a notion amongst the protesters that in order to get the attention of the government and for their grievances to be addressed quickly, certain properties have to be deliberately and maliciously damaged including digging and/ or burning of the roads.

Buntse (2016:17) cited the burning down of infrastructures such as local libraries, or state buildings, looting of shops, hurting of police officers who monitor the protests including foreign nationals who rent or own local shops and/ or sometimes public servants as crimes associated with service delivery protests in South Africa. Furthermore, Buntse (2016:17) mentioned the burning of tyres, blockade of roads and throwing of rocks to bystanders, police and motorists as other crimes aligned to service delivery protests. In a nutshell, researchers can confirm that crimes related to service delivery protests are more or less the same and commonly known to the communities.

Theme 2: The Likely Charges to be Instituted against Perpetrators of Service Delivery Protests Crimes

Regulation 12(2) of the RGA stipulates that it shall be a defense to a charge of convening a gathering in contravention of sub-regulation 1(a) that the gathering concerned took place spontaneously, meaning no notice or no adequate notice was given to the relevant authorities in accordance with the provisions of Regulation 3 of the Act.

Khumalo (2015:593) indicates that perpetrators of service delivery protests crimes are charged with crime of public of violence. Khumalo (2015:594) further argues that despite that perpetrators of service delivery protests crimes are formally charged, prosecuted and sentenced, the punishments remains lenient since government is afraid to be stigmatised with apartheid policing style of protests under Internal Security Act and Riotous Assemblies Act, when it happen that the state impose stricter criminal sanctions to those who commit crimes from service delivery protests. Quite often, the police tend to render service (through negotiations with protesters) during these protests and minimal enforce the laws. Laws tend to be enforced by police only when the protests action turned to be violent.

The perpetrators of service delivery protests are also likely to be charged with intimidation under section 1(1)(a) and (b) of the Intimidation Act, 72 of 1982, though, such Act is reported to be contentious as it was passed during the apartheid period and not repeal in the modern and South African democratic dispensation (Skelton & Nsibirwa, 2017:46-47). Furthermore, it was established that section 1(1)(b) and 1(2) of the Intimidation Act were declared unconstitutional and invalid by the Constitutional Court in the matter of Moyo and Another v The Minister of Police and Others.

The researchers share the same sentiment with Khumalo (2015:593) that suspect of service delivery protest crimes received lighter sentence from courts or released with warning by the police after being arrested. The researchers believe that such outcomes of prosecutorial and courts processes maybe viewed by others protesters as loophole to utilised with the hope that there is a likelihood that they may be left off the hook when caught being violent and committing certain crimes during service delivery protests.

Buthelezi (2019) suggests that when the service delivery protest is declared unlawful, protesters are likely to be charged with organising a gathering without serving a notice, participating in an illegal gathering or public violence, malicious damage to property and assault. Buthelezi (2019) further indicates that it worrying that South Africa continues to experience violent service delivery protests defined by malicious damage to both public and private property.

It was established that perpetrators of service delivery protests crimes are charged with public violence and intimidation in terms of the current existing legislation.

Theme 3: The Impact of Arrest and Prosecution on Perpetrators of Service Delivery Protests Crimes as Prevention of Violent Protest in South Africa

NPA (2015:17) reported that for Quarter 3 (Q3) of 2014, the courts archive a 75% conviction rate in violent protests and industrial action prosecuted, exceeding the quarterly target of 74% by 1%. During this period, the NPA reported that only three (3) cases have been reported to be in the final stage to be concluded.

Over and above, the NPA Annual Report for the 2019/20 financial year indicates that of the 100 cases completed for violent protests and industrial action, the NPA secured 93 convictions, which indicates a conviction of 77.5%. The NPA further emphasise that this was an improvement in both finalisation and conviction rate as compared to the 2018/19 financial year. Furthermore, the NPA acknowledged that the conviction rates of violent protests and industrial action dropped by 2.1% year-on-year, from 95 to 93 convictions.

This is in contrast to 2019/2020 SAPS annual report which indicates 12 244 crowd-related incidents were attended to and successfully policed/ stabilised by the Public Order Policing (POP) Units across South Africa (SAPS, 2020:153). Of the 12 244 crowd-related incidents, the POP made 3 678 number of arrests which consists of 14 arrests for peaceful incidents and 3 664 arrests for crowd unrest incidents. The report also recorded a decrease of 890 in unrest-related incidents as compared to 2018/2019.

This translates that the number of cases (prosecution) processed completed for violent protests and industrial action by the NPA in 2019/20 is far less as compared to number of arrests made by the POP and recorded by the SAPS. It further explains that with the high number of arrests made by the police and lesser cases completed by NPA, the majority of culprits are either wrongful arrested, released with warning and/ or left of the hook or not prosecuted due to the lack of evidence.

However, the study by Khumalo (2015:585) indicates the continuous rising number of violent service delivery protests and marches irrespective of the existing common law crime of public violence in South Africa. The continuous violation of the rights of those who are not part of the protests action (non-protesters) was pointed out as enough evidence for the failure of the state and NPA to deal with the crime of public violence against implicated individuals.

Crush (2014:20) is of the view that the state has normalised the culture of impunity towards perpetrators of service delivery protests crimes that existed post-1994 has been strengthened by lack of prosecution by NPA including failure by the courts to impose severe sentence on their criminal behavior/ wrongdoing.

Khumalo (2015:585) went on to emphasise that the lesser prosecution rate of perpetrators of service delivery protests crimes is also driven by lack of political will to press charges and go after individuals who committed crime of public violence. Failure by SAPS to arrest and charged the implicated individuals and NPA to prosecute the culprits of service delivery protests crimes, is viewed as failure to protect the rights of those who are not part of these protests as well as failure to promote the spirit, purport and objects of the Bill of Rights as stated in Section 39(2) of the 1996 Constitution of the Republic of South Africa.

The NPA set a target of a 74% conviction rate as per the NPA Q3 2014/15 Performance Information Report and 2019/20 Annual Report. Through the descriptive research approach, the researchers highlighted several arrests that were made in different areas, cities and provinces regarding service delivery protests and related crimes including in some cases where the arrested perpetrators were left of the hook. The study found that some of the reasons provided by NPA not to prosecute these

suspects were due to the lack of sufficient evidence and reluctance by state witnesses to testify in court, notwithstanding the presentation of footage in various media platforms showing these individuals performing acts of criminalities during these protests.

The way in which the NPA deal with criminals who commit various crimes including those who violate section 17 of the 1996 Constitution of the Republic of South Africa during violent service delivery protests is the true reflection of the failure of the state to arrest (prevent) the level of crime in South Africa. Furthermore, the NPA has not been called out by media, civil society organisations and parliament to account and provide reasons for their lower prosecuting rate of service delivery protests suspects, despite overwhelming evidence such as footage and vandalism of state infrastructures reported in various media platforms (Muntingh & Dereymaeker, 2013:4).

The study further found that it appears that there is a lack of preventative and prosecutorial will to these types of crimes which encourages the society to continue with these criminal elements or lawlessness behaviour during protests as their culprits know that they will be no consequences to their actions thereafter.

In a nutshell, the researchers found that the arrest and prosecution of service delivery protest criminals have no impact on reducing violent service delivery protests in South Africa. The researchers share the same sentiment with the R2P (2016-2017:18-22) that the police (SAPS) use arrests as strategies to intimidate other protesters and/ or to restrain the protests from continuing. This is because 97.3% of the arrested perpetrators from violent protests are either not charged by the police and prosecuted by NPA based on the 2019/20 Annual Reports presented above. Thus, where there is no consequences and accountability for unlawful actions, such a loophole creates an opportunity for the continuation and normalisation of violent protests by protesters in South Africa.

Theme 4: The Challenges Facing Both The SAPS and NPA Regarding Arrest, Charging and Prosecuting the Perpetrators of Service Delivery Protests Crimes

One of the challenges found is the perception held by the public and media regarding the lack of SAPS to enforce service delivery protest laws such as the Regulations of Gathering Act (RGA) and charge the arrested suspects. Secondly, is the failure of the NPA to prosecute the culprits of a crime of public violence, citing a lack of sufficient evidence. Another challenge identified is the inefficiency of the sentence imposed to the perpetrators of the crime of public violence to discourage other protesters not to commit the same crimes again when protests action erupted (Khumalo, 2015:584-585).

The failure by SAPS to enforce the law again came into the spotlight and was criticised during the Labour Court Appeal rule of National Education, Health and Allied Workers Union (NEHAWU) vs Department of Public Service and Administration (DPSA). In the ruling, the full bench of the court stated that “It has become commonplace for the SAPS to walk away from scenes of criminal behaviour in a striking context, calling it a private or civil matter. Criminal conduct is neither private nor a civil matter.”

Davis (2017) asked a critical question as whether culprits of service delivery protest or unrests who incite violence and cause damage to infrastructure are identified by police and dealt with by criminal justice systems? This is because of the way in which malicious damage to properties by protesters during protests action or unrests is quite disturbing. Davis (2017) argues that one of the key role of education is to conscientise society at large to be cautious and diplomatic when embarking of protests action by desist from destroying and burning infrastructure.

The biggest challenge facing the SAPS and NPA is the arrest and prosecution of perpetrators of service delivery protests crimes. Culprits are mostly arrested, charged and prosecuted for committing public violence and sometimes arson. This is because the investigations of service delivery protests

crimes are complex and sophisticated. The police are required to investigate protest crimes within the ambit of the law to avoid the withdrawal of cases in court (Singh, 2022).

Lack of capacity and allocation of resources to POP personnel is identified as a major challenge. It was found that members of POP function within limited resources to address the rising number of service delivery protests and related crimes (Phiyega, 2014). The number of violent service delivery protests has been on the rise since 2004, while the capacity of the police has been gradually reduced due to budget cuts, poor economic growth and resignations.

Burger (2014) states that policing community protests, any demonstrations and public gatherings burden police resources that aim to address serious crimes. The rising number of violent service delivery protests requires urgent interventions from both the police and politicians. This is because it is difficult for police to manage service delivery protests while political leaders suggest that there will be increasing reliance on the police to deal with a phenomenon that is primarily social and political in nature.

One of the challenges encountered by the SAPS during the violent service delivery protests is the clashes with the protesters. Police are forced to use maximum force to calm down the situation. Police often fire rubber bullets, stun grenades and tear gas to disperse the protesters (Crisis24, 2023). However, civil society organisations, media and other politicians view the actions of police as an abuse of power over communities that are fighting for basic services.

However, Skelton and Nsibirwa (2017:46-47) emphasise that it may be difficult for the police to identify protesters to be charged with intimidation during service delivery protests. It may also be difficult for the state (NPA) to prove that some ultimatums or acts displayed by protesters actually amount to intimidation, for instance, barricading roads and preventing school children to attend school during protest actions. Skelton and Nsibirwa (2017:46-47) suggest that threats to school learners to attend “education does not amount to a ‘livelihood’ as required by the definition of intimidation, which falls short of threats to personal safety or property. The word ‘livelihood’ is a shorthand for protecting workers whose jobs may be threatened by protest or strike, but it does not expressly extend to school attendance.”

Despite that it may be legitimate, reasonable and proportionate for the NPA to prosecute the culprits of service delivery protest for the crime of intimidation where the actions of protesters have resulted in preventing school learners not to attend schools for days due to road barricades, intimidation and threats; however, Skelton and Nsibirwa (2017:47) highlight that there may be more obstacles underneath the criminal law to hold those who found wanting during protest actions accountable.

The study found that both the SAPS and NPA are caught between the hard and rock to deal with perpetrators of service delivery protests crimes. The SAPS always receive backlashes and criticisms from politicians, media and civil society organisations regarding how they handle violent protests. Some politicians and civil society organisations went as far as arguing that the right to assemble is enshrined in the constitution and if citizens are fighting for the genuine call of being provided with basic service through protest actions, they should do so as part of expressing their frustrations and dissatisfaction with the government of the day.

The NPA 2019/20 Annual Report highlights that the conviction rates of violent protests and industrial action is influenced by a number of factors such as difficulties in identifying culprits (e.g, pictures and footages provided are not clear or visible enough to secure convictions), the unwillingness of witnesses to testify and inconsistencies of evidence provided by the state witnesses. This is because most of service delivery protests remain violent and chaotic since many criminals are involved.

The most challenging part for the SAPS is to deal with public violence, as the institution often receives backlash and objections from the public, media, politicians and civil society organisations to

police brutality against suspects of service delivery protests crimes including the strategy employed by police to address such social unrests while perpetrators of these protests receive little criticisms regarding their behaviours from the same people and organisations (Collins, 2013:30). Although there are increasing objections to police brutality against innocent victims, and against the use of police force in quashing social protest, the researchers are of the view that violence against suspected criminals receives little criticism and frequent vocal support.

The research also found that the SAPS might be underreporting on crimes of service delivery protests. This is because the SAPS sometimes record and/ or categorise some of the crimes committed during public/ service delivery protests under Contact-Related Crimes. Furthermore, the study found that any police intervention during the service delivery protests resulted in clashes between the police and the protesters. To control the crowd, the police fired rubber bullets, tear gas and stun grenades to disperse the crowd of protesters.

Recommendation

As per the results of the study, the researchers recommends that there must be properly documented data on the rising number of protests crimes so that it can be utilised by the SAPS to establish the trends of violent service delivery protests and zoom into those areas in which these protests are likely to erupt. The researchers are of the view that this will help the police to assess the progress made in terms of police arrests and charges instituted against those who break the laws during protests including tracking down the number of suspects who are successfully prosecuted by NPA. These will further help the state to put measures in place to address any obstacles that may arise such as police failure to gather sufficient evidence to secure successful prosecution of perpetrators of service delivery protests crimes (Breen & Nel, 2011:39). The study further recommends that both the data presented by the SAPS relating to the number of arrests made and cases prosecuted by NPA need to be thoroughly interrogated by parliament and other oversight bodies including civil society organisations due to the discrepancy found. This will help to establish whether there is a failure by the SAPS to adequately investigate, secure evidence and charge the arrested perpetrators. This will further determine whether the NPA lacks capacity and skills to enrol and prosecute service delivery protest crimes cases since the secured conviction rate does not correspond with the number of arrests executed.

Conclusion

Based on the findings presented above, there is no dispute that arrests are effected by the police (SAPS and Metro Police) during the service delivery protests crimes. However, the researchers conclude that the current existing deterrent mechanisms in place are not effective enough to deal with or discourage the crime of public violence committed by perpetrators during violent protests. This might be because the sentence imposed to those who got prosecuted and convicted for crimes of public violence seemed not to have a major impact in preventing such crimes to happen during the protests. Notwithstanding that the NPA reported to achieved a conviction rate of 75%, though such conviction rates have no impact to minimise acts of criminalities associated with violent service delivery protests in South Africa. The number of violent service delivery protests and arrests thereafter continue to rise on an alarming rate year-on-year. The study found that there is an inconsistency between the annual reporting of cases (prosecutorial cases) completed by the NPA and arrests effected by SAPS. From the 3 678 total number of arrests made by the SAPS in the 2019/2020 financial year, the NPA only enrolled and prosecuted 100 cases from the 3 678 which constitutes 2.7%. Over and above, where there is no consequences and accountability for the crime of public violence, such a gap creates an opportunity for the continuation and normalisation of violent protests by discontent communities in South African.

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