THE USE OF FORCE BY THE POLICE AS A HUMAN SECURITY ISSUE, WITH SPECIFIC REFERENCE TO THE MARIKANA MASSACRE

by

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DECLARATION

I declare that this mini-dissertation is my own original work and has not been submitted before to any institution for assessment purposes. Further, I have acknowledged all sources used and have cited these in the reference section in accordance with university requirements.

November 2020

ETHICS STATEMENT

The author, whose name appears on the title page of this mini-dissertation, has obtained, for the research described in this work, the applicable research ethics approval.

The author declares that she has observed the ethical standards required in terms of the University of Pretoria's Code of ethics for researchers and the Policy guidelines for responsible research.

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ABSTRACT

The Marikana massacre occurred on the 16th of August 2012. The incident involved several parties: Lonmin mineworkers; Lonmin Mine Company management; two unions (National Union of Mineworkers (NUM) and the Association of Mineworkers and Construction Union (AMCU), African National Congress (ANC), South African Police Service (SAPS) and the media. The mineworkers were asking for a living wage of R12 500 per month and were demanding that the employer address them. Thirty-four miners were shot and killed by South African Police Service (SAPS) officers during the protest. The political alignment of the parties involved, appears to have influenced how the strike rapidly escalated into violence. An assessment of the strategic policing framework that existed at the time of the Marikana labour protest, the functions executed by the SAPS, and the civil-policing relations between the police and the protesting mine workers are the focus of this study. Furthermore, different perspectives about the use of force by police, as well as the contestation and debates on the use of force at the Marikana industrial action are outlined.

The study concludes that the human rights that are proclaimed in the RSA Constitution seem not to translate into how the SAPS operate during policing of public gatherings, specifically the Marikana industrial action in this case. Findings about the use of force and key problems facing the police related to protest include the following: inadequate Public Order Policing (POP) operations training, lack of police accountability, police legitimacy negatively impacted, and ineffective restructuring.

The massacre exposed weaknesses in the country's legal system or perhaps a lack of change in the post-apartheid era within the SAPS as an institution and among its members. Recommendations made on how this gap between policy and practice can be bridged include the need for professional training on policing public gatherings and crowds; a public order policy (POP) framework implementation review and monitoring systems for accountability and oversight.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR   African Commission on Human and People's Rights

AMCU   Association of Mineworkers and Construction Union

ANC   African National Congress

APCOF   African Policing Civilian Oversight Forum

AU   African Union

BLTPP   Basic Level Training Pilot Programme

CCU   Crime Combating Unit

CHS   Commission of Human Security

DA   Democratic Alliance

DOD   Department of Defence

EFF   Economic Freedom Fighters

EWC   Early Warning System

GDP   Gross Domestic Product

HRC   Human Rights Commission

ICCPR   International Covenant on Civil and Political Rights

ICD   Independent Complaints Directorate

IIDEA   International Institute for Democracy and Electoral Assistance

IMC   Inter-ministerial Committee

ISS   Institute for Security Studies

JCPS   Justice, Crime, Prevention and Security cluster

JOCCOM   Joint Operational Coordinating Committee

LRC   Legal resource centre

NATJOINTS   National Joint Operational and Intelligence Structure

NDP   National Development Plan

NGO   Non-governmental organisation

NIU   National Intervention Unit (South African Police Service)

NUM   National Union of Mineworkers

NPA   National Prosecution Authority

OHCHR   Office of the High Commissioner on Human Rights

ORS	Operational Response Services (SAPS)
POP	Public Order Police (SAPS)
UCT	University of Cape town
RDOs	Rock Drill Operators
RGA	Regulation of Gatherings Act
RSA	Republic of South Africa
SAHRC	South African Human Rights Commission
SAP	South African Police
SAPS	South African Police Service
SaVI	Safety and Violence Initiative
SERI	Socio-Economic Rights Institute
SO	Standing Order
STF	Special Task Force (SAPS)
TRT	Tactical Response Team (SAPS)
TRU	Tactical Response Unit
UK	United Kingdom
UNDP	Unites Nations Development Program
USA	United States of America

Abbreviations of titles of rank (in order of rank):

Gen.	General
Lt Gen.	Lieutenant-General
Maj. Gen.	Major-General
Brig.	Brigadier
Col.	Colonel
Capt.	Captain
WO	Warrant Officer

MAPS OF THE AREA

MAP ONE: KILLINGS NEAR THE NUM OFFICE
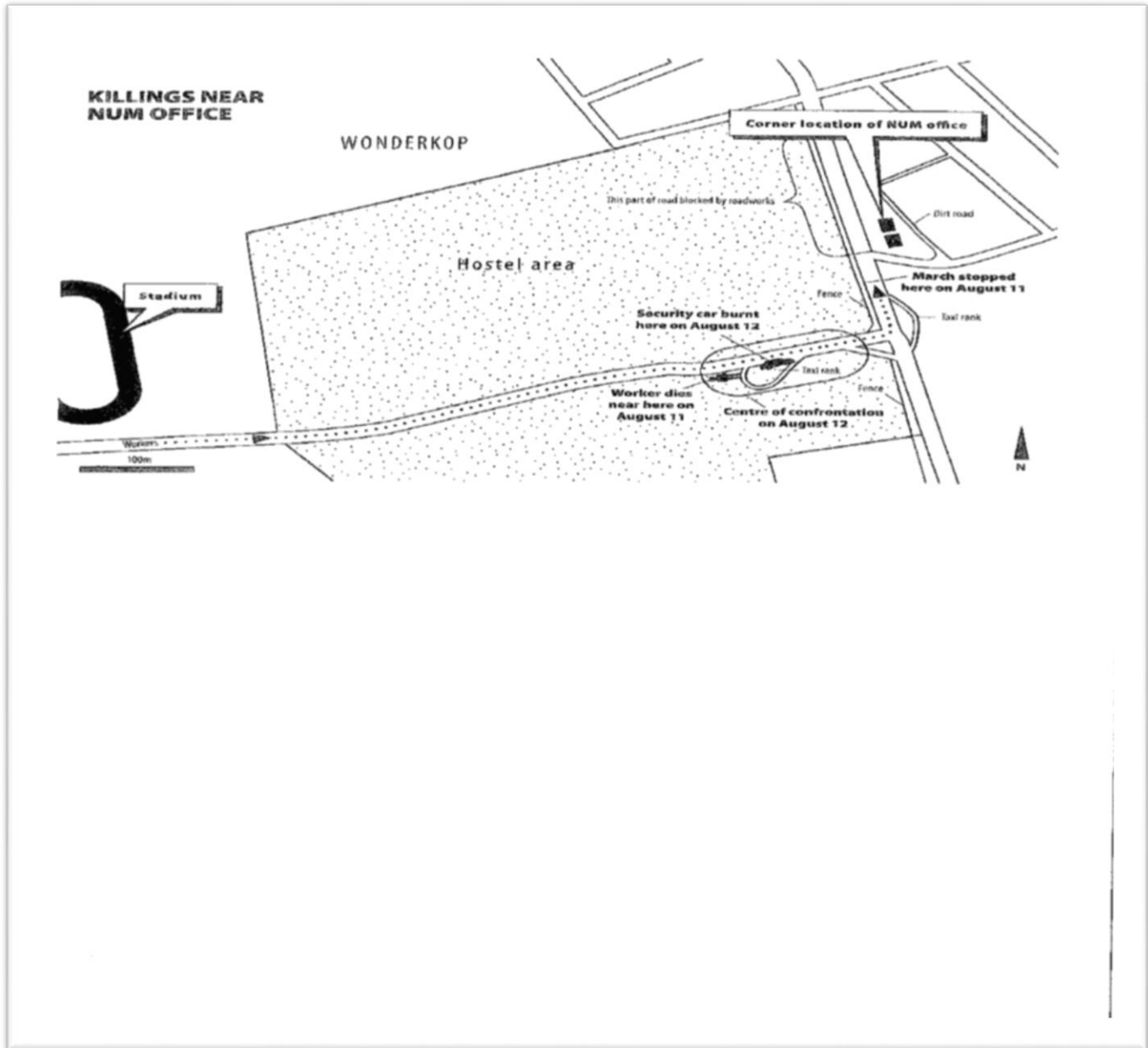
(Alexandra *et al.* 2012: xiv)

MAP TWO: SITE OF THE MASSACRE

SITE OF THE MASSACRE

First person reportedly shot here

Kraals

Shack

Gap

Bodies of those killed in view of television cameras

Hillock

Nkaneng

Wonderkop

Workers' leaders voice objection to barrier

Razor wire barrier unrolled by police

The "mountain"

The "killing koppie"

N

Pylon

Electrical power facility

To Marikana

50m
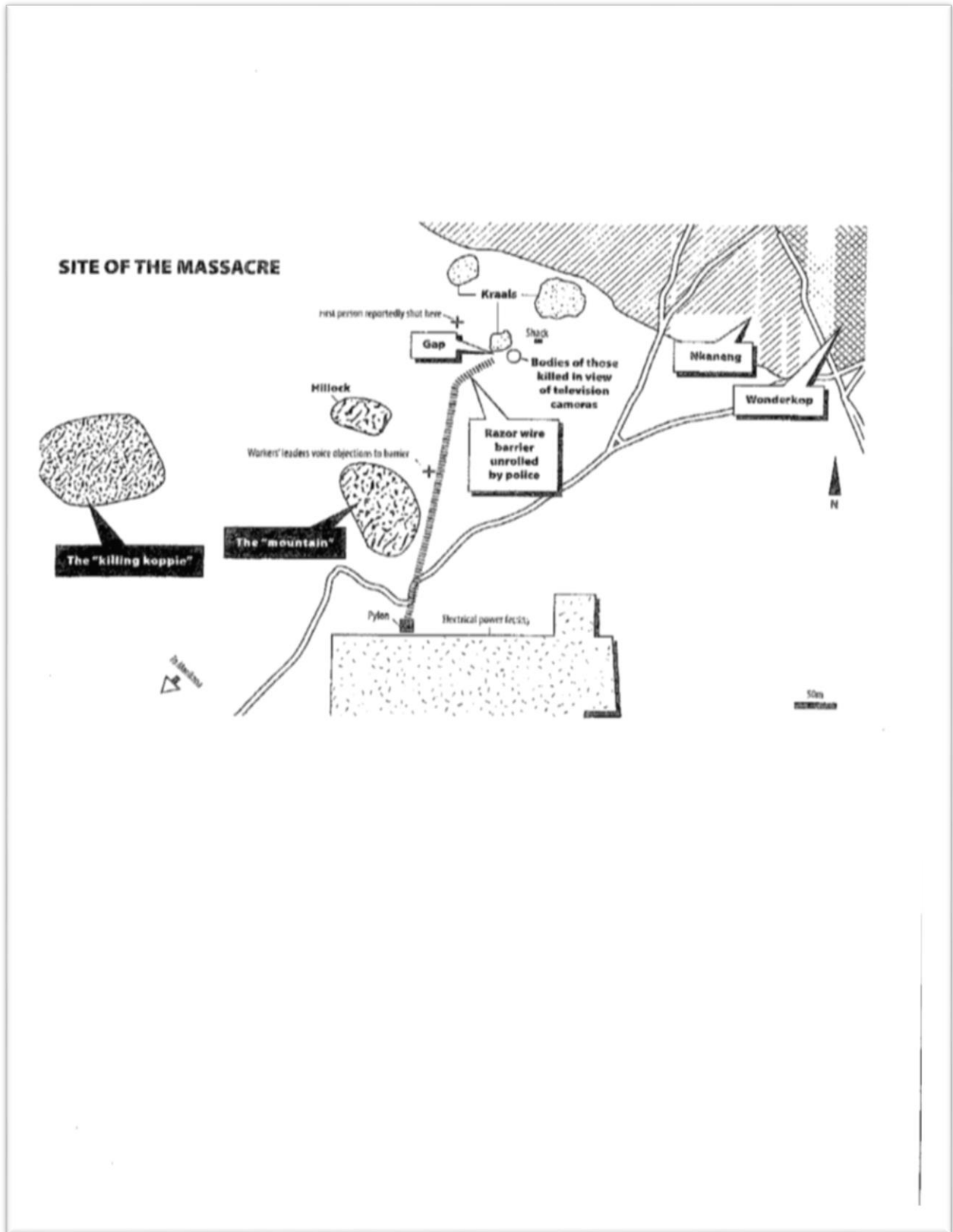
(Alexandra *et al.* 2012: xii)

MAP THREE: THE RAILWAY LINE KILLINGS
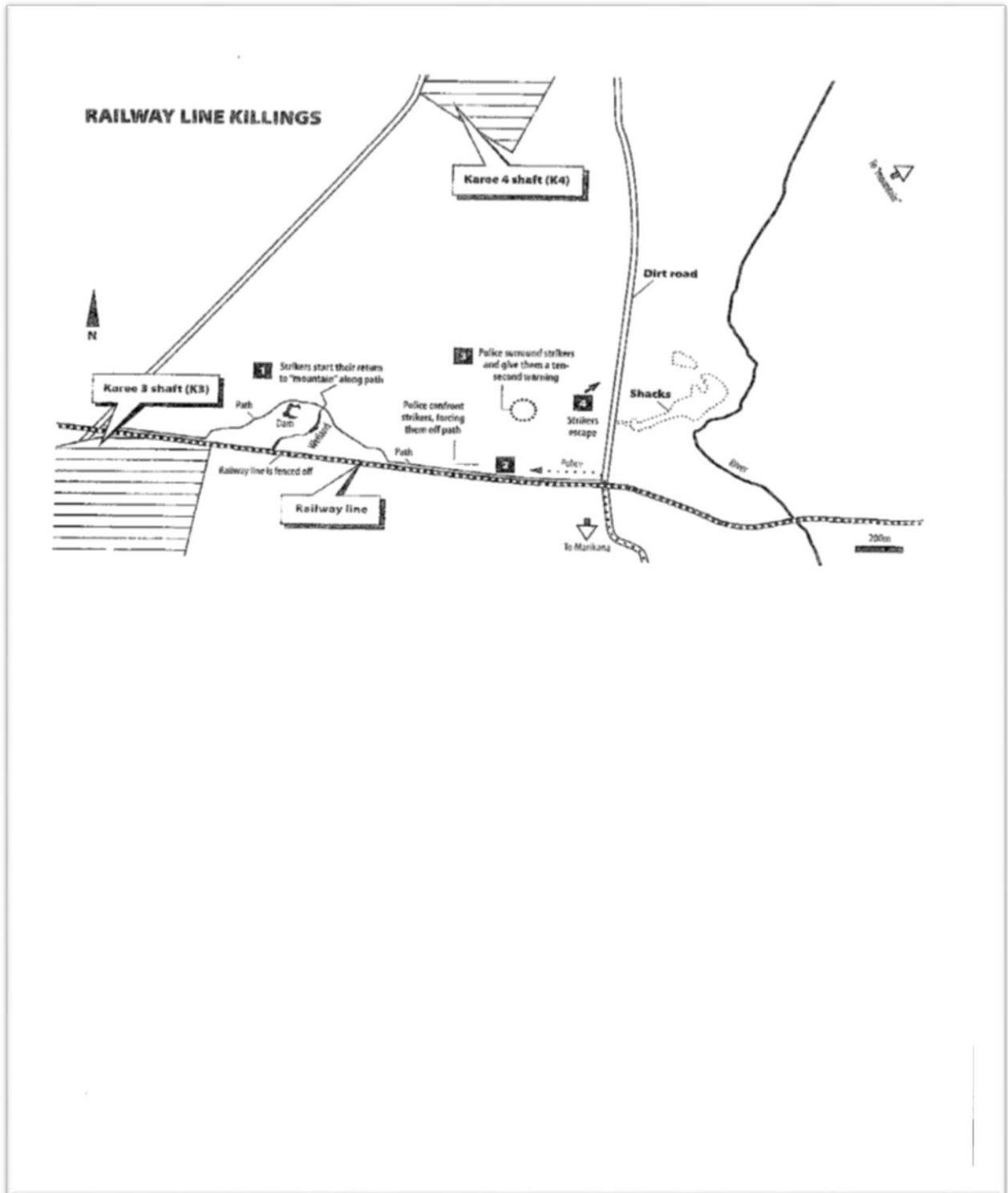
(Alexandra *et al.* 2012: xiii

Chapter One

INTRODUCTION

1.1   Introduction

During the negotiations between the apartheid regime and the African National Congress (ANC) supported by the members and structures of the democratic movement in the early 1990s, the language used about the future security dispensation in South Africa was framed around a new era of "freedom from fear" and "freedom from want", the "language of human security" (Africa, 2015:179). Further, Ferreira (2009:503) states that since 1994, South Africa has infused its domestic and international policies with values, thinking, and an agenda "of human security".

Around the same time, a new policy framework of human security was captured and accepted as a concept in the 1994 Human Development Report of the United Nations Development Program (UNDP, 1994:3). The principles underlying the human security concept include "adherence to the rule of law, respect for human rights and fundamental freedoms, transparency in public policymaking and the encouragement of the separation of the state and religion" (UNDP, 1994:3). These principles "impacted significantly on the policy proposals that were tabled during the negotiations and featured later in the adopted Constitution" (Africa, 2015:181). As stated by Africa (2015), these freedoms are the language of human security and are referred to in the SA constitution, in Chapter 2: Bill of Rights section (12). The Commission of Human Security (CHS) defines human security as the "protection of the vital core of all human lives in ways that enhance human freedoms and human fulfilment" (UNOCHA, 2009:6). It further adds that human security means protecting fundamental freedoms – freedoms that are the essence of life. According to Tsai (2009:20), countries such as Canada and Japan have proclaimed human security to be the guiding principle of their foreign policies.

Depending on the context, human security can have a wide variety of intended meanings. The UNDP (1994:24-25) defines human security according to seven dimensions; personal, environmental, economic, political, community, health, and food security. The personal dimension reflects that the concept of human security has two definitions: one emphasises "freedom from want and the other freedom from fear" (Chu, 2015:72). "Freedom from want" associate threats with a host of factors capable of degrading human beings' livelihood and dignities such poverty, famine, disease, unemployment, and even traffic accidents, while "freedom from fear" emphasises threats directly affecting human beings' rights, safety, and life (Chu, 2015). Newman (2001:240) also defines human security as "freedom from want"

and "freedom from fear". Supporting Chu (2015) and Newham (2001) is Williams (2008:231), who defines human security as the absence of threats to various human values, including the most basic human value, the physical safety of the individual. Other definitions rooted in holistic perspectives state that human security has seven elements including economic, food, health, environmental, education, personal and political security (Hughes *et al.* 2001:71).

1.2   Research problem

Democracy was established in 1994, after successful negotiations between the apartheid government and the democratic movement led by the African National Congress (ANC). Apartheid ("apartness" in the language of Afrikaans) was a system of legislation that upheld segregationist policies against non-white citizens of South Africa (https://www.history.com/topics/africa/apartheid).In 1948 the Afrikaner National Party won the general elections under the slogan "apartheid". Subsequently, South African black people were excluded from participation in national government, racially discriminated against, politically repressed, and violence was institutionalised. This characterised the lives of SA black people for almost 50 years. Van der Merwe (2013:66) notes that "the system of apartheid constituted systemic violence and relied on physical violence to survive". Resistance to the oppressive apartheid government in SA took different forms from non-violent instruments by mass movements such as protest actions, strikes, demonstrations, boycotts, and stay-aways to eventually the armed resistance. The apartheid regime reacted with force to any protest action; which led to the loss of many African lives. The apartheid regime acknowledged the state's violent acts as a source of insecurity during the negotiations in the early 1990s (Africa, 2015: 179). Very often, the police were instrumental in such violence.

Post-1994, SA is a democratic state which advocates and represents peace and reconciliation, as stated in the Promotion of National Unity and Reconciliation Act of 1995. The White Paper on Safety and Security adopted by SA in 1998 emphasised the need for democratic control, police accountability, and community participation in issues of safety and security specifically for the South African Police Service (SAPS) (www.policesecretariat.gov.za). This policy framework, long with the Constitution, provided the context for the new thinking on security going forward, with people as the referent object.

Protest actions in post-apartheid South Africa are legal when a notice to protest is approved by relevant local municipality authorities or Metro police. Such protests are recognised by the Regulation of Gatherings Act 205 of 1993 (RGA). The right to protest is also recognised

in section 17 of the Bill of Rights in the Constitution. According to Roberts *et al.* (2017: 64) the RGA was "introduced to reform how police handled crowd control" as protest actions were spiralling out of control in the pre-democracy period. In contrast, there are some Constitutional Court judgments that state that the provisions of the RGA (or Gatherings Act) are unconstitutional. Section 12(1) (a) of the Gatherings Act implies that the RGA can legalise a protest, but also regulates it as a criminal offense if there is a failure by the convener to give notice before the gathering. It is against this background that, the incidents of the 10th to the 16th of August 2012 at the Lonmin Platinum Mine in Marikana will come under scrutiny.

The Marikana shootings reflected a side of democratic South Africa, where violent force was administered by police against protesting mine workers. According to Lukhele (2015:69) and Kempen (2015:56), the SA media has labelled this event as a Marikana massacre. Bruce (2018:5) also referred to it as the "Marikana massacre" as it has since often been referred to. This protest that preceded the 'massacre' involved Lonmin mineworkers demanding a salary increase of R12 500 from the North West province in Marikana. The country observed through limited media images, the police reacting with live ammunition to the protests, resulting in the killing of 34 miners with more than 70 people injured, and approximately 250 people arrested (Kempen, 2015:56). In the seven day period leading up to the Marikana incident, a pattern of violence had already begun to unfold. According to Kempen (2015:56), on 9 August 2012, approximately 300 people gathered at Wonderkop Stadium in Marikana. Later the same day, during the early evening, the miners engaged in an illegal march. During the march, some miners, (apparently affiliated to the Association of Mineworkers and Construction Union (AMCU) intimidated Lonmin workers, encouraging them not go into work, using pangas and knobkerries. Security personnel from Lonmin Mine responded by firing rubber bullets. On the 12th of August 2012, two of Lonmins' security officers, were killed, while on the 13th of August 2012, three police officers, and one NUM shop steward were stabbed to death by allegedly striking miners.

In response to the killings, Colonel (Col.) Duncan Scott of the SAPS Special Task Force (STF) was instructed by Police Headquarters to go to Marikana in the North West Province to assist with the planning and coordination of the operation to be implemented on the 14th of August 2012 (Kempen, 2015:56). Kempen (2015) further adds that the initial plan was to encircle the miners, with an exit point to disarm the strikers. Col. Scott developed the plan further and presented it to Joint Operational Coordinating Committee (JOCCOM). (Kempen, 2015:56) indicates that the amended operational plan had several elements: firstly, to engage in dialogue to seek peaceful disarmament; and secondly, dispersal of the strikers. Thirdly, SAPS force levels would be escalated with reserves, in the event of increased threat

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levels against SAPS members; fourthly, the plan was to dissuade illegal activity or planned violence towards the SAPS. Fifthly, it was hoped that by employing the encircling strategy, the peaceful disarmament of the miners could be achieved. The strategy entailed encircling the strikers with barbed wire, to offer them an exit point. The last element of the strategy was to ensure the strikers hand over their weapons through the exit point.

One of the defects of the planned intervention included a decision taken at the national police level to forcibly remove the miners at the *Koppie* if they did not voluntarily do so on 16th August 2012 (Kempen, 2015:57). This decision at the strategic level was taken without consulting the police commanders, and did not take into consideration the situation on the ground. Consequently, the police were unable to disarm and disperse the striking miners on the 16th of August, 2012 peacefully, resulting in the loss of mineworkers lives.

1.3   Research statement

Sources on the use of violence by police include Van der Merwe (2013), McDonald (2003), and Von Holdt (2014). Sources referring to operationalising human security in SA include literature by Ferreira *et al.* (2009) and Africa (2015). Although human security is not officially named as a security concept in SA policy documents, the security approach that was adopted in the Constitution of 1996 is reflective of human security. The study aims to understand why the police, in such a context used excessive force to manage a labour protest and also to understand the constitution and legal framework which allowed this in a democratic country. The South African Police Service Act, 1995, allows an official member on duty to use minimal force, only to the extent that is reasonable in the circumstances. Moreover, SAPS Standing Order No. 262 states that the use of force must be avoided at all costs, and members deployed for an operation must demonstrate the highest degree of tolerance (Iwu & Iwu, 2015:544). The study therefore seeks to reveal the root factors contributing to the excessive use of force by the police in the Marikana protest, and the extent to which the police may need personnel and institutional rehabilitation after this violent response to an industrial action.

The research therefore explores official statements and strategies, with the expectation that understanding the official perceptions of human security may also reveal the underlying reasons why the police officials acted in the way they did during the 2012 Lonmin platinum strike, when the Constitution requires of them the protection of human rights. The research will also highlight the gap between upholding human rights and the use of force by the state while executing its basic function to render safety and security in the country.

1.3.1 Objectives

There are three objectives to the study:

- to identify factors that contributed to the use of force by police in Marikana;
- to determine ways in which perceptions of human (in)security affected the different decision-making levels of SAPS in Marikana to maintain law and order; and
- to clarify the concept of human security and the constitutional framework of policing strikes with specific reference to Marikana.

1.4   Research question

The central question of the study is: How did the understanding of the human security paradigm influence police behaviour and decision-making, with specific reference to the Marikana 'massacre'?

The research question is formulated within the conceptual frameworks of criminal justice theory, human security and the securitisation paradigm. Criminal justice theory reflects the application and administration of human rights within the criminal justice system to measure the basic democratic values of a country (Kinnes, 2009:1). The human security concept allows the different elements of human security to be explained, grounded in the multiplicity and enormity of human-related challenges (Solomon, 2015:57). The use of excessive force by police during public gatherings demonstrates a securitised environment by the state and the state being the direct source of insecurity for the people.

A descriptive question has been presented to address the research problem. The question aims to gain answers that describe the different events of the Marikana labour protest. Litchman (2017:12) states that research questions can be developed from different starting points such as human interactions, social processes, and phenomena.

Can what happened at Marikana be described as a 'massacre'? An incident is a massacre when a large number of civilians are killed under unreasonable circumstances. A massacre is defined in the Oxford English Dictionary as the indiscriminate and brutal slaughter of people in numbers. Osiel (1995:468) states that a massacre entails large-scale violation of basic human rights to life and liberty by the central state in a systematic and organized fashion, often against its own citizens, generally in a climate of war-civil or international, real or imagined. The study will attempt to provide insight into whether the label is justified in the

case of the police violence at Marikana. The sub-questions that flow from the central question will, it is hoped; help us to unpack the issues and draw conclusions:

The related sub-questions are:

- Why did the police use force to maintain law and order in Marikana?
- How did human (in) security affect the police security services in Marikana?
- How is human security defined and conceived by the Government of SA?
- What is the current state of human security in SA?
- And taking the lessons of Marikana as a departure point, what can be done to ensure that police conduct during protests, promotes rather than undermines human security?

1.5   Literature overview

The literature overview aims to provide a conditional indication and assessment of primary and secondary published sources related to the research topic. The purpose of the literature review is to provide recently published literature and research that will assist the development of the research topic, and understanding of the conceptual and methodological approaches to the study. The previously related research will assist to identify the need for the research.

The Marikana incident occurred at a time when South Africa had been a democratic country for 18 years. Democratic South Africa is characterised by a constitution that refers to human security in Chapter 2 of the Bill of Rights. The brutal injustice against human life is not a new occurrence in SA. During the apartheid era, the General Law Amendment Act 37 of 1963 gave the SAP the power to arrest anyone suspected of acting against the state, and held them without charge for 90 days. The following are examples of mass killings by the police during public gatherings. On June 16 of 1976, the Soweto youth uprising occurred, where police used force against a public demonstration, killing many school children. Roberts *et al*. (2017:64), states that the 1960 Sharpeville massacre is another infamous example, when police fired live ammunition into a crowd, killing 69 and injured many, similar incidents occurred in 1985 Uitenhage when 20 people were killed.

This history creates "a deep-seated lack of public confidence in the legitimacy of the police" (Roberts *et al*, 2017:64). According to Neethling (2012) cited in Van der Merwe (2013:70), just a week before the Marikana labour protest, the Minister of Police, Nathi Mthethwa, spoke strongly about the need for police to use maximum force:

"Police must return fire with fire. We will use maximum force based on the law itself. Those who want to break the law, such as cash-in-transit heists and bank robberies, must think again. They should know that we will not waiver in continuing to let them feel the heat and that we will squeeze them with maximum force".

The above statement by Minister Mthethwa seemed to encourage the SAPS members to use force where they saw fit, *without any clear guidelines* or indeed *under what circumstances*. The statement therefore also reveals how the leader of the police perceived human security and how it was juxtaposed with the rule of law. Further to this, Lukhele (2015:71) identifies that the police decisions to use force under the leadership of the National Commissioner of Police, General Riah Phiyega, prioritised political considerations, the state of the economy and investor confidence. The government felt a need to contain yet another labour unrest(s) that had become commonplace in the volatile country (Lukhele, 2015:71). Van der Merwe (2013: 68) states that "physical violence (both at interpersonal and collective levels), seemed to have become the norm in many social contexts, and these seem to mirror the underlying structural violence that has only marginally been ameliorated since the transition to democracy". Galtung (1969) cited in Van der Merwe (2013:68), refers to structural violence as "those social structures which harm people by systematically limiting their access to basic needs". Discussing the excessive use of force further, Faul (2013:6), argues that many police officials believe the way to earn respect is through force, suggesting that torture and violence reduce crime, and restore order. During the apartheid- era, police used this method to fight against perceived political activists. Post 1994 there were a number of restructuring initiatives attempting to change the apartheid policing methods and mentality. Unfortunately with the Marikana incident, according to Lukhele (2015:71) this gave a regressive appearance to policing. Implying that the police may still believe in demanding, rather than legitimately earning the respect of the citizens.

Van der Merwe (2013:68) notes that "understanding violence as a form of communication also, however, raises serious questions about what communication skills and techniques a democratic South Africa have inherited and how to make sense of this culture of dealing with conflict". McDonald (2003:119) suggests that it is due to the high level of uncertainty law enforcement officers' face on duty, that they make assumptions in the situations they face. McDonald (2003) further states that the "police are trained to quickly assess the situation and act to maintain and control exercising their right to use physical force". Von Holdt (2014:129) states that many democracies in the contemporary world are violent and that

violence is part of the formation of the modern state. However, the use of excessive force during protest actions by police stands against the principle of "freedom from fear" as one principle that talks to the freedom of an individual from threats to physical safety, which was included in the discussions on the role of security structures both during the transition as well as thereafter. Scholars such as Bohler *et al.* (2017:83) state that the State's response to protest action is in many ways a reflection of the State response to protest during the apartheid era, using paramilitary tactics, which disregard human rights. Lukhele (2015:71) adds to what Bohler is stating above, by arguing that "President Jacob Zuma stepped up the militarisation of the SAPS by introducing military titles for SAPS officers". This changed the appearance and thinking towards policing by the SAPS officials in a democratic country. Unconsciously, it allowed the SAPS to view the Lonmin Mine strike as a battlefield in need of conquering and strikers as an enemy force requiring pacification (Lukhele, 2015:71). According to an ISS report by Bruce (2018), on the day of the mass shooting at Marikana "police units had started shooting into the area from several different sides. This created the impression among some police that strikers were firing at them; however police were not in immediate danger". He further adds that, "disciplined police units would have held their fire and taken cover, and that the police priority ought to have been to identify who was shooting at them".

The freedoms and human rights declared in the Constitution are often not reflected in the daily life experiences or relations of normal SA citizen interactions with the police. Instead a public pronouncement by the State Minister Nathi Mthethwa to use full force constitutes a received reality for many of the country's citizens. The decision to use excessive force taken by police management at Marikana were not in line with Chapter 11 of the security services in the Constitution section 205 (3) indicating that the objects of the police service are 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. What informs the questions in this study is the SAPS' lack of understanding of the constitutional and legal framework within which the police are required to operate within a constitutional state like SA, and the implications for human security.

1.6   Research methodology approach

The study uses the case study method, taking the Marikana massacre as a specific labour protest. This study employed a qualitative research method with a descriptive approach. The research problem identifies police using excessive force during a protest action, which contradicts the country's Constitution which calls for the protection of human rights. It further

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identifies the mandate of the police to uphold peace and order in the country as stated in the White Paper on Safety and Security adopted in 1998. In order for the police to uphold peace and order during a public gathering, the South African Police Service Act, 1995, allows an official member on duty t to use minimal force only to the extent which is reasonable in the circumstances. This study will argue that the observed use of violence by police during the Marikana labour protest reflects the way in which police management conceives reasonable circumstances and that of human security more broadly.

The qualitative methodology, according to Creswell (2014:4) is used for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. Hence, it will be used to understand the use of force by police under the command of officials in a democratic country with a living constitution that refers to human security. Qualitative research uses qualitative data, which includes information such as "words (recorded or written), pictures, drawings, paintings, photographs, films, videotapes, music and soundtracks" (Struwing & Stead, 2001:13). The study employed criminal justice theory as a concept, together with human security and securitisation paradigm to understand the nature of reality. Firstly, it will assess the use of live ammunition during the Marikana labour protest by police. Secondly it will consider the people involved including the police commissioner, station commanders, police, and mine workers. This presents the opportunity to argue that their behaviour, interests, motives, and relations should be seen as factors in the problem at hand, which are subject to change. Furthermore, the study aims to represent experiences relating to human security perceptions of the State and how these perceptions influenced operationalising (securitising) the Marikana labour strike on the ground.

A working concept of human security identifies and acknowledges that security threats emanate from "socio-economic, food, health, environment, personal, community and political security" (Hughes, *et al.* 2011:71). The characteristic of human security identified by Hughes (2011) above requires a qualitative approach to understanding the concept and addressing the research problem. With regards to the research question, through the criminal justice approach, different voices from different levels can be heard regarding the use of violence by police and operationalising human security.

1.7 Research design and data collection

The study will employ a critical literature review as its research design because it will allow reviewing and evaluating published literature related to the research problem. Critically reviewing the literature involves a deeper examination of the claims in the document as well as supporting points to those claims. It also involves possible counter-claims to the argument. Secondly, it helps to indicate gaps in the literature related to the research problem and possible future studies, defined to "assess theories or hypotheses by critically examining the methods and results of single primary studies; the material is selected to present an argument" (Jesson, 2011:76). Literature by Von Holdt (2014) depicts a violent SA democracy (police using excessive force); while Ferreira *et al.* (2009) argue that the country has endeavoured to reflect human security values in almost all state activities. A limitation of this review is that they don't "typically demonstrate the systematicity of other, more structured approaches to the literature" (Grant *et al.* 2009:93). This limitation will not affect the study negatively, as some of its stated objectives are to understand official perceptions of human security and use of violence by police; instead of how many times the police use force, for instance.

The study's emphasis is on the collection of documents as data sources although qualitative methodology "takes varying forms including observations and interviews" (Gentles *et al.* 2015: 1773). Focus will be placed on official documents relating to human rights, use of force by police, and the Marikana protest as a single case study, through purposeful sampling.

Primary documents and secondary literature sources will be used as data sources for this literature-based study. The UNDP (1994) Report on Human Development, will serve as the primary source to understand the human security concept. The primary sources will include but not limited to: the South Africa's Constitution Chapter 2 Bill of Rights section12: Promotion of National Unity and Reconciliation Act of 1995: section 12(1) (a) of the Gatherings Act 205 of 1993, and the White Paper on Safety and Security adopted in 1998: South African Police Service Quarterly and the Marikana Inquiry archives. Public speeches and writings by government officials in the executive are also used as primary sources. These primary documents are available in the public domain and can indicate the official state perception of human security. Secondary sources will include journals, articles books, and media publications which are also available publicly to understand the different arguments for why the police are using force.

1.8   Data Analysis

A data analysis method enables bringing about "organisation and meaning to large amounts of data" (Struwig & Stead, 2001:169). The study will employ critical analysis to analyse the information. Critical analysis will allow for an in-depth evaluation of the different narratives related to the use of violence by police, human security, and official documents (such as the Bill of Rights). Further, it is necessary to understand the authors' expressed opinion in the text. The literature will address the research question, by either agreeing or disagreeing with the research problem for the study to rather proceed with its argument. The study assumes that a lack of human security in SA underpins police use of force.

A critical analysis is defined as a social practice that takes seriously the historical and socio-political context in which text is produced and to offer alternatives to knowledge, theory-building, and social reality (Allen 2017:2). Due to its concern with the "relationship between power and language", interrogates "how language reproduces power" and "social inequalities seem "that normal" and "natural". Further, critical analysis embraces multiple perspectives, gives space to unheard voices, and stimulates social criticism (Allen, 2017:2). The multiple perspectives in the study include (different voices from) official documents such as the Constitution and actors within the Police such as the National commissioner or Station Commander.

1.9   Structure of the research

Chapter 1: The chapter introduces and gives context to the topic. The problem statement is given, based on a literature review centred on human security and the excessive use of force by police during protest action. The research question is posed with possible assumptions. The research design and methodology are explained.

Chapter 2: The chapter clarifies key concepts such as criminal justice theory, human security, securitisation and national security. The chapter also presents a theoretical construct that positions/ anchors and provides parameters of the study. Further, provides a contextual overview of human security, the official conceptualisation of human security is analysed by discussing the constitution and institutional framework of human security, the status of human security, and securitisation of human security in Marikana.

Chapter 3: The chapter outlines the strategic policing posture, functions executed by the SAPS, the civil-policing relations the Marikana protest between the police and the protesting Lonmin mineworkers.

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Chapter 4: The chapter summarises the key findings of the study. It also addresses the research question formulated at the onset. Based on this evaluation the recommendations on the management of the use of violence by police, human security are made to the South African Government.

1.10   Research ethics

The study will have no ethical implications in terms of the university's research ethics policy as it will employ a qualitative research approach which will focus only on a desktop literature review research design. The study commits to observe basic ethical principles in research.

THEORETICAL FRAMEWORK

2.1   Introduction

The raison d'être of any government is to provide security to its state and people. The chapter will begin by outlining the traditional security approach and assumptions regarding security issues. Through the lens of criminal justice theory, the chapter aims to understand the use of force by police enforcement. Further, the securitisation concept and human security will be discussed in line with the widening and deepening of the concept emerging from Critical Security Studies. Peoples (2010:10), states that "how security professionals and bureaucracies 'do' security, is how the state approaches security and outlines the referent object to be protected". The manner in which law enforcement is carried out by the police reflects the state's perception of human security. Lastly, the critics of human security are also discussed, addressing the weakness in the arguments.

2.2   The traditional concept of national security and democratic South Africa

Traditional security theory focused on power (authority), fear, and anarchy (revolutions); a state-centric approach. This means the state and military power are viewed as the "most important agent and referents of security in international politics" (Williams, 2008:3). Additionally, three other points of focus form part of the "old" traditional security approach according to Buzan (1991), these are strategy, science, and status quo. *Strategy* involves developing the best practical and intellectual ways to counter threats and when or how to deploy the military when a need arose. *Science* addresses the need for legitimate knowledge and information about the security situation. Lastly, *status quo* recognises "security policies as preventing radical and revolutionary changes within international societies" (Williams, 2008:3). The above traditional approaches are still valid to some extent, but must be enhanced to accommodate more complex emergent issues. The liberal constitution of South Africa, for example is focused on ensuring human dignity, equality, human rights and freedoms, accountability, responsiveness, and openness (APCOF, 2017:1).

A majority of conflicts after the Second World War emanated from Third World countries and certainly the reality for developed countries is very different to that of Third World countries. South Africa is one of the African countries that transitioned from an oppressive state

security system to a liberal democratic country. According to Navari (cited in Williams 2008:31), liberalism as an approach emphasizes the "importance of republican constitutions" adding that, "the federation of free states would provide for a type of collective security system; and the provision of universal hospitality". The democratic concept, which is central to republic constitutions, may be defined as formal and informal institutional arrangements for collective decision making that incorporate core values of democracy in efforts to build and sustain peace and to human development and human security (IIDEA, 2006:6). Quijano & Wallerstein (1992:491) ask why, despite, SA being a liberal democratic state, force is still mandated for use against its citizens. Ryerson (2010:172) provides some perspective, stating that, "the liberal world order had emerged as the dominant paradigm, and that the spread of liberal democratic governance was both legitimate and to be encouraged" but that "the role of the state as the main referent of security was not changing similarly". Further, Adler (2008:78) indicates that "liberal regimes create an atmosphere that both justifies and necessitates further illiberal practices".

The apartheid government was the source of insecurity for many South Africans. Indeed "civilians were becoming increasingly vulnerable to violence by their state" (Ryerson, 2010:172). The system of apartheid constituted systemic violence and relied on physical violence to maintain power (Van der Merwe, 2013:66). Protest actions, such as strikes, demonstrations, boycotts, and stay-aways, were some of the instruments used by mass movements to resist State oppression. The apartheid regime reacted with force to any protest action, which led to the loss of many African lives. Ferreira (2009: 503) states that "since 1994 SA has infused its domestic and international policy with values, thinking and agenda "of human security". The principles underlying the concept of human security includes "adherence to the rule of law, respect for human rights and fundamental freedoms, transparency in public policymaking, and the encouragement of the separation of the state and religion" (UNDP, 1994:3). These principles "impacted significantly on the policy proposals that were tabled during the negotiations and featured later in the adopted Constitution" (Africa, 2015:181)., According to Hammerstad (2005:76) , adopting the liberal Constitution of South Africa created intense economic interdependence, social, cultural, and political interaction. Hammerstad goes on to state that such a community is characterised by a high level of mutual trust, confidence, and sympathy, not only between state leaders but also between ordinary members of society.

2.3   The use of force by police during public order policing

We can learn from international experience of trying to minimise or allow the use of force during protests. As a research, development and evaluation agency of the U.S Department the National Institute of Justice (NIJ) (2019), states that "the use of force by law enforcement officers becomes necessary and is permitted under specific circumstances, such as in self-defence or defence of another individual or group". The Texas Code of Criminal Procedure states that "in making an arrest, all reasonable means are permitted to be used to affect it. A general definition of "reasonable" concerning the use of force is any action that a reasonable and prudent person would believe to be necessary to complete the required task (Wittie, 2011:17). Article 38 of the 1992 Law governing the use of firearms by the Belgian police states that "police may use firearms where the crime or offence is being committed with the use of force, and if it can reasonably be assumed that those persons are in possession of firearms ready for use and that they will use these weapons against persons (https://www.policinglaw.info/country/belgium). The laws on police use of force worldwide states that police and other law enforcement officials may use force when it is necessary to do so for a legitimate law enforcement purpose (https://www.policinglaw.info/international-standards)

The International Association of Chiefs of Police has described the use of force as an "amount of effort required by police to compel compliance by an unwilling subject" (APCOF, 2017:16). International law on the use of force includes binding and non-binding treaties, general comments, principles, and guidelines (APCOF, 2017:17). These include the United Nations Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the United Nations Code of Conduct for Law Enforcement Officials, reports of the UN Special Rapporteurs; and the African Commission on Human and Peoples' Rights (ACHPR) Guidelines for the Policing of Assemblies.

According to APCOF (2017:13), ACHPR Guidelines provide that force may never be used except to stop an imminent threat. The use of force and firearms must be regulated under national laws in conformity with the ACHPR's General Comment No.3 on Article 4 of the African Charter, and other relevant regional and international human rights standards. The Office of the High Commissioner for Human Rights (UN Human Rights) has a Code of Conduct for Law Enforcement Officials adopted by General Assembly resolution 34/169 of 17 December 1979. Article 2 states that, in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. Further to this, article 3 indicates that law enforcement officials may use force

only when strictly necessary and to the extent required for the performance of their duty. Additionally, the African Union (AU) guidelines for policing of assemblies by law enforcement officials in Africa section 21; states that the use of force is an exceptional measure; that weapons that cannot be used safely and effectively must be prohibited; and that law enforcement officials must exercise particular caution when using crowd-control devices which are indiscriminate in their effect (APCOF, 2017:8).

In South Africa the Public Order Policing (POP) units of the SAPS are responsible for the maintenance of public order and policing of public protests, gatherings, and major events with a mandate determined by section 205(3) of the Constitution. The POP units were restructured in 2011, to use paramilitary units and tactical response teams for crowd control based on a French model of policing (Tait & Marks, 2011: 19). This approach ensures physical control and employs symbolic use of force to easily restrain and detain protesters, which are not democratic policing principles. This change in culture and attitude, according to Royeppen (2016:345), created a distance between communities and the police and influenced the anticipated frequent use of force by the police. Different South African laws have provisions for the use of force in accordance with the Constitution.

The South African Police Service Act, 1995, allows an official member on duty who is authorised, to use minimal force only when it is reasonable in the circumstances. The SAPS Standing Order No.262 regulates public order policing and crowd management, and illustrates a move from crowd control to crowd management (Royeppen, 2016: 345). The Standing Order states that the use of force must be avoided at all costs, and members deployed for an operation must demonstrate the highest degree of tolerance (Iwu & Iwu, 2015:544). The standing order further outlines procedure(s) to be followed by police if peaceful mitigating measures fail in a public gathering. The standing order also states the requirements to be followed by police if the use of force is unavoidable.

Further, as mandated by the Constitution, there are democratic instruments such as the Regulation of Gatherings Act (RGA) of 1993, a law that allows people the right to protest lawfully. Protest actions are legal when a notice to protest is approved by relevant local municipality authorities or Metro Police, as recognised in the Regulation of Gatherings Act 205 of 1993, while the right to protest is also recognised in section 17 of the Bill of Rights in the Constitution. According to Roberts *et al.* (2017: 64) the RGA was "introduced to reform how police handled crowd control" as protest actions were spiralling out of control during the state of Emergency of the 1980s. Section 9(2) of the Regulations of Gatherings Act (RGA) states that, the amount of force used to dispense a gathering may not be greater than what is necessary, and must be proportionate to the circumstances of the case. It is also

important to acknowledge that, the police represent the government. The police approach reflects the attitude of the government towards the grievances of the communities and organisations that are protesting (Royeppen, 2016: 350). The manner in which the Marikana labour protest was handled by all parties involved, especially the police might have demonstrated how the government perceives public gatherings specifically protest actions.

2.4   Criminal justice theory

According to criminal justice theory, the government has the power to regulate human behaviour and conduct through civil and criminal laws and the criminal justice system. The criminal justice system's purpose is to uphold law and order. This is also done through rehabilitation of offenders, punishment of the criminals, moral support of victims and to prevent criminal activities purpose. Bowd (2009:36) states in support of this that "the purpose of criminal law is to identify a set of rules that define the limits of socially acceptable behaviour and with suitable measured punishment, to prohibit behaviour that falls outside these limits".

The behaviour of police officers, specifically the use of force by the SAPS, will be examined through the lens of criminal justice theory. According to Van der Spuy (2018:48), the SAPS is the largest police organisation on the African continent, and "routinely utilises a very enlightened discourse which emulates 21-century "police speak" regarding community-based policing; human rights compliant policing, and intelligence-led policing". Criminal justice theory provides the lens for scrutinising the practices and how much they adhere to laid-down principles and standards (Bowd, 2009:2).

The theory reflects the application and administration of human rights to measure the basic democratic values of a country (Kinnes, 2009:1). Decolonisation of many countries, specifically in Africa, introduced democratic practices. Kinnes (2009:1) further states that in spite of this, the criminal justice systems remain fragile in African countries. African governments do not have the capacity (or will) to change the legacy of colonialism, as they inherited the colonial criminal justice systems that are continuing to serve the interest of the new political elites (Kinnes, 2009:2).

Warden (2007: 150) identifies three relevant sub-systems within criminal justice theory namely; sociological, psychological, and organisational. In support is Bernard *et al.* (2001:2) who also identify three categories or subsystems: organisation, underlying assumptions, and predictor variables. These subsystems are involved in law-making, law enforcement and policing, prosecution, judgement and sentencing, administration of penal sanctions, and

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correctional progress (Alemika, 2009:21). Sociological or predictor variables components focus on individual, situational, organisational and community aspects, while psychological or underlying assumptions focus is on consensus and conflict aspects. The organisational component's focus is on the different organisations within the criminal justice system such as the police, courts, and correctional services. These subsystems are involved in law-making, law enforcement and policing, prosecution, judgement and sentencing, administration of penal sanctions and correctional progress.

Sociological subsystem

Warden (2007:150) states that police behaviour is influenced by the social dynamics of police-citizen encounters. This was created by militarisation of the POP unit by adopting paramilitary training concepts based on France's public policing approach in 2011 (Tait & Marks, 2011: 19). In a country like South Africa transitioning from a brutal apartheid system, the legitimacy of the police is low as the police were instrumentalised by the Government to violate human rights. The French policing approach doesn't consider the historical scars of the country such as structural violence and the effects of this 'foreign' approach in the context of South Africa's democratic principle and values. Interestingly, Alemika (2009:25) states that in both the colonial and post-colonial eras, the legal institutions and law enforcement officials functioned as instruments to be used by rulers for the suppression of the citizens. Bowd (2009:39) states that many African criminal justice systems have their origins in the institutions of the colonialists and are certainly influenced by states that dominate the current world order. Unfortunately, even after independence, African governments did little to change from the legal systems they inherited; instead, they institutionalised them by abolishing customary court systems (Bowd, 2009:40). In support of this, Miller (1975:88) cited by Govender (2018:3) states that many police officials in South Africa are against the application of 'colonial policing'; nevertheless they are central to its success, because they are the ones who maintain law and order, acting as instruments of the political order.

Further to this, the public image of the police is negative due to corruption, including criminality or misconduct as the police have no empathy towards the people, which leads to poor service delivery. Policing marginal communities is also difficult due to of poor community-police relations. According to Stone & Howell (2019:86) residents of informal settlements experiences high levels of distrust in the police force, due to perceptions of their lack of responsiveness, as well as growing suspicions that some officers are corrupt and involved in criminal activities and syndicates. The paramilitary tactics continue to further the gap and mistrust specifically of the more marginalised communities, towards the police.

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Howell (2019: 2) states that "modern cities and the peripheries are extremely unequal, because they are stratified along economic; social and political lines, all of which serve to create dangerous urban landscapes in which mistrust, anger, and ironically, feelings of isolation pervade". The police likewise feel this difference and in ensuring public order, force is usually used as a policing style in informal areas compared to urban areas.

Psychological subsystem

The paramilitary approaches adopted by the SAPS have influenced the culture, attitude, and more importantly the thinking of the police towards protests or public gatherings. Also, the country experienced brutality towards human rights before democracy, this historical structural violence lingers, reinforcing the use of force. Unfortunately, the use of hard power is still part of police psychology. Furthermore, Warden (2007: 152) indicates that there are many underlying propositions (or suppositions) about behavioural differences related to the officer's race, gender, and educational background. The SAPS establishment under apartheid included SAP officers, special constables or auxiliary forces, and homeland police, who were all stakeholders in apartheid. All former police members of the South African Police (SAP) force officers were entitled to be part of South African Police Service (SAPS) according to the deal negotiated by the political parties during the transition to democracy. Scharf (2001:75) argues that as policing styles are highly context and history-specific, the old styles were joining the new democracy whether in unofficial practices, or thinking. The old styles included the systematic use of brutality; torture or extra-judicial killings, which characterised policing during the apartheid era (Newham, 2005:162). Additionally, Lamb (2018:12) states that SAPS merged personnel from the former riot unit and internal stability units from SAP and the various police forces from Bantustan areas within SA. These differences are presumed to manifest themselves in officers' behavioural patterns. Tait and Marks (2011:20) state that the paramilitary approach is more focused on state protection than in upholding the rights and civil liberties of the citizens.

Organisational subsystem

The on-going restructuring of the institutional structures of the police is one of the destabilising factors of the SAPS as an organisation. The organisation concept refers to the formal organisational structure, especially the system of incentives and disincentives and the content of application of rules and regulations (Warden, 2007: 155). In the post-apartheid era the police name was changed from the South African Police Force to the South African Police Service. The Internal Stability Division that was established in 1992 was renamed in

1994, the Public Order Police (POP). All members of this new unit (POP) were retrained and instructed to follow new policy guidelines (Tait & Marks, 2011:18). Their training involved minimal use of force, in line with international standards designed by the Belgian police. Another restructuring entailed the POP unit renamed to Crime Combating Unit (CCU). This unit's primary function was no longer crowd management, but crime control (Tait & Marks, 2011:19).

Additionally, layers of paramilitary police were introduced into public order management (Iwu & Iwu, 2015:547; Tait & Marks 2011: 11). One of the layers includes Tactical Response Units (TRU), but with members who lacked training and skills in policing of public order gatherings. In 2011, the CCU was renamed Public Order Police (POP) again. A French model was adopted in September 2011, being paramilitary in nature, ensuring physical control, and employing symbolic use of force (Tait & Marks, 2011: 19). Van der Spuy (2018: 45) indicates that an investigative journalist attached to the Mail and Guardian newspaper reported in 2011 that old-style training practices reminiscent of police training during apartheid were evident at a training college in Pretoria. This signalled a notorious return of the use of force a characteristic of the apartheid regime. Furthermore, the constant change of leadership in terms of police commissioners since 1994 created instability, confusion in terms of line of command, coordination and accountability, loss of capacity and skills, and general morale amongst the members. Additionally, the organisation was highly influenced by the hegemonic ANC, since the police appear to serve political party issues instead of the constitutional rights of the people.

Given the above, Van der Spuy (2018) identifies both internal and external factors influencing the slow or poor transformation of the public order policing specifically the SAPS after 1994. Internally, this included a moratorium on police recruitment in 1995, which disrupted the momentum for change that had been set in motion (Van der Spuy, 2018:42). Restructuring included paramilitary training, "talk of war on crime" and re-militarisation linked to community policing. As mentioned above, this resulted in misplaced skills and low morale. External factors include the increase in acts of public disorder (stretching the resources of the police), the choices in international cooperation (Belgium and French training approaches based on their international standards), the impact of state capture of SAPS structures, and political influence. Currently, the country is observing the Zondo Commission of Inquiry related to state capture and this will give an indication of how the organisation was compromised.

Guy Lamb identifies the relationship between the mass killings by police on duty, and police reform. After the 2012 Marikana shootings, the Farlam Commission of Inquiry made several recommendations for police restructuring. Police reform as one, was defined as changes that are made to the police to improve police work and the functioning of the police organisation for all government types, not only democracies (Lamb, 2018:6). The Farlam Commission of Inquiry was not the first inquiry established to investigate massive killings by police. The Goldstone Commission was the first inquiry post-1994 to investigate violence and brutality by police against mostly African communities during the 1980s. Remarkably, as a former senior police officer with the SAPS, Govender (2018:2) states that very little was done to develop and implement clear policies and processes to decolonise the police and bring about systematic change after 1994. The statements mentioned above lead one to ascertain that poor or no police reform was implemented in SA post-1994.

2.5   Securitisation and human security theory

The study will not restrict itself to a single theory, but would like to have the added advantage of benefitting from different but interrelated theories namely human security and securitisation .The use of force by police during public gatherings demonstrates a securitised environment with the state being the direct source of insecurity for the people. Securitisation and human security are emerging paradigms from critical approaches to security, aiming to understanding global weaknesses, whose supporters challenge the traditional idea of national security by arguing that the appropriate referent for security should be at the human rather than national level (IIDEA, 2006:6). The supporters of these two theories believe that there is a need for change from traditional security perspectives contemplating a different approach to security issues globally may bring a security revolution

2.5.1   Securitisation

Waever (1999: 334) as cited in Waever (2011:468) asks the crucial questions: "the securitisation approach points to the inherently political nature of any designation of security issues and thus it puts an ethical question at the feet of analyst; decision-makers: Why do you call this a security issue? What are the implications of doing this or not doing it?"
 According to traditional security approaches a state is understood as the referent object, with threats emanating from other states. In reality, in emerging democratic state, conflict emanates from within (e.g. regime change, intra-state conflict, civil wars or coup d'état), and the majority of security threats are non-military usually due to underdevelopment, resource scarcity, and overpopulation. The application or operationalisation of security issues at

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global or domestic levels is understood as securitisation. Royeppen (2016: 343) indicates that it is the subsequent state response to a perceived threat to order or securitise the threat, and further adds that the state's response to restore security is influenced by economic and political factors. In addition to these factors, other threats that a state can problematise emanate from other areas of national interest such as environmental, social, and territorial integrity. Securitisation is a good thing when it is preserving the survival of a certain referent object (of humans, animals, and environment). Also, securitisation is good when used to protect national interest and values of a state from internal and external threats. Ononoghu *et al.* (2018: 120) notes the pervasive logic that "everything a state or its agencies does is justified in the name of national security".

As Buzan (1999:259) argues, there are logical and perceptual problems when it comes to securitisation. Adding that "a security issue can be influenced by internal information; location; and perceptions, which can create a security threat". Hence, securitisation is a bad thing when it is taking away any freedoms identified in the human security concept adopted in the UNDP report of 1994 and by Hughes (2011:71). Further, "when it lacks the logic of necessity, narrowing of choice for the people and empowering the smaller elite influenced by economic and political interest" Waever (2011:469), ultimately benefitting the privileged.

Post-apartheid SA observed new elites with perceptions and realities, where, a criminal justice system is taken as a useful tool against opponents when other crises are unfolding (Kinnes, 2009: 5). According to Royeppen (2016:344), the ruling African National Congress (ANC) tried to create spaces to accommodate popular politics after 1994. Unfortunately theses spaces are sometimes monopolised by the ANC. The top-down approach of governance has threatened the core of the social organisation and social power as it fails to address the problems of the past in a realistic manner. These problems include economic inequality and historical structured violence that violates human rights. Waever (2011:244) alludes to the fact that the 'securitisation theory is closely linked to political processes' meaning that the security concerns are influenced by political perceptions. Waever (2011) further identifies that, the responsibility, ethics, transformation into modern societies, and post-western (traditional) security theories influence securitisation and de-securitisation of concerns.

2.5.2   Human security

Human security is defined as the absence of threats to various score human values, including the most basic human value, the physical safety of the individual (William, 2008:231). On the other hand, the Commission of Human Security (CHS) defines human

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security as "the protection of the vital core of all human lives in ways that enhance human freedoms and human fulfilment" (UNOCHA, 2009:6).

Buzan (1991) developed five focus sectors, moving away from the belief that security should only focus on states, but rather relate to all human and non-human collectives. The "new" security focuses (or foci) are also referred to as the deepeners by Buzan (1991) who is supported by Booth (1995) and Newman (2001). They include the "military, economic, political, societal and environmental. It is noted that the military and political sectors extend from the "old" traditional focus. According to an adage, we need to know where we are coming from to know where we are going hence the inclusion of military and political sectors. Each of the five sectors had its way of prioritising security issues accordingly. The "new" security focuses of Buzan (1991) have allowed for the human security concept to be developed. As opposed to the traditional state-centred approach, people are referent subjects hence the approach is people-centred. Lord Beveridge (cited in Mills & Sidiropoulos 2004: 4) agrees with the UNDP (1994) that identified "five fundamental human needs, expressed in terms of freedoms: from want (to have sufficient food), from disease (access to medical help and medicine), from squalor (to have a place of shelter), from ignorance (access to education), and from idleness (to have employment)". Beveridge states that if all of these freedoms were met, the dilemma of security would certainly fall away. It may be safe to suggest that Buzan's five sectors, i.e. the "new" security sectors are closely related to what human security entails.

According to Tsai, (2009:20) human security "supplements the traditional concept of security and represents the emergence of a new paradigm in the field". He further affirms that "it is a multi-level, wide-ranging security concept by including both the traditional and non-traditional elements of security. Human security is perceived as an attempt to reconstruct the interpretation of the roots of insecurity, underdevelopment, and poverty (Tsai, 2009:23). Additionally, Newman (2001:240) states that human security is a broad, multifaceted, and evolving conception of security. The UNDP (1994) cited by Isike *et al.* (2009: 106) states that threats to human security occur in at least seven distinct areas of human existence, namely the community, economic, environmental, food, health, personal, and political threats. The UNDP (1994) indicates the importance of the new security approach incorporating human and non-human elements, as it reflects the emerging security concerns emanating from sectors that old traditional security theories did not take into account.

2.6   Critique of the concept of human security

A criticism against "human security" emanating from critical theories that has emerged, Christie (2008) cited in Ryerson (2010:176), critiques the concept of human security, stating that, it is "remarkably malleable, and its elasticity and non-specificity have allowed policymakers to fit a range of programmes within its framework". According to Ryerson (2010:181), human security is said to perhaps have "limited usefulness in the immediate and generally localised, struggles to redress particular expressions of gendered violence". Hansen (2000:294) has criticised the absence of gender in the human security approach. Her critique also called for the inclusion of both visual and bodily acts as modes of articulating (in) security. Hudson (2005:157) supports this view in stating that despite the broad and inclusive nature of the human security approach, gender as a dimension tends to be overlooked.

Sceptics also point out that human security initially aimed to lend voice to subalterns on security issues through emancipation, but it might be used to further the interests of the elites (Ryerson, 2010:182). Human security discourse is likely to have the exact opposite effect of emancipatory aims and is further disempowering people in the global South (MacCormark, cited in Ryerson (2010:183). Krause and William (1997:46) as sited by Ryerson (2010:183) likewise argue that "placing the individual as the referent of security will simply reinforce the notion that it is the state that is responsible for individuals' security". Additionally, Ryerson (2010) also grounds human security in a philosophy of liberalism. This is ironic: due to the link human security has with liberalism, the concept has been embraced by the Northern policy community. Furthermore, through securitisation, human security has been used to justify the expansion of the roles of traditional security actors and technologies (Ryerson, 2010:185). Due to this, the concept is unlikely to support counter-hegemonic narratives or meaningful systemic change (Ryerson, 2010:185). In spite of these weaknesses, the concept of human security attempts to cover security issues that the traditional approaches could not.

2.7   Conclusion

Post-1994, SA adopted a constitution with talks of "freedoms" and "human rights". It is under these freedoms and human rights that the country observed a lack of human security during the Marikana industrial action. The country has many policy frameworks that guide law enforcement officers in the use of force during public gatherings that are based on

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international standards. The chapter explored theoretical issues that are useful in explaining this dichotomy. Criminal justice theory is useful to understand police behaviour, as well as the use of force by the police. The theory argues that police approaches reflect the attitude of the state towards the grievances of the communities and organisations that are protesting. Criminal justice theory provides the lens for scrutinising the practices and how much they adhere to laid-down principles and standards. The theory reflects the application and administration of human rights to measure the basic democratic values of a country. Three concepts within the criminal justice theory are identified namely; sociological, psychological, and organisational. These subsystems are involved in law-making, law enforcement and policing, prosecution, judgement and sentencing, administration of penal sanctions, and correctional progress. Unfortunately, even after independence African governments did little to change from the legal systems they inherited; instead they institutionalised them by abolishing customary court systems. This can be said to be the case even in post-apartheid and democratic South Africa which has modelled its public order policing on paramilitary approaches of some northern countries. The concept of human security places people as the referent and securitisation is a process of securing issues previously not a security referent. The two concepts are important counter narratives in the body of non-traditional security theory, unfortunately with deficiencies, as has been demonstrated in the chapter.

Chapter Three

THE USE OF FORCE BY THE POLICE DURING THE MARIKANA PROTEST: A HUMAN SECURITY ISSUE

3.1   Introduction

The chapter provides an assessment of the strategic policing framework that existed at the time of the Marikana labour protest, functions executed by the SAPS, and the civil-policing relations between the police and the protesting mine workers. It further outlines different perspectives about the use of force by police, as well as the contestation of the use of force at the Marikana labour strike.

The conflict at the Mine in August 2012 involved Lonmin workers who were on strike, Lonmin mine company management; two unions - the National Union of Mineworkers (NUM) and the Association of Mineworkers and Construction Union (AMCU) and the South African Police Service (SAPS). According to Alexandra *et al.* (2012:22) based on the surviving miners' accounts, on Thursday 9 August, the strike began after a meeting at Wonderkop Stadium in Marikana, where workers of Lonmin gathered to address the issue of wage dissatisfaction; a common proposal was for a basic salary of R12 500 per month for the miners. A committee was also elected during the meeting, and it reflected the ethnic diversity of the workforce (Alexandra *et al.* 2012:22). This committee was referred to by the striking workers as the leaders of the strike in the days leading to the massacre. The labour remuneration issues also included poor working and living conditions of miners and their families. Rock drill operators (RDO's) a category of employees who were part of the strike, said that they worked underground performing heavy manual work, under the threat of rockfall and machinery accidents (Alexandra *et al.* 2012: 16). Further, they could not "knock off" until they had reached their targets, which meant working 12 hours and sometimes more, receiving only between R4 000 and R5 000 per month. One widow from Nkaneng informal settlement indicated that her husband was an RDO and that the rocks would fall on his back, injuring him and that her husband would always come home exhausted (Alexandra *et al.* 2012: 17).

According to Bruce (2018:19), on the second day of the strike, Friday, 10 August, Lonmin management insisted that any "wage-related demands should go through NUM". This was becouse NUM was the mining union officially recognised by Lonmin at the Marikana mine in the months leading up to the massacre. While the AMCU allegedly had an approximate membership of 48 % during the strike, the union did not have official bargaining powers.

Adding to the above dynamics between these labour unions were tensions brought about by disgruntled NUM members joining and further recruiting for AMCU. In this context, the call by striking miners for negotiations was not adhered to by Lonmin as the majority of strikers then belonged to AMCU.

Consequently, the decision was taken by the strikers to attempt negotiations with their employer through their elected committee. The mining company, Lonmin, did not recognise the strike as it was illegal and had not been communicated with them through the labour unions (Nicolaides, 2014:40)**.** Further, Lonmin management also did not issue any commitments to enter into formal negotiations with the strikers elected committee. According to Mr Zikwana, president of NUM, the unprotected strike at Lonmin was characterised by high levels of intimidation, violence and exhibited a disturbing disregard for the rights and lives of non-strikers (Dlangamandla *et al*. 2013:117). The Lonmin management, as well as NUM, had strong affiliations with prominent members of the ANC such as Lonmin shareholder President Cyril Ramaphosa, leading to the suspicion of AMCU members, that the decision to refuse negotiations with the strikers was politically influenced. According to Bruce (2017:26) before the 16th of August 2012, Cyril Ramaphosa was a Lonmin non-executive director and together with NUM president Senzeni Zokwana, sent an e-mail to Minister of Police Nathi Mthethwa, and decisions that subsequently lead to the fatalities were made. Steinberg (2014: 175) refers to this manner of nexus as the "relationship between policing and political order".

3.2   Strategic policing framework

In a formal democracy like SA, national security according to Department of Defence (RSADOD, 2015:45) refers to "protection and defence of the republic, its sovereignty, territorial integrity, national interest and people following the constitution and the principles of international law regulating the use of force". According to Heymann (1995:9) and Steinberg (2014:173), SA has a strong democracy that is endorsed by the people; with a comprehensive framework for policing.

The Constitution of the Republic of South Africa of 1996 is the supreme law of the Republic and provides the foundation for the rule of law (RSADOD, 2015:54). The Constitution establishes a broad set of indisputable rights. These rights include, "inter alia, the right to equality before the law and equal protection and benefit of the law; to be treated with dignity and respect; to freedom and security of the person; to freedom of religion, belief, and opinion; to freedom of expression; to freedom of association; and to peacefully demonstrate" (RSADOD, 2015:54). The SAPS derives its powers and functions from section 205 of

the Constitution of the Republic of South Africa of 1996 and the SAPS Act of 1995 as well as the White Paper on Safety and Security 1998. This legislation and policy framework regulate the police service in terms of its core function, which is to prevent, investigate, and combat crime (https://www.gov.za/about-sa/police-and-defence). The White Paper also provides a clear legislative and administrative framework to facilitate synergy and alignment of policies on safety and security (https://www.saferspaces.org.za/).

The National Development Plan (NDP), adopted in 2012, complements the Constitution by emphasising the form of policing that is required in a democratic South Africa (https://www.gov.za/about-sa/police-and-defence). The NDP also offers the long-term perspective that the different sectors of society need to play to achieve the desired goals of the constitution. The NDP indicates "building safer communities" as a key objective and establishes a vision for the country by 2030. It states that "In 2030, people living in South Africa must feel safe at home, school, work, and to enjoy a community life free of fear; women to walk freely in the streets and children to play safely outside". Furthermore, it sets out the following aspiration, "The police service is well-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and properties without discrimination, protect the peaceful against violence, and respect the rights to equality and justice." Chapter 12 of the NDP details the need to build safer communities in South Africa through a holistic view of safety and security (https://www.gov.za/about-sa/police-and-defence). The White Paper on Safety and Security adopted by SA in 1998 emphasised the need for democratic control, police accountability and community participation in issues of safety and security specifically for the South African Police Service (SAPS) (www.policesecretariat.gov.za), and the NDP gives further expression to these ideas. The Minister of Police, Mr. Nathi Mthethwa, approved the Public Order Policing strategy to improve the management of public protests by the police on 30 August 2011. According to SAPS (2015:5), the strategy aims at "providing a framework and guidelines in respect of policing public protests and introducing stringent measures regarding the use of force, during public gatherings and protests". The strategy further aims to "enhance existing Public Order Policing (POP) Units through the provision of additional capacity, the re-establishment of previously-existing POP Units closed during various restructuring processes, and the establishment of new POP units to ensure equal distribution of human and physical resources". Moreover, "a dedicated investigating capacity, complemented by intelligence capacity, form part of these units" (SAPS, 2015:5). Additionally, these units "investigate all case dockets that emanate from unrest-related incidents or protest actions and all other cases that emanate from the National Joint Operational and Intelligence Structure (NATJOINTS) operations, such as major events and

elections"(SAPS, 2015:5).The strategy further states that, "all new entry-level police members undergo basic crowd management training as part of their basic training; primarily to instil an understanding of crowd management amongst all SAPS members". In managing oversight, "attention will be given to improving physical and technological equipment, such as improving video recording capability and equipment used during protests, as well as investing in the technical ability to record and store visual material recorded during and after protests" (SAPS, 2015:5).

Alongside the Regulation of Gatherings Act 205 of 1993 (RGA), the right to protest was also recognised in section 17 of the Bill of Rights in the Constitution. According to Roberts *et al.* (2017: 64), the RGA was "introduced to reform how police handled crowd control" as protest actions were spiralling out of control pre-democracy, and currently, any groupings planning to protest must gain authorisation by adhering to this Act. The SAPS Standing Order No. 262, issued by the consolidation Notice 13 of 2004, states that the use of force must be avoided at all costs and members deployed for an operation must display the highest degree of tolerance (Iwu & Iwu, 2015:544). It also provides guidelines to be followed by police if negotiations fail during a public gathering where people's lives are in danger. The Standing Order further outlined the requirements the police must adhere to if the use of force is unavoidable during a public gathering. Ironically, the massacre happened on the day when the National Council of Provinces unanimously passed the Criminal Procedure Act Amendment Bill, restraining the use of force by the police in situations like the one in Marikana. The Bill, intended to bring section 49 of the Act in line with the Constitution, provided guidelines on why and how force, and deadly force, should be used to carry out an arrest or deal with a violent crowd (www.sahrc.org.za).

3.2.1   Strategic poling framework intervention

In 2013, during the State of the Nation Address, President Jacob Zuma directed the Justice, Crime Prevention and Security (JCPS) cluster to put measures in place to ensure that any incidents of violent protest are acted upon, investigated, and the perpetrators prosecuted (www.saps.gov.za).

> "Our Bill of Rights guarantees that "everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions". We, therefore, call on our people to exercise their rights to protest in a peaceful and orderly manner. It is unacceptable when people's rights are violated by perpetrators of violent actions, such as actions that lead to injury and death of persons, damage to property and the destruction of valuable public infrastructure.

We are duty-bound to uphold, defend, and respect the Constitution as the supreme law of the Republic. We will spare no effort in doing so. For this reason, I have instructed the Justice, Crime Prevention, and Security Cluster to put measures in place, with immediate effect, to ensure that any incidents of violent protest are acted upon, investigated, and prosecuted.

Courts will be allocated to deal with such cases on a prioritised roll. The law must be enforced and it must be seen to be enforced - fairly, effectively, and expeditiously." (Zuma, 2013).

In response, the Department of Police ensured that dedicated capacity was put in place to manage the public disorder and integrates its efforts with other JCPS Cluster Departments to ensure that the President's requirements in this regard were met (SAPS, 2015:16). Furthermore, partnerships with other government departments were to become essential in addressing the root causes of public protest (i.e., the Department of Housing, Social Development, and Local Government). The capacitation of the Public Order Policing units was ensuredto be dealt with as one of the key focus areas over the Medium Term Strategic Framework (SAPS, 2015:16).

The SAPS Strategic Plan for 2014-2019 was officially signed on March 4, 2015. Notably, the plan was developed by the top management of the South African Police Service (SAPS) under the guidance of the Minister of Police Nathi Nhleko and National Commissioner of the SAPS General MV Phiyega. It also takes into account all the relevant policies, legislation, and other mandates applicable to SAPS. The Strategic Plan introduced a new national police instruction, which declared that public order policing (POP) units are to be in control of the policing of protest. Additionally, authority should not be transferred to the more militarised tactical units of the SAPS (Lamb, 2018:14). Instructions are the actual policy documents that oversee the change within the SAPS as an organisation and the conduct of the members while on duty. Lastly, the strategic plan reflected the strategic goals and objectives that the South African Police Service would endeavour to achieve over the period 2014-2019 (SAPS strategy, 2015: vii). Two of the four pillars of the strategy include professionalisation of the police service and demilitarisation of the police service. To operationalise the above, the newly adopted Public Order Policing Policy by Minister of Police Nathi Mthethwa; provided direction for a human rights-based approach to dealing with the public disorder (SAPS, 2015:16). The Public Order Policing Policy was reinforced by the introduction of the Dangerous Weapons Act, 2013 (Act No. 13 of 2013) that provided for certain prohibitions in respect of the possession to dangerous weapons.

3.3   The Marikana massacre

The killings on the 16th of August 2012 took place in two different areas, referred to as crime Scene 1 and Scene 2   and also known as *The Koppie* in the report of the Marikana Commission of Inquiry (see Map 2 on page x) which shows the sites of the massacre. A total of 17 people were killed by R5/R1 and 9mm guns by SAPS members in scene 2. The events of the days that led to the shootings of the 16th are important to review, as they place in context the violent nature of the police action. A decision was taken during the meeting of the 9th, that only rock drill operators (RDOs) would strike and March to the offices of Lonmin's local senior management. The 10th of August 2012 was the second day of the strike, and reports of intimidation of non-strikers had begun to unfold. NUM urged Lonmin and the SAPS to take steps to prevent the unlawful conduct of the strikers and to halt the numerous instances of intimidation and violence that were directed against non-strikers (Dlangamandla *et al.* 2013:117). According to Alexandra *et al.* (2012:23) on the 10th the workers' leaders presented the matter to Lonmin Company but were informed to channel their demands through NUM, but this was problematic since NUM was not in support of the strike. This led the strikers to conclude that all workers must participate, starting with the night shift of the same day. On the 11th of August 2012, the strikers marched while singing towards the offices on NUM; they were unarmed, without even traditional weapons (Alexandra *et al.* 2012:24). Unfortunately, before the strikers reached the offices, NUM leaders and other shop stewards began shooting at the strikers resulting in two fatalities (see Map 1 on page xi) showing the killings near the NUM office (Alexandra *et al.* 2012:24). In a contrasting account given by Mr Erica Gcilitshana a national office bearer of NUM and an employee of Lonmin Platinum, the strikers marched towards NUM offices armed with an assortment of dangerous weapons. He further states that upon their arrival in the vicinity of the NUM offices a confrontation ensued between the marchers and several NUM members during which some shots were fired at the strikers. Mr Gcilitshana concludes that there was no record of any fatalities during this incident (Dlangamandla *et al.* 2013: 135)

After the 11th of August 2012, strikers began gathering and carrying their traditional weapons to protect themselves; this changed the initial nature of the strike. Alexandra *et al.* (2010:27) state that "it was only at this point, after the shooting of their comrades, that workers gathered their traditional weapons". In conflict, it is the view of NUM that its opposition to the unprotected strike gave rise to anti-NUM sentiments among the strikers and violence towards its members, officials and the union itself (Dlangamandla *et al.* 2013: 117). After the 11th, a sangoma was hired by the strikers to assist them. According to a Lonmin security who was also spying on the protesters, alleged that strikers participated in *muthi* rituals, which could have changed the posture of strikers against SAPS, even though they   had high tech

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weaponry. The rituals included ceremony marks (*ugcabo*) and cleansing with *muthi* water (*intelezi*). Both these rituals were believed by the striking miners to bring about protection and power against any harm from perceived enemies. This allegation, in turn, may have influenced the police perception of the strikers as some could have believed that the muthi works and feared the strikers. As the number of deaths increased, Royeppen (2016: 344) states that "some scholars have argued that it was the violent response of the police that provoked protestors into responding with violence". Hence, the clashes on Sunday the 12th of August which led strikers to kill two Lonmin security guards, Hassan Fundi and Frans Mabelane, and two non-striking Lonmin employees (Kempem, 2015:56). According to surviving protesters, the violence was a response to the unexplained NUM shootings on the 11th of August (Alexander *et al.*, 2012:122).

According to Bruce (2018), Kempem (2015), and Alexander *et al.* (2012), on the 13th of August striking workers were marching towards the K3 shaft (Karee Mine) when mine security officials stopped them and persuaded them to return to the *Koppie* (see Map Three on page xxi which shows the railway line killings) . Major. General. (Maj. Gen.) Mpembe encountered the protesters at the gravel road next to the railway line between Karee Mine offices and the Marikana location eight kilometers from the Koppie marching with their traditional weapons (Dlangamandla *et al.* 2013:146). As the overall commander of the intervention plan Major General (Maj.Gen.) Mpembe of the SAPS demanded that miners should surrender all dangerous weapons in their possession, but they refused. Teargas canisters and stun grenade were discharged to the miners, and the miners retaliated by attacking the police officers. As a result, three police officers were hacked to death, three miners were shot dead, one police officer sustained serious stab wound injuries, and five miners were shot and sustained injuries. One striker was killed on the 14th, allegedly for being a spy, by strikers. According to Bruce (2018), Kempen (2015) and Alexandra *et al.* (2012) this day shaped both the strikers' and police's understanding of the strike moving forward. One can argue that the strikers were willing to face the possibility of death to win, while the police were willing to avenge the death of their own with more force.

Bruce (2018:5) depicts events that occurred at Crime Scene 1 when the SAPS launched the intervention on the afternoon of the 16th of August 2012. The SAPS intervention plan was ordered by Maj. Gen. Mpembe and approved by SAPS leaders at the national level. The plan involved rolling out barbed wire to encircle the *Koppie*. The aim was to disarm the miners by creating a single exit point. A group of strikers attacked the police vehicle Nyala11 with spears, knobkerries (short clubs), and pangas. The group attempted to damage the vehicle's tyres and windscreen in frustration at what they perceived as police blocking them

from moving towards Nkaneg settlement. According to Bruce (2018: 13) "the area where police were positioned overlapped with a path leading into the Nkaneg settlement and had been used by strikers throughout the day". Bruce further claims that not all strikers had knobkerries, spears or assegais, iron rods, pangas, knives, axes, and sjamboks. As a result of the attack on the Nyala, stun grenades and CS teargas was fired from behind the leading group of strikers by the Tactical Response Team (TRT) members (Bruce, 2018:12). One difference between Crime Scene 1 and Scene 2 was that the events at Scene 1 were captured by the media in photographs and video footage. The events included the launch of the police intervention plan when a barbed wire was rolled out to encircle the protesters; the protester attacked the police vehicle, Nyala 11 in retaliation which led to the shootings know as Scene 1 (Bruce, 2018: 12).The scenes captured suggest that the strikers were not attacking the police at the time of the shooting. Instead, the shooting pushed the strikers towards the police line (an area where police vehicles and personnel were positioned). In the Farlam commission report, it was established that the strikers reacted in frustration to what they understood as SAPS attempts to block them from moving towards Nkaneng, a community settlement (Bruce, 2018: 12).

The second shooting of live ammunition was fired by 47 members of the SAPS tactical response team (TRT) and one member of the public order policing (POP). This took place on 16 August 2012 at the large boulders surrounded by fairly thick bush (referred by the Marikana Commission as the small *Koppie* or Scene 2). The first shooting resulted in the death of sixteen (16) miners next to the cattle kraal (Scene 1). During the shooting, other miners ran to the *Koppie* for cover behind the rocks. The police followed the miners to the *Koppie* and fourteen miners (14) were shot and killed (scene 2). Fifty-nine (59) miners sustained gunshot injuries and were transported to various hospitals for medical treatment. Three (3) miners died at the hospital and one (1) died in the police vehicle at the detention centre, bringing the total number of deceased miners to thirty-four (34). According to Bruce (2018:14), it is alleged that the majority of the police that proceeded to Scene 2 believed that their colleagues were attacked at Scene 1 due to misleading information communicated by police radio. This belief does not justify the shootings at Scene 2 but gives some context to the SAPS actions that were eventually labelled as of self-defence.

Kempen (2015:2) argues that "the police members had to employ force to protect themselves from the charging group". Maj. Gen Mpembe stated that "the group charged at the police members, to defend themselves, and their colleagues, members of the police fired at the marchers with live ammunition" (Dlangamandla *et al*. 2013:148). He further adds that marchers robbed the police they had killed and injured, of two nine-millimeter pistols, an R5

assault rifle, a shotgun, and a hand-held radio. According to the Farlam Commission report, many of the POP members reported that, during the afternoon's events, they were shot at with firearms which had been hidden behind many of the strikers' blankets. Contrary to the police reports, Bruce (2018:12) states that the "strikers were not attacking the police at the time of both shootings, because the teargas and stun grenades were fired from behind the lead group of strikers". Bruce further adds that the "presence of unarmed strikers such as Mr. Ntsenyelo in this group is incompatible with the idea that they were intending to attack the police". Peter Alexandra supports Bruce by recounting that, workers were not on the offensive, but were even literally running for their lives, some were even shot on the back or in the back of the head while running (Alexandra *et al.* 20113:3). Unfortunately, the use of force was justified by the Police Commissioner, Rhea Phiyega, who stated that the "police at Marikana were forced to utilise maximum force to defend themselves" (Royeppen, 2016: 351). Contrary to events in Scene 1, there was no presence of media personnel during the fatal shootings of Scene 2. Interestingly, to date, police still proclaim self-defence from the alleged threat of violence from protesters during the findings of the Farlam Commission of Inquiry.

3.3.1 Operations executed by the SAPS that led to the massacre

It is essential to examine the role of the senior leadership of the SAPS because the decisions they took determined and influenced the outcome of the Lonmin labour strike. In particular, we need to examine the role of the senior national and provincial leaders (National Commissioner Phiyega and North West Provincial Commissioner Zukiswa Mbombo), and senior SAPS commanders (Maj. Gen Mpembe and Annandale) prior the 16th of August 2012.

On Monday 13 August 2012 morning, Maj. Gen. Mpembe of the SAPS was appointed as the overall commander of the intervention plan. According to Bruce (2017:23) Maj. Gen. Mpembe was deputy provincial commissioner for Operational Services in Gauteng before the appointment. Brig. Calitz, the North West provincial head of Operational Response Services (ORS), was appointed as an operational commander. Maj. Gen. Annandale, Head of Specialised Interventions in the national SAPS ORS division, was also sent to Marikana. His presence meant that the national level of the SAPS had a strong representation at Marikana (Bruce, 2017:25).

According to Newham (2015: 41), there were constitutional and legal imperatives that required Phiyega and her senior officers to act impartially. However the Farlam Commission

of Inquiry found that in the days running up to the massacre, 'Gen. Phiyega was complicit in engaging in discussions where political factors were inappropriately considered and discussed concerning policing the situation at Marikana' (Newham, 2015: 41). Newham further adds that Gen.Phiyega and Lt.-Gen. Zukiswa Mbombo discussed the possibility that Julius Malema, the leader of the then newly launched Economic Freedom Fighters (EFF), might arrive at Marikana during the strike and take credit for diffusing the situation (Newham, 2015: 41). Evidence presented by six experienced lawyers who were hired by the Commission to act as impartial evidence leaders to the Farlam Commission revealed that Mbombo discussed Phiyega's concerns with Lonmin mine management, saying that, "she did not want mining companies to be seen to be supporting AMCU"; "she did not want mining companies to undermine NUM"; "she was responding to what she perceived as pressure from Mr Cyril Ramaphosa, whom she considered to be politically influential"; she "wanted to end the violence before Mr Julius Malema arrived in Marikana and was given credit for defusing the situation" and last "she was concerned that Mr Malema supported nationalisation of the mines" (Newham, 2015:42).The discussions by the Commissioner of Police with senior SAPS personal were inconsistent with the country's Constitution which requires policing to be conducted in an objective and unbiased manner.These discussions above influenced strategic decisions around the how to handle the situation around the escalating conflict.

According to Maj. Gen. Mpembe, on the 13th of August 2012 the SAPS was formally briefed on the situation by mine management stating that the protesters were "faceless" and that the company did not know who they were (Dlangamandla *et al.* 2013:145). A permanent JOC was established on the same day at premises made available by Lonmin. Maj.Gen. Mpembe stated that as the overall commander, it was his duty to ensure that there was a proper plan to operationalise the provincial Commissioners' instructions, and ensure that various SAPS units deployed in the area were properly briefed (Dlangamandla *et al.* 2013:145).

Under the command of Maj. Gen. Mpembe, police fired tear gas and threw stun grenades at strikers; it should be noted that stun grenades sound like gunfire (Bruce, 2017:24). This incident resulted in the killing of two SAPS members, and one striker. In response to the killings, Colonel (Col.) Duncan Scott, a senior member of the STF and the chief SAPS planner at Marikana reporting to Major General (Maj.Gen.) Annandale was instructed to go to Marikana to assist with the planning and coordination of the operation on 13 August 2012. According to Bruce (2018:16), after the two SAPS members were killed by strikers on the 13th of August, the strike became the focus of intensified national political and media

attention; national police commanders, planners, and units were brought in, and Public Order Police (POP) commanders were marginalised from the command system.

The operational plan was to be implemented on the 14th of August 2012 and involved the STF, a specialised paramilitary unit responsible for dealing with medium and high-risk interventions (Bruce, 2017:24). The operation also included members of the National Intervention Unit (NIU) of the SAPS and K9 units (officers deployed with police dogs) and a few POP members. The initial plan was to encircle the miners, with an exit point to disarm the strikers. Due to identified operational challenges, it was amended. On the 13th of August 2012 Col. Scott further developed the plan, with six phases, and presented it to the SAPS top management (Kempem, 2015:56). The amended operational plan firstly aimed to engage in dialogue to seek peaceful disarmament, and secondly was aimed at the dispersal of the strikers. Third SAPS force levels would be escalated with reserves, in the event of increased threat levels against SAPS members and, fourth, the plan was to dissuade illegal activity or planned violence towards the SAPS. Fifth, by employing the encircling strategy, peaceful disarmament could be achieved. The strategy entailed encircling the strikers with barbed wire, to offer them an exit point. The last phase was to ensure the strikers hand over their weapons through the exit point (Kempem, 2015:56).

The decision to forcibly remove the miners at the *Koppie,* if they failed to voluntarily disperse, eventually contributed to the massacre on 16th August. This decision at the strategic level was taken without consulting the police commanders and did not consider the situation on the ground level at Marikana Newham (2015:42) indicates that the commission found, the decision to disarm and disperse the striking mineworkers was taken by senior SAPS leaders, who had attended an 'extraordinary session' of the SAPS National Management Forum the evening before 15 August 2012. Additionally, the evidence before the commission showed that senior operational commanders 'warned the Provincial Commissioner that proceeding to the tactical option that day would involve bloodshed'. As an alternative to revisiting the decision to disperse, disarm and arrest the striking mineworkers, top SAPS commanders, including the SAPS commissioner General Phiyega, accepted that bloodshed might follow (Newham,2015:42). More evidence before the commission of inquiry revealed that at least some senior members of the SAPS anticipated a bloody confrontation, evident by the fact that 4 000 additional rounds of R5 ammunition were ordered for delivery and that attempts were made to procure the attendance of four mortuary vehicles (which would have provided for the removal of sixteen corpses) (Newham, 2015:42).

Bruce (2018:14) states that any control and command were absent at Scene 2 on the 16th of August 2012. Maj Gen Mpembe stated that as the overall commander he could only give direction when it was sought either by the JOC or the operational commander and that neither sought direction (Dlangamandla *et al.* 2013:156). According to Bruce (2017:26), "none of the people who were to play critical roles in the command of the operation namely Mbombo, Mpembe, Annandale, and Scott had public order policing command experience or had recently attended public order training". All of them were unfamiliar with Standing Order (SO) 262, the SAPS standing order governing public order policing at that time (Bruce, 2017: 26). Bruce adds that both the Minister and commissioner at the time of the Marikana Massacre were not experienced police people but were tasked to run an organisation and understand a profession they did not know. According to Newham (2015: 41) at the time of the appointment of Riah Phiyega to the post of SAPS National Commissioner on 13 June 2012, much was made of her prior management experience. However, her lack of police experience and any proven ability to address the types of organisational challenges facing the SAPS was publicly raised as a concern at the time. Newham stated that "the appointment of SAPS leaders, who often had no experience in policing, was a key problem; their appointment seemed to be politically influenced by being ANC cadres" (Nicolson, 2017:2)

3.3.2 Civil-policing relations between the police and protesting mineworkers, which influenced the use of force by police

A mine-worker who was at the first meeting in Wonderkop on the 9th of August 2012 stated: "Yes, we demanded 12.5 but we only wanted to talk, we wanted management to negotiate that maybe at the end we will get around 8.9" (Alexander *et al.* 2012: 21).

South Africa is a democratic, but unfortunately unequal country; there is a large gap between the poor and wealthy. Many communities or specifically workers who feel marginalised often protest for their voices to be heard. Howell (2019:3) states that "development in short, has come at a hefty price, with economic development and the entrenchment of security via the police not being congruent between the rich and poorer". Roberts *et al.* (2017: 64) meanwhile state that "relatively little is known about South Africans' views on the policing of protest action and the factors that influence such attitudes". It can be generally said that the relationship between the public and police is hostile because of the distrust of the police by the people. The police must enforce law and order, and often they are perceived by the public to be siding with the other in this case the employer. According to Alexander *et al.* (2012:40), a mine worker who survived the Marikana shootings stated that "it seemed as

though the police did not belong to the government, but they belonged to the company". Howell (2019) adds that "it seems that some cities have come to a point where this relationship has become inverse, and many of those who now live in urban areas have become caught up in cycles of structural, interpersonal, and psychological forms of violence that sustain the very environments that generated these problems in the first instance". The police likely approached the 16th of August 2012 with feelings of resentment and spite towards the strikers as they killed two of their own, while, the strikers felt a need to arm themselves with traditional weapons as they perceived the police to be attacking them. Moreover, research by Newham & Faul, as cited by Bohler-Muller (2017: 83) supported by Lukhele (2015) and Steinberg (2014) noted that "it has been shown that the police in SA use paramilitary tactics that disregard human rights, much to the detriment of police-community relations". Unfortunately, it is possible that both the police and strikers had preconceived negative perceptions about each other and were prepared for open conflict.

3.4   The use of force

Amongst the most widely recognised forms of human rights violations are police brutality cases in South Africa. The United Nations Human Rights Committee (OHCHR) has expressed concern about the numbers of cases of violence, excessive use of force, and deaths at the hands of SAPS and Correctional Services officials (APCOF, 2017:3). Such violations include the killing of Andries Tatane in Ficksburg in 2011, the Marikana shootings in 2012 as well as several other cases of deaths during protests against the apartheid regime before 1994. Bohler-Muller *et al.* (2017:82) state that students, workers, and a range of other actors increasingly employ protest tactics in their attempts at achieving social, political, and economic change". Several years beyond the Marikana massacre, the growing number of police brutality cases and the use of excessive force by officers in protests are prevalent. The police have acknowledged that its regulatory framework needs to be strengthened (Masuku, 2005:15). Furthermore, it was evident that there are different perspectives on why police resort to violence when executing their duties specifically during public protests. In the body of theory explaining police violence, the following factors are relevant:

- The state is seen as the referent object of security

According to Neethling (2012), as cited by Van der Merwe (2013: 70) just a week before the Marikana massacre, the Minister of Police, Nathi Mthethwa spoke strongly about the need for police to use maximum force: "*Police must return fire with fire, we will use maximum force based on the law itself* " (Van der Merwe, 2013: 70). The statement by Minister Mthethwa

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could have perhaps encouraged the SAPS members to use force where they saw fit without any clear guidelines or under what circumstances. Van der Spuy (2018:44) identifies talk of war on crime by the SAPS leadership after the year 2000. The "war on crime" allowed the use of lethal force in the execution of police duties (Spuy, 2018:44). Further, Lukhele (2015:71) identifies that the police decisions to use force under the leadership of then, National commissioner of Police Riah Phiyega, prioritised political considerations, the good of the economy, and investor confidence. The government felt a need to contain yet another labour unrest that had become volatile in the country (Lukhele, 2015:71).

- Historical structural violence in South Africa

Galtung (1969) as cited by Van der Merwe (2013:68) refers to structural violence as the social structures which harm people by systematically limiting their access to basic needs (Galtung 1969). Van der Merwe (2013: 68) states that "physical violence (both at interpersonal and collective levels) seems to have become the norm in many social contexts, and these seem to mirror the underlying structural violence that has only marginally been ameliorated since the transition to SA democracy". Scharf (2001:75) adds that SA gained its liberation through negotiations, which meant all former police members of SAPF were entitled to be part of SAPS. As policing styles are highly context- and history-specific post-1994 SA observed old styles joining the new democratic styles either on unofficial practices or thinking (Scharf, 2001:75). The old styles included, "systematic use of brutality, torture, or extra-judicial killings characterised policing during the apartheid era" (Newham, 2005:162). Porta & Fillieule (2004:218) further identified two protest policing styles: the "tough" and "soft" style. During crime Scene 1 and 2 of the Marikana strike, the "tough" style was used by police. This was according to Porta & Fillieule (2004:218), brutal, repressive, diffused, illegal, reactive, confrontational and rigid, similar to the apartheid regime security approach. Buzan (1991:122) further adds that "threats also have a historical dimension, which adds further to the complexities of assessment; a threat which resonates with the historical experience of a state may well be amplified by the heightened sensitivity thus created." The government fears peoples' unrest, uprise, or protest because of the country's history with the people against the apartheid government.

The SA police unfortunately only knew force as a solution to any public demonstrations before 1994. The traces of this practice resonated during the Marikana protest. In support of the schoolers above, Porter & Reiter, as cited by Roberts *et al.* (2017:66), cite "the political context and culture of a country, including dominant norms about the role of the state and citizen rights". Bohler-Muller *et al.* (2017:82) indicate that "public attitudes towards protest activity are likely to be influenced by historical context." Their statement explains the violent interactions between SAPS and Lonmin strikers. SA has a comprehensive strategic legal

framework such as the National Crime Prevention Strategy of 1998, yet regardless of the above "an authoritarian populist regime may well be in store" (Steinberg, 2014:174). In this context, "the aggressive crowd control methods of the police have in many instances provoked protesters to respond with violence" (Bohler-Muller *et al.* 2017:83). As much as SA is a democratic state, the remains of the apartheid regime are refusing to die, as evident in the style of policing during the Marikana labour protest.

- Earning and maintenance of respect is forced

Extending the analysis of the use of force is Faull (2013:6), stating that many police officials believe the way to earn respect is through force, in the belief that torture and violence reduce crime and restore order. In a misconstrued manner, the police could have used force to demand respect from strikers who killed and injured their colleagues before the events of the 16th. This implies that the police believe in demanding rather than legitimately earning the respect by which they achieve their ends. Contributing to this "demand" for respect by the police is the public image of the police. According to research by Potgieter (2014), communities do not respect and regard police highly because they perceive them as impersonal while rendering service delivery. They are seen as corrupt and brutal towards people and lacking in knowledge and insight. Supporting Potgieter (2014) is Newham (2005:161), who says there is a "widespread problem of police misconduct, abuse of power and poor service at the local level."

- Force is used as a form of communication

Van der Merwe (2013) indicates a different side of the use of force by saying it is a form of communication: But, "understanding violence as a form of communication also, however, raises serious questions about what communication skills and techniques a democratic South Africa have inherited and how to make sense of this culture of dealing with conflict" (Van der Merwe, 2013:68). Cyril Ramaphosa, who was Lonmin's non-executive director, described the Marikana protests as "dastardly criminal" in an e-mail to colleague Albert Jamieson dated August 15, 2012. Ramaphosa, who became president in 2018, called for "concomitant action" to be taken against the mineworkers (Mkentane, 2019). Additionally, attorney Andries Nkome, who represents mine-workers who were injured and those arrested during the Massacre says "our view is that the police acted the way they did as a result of communication made by Ramaphosa" (Mkentane, 2019). As the strike escalated there was widespread attention from various groups politically, and business elites. Porter & Reiter as cited by Roberts *et al.* (2017:66), add that public opinion and interests expressed by various collective actors, including government, social movements, political parties, trade unions, interests' groups, civil society organisations and the media

ultimately influenced the shootings at scene 2. President Ramaphosa took full responsibility for his role before the events of the 16 August 2012, stating that "I was disturbed upon hearing the news that 10 innocent miners had been killed. My reaction was: this cannot be activism. This is a criminal act. Back then I felt that the situation should be dealt with by law. It was an inappropriate language. I cannot try to be smart about it" (Hartley, 2018:99).

- High level of uncertainty faced by law enforcement officers

McDonald (2003:119) suggests that the use of force occurs because of the high level of uncertainty law enforcement officers encounter while on duty and the assumptions they make about the situations they face. McDonald (2003) further states that "police are trained to quickly assess the situation and act to maintain and control exercising their right to use physical force". At Marikana the police appeared to approach Scene 2 with the perception that the strikers were attacking them and that they needed to restore order. Unfortunately, their perceptions were not completely correct. Porter & Reiter cited by Roberts *et al.* (2017:66) adds that "the police's perceptions of external reality, both at the individual officer level and collectively" informed the actions they executed at the small "*Koppie*". The alleged use of *muthi* also contributed to uncertainty, as police were anxious about the behaviour of the strikers due to this assumption.

- Modern democratic countries are violent

Von Holdt (2014:129) points out that many democracies in the contemporary world are violent. That violence is part of the formation of this modern state. Scholars such as Bohler-Muller *et al.* (2017:83) argue that the SA state's response to protest action is in many ways a reflection of the response to protest during the apartheid era, using paramilitary tactics which disregard human rights. Lukhele (2015:71) adds to what Bohler-Muller *et al.* (2017) is stating, by noting that, "President Jacob Zuma stepped up the militarisation of the SAPS by introducing military titles for SAPS officers." This changed the appearance and thinking towards policing by the SAPS officials in a democratic country.

The Farlam Commission of Inquiry was established soon after the massacre, to investigate what led the SAPS officials to open fire on striking Lonmin platinum mineworkers in Marikana. According to Lamb (2018:13), based on the submissions to the commission, the SAPS stated that the police that fired their guns against the striking mineworkers had done so in self-defence, as the mineworkers behaved in a threatening manner and appeared as though they intended to attack the police on the scene. The submissions further stated that the miners ignored the police instruction to lay down their weapons (which were mainly

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sticks, sjamboks, and spears). The statements in the submissions are in line with two perspectives above for the use of force, namely a high level of uncertainty faced by law enforcement officers; and the police using force for earning and maintaining respect.

The comprehensive framework for policing seemed not to be in sync with the practical implementation of the democratic principles which are outlined in the constitution. South Africa had a strategic policing framework that governs the use of force by police during public gatherings. Additionally, there are various instruments for policing public gatherings that guide how and when force may be used during a protest. According to Sithole (2017:10), "all policies such as the South African Police Act, 68 of 1995, the National Crime Prevention Strategy of 1996, the White Paper on Safety and Security of 1998, the Reservists Policy, etc. are based on the prescriptions of the Constitution of South Africa". Law enforcement officials must use all strategic guidelines for policing public gatherings to encourage compliance with legal and regulatory frameworks and intervening peacefully (APCOF, 2017:10). The National Development Plan (NDP) Chapter 12 details the need to build safer communities in South Africa through a holistic view of safety and security (https://www.gov.za/about-sa/police-and-defence), whereas, the Public Order Policing Strategy provides a direction of a human rights-based approach to dealing with the public disorder (SAP, 2015:16). The White Paper on Safety and Security of 1998 emphasised the need for democratic control, police accountability, and community participation in issues of safety and security specifically for the South African Police Service (SAPS) (www.policesecretariat.gov.za). The Criminal Procedures Act Amendment Bill curtails the use of force by the police in situations like the one in Marikana, and is intended to bring section 49 of the Act in line with the Constitution, providing guidelines on why and how force, and deadly force, should be used to carry out an arrest or deal with a violent crowd (www.sahrc.org.za.).

To protest in SA is a democratic right for all citizens, and this right to protest is recognised in section 17 of the Bill of Rights in the Constitution. Any groups aiming to protest must gain authorisation according to the Regulation of Gatherings Act 205 of 1993 (RGA), which regulates protest or gatherings in SA by providing the democratic rights to protest, while also allowing the police to uphold their mandate to maintain law and order constitutionally. The SAPS Standing Order No.262 states that the use of force must be avoided at all costs and members deployed for an operation must display the highest degree of tolerance (Iwu & Iwu, 2015:544). The standing order includes guidelines to be followed by police if negotiations fail during a public gathering where people's lives are in danger. The standing order further outlines the requirements the police must adhere to if the use of force is unavoidable during a public gathering. It can therefore be concluded that South Africa has various instruments

guided by the constitution to protect and guide both the police and the people during a public gathering. It is therefore important to understand the conditions and challenges that contributed to the use of excessive force by the police during the Marikana labour protests.

3.4.1 Challenges that contributed to the use of force during the Marikana protest

After 1994, the security services were restructured to align with the objectives of the democratic order. According to van der Spuy (2018), there are both internal and external factors that 'slowed' the reform of police training after 1996. As part of the political agreement of 1994, auxiliary forces had to be integrated into the SAPS. Internally, a moratorium on police recruitment was announced late in 1995 by SAPS, which disrupted the schedule changes that were about to be operationalised. The moratorium aimed to train the special constables (auxiliary forces) that were deployed in African townships during the 1980s, and it further stated that training colleges had to offer a 'remedial type' training of three months. These special constables (the auxiliaries) were mainly black Africans with low literacy levels, some with criminal records, and thuggish behaviour. This undermined the morale of trainers because they were not prepared or equipped to train a low calibre group. At the end of the moratorium after two years, many experienced trainers from the Basic Level Training Pilot Programme (BLTPP) had left for other positions in the organisation, negatively affecting the budget spent on the BLTPP (Spuy, 2018:41).

The first restructuring post-1994 involved all members of the new Public Order Policing (POP) unit being retrained and instructed to follow new policy guidelines (Tait & Marks, 2011:18). Their training stipulated the minimal use of force, in line with international standards. During the second restructuring in 2006, most of the POP members were deployed to stations where they were meant to guide local visible police in the policing of public order events; however, the required in-service training did not occur (Tait & Marks, 2011:18). In 2006, a third restructuring occurred with an already reduced number of 23 units. During this restructuring, the POP unit was renamed as the Crime Combating Unit (CCU). This unit's primary function was no longer crowd management, but crime control (Tait & Marks, 2011:19).

3.5 Reflections on the use of force by police during the Marikana protest

According to De Vos (2012), a legal scholar from the University of Cape Town, Marikana was avoidable, unconstitutional, and entirely predictable. De Vos further states that this was due to a "total misunderstanding of Constitutional obligations by senior politicians and police leaders". The South African Human Rights Commission (SAHRC) also condemns the violence that erupted in the Marikana Lonmin mine, in Rustenburg, that led to the tragic deaths of mine-workers. The SAHRC states that there were no grounds for the use of excessive force and that police should have considered other means such as water cannons or tear gas at their disposal to disperse the crowd and be able to arrest the situation.

During the 2019 Marikana commemoration, national spokesperson Pule Mabe of the ANC stated that SA should learn from the tragic events of 16 August 2012. Mabe further stated that "the South African industrial engagement framework must be robust and smart enough to keep our workers and employers talking, rather than being locked into a life and death struggle". Furthermore, "South Africa should never again find itself in a situation where workers themselves are on opposite ends of the barricades, while employers expect authorities to manage worker dissatisfaction".

In 2019, Chief Justice Mogoeng Mogoeng stated that the massacre should never have happened and that the incident served as an example of poor South African leadership. Mogoeng Mogoeng added that "Marikana is a typical example of how we handle South African problems, many tragic situations that affect the lives of people are unattended to because we choose not to attend to them". According to Nkanjeni (2019) a digital journalist for TimesLIVE, Mogoeng Mogoeng states that "we choose to be too careful not to offend; we choose to mind our business, even if it means others are to suffer as a result."

3.6 Current perspectives regarding the Marikana massacre

According to Bruce (2018:7), a small team of academics and researchers from the University of Johannesburg visited Marikana on the 20th of August 2012 and published an article thereafter utilising evidence that remained on Monday, four days after the massacre. The article highlighted that "terrified strikers scattered in all directions, with a large number heading for cover by the *koppie*; this is where the largest number of strikers died. No cameras recorded this slaughter, but the police markers show where corpses were removed with remnants of a pool of blood as evidence" (Bruce, 2018:7). An article by photojournalist Greg Marinovich drew attention to the fact that many of those killed at Marikana had not

been killed at the first scene, which was captured on TV footage, but at a second scene referred to as the small "*Koppie*" (Bruce, 2018:7).

The violence against the miners must be seen in the context of the structural violence that was the reality of their daily lives. Mkentane (2019) indicates that in 2019, "conditions were still the same seven years later, according to Marikana mineworkers". He further stated that "the socio-economic conditions that spurred Lonmin mineworkers to embark on a strike that led to the bloody Marikana massacre seven years ago, have not changed according to those affected by the incident, adding that some of the findings of the Marikana Commission of Inquiry were criticised for acquitting political leaders accused of having played a role in the events leading to the massacre". On the 16th of August 2019 during an interview with Bingwa (2019), Marikana Commission of Inquiry Chairperson Judge Ian Farlam ascertains that "government has not acted on all recommendations by Marikana Commission". Farlam further states that "the South African government adhered to some recommendations made by the commission after the massacre". Farlam adds that, "one main recommendation was that the police needed to be demilitarised and were currently uncertain about what has been done regarding that recommendation" (Bingwa, 2019). Additionally, other broad recommendations included "compensation for the injured and families, examining the procedures of Public Order Policing, and preparing valid cases for prosecution according to applicable laws".

Adding to undesired socio-economic conditions, Hamann (2019) stated that both the public and private sector let down Marikana victims. He further stated that "a judicial commission of inquiry was set up to investigate how it came about to put much of the blame on the police; whereas it was also critical of the mining company, Lonmin" (Hamann, 2019) .Specifically, the commission highlighted the "company's failure to live up to its promise to build 5500 houses for workers; by only providing three houses, this was a legally binding promise made under its 2006 Social and Labour Plan (SLP) before the Massacre in terms of the Mining Charter of 2002" (Hamann, 2019). This "created a situation, according to the commission, in which large numbers of Lonmin workers live in squalid informal settlements" (Hamann, 2019). Apart from the low wages, Hamann (2019) stated that "these settlements create an environment conducive to the creation of tension, labour unrest, and disunity among Lonmin employees or other harmful conduct". Such irresponsibility by Lonmin cannot be read outside of the context of labour conditions that gave rise to the massacre (Hamann, 2019).

Soon after the massacre, the SAHRC called for an investigation of the responsibilities of all those involved. They include municipalities, communities, Government departments, unions, and the mining house. The investigation it argued, should also address the underlying

factors that contributed to this tragedy, such as the living conditions of mine-workers and their families. The call for an investigation was prompted by increasing public pressure from media and Non-Governmental Organisations (NGOs) with concerns and complaints, which argued that the national police commissioner General Riah Phiyega and the police violated the right to life of the miners, as documented in the Bill of Rights (https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/162-sahrc-condemns-the-violence-in-marikana-calls-for-an-investigation).

According to the SAHRC seven years later, it was still not clear what happened before the police opened fire and fatally wounding numerous miners. The SAHRC understands that there were no grounds for excessive force to be used, further stating that "the police should have used other means at their disposal to disperse the crowd and to arrest the situation." During the 7th commemoration of Marikana in 2019, the SAHRC indicated that "police needed to be more sensitive to human rights when executing their duties", further stating that "it aimed to contribute to justice for the Lonmin miners, their families, and all those who continue to experience such violations of their Constitutional rights" (https://www.sahrc.org.za/home).

The African Policing Civilian Oversight Forum's (APCOF) Melanie Dugmore stated that what SA lacks was an action plan with clear activities, time frames and responsibilities during the seventh Marikana commemoration on 16 August 2019 (https://apcof.org/). Given the above, the APCOF has undertaken a range of activities aimed at strengthening police oversight and accountability in South Africa in 2019 (https://apcof.org/). According to APCOF (2019), "this includes efforts to support civilian oversight institutions, civil society, and the South African Police Service (SAPS) to promote the agenda of democratic and accountable police in South Africa". The current project has four objectives, namely: to support a rights-based approach to remand detention; to develop a model use of force law; to strengthen the Independent Police Investigative Directorate (IPID), and finally to promoting police and civil society dialogues on human rights, and policing that is compliant with continental and international obligations (https://apcof.org/). Chair of the portfolio committee on police Frans Beukman stated that "top leadership at the SAPS should promote a culture of human rights", adding that "we can't go with the approach of force at all cost that was not the right approach" (https://www.sahrc.org.za/).

In a report sent to President Jacob Zuma released on 25 June 2015, the Socio-economic Rights Institute (SERI) stated that the commission set to investigate the Marikana massacre didn't tackle the socio-economic impact of the killings on the affected communities, adding that these communities were troubled by the high unemployment rates, lack of proper

infrastructure, lack of participation in mining profits, and general health and safety issues. For the above reasons, SERI was seeking possible new solutions for these communities. (https://www.seri-sa.org/index.php/advocacy/expanding-political-space/marikana) The Institute for Security Studies (ISS) released new research into the Marikana industrial action in 2018, six years after the tragedy. One of the aspects of the report highlights how some police officers assumed that they were under fire from the miners, when in fact bullets were coming from their colleagues on the other side of The Koppie. The research findings of the report vindicate the miners. The Independent Police Investigative Directorate (IPID) completed its investigations into the killing of three (3) miners and two (2) policemen on 15 March 2017. IPID handed the docket with evidence to the National Prosecuting Authority (NPA). Six (6) suspects were arrested and three (3) were summonsed, and one (1) suspect was charged for both cases. The suspects face charges of murder, defeating the ends of justice, attempted murder, and contravention of section 6(2) of the Commissions Act and contravention of section 29(1) of the IPID Act (https://www.gcis.gov.za/). According to Nicolson (2017), eighty-seven (87) police officers involved in Marikana were let off by SAPS with no explanation. Adding to that, IPID he argues should be the unit holding cops accountable. Unfortunately, IPID does not have the funds or resources to deal efficiently with Marikana issues (Nicolson, 2017).

Joseph Mathunjwa, the AMCU leader expressed his dismay for the excessive force that was demonstrated on the day of the Marikana massacre during the 2019 commemoration. He further stated that "the show of power by the government was unnecessary, and the bloodshed was intentionally aimed at proving to capitalist that the state will protect its assets at all costs" (https://amcu.co.za/marikana-memorial-2/). He further said that "this day was confirmation of how the state was captured and the blood of comrades was proof of what the state can do to show its obedience to their masters". He further stated that "we must not be fooled into thinking that the Marikana massacre was a coincidence or a mere blunder by the state; it was deliberate and it served a very specific purpose."(https://amcu.co.za/marikana-memorial-2/). Fred Arendse, chief executive officer for Siyakhula Sonke Corporation's (SSC Group) a minerals and investment Company, states that "we thank AMCU leadership for the things they have done for the families of the mineworkers who were killed in 2012". He further stated that "seven years later, what was started by the comrades who have fallen will be continued because this fight will never stop until the real transformation is realised" (https://amcu.co.za/amcu-members-brave-scotching-sun-to-commemorate-marikana-massacre/).

NUM held a rally on the 17th of November 2019 in Marikana to regain the presence it lost in the area since the 2012 Massacre. One of the underlying reasons why NUM lost members since the massacre is an allegation that NUM had become too close to capitalist and Lonmin management, hence the NUM shootings before 16 August 2012. Interestingly, President Cyril Ramaphosa, NUM's founding leader who was a non-executive director of Lonmin when the Marikana massacre took place, become a rand billionaire and is currently the president of the Republic of South Africa (https://www.dailymaverick.co.za/article/2019-11-18).

On 16 August 2019, a Democratic Alliance (DA) representative during the commemoration stated that "It is shocking that mineworkers were killed for demanding a decent living wage at the hands of a democratic government", adding that "as the DA we have urged President Ramaphosa to declare this day the Marikana Memorial Day to honour the victims of the Marikana massacre" (http://amcu.co.za/). He concluded that "seven years later, there are no consequences and still no accountability from those who were involved in the Marikana massacre." Similarly, a local Economic Freedom Fighters (EFF) leader Pumza Pretorius stated that "as the EFF we are disappointed but not shocked by the fact that the government has not taken any responsibility for the tragedy that took place in 2012" (http://amcu.co.za/). Pretorius added that "we want to see justice for the Marikana victims" (http://amcu.co.za/).

On 16 August 2019, Government joined the nation in commemorating the tragic Marikana incidents which occurred seven years ago on 16 August 2012. According to the ANC statement; the tragic death of 34 miners and members of the South African Police Service is an incident that was deeply regrettable in our young democracy (https://www.anc1912.org.za/). Further stating that "as the country remembers those South Africans that lost their lives, let's also reflect on what is it that we should do to strengthen our democracy and prevent such incidences as we continue the journey to nurture our democracy and improve the lives of South Africans". Given the above, according to the Department of Communications and Information Systems (GCIS) the government initiated an Inter-Ministerial Committee (IMC) for the Special Presidential Package for Revitalisation of Distressed Mining Communities Project; chaired by the Minister in the Presidency. Further, planning, monitoring, and evaluation were set up in 2012 to oversee the implementation of socio-economic challenges in Mining communities. Adding that the IMC aims to (1) Achieve integrated and sustainable human settlements; (2) Improve socio-economic conditions in mine-affected communities; (3) Improve working conditions of mineworkers and the health of mining communities; and (4) Achieve decent living conditions for mine workers and meaningful contribution to the development trajectory of mining towns and labour sending areas (https://www.gcis.gov.za/).

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According to the RSA Presidency, to date in Marikana, two human settlement projects are being completed that will deliver over 500 units, built on land donated by Lonmin. Approximately 592 hectares of land have been acquired by municipalities supported by the Department of Human Settlements housing agency. Improved socioeconomic conditions, led by the Department of Trade Industry and Competition, Department of Co-operative Governance, Department of Traditional Affairs, Department Rural Development and Land Reform. These departments are facilitating both large and small scale industrial projects in the 15 mining towns. The Department of Health together with the Departments of Labour and Mineral Resources are working towards alignment of the industry's occupational health and safety policy and the required legislative changes to facilitate ease of compensation and other benefits towards an enhanced social protection system (http://www.thepresidency.gov.za/content/much-progress-made-revitalisation-distressed-mining-towns).

According to surviving mineworkers and their families, everyone blames NUM and Lonmin for the loss of their loved ones and some currently being in wheelchairs (Alexandra *et al.* 2012:149). The mineworkers state that NUM should have listened to worker's grievances instead of opening fire on them. As a labour union, they should have intervened with Lonmin and mediate the situation. The mineworkers also blame the employer for not caring enough to even listen or attempt to resolve the worker's problems. Instead, Lonmin management called the police to kill them. The surviving mineworkers stated that "on the 16th of August 2012, the police came with razor wire, hippos, helicopters, and horses; at first, we were not worried because we didn't wrong anyone; after they fired the first shot; the police used teargas to make us dizzy, while hippos ran over our brothers" (Alexandra *et al.* 2012:150). In the words of the survivor "they shot those that were running away, even from the sky, so how can police claim self-defence when they were attacking and killing our brothers?" (Alexandra *et al.* 2012:150). Allegedly, an Eastern Cape policeman told friends from Transkei after the Marikana shooting that there was "a signed paper allowing them to shoot" (Alexandra *et al.* 2012:34).

3.7 Conclusion

The year 2019 marked seven years since the deadly Marikana industrial action. The conflict at the mine in August 2012 involved among others, the striking Lonmin workers-strikers, Lonmin mine management, two unions (NUM and AMCU), and the SAPS. SA has a strong democracy that is endorsed by the people, with a comprehensive framework for policing. The SAPS derives its powers and functions from section 205 of the Constitution of the

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Republic of South Africa of 1996 and the SAPS Act of 1995. This legislation regulates the police service in terms of its core function, which is to prevent, investigate, and combat crime. Yet on 16 August 2012, the Marikana strike turned deadly as the total of the number of deceased miners came to thirty-four (34).

Although the police indicated that they had to employ force to protect themselves from the charging group there was no evidence to prove that the strikers had provoked the police.. None of the senior police officers who were to play critical roles had public order policing command experience or had recently attended public order neither training nor familiar with SO 262. It is evident from the Marikana industrial action, that there are different perspectives as to why police resort to violence when executing their duties specifically during public protests. The use of force can be attributed to the state being seen as the referent object (as opposed to the people); the country's historical structural violence; the use of force is seen as means of garnering respect from communities; the uncertainty of the police while on duty; and lastly, that democracies generally turn violent.

Criminal justice theory reflects the application and administration of human rights and measures the extent to which basic democratic values of a country are upheld by the criminal justice system. The occurrence of the Marikana massacre demonstrated an inadequate application and administration of human rights. The legitimacy of the South African legal system alongside the constitutional, democratic values came under scrutiny after the 16th of August 2012 by civil societies, NGOs, local and international media, academic and research institutions. At the time of the massacre, SA had a comprehensive legal framework guiding law enforcement and policies related to the policing of public gatherings.

One can argue that SA's historical structural violence, militarised security approach and poor leadership and command contributed to police inconsistency that eventually led to the Marikana massacre. While submissions to the Farlam Commission stated that police fired their guns in self-defence, other analysts argue that the Marikana tragedy was avoidable, unconstitutional, and entirely predictable. Further, it was due to a total misunderstanding of Constitutional obligations by senior politicians and police leaders. Even the police have acknowledged that its legal regulatory framework needs to be strengthened.

South Africa should never again find itself in a situation where workers themselves are on opposite ends of the guns, while employers expect the police to manage worker dissatisfaction. The South African industrial engagement framework must be vigorous and smart enough to keep workers and employers talking rather than being locked into a life and

death struggle. A judicial commission of inquiry was set up by the government to investigate what led the SAPS officials to open fire on striking Lonmin platinum mineworkers in Marikana Seven years later after the tragic event, no prosecutions of any police officials or political figureheads have transpired for the killings at either of the scenes One or Two. This shows the lack of dignity shown for the lives of the victims and their families and demonstrates a lack of human security in SA *even after* the Farlam Commission of Inquiry made *detailed* recommendations.

Chapter Four

FINDINGS AND RECOMMENDATIONS

4.1   Introduction

On the16th of August 2012, South Africa witnessed some of the challenges through the Marikana massacre, an indication that the human rights that are proclaimed in the Constitution seem not to translate into how the SAPS operate during policing of public gatherings. The democratically elected government's police service derives its mandate from Section 205 of the Constitution of the Republic of South Africa, 1996 (www.saps.gov.za). The country might have this constitutional mandate and policy frameworks such as the National Crime Prevention Strategy of 1998, but the events at Marikana suggested that an authoritarian populist regime may well emerge (Steinberg, 2014:174).

In this chapter, the findings of the study are summarised, the context being the policing of public gatherings, and the use of excessive force by the police specifically during the Lonmin labour strike. It also addresses the research questions formulated at the outset of the study. Based on these findings, recommendations on the management of the use of force by police to foster human security are made for the South African government. The South African Police Service Standing Order No.262 stipulates that the use of force must be avoided at all costs, and members deployed for an operation must display the highest degree of tolerance. Although the country embraced a democratic dispensation in 1994, little was done to develop and implement clear policies and processes to decolonise the police and bring about systematic change (Govender, 2018:3) Findings indicate that police were not fully reformed during the Marikana massacre. Instead, they resorted to using excessive force against the protesters, which led to the loss of lives. Additionally, the police have acknowledged that its legal regulatory framework needs to be strengthened (Masuku, 2005:15). According to Iwu & Iwu (2015: 546), the police admitted to parliament a year before the Marikana incident, that there was a need to review the standing order, which they felt did not assist them during protests. Additionally, Iwi & Iwu (2018) and Lamb (2018:13) state that after the Marikana massacre, the SAPS indicated in its 2012/13 Annual Report that its public order policing units required additional resources.

Responses to the research question

The main question asked in the study is: How did the use of force by the police affect human security, with specific reference to the Marikana massacre? The study identified seven major challenges that the SAPS law enforcement officials faced related to public order policing management.

4.2   Findings

4.2.1   The use of force

There are different perceptions as to why police resort to violence when executing their duties specifically during public protests. Six perspectives in the literature offer different viewpoints on how to understand the use of force by police:

•   ***The State as the referent object*** - The ruling political party is hegemonic with influence on many government departments, including the SAPS. Lukhele (2015:71) identifies that the police decisions to use force under the leadership of the National Commissioner of Police Riah Phiyega, prioritised political considerations, the good of the economy, and investor confidence, and further added that the government felt a need to contain another labour unrest which had become volatile in the country. Lukhele's statement supports the finding of the study; Marikana revealed the state using force against striking mineworkers and overlooking human rights to assure and support Lonmin management, investors and politicians aligned with the mine.

•   ***Historical structural violence –*** The brutally authoritarian apartheid government tactics still resonate even after the transition to a democratic country. Van der Merwe (2013: 68) states that "physical violence (both at interpersonal and collective levels) seems to have become the norm in many social contexts, and these seem to mirror the underlying structural violence that has only marginally been ameliorated since the transition to SA democracy." The legal framework might easily be reformed, but this is no guarantee that the habitual thinking and behaviour of officers will change as easily. More effort by the state is needed to be directed at transforming violent behaviour accumulated by police over the apartheid era.

•   ***Earning and maintenance of respect*** - The use of force was a form of demanding respect from the communities and the striking Lonmin miners. A Faull (2013:6) state that many police officials believe the way to earn respect is through force, suggesting that they believe torture and violence reduce crime and restore order. This implies that the police

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believe in demanding rather than legitimately earning respect. Unfortunately, this practice continues to post-1994. Similar to historical behaviour, respect was demanded by the police force officers prior to 1994 by casually using force. Before the shootings of 16 August, 2012 in Marikana, police instructed the strikers to surrender all dangerous weapons in their possession at no avail. Police might have perceived this defiance as strikers disrespecting police authority warranting for the use of force.

• **_Force as a form of communication_** - South Africa seems to have inherited communication skills and techniques that conflict with democratic values. Attorney Andries Nkome, who represents mineworkers who were injured and those arrested during the massacre, has stated that "their view was that the police acted the way they did as a result of communication made by Ramaphosa" (Mketane, 2019). Cyril Ramaphosa, then a non-executive director in Lonmin and the NUM president, Senzeni Zokwana, contacted the Minister of Police, Nathi Mthethwa, on the afternoon of Sunday, 12 August 2012. Their concerns about the situation were communicated to the senior SAPS leaders. Hence, decisions were made at the strategic level to curb the strike by using force. This was a form of communicating authority and gaining desired results faster, by overlooking human rights.

• **_High level of uncertainty faced by law enforcement officers_** - the unknown or uncertainty triggers anxiety. McDonald (2003:119) suggests that the use of force is due to the high level of uncertainty law enforcement officers' face on duty; hence they make assumptions about the situation. McDonald (2003:20) further states that the "police are trained to quickly assess the situation and act to maintain and control exercising their right to use physical force". Due to the killings of two police officers on 13 August 2012 by striking mineworkers, there was uncertainty among police offers regarding the behaviour of the strikers. The alleged use of _muthi_ contributed to police apprehensiveness because some officers might have believed that _muthi_ will provide protection and power to the strikers. For this reason, police were ready to use force.

• **_Modern democratic countries are violent_** - Von Holdt (2014:129) states that many democracies in the contemporary world are violent, that violence is part of the formation of these modern states. South Africa is one example of a modern democratic country which was formed through an armed struggle against the apartheid government. Similar to structural violence, reforming approaches into democratic values was overlooked by the state, although the legal framework regulates the use of force and is guided by the constitution which promoted human rights.

All five perspectives are relevant to the study. The State as the referent object and modern democratic countries being violent in the way they relate to citizens, apply South Africa as a

country. On the other hand, the respective aspects of historical structural violence, earning and maintain respect, force as a form of communication, and high level of uncertainty relate specifically to the conduct of the SAPS officers in general and during the Marikana Massacre.

4.2.2   Key problems facing the police related to protests

- **Inadequate Public Order Policing operations training**

During the Marikana labour protest, the Public Order Police unit was not used. Instead, tactical members that were not trained in policing public gatherings were deployed. Royeppen (2016:351) adds that "the whole operation was poorly coordinated and highly militarised, with police using both a special task force (trained to deal with a hostage and terrorist situations) and a tactical response". According to ACHPR guidelines, no military personal should be deployed in assemblies except under exceptional circumstances and they must be under the command of the police (APCOF, 2017:12). During the Marikana strike, this guide was not adhered to. Instead inexperienced and unqualified police leadership mishandled the Lonmin mine strike (Lukhele, 2015:74). Further to this, Bruce (2017:20) adds that the shootings at Scene 2 were not carried out under any centralised command and control, which led to the loss of life. The loss of life created human insecurity, an unfortunate result of poor training on how to manage public gatherings and crowd control. There is training for public order policing in the SAPS, but this needs to be consistent with democratic values. Further, demilitarised training must be prioritised by the senior leadership of the SAPS.

- **Lack of police accountability**.

There was a lack of internal controls governing police conduct. According to Nicolson (2017:22) "a credible police organisation will ensure that clear and transparent consequences follow on conduct and performance that go against the laws, regulations and ethical principles governing the profession". Such accountability was completely lacking in the SAPS both during and after the massacre. A decision to operationalise the intervention plan was taken by Lt. Gen Mbombo, and was endorsed by SAPS leadership at the national level, instead of tactical commanders on the ground (Kempen, 2015:58). Due to a lack of command and control on the ground by police, lines of accountability became blurred, and it became difficult to identify which unit and individuals were unnecessarily violent or rough with the protesters (Tait & Marks, 2011:19). Unfortunately, even though police were instrumental in the deaths of the Lonmin miners from the national level to the overall commanders on the ground, there was no clear accountability. According to Kempen

(2015:59), the main conclusion by the Farlam Commission of Inquiry regarding Scene 2, police provided no details of what happened concerning the majority of the deaths. Unfortunately, poor police accountability management is the reason why no prosecutions of the Marikana shootings have yet taken place. Royeppen (2016:351) states that "this problem can be attributed to a larger institutional problem within, where police can easily evade liability and responsibility for their violent actions". The lack of accountability measures within the SAPS contributed to the use of force during the Marikana strike as officers are aware that they can get away with misconduct. The lack command and control also contributed to poor accountability even at the management level.

- **Police legitimacy negatively impacted**

After SA transitioned from a brutal apartheid system in 1994, the legitimacy of the police was low as they were instrumentalised by the apartheid government to violate human rights. One can argue that South Africa's historical structural violence, militarised security approach, and poor leadership and command contributed to police inconsistency that eventually led to the use of violence. According to research by Potgieter (2014), communities do not respect and regard police highly, because they perceive them to be impersonal while rendering their service. They are seen as corrupt and brutal towards people and lacking in knowledge and insight. Additionally, according to Tait & Marks (2011: 21), the excessive use of force that leads to deaths, likely reinforces the alienation and mistrust that certain more marginalised sectors of the public feel towards the police. Two SAPS members and three strikers were killed on the 13th of August 2012 during a clash. This event, according to Bruce (2018:10), indicated that "there was a major shift in the perceptions of the strikers about what they were up against". Col. Scott, the SAPS chief planner at Marikana stated that:

> *This group of strikers had taken their willingness to achieve their goals to the level beyond what the police had previously experienced in a labour and service delivery unrest. This had moved from the destruction of property and harming of non-striking employees, to standing against the authority of state vested in the police, by attacking and murdering police officials when they tried to enforce the law.*

Interestingly, Maj. Gen. Mpembe stated, a day before the massacre, that violence was going to be used by police if their intervention plan was unsuccessful. Oversight organisations are critical for ensuring transparency and public legitimacy through ensuring that the police action following social norms and legal frameworks (Masuku, 2015:4). Supporting Potgieter (2014) is Newham (2005:161) who notes the "widespread problem of police misconduct,

abuse of power and poor service at the local level". Restoring public safety demands a renewed relationship between the police and the communities (Shearing, 1995: 32). Further, "the principles and processes outlined in the Gatherings Act are no longer consistently being adhered to by the police, which has negative consequences for the police legitimacy and support from the communities" (Tait & Marks, 2011:16). According to Govender (2018:3), the "police in colonised countries are generally more socially isolated from the public than in countries such as Great Britain; further leading to the notion that the police are the most hostile of all colonial agencies". Govender (2018) supports Von Holdt (2014), who identified that democratic states are mostly violent. Due to South Africa's apartheid history, police were perceived, mainly by black communities, as the enemy. Democracy did not automatically translate into amicable relations between police and communities. One can argue that SA's historical structural violence, militarised security approach, and poor leadership and command contributed to police inconsistency that eventually led to the use of violence in Marikana. There seemed to be a perception of them (police) against us (striking mineworkers) during the Marikana strike. This perception might have contributed to the massacre.

- **Restructuring**

The International Institute for Democracy and Electoral Assistance (IIDEA) (2006:6) states that rapid or ill-considered democratic transitions can also be a catalyst for violent conflicts. Such transitions rearrange political competition, alter structures and power relations, and may worsen social problems, rather than improving them (IDEA, 2006:6). The post-apartheid period had different restructuring settings, which focused on political and socio-economic change, with an emphasis on democratic values. The inconsistency of management and restructuring in the police leads to poor direction and irregular practices during operations. Van der Spuy (2018:43) refers to these changes as the multiple waves of restructuring. The Internal Stability Division that was established in 1992 with 42 riot units was renamed Public Order Police (POP) in 1994. Additionally, layers of paramilitary police were introduced into public order management (Iwu & Iwu, 2015:547; Tait & Marks, 2011: 19). These layers included Tactical Response Units (TRU) and Crime Combating Unit (CCU), with members who lacked training and skills in policing of public order gatherings. In 2011 the CCU was renamed back to Public Order Police (POP) again. A French model was adopted in September 2011, which is paramilitary, ensures physical control, and employs symbolic use of force, in contrast to democratic policing principles (Tait & Marks, 2011: 19). Unfortunately, in 2012, the Marikana strike occurred when members of TRU were deployed instead of the POP unit. The on-going restructuring confused the lines of command, coordination, and accountability, loss of capacity, and skills and general morale among members (Tait &

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Marks, 2011: 19). Besides restructuring, another challenge includes inconsistency of management at a strategic level. Sithole (2017:20) states that "there is a dire need to conduct intensified research on why all South African National Police Commissioners do not complete their terms of office, especially post-1994, as that may impact negatively on evaluating the successes and failures of any police model". The international cooperation in police training also added to the disorientation in focus. The training exchange with SAPS included police institutions such as from China, USA, UK, France, Belgium, Netherlands, and Hungary (Van der Spuy, 2018:46). Each country had its specific type or style of training approached to address specific country dynamics, some not in line with democratic values. These exchanges might have also influenced the SAPS mentions above. The lack of leadership, management and democratic operational models' inconsistency led to the Marikana massacre.

- **The massive increase in police personnel.**

An additional factor was the human resource increase that started in 2000. According to Van der Spuy (2018:43), the increase aimed "to adjust the demographic profile of larger organisation in pursuit of demographic representativeness, which overlooked effectiveness over quality". The 51 per cent growth in police personnel by 2012 resulted in strained administrative systems with delays in the processing of applications (i.e. vetting and security clearance) and corruption increased. This meant that the organisation had a huge number of recruits, who did not go through proper controls and standards of recruitment of selection and training. On the ground, the supervisory roles of frontline managers struggled to cope with the increase of responsibilities (Van der Spuy, 2018:43). Having a large number of officers that are not security cleared or properly trained did not fulfil the constitutional mandates of the SAPS.

- **The increase in public disorder**

As part of the external factors unfortunately the increase in public disorder also disrupted the intended police reform. After 1994, incidents of public disorder decreased dramatically (Van der Spuy, 2018:45). This was a period where the majority of South Africans were enjoying the newly found freedoms and the dust of the 1980s struggles against apartheid was also settling down. As of 2000, however, a new wave of service delivery protests became a routine. The protests also increased incidents of public disorder, which strained police resources. The police were neither equipped nor prepared for the new reality. The newly renamed SAPS also had to embrace old and new crime demands. As a democratic organisation, within the constitutional legal framework, the SAPS had to focus on other

crimes not related to public disorders such as domestic violence, environmental crimes, and cyber-crimes (Van der Spuy, 2018:45). After 1994, the societal focus shifted to the promises made by the elected government. As the SAPS appeared to be overwhelmed by the increasing number of demonstrations, the Marikana protest was one labour strike that exposed how police practically managed gatherings.

- **Political influence**

Another external factor included political influence over the SAPS. According to Van der Spuy, (2018:46), the inconsistency in leadership could be due to political influence and the influence of 'state capture' on the security apparatus .The constant 'change' in appointments of the top leadership supports Van der Spuy's reason, as, within the governing ANC, new tensions and divisions also referred to as 'camps', were introduced to the organisation (Van der Spuy, 2018:46). This may have negatively influenced the organisation's mandate to uphold law and order according to the constitution of SA. The police, as part of the security cluster, are used by politicians to achieve certain goals. The decisions to involve national SAPS units were also affected by political affiliations with ANC member and then a non-executive board member of Lonmin President Cyril Ramaphosa. He contacted the Minister of Police, Nathi Mthethwa, on the afternoon of Sunday, 12 August, regarding the situation at the mine. His concerns were communicated to the senior SAPS leaders, Phiyega and Mbombo, and later on, an intervention plan was adopted that led to the massacre.

4.3 Recommendations

The Farlam Commission of Inquiry outlined some broad recommendations after all the hearings were completed. These include compensation for the injured and families, examining the procedures of Public Order Policing (POP) and preparing valid cases for prosecution according to applicable laws (https://www.sahrc.org.za). In 2016, based on the findings by the Farlam Commission of Inquiry, specific interventions were proclaimed by Government (Lamb, 2018:14). The South African Treasury allocated additional budgetary resources of R598-million to the SAPS for public order policing. Finance minister Pravin Gordhan stated that the allocation would be used over the medium-term period of three years (Capazorio, 2016:1). The Minister of Police Nathi Nhleko, appointed the panel of experts recommended by the commission to advise the SAPS on how to avoid bloodshed during public policing. Minister Nhleko further indicated that training in public order policing for police cadets had been increased from two to three weeks in the same year. A new national police instruction had also been finalised and signed, declaring that, public order

policing units are to be in control of the policing of protest, and that authority should not be transferred to the more militarised tactical units of the SAPS (Lamb, 2018:14). However, as of 2019, no funds have been provided to enhance independent oversight of the SAPS and to investigate abuses allegedly perpetrated by SAPS members (Lamb, 2018: 14). The Independent Police Investigative Directorate (IPID), which is working with the National Prosecuting Authority (NPA) on investigating the Marikana killings, has said it doesn't have the funds or resources to deal efficiently with Marikana issues (Nicolson, 2017:2). Interestingly, allegations that emerged during the Marikana Commission of Inquiry continue against senior police officials accused of colluding with politicians to violently end the strike (Nicolson, 2017:2).It was also argued that "unless policing is reformed, another Marikana where 34 people were killed by cops in a day is a possibility" (Nicolson, 2017:2). Given the above, the following recommendations below are still valid after seven years of the incident.

4.3.1   Professional training on policing public gatherings and crowds

Although there has been much restructuring and renaming within the SAPS, a unit trained to manage public gatherings exists. Unfortunately, during the Marikana strike, the wrong unit was deployed one that was not trained in policing public gatherings. Whether this decision was an honest management oversight or a deliberate politically influenced one is yet to be established. The Marikana Commission has in its report documented the shortcomings in both generic and specialist policing skills (Van der Spuy, 2018: 47). Since the Marikana incident, there have been suggestions of the need for demilitarisation, professionalism, and modernisation of technology of the police organisation, both internally and externally. The SAPS strategy (2015:5) states that "all-new entry-level police members must undergo basic crowd management training as part of their basic training, primarily to instil an understanding of crowd management amongst all SAPS members." It further adds that "by focusing on the training to achieve a professional police organisation, a 'back to basics' approach was tabled by the police department as part of the "turn-around" strategy in the 2015-2019 Strategic Plan. According to then acting National police Commissioner Lt. Gen. Khomotso Phahlane, the approach "focuses on every police officer doing the basics of policing and on doing these basics properly and consistently" (Spuy, 2018: 47). According to the Farlam Commission report of 2015, one of the major recommendations related to public order policing was that South Africa should be significantly reformed (Lamb, 2018:14). The commission report further recommended that the use of automatic military assaults firearms by police should be discontinued in the policing of protest (Lamb, 2018:14). Additionally, SAPS personal should be trained according to the amended rules and procedures for public order policing based on

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international best practice (Lamb, 2018:14). During an interview with Bingwa (2019) Judge Farlam, Chairperson of the Marikana Commission of Inquiry stated that "the terrible thing about the days before the massacre is that police were using assault rifles for public order policing and that is unacceptable", and he further notes that "the good thing is that the police don't do that anymore", from the reports on public order policing, "assault rifles are not being used, that was one of our recommendations at the inquiry".

Farlam added that the main recommendation was that the police need to be demilitarised and "I am not sure what has been done about that recommendation" (Bingwa, 2019). The commission further recommended, "a need to establish an independent panel of local and international experts from both within and outside the SAPS to review public order policing while looking at examples of international best practices" (Royeppen, 2016:352). Police in public order policing need to be re-trained in crowd management, the same way as the POP unit of 1995. Training should be interactive and aim towards producing professional police officers who are familiar with relevant legislation and policy geared towards the democratic and peaceful policing of gatherings and protests (Tait & Marks, 2011:20). Police should also "engage with communities and stakeholders to influence disgruntled groups and peacefully resolve points of dissatisfaction" (APCOF, 2017:10). Additionally, Sithole (2017:20) states that the Commission recommended: "strengthening relationships with sister departments such as justice, health, social development, etc. to be able to deal decisively with unexpected and new forms of criminal activities and be able to mitigate the use of force by the SAPS members".

According to the SAHRC cited in APCOF (2017:3), there are five recommendations related to public policing matters that police needs to comply with. First, "the SAPS should provide effective and comprehensive training to police officers engaged in managing public gatherings". Second, "the police department should develop an improved training manual for training its POP component within six months and submit a copy to the SAHRC for oversight". Third, "more focused attention should be placed on specialised and focused training for the POP and equip POP members to comply with human rights norms". Fourth, "the SAPS should engage with communities where there are high levels of public protests". Last, "the Minister of Police and Minister of Cooperative Governance and Training Affairs should report every six months on the measures they have collectively put in place to address the phenomenon of increasing violent protest; including measures to ameliorate systemic failures".

4.3.2 Public Order Policy framework implementation review

After the Marikana industrial action, there seems to be a gap between the strategic policy framework and the practical implantation of policies. Moreover, the necessary demilitarised public order policing training, police officers on the ground also requires consistent leadership and management. According to Sithole (2017:10) "all policies such as the South African Police Act, 68 of 1995, the National Crime Prevention Strategy of 1996, the White Paper on Safety and Security of 1998, the Reservists Policy, etc. are all based on the prescriptions of the Constitution of South Africa". Law enforcement officials must use all strategic guidelines for policing public gatherings to encourage compliance with legal and regulatory frameworks and intervening peacefully (APCOF, 2017:10). The Minister of Police Nathi Mthethwa approved the public order policing policy to improve the management of public protests by the Police on 30 August 2011. The policy aims to provide a framework and guidelines in respect of policing public protests and introducing stringent measures regarding the use of force, during public gatherings and protests (www.saps.gov.za). Further, the policy aims to enhance existing Public Order Policing (POP) Units through the provision of additional capacity, the re-establishment of previously-existing POP Units closed during various restructuring processes, and the establishment of new POP units to ensure equal distribution of human and physical resources (www.saps.gov.za). Ironically the policy was approved exactly eleven months before the Marikana labour strike. According to SAPS (2015:16), a dedicated investigating capacity, complemented by intelligence, form part of these units. They will investigate all case dockets that emanate from unrest-related incidents or protest actions and all other cases that emanate from the National Joint Operational and Intelligence Structure (NATJOINTS) operations, such as major events and elections (SAPS strategy, 2015:16). The new Public Order Policing Policy provides direction for a human rights-based approach to dealing with public disorder. It is supported by the introduction of the Dangerous Weapons Act, 2013 (Act No. 13 of 2013) (SAPS, 2015:16). The Regulation of Gatherings Act 205 of 1993 (RGA)", the right to protest is also recognised in section 17 of the Bill of rights in the constitution. African United (AU) guidelines for information, communication, and facilitation mechanism states that law enforcement agencies must allow for and facilitate the involvement of third parties in dialogue and mediation with assembly organisers- even where the protest takes place outside of the RGA (APCOF, 2017:7).

4.3.3   Monitoring systems for accountability and oversight

The historical structural corruption and police culture influence the lack of prioritising improving monitoring systems of the SAPS. Perceptions are that the police are so used to misconduct, that even at a strategic level, accountability and oversight are not prioritised. Masuku (2015:3) agrees with the above by stating that it is "the institutionalised nature of police brutality and the lack of transparency", which continued post-1994; while "accountability systems that are particularly relevant in a democratic South Africa" are absent. Further to this, attention must be given to improving physical and technological equipment, such as improving video recording capability and equipment used during protests, as well as investing in the technical ability to record and store visual material recorded during and after protests (SAPS strategy, 2015:5). There also needs to be an integrated communication strategy developed by the Government Communication and Information System (APCOF, 2017:11).

An internal disciplinary system that can be implemented includes an early warning system (EWS). The EWS is used by police managers to provide them with a range of information on the activities of their members (Masuku, 2005:10). Additionally, the EWS tends to include information that reflects on the police officer's performance and conduct while performing his/her policing duties, such as shootings by a police official, alleged misconduct by the official, criminal charges against the official, etc. This system will allow the manager to intervene quicker to ensure appropriate disciplinary measures are taken. Another internal system recommended for internal monitoring is Stop Track technology. According to Masuku (2005:12), this will enable police commanders to track the conduct and performance of their members. Additionally, this technology identifies areas in the police organisation that require particular monitoring to track and audit the conduct of the members (Masuku, 2005:12). As a result, managers can spot problematic trends and misconduct much earlier. Secondly, commanders can evaluate other disciplinary systems within the organisation, such as the EWS. This technology has a wider role to play in the organisational performance and transformation of the SAPS.

Concerning external oversight, different civil society institutions such as NGOs and different structures must be involved to ensure accountability as they focus on various issues of policing. This inclusion will demonstrate democratic values. These can include community organisations such as community policing forums; media such as television and radio (both state and privately controlled); academic institutions and research organisations, and business associations such as Business Against Crime. The Independent Complaints

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Directorate (ICD), now known as IPID is a civilian-run state structure that is not part of the SAPS. IPID must be empowered to have more influence on policy development and have the authority to ensure discipline is enforced after investigations. To uphold the Bill of Rights is the role of the Human Rights Commission (HCR), another state structure. The HRC must play an indirect role in the oversight of complaints and information relating to problematic police conduct (Masuku, 2005:14). The relationships between external oversight systems and SAPS must be enhanced for a cooperatively fight against police misconduct.

According to AU guidelines for Policing of Assembly by Law Enforcement Officials in Africa, accountability mechanisms should be in place to provide an adequate, effective, and prompt remedy to a person who experiences human rights violations; to monitor and report on the preparation and execution of all law enforcement operations including tracking complaints and abuses (APCOF: 2017:8). Chief Justice Mogoeng Mogoeng raised questions during the 2019 massacre commemoration about how the massacre and its aftermath were handled. He asked, "have we made it our business to make sure that everybody who was directly or indirectly involved in that tragic event was held accountable properly, or have we deployed our wisdom to manage the truth in such a way as to shift blame to those who have very little to protect themselves with?" (Nkanjeni, 2019). The Farlam Commission recommended that the NPA investigate several incidents at Marikana to determine if there was a basis for prosecution. It also recommended that the NPA investigate murders, attempted murders, and assaults that occurred in the days leading up to the Massacre (Mkentane, 2019). Moreover, each police officer who discharged their firearms in Marikana, together with those who were in control and command, must face criminal prosecution, holds a dangerous risk (https://www.seri-sa.org/images/SAPS_Heads.pdf_).

4.4.   Alternative conception

South Africa embarked on initiatives to transform the SAP force to SAPS post-1994. The democratic constitution guiding the strategic policy framework was adopted. The government introduced public order policing to guide police in how to manage public gatherings considering human rights. Further to this, the RGA was introduced to allow people to gather lawfully, exercising their right to protest. Demilitarisation of the structures, ranks, and the culture of the previous force that guided and shaped the brutal practices without accountability was attempted. The tragedy of the Marikana industrial action demonstrates that these initiatives were not effective enough to reflect democratic values of the Constitution and that an alternative concept must be considered to inform the strategic policy framework.

According to Shearing (1995:30), the depoliticisation of the police concept is proposed with two principle modes. One principle of the strategy means that police must be directly responsive to the safety needs of ordinary people; by developing links directed by people rather than the government. The introduction of civilian staffed executive structures at a national and provincial level, called secretariats, regulated by ruling party politicians was pointing to this direction. The structures were established in 1995 to monitor police policy implementation to achieve transparency and accountability within the SAPS. Unfortunately, they were not fully embraced, hence they are currently ineffective. Additionally, the principle will encourage police to render the service of identifying safety risks, instead of responding to mitigate the risk. The aim is that police must work with communities instead of being perceived by people as agents of the government. The second principle involves separating the police from direct political control. This will ensure that they answer to the liberal democratic laws mandated by the constitution. Although the SAPS has embraced democratic policing as an organisation in both structure and functioning, they are nevertheless instrumental in maintaining law and order and to the success of the government of the day; which has the majority ruling political party.

A second proposed concept is devolution, also with two strategies. First, this involves shifting control over governance away from the State. Second, policing involves community policing initiatives that redefine the police as brokers of community resources that mobilise and coordinate (Shearing, 1995:32). The concept of community policing for poor people takes its lead from private policing, and not State policing (Shearing, 1995:34), Further adding that one strategy provides corporate communities with control of both the rowing and the directing of policing, while the other has sought to devolve to poor communities the rowing of policies but not it's directing. To achieve the devolution concept, reshaping of the legislative framework and institutional arrangement must be done that will govern policing in SA (Shearing, 1995:35). For SA to restore policing public gatherings safely, a renewed partnership between the police and the community is necessary.

4.4.1 Human security and securitisation

A third proposed concept to address the failures of which Marikana is emblematic is human security. Contrary to traditional views of security, human security is people-centric, where people are the referent object. According to Tsai (2009:20), human security "supplements the traditional concept of security and represents the emergence of a new paradigm in the field." Tsai (2009) further affirms that "it is a multi-level, wide-ranging security concept by including both the traditional and non-traditional elements of security". The application or

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operationalisation of security issues at global or domestic levels is understood as securitisation. According to Royeppen (2016: 343) when a state responds to a perceived threat, by doing so the threat is securitised .further adding that the state's response to restore security is influenced by economic and political factors. In addition to these factors, other threats that a state can problematise emanate from other areas of national interest such as environmental, social, and that of territorial integrity. Wendt (1994:387) as sited by Tsai (2009:24) states that a nation defines its national interest according to its condition, including the system of factors and internal factors. Securitisation is a good thing when it is preserving the survival of a certain referent object (such as of humans, animals, or environment). When people start to think of common interests, the definition of security will become "people-centred" (Tsai, 2009:23).

Human security has gradually developed through a series of initiatives and academic reports by multi-national, independent commissions of experts, academics, and intellectuals (Tsai, 2009:22). Human security is perceived as an attempt to reconstruct the interpretation of the roots of insecurity, underdevelopment, and poverty (Tsai, 2009:23). Moreover, Newman (2001:240) states that "human security is a broad, multifaceted, and evolving conception of security". The aim of the conception of human security is not to lessen the importance of the sovereign state, but to awaken recognition that the main objective of all political acts is the protection of human life (Bedeski, 2007) as cited by Tsai, 2009:25).

4.5   Conclusion

The Marikana community is a unique one because it is a grieving community as a result of the industrial action on the 16th of August 2012. South Africa can develop a comprehensive, flexible, and applicable policing model by incorporating some of the worldwide good policing practices. This is a daunting challenge for SAPS and the government but can be achieved with enough commitment and prioritisation. The AU guidelines for regulatory framework governing the policing of assembly states that law enforcement agencies should have in place, make available, and promote, in the public domain, enforceable standards of conduct for law enforcement officials (APCOF, 2017:7). A model that is developed for public order policing in SA should be determined through careful consideration of the relevant legal framework and local social context (Tait & Marks, 2011:20). Although constitutional democratic principles guided the strategic legal framework for policing public gatherings were adopted. The state might have overlooked existing social scars and prevailing past norms hindering implementing democratic policing of public gathering practically.

First, the government must acknowledge that it does need help from all stakeholders available at its disposal because incidents such as the Marikana labour protest are unnecessary and a tragedy in a country with democratic principles. The study identified seven major challenges that the SAPS face related to public order policing management, namely, inadequate public order policing operations training, lack of police accountability, negative police legitimacy, restructuring, the increase in police personnel, the increase of public disorder and the state capture and political influence. There needs to be a focus in the de-escalation of using force instead employ crisis intervention methods such as water cannons, teargas etc. The inconsistency of management approaches and continuous restructuring leads to poor direction and irregular practices during operations.

A national introspection and police reform were positive outcomes from the Marikana tragedy. Recommendations included professional training on policing public gatherings and crowds in line with international standards. Training is necessary and must be directly in line with democratic values to ensure that officers have the tools and resources to know when to employ deadly force reasonably and when necessary. Monitoring systems for accountability and oversight were also outlined. Internal oversight includes EWS and the Stop Track technology. External oversight includes different civil society institutions such as NGOs, and different structures such as IPID, APCOF, and SAHRC etc., that must be involved to ensure accountability as they focus on a variety of issues of policing. Oversight measures recommended that police officers crossing the line of reasonable and necessary must be disciplined, terminated or prosecuted. An alternative conception such as depoliticisation of the police was proposed. The focus of depoliticisation is that police must be directly responsive to the safety needs of ordinary people, by developing links directed by people rather than the government. The aim is for police to work with communities instead of being perceived by people as agents of the government.

Police need to have a strong understanding of the responsibilities and challenges they encounter while policing protests, which may have a huge impact in determining whether force may be utilised. The challenges identified must be prioritised by the state to equip the police to prevent unreasonable excessive use of force. Police leadership at the strategic level must also understand the negative impact continuous restructuring has on the organisation and the official's behaviour and psychology. Consistency with the constitutional values, training, crisis intervention methods, oversight mechanism must be adopted to prevent another tragic industrial action.

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