



UNIVERSITY of the  
WESTERN CAPE



DULLAH OMAR INSTITUTE  
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

# Not my Riot

SAPS, local government and crowd management

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ACJR Webinar 1 August 2024

# Constitution 1996

- *Section 205(3)*

*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.*

- *Section 206 (7)*

*National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.*

# Chapter 12 of the SAPS Act 1995

- Inserted in 1998, sections 64 and 64A – 64Q
- *64E. Functions of municipal police service.—The functions of a municipal police service are—*
  - (a) traffic policing, subject to any legislation relating to road traffic;*
  - (b) the policing of municipal by-laws and regulations which are the responsibility of the municipality in question; and*
  - (c) the prevention of crime.*

# Comment on Chapter 12

- Chapter 12 has constrained the development and expansion of municipal police services among municipalities:
  - The requirement for a 24-hour police service significantly raises the costs associated with a municipal police service.
  - The requirement that municipal police officers be qualified traffic officers also increases costs.
  - The requirement that a municipality fund a municipal police service entirely from own funds has meant that only relatively wealthy municipalities are able to run municipal police services.

# National Standards

*64L. Powers and duties of National Commissioner in respect of municipal police service.—*

*(1) The National Commissioner **may determine national standards of policing for municipal police services** and, in addition to the training prescribed for traffic officers in terms of the Road Traffic Act, 1989 (Act No. 29 of 1989), determine national standards with regard to the training of members of municipal police services.*

*(2) (a) A draft of the national standards contemplated in subsection (1) shall be published in the Gazette, together with a notice inviting all interested persons to submit comments regarding the proposed national standards in writing, within a period stated in the notice and which shall not be less than 60 days from the date of publication.*

*(b) If the National Commissioner decides to amend the national standards as a result of comments received, it shall not be necessary to publish the national standards again before promulgation.*

# The draft Standards

- Refer to the Regulation of Gatherings Act as “the Act”, yet the empowering Act is the SAPS Act
- Also refers to the Safety at Sports and Recreational Events Act (SASREA)
- Creates concepts and imposes obligations not contained in legislation and for which the National Commissioner is not specifically empowered

# The draft Standards – first responders

- The definition of “first responder”
  - *“first responder” means the first official who responds to and arrives at the scene of a spontaneous gathering (such an official may be a member of the Service, a member or other law enforcement agency)*
- “first responders” not a term used in any of the referenced legislation
- Section 64L only empowers the National Commissioner to make standards for municipal police, not to legislate new powers and obligations, and certainly not for actors outside of municipal police. Standards are not the same as regulations.
- The draft Standard goes on to impose onerous obligations on *first responders* in part 10. This is beyond the powers of the National Commissioner.

# The draft Standards – responsible officers

- *“responsible officer” means a person designated as responsible officer or deputy responsible officer by the local authority and includes any person deemed to be a responsible officer as contemplated in section 2(4)(b) or 3(4) of the Act;*
- RGA definition refers to a person appointed in terms of s2(4)(a) of the RGA, which provides that a local authority must appoint a “suitable person”. This person need not be a municipal police officer; in that case the Executive Head is designated.
- The obligations in relation to pro-active conflict resolution placed on the Executive Head in part 5(2) are extensive.



# Non-metro protests?

Ventersburg

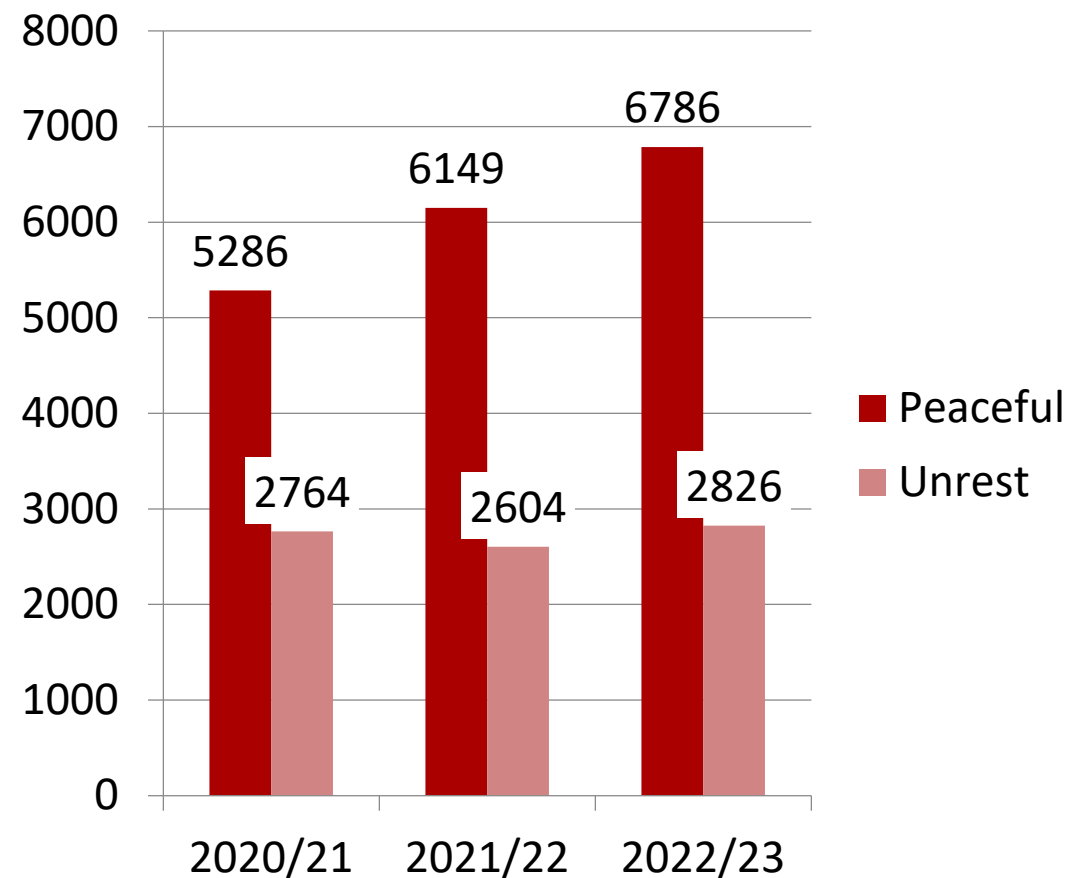


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# The draft Standards – threat assessment and Public Order Policing (POP) units

- In 8(3), the requirement to have POP on standby even for a level 1 threat means POP will always be thinly spread.
- Only 47 Provincial POP Units and four reserve units (in Pretoria, Durban, Cape Town and Mbombela)
- The human resource capability increased from 5 840 members, in 2021/22 to 7 361 members, in 2022/23
- 7 001 SAPS Act members and 360 PSA personnel, including the new recruit constables



# Overall Comment

- A need for a protocol to guide the relationship at local level among various players
- Crowd management should be led by the SAPS.
- However, a “Standard” for municipal police is not the correct legal instrument because:
  - A “Standard” cannot create new functions (with potential budgetary implications) nor impose new obligations on municipal police not provided for in primary legislation; the relevant delegated legislative authority to do so has not been accorded to the National Commissioner
  - A Standard for municipal police cannot bind important players such as traffic police or law enforcement which do not have the status of municipal police, who may have a role to play
  - Most local authorities do not have municipal police services (but rather Law Enforcement or Traffic Services) and thus a Standard cannot guide what happens in these local authorities, leaving most of the country without a clear protocol
  - The standard in its current format does not set standards of competence for individual officials; if such standards do exist, these should be cross-referenced.
  - A protocol such as this which requires the co-operation of many distinct parties must be negotiated and consulted upon, preferably at the level of local authority, as the parties which are relevant may vary from one local area to another, in their number, nature and capacity. To this end it is recommended that the regulations should encourage flexibility to allow for the diverse situations across the country and also to encourage cooperation at local level.

# Overall Recommendations

- Withdraw the draft Standard.
- Draft a new Standard which confines itself to issues which are appropriate to a Standard (such as training and equipment) and which bind only municipal police.
- Lobby for appropriate legal instruments to guide public order and crowd management include the following:
  - Regulations under section 10 of the Regulation of Gatherings Act (RGA), which the Minister responsible for policing is empowered to make;
  - Regulations under section 15 of the Safety at Sports and Recreational Events Act (SASREA), which the Minister responsible for sport is empowered to make;
  - A Memorandum of Understanding agreed to amongst the relevant parties in a local authority.
- Amendments to the SAPS Act be considered by Parliament to affirm the role of municipal police in public order and crowd management and to allow external funding from Treasury in this regard.