

Swinging batons and cowering heads

Policing strikes, marches and demonstrations

Municipalities often obstruct demonstrations and police often use undue force. **Ronald Wesso** examines this trend and asks why freedom of assembly is so often violated.

Oupa Mbhele, an official of the South African Transport and Allied Workers Union (Satawu), carries the scars of being shot four times at close range. The shooters were the police and Oupa's crime was to take part in protest action connected to a strike.

Large numbers of people in this country have been through the same thing. From the marchers in Sharpeville in 1960 to the 29 people killed by Ciskei security forces during a march in 1992. The latter incidents expressed the hatred and contempt that the apartheid regime directed towards black people. But Mbhele's case is different. It happened last year.

Mbhele is one of a growing number of people who during strikes, demonstrations and marches experience the violence of police forces that are part of the post-1994 democratic state. Who can forget what happened when security workers staged a protest march on 16 May 2006 in the centre of Cape Town? Police swinging batons at the heads of cowering black people and shooting all kinds of ammunition into crowds who were clearly running away. Screams and blood and tears were everywhere. Union officials were arrested and detained. And afterwards there was

wholesale condemnation by politicians and most media of the victims of police violence rather than the perpetrators.

Is this right? How can it be? There is no way that workers and protestors generally should have to face this kind of police violence. It is never right and in a constitutional democracy with a bill of rights that enshrines freedom of assembly it should be illegal.

TAKING POLICE VIOLENCE TO PARLIAMENT

In August last year the Congress of South African Trade Unions (Cosatu) took this matter to parliament. Tony Ehrenreich, Cosatu's Western Cape secretary, told parliament's Select Committee on Labour and Public Enterprises that "the conduct of the police is often brutal, harsh, and excessive and gives rise to increased frustration amongst the marchers." He felt that this was because of the lack of training and experience of the municipal police that the Cape Town City Council deploys during marches and protests.

Ehrenreich told members of parliament (MPs) that strikes and protests are becoming more frequent and emotive because of growing inequality, poverty, use of

scab labour and consequent rising levels of frustration among especially the lowest paid workers. If Ehrenreich is right, as he probably is, then it certainly gives great urgency to the need to find solutions to the problems of policing strikes and demonstrations.

Secretary of the South African Commercial, Catering and Allied Workers Union (Saccawu), C Booie, was just as critical as Ehrenreich if not more so. He referred to the strike at Shoprite/Checkers that was happening at the time and told MPs how the South African Police Service (SAPS) officers openly sided with management against the workers. Despite Saccawu making every effort to work with management and the police to avoid violence during the strike, management simply walked away from attempts to engage them and the police chased workers who were peacefully protesting in Khayelitsha. F Carelse, an official of the National Union of Metalworkers of South Africa (Numsa), added a number of similar stories from Numsa's experience in their sector.

The ANC MPs responded in their usual way to problems of the labour movement – a patronising pretence of neutrality that does a bad job of



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hiding haughty indifference. Mr D Botha from Limpopo felt that part of the problem was that today's marches had far less discipline than the big marches of the 1980s. Has Mr Botha forgotten the brutality that the police and army perpetrated on the "big marches of the 1980s"? Or does he just not know?

Ms N Ntwanambi of the Western Cape "felt that both the strikers and police acted equally inappropriately." She called for "better involvement, communication and engagement between all parties." The only action that Ms Ntwanambi attributes to the strikers is "confiscating Shoprite/Checkers shopping bags from shopper's hands". How is this equal to the horrific police brutality we have seen? Whatever the strikers did, they ended up beaten, shot, arrested and vilified. What happened to the police officers that acted inappropriately? Her recommendation for cooperation between the strikers, the police and the employers assume that these groups all want the same thing - more effective strikes and demonstrations. It is a ridiculous assumption.

Ehrenreich argued against the use of the apartheid era Public Violence Act against strikers and

demonstrators. He said that Cosatu felt "that the current laws on public violence were inappropriate to use in the event of any cases flowing out of protest action where there may have been instances of unlawful conduct. For instance, if someone breaks a car window, it must not be seen as public violence, but rather as malicious damage to property." Ehrenreich pointed out "that public violence was seen in the same light as during apartheid." Common offences are treated as crimes against the state, which leads to harsher sentences.

Ehrenreich stated that the Public Violence Act is unconstitutional in the manner in which it is applied and he appealed to the Committee to review it. None of the MPs responded to this point. The fact that people are violated under laws made by the apartheid parliament that conflict with our Constitution is not of interest to these lawmakers.

REGULATION OF GATHERINGS ACT

Cosatu's concerns are strongly echoed by the results of a Freedom of Expression Institute (FXI) study published in August last year.

The FXI looked at the implementation of the Regulation of Gatherings Act (RGA) since 2000. This Act legislates the procedures

that those wanting to organise a public gathering must follow. It also confers certain responsibilities and powers on local authorities to whom would-be public gatherers must apply for permission.

The study looks at certain unions, social movements and community based organisations in a number of municipalities and tracks how many gatherings these groups had organised, how many times they had received permission, how many times their gatherings were prohibited and what reasons, if any, local authorities put forward for these prohibitions. In the end the study enabled the asking of two questions: Is the RGA implemented as it should be? Does its implementation safeguard the constitutionally enshrined right to freedom of assembly? The answers are disturbing.

The study notes: "Ten cases involving the implementation of Section 3 and 4 of the RGA show a glaring violation of the provisions of the RGA and most importantly the constitutionally enshrined right to freedom of expression and assembly." If it was only the numbers of refusals then it would be bad enough. But more important is the pattern of these violations. As the study concludes: "The case studies show a disturbing pattern where organisations that stridently oppose the government's macro-economic strategy and denounce the continued impoverishment of the masses are finding themselves isolated and targeted by local municipalities and its law enforcement machinery."

The reasons for these results are quite logical. These organisations do not only denounce poverty and oppose the ANC government's economic policy. They target local governments specifically.

Municipalities end up in the position of having to decide whether to accommodate and even support protests directed against themselves. Is it a surprise that they use the RGA and other means to undermine and criminalise such protests? Cosatu experienced prohibitions of its gatherings in the Democratic Alliance (DA) led Cape Town municipality. In Johannesburg the Anti-Privatisation Forum suffered prohibitions. In Durban it was Abahlali base Mjondolo. In other words it depended on who the municipal government saw as its political enemies.

The FXI study amassed an impressive body of evidence that bears out this logic. There are stories of arbitrary power and contempt for people that compare with apartheid. (The FXI even doubts the constitutionality of the RGA, which was passed in 1993, *before* the Constitution came into force.)

In Middelburg, to mention the most extreme example, the municipal council prohibited a certain community based organisation from having meetings! Despite this violation of the law and the Constitution, there are no reports that this council has been disciplined.

This is the outcome of a political system conferring rights on people and power on state officials. In practice the state officials get to decide when and how people can access these rights. Under the RGA, for those that do not have money to pay lawyers, the right to freedom of assembly is arbitrated by traffic officials. And while progressive people are found almost everywhere, as a rule traffic cops are not in the vanguard of the revolution. The repression practiced under the RGA and similar laws are

not unintended or accidental. It is inherent in the way the state is set up and functions.

WHAT THEN IS THE PURPOSE OF THE CRIMINALISATION OF STRIKES AND PROTESTS?

Criminalisation means setting people up for beatings, shootings or imprisonment. In other words, it is the use of violence in defence of power and privilege. The police violence directed at strikers and protestors is part of a pattern of power relationships being challenged and defended. Better communication and information is always helpful, but if the basic power structure of unrecalable, unaccountable political and unelected state and judicial officials remains unchallenged, the threat of criminalisation, repression and brutalisation of protestors will continue. And the main victims will be the poor, blacks and women.

One of the ironies of the situation is that unions, social movements and community based organisations clearly do their damndest to stay within the law while state authorities at all levels ignore and break the law. For working class formations looking for a way forward, a close questioning of their own attitudes to the law offers a good starting point. Certainly the law can be reformed. One way that suggests itself is to challenge the assumption written into the law that we can only enjoy our right to freedom of assembly in the nearby presence of police officers. This is nonsense. The presence of police officers strutting their state and masculine power are one of the triggers for violence at protests. Why can't the law require that they be at least one kilometre away only to be called upon in emergencies? We will have

much safer demonstrations that way.

Another issue to look at is the tendency for union officials to say that criminal elements infiltrate strikes and marches to commit crimes. If this is true then it must be said but no one has forwarded any evidence. It is playing into the agenda of criminalising strikes and demonstrations and it is unlikely that it is true. There are many strikes and many marches. But the violence and damage to property was only associated with the most drawn out, most bitter and pressurised ones. Are we saying that tsotsis are analysing which strikes to infiltrate based on the intensity of polarisation, simply to smash car windows and steal tomatoes? There is a huge difference between frustrated workers breaking the law and career criminals using the workers' struggle. We are doing the working class a huge disservice if we call the former the latter.

Ultimately the labour and broad working class movement need a clear political orientation on the law. Are we committed to following the law even if it hurts the working class? Does the fight for working class emancipation include a struggle to overthrow the current capitalist-democratic legal and political system? Based on answers to these questions the movements can discuss whether it is necessary, and how to develop the capacity, to defy the law. Not doing so will leave the working class trapped in capitalist exploitation and poverty.

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