

Law enforcement brutality vs the law

By [Mthokozisi Maphumulo](#).

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Many countries around the world implemented various drastic measures to curb the spread of the Covid-19 virus. South Africa has effected such measures, including a national lockdown in order to save lives, despite the economic repercussions.



Police Minister Bheki Cele

Since the official commencement of the nation-wide lockdown on Thursday, 26 March 2020, there has been several arrests made for those breaking lockdown regulations. What has raised concerns, however, is the manner in which perpetrators have been treated by South African Police Service (Saps and South African National Defence Force (SANDF) members. There have been several reports and video clips trending on social media showing brutality against citizens.

Impact on people's lives

This is in direct contrast to the president's orders, when he reminded Saps and the SANDF that this is not the time of using force and of being cruel. The mandate was made clear that theirs is to 'preserve lives'; maintain compliance and ensure protection of the community members. The behavior displayed by the law enforcement members militates against the utterances of the president; various international, regional and national legal instruments and most particularly, in the South African context, the spirit of Ubuntu.

The national lockdown has greatly impacted upon peoples' lives, movement and people have been ordered to stay at home unless attending to one of the exclusions such as seeking medical help and buying essentials. Thus, although loitering and wondering on the streets is prohibited, people are still permitted to go out for specific reasons. This then places a duty on the law enforcement members to establish, from the concerned persons, the reason for being outside/on the street. If the reason provided is unjustifiable, the most extreme step would be to arrest that person. The least and more purpose-driven step would be to order the person to go home or, insofar as it is practically possible, accompany the person to his home and warn him, accordingly.

To use force, brutality and subject perpetrators to degrading and inhumane treatment by kicking them or firing rubbers bullets at them is extreme and may have dire legal ramifications for both the concerned member/s of the law enforcement and the State (relevant minister). Such conduct is against the Constitution of the Republic of South Africa, 1996; various legislation and the common law. Persons who are subjected to such cruelty and brutality may sue the state for damages –

the nature and extent of which will be dependent upon the prevailing peculiar circumstances of each specific case. In as much as people are encouraged to remain indoors during this period, the state is still susceptible to being sued where the circumstances dictate so. In fact, robust litigation against the State may be one of the 'vehicles' to use in order to discourage the brutality used against members of the public.

Previous experience

In recent years, we have seen that whenever the Saps use force and violence, the end tends to be sour. Few years ago, when Bheki Cele was the Saps commissioner, he introduced the "shoot to kill" approach, as a mechanism to deter crime. Instead, violence erupted as people adopted the same "shoot to kill" approach against the police service. The killings of members continued for an extended period until 2018/2019. A fortunate serendipity is that the same government official, Minister Bheki Cele, is in charge of the Saps.

As he has seen the regrettable ramifications of the violent approach, he should and, hopefully will, prioritise non-force/minimal force approach and put certain measures/checks in place to ensure compliance by the members of the Saps. Another example would be that of the Marikana incident whereby the police violence led to massive issues – with several mine workers losing their lives. Such incidents should serve as a reminder and a lesson for the government and law enforcement members that violence causes more harm than good. Consistent cruelty towards the members of the public may well invite a rebellion and the whole purpose of the lockdown will be undermined and defeated.

In certain communities around the country, there has been a total disregard of the lockdown regulations as people continue with their daily businesses as usual. This then requires the Saps and soldiers to intervene, in order to ensure compliance. In cases where non-violent approach does not bear the desired response, our law is flexible, to a certain degree, as it allows a minimal and reasonable force. In general, as a country, we are not known for abiding by the law (as evident in the global crime statistics), and, as such, it can be expected that there will be some people who will disobey the regulations put in place. Law enforcement members, who are also the subjects of the law, need to act accordingly, failing which there may be a serious uprising which is the last thing we need at this point.

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