



socio-economic rights institute
of south africa

A DOUBLE HARM: POLICE MISUSE OF FORCE AND BARRIERS TO NECESSARY HEALTH CARE SERVICES

**Responses to student protests at the University of the
Witwatersrand, September to November 2016**

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1. EXECUTIVE SUMMARY

During late 2016, in the midst of a new wave of student protests on the campuses of the University of the Witwatersrand, Johannesburg, university authorities requested police support to manage the increasingly volatile environment. This report documents some of the consequences, both direct and indirect, of the deployment of the police on campus. The report was prompted by concerns about indications of significant injuries from incidents involving apparently unjustified police use of force against protestors and others. It was also prompted by a further major concern, the lack of preparedness on the part of university, police and other services to be able to deal with the consequences of injuries and trauma.

The evidence on the use of force, subsequently gathered through interviews with directly affected individuals and other witnesses, combined with expert assessment of objective evidence and visual footage, confirmed the following violations of applicable human rights law:

- Unjustified use of force and the misuse of permissible weapons in response to peaceful assembly or against individuals who posed no threat to the police or others;
- Dispersal of peaceful protests with excessive force despite appeals to negotiate;
- The targeted or indiscriminate use of force against humanitarian workers and a place of safety; and
- Indiscriminate and unjustified use of force in the enforcement of the university-imposed curfew.

The injuries incurred from some of the instances of the misuse of force included: thermal burns to the face, loss of an eye, multiple rubber bullet injuries to single individuals, intentional close-range shooting with rubber bullets causing traumatic injuries and long-term health consequences from a fall while fleeing unlawful police shooting. At the same time these incidents were central to unlawful infringements of the right to peaceful assembly.

The report focuses additionally on the ‘double harm’ caused to the injured by the lack of preparedness on the part of the authorities in ensuring access to health care services with the capacity to respond to the level and type of injuries likely to arise from the large-scale deployment of force on campus. As a result, for the victims there were difficulties in both accessing and receiving essential medical attention, bridged only by the extensive efforts of volunteer first aiders and the personal commitment of staff at the existing health facility on campus. There was no plan put forward by either the police or the university to deal with the contingencies of campus securitisation and in a situation which the International Committee of the Red Cross (ICRC) would term as an example of “other emergencies”.

As emphasised in the Marikana Commission of Inquiry’s evidence, conclusions and recommendations, in “an operation where there is a high likelihood of the use of force, the plan should include the provision of adequate and speedy first aid to those who are injured”.¹ This report documents evidence of the failure to anticipate and plan accordingly, and with some of the resulting consequences, including:

¹ Marikana Commission of Inquiry, *Marikana Commission of Inquiry: Report on Matters of Public, National and International Concern Arising out the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province* (March 2015), p. 552 at para. F(1).

- Obstruction of attempts by volunteers and others to reach, support and treat wounded students;
- Formal health care workers and volunteer first-aiders exposed to tear gas and stun grenades, as well as at risk from the indiscriminate firing of rubber bullets while they were attending to the injured, violating bedrock principles of medical neutrality;
- The deliberate targeting by police of a place of safety and treatment for injured students and others affected by police dispersal operations;
- A lack of coordination in the evacuation of injured people from where injured to more appropriate centres of care;
- Obstruction or delays in the arrival of ambulances due to securitisation aspects, including the imposition of the curfew, and a lack of planning to ensure safe access and evacuation routes for ambulances; and
- Temporary closure of the Campus Health and Wellness Centre due to an escalation of violence in its vicinity with consequent damage to the clinic's windows, including from the indiscriminate firing of rubber bullets towards the clinic.

The report includes a range of recommendations, including accountability measures to ensure the non-repetition of the pattern of the various abuses documented; controls on the use of less lethal weapons; obligations to negotiate, de-escalate, and avoid the use of force; arbitrary detention; targeted use of force against humanitarian workers; indiscriminate and unjustified use of force to enforce university curfew measures, and obligations to ensure access to medical care in situations of conflict.

2. INTRODUCTION

“The full and free exercise of the right to freedom of peaceful assembly is possible only where an enabling and safe environment for the general public, including for civil society and human rights defenders, exists and where access to spaces for public participation is not excessively or unreasonably restricted.”²

“States have an obligation not only to refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment.”³

During September 2016, the University of the Witwatersrand requested that members of the Public Order Police (POP) unit of the South African Police Service (SAPS) provide assistance in managing a new wave of student protests. The student protest movement #FeesMustFall, which began in late 2015 and spread rapidly across the country, and the responses to it, had led to often intensely divided campuses at student, faculty and administration levels. In the background was a slow moving national government-level process intended to resolve the crisis over escalating higher-education costs in a country still profoundly affected by the legacies of its apartheid and colonial past. Intense debates occurred in this volatile mix about the role of campus-based security officers, private security companies and the SAPS in maintaining functioning university environments and balancing universities’ due diligence obligations towards students involved in the protests and those not wishing to participate. A particularly disturbing element in this complex environment was the indication that the government, at least at the level of the Ministry of State Security, had taken the view that the student protests posed a threat to national security.⁴

As the crisis intensified at the University of the Witwatersrand in September and October 2016, the police were invited onto its campuses to play a direct role in response to protest gatherings. The police also played a critical role in the imposition and enforcement of a university-wide curfew and various Public Order Police (POP) dispersal operations. Serious incidents occurred in which certain rights protected under South Africa’s Constitution and under international human rights law were threatened or infringed, including the right to peaceful assembly, the right to bodily integrity and the right of access to health care services.⁵ Some of these incidents are comprehensively documented in parts 4 and 5 of this report. They are

² United Nations Human Rights Council (UN HRC), *Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies* (4 February 2016), UN Doc A/HRC/31/66, para. 7, also available at: <http://www.refworld.org/docid/575135464.html>.

³ UN HRC, *Joint Report of the Special Rapporteurs*, para. 13.

⁴ During a panel discussion hosted by the Institute for Security Studies (ISS) in Pretoria on 14 November 2016, then Minister of State Security, David Mahlobo, stated that student protests pose a threat to national security and stated that the Department had a list of academics that they were monitoring on the basis that their teaching was “conditioning students”. See Staff Reporter, “State Security Minister Mahlobo under fire for ‘dangerous creep’”, *Business Day* (18 November 2016), available at: <https://www.businesslive.co.za/bd/national/2016-11-18-state-security-minister-mahlobo-under-fire-for-dangerous-creep/>.

⁵ See sections 12, 17 and 27 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

analysed in respect of the State's obligations under international and domestic human rights law and standards.⁶

This report is a qualitative study about the impact of the decision to deploy the SAPS in one particular university environment, the University of the Witwatersrand, during the #FeesMustFall protests that took place between September and November 2016. The study was prompted by concerns over evidence of serious injuries resulting from the SAPS' use of force against protestors and others. A further major concern related to the lack of preparedness on the part of the university authorities, the SAPS and other services to be able to deal with the consequences of injuries and trauma and, in particular, the need for health care services.

The study was conducted by a research team from backgrounds in medicine, social research and the documentation of human rights violations, and forensic injury analysis. The research was conducted through a series of in-depth interviews with more than 40 people who were directly involved in incidents related to the police response to protest action at the University of the Witwatersrand from September to November 2016. These interviews took place in 2016 and 2017. As people recounted their experiences, there was triangulation of particular events, which clustered to the point of saturation. The team also consulted a number of experts in law, policing, human rights and ballistics. Forensic medical examinations were furthermore conducted with full informed consent on more than ten injured individuals.

The aim of the study was to:

- Contribute to an increased understanding of the risks to bodily integrity from the deployment of police with the capacity to use force involving 'less lethal weapons' in response to protests;
- Document carefully, confidentially and with respect, the nature of the injuries sustained by protestors and bystanders as a result of the police's use of force and the circumstances in which they incurred;
- Increase understanding of the additional harm suffered by those directly affected by the use of force as a result of the lack of preparedness in emergency health care capacity at the time of the SAPS deployment; and
- Support preventive and accountability measures to ensure non-repetition.

The study also explores the failure to ensure adequate access to health care and supportive services for persons injured by the excessive use of force during the protests. In part 5 of this report, the authors explore the various barriers to access emergency and ordinary health care

⁶ South Africa has ratified several international instruments of relevance, including the International Covenant on Civil and Political Rights (1966) (ICCPR) and its accompanying Optional Protocol to the International Covenant on Civil and Political Rights (1966) (OP-ICCPR) and the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) (Second OP-ICCPR); the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) and its accompanying Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2009) (OP-ICESCR); and the African Charter on Human and Peoples' Rights (1981). Relevant international 'soft' law includes the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). See further under part 5 of this report considerations relating to the right to health and humanitarian law.

assistance created by the university's lack of preparedness for the inevitable injuries that would arise from police activity on campus, and by the actions of individual police officers.

3. LAW, THE USE OF FORCE AND THE RIGHT TO PEACEFUL ASSEMBLY

In February 2016, the United Nations Special Rapporteur on the right to freedom of peaceful assembly and of association and the United Nations Special Rapporteur on extrajudicial, summary and arbitrary executions presented their joint report on the proper management of assemblies to the United Nations Human Rights Council. The joint report comprehensively deals with the international law and legal standards related to the right to peaceful assembly and the use of force during the management of assemblies by building on existing international legal standards. With the support of an expert panel on policing, the Special Rapporteurs reported the results of their widespread consultations in 2015 with a range of global and local actors. The joint report was based on four regionally-based consultations with State representatives, civil society, national human rights institutions, regional human rights mechanisms, police representatives and a variety of other experts. The resulting joint report sets a high bar in the protection of the right to peaceful assembly, through the management of assemblies, the avoidance of the use of force wherever possible or the use of minimum force where force is necessary, and the recognition of the importance of the right to peaceful assembly to amplify the voices of the marginalised and for those who represent alternative narratives.⁷

This chapter explores the legal principles applicable to the use of force in a protest situation. The chapter relies primarily on international law. However, where domestic law is available and has been developed, it is set out. An opinion provided by counsel at the Johannesburg Bar is also deployed to explain the meaning and application of the available domestic law insofar as it applies to protest situations. These principles apply to all protest situations, including – but not limited to – the campus-based protests which took place at the University of the Witwatersrand in 2016. The application of these principles to the protest situation at the university will be explored in more detail in part 4 of this report.

3.1 The use of force and the right to life

The foundations in international human rights law and standards relating to the use of force and firearms remain the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (LEOs).⁸ They are still widely accepted as the authoritative statement of law.⁹ At their core are three international human rights principles that govern the use of force and firearms: legality, necessity and proportionality.

⁷ UN HRC, *Joint Report of the Special Rapporteurs*, paras. 1-4.

⁸ See the UN Code of Conduct for Law Enforcement Officials (1979) (adopted by UN General Assembly resolution 34/169 of 17 December 1979); and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). See also Amnesty International Dutch Section Police and Human Rights Programme, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (August 2015), pp. 17-20, and annex 1, pp. 191-194.

⁹ UN HRC, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns (1 April 2014), UN Doc. A/HRC/26/36, paras. 43-44.f

- *Legality* – The principle of legality requires that the use of force has to serve a lawful law enforcement objective.
- *Necessity* – The principle of necessity requires that LEOs may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
- *Proportionality* – The principle of proportionality or the prohibition of excessive harm requires that, whenever the lawful use of force and firearms is unavoidable, LEOs must exercise restraint and ensure that the degree of force that is employed is proportionate to the seriousness of the offence and the legitimate objective to be achieved. Proportionality serves to limit the force which might be used to achieve a specific legitimate objective and can even prohibit the use of any force if the harm inflicted by the use of force outweighs the benefits achieved.¹⁰

In addition to these, another often overlooked ‘principle’ guiding the use of force is the requirement of *prevention or precaution*. In terms of the principle of prevention or precaution, LEOs are required to take “all possible measures” to avoid situations where the decision is taken to use force, or, where such a decision is taken, LEOs are required to ensure that all possible steps to contain the damage as much as possible are put in place.¹¹

3.2 The use of force and public assemblies

In the context of public demonstrations, the following limitations on the use of force in instances of crowd management and dispersals are accepted as grounded in human rights principles or ‘best practice’:

- *Lawful and peaceful assembly* – LEOs may not use any force during an assembly that is lawful and peaceful.¹²
- *Lawful and peaceful assembly, but necessary reason to disperse* – In instances where an assembly is lawful and peaceful but the assembly must be dispersed for a legitimate and necessary reason, LEOs may only use minimum force. This means that LEOs may not use more force than is necessary to disperse the crowd.¹³
- *Presence of some protestors who are violent* – In instances where an assembly contains sporadic violence or unlawful activity by some of the protestors, this does not turn the protest as a whole into a non-peaceful assembly. In these instances, LEOs should use minimum force. This means that LEOs may not use more force than is necessary and are not authorised to use lethal force.¹⁴

¹⁰ UN HRC, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, paras. 55- 62, 65-73, and 85-100.

¹¹ UN HRC, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, paras. 63-64. The report refers to *McCann and Others v the United Kingdom*, European Court of Human Rights, App No 18984/91 (27 September 1995), where the lack of control and organisation of the operation had led to the violation of the right to life. This legal precedent was raised during the Marikana Commission of Inquiry on behalf of the South African Human Rights Commission. See the Written Submission of the South African Human Rights Commission regarding ‘Phase One’, Pleadings, Marikana Commission of Inquiry (29 October 2014), para. 3.1.8, available at: http://seri-sa.org/images/SAHRC_WrittenSubmissions.pdf.

¹² See Principle 12 of the UN Basic Principles on the Use of Force.

¹³ See Principle 13 of the UN Basic Principles on the Use of Force.

¹⁴ UN HRC, *Joint Report of the Special Rapporteurs*, para. 24.

- *Unlawful and violent (non-peaceful) assembly* – In these instances, LEOs should use minimum force and may only use firearms in accordance with Principle 9 of the UN Basic Principles on the Use of Force and Firearms. This means that LEOs may only use firearms in self-defence and in the defence of others against an imminent threat of death or serious injury.¹⁵
- *Prohibition of indiscriminate use of force* – International human rights law prohibits LEOs from indiscriminately firing into a crowd under any circumstances.¹⁶

Firearms should never be used by police to manage an assembly, unless it is strictly necessary under the circumstances.

The UN Basic Principles on the Use of Force and Firearms recognises that LEOs may use non-lethal incapacitating weapons (more appropriately referred to as ‘less-lethal’ weapons) in appropriate circumstances, provided that the use and deployment of these weapons are carefully controlled and evaluated, and adhere to the principles outlined above.¹⁷ Less-lethal weapons are weapons that are designed for the use of force without causing death (while acknowledging that there is always a risk that any weapon could cause death if it is used inappropriately or in the incorrect circumstances).¹⁸ The overall aim of these weapons is therefore to minimise “the risk of permanent injury or death while effectively maintaining public order”.¹⁹ However, the use of less-lethal weapons had been shown to result in “frequent injury, disability and even death”.²⁰ Although less-lethal weapons are therefore perceived by LEOs to be safe, these perceptions are incorrect as the use of these weapons can still carry the risk of serious injury or death. For this reason, a large number of international human rights organisations have condemned the use of these weapons and called for states to ban them altogether.²¹ Less-lethal weapons should be fully tested to eliminate any malfunctioning equipment, ensure that the weapons do not cause disproportionate harm, or are highly abusive. LEOs should also be carefully trained in the use of appropriate less lethal weapons and effective command and control should be exercised over their use and deployment to reduce the risk of harm.²²

¹⁵ See Principle 9 of the UN Basic Principles on the Use of Force.

¹⁶ UN HRC, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, para. 75, where the report refers to the Geneva Academy on International Humanitarian Law and Human Rights (Geneva Academy), *Facilitating Peaceful Protests*, Academy Briefing No. 5 (January 2014), p. 21.

¹⁷ See Principles 2 and 3 of the UN Basic Principles on the Use of Force.

¹⁸ See the definition of “non-lethal weapons” and “less-lethal weapons” in Amnesty International, *Use of Force*, p. 23.

¹⁹ Physicians for Human Rights (PHR) and International Civil Liberties Organizations (INCLO), *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons* (2014), pp. 13-14, available at: <http://www.inclo.net/issues/lethal-in-disguise.html>.

²⁰ PHR and INCLO, *Lethal in Disguise*, pp. 13-14.

²¹ PHR and INCLO, *Lethal in Disguise*, pp. 13-14.

²² UN HRC, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, paras. 101-107. Principles 2 and 3 of the UN Basic Principles on the Use of Force had earlier indicated this potential approach to diversifying the range of equipment for LEOs to reduce risk death or injury. See also Amnesty International, *Use of Force*, pp. 131-132; and, in the public order context, pp. 147-149 and 157-160. A long-term study conducted by the Physicians for Human Rights and the International Civil Liberties Organizations (INCLO) confirmed health risks which would need to be considered in the deployment of these less-lethal weapons, as well as the need for thorough training to reduce risks of injuries. See, in general, PHR and INCLO, *Lethal in Disguise*. See also part 4 of this report where the health consequences of the misuse of stun grenades and rubber bullets are discussed in more detail.

Some less-lethal weapons permitted to be used by the South African Police Service (SAPS) include stun grenades, shotguns and approved rubber bullet rounds, water cannons and CS teargas grenades.²³ SAPS officers are also authorised to wear and carry protective equipment to reduce risks to their own safety when using these weapons.

3.3 The management of assemblies

In the joint report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary and arbitrary executions on the management of assemblies, the Special Rapporteurs emphasised the positive obligations of states not only refrain from violating the rights of individuals involved in an assembly “but [also] to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment.”²⁴

In placing the emphasis on positive obligations of states, the Special Rapporteurs noted practical measures which could be taken to ensure that freedom of peaceful assembly and association are fully realised and the unlawful use of force limited. These measures include consistent planning processes, proper threat and risk assessments which incorporate human rights law and ethics, lawful and proportionate conduct by LEOs, and the provision of basic services, such as medical assistance. Consistent with these obligations, “the management of assemblies encompasses facilitation and enablement”.²⁵ At the heart of this approach is the application of the principle of precaution as explained above, that requires all feasible steps be taken in planning, preparing and conducting an operation relating to an assembly to avoid the use of force.

The joint report lays out the following standards for the appropriate management of assemblies:

- The obligations of LEOs to protect the safety and rights of participants, monitors and bystanders;
- The requirement that LEOs are adequately trained in facilitating assemblies, involving legal knowledge, including human rights, techniques for crowd management and “soft skills” such as effective communication, negotiation and mediation which would enable “LEOs to avoid escalation of violence and minimize conflict”;²⁶
- The authority to arrest, allowing LEOs to remove from an assembly “individuals who are acting violently”, while ensuring that “no-one may be subject to arbitrary arrest or detention” which effectively leads to the “criminalization of assemblies and dissent”;²⁷ and,
- States and LEOs should institute post-event debriefing mechanisms for assemblies as a permanent process “to facilitate learning and ensure the protection of rights.”²⁸

²³ See section 12(5) of National Instruction 4 of 2014, Public Order Police: Crowd Management during Public Gatherings and Demonstrations.

²⁴ UN HRC, *Joint Report of the Special Rapporteurs*, para. 13.

²⁵ UN HRC, *Joint Report of the Special Rapporteurs*, paras. 37-40, 49(b), and 68-72.

²⁶ UN HRC, *Joint Report of the Special Rapporteurs*, paras. 41-42, 49(c), and 49(d).

²⁷ UN HRC, *Joint Report of the Special Rapporteurs*, paras. 44-45.

²⁸ UN HRC, *Joint Report of the Special Rapporteurs*, para. 49(e).

3.4 Positive obligations, the management of assemblies and the SAPS

The mandate of the police, under the South African Police Services Act 68 of 1995 (the SAPS Act), includes to maintain public order in terms of section 205(3) of the Constitution. Furthermore, the SAPS Act obliges the National Commissioner of the SAPS to establish and maintain a national public order policing unit.²⁹ Currently, the relevant subordinate legislation governing this public order unit is the National Instruction 4 of 2014 on Public Order Police: Crowd Management During Public Gatherings and Demonstrations (National Instruction 4 of 2014).

This 2014 national instruction was promulgated after the fatal incident involving a protestor, Andries Tatane, who was fatally shot by police using rubber bullets during a service delivery protest. It contains many positive features which are in line with international human rights standards related to crowd management, as noted above. They include:

- A central oversight function of the operational commander by placing obligations on the commander to build trust with the crowd and its representatives;
- Pre-operation briefing; the use of a written plan; video-recording of all duties performed;
- “Highest degree of tolerance displayed”; negotiations to continue between police and convenors throughout the operation;
- The use of force to be avoided at all costs; if “unavoidable”, then the purpose must be to de-escalate with minimum force to accomplish the goal; and,
- Debriefing post-operation; record-keeping; investigations.³⁰

3.5 The issue of acts of violence during assemblies

On the issue of violence, the South African Constitution contains an explicit limitation clause:

“Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.”³¹

This provision includes two limitations on the right to protest, namely that only protests that are peaceful and unarmed are granted constitutional protection. However, while certain conduct would leave a protest unprotected in terms of these limitations, the Constitutional Court, in its 2012 judgment in *South African Transport and Allied Workers Union (SATAWU) v Garvas*,³² provided a crucial protective nuance by stating that:

“An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”.³³

²⁹ See sections 17(1) and (2) of the SAPS Act, read with section 218(k) of the Interim Constitution (the Constitution of the Republic of South Africa Act 200 of 1993).

³⁰ See section 5, 10, 11-15 and 17 of National Instruction 4 of 2014.

³¹ See section 17 of the Constitution.

³² *South African Transport and Allied Workers Union (SATAWU) and Another v Garvas and Others* 2013 (1) SA 83 (CC) (*Garvas*).

³³ *Garvas*, para. 53.

The Eastern Cape High Court, in *Rhodes University v Student Representative Council of Rhodes University*,³⁴ provided further elaboration on the issue of conduct and intention when ruling that

“crowd action albeit loud, noisy and disruptive is a direct expression of popular opinion ... *this is what* is protected in section 17 of the Constitution.”³⁵

In the context of protecting the right to peaceful assembly, the Joint Report of the Special Rapporteurs states that the right to peacefully assemble is held by each individual participating in an assembly. As a result, the report notes that “[a]cts of sporadic violence or offences by some should not be attributed to those whose intentions and behaviour remain peaceful in nature.”³⁶

The African Commission on Human and Peoples’ Rights in 2015 similarly concluded to protect assembly participants as a whole and that, if “acts of violence occur during [assemblies and demonstrations], participants retain their rights to bodily integrity and other rights and force may not be used except in accordance with the principles of necessity and proportionality.”³⁷

3.6 Prior restraint orders on student protest: Concerns and potential impacts

Freedom of peaceful assembly is a fundamental right. Any restrictions imposed on this right must satisfy the legality principle, be proportionate and must be the least intrusive instrument to meet the necessity requirement.³⁸

In 2015 and 2016, during the period of the student protests on fees and other related issues, some universities, including the University of the Witwatersrand, obtained court orders from the courts across the country authorising “prior restraint of student protest on or near University campuses”.

A legal opinion prepared for the Council for the Advancement of the South African Constitution (CASAC) by advocates Stuart Wilson and Irene de Vos, identified the constitutional protections implicated by these prior restraint orders obtained, as:

“primarily the right to assemble, demonstrate, picket and present petitions, so long as protestors are peaceful and unarmed. In addition (depending on police and university responses) other rights affected can include rights to freedom of expression, to freedom of association, to bodily integrity and rights of arrested and detained persons.”³⁹

³⁴ *Rhodes University v Student Representative Council of Rhodes University and Others* 2017 (1) All SA 617 (ECG) (*Rhodes University*).

³⁵ *Rhodes University*, para. 89.

³⁶ UN HRC, *Joint Report of the Special Rapporteurs*, para. 20.

³⁷ See the African Commission on Human and Peoples’ Rights (ACHPR), *General Comment No 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4)* (2015), paras. 27- 31.

³⁸ UN HRC, *Joint Report of the Special Rapporteurs*, paras. 29-30.

³⁹ Socio-Economic Rights Institute of South Africa (SERI), “Opinion commissioned by the Council for the Advancement of South African Constitution (CASAC): Restraint of Protest on or near University Campuses” (22 December 2016), available at: http://seri-sa.org/images/CASAC_Opinion_final.pdf.

The opinion's conclusions from a range of cases on which SERI has litigated, include the following:

- That legal proceedings requesting wide-ranging relief against named individuals, who may reasonably be suspected of conducting themselves unlawfully - such as through acts of intimidation, hate speech or incitement to imminent violence - are combined with "large, ill-defined classes of protestors". Such interdicts appear to function "as crowd-management mechanisms, or as bases for enlisting police support in an effort to repress gatherings on University property".

The opinion noted further concerns, including that:

- An interdict against a "class of students", may effectively act to coerce students not to associate themselves with individuals or groups known to organise protests; and/or could expose a student, who does join a protest, to liability as part of a catch-all group cited in an interdict.

A wider concern arising from these interdicts, the opinion concluded, was that the prior restraint orders "have almost always been used as bases for permitting police and private security to enter University campuses to enforce them." The range of enforcement actions have included "deployment of coercive crowd management techniques, such as rubber bullets, teargas, arrests and detention."⁴⁰

⁴⁰ SERI, "Opinion commissioned by CASAC", para. 10.

4. THE USE OF FORCE BY POLICE ON THE UNIVERSITY OF THE WITWATERSRAND CAMPUSES: A CASE ANALYSIS

4.1 Introduction

As indicated in part 3 of this report, there is a high bar set for protecting the right to peaceful assembly and associated rights under international human rights law and South African constitutional law. This is also reflected in subordinate law governing the conduct of municipal authorities and police operations in response to protests. The UN Joint Report of the Special Rapporteurs' emphasis on the "management of assemblies", including the management of "isolated incidents of violence" without violating the rights of other participants, was also highlighted by the Constitutional Court in *Garvas*.⁴¹ In respect of the use of force, international human rights law, as noted in part 3 of this report, requires adherence to the principles of legality, necessity and proportionality and the application of the precautionary principle. As also indicated, the SAPS National Instruction 4 of 2014 on public order policing states, at the outset, that the police service "respects and aims to protect, promote and fulfil the rights" contained in the Constitution, which include the right to life, the right of access to health care services and the right to bodily integrity. In this spirit, National Instruction 4 of 2014 emphasises the avoidance of force through "pro-active conflict resolution"; the obligation of the operational commander to attempt to build trust with the crowd, to display the "highest degree of tolerance", and to avoid the "use of force...at all costs". Where "force is unavoidable", it "must be to de-escalate conflict with the minimum force [used] to accomplish the goal".⁴²

Both at the international level and South African levels, the obligations to adhere to the principles of necessity and proportionality are clearly articulated. Despite this accepted framework, during the period of increased police presence on the University of the Witwatersrand's campuses in late 2016, there occurred some disturbing incidents involving the misuse of force against students and others.

In the following cases we present corroborated evidence and expert analysis, indicating:

- Unjustified use of force and the misuse of permissible weapons in response to peaceful assembly or against individuals posing no threat to the police or others;
- Dispersal of peaceful protests with excessive force despite appeals to negotiate;
- The targeted or indiscriminate use of force against humanitarian workers and a place of safety; and,
- Indiscriminate and unjustified use of force in the enforcement of the university curfew.

Much of the use of force described in this part was justified in terms of a court order granted in favour of the University of the Witwatersrand by the Johannesburg High Court on 25 April 2016. This order interdicted and restrained the named respondents and/or "any other persons participating in protest action" from:⁴³

⁴¹ See above part 3 of this report at p. 7.

⁴² See above part 3 of this report at p. 6.

⁴³ See *University of the Witwatersrand, Johannesburg v Jafta Kolisang and Others*, Judgment, High Court Gauteng Local Division, Case No 2016/00889 (25 April 2016), para. 3.1, available at:

- Participating in a range of already criminalised conduct, including:
 - property damage (in particular the property of the university, university staff or students);
 - harassing, intimidating, threatening or assaulting any university students, staff, university service providers or members of the public in any manner whatsoever;
 - carrying firearms or dangerous weapons defined in the Dangerous Weapons Act 15 of 2013, or knives or sticks of any kind on campus.
- Participating in specific acts relating to the university environment and services, and the specificities of protest action, including:
 - unlawfully occupying Senate House⁴⁴ or any other university offices, buildings, facilities or lecture halls;
 - in any way disrupting the normal activities of the university, including registration, classes, lectures, tutorials and the like;
 - obstructing or preventing any person from entering or leaving the university's campuses or any of its buildings, facilities, residences, halls, classrooms and the like.

The High Court further directed the SAPS and/or the POP unit to assist the university with enforcement of this court order.⁴⁵

In order to publicise its contents, the court order was to be served directly by e-mail to the six named respondents and by affixing copies of the order to notice boards at the University of the Witwatersrand's main entrances. It is arguable that there were many students who did not see these copies. Some of those interviewed for this report had either not seen the notices, were unaware of their existence, or believed that the order did not apply to their particular campus. Some, though, who were aware of the court order, were pessimistic that they would be allowed to meet peacefully 'to talk'. Nonetheless, they proceeded to meet, to their great cost, and suffered unlawful use of force against them.

4.2 Unjustified use of force and misuse of permissible weapons (21 September 2016)

The incident illustrating the above concerns involved the police dispersal of protestors on 21 September 2016. During the dispersal, a weapon permitted under National Instruction 4 of 2014, a stun grenade,⁴⁶ was misused. The circumstances of its explosion caused severe injuries to two participants in the demonstration, who were not posing a threat to the police or others at the time.

<https://www.wits.ac.za/media/wits-university/news-and-events/images/documents/Final%20Court%20Order%20on%2025%20April%202016.pdf>.

⁴⁴ Known now as Solomon Mahlangu House.

⁴⁵ *University of the Witwatersrand, Johannesburg v Jafta Kolisang and Others*, Judgment, High Court Gauteng Local Division, Case No 2016/00889 (25 April 2016), para. 3.2, which reads:

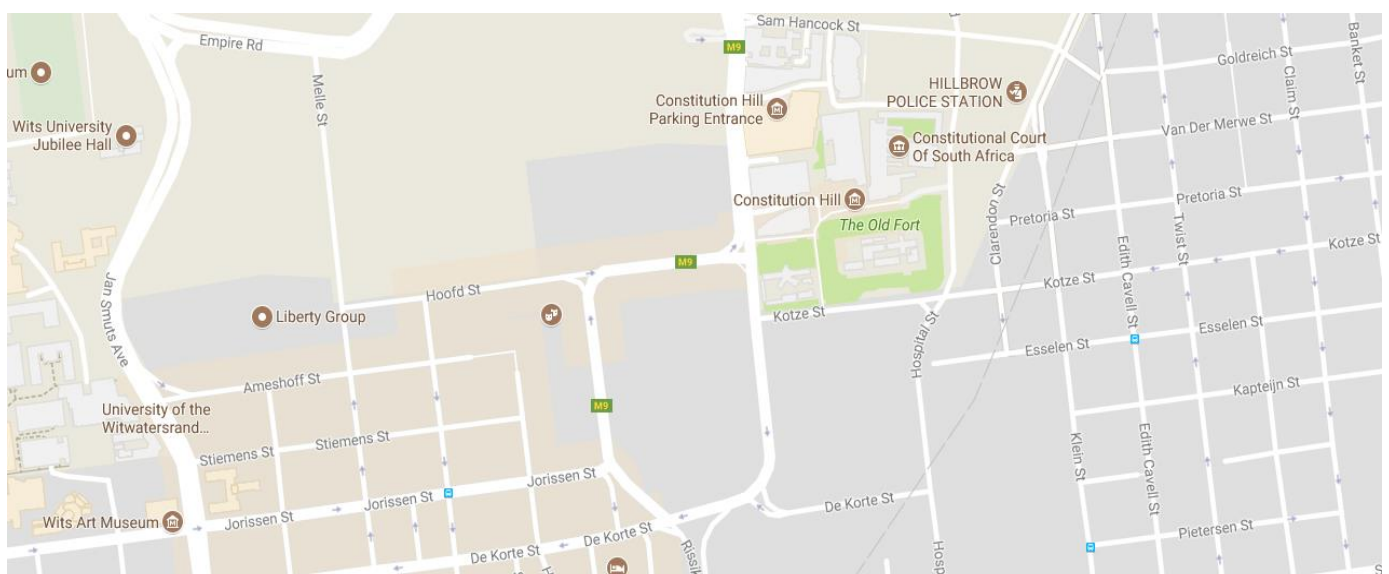
"The South African Police Services and/or the Public Order Policing Unit are directed to assist the [university] in enforcing this order and to take steps or measures that are necessary to ensure compliance with this order and to maintain law and order [on the university's premises campuses]."

⁴⁶ See section 12(5)(g) of National Instruction 4 of 2014.

The events took place near the intersection of Jorissen and Bertha Streets and on the university's East Campus. Student protests on fees and other issues had recently resumed in mid-September. Several hundred students were attempting to undertake a protest march into central Braamfontein. A 19 year old first year student, Witness 4, was standing at the edge of the student crowd with her friend, Witness 1. She had never been in a protest march before, said she had been drawn by the singing "in solidarity with #FMF" and in support of the Rosebank College students (Rosebank College is a private tertiary institution located on Bertha Street – also referred to as Jan Smuts Avenue – across the road from the university). They were, however, rapidly dispersed by the police who were 'holding the line' outside Rosebank College. There appeared initially to be discussions going on between the police and student leaders at the front of the assembly. Then a message spread down the line of students. Witness 1 heard from those in front of her that the police had ordered them to disperse and that they did not have permission to strike or walk through the street; that they must disperse "by the count of 10" or the police would open fire. Witness 4 all of a sudden saw the police raise their guns towards the whole crowd. Believing that there was a threat, she ran, with others from the scene:

"We started running. This was the first time [for me] being in a process like this. You run when others run."

The dispersing students had run from the scene, but soon began regrouping along Jorissen Street and around the university entrance gate. Some of the students carried on their conversations sitting down at the side of the road. Witness 1 noticed that the police officers, who had been in discussion with the student leaders near Rosebank College, appeared at the university gate. They seemed to be engaging "angrily" with some students on the street near the gate. Witness 1, who was some distance back from this encounter, heard what she thought were gunshots. She began running into the university campus on the other side of the boom gate. Joined by Witness 4, the two students continued to run from the source of the threat. Before they reached 'the tunnel', which runs under several university buildings, they suddenly heard a loud 'bang' behind them. Grabbing each other's hands, they ran faster in sheer panic and fear.



Map of the Braamfontein area (Google Maps)

Then a few seconds later a “second one hit us”, Witness 4 stated. She described seeing “a flame jumping up in front of us”. Witness 1 described seeing a “kind of fire ... a flash burn ... my right ear went deaf... [but] I still kept running.” Her glasses had fallen into her hands. She saw others running, some losing their shoes in the metal gratings before the tunnel. Her vision was blurred and her eyes felt as though they were burning like the right side of her face. She could feel blood on her hands when she touched her face. She was panicking.

They both experienced “excruciating pain” and were bleeding from their faces. Witness 4 described feeling “burning hot ...[her] face itching ... like something was sticking on [her] skin”. When Witness 4 was helped to reach the Campus Health and Wellness Clinic, she found herself “screaming in pain at people”.

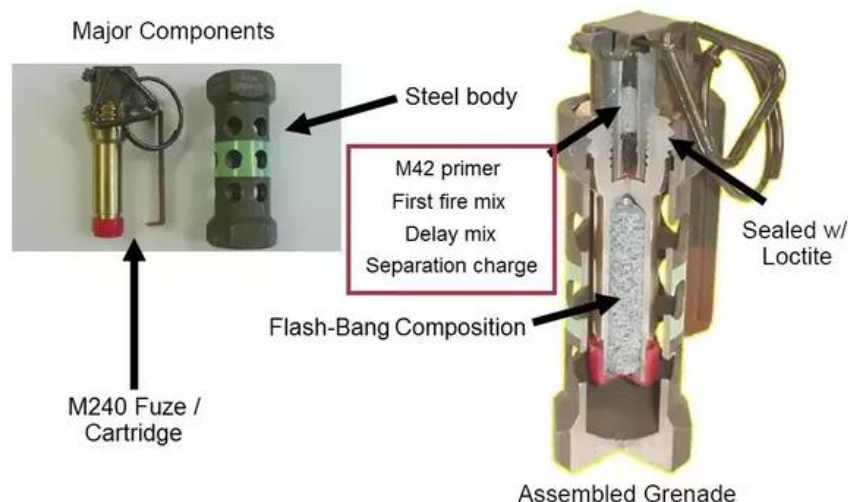
Summary Injury Assessment

Witness 1 suffered longer-term loss of hearing on her right side (the eardrum had a tear due to the explosion of the stun grenade). The entire right side of her face suffered a thermal burn from forehead to chin, with the most intense burn near the area of the right orbit (that part of the skull that contains the eyeball and its supporting structures) and over the cheekbone. The victim’s glasses, which had fallen into her hands as she ran, appeared to have protected her eyes from the thermal burn. The glasses showed a sandblasted effect from the explosion. The stun grenade device was not in direct contact with her skin when it exploded between her and Witness 4, but could not have been more than several centimetres away.

Witness 4 suffered from acutely burned surfaces on the left side of her face, with the appearance of very high-intensity heat burn. The epicentre of the heat generation device was not greater than several centimetres from the left side of the front of her face. She required extensive treatment including surgery to remove the damaged superficial layers of the burnt skin.

Commentary

1. Stun grenades have long been in the armoury of POP units. The weapon is provided for under section 12(5) of the National Instruction 4 of 2014. If used according to the agreed procedures, we are reliably informed, the device should be rolled along the ground to the side of the crowd, so that it cannot explode in close proximity to any person. It relies on a massive disorienting sound from a double blast to cause panic and precipitate the affected persons to run.
2. In the above case affecting Witness 1 and Witness 4, the device appears to have been thrown over the crowd and caused an “airburst” or flash plume of intense brightness and heat over the two victims, at such close proximity to have caused severe burns to both and additional injuries in one (Witness 1) from the material of the exploding cartridge.



Structure of a stun grenade

3. This incident reveals both a profound deficit of suitable training in correct weapon usage and deployment on the part of the POP officer involved, and an absence of appropriate command and control during the operation.
4. The level of force used bore no relationship to any threat posed by the two victims who were unarmed and fleeing from the dispersal scene. It thus violated the principle of necessity. Additionally, in the excessive harm caused, the force used violated the principle of proportionality.
5. The current United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Professor Nils Melzer, is currently considering for inclusion in his mandate situations involving the use of force by law enforcement officials ('extra-custodial use of force'). The Special Rapporteur, while confirming that states must be enabled to use appropriate means, including necessary and proportionate force, with a view to maintaining public order and security, noted that

"experience shows that it is precisely in situations where force is used in insufficiently controlled environments that the risk of arbitrariness and abuse is highest."⁴⁷

4.3 Dispersal-led strategies to managing assemblies: Risks of increased violence? (4 October 2016)

"I felt there was a big difference between late 2015 and late 2016. During the earlier period, I witnessed the police negotiating, issuing warnings and avoiding force. [But] late 2016 was dominated by no negotiations and the use of force."⁴⁸

Amidst difficult negotiations over the issue of full resumption of university operations, tensions were high on the morning of 4 October 2016. The Senior Executive Team (SET), which consists of the Vice Chancellor and senior members of the administration, issued an update

⁴⁷ UN HRC, *Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment* (14 February 2017), UN Doc A/HRC/34/54, paras. 41-43.

⁴⁸ Interview with Witness 28, a staff member at the University of the Witwatersrand and academic monitor, Johannesburg (9 August 2017).

at 9:00 informing university staff and students that lectures had resumed; that the April 2016 interdict “remain[ed] in place and the University [would] enforce it if required”; that two students had already been arrested that morning for violating the court order; and that “police ha[d] been asked to ensure that any group be dispersed before it [became] large enough to constitute a problem”.⁴⁹ Additionally, the SET noted it had been “alerted” to a call by some staff to form a human chain between police and students. The SET stated that “staff should not engage in such activities as this would be abetting protest” and undermining SET’s attempts to get the academic programme back on course.⁵⁰



***A map of the University of the Witwatersrand’s East and West Campuses
(University of Witwatersrand)***

By 7:00 students had already started gathering at the Piazza between the Great Hall and the steps leading down to the Library Lawns and fountain on the university’s East Campus. The police were also present; and, according to observers,⁵¹ students were informing them that the police were threatening to arrest them if they gathered in groups of two or more people.

⁴⁹ University of the Witwatersrand Senior Executive Team, “Update from Senior Executive Team on University Opening (09:00)” (4 October 2016), available at: <https://www.wits.ac.za/news/latest-news/general-news/2016/feesmustfall2016/statements/lectures-are-underway.html>.

⁵⁰ University of the Witwatersrand Senior Executive Team, “Update from the Senior Executive Team on University Opening (09:00)”.

⁵¹ Interview with Witness 28 (9 August 2017); Interview with Witness 6, a journalist, Johannesburg (27 March 2017).

From 07:50 there were reported instances of police conducting arrests including of at least one student leader who was taken to Hillbrow Police Station. Observers reported that stun grenades were used to disperse the crowd. By 10:00 several hundred students who had been outside the Great Hall were walking through to West Campus to rally support from other students.⁵²

At some time before 11:00, a large number of students were moving back towards East Campus. They paused in the tunnel under the highway while being addressed by several of their prominent political leaders. Reports indicated that the protest in the tunnel was peaceful.⁵³ They then continued walking through the tunnel, turning south onto Yale Road. There they were joined by a line of academics to walk ahead of the group, moving south along Yale Road towards the Planetarium and the roundabout leading onto University Avenue, which runs through East Campus.

At about 11:00 observers further along Yale Road reported that the police were mobilising and moving down from the Amic Deck area, the main pedestrian walkway to the Great Hall and Piazza on East Campus. The marchers paused near the Planetarium in front of the roundabout, waiting for others behind them to catch up. A prominent lawyer, Advocate Dali Mpofu, tried to find out the name of the police commander and went to look for him.⁵⁴ At that moment the police launched stun grenades and tear gas in the direction of the stationary marchers. A witness, who said that he had been walking with the leaders, saw a police officer throw a canister “in a bowling action along the ground” and a “green cloud” arising from it.⁵⁵ An observer near the front of the marchers with the academic group stated that she “did not hear the police give a verbal warning” or see them engage in negotiations with those leaders at the head of the marchers, before dispersing them with weapons.⁵⁶ Before the police deployed their armoury the assembly was, she said, a



Spent tear gas canister found at the University of the Witwatersrand

⁵² Some of these developments were being reported live on the University of the Witwatersrand's radio station, *Voice of Wits*. For example, see a podcast on these events available at: <http://www.journalism.co.za/blog/podcast-law-focus-militarisation-campuses/>.

⁵³ Interview with Witness 28 (9 August 2017).

⁵⁴ Adv Mpofu referred to this inquiry and the name of the commander during a broadcast interview near the Great Hall entrance several hours later. See, for example, the *Voice of Wits* podcast on these events, available at: <http://www.journalism.co.za/blog/podcast-law-focus-militarisation-campuses/>.

⁵⁵ Interview with Witness 31, final year student at the University of the Witwatersrand, Johannesburg (29 June 2017); Interview with Witness 35, second year student at the University of the Witwatersrand, Johannesburg (7 October 2017).

⁵⁶ Interview with Witness 28 (9 August 2017).

“peaceful, singing, toyi-toying and largely happy group”, a “containable group” with whom the police could negotiate. Instead,

“there was a complete failure by the police to negotiate, de-escalate. All they achieved was to increase violence.”⁵⁷

People were now running in all directions as a result of the noise of the stun grenades. The clouds of tear gas were causing problems for some individuals. An observer with two young first year students crouched behind a large flowerpot, using some water provided by volunteer first aiders and a scarf for protection. A “white police officer” was advancing down Yale Road towards them and continuing to throw activated tear gas canisters in their direction at about three metres distance from them.⁵⁸ Media workers flagged them a warning. They fled from their shelter and made their way towards the Campus Health and Wellness Centre to obtain assistance for one of the students badly affected by the tear gas.

Over the next hour there were running confrontations between students and police within the built-up environment of East Campus, with concrete rubbish containers being broken up for rocks to throw, bricks being hurled through windows, a white police sedan vehicle over-turned, police deploying water cannons with blue dye, and students, who had resumed academic classes, emerging from buildings after lectures into clouds of tear gas, the loud booms from stun grenades, amidst rubber bullets and rocks flying. All of this was “collateral damage” which further “fractured the university community”, commented an observer.⁵⁹

Towards 13:00 there was a moment of calm near the Great Hall and Piazza. Several of the student movement leaders, together with Advocate Mpofu, were attempting to engage with the police and calling for the students to stop throwing rocks.⁶⁰ But their efforts appeared to fail. Broadcast audio footage picks up the sound of gunshots and the boom of stun grenades. The sound recordist herself can be heard crying out with pain at the moment she was hit on the back of her right calf by one of the devices, possibly by a stun grenade canister, which caused a thermal burn.⁶¹ In the developing chaos, when the injured recordist was trying to run down the Great Hall steps, she fell heavily on her right knee, cutting it deeply. She was assisted to reach a first aid site at the nearby Holy Trinity Catholic Church.⁶²

Witness 31, when hearing the sound of shots and stun grenade booms, ran away from the direction of the fleeing crowd, up the steps to the Great Hall entrance with his hands raised up and collided in fast motion with a shield held by a security guard, who hit him heavily with a baton on the top of his head. He went flying to the ground and managed to roll away towards

⁵⁷ Interview with Witness 28 (9 August 2017). A student, Witness 31, stated that by 4 October, they had reached a “point of retaliation” in response to the “unwarranted use of force by the police”. Interview with Witness 31 (29 June 2017).

⁵⁸ Interview with Witness 28, a staff member and academic monitor at the University of the Witwatersrand, Johannesburg (1 September 2017).

⁵⁹ Interview with Witness 28 (1 September 2017).

⁶⁰ Interview with Witness 35 (7 October 2017).

⁶¹ Interview with Witness 6 (27 March 2017). See also the *Voice of Wits* podcast on these events, available at: <http://www.journalism.co.za/blog/podcast-law-focus-militarisation-campuses/>.

⁶² Interview with Witness 6 (27 March 2017). See more on the role of Trinity Church in supporting the presence of emergency first aid teams on p. 56 of this report.

the interior of the building where first aiders assisted him initially, before walking him over to the site at the Holy Trinity Catholic Church for further assistance.⁶³

When the police began firing weapons again, Witness 28 was at the furthest edge of the Piazza, running from the police line with her back to the Great Hall and the cluster of about ten police officers. Just as she was going down the right set of stone stairs leading to the Matrix Building and the Campus Health and Wellness Centre, she was struck by a rubber bullet. She described being hit “dead on” in the back of her left thigh above her knee crease. She states: “It shook me, I felt a painful sting, a forceful bang. It almost knocked me off my feet”.⁶⁴ Although that leg “gave out”, she managed to keep her balance and hobbled down the stairs. She reached Campus Health where she received assistance from a volunteer medical doctor.⁶⁵

A medical consultation and assessment of the evidence, including photographic evidence taken within two days of the incident, confirmed that her injury was consistent not with a ricochet rubber bullet but was a direct shot fired within a range of 10 metres or less and likely to have involved a hard type rubber ball.

The Campus Health and Wellness Centre experienced a surge in the number and range of differently injured persons coming to them for assistance. The facility’s daily patient statistics surged on 4 October 2016.⁶⁶

Adding to its difficulties, the facility got caught in the crossfire, as the running battles between police and students unfolded. Rubber bullets were fired and rocks hurled at its windows. The Clinic head who was on site, went out to confront the police, after they had fired at students singing and sheltering near the clinic. The police had come rushing down from the Great Hall alongside the Matrix Building, “shooting at anything”, she said. She demanded to know, “why are you shooting, it’s a clinic!” In response to the police query, “Where is the clinic?” She retorted, “Here! You shot at the clinic”.⁶⁷

Commentary

1. In respect of the initial dispersal of the large demonstration on Yale Road heading towards East Campus mid-morning on 4 October 2016, there was apparently an imperative to disperse the crowd. Witnesses indicated that they heard no warning and saw no sign of any attempt by the police to engage with the frontline or student leadership of the march before firing tear gas and launching stun grenades. Witness accounts of the march as it wound its way from West Campus through the tunnel towards East Campus indicates it was peaceful. The use of force to disperse a peaceful assembly violates the principles of necessity and proportionality. The sole approach adopted – to disperse the crowd with force – seems only to have contributed to an escalation of conflict between demonstrators/students and the police, and in the densely built up East Campus area;

⁶³ Interview with Witness 31 (29 June 2017).

⁶⁴ Interview with Witness 28 (9 August 2017).

⁶⁵ Interview with Witness 28 (1 September 2017).

⁶⁶ For further information on the role of the clinic during the protest and its aftermath, including a discussion of its heavy patient load and the challenges with capacity it faced, see part 5 of this report.

⁶⁷ Interview with Witness 8, a senior primary health care nurse, Johannesburg (17 November 2016).

2. After the breakdown of the later negotiations tried in the middle of the day between the police and the student leadership, the police fired weapons, including at least stun grenades and rubber bullets, with indiscriminate effect, hitting individuals who posed no threat to police or others and causing injuries to a number of them. As such, the force used violated the principles of necessity and proportionality. Moreover, firing rubber bullets recklessly in a manner that led to a health facility involved in treating the injured being damaged is a further violation of the principles of necessity and proportionality;
3. The instruction by the SET that any gathering over a certain number should be dispersed by the police was likely to lead to arbitrary arrest and detention. Furthermore, the instruction appeared to impose a command structure over the POP and take away their capacity for assessment based on their training, their obligations under National Instruction 4 of 2014, including to de-escalate conflict and engage with leaders of assemblies. At the same time this instruction to the police constituted a further denial of the right to peaceful assembly;
4. The university's warning to staff and others who might participate in "forming a human chain" in front of the marchers, amounted to intimidation. United Nations human rights officials concerned with protecting the right to freedom of peaceful assembly and the right to life have stated, in terms of the International Covenant on Civil and Political Rights (ICCPR), to which treaty South Africa is a Party, that "monitors" have a protected right to observe, record, report and "address human rights problems" in the context of assemblies.⁶⁸

4.4 Targeted use of force against humanitarian workers and a place of safety (10 October 2016)

Although several pertinent incidents did involve issues already raised above, such as the manner of crowd dispersals, the concern here is about a use of force which appears to have been intended to cause intimidation or harassment of humanitarian workers in places of safety.

The broad context was the dispersal of demonstrators on the University of the Witwatersrand's East Campus early on 10 October 2016. Student protestors had gathered on the steps of the Great Hall and in the front on the Piazza. Witness 15, a university researcher collaborating with an observer group,⁶⁹ was watching a gathering of students. The students were singing and some were sitting in front of police Nyalas flanking the Piazza.⁷⁰ Witness 15 did not see any stones being thrown and the crowd seemed peaceful, although the SET update statement issued at 13:00 had linked the police dispersal of the crowd outside the Great Hall with the students' demand for access to Solomon Mahlangu House and the throwing of "sizeable rocks".⁷¹

In the view of Witness 15, when the occupants of one of the Nyalas revved its engine, this appeared to have caused "a commotion" in the crowd. Members of the protest group started

⁶⁸ UN HRC, *Joint Report of the Special Rapporteurs*, paras. 68-72.

⁶⁹ Interview with Witness 15, a staff member at the University of the Witwatersrand and observer, Johannesburg (17 March 2017).

⁷⁰ A Nyala is an armored police vehicle.

⁷¹ University of the Witwatersrand Senior Executive Team, "Statement on disruptions of classes today" (10 October 2016), available at: <http://www.wits.ac.za/news/latest-news/general-news/2016/feesmustfall-2016/statements/>.

running off the steps of the Great Hall and into the Piazza. Suddenly Witness 15 and a colleague heard a “flash bang” noise. His colleague covered his ears with his hands. Of concern to the observers was that the launch of the stun grenade seemed to have had the effect of making “the whole mass crowd” surge forwards. They were now moving towards the direction of Holy Trinity Catholic Church, whose property was contiguous with East Campus,⁷² via the turnstile gates above the university’s Arts School and out into Bertha Street to the east. Further “flash bangs” from stun grenades followed and the police also launched tear gas towards the retreating crowd. Witness 15 and his colleagues found themselves being pushed by the surging crowd into Jorissen Street to the south and they were feeling “very shaken”.

By now “rocks were flying”, Witness 15 stated. Trash had been set alight. Police vehicles were clearing Jorissen Street using rubber bullets. Four to five “heavily clad” police were on the corner of Jorissen and Bertha Streets. Witness 15 and his fellow observers asked a police officer,

“Why are you doing this? There are all kinds of people on the streets.”

The officer reportedly explained that,

“We can’t tell who these kids are – students or civilians”.

Chaos was beginning to develop in the Braamfontein area and elements of conflict evident between students and police. A police officer allowed the witness and his colleagues to go up into Bertha Street from Jorissen Street. They entered into the precinct of the Holy Trinity Catholic Church (Trinity Church) through the street gate. There they saw “scared, very young students who had no-where to go; they could not reach their residence halls on campus, and Braamfontein had now become a war zone”. The students appeared to feel safe in the church precinct area where the cars were parked, but Witness 15 could see that they were anxious and exhausted from the morning’s events.⁷³

Targeting humanitarian workers and individuals seeking sanctuary

Throughout the morning of 10 October Trinity Church and its precinct, which shared a contiguous wall and gate on its western side with the University of the Witwatersrand’s main campus, increasingly became a safe space for students affected by the police dispersal activities. Students and others escaping the police operations near the Great Hall were coming through the shared gate to escape the effects of the weapons being deployed by the police. They were coming in groups of 20 or so from the campus into the Trinity Church precinct and some were also flowing out into Bertha Street through the vehicle gate.

⁷² See the map of the Braamfontein area above on p. 15 of this report.

⁷³ Interview with Witness 15 (17 March 2017). Three further interviews assisted in piecing together the series of events in Braamfontein on 10 October 2016. Interview with Witness 12, a volunteer first aid provider and under-graduate student at the University of the Witwatersrand, Johannesburg (18 March 2017); Interview with Witness 14, a staff member at the University of the Witwatersrand and academic observer, Johannesburg (23 March 2017); and Interview with Witness 13, a journalist, Johannesburg (20 May 2017).

Holy Trinity Catholic Church for many years had provided chaplaincy services to the University of the Witwatersrand and services to vulnerable communities in the Braamfontein and inner-city areas. In the midst of the turmoil on 10 October, the parish priest (Witness 3) and his colleagues tried to maintain open access to the precinct of the church for those seeking a safe haven. The intervening gate between the campus and the church precinct became a matter of contention between the campus security officers, police and the Trinity Church authorities, particularly when rumours spread that the police were heading towards Trinity Church and there was a feeling amongst students of being trapped.⁷⁴ At some point during the morning of 10 October the campus security officers had chained the gate shut. Several times Witness 3 had to negotiate with security officers or the police to re-open the gate or, at least, not make it impossible to open in case of an emergency. An officer from the Johannesburg Metropolitan Police Department (JMPD) demanded that the gate be closed. After some back and forth, Witness 3 reached an agreement with him that the police allow students to come off the campus, but not to allow students back onto the campus through the gate.

As Witness 3 said during an interview he had tried to ensure that the gate could be opened as:

“I did not want the students sheltering near the church to be trapped at that gate, with the Nyalas shooting into the precinct area from Bertha Street.”⁷⁵

Not long after this encounter with the JMPD, an officer from the SAPS, without any explanation, came and demanded to know Witness 3’s name. Witness 3 took it as a gesture of intimidation. The SAPS officer insisted that the gate be heavily padlocked. Witness 3 resisted this demand, but an observer with him helped persuade the SAPS officer to accept a “light” welding, so that it could be forced open in an emergency.

At around 13:30, when Trinity Church’s daily service concluded, Witness 3 recalled standing near the open vehicle gate with a crowd of students considering whether he should attempt to leave the Church area to attend to a medical matter. He noted that Bertha Street was now strewn with rubble. At this point he saw a police Nyala slowly driving up Bertha Street, facing north towards Jan Smuts Avenue. He recalled noticing that:

“police were shooting from the vehicle all the way up the hill... [and that] the Nyala was firing into the crowd [he was standing with] as it was moving up the hill.”⁷⁶

During this journey, the Nyala had paused at the open gates and fired towards the crowd. Witness 3 was hit by two rubber bullets in his lower legs through his cassock, but neither he nor anyone else sustained any injury. However, the shooting caused the students and others sheltering on Trinity Church grounds to retreat further back and others to surge into the grounds from Bertha Street. Witness 3 did not consider that he was being specifically targeted in that incident.

While this incident clearly entailed indiscriminate use of force, it was followed by a second incident involving a police Nyala. This incident included elements of a targeted attack, directed

⁷⁴ Interview with Witness 15 (17 March 2017).

⁷⁵ Interview with Witness 3, a parish priest, Johannesburg (23 March 2017).

⁷⁶ Interview with Witness 3 (23 March 2017).

at both Witness 3 and those sheltering in the Church precinct. A second police Nyala moved rapidly down Stiemens Street and ahead of it a view of the entrance to Trinity Church. The Nyala passed a multi-storey student residence, Noswal Hall, on its right, crossed at speed over both carriageways of Bertha Street and into the 'T-junction' created by Bertha Street and the driveway and gate into Trinity Church property. The vehicle stopped abruptly, nearly striking the priest who was standing alone at the gate. There was no shooting, no verbal exchange between the police and the priest. After a few seconds, the vehicle reversed and drove away in the wrong direction down Bertha Street.

A well-publicised photographic image of this incident captures a moment when the vehicle was mounted on the pavement at about 2.5 to 3 metres distance from the priest.⁷⁷ The live footage,⁷⁸ however, shows that the vehicle continued to move forward until it reached a few centimetres from the priest. During the last seconds of the speeding vehicle crossing Bertha Street and reaching the priest at the gate, those involved in filming from the building heights on the opposite side of Bertha Street increasingly and loudly expressed their shock and astonishment at what appeared to be unfolding below.



Photo by Edward Molopi

During an interview reflecting on that incident, Witness 3 said that the vehicle came “screeching” to a halt and added:

⁷⁷ The photograph was taken by Edward Molopi.

⁷⁸ The footage was filmed from the top of Noswal Hall and another tall building, both opposite Trinity Church. See Crime Watch, “Watch brave Catholic priest stop riot police during student protests”, *You Tube* (11 October 2017), available at: <https://www.youtube.com/watch?v=JARtKe5K2mo>.

"I was on the boundary. They had been shooting before. I thought, I am not going to let them into here, which is a shelter... Had I not stood there they would have come into the gate and shot at the students."⁷⁹

He acknowledged that he felt terrified though and that the seconds involved in the encounter "felt like forever".

The police had not finished, however. A third vehicle appeared in Bertha Street.⁸⁰ A videographer on foot was following the vehicle's movements as it turned left out of Ameshoff Street into Bertha Street and then travelled down the upward-direction traffic lane and on the near side to the church gates. It turned slightly into the driveway and stopped next to the gate where Witness 3 still stood. The vehicle's right side was facing towards the Church grounds. Witness 3 estimated that the appearance of this Nyala was about 5 to 10 minutes after the previous incident. There appeared to be no other vehicles or any activity on Bertha Street at the time, from the video footage. Witness 3 recalled seeing "thin gun barrels" sticking out of the right side of the vehicle and pointing straight at him, not angled to the ground. The police opened fire. The sounds of "multiple gunshots" heard on the videographer's footage when the Nyala stopped outside Trinity Church gate corroborate his recollections.⁸¹

The shooters, Witness 3 estimated, were three to five metres away from him. Bullets went past either side of his head and shoulders, before he was hit in the face. He felt stunned and in pain. He was helped away by students, staggering but did not fall and turned to say to others "don't let them bring weapons into the church."⁸² The vehicle had left the scene seconds later after the shooting, driving further down Bertha Street and out of sight. The priest was actively bleeding from a traumatic upper lip wound and his cassock became considerably bloodstained from chest height downwards while being assisted into the Church building. The volunteer medical first aiders based at Trinity Church and a volunteer medical doctor, who had arrived not long after the incident, further assisted him, before he was taken in a private vehicle to the Charlotte Maxeke Johannesburg Academic Hospital (CMJAH) for examination and reparative treatment over several days.



Witness 3 after the incident

⁷⁹ Interview with Witness 3 (23 March 2017).

⁸⁰ Although it is not clear, the vehicles used during the second and third incidents could have been the same vehicle.

⁸¹ See Times Live, "Chaos erupts as priest shot with rubber bullets by police", *You Tube* (10 October 2016), available at: https://www.youtube.com/watch?v=95J_SUH1b-E.

⁸² Interview with Witness 3 (23 March 2017).

When he was interviewed, Witness 3 was emphatic that there could not have been any other object which struck him on the face other than a rubber bullet. The police were shooting towards him at the time of his sustaining the injury and he was confident that there were no other flying projectiles from any other source.⁸³

Summary Injury Assessment

Witness 3, in the immediate aftermath of the shooting, was stunned, in pain and actively bleeding, with his full-length cassock becoming bloodstained as he was helped into Trinity House for initial medical attention. He was transferred to Charlotte Maxeke Johannesburg Academic Hospital (“CMJAH”) for reparative suturing and reconstruction from a traumatic upper lip-split laceration. His isolated full-upper lip laceration to the exclusion of any other injury to his face indicated a singular and localised impact of a small object of a blunt nature with sufficient velocity to cause a penetrative injury. Medical and ballistic evidence converge to indicate that the nature of this “blunt-force” injury was consistent with the impact of a rubber bullet. The rubber bullet would have separated into its twin projectiles prior to the impact. The forensic and interview evidence indicate that Witness 3 was directly facing the Nyala when the police were firing at him. At a firing range of 5 metres or less distance, the injury would have been caused by a direct shot.

Soon after the incident the SAPS Deputy National Commissioner of Police, Lieutenant General Gary Kruser, accompanied by a small delegation, visited Witness 3 at his home to apologise for what had happened. He said that he had instituted an official investigation into the incident, to be led by the Gauteng Provincial Commissioner of Police.⁸⁴ Although the investigation had only just begun, the Deputy National Commissioner of Police stated that there had been no command to shoot the priest. Witness 3 stated that he had been promised that there would be an investigation, however, notwithstanding this visit and the promise of action, as of October 2017 no-one, neither police, nor investigators from any other official body, had come back to inform him that they were taking the investigation process further.⁸⁵

Targeting a place of safety and treatment

Notwithstanding this, Trinity Church remained in the midst of a flow of injured persons into the Church precinct. With the SAPS continuing their dispersal activities locally, injured persons continued to seek shelter and care in the Trinity Church grounds. At the same time emergency first aiders and patients alike were at risk of indiscriminate shooting by police, particularly from Bertha Street.

Witness 14, an academic researcher and lecturer, who volunteered as a monitor during the student protests at the University of the Witwatersrand, described hiding in a corner off Jorissen Street with others as a police Nyala proceeded up the street firing shots from the vehicle, also on 10 October 2016.⁸⁶ Emerging from her place of shelter she noticed two women

⁸³ Interview with Witness 3 (23 March 2017).

⁸⁴ See Ranjeni Munusamy, “Holy Shield: #FeesMustFall priest tells of his day of terror”, *Daily Maverick* (11 October 2016), available at: <https://www.dailymaverick.co.za/article/2016-10-11-holy-shield-feesmustfall-priest-tells-of-his-day-of-terror/#.WeCiFluCzX4>.

⁸⁵ Interview with Witness 3 (23 March 2017).

⁸⁶ Interview with Witness 14, an academic observer, Johannesburg (23 March 2017).

running down Jorissen Street. One of the women was holding something over her right eye and the witness saw a “lot of vivid blood”. She followed them down the street to ensure that they could reach Trinity Church and receive the assistance of a volunteer medical first aider. Witness 14 was confident that the woman could not have been injured by a rock, although she stated that she did see some students throwing rocks at “armoured [police] vehicles” earlier in the day. The moment of the woman’s injury, she stated, appeared to coincide with the movement of the Nyala firing as it travelled up Jorissen Street. At Trinity Church she was reassured to see a volunteer first aider coming forward to assist the injured woman.

Witness 14 remained within the Trinity Church grounds, as Bertha Street had become unsafe with activity from the Nyalas and students throwing rocks at these vehicles. She heard the priest telling some students coming in from Bertha Street to leave their rocks outside, saying to them “this is a non-violent space, a safe place”. While she was at Trinity Church she witnessed the police Nyalas firing into the Church precinct, through the grill-barred walls. She was adamant about these rubber bullet shots, “definitely, definitely”, she said.⁸⁷ She saw a Nyala going around shooting out of its side. She was inside the gate when a Nyala drove “quite fast ... straight at the gate” before screeching to a halt near the priest.⁸⁸ She and others fled to shelter behind cars in the parking lot. She noted that some of the cars became dented from the impact of rubber bullets during the course of the day. She was still sheltering behind the vehicles, but saw Witness 3 being led into Trinity House bleeding from his face.

Before Witness 14 left Trinity Church later that day she observed two student-aged women suffering panic attacks, which seem to have been provoked by the Nyalas circling and firing indiscriminately into the precinct area of Trinity Church. One of them, who had not been involved in the protests, desperately wanted to get away from this threatening situation. Witness 14 accompanied her out on to the streets and up to the Civic Centre at the top of the Braamfontein area, where the situation was strangely calm.

A fifth-year medical student and member of the first aider group, Witness 7, had struggled in the chaotic atmosphere of the Trinity Church precinct to help the injured young woman, who had been shot at or around her right eye. Witness 7 was also trying to assist the injured woman’s friend, who suffered a panic attack as a result of what she had seen and experienced. Neither the injured woman nor her distressed friend had had any connection with the student protests at the time of the shooting incident.

Witness 7 described the situation during an interview as follows:

“It was a hostile environment ... rubber bullets were being fired through the fence from the street, they were shooting through the fence intermittently. We were exposed. We were running back and forth between the exposed area of the parking and the enclosed portion. Most of the students were huddled where the cars were usually parked.”⁸⁹

Another medical student, who had been asked by the priests to stay and help when she arrived later in the day, observed of her fellow students:

⁸⁷ Interview with Witness 14 (23 March 2017).

⁸⁸ See above description of the second incident involving Witness 3.

⁸⁹ Interview with Witness 7, volunteer first aid provider and fifth year medical student at the University of the Witwatersrand, Johannesburg (2 June 2017).

“[They] had been there all day, running on adrenaline, treating people, but traumatised themselves. The Memorial Garden, where they were working, is near the side door entrance to the church itself. The police were shooting through [the grill bars of] the wall from the road, while driving past in their Nyalas. I feel that they knew that medics were treating the injured on the other side.”⁹⁰

During a separate interview, Witness 7 explained that she and her first aider colleagues faced additional stress in responding to seriously injured patients under these difficult circumstances.⁹¹ The patient with the eye injury, she noted, was not bleeding profusely, but the “tissues of the eye looked ruptured...I couldn’t see the architecture [of the eyeball properly]”. Some part of the eye tissue had mushroomed out on to her face, bleeding. The patient was unable to close the upper eyelid of her right eye and she was hysterical. “She cried out about her eye”, Witness 7 said. As a member of the first aider group, Witness 7 knew that she and her colleagues did not have the facilities or expertise to properly deal with the severity of the woman’s injuries. They bandaged her eye and managed to make contact with an ambulance. It was delayed reaching them for some period due to the chaos in the streets. While the ambulance took the injured woman to a private hospital in Parktown, Johannesburg, she sat untreated for some hours due to an insurance problem.

Indiscriminate shooting

In the heated conflict between police and students, which had spilled out into the Braamfontein area and involving indiscriminate shooting, makeshift weapons and property damage,⁹² there was at least one victim of ‘collateral damage’ who was left with permanent consequences.

Thirty-year old Witness 21 became such a casualty on 10 October 2016 while trying to find a safe route home. He left his Braamfontein workplace, where he worked as a cleaner, at about 16:00 as usual. He could see police vehicles and students further up in Braamfontein on the route he normally took home. There seemed to be some kind of trouble going on there, so he turned onto Melle Street instead. Walking south in search of a peaceful way home, he crossed over Stiemens Street and then Jorissen Streets. At the intersection of Jorissen and Melle Streets, he could see a Nyala parked in the middle of the intersection and students running from the police. As he did not feel safe, he kept walking south, crossing over De Korte Street.

He continued a short distance down Melle Street and paused outside the shutter door entrance of a parking garage, Once Parking. He stood with his back to the closed garage door. “This is where I was shot”, he said, to members of the Project Team who had accompanied him walking the route of the incident.⁹³ He stated this fact with confidence. On that day, he had stood at the garage door considering what he should do next in his efforts to get home safely. Turning to the left he looked towards The Grove, a popular open area of cafes with outside

⁹⁰ Interview with Witness 10, third year medical student at the University of the Witwatersrand, Johannesburg (18 November 2016).

⁹¹ Interview with Witness 7 (2 June 2017); Group interview with first aid providers, Johannesburg (11 March 2017).

⁹² Interview with Witness 13, a journalist, Johannesburg (20 May 2017); Interview with Witness 14 (23 March 2017); Interview with Witness 15 (17 March 2017); Interview with Witness 24, a staff member and academic observer at the University of the Witwatersrand, Johannesburg (23 June 2017); Interview with Witness 31 (29 June 2017); Interview with Witness 35 (7 October 2017).

⁹³ Interview with Witness 21, a bystander, Johannesburg (27 July 2017).

tables, bounded by the then Hotel Lamunu to the east and Melle Street to the west. Many people were gathered there, possibly to get out of the way of the commotion in the streets. Then he turned to look back up Melle Street, where two blocks to the north he has seen the Nyala standing at the intersection with Jorissen Street and with the students running away from the police. At that moment of turning his head to the right he heard a loud “bang” and felt something strike him on his face. He tried to run towards The Grove, he felt dizzy, saw blood on his white t-shirt. There was “darkness out of my right side”. Then he fell.⁹⁴

He was assisted quickly by a person whom he described as a female black student, who came out of one of the cafes. She, along with others, helped him walk into a recessed alley, leading into Juta Street. They took him into the lobby of 87 Juta Street, a South Point student residence. Helping him onto a couch, they bandaged his injury and led him out to emergency service vehicles standing nearby. The ambulance crew assisted in stopping the bleeding but he was now feeling the pain from the injury to his right eye. He was then taken to Charlotte Maxeke Johannesburg Academic Hospital.⁹⁵

Rapidly, after diagnostic procedures at the hospital, he was taken for surgery and awoke from his operation to be told he had lost his right eye, “now you have one eye”.⁹⁶ He was sent home bandaged and with medicine to keep the wound/eye socket clean. Only much later, in early 2017, did he receive at another hospital an artificial eye, which fit him badly.

Recounting the impact of this terrible event during an interview, he said:

“I was so shocked at what happened when I was shot by the police ... and then to be told at the hospital that I had lost my eye. I felt so bad, I could not believe it.”

Burying his head in his hands, he added, “there are so many things I now can’t do to keep my life”.⁹⁷

Witness 21 had experienced the gunshot injury so rapidly after turning towards the right, near The Grove, that he could not recall if he saw movement from the Nyala towards him or armed police on foot.⁹⁸ The Nyala he had seen at the Jorissen Street intersection when he was walking south is estimated to have been about 130 metres from the point where Witness 21 was standing when he got shot. He recalled seeing police with “long pump guns” and padding on their shoulders, when he had paused earlier at the Jorissen Street intersection, indicating that they were POP members.⁹⁹ Although there was action going on between the students

⁹⁴ Interviews with Witness 21, a bystander, Johannesburg (6 July 2017); Interview with Witness 21 (27 July 2017).

⁹⁵ Interview with Witness 21 (6 July 2017); Interview with Witness 21 (27 July 2017). A local newspaper, the *Northcliff Melville Times*, reported on the support work of the emergency services in this incident, (29 November 2016).

⁹⁶ Interview with Witness 21 (6 July 2017).

⁹⁷ Interview with Witness 21, a bystander, Johannesburg (3 July 2017).

⁹⁸ Interview with Witness 21, a bystander, Johannesburg (1 September 2017); Interview with Witness 21 (27 July 2017).

⁹⁹ Interview with Witness 21 (6 July 2017).

and the police in the vicinity, he thought at that moment, “why should I run?... it is between the students and the police.”¹⁰⁰

Several witnesses who were working at one of the cafes in The Grove during the late afternoon and evening of 10 October stated that the police had been active “in the area” that day. The witnesses stated that the police fired tear gas canisters at the outside and into the interior of the café. The former incident, which was in the early evening, caused a panic amongst dinner guests sitting outside and who had to run into the café, escaping through the back door and into Juta Street. One of the witnesses stated that he had seen students running through The Grove and escaping the police through the alley into Juta Street.¹⁰¹

Summary injury assessment

Witness 21 suffered a catastrophic and life-changing injury as a result of the indiscriminate use of force by the police in the conduct of their dispersal operations in the Braamfontein area near the University of the Witwatersrand on 10 October 2016.

The injury is consistent with a rubber bullet injury, that is, with an object small enough (at 17mm in diameter) and with sufficient velocity to have struck only his open eye and globe, and caused no wider facial damage ... [T]he body position and facial profile of the patient when struck, indicates that the projectile that impacted his eye originated from the upper (northern) portion of the streets (from around where the police contingent and Nyala vehicle were positioned). It remains difficult, however, to determine with any accuracy from what distance he was shot, or, if it was a direct or an indirect shot. However, it is recognised that at a rubber bullet firing distance of over 20 metres, the eyes remain vulnerable to injury, more so than other parts of the body, even if the eye is hit by a ricochet bullet at less velocity.

Commentary

1. The attack by members of the police on an unarmed religious and humanitarian worker had no justification under international human rights law or the law and procedures governing the use of force by the SAPS. The activities of the occupants of the first Nyala arriving outside the Trinity Church gate at the very least involved indiscriminate use of force against the group, including Witness 3, who were gathered near the entrance gate. There is no evidence to suggest that the shooting could be justified in terms of any threats posed by those inside the church. Instead the motivation for the use of force against the church and those occupying it appeared to be to intimidate the priest of the church (Witness 3) and discourage him from allowing the premises to operate as a place of refuge during police dispersal operations;
2. The degree of force deployed during the dispersal operations violates the principles of necessity and proportionality. In particular the extensive use of rubber bullets, which are classified as a weapon to be used only in extreme circumstances in terms of National Instruction 4 of 2014, indicates that the police’s use of force was disproportionate and

¹⁰⁰ Interview with Witness 21 (6 July 2017). See also an article in the *Northcliff Melville Times* where Witness 21 stated that he blamed the police because they “were shooting at anyone in the street and that he was an innocent bystander who was caught in the crossfire” (Gaahle Mokgoro, “Man to sue police after being shot during #FeesMustFall protest”, *Northcliff Melville Times* (24 November 2016).

¹⁰¹ Interviews with witnesses 21.1 and 21.2, Johannesburg (30 July 2017) (4 August 2017).

- unnecessary. None of the protestors or bystanders who took refuge in the church precinct was armed. Witness 3 and his colleagues ensured that this was the case;
3. There appeared to have been no attempts to negotiate with the church authorities on any particular issue other than the matter of the shared gate with the university;
 4. The movements of the second Nyala, driven at full speed down a local street, crossing at speed both carriageways of Bertha Street and “screeching to a halt” mere centimetres away from Witness 3 who was standing at the entrance to the church precinct, appear to show reckless disregard for life and an intention to ruthlessly harass the priest and those working with him into submission;
 5. The final manoeuvre against Witness 3, involving the third Nyala, appeared completely intentional. The shooters fired direct shots from a range of five metres or less at Witness 3. Immediately after shooting him, the occupants of the Nyala drove off.
 6. The continued harassment through the use of force against other humanitarian workers, including medical first aiders assisting the injured, had no justification. None of the individuals concerned nor their activities posed any threat to the police or others. At a minimum, these shootings were indiscriminate and violated the principles of proportionality and necessity. United Nations human rights officials concerned with protecting the right to freedom of peaceful assembly and the right to life have stated, in terms of the ICCPR, which the South African government has ratified, that human rights “monitors” have a protected right to observe, record, report and “address human rights problems” in the context of assemblies.¹⁰²
 7. The shooting of Witness 21 is evidence of indiscriminate firing of weapons by police and the unnecessary and disproportionate force used by POP in conducting their dispersal operations in general, and with devastating consequences for the individual affected.

4.5 Indiscriminate and unjustified use of force to enforce the university curfew (14 to 16 October 2016)

“Please note that police are not allowed to enter residences unless it is to apprehend individuals involved in criminal activity.”¹⁰³

The information notice from which the above statement was extracted, was issued by the University of the Witwatersrand’s SET two days after three police officers had entered a university residence in the middle of the night and assaulted and shot a young student. The incident occurred within 24 hours of the SET’s decision to impose a curfew on students residing in university halls of residence. The notification of the curfew, also referred to as a “restrictive movement” order, was instituted on 14 October 2016 and required students to remain inside their student residences from between 22:00 and 06:00 every night until further notice. Facilities, libraries and reading rooms, among others, were also to be closed between 21:30 and 06:00.

In the SET update issued at 10:00 on 14 October 2016, the SET referred to a number of incidents of violence on the university’s campuses that had taken place during the previous

¹⁰² UN HRC, *Joint Report of the Special Rapporteurs*, paras. 68-72.

¹⁰³ University of the Witwatersrand Senior Executive Team, “Update on incidents and restrictions on campus” (17 October 2016), available at: <http://www.wits.ac.za/news/latest-news/general-news/2016/feesmustfall2016/statements/>.

night, including fires started on lawns and in garbage bins in four locations, the stoning of police and fire engines, and the injury of a university security official. The update noted that these incidents were linked to “20-30 protesting students spread out through the Braamfontein campuses”. The SET’s update at 17:00 referred to the university’s “obligation to ensure the safety and security of persons and infrastructure within its precincts” and accordingly resolved to put into place “measures to minimise the present danger”. These measures included:

1. Closure of all university buildings between 21:30 and 06:00, with the exception of accommodation and student residences;
2. Prohibition on university precincts of persons not assigned accommodation/ residences between these hours; or who are otherwise authorised to occupy university facilities or undertake official business between these hours;
3. Authorised persons must remain in specific authorised area until 06:00, unless granted express permission from the Registrar to do otherwise;
4. In the event of an emergency Campus Control was to be contacted.

The SET notice added that a “full security and police presence will be deployed across all campuses and vehicles, buses and bags may be searched”.

The imposition of the curfew was met by protests from some students who saw the measure as oppressive, with others objecting to the sheer impracticality of the measure. A further issue began to rapidly emerge, that of the role of the SAPS in the enforcement of the curfew and their understanding of the requirements of the curfew.

A medical student first aider raised her concerns with the university authorities on the night on which the curfew was imposed. After witnessing events at the women’s residence, Sunnyside Residence, on East Campus, she had written of her concern to the Vice-Chancellor and Principal, Professor Adam Habib:

“partly in response to the contradictions between the press reporting and what the experienced reality had been. There are people walking around who are physically wounded and traumatised, but you would not know that from the press reports nor the comments from the Administration.”¹⁰⁴

Early on the evening of 14 October, Witness 10 had gone to Sunnyside Residence to wait for other volunteer medical student first aiders to join her. Witness 10 was unaware that a curfew had been announced some hours earlier. She was standing in the reception area of the university residence and noticed an unusual number of police vehicles nearby in the small side roads and police officers “in full riot gear” moving on foot in the area. She encouraged students near the front entrance to step inside for their safety. It was a time of the evening when students were moving about between the nearby Matrix Building getting their supper and returning to their residences. Through the students she became aware that an e-mail had been circulated by the SET, which announced the imposition of a curfew to begin that evening from 22:00. Witness 10 noted that the e-mail had been initiated “some hours ago”, going out first to the staff listed alphabetically and then to students. It was now 19:00 and she had not yet received the e-mail through this distribution system.

¹⁰⁴ Interview with Witness 10 (18 November 2016).

At 19:20 while standing with the students in the reception area and near to the entrance to the common room, the Witness saw the police throwing tear gas on to the top of the steps leading into Sunnyside. It caused a sense of shock to those near her, and, according to the Witness, some of the students called out “this is our home and now you are shooting into our home”. They then closed but did not lock the front batwing doors of the Residence and retreated from the hallway and onto the stairs to the upper floors.

At 19:24, Witness 10 recorded that the police fired rubber bullets towards the front door of Sunnyside. A number of rubber bullet cartridges and balls landed in the front entrance way. Witness 10, in an e-mailed letter to the Vice-Chancellor and Principal noted that

“[t]heir force pushed the doors open. Thankfully [there] were no students in the reception area, otherwise there might have been injuries. The students and I were left visibly shaken. In both instances, the actions of the police appear to have been unprovoked”.¹⁰⁵

Shortly after this incident, Witness 10 was joined by her other medical student colleagues. They commented on the lingering smell of tear gas fumes. Witness 10 and her colleagues decided to directly approach the police officers sitting in a Nyala and to appeal to them to allow themselves and those students who did not belong to Sunnyside Residence “safe passage” to their own residences. Witness 10, who was wearing a white lab coat and carrying a first aid kit, approached the vehicle. She was accompanied by a colleague, who was a more senior medical student. He was wearing medical scrubs. Despite the overtly peaceful gestures they were making, the officers did not “stand down” their guns until the medical students had reached the vehicle, a situation, which the Witness said, alarmed them both. The officer with whom she negotiated refused to give her his name. When she raised the issue about the curfew and the start time, the officer replied, “what curfew?” The officer then gave them 15 minutes only, to make the safe passage transition with others.

In raising her concerns later that night with the University Vice-Chancellor and Principal, Witness 10 drew his attention to certain “completely unprovoked” incidents occurring at Sunnyside Residence. In addition, she noted, there appeared to be confusion in the information communicated between the Senior Executive Team and the police, with the students’ understanding from the circulated e-mail that they could move about freely on campus until 22:00. She stated that she had concluded from what she had witnessed that “the police were either a) not informed of that decision, or b) chose to act outside the confines of it”.¹⁰⁶

In the Vice Chancellor and Principal’s reply to her e-mailed account and concerns, he stated that the head of the university’s security services, Mokgawe Kobe, had visited Sunnyside and indicated that “some protestors had been stoning police and had been involved in arson nearby.” He went on to state that there had been four separate arson attempts that evening. There were no further specifics provided, except to state that he had accepted the information provided by the university’s security services.¹⁰⁷

¹⁰⁵ Email correspondence between Witness 10 and Prof Adam Habib (14 October 2016), sent at 22:12.

¹⁰⁶ Email correspondence between Witness 10 and Prof Adam Habib (14 October 2016), sent at 22:12.

¹⁰⁷ Email correspondence between Prof Adam Habib and Witness 10 (14 October 2016), sent at 23:28.

On the following morning, the Senior Executive Team issued a statement stating that “a group of students involved in skirmishes with the police” and attempted acts of arson at the Matrix building, “stoned the police outside the [nearby] Sunnyside residence and the police dispersed them using stun grenades and teargas. At no point did the police enter or throw teargas into the residence”.¹⁰⁸

In a second statement about the incident issued ten minutes later, the same source stated that the students had regrouped at the Matrix, under the University Avenue bridge and attempted to establish a road blockade. According to the statement, the students, in the course of being dispersed by the police, ran into the foyer of Sunnyside Residence as well as into the Matrix building. According to the statement, the police “cleared them” from the Matrix building, and dispersed them outside the Sunnyside residence after they had come out of Sunnyside to throw stones at the police. The statement once again affirms that “[a]t no point did the police enter Sunnyside or shoot inside the Residence.” The statement continued by noting that the university’s security services later went to Sunnyside Residence and spoke to two members of staff and three students who “confirmed that the confrontation had happened outside” and only the “smell of teargas ... came in their direction”.¹⁰⁹

While it is reassuring that Campus Security did conduct an investigation into the concerns raised by Witness 10 about the SAPS conduct, an independent forensic assessment conducted during March 2017 confirmed evidence supporting Witness 10’s allegation that the police had fired directly at the front of Sunnyside Residence on the night of 14 October 2016. The results of the forensic assessment indicated the following:¹¹⁰

- Evidence that rubber bullets hit the left side panel of the batwing doors: There were two well-defined indentations evident in the door frame, adjacent to the glass panes. Each indentation was 17mm in diameter and was consistent with the impact of a rubber bullet. In addition, each indentation also showed blue discolouration in the fine fissures of the wood grain of the doorframe. According to a ballistics report on the indentations, the indentations are “significant” and are indicative of “a high velocity impact”. The report concludes that such indentations “are not consistent with ricochet or glanced off damage but from a direct impact”.
- Evidence that those who were firing the shotguns were aiming upwards towards the door: The two impacted depressions in the doorframe were 1.4 and 1.8 metres above the floor level of the entrance, with the entrance approximately 1.5 metres above street level and the paved and parking area in front of Sunnyside Residence.

While undertaking the assessment, members of the Project Team were approached by a person who informed the team that she had been present when the incident occurred.¹¹¹ The

¹⁰⁸ University of the Witwatersrand Senior Executive Team, “Wits condemns Friday night’s violence on campus and in Braamfontein” (15 October 2016), available at: <http://www.wits.ac.za/news/latest-news/general-news/2016/feesmustfall2016/statements/>.

¹⁰⁹ University of the Witwatersrand Campus Control, “Summary of incidents on Campus on Friday Night” (15 October 2016), available at: <http://www.wits.ac.za/news/latest-news/general-news/2016/feesmustfall2016/statements/>.

¹¹⁰ The assessment was done by a member of the project team, with additional ballistics assessment provided by an independent expert.

¹¹¹ Interview with Witness 11.1, Johannesburg (March 2017).

Witness said that she saw “the police shoot directly from the road into the Residence and at the doors”. She stated that some of the shooters were standing on the road across from the front door, and three had come into the paved frontage area below the steps, some seven metres from the front entrance.

It would appear from the fact that the rubber balls struck the door and passed into the entrance of the Residence from the paved parking area indicates that the shooters held their rifles in “raised trajectory” and were thus “targeted and directed” shots. The Project Team were shown blue rubber balls which had been retained from the incident.

On the basis of the forensic investigation conducted by the authors of this report together with ballistics expertise, it appears that the university was wrong to suggest that the police had not fired at the residence, and that “the confrontation had happened outside”. It is clear that at least part of the confrontation was at the entry point of the residence.

The imposition of the curfew was met with protests by some students. On the night the curfew was imposed, students from Barnato Hall and David Webster Hall on West Campus engaged in “singing protests” outside the latter until the police conducted a dispersal operation. The students from David Webster Hall retreated into the reception area, where they continued to hold singing protests at the back section of the ground floor area. According to a witness and resident of the hall who later made a “voluntary statement” to the university, the police fired four shots into the residence, two of which hit the front door and the other two the laundry room.¹¹² The police also allegedly fired at the windows of the residence at higher levels, including into the study room area on the first floor and into the computer room on the second floor, apparently because lights and movement were visible.¹¹³ One complainant, in his statement, described being in the computer room at night with ten other residents discussing the protests when police allegedly fired through the windows into the computer room, causing them to turn off the lights, crawl out of the computer room and make their way back into their own rooms.¹¹⁴ Another witness said that as their rooms were so tiny, the residents preferred to study or gather for discussions in the study or computer rooms, so the police shooting up at the windows, if they saw lights on, made their lives difficult.¹¹⁵ Witness 17 added that from their conduct the police appeared to have believed or have been instructed to compel the residents to have lights out and be asleep by 22:00.

After 14 October, the issue of access to study facilities in the residences after 22:00 at night deteriorated into open conflict between students and the police at Men’s Res, which incorporates College House and Dalrymple House on East Campus. The conflict ran for about a week, with the students left to battle it out with the police, apparently without mediation or other support from the wardens. One problem for the student residents in Dalrymple House was their lack of access to the computer room during the curfew hours. Historically, many students had relied on access to a computer room only accessible through College House. Under the curfew conditions, if they attempted to return to Dalrymple House after 22:00 they

¹¹² Witness 17.3, Statement to the University (15 October 2016).

¹¹³ Witness 17.3, Statement to the University (15 October 2016); Witness 17.4, Statement to the University (16 October 2016); Interview with Witness 17, a third year student at the University of the Witwatersrand, Johannesburg (8 September 2017).

¹¹⁴ Witness 17.4, Statement to the University (undated).

¹¹⁵ Interview with Witness 17 (8 September 2017).

were at risk of harassment, being exposed to tear gas and at risk of being shot at with rubber bullets from Nyalas parked among the trees, bushes and gardens between the two residences. On one night Witness 35 was unable to sleep in his room, which was located on the second floor facing Dalrymple, because tear gas had settled in the room. The students resorted to trying to obliterate the outdoor pole lights so that they could not be seen moving between the two residences after 22:00. As aggression levels rose, they resorted to throwing stones at the Nyalas. Police stationed at the front of Dalrymple House allegedly were also shooting towards the entrance of College House.¹¹⁶

The university seemed to have acknowledged a few days after the curfew was imposed the need to accommodate “multiple legitimate requests from students who need to access university facilities for study purposes after 10pm”, and began to set up arrangements with associated Campus Control escorts for students on request.¹¹⁷

Of further concern, police appear to have entered David Webster Hall on several occasions, apparently gaining access through the disabled students’ entrance. On the first occasion, they followed a resident who had arrived back in the early morning hours of 15 October 2016 and used the disabled entrance into the residence. In his statement to the university, the student described seeing “a commotion” outside the residence when he arrived. As he approached the entrance in his wheelchair, three or four armed police advanced towards him, he stated. He pleaded with them “not to fire at [him]” as he was just wanted to enter the building and get to his room. There was a delay before the security guard came to the disabled entrance with keys to let him in. He stated that the police followed him inside and scanned the building briefly, then left.¹¹⁸ They appeared to have come back into the building some hours later, in response to renewed singing by students inside the residence, again using the disabled entrance, allegedly after threatening the security guard.¹¹⁹ The police then allegedly assaulted two male students who were stranded at David Webster Hall after the curfew was imposed and shot a resident in her room.¹²⁰

4.6 Unjustified use of force – violation of principles of legality, necessity and proportionality (15 October 2016)

“The campus became peaceful and quieter at 10pm. Later in the evening the students from Men’s Residence tried to get out but the police pushed them back. At David Webster they also tried to get out and they lit a mattress and the police dispersed them. At Knockando they also tried to get out and the police pushed them back. The students broke a few windows. There were no further incidents for the remainder of the night on campus. It is quiet on campus this morning.”¹²¹

¹¹⁶ Interview with Witness 35 (7 October 2017).

¹¹⁷ University of the Witwatersrand Senior Executive Team, “Update on incidents and restrictions on campus” (17 October 2016), available at: <http://www.wits.ac.za/news/latest-news/general-news/2016/feesmustfall2016/statements/>.

¹¹⁸ Witness 17.6, Statement to the University (18 October 2016).

¹¹⁹ Witness 17.6, Statement to the University (18 October 2016); Witness 17.3; and Interview with Witness 17 (8 September 2016).

¹²⁰ Witness 17.3; and see next section below.

¹²¹ University of the Witwatersrand Campus Control, “Summary of incidents on Campus on Friday Night”.

The update from SET of 15 October 2016 noted a wide range of alleged violent conduct by students and others on campus and in Braamfontein. In a brief reference, it added that those reporting police misuse of force should report such information to the Head of Security and to Campus Control who “will investigate all such incidents”.

The following incident demonstrates the difficulties faced in attempting to follow the SET’s directions, and the ineffectiveness of the promised investigations.

In the early morning hours of 15 October 2016 Witness 17 was in her room at David Webster Hall, watching a movie. Her lights were on. She heard banging on the door. According to various accounts including that of Witness 17, the incident occurred sometime between 3:00 and 4:30 in the morning. Thinking it was student friends, she opened the door, then immediately tried to shut it when she saw three police officers standing there, one with a gun. They were wearing heavy boots and dark blue bomber jackets, which concealed their identity badges.

Witness 17 tried to push the door shut, but one of them suddenly slapped her on her open face, shocking and startling her. They were demanding to know why she was not sleeping, why she was protesting and bothering them. Two of the three police officers pushed her back into her small room, slapping her with open palms and ‘boot kicking’ her near the ankles. One of them was continuing to demand to know “why are you not sleeping?” The third officer, who was behind them, was pushing and prodding her on her right side with the muzzle of his shotgun. She managed to pivot around to avoid being trapped in a tiny space and unable to protect herself. She was now with her back to the wardrobe trying to defend herself from the police officers assaulting her. Then the two men who were beating her stopped and one of them said “go back to sleep”. She heard loud sounds of their boots on her floor tiles leaving the room. The policeman with the shotgun, now fully inside her room, continued poking her with his gun muzzle, which was now up against her jeans at her left side. She heard him say in English “stupid girl”. Suddenly she realised that she had been shot. She froze and slid down against the wardrobe to the floor. She experienced a burning feeling where she was shot and she saw a bloody oily liquid seeping into her jeans. The third policeman had gone immediately after shooting her.¹²²



Witness 17 directly after the incident

¹²² Witness 17, Statement to the University (17 October 2016); Interviews with Witness 17 (27 July 2017); Interview with Witness 17 (4 August 2017); Interview with Witness 17 (11 August 2017).

Throughout this violent incident, in what she estimated was less than a minute in duration, her room door was open and also her window, which was near a student neighbour on the other side of her room. It is likely that other residents, who were hiding in their rooms from the police, could hear the screams, shouting and sound of the gunshot. A friend came rushing into her room to assist her and called a medical student who was also living at David Webster Hall to help with first aid. In a statement made to the university later on 15 October 2016, that medical student stated that: "I found her sitting on the floor inside her room with blood on the floor next to where she was shot on her left upper lateral thigh."¹²³ She contacted an ambulance to get advice. A paramedic with the ambulance service advised her to cover but not to tamper with the wound, "much as I had told them the bullet is inside her thigh". The medical student helped the injured person, as advised, and waited with her until the ambulance arrived, commenting later in her statement that the victim was "crying uncontrollably throughout" the prolonged wait.

Despite her serious injury Witness 17 had to wait until 06:00 before an ambulance arrived. The delay, she believed, was due to the effect of the curfew. The ambulance was further delayed in departing due to the need to wait for two other seriously injured persons to be included: a male student shot in the chest, who was experiencing difficulty breathing and needed emergency care in the ambulance, and a student from Barnato Hall, who had been shot in the back, according to Witness 17. Later, following their hospital treatment, she was to learn from the former of the two injured young men that when the police entered David Webster Hall the second time, he had hidden in a toilet. He was from another residence and had been trapped at David Webster Hall by the curfew. According to Witness 17, he told her that he had been found there by the police, who allegedly then shot and beat him in the toilet facility.

The ambulance took them to Helen Joseph Hospital where their arrival was noted in Witness 17's medical records as 6:40 on 15 October. She received attention from a doctor working in emergency medicine an hour later, with her history noted as involving both a physical assault and being shot with a rubber bullet in her left hip area, and that she was in pain from both sources of injury. The doctor did a washout of the bullet wound and removed two rubber bullets in the process. A consultant ordered that the large wound could not be closed by suture and that Witness 17 would need ongoing "wound care".

Her hospital medical records, which went temporarily missing, included a copy of the J88 medico-legal form, which noted a "large puncture type wound... with rubber bullet visibly lodged in wound".¹²⁴ Additionally, the doctor noted a "tender area over the lateral part of the left lower leg, above the ankle", consistent with the patient's allegation of assault.

After Witness 17's return later on 15 October to her residence from Helen Joseph Hospital, her wound began "oozing" whenever she had to walk or stand upright. A university residence official took her to Milpark private hospital later on that afternoon where her wound was cleaned and the dressing changed. Milpark Hospital, where she was later taken for twice daily treatments and eventually for surgery to deal with the non-healing wound, had noted in her

¹²³ Witness 17.2, Statement to the University (15 October 2016).

¹²⁴ The J88 is a legal document completed by an examining doctor or nurse and documents injuries sustained by a victim in any circumstance where a legal investigation is to follow. It is essential for any criminal investigation into an incident by police or the Independent Police Investigative Directorate (IPID).

record the measurement of her wound as 3cm x 3cm x 3cm and with a history of shot “at close range”.

For the following two weeks, Witness 17 was marooned in her room unable to attend classes, and taken to Milpark Hospital twice a day by the support person where medical staff drained, cleaned and dressed her wound. However, her wound became infected, delaying healing and with further complications likely. The medical specialists recommended urgent surgery, but the cost was an impediment. An intervention led to the assistance of a senior university official who ensured that the cost of the surgery was covered.

Witness 17 gradually recovered her health and mobility. However, as with some other seriously injured students, she struggled to prepare for and sit her end of year exams, lost her bursary support and had to repeat the third year of her four year honours degree.

Her struggle for access to an effective remedy and an apology provided further challenges. As she states:

“It appeared that at all the police stations, the refusal to help me stemmed from the allegation that the police had shot me”.¹²⁵

The victim of this reckless and unjustified use of force by police was personally attacked by a senior police officer, and was subjected to harassment over the phone and on social media platforms (including by an individual who did not disguise his membership of the SAPS). She had to change her personal details to protect herself from further abuse.

When she sought to get her J88 form stamped and to open a criminal complaint, she was, in turn, confronted at several police stations by a refusal to open a criminal investigation docket. The officers variously flatly refused, or called her “a stupid girl”, or accused her of lying and fabricating the story. In each instance, she was told to go away.¹²⁶ In December 2016, Witness 17 attempted to open a complaint with the Independent Police Investigative Directorate (IPID), using an online complaint system. Later when following up with a call to IPID, she was informed that they could not assist her, without a police criminal complaint number.

Witness 17 also tried various university-based remedies, including:

- Lodging a University of the Witwatersrand “voluntary statement” on 17 October 2016 detailing the incident (the statement was accompanied by six other individual voluntary statements each attesting to their witnessing of events that night at David Webster Hall and alleging misuse of force by police against themselves or others). Witness 17 submitted her statement and that of the others to Campus Control. A year later Witness 17 was still waiting for follow-up.
- On 21 October 2016, Witness 17 appealed directly to the University of the Witwatersrand Vice-Chancellor and Principal, Prof Adam Habib, by e-mail. She iterated the sequence of events, the medical and psychological consequences of being assaulted and shot in her room by police officers, the public abuse to which she had been subjected and the

¹²⁵ Interview with Witness 17 (27 July 2017).

¹²⁶ Interview with Witness 17 (27 July 2017).

obstacles all of this created for her ability to continue her studies. She appealed for acknowledgement of the harm done and assistance in obtaining “justice and to heal”.

- On 23 October 2016, Witness 17 received an e-mail reply directly from the Vice-Chancellor of the university in which he expressed that he was “sorry to hear about the incident and that sections of the university have not been as responsive as they should have been”. He copied in the Dean of Students, the head of Campus Control, “who will be in touch about getting a report on the incident and investigating it further”, and the Head of Residence, to assist on any support as per their areas of responsibility.
- Witness 17 subsequently was informed by the Vice-Chancellor and Principal about the establishment of a group of “independent investigators” who would be inquiring into events at David Webster Hall. When contacted by e-mail by this investigation team, she met them and provided them with information on her case, both written and orally. “I gave them proofs, pictures and communications with Prof Habib and the statements made by others concerning [her] incident.” The investigators apparently filmed and taped the interview with her.¹²⁷ After a prolonged period of silence from the investigation team, Witness 17 began to make inquiries. She was still seeking a copy of their report in October 2017.

Summary injury assessment

Subsequent independent medical and ballistics assessments confirmed that the “wound is consistent with a gunshot having been fired ‘in contact’ or within 1.5 – 2 meters whereby all the components [of the rubber bullet casing] had penetrated the wound through the denim”.

Commentary section

1. The shooting of Witness 17 was without any justification whatsoever. The use of armed force by the police officer threatening an unarmed individual, who was also at the same time been physically assaulted by two other police officers, violated the principles of legality, necessity and proportionality. The manner in which the shooter used force was also extremely reckless. All three police officers should be subjected to criminal investigation as a matter of urgency;
2. In view of the evidence of a climate of prejudice created against this victim of a police shooting within SAPS, it would be necessary for the criminal investigation process to be subjected to independent scrutiny, if not prosecutor-led;
3. There should be a SAPS internal review of the manner in which the curfew was enforced by the SAPS, with evidence of indiscriminate use of force on some occasions, including by their firing through ground floor and upper windows, and potentially against individuals manifestly complying with the curfew by being inside their residences after 22:00 hours;
4. Irrespective of the reasons invoked by the university authorities for the imposition of the curfew, including protection of lives and property, it had due diligence obligations to take all reasonable measures to protect those living in the university residences from the risk of the use of unlawful force by the police.
5. Speedy publication of the internal investigation report could also be an important measure of redress for those affected by the police use of unlawful force.

¹²⁷ Interview with Witness 17 (27 July 2017); Interview with Witness 17 (8 September 2017).

4.7 Dispersal of a peaceful assembly with excessive force despite appeals to negotiate (20 October 2016)

On 20 October 2016, a refusal on the part of the police frontline to negotiate with unarmed protestors led to a rapid resort to the highest permitted level of force. In this event, a number of individuals incurred severe injuries. Those people posed no threat to the police or others at the time.

Several hundred students had converged from different quarters to march towards the university's Science Stadium, a venue on the University of the Witwatersrand's West Campus, where they intended to hold a meeting to discuss some of their current concerns.¹²⁸ A participant, Witness 23, joined the group to support the "good cause of free education" and prevent "exclusion" of some students. They were singing. She could see no "politically-aligned placards or t-shirts" amongst the group. The high level of policing around the Great Hall on East Campus, caused them to seek another venue.¹²⁹ They were minutes away from the intended venue when they encountered a line of about a dozen POP officers. Witness 23 saw several of the group's leaders step forward to attempt to engage with the police. She witnessed a "hostile" and "aggressive" reception given to her colleagues, one of whom, Witness 2, she saw being roughly pushed backwards.

Witness 2 could see that while she was trying to negotiate with those at the head of the police line, they were busy loading their shotguns. She commented later:¹³⁰

"We told the police we want to pass on ... We all had our hands up. We did not have stones or sticks ... The police started screaming at us. I had my hands up [and was saying] please don't shoot, we just want to go for a meeting; we just want to talk... But they had no intention to talk to us."

A month later, Witness 2 was still shocked at what had happened. The effort to peacefully march and meet had also been undermined, in her view, by the April 2016 court interdict, which, she believed, "was a general prohibition of gatherings on campus."¹³¹

Witness 23 saw that the police were "insistent" and were ordering them to "disappear" or "after five seconds they would shoot". Their efforts to negotiate were all over in less than three minutes, she commented.

When Witness 2 was shouted at and roughly shoved backwards by a police officer who appeared to be the operational commander, she started to turn away fearing that they were about to shoot. Just as she was facing away from the police, they opened fire with rubber bullets, in the direction of her and the rest of the crowd that had assembled. Within seconds of the volley,¹³² a stun-grenade was launched from within the police line towards the protestors

¹²⁸ See the map of the University of the Witwatersrand's East and West campuses on p. 18 of this report.

¹²⁹ Interview with Witness 23, first year student at the University of the Witwatersrand, Johannesburg (27 July 2017).

¹³⁰ Interview with Witness 2, honours student at the University of the Witwatersrand, Johannesburg (18 November 2016).

¹³¹ See the discussion in part 3 of this report above and under *Commentary* below.

¹³² Repeated listening to the sound footage of the unfolding scene indicates a barely perceptible time gap between the opening volley of gunfire and the boom of the stun grenade. See SABC News, "Lead

who were beginning to flee. Witness 2 saw the stun grenade at the moment she felt the bullets hitting her. One of her colleagues, Witness 35, who was close behind her, “saw bullets bouncing off her back” and the smoke from the stun grenade. He tried to escape towards the steps leading to the Career Counselling and Development Unit (CCDU) building and to pull her behind him, then he got shot himself, five times, on his right side – three times on the right outer side of his thigh, one which struck his right big toe and the fifth which tore his shoe. He had also been injured on his right Achilles tendon prior to being shot, which made him scream with pain.¹³³

Witness 23 heard the explosion, saw the white smoke and felt a shock, her head telling her to “run, run, run”.¹³⁴ It was the boom of the stun grenade exploding, she thought, that made them all turn and run. Witness 23 began running in a panic, partly fearing that the police were pursuing her. Indeed, the police line had set off walking rapidly down the road in pursuit of the running students. This additional aggressive activity, including some discharging of firearms, increased the sense of panic amongst the dispersing students.

In the melee and panic Witness 23 fell heavily, dislocating her left knee and was unable to get up again. She felt no sensation below her left knee and was lying on the road at the edge of the median strip. Hearing her calls for help, several male students paused in their flight to come to her assistance. They tried to help her get up. However, the police were bearing down on this group. A police officer, who appeared to have been the commanding officer, raised and fired his gun towards the students kneeling or standing protectively around the injured woman. His order for them to leave her or there would be consequences was audible to the group protecting her. Despite their pleas that she was injured and that they could not leave her, in the face of ongoing shooting by the police they had to flee. She was left on the side of the road, pleading repeatedly, “please help me”, to the police as they ran past her.

Witness 35, who was limping behind the police line pursuing the students, could hear the police “verbally assault” two of his fellow students desperately trying to assist Witness 23. One of the two students began to vomit in distress.¹³⁵ Witness 35 attempted to argue with the police, but then he became a new target, with one of the police officers pursuing him with a raised shotgun “almost pushing” him towards the parking area near Amic Deck. At the parking area, Witness 35, exhausted, in pain from his injuries and fearing arrest, turned around to face the police officer who continued to point his gun directly at him. He pleaded to the police officer to stop and not to harm him. To his relief the policeman walked away.

Summary Injury Assessments

Witness 2, as confirmed by hospital, medico-legal and ballistics evidence, received 13 rubber bullet injuries, ten of which caused severe bruises to her back and three causing glancing injuries to her sides. They were all fired directly at her. None were ricochet shots. The

up to the shooting of Shaeera Kalla, others”, *You Tube* (21 October 2016), available at: <https://www.youtube.com/watch?v=DMtllDXZpE>.

¹³³ Interview with Witness 35 (7 October 2017).

¹³⁴ Interview with Witness 23 (4 August 2017).

¹³⁵ Interview with Witness 35 (7 October 2017). Witness 2 also saw this before she was assisted to access health care services at the Campus Health and Wellness Centre. Interview with Witness 2 (18 November 2016).

distribution of the injuries were consistent with her turning and facing away from the police when shot. She was in severe pain and her injuries required hospitalisation for nearly a week and a longer-term healing process of a number of months following the incident. Several other student leaders at the front line were also shot and injured, requiring medical treatment at the Campus Health and Wellness Centre and/or hospital facilities.

Witness 23, after her fall, required hospital-based care and surgery over a period of three months for a damaging “multi-ligament knee injury”, an injury more often occurring in high-energy sports and similar activities. She suffered a possibly-life changing permanent knee joint injury and is unlikely to fully recover a comprehensive range of movement and function in her injured joint.

Commentary

There are multiple concerns arising from this dispersal incident.

1. It is possible that the police had been watching the marchers for some time while standing near their Nyala at the edge of the road and facing in the direction of the oncoming group. Visual footage suggests that the police began quickly to form a line across the road, with the senior officer or commander aggressively moving forward to confront several of the leaders who were attempting to negotiate. The footage and testimony indicate that the student leaders had their hands raised to confirm that they were not armed. It was a matter of minutes between this more active effort by several of the student leaders to engage with the police, before the police opened fire on them. It would appear from the police conduct that their intention from the outset was to stop the protestors moving to their venue and to disperse them.
2. The POP unit’s conduct appears to have been totally at odds with National Instruction 4 of 2014’s injunction that members involved in public order policing operations must conduct intelligence gathering and assess threat levels accurately;¹³⁶ avoid the use of force at all costs;¹³⁷ ensure that ongoing negotiations take place between the police officers and conveners or other leaders to resolve issues before they escalate;¹³⁸ and, where “offensive actions” have been taken, “the purpose must be to de-escalate conflict with the minimum force to accomplish the goal”.¹³⁹ Section 14(3) of the National Instruction elaborates on this approach, emphasising that the degree of force deployed must be proportional to the seriousness of the situation or the threat posed; that minimum force must be used and discontinued once the objective has been achieved; and that police officials should always implement a gradual police response.
3. The immediate reliance on rubber bullets by the police to disperse the crowd breached the SAPS’s own instructions. These require “approved rubber rounds” only to be used as offensive measures to disperse a crowd “in extreme circumstances, if less forceful methods have proven ineffective”.¹⁴⁰ It is highly doubtful that these circumstances constituted “extreme circumstances”. No other, less extreme measures appear to have been tried, with the stun grenade being fired almost simultaneously with the shotguns. As

¹³⁶ Sections 5(2) and 9(3) of the National Instruction 4 of 2014.

¹³⁷ Section 13(2) of the National Instruction 4 of 2014.

¹³⁸ Section 13(2) of the National Instruction 4 of 2014.

¹³⁹ Section 14(3)(a) of the National Instruction 4 of 2014.

¹⁴⁰ Section 14(3)(6) of the National Instruction 4 of 2014.

such the police used unnecessary and disproportionate force, violating the principles of necessity and proportionality.

4. Additionally, the level of force used bore no relationship to any threat posed by, among others:
 - a. Witness 2, who was unarmed with her hands raised in front of the police line, but was nonetheless shot, as she turned her back to them, with direct shots at 'close range' - within a distance of no more than ten metres (below the minimum of 20 metres stipulated under SAPS directives).¹⁴¹ As such this was an unjustified use of force, which violated the principles of necessity and proportionality. Witness 35, who was standing close to Witness 2 and turning to find an escape route when he was shot on his right side, was similarly the target of unjustified use of force.
 - b. Witness 2 was also abused when a uniformed SAPS member arrived at the hospital emergency section, attempting to obtain a statement from the injured patient and access to photos of her injuries. The police intrusion was recorded in the hospital records at 15:55 on 20 October 2016. A second attempt was made when the patient was moved to a ward. Both attempts failed but they represented an improper and intimidating attempt to compromise the patient's access to an effective and impartial remedy. These also violate principles of medical neutrality discussed in part 5 of this report, as they could be construed as attempts to interfere with appropriate medical care.
 - c. As armed police continued to chase the dispersing protestors, they threatened and shot at a small number of students who had gone to assist their fallen colleague, Witness 23. The moving front line of the police was within only seven to ten metres from the injured person lying on the ground and her helpers standing around her, when they shot in their direction and forced them to abandon her. Those assisting her were unarmed and posed no visible threat to the lives of the police. The police use of force was unjustified, violating the principles of necessity and proportionality. It was also reckless in regard to the incapacitated injured person lying on the ground. One of the police furthermore turned on Witness 35, who had also tried to intervene, effectively marching him at gunpoint, despite his injured state, to another location on the campus before walking away.
 - d. The police conduct in failing to offer any assistance to or summon an emergency vehicle for the injured person lying helplessly on the side of the road, when they had the power to do so, was also contrary to the consensus stated by the Report of the Marikana Commission, that those responsible for ordering or using force must have a plan and available capacity to respond to emergencies created by the use of force.¹⁴²

More generally, while the university had obtained a final court order in April 2016 obliging the SAPS to assist it in the enforcement of the interdict, the prohibitions to be enforced included offences already criminalised under the ordinary law and forms of conduct explicitly listed,

¹⁴¹ On reliable authority, the minimum distance of permissible rubber bullet discharges is provided for in both POP training manuals, as well as in POP Divisional Directives.

¹⁴² See part 5 of this report and the discussion of the findings and recommendations of the Marikana Commission of Inquiry relating to "best practice" in crowd management operations that are likely to involve the use of force, where the findings include the need to ensure that there is sufficient capacity to respond to injuries and adequate training and capacity within the police services to provide first aid treatment.

involving the disruption of the Applicant's normal activities. Nowhere in the court order is "peaceful assembly" as such interdicted. The police involved in the above operation were either poorly informed as to the grounds upon which their dispersal operation could be justified or they received an unlawful order to disperse a peaceful assembly involving none of the interdicted conduct.¹⁴³

4.8 Arbitrary detention (21 October 2016)

On Friday, 21 October 2016 about 200 predominantly black medical students participated in a protest near the University of the Witwatersrand Medical School canteen. Their participation arose partly from a range of grievances directed at the faculty's management. They were singing "struggle songs", according to Witness 5, himself a medical student, and were attempting to gain entrance to the canteen in small groups.¹⁴⁴ Security guards were pushing them back. Witness 5, who had arrived from his university accommodation to see this situation already developed, observed of the protestors that "their emotions were high [and] the managers were silent". This situation went on for about 30 minutes, before the security guards called in a police patrol vehicle.

Witness 5 and three others found themselves being "aggressively" handed over by the security officers to the police, who handcuffed them using the security guards' metal handcuffs temporarily. Witness 5 commented that:

"Nobody from the Administration came to talk to us. There was no attempt to resolve the situation. We were penned in."

The police, who appeared to the arrested group to be senior officers, spoke to them in an aggressive manner. The four detained students were taken to Hillbrow Police Station, where they were re-handcuffed. They were kept waiting for several hours. In spite of their long detention period, they were not provided with any information on possible charges against them. After some time, according to Witness 5, a police officer told them that they had "contravened a court order". Witness 5 and his colleagues were puzzled, as they believed that the April 2016 court order did not apply to the Medical School, given its location far from the main university campuses.

The detainees were taken to a communal cell, estimated as six by three metres in size, with about a dozen other detainees already in the cell. The other arrested men were apparently being held under various criminal charges. The main problems Witness 5 and his colleagues faced in the cell were the filthy conditions of the toilet, the lack of washing facilities and the overflowing of the shower, which had a blocked drain, and caused water to overflow onto the cement floor where they also had to sleep. The meals were adequate, although there was difficulty in securing food in the initial period after their arrest. One of the detained students needed urgent access to an asthma pump, which was arranged.

¹⁴³ See part 3 of this report in relation to the illegality of the use of force in cases of peaceful assembly under international human rights law.

¹⁴⁴ Interview with Witness 5, fifth year medical student at the University of the Witwatersrand, Johannesburg (17 March 2017).

It was not until the early evening that a *pro bono* attorney was able to reach the police station and locate the detained students. Initially the lawyer's information on the case was that bail would be refused because of some "higher level directive" that arrested students had to be automatically denied bail.¹⁴⁵ Witness 5 recalled that a senior officer when leaving the station late on Friday afternoon had commented to them that they would not "get out until Monday".

The attorney, from one of a small group of public interest legal services organisations offering *pro bono* legal assistance in response to the wave of arrests arising from the student protests, consulted with the four detainees in the evening of 21 October.¹⁴⁶ He struggled for the next 24 hours to locate the designated investigating officer in SAPS and the allocated prosecutor. The former apparently produced a file noting that the detainees were being charged with participation in an unlawful gathering and contravening a court order. Indeed, Witness 5 said, when they were finally charged and appeared in the Johannesburg Magistrates' Court on the following Monday, they were charged with violating a court order by participating in an "unlawful assembly" at a specific place "not protected" under the April 2016 court order.

There was no evidence at all that any of the detained students had been involved in violence. The prosecutor abandoned a possible common law charge of public violence. None of the arrested students had a previous police record. However, it was not until Monday morning, after the attorney had gathered full confirmation of the university and other personal details of the four accused, that he was able to secure an agreement with the prosecutor not to oppose their release on bail in the Magistrates' Court hearing. The Magistrate ordered their release on bail of R1,000.00 each and they were warned to re-appear in court on 24 November 2016. On that date all charges were withdrawn in court.

Reflecting on this difficult experience, Witness 5 commented that he was in "a state of shock", finding himself arrested and in a police cell for the first time in his life. In a wider sense, he said,

"a lot of damage was also caused from creating a 'monster' out of innocent students in the public mind."

Commentary

- The four students were subjected to unlawful arrest: This is evident from the fact that there was no reasonable basis for arresting any of the four in relation to the protest on 21 October; the prosecutor's effort to locate a proper basis for prosecuting them on a charge, such as under the common law offence of public violence, failed; charges were ultimately not pursued;
- The four students were subjected to arbitrary detention: Given that the students were not charged with Schedule 1 offences and had no previous convictions, they should have been released on police bail. Instead the students were denied the right to be released on bail due to a "charge" which violated the principle of legality;
- The four students were held in degrading conditions for three nights for no lawful reason.

¹⁴⁵ Interview with Witness 5.1, legal representative, Johannesburg (15 May 2017).

¹⁴⁶ Interview with Witness 5.1 (15 May 2017).

- More broadly, their constitutional right to participate in a peaceful assembly was violated through their arrest, detention and prosecution on a charge without any legal basis. The UN Joint Report of the Special Rapporteurs states that “no-one may be subject to arbitrary arrest and detention” which, in the context of assemblies, can lead to the “criminalisation of assemblies and dissent”.¹⁴⁷ Even if incidents of violence may have occurred at the protest the four students were attending, the students would have retained their rights to peaceful assembly. As mentioned earlier, the UN Joint Report of the Special Rapporteurs states:

“[T]he right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violent offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature.”¹⁴⁸

¹⁴⁷ UN HRC, *Joint Report of the Special Rapporteurs*, para. 45.

¹⁴⁸ UN HRC, *Joint Report of the Special Rapporteurs*, para. 20. See also *Garvas*, para. 53, where the Constitutional Court protected the right to peaceful assembly of participants remaining peaceful in intent or behaviour during a gathering which may result in sporadic violence by others.

5. EXTENSION OF HARM THROUGH COMPROMISING ACCESS TO HEALTH SERVICES

5.1 Introduction

The individual and public health aftermath of ‘higher education campus securitisation’ has been a neglected area of concern and documentation. The impact and consequences for health, from the manner in which access to university spaces was controlled and free movement restricted within and across the University of the Witwatersrand’s campuses through the deployment of police and other security personnel, remain poorly understood and unattended to date. As Witness 4 said during her interview:

“This incident did not only leave us scarred physically, but it also scarred us emotionally for life.”¹⁴⁹

The harm documented in the previous section of this report was caused not only by physical injuries sustained from the use of force on university campuses and in the neighbouring area of Braamfontein, but also from access of emergency medical services being compromised for those who required it. Difficulties in both accessing and receiving essential medical attention exacerbated human suffering.

It is critical to understand how incidents of direct police harm, such as highlighted in part 4 of this report, were compounded through systematic and structural constraints in the provision of emergency assistance and other necessary health care. Also important is understanding if such additional suffering may have been mitigated or avoided altogether through adherence to universal human rights and humanitarian norms intended to deliver health care services in a timely and appropriate manner.

5.1.1 Disruption of routine health care

The provision of routine health care services to the university community through the Campus Health and Wellness Centre (Campus Health) and the Counselling and Careers Development Unit (CCDU) became disrupted for a variety of reasons throughout the #FeesMustFall protests. A key factor was the increasing focus of health care providers on dealing with acute emergencies and containing the health consequences of an abnormal situation on campus. The capacity to attend to urgent health problems arising from university and police responses to the protests was insufficient. The capacity of staff to provide health care services was strained by the additional responsibilities in the wake of the #FeesMustFall protests, the sometimes fearful atmosphere and budgetary constraints (as university budgets to provide additional services were not increased in response to the crisis). Operating hours for clinical services remained the same despite the dramatically increased demand for such services. There was no plan put forward by either the police or the university to deal with the contingencies of campus securitisation. Thus, by default, a largely student volunteer effort was mounted to address the pressing gaps in health service delivery.

5.1.2 The need for supplementary health care provision in exceptional situations

¹⁴⁹ Interview with Witness 4 (14 March 2017).

While the deployment of security personnel and SAPS on the university campuses during student protest action, and the consequences evident in part 4 of this report, did not constitute “a war or armed conflict”, nonetheless the conditions did meet the threshold for ensuring protection of health care in all its aspects. The International Committee of the Red Cross (ICRC) terms such situations as “other emergencies” and provides the following definition:

“[circumstances] that fall short of the threshold for armed conflict, during which security measures or incidents related to security can result in serious consequences for people in need of effective and impartial health care: death, aggravation of injuries, worsening of illnesses or diseases, obstruction of preventive health-care programmes, and so on. These [security] measures or incidents might take a number of forms: violence against people in need of health care; violence against health-care personnel and facilities or medical vehicles; entry into health-care facilities ... with the intent or effect of interrupting the delivery of health-care services; arbitrary denials of or delays in the passage of medical vehicles at checkpoints; or simply the general insecurity prevailing in an area affected by a situation of emergency. In these circumstances ... health-care personnel ... may be called upon to prevent and alleviate human suffering”.¹⁵⁰

Given that members of the university community required medical services, both routine and extraordinary, throughout the period under review (September to November 2016), the principles of medical neutrality and the necessity to safeguard health care at risk became relevant to the situational context. Consistent with this understanding, the mandate to deliver prompt and appropriate health care services whether to those who were injured or to anyone requiring routine medical treatment, did not diminish during the crisis situation. Indeed, there ought to have been a greater and compelling responsibility to ensure that the holistic health needs—whether physical, mental, psychological or spiritual—of a community deeply divided and experiencing trauma¹⁵¹ were being met.

5.2 Duties to provide health care services

There are multiple domestic and international legal obligations, as well as norms and standards for professional conduct that govern the responsibilities for health care provision during both ordinary and exceptional situations. These obligations and standards also provide strict parameters when it would be fair to deviate from usual practise. Among the relevant domestic and international legal obligations and standards to guide those responsible to ensure adequate, appropriate and non-discriminatory access are the following:

¹⁵⁰ See the International Committee of the Red Cross (ICRC), *Health Care in Danger: The Responsibilities of Health Care Personnel Working in Armed Conflicts and Other Emergencies* (August 2012), available at: <http://healthcareindanger.org/wp-content/uploads/2015/09/icrc-002-4104-the-responsibilities-health-care-personnel.pdf>.

¹⁵¹ It is common cause that the period of the #FeesMustFall crisis (September to November 2016) was one of considerable stress to all university staff and students. Whilst there were many public and private expressions of these sentiments, the School of Human and Community Development issued a statement directed to senior university management after an all-staff meeting on 21 October 2016 that captured the significance of the situation:

“As a School we are deeply concerned about the psychological impact on the University community of the continuation of the academic year under the present conditions. As mental health professionals, we believe that any attempt to continue with the academic programme under these conditions may be at the psychological expense of the people who comprise the University community. The psychic and interpersonal stress upon staff and students has already been severe and will have continuing ramifications long after this specific period.”

- Section 27(1) of the Bill of Rights in the South African Constitution, guaranteeing the right of access to health care services for everyone; and
- Section 27(3) guarantees, without qualification, that “[n]o-one may be refused emergency medical treatment”; and
- Other constitutional rights are relevant in the context of the provision of health care services, including the right to human dignity, the right to life, the right to freedom and security of the person, and the right not to be tortured or treated or punished in a cruel, inhuman or degrading way.
- Various provisions protecting the right to health are also contained in the ICCPR and the International Covenant on Economic, Social and Cultural Right (ICESCR), both of which South Africa has ratified. In respect of the Siracusa Principles, any limitation or derogation from the ICCPR must be legitimate, non-discriminatory, non-arbitrary, taken as an exceptional step and without the possibility of a less severe alternative.¹⁵²
- Read together, this international human rights legal framework lays out the necessity for the provision of essential health care services, even during times of public emergencies.

The recent joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary and arbitrary execution,¹⁵³ covering duties with regards to the exercise of the human right to peaceful protest, is instructive. Section D addresses how “States shall facilitate the exercise of the right of peaceful assembly” and explains that “the positive obligation of the State to ensure rights requires that authorities facilitate assemblies.”¹⁵⁴ In particular, the Special Rapporteurs described several practical recommendations including the importance of contingency planning, effective communication and collaborations, in particular on any safety or security measures needed, and noted pertinently:

“The State’s obligation to facilitate includes the responsibility to provide basic services, including traffic management, *medical assistance* (emphasis added) and clean-up services. *Organizers should not be held responsible for the provision of such services* nor should they be required to contribute to the cost of their provision.”¹⁵⁵

Regarding the responsibility for provision of medical assistance described above, it can be any branch of the state that renders this essential service. For police, there are clear directives that set this out as a requirement. Principle 5 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Resolution 45/166, 1990) reinforces the obligation to guarantee delivery of care to wounded individuals by stating that:

¹⁵² Article 4 of the ICCPR, which South Africa ratified in 1995, includes non-derogable rights from which States can never deviate “even in times of public emergency that threatens the life of the nation”. Similarly, the ICESCR, which South Africa ratified in 2015, obliges States Parties to adhere to a minimum core obligation, to ensure minimum essential levels to the specific right including the right to health. See Committee of Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1 of the Covenant)* (1990), UN Doc E/1991/23.

¹⁵³ See part 3 of this report.

¹⁵⁴ UN HRC, *Joint Report of the Special Rapporteurs*, para. 37.

¹⁵⁵ UN HRC, *Joint Report of the Special Rapporteurs* (emphasis added).

“Whenever the lawful use of force is unavoidable, law enforcement officials shall: [...] (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”

The SAPS also have clear guidance on their role in providing first aid to anyone injured, even in the course of their operations. A recommendation from the 2015 report of the Marikana Commission of Inquiry states that those responsible for ordering or using force must have a plan as well as the available capacity to respond to emergencies created by the use of force; specifically: “In an operation where there is a high likelihood of the use of force, the plan should include the provision of adequate and speedy first aid to those who are injured”. The Commission affirmed the views of an expert witness (Gary White) that operational planning which takes into account “adequate first aid arrangements” is “a matter of good practice and recognized as in compliance with human rights standards”.¹⁵⁶

Universities in South Africa have additional duties regarding health and wellness towards students living in residences, either on or off campuses. The university’s responsibility for “Student Well-Being and Support”, which is dealt with under section 8 of the 2015 policy on the minimum norms and standards for student residences at public universities states that:

“The University student housing must provide for adequate provision for *access to medical and psychological services to cater for the well-being of student residents during work hours, and must ensure that emergency support is available after hours*. This includes the provision of a first aid kit and instructions on the use thereof.”¹⁵⁷

In effect, this provides public universities in South Africa with a directive to develop mechanisms that attend to residential students’ needs for health and well-being around the clock. The use and contents of first aid kits are regulated through occupational health and safety legislation; and, in order to ensure the competence of first aid providers who use the first aid boxes, the government accredits training programmes and stipulates that certificates should be issued and skills updated regularly.¹⁵⁸ While this policy does not specify who is responsible for emergency care after hours, there are wardens assigned to each student residence at the University of the Witwatersrand who report to senior management through the Dean of Students.

Doctors, nurses and other health care providers have professional and ethical norms and standards which govern service delivery and relationships with patients. Collectively, these explain that duties to a patient take precedence over one’s own personal beliefs and must

¹⁵⁶ Marikana Commission of Inquiry, *Marikana Commission of Inquiry: Report on Matters of Public, National and International Concern Arising out the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province* (March 2015), p. 552 at para. F1 and section 8 at paras 8.1.1-8.1.3.

¹⁵⁷ Department of Higher Education and Training, “Policy on the Minimum Norms and Standard for Student Housing at Public Universities”, Government Notice No R897 (29 September 2015) (emphasis added). The policy was adopted in accordance with the Higher Education Act 101 of 1997.

¹⁵⁸ For standardisation purposes, Level 1 first aid competencies are governed by the Occupational Health and Safety Act 85 of 1993 as are the contents of first aid boxes.

respect human rights, principles of non-discrimination, confidentiality, fidelity to professional ethics and doing no harm.¹⁵⁹

5.3 Provision of health care in accordance with principles of medical neutrality

There is ample domestic and international evidence that during periods of emergency and crisis as well as social and political instability, medical care is at risk of compromise; and, access to health care services may be manipulated as a tool of power. As explained by the ICRC, the largest international humanitarian network in the world,

“armed conflict and internal disturbances – such as violent protests and riots – cause injuries among those directly participating and those who get caught in the way. Serious injuries require medical attention, yet it is precisely at these moments of greatest need that health-care services are most vulnerable to disruption, interference and attack”.¹⁶⁰

To guard against these possibilities, it is imperative that conflicted parties respect international humanitarian law. The Geneva Conventions lay out the international legal standard for humanitarian treatment of the sick and wounded during armed conflict and other emergencies. They safeguard principles of medical neutrality and ethics, reminding us that these do not change from times of peace to situations of protest, states of emergency and violent conflict.¹⁶¹ Moreover, they acknowledge that universal medical ethics require additional protections in such extreme situations. South Africa, as a signatory state to the Geneva Conventions, has a broad duty to safeguard health care providers at all times—even more so during periods of conflict and emergency—so that systems rendering health care, both emergency and routine, can remain securely in place.

Physicians for Human Rights (PHR), an international non-governmental organisation which uses medicine and science to document, and advocate against, health and human rights violations around the world, explained the humanitarian obligations of medical practitioners in the context of medical neutrality in their April 2017 Policy Brief:

“Under international human rights law, states are obligated to ensure effective protection for health care workers at all times, and to *provide unencumbered access to emergency health care* for all. These obligations remain in force *regardless of any context* of conflict, civil unrest, emergency, or alleged criminal activity. Interference by a third party, including punishment or harassment of health care professionals for providing medical treatment in accordance with international medical ethics,

¹⁵⁹ See the International Council of Nurses, *ICN Code of Ethics for Nurses* (2012); World Medical Association, *Declaration of Geneva* (2017); and the Codes of Conduct from the Health Professions Council of South Africa and the South Africa Council of Nurses.

¹⁶⁰ ICRC, *Health Care in Danger: Making the Case* (2011), available at: <https://www.icrc.org/en/publication/4072-health-care-danger-making-case>.

¹⁶¹ Such legal precedent has been established over time to ensure the provision of medical care in neutral and impartial ways, especially when such care is under threat. In the broad context of Common Article 3(2) of the Geneva Conventions: “The wounded and the sick shall be collected and cared for.” In practice, this means that only the clinical rules of triage can be used to administer medical care to anyone who is ill or wounded. The sickest person is treated first irrespective of what ‘side’ they are on and regardless of affiliation, creed or other status. Moreover, conflicted parties agree to recognise and protect health cadres who provide such care in exchange for their unbiased and self-regulated professionalism. Health care providers are thus not permitted to declare or act upon their allegiances in a conflict situation while being offered such protections.

is prohibited by international law. This is also known as the principle of medical neutrality. Where medical neutrality is undermined or attacked, *international law requires authorities to investigate*.¹⁶²

The police too must not only respect but actually practise medical neutrality. This is clear in the National Instruction 4 of 2014,¹⁶³ and as well as from recommendations arising from the Marikana Commission (see above). Although it may appear to be a conflict of interest when the police officer causing the injury attends to the wounded person as a first-aider, the Marikana Commission agreed with expert evidence in finding that there was no inherent conflict between the SAPS carrying of arms and the duty to render assistance to a person injured by those arms.¹⁶⁴ This is in large part due to the imperative for any and all first aid providers to adhere to the ethics of impartiality and medical triage.

5.4 Filling the gap: Student first aid responders

In recognition of the ethical and legal obligations and duty of health practitioners to provide care, and observations of the service constraints in the health services on campuses at the University of the Witwatersrand during the crisis, a group of fifth and sixth year medical students at the University of the Witwatersrand established a medical response task team to assist with assessing and providing Level 1 first aid for protest-related injuries. One student volunteer said:

“[We were just] ordinary students who wanted to be trained [to help] after seeing our colleagues who [were] being injured and wanted to do something [rather than stand by helplessly].”¹⁶⁵

The task team objectives included coordinating the provision of first aid to wounded persons, as well as attending to associated emotional and psychological trauma, including referral.

The range of campus health services in ordinary circumstances

The Campus Health and Wellness Centre (CHWC) is staffed by Primary Health Care (PHC) nurses and one medical doctor. It provides comprehensive primary health care services within its annual budget to the Wits community of students and staff. It is located in the Matrix Building on East Campus and open from 08:00 to 16:30 Monday to Friday. No after-hours services are provided.¹⁶⁶ During the day, the CHWC has at its disposal a five-seater sedan for patient

¹⁶² Physicians for Human Rights, *Medical Neutrality and the Right to Health: Effective Protections for Health Care Workers under International Human Rights Law*, Policy Brief (April 2017), available at: <http://physiciansforhumanrights.org/assets/misc/medical-neutrality-policy-brief-april-2017-003.pdf> (emphasis added).

¹⁶³ See section 12.2(e) of National Instruction 4 of 2014, which reads:

“The Overall Commander or a designated officer must [...] ensure that members trained in first aid ...are also tasked should the need arise.”

¹⁶⁴ See the Marikana Commission of Inquiry, *Marikana Commission of Inquiry: Report on Matters of Public, National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province* (March 2015), pp. 361-362 and para.1056.

¹⁶⁵ Interview with Witness 9-3, Johannesburg (March 2017).

¹⁶⁶ Students on campus who become ill after hours and over weekends are advised to either “report to Residence Hall Co-ordinator; or, if...on a medical aid make use of a private local 24-hour casualty service (e.g. Milpark Hospital); or if...not on a medical aid...go to a public hospital (e.g. Johannesburg Hospital). In an emergency, after hours, contact Campus Control (011) 717-4444 for assistance with

transport between campuses and to the clinic. This vehicle operates during clinic hours and only if there are sufficient numbers of nurses to go out in pairs while also ensuring clinic coverage. The CHWC was unable to accommodate any greater service provision during the #FeesMustFall protests in 2016, as it was not provided with additional resources and could not exceed the limitations of its annual allocation.

Campus health services in extraordinary circumstances

Multiple injured people who surged into the facility during the crisis were not easily accommodated, and staff shortages restricted the utility of the internal transport service. Contingency plans, if there were any, to deal with potential disruptions to routine health service delivery as well as a possible scenario of mass casualties, were not communicated to the university community by the administration. Nothing beyond the usual provision of services appeared to have been in place during the extreme conditions when the police and security forces were on campus during September and October 2016. These conditions overextended resources to maximum strain. On the days when the mass influx of students overwhelmed the CHWC services, medical students provided voluntary on-site assistance.

In “filling the gap”, volunteer student first aiders and CHWC nurses worked together as far as possible, encouraging and lending legitimacy to each other’s services. Training was provided for the medical conditions the volunteers might see as well as their responsibilities to maintain impartiality under international humanitarian law. Students would administer first aid and stabilise, referring more complex patients to Campus Health when it was open. If needed, first aid volunteers would also coordinate transport and refer to higher levels of care, communicating this with CHWC which could accordingly keep track of hospitalised (and/or injured or detained students) to ensure follow up care after discharge. This responsibility included that students had to arrange transport during nights and weekends directly with an ambulance service or improvise amongst themselves the transport of a patient, and sometimes, even during the day. Some students used private cars or enlisted parental assistance. However, although Campus Control was meant to play a more active role in the transport of injured students to outside clinics or hospitals, the fact that it was the chief command and control of security operations on campus (coordinating with SAPS and private security) meant that it was no longer trusted by students.

The Counselling and Career Development Unit (CCDU) was regarded by some students with suspicion due to the fear of breaches in confidentiality. In addition, the formality of making an initial appointment for assessment during office hours did not meet the immediate needs for trauma debriefing and group counselling. This was especially true after hours and over weekends, and heightened after incidents involving police officers entering some student residences during the period of the curfew, as described above in part 4 of this report. Mental health volunteer efforts were mounted in response to these limitations, with psychology and counselling post-graduate students and certain academic programmes offering crisis intervention, trauma debriefing and the creation of safe zones or ‘chill-out’ spaces.

transport.” See the University of the Witwatersrand website, available at: <https://www.wits.ac.za/campushealth/what-to-do-in-a-medical-emergency/>.

5.4.1 Unconventional sites and safe spaces for first aid care: Holy Trinity Catholic Church

A network of safe spaces on East and West Campuses, as well as in a nearby religious venue, was created. The health and wellness task team implemented reactive and proactive mental health support and liaised with the psychological support services group that was formed by concerned academics and postgraduate students. There was also the matter of providing 'care for caregivers' and support to the more than 140 eventual members of direct first aid providers who volunteered their time to staff a 24-hour student-run service.

The Holy Trinity Catholic Church became a well-established site for the provision of first aid. The church forms part of the Archdiocese of Johannesburg and borders the East Campus of the University of the Witwatersrand. The public entrance to the church, comprising pedestrian and car park gates, faces Stiemens Street and is sandwiched between the university's Art School to the north and Campus Corner and the Wits Art Museum (WAM) to the south.¹⁶⁷ In 2004, Wits medical students established a free, student-run medical clinic known as Trinity Health Services caring for the homeless in Braamfontein and the inner-city at large. For more than eight years, the clinic provided bi-weekly screenings and dispensed medication to the local population, referring more serious cases to local government clinics and hospitals. The student teams were often multi-disciplinary, with medical, pharmacy and nursing students participating.

From 2012 to early 2016, the clinic had become dormant, but was re-opened in February 2016 having addressed certain regulatory concerns. A public launch, which included students and staff members of the university, was held in May 2016, so that by the end of 2016, Holy Trinity had firmly established itself as a feature of university campus life for Catholics and non-Catholics alike. In addition, a shared commitment between the university and the church to addressing the health care needs of the community was reaffirmed. It was only natural then that the parish became a site for voluntary emergency medical assistance during the #FeesMustFall protests in 2016.

The volunteer first aiders, some of whom were already involved in the renewal of Trinity Health Services earlier in the year, set up a table to provide medical attention outside the church in the alcove (Memorial Garden) near the entrance gates from 21 September 2017. The volunteers were also granted access to the common room in Trinity House for the purpose of providing first aid services during the evenings, overnight and on weekends. There was an attempt to ensure continuous staffing of this site, with extra hands arriving whenever required. It also had limited supplies to re-stock first aid kits, acting as a hub for dispensing and coordinating services.

5.4.2 Post-incident analysis of challenges

¹⁶⁷ The Jesuit parish has a close historical relationship to the university community, serving as the chaplaincy for the university as well as providing a hall of residence, Trinity House, for Catholic students studying at the University of the Witwatersrand and other universities in the area since it opened in 1991. This close relationship between the university and Holy Trinity meant that the adjoining physical space between the two institutions was easily permeable. The parish of choice for Catholic staff and students at the university, it is the site of service learning initiatives as students support both a soup kitchen and a free medical clinic.

The student first aid response managed a large volume of patients under difficult conditions. There was no loss of life, and harm to those injured was minimised by their assistance. Persons interviewed for this report including those who received care, professional health staff and protest monitors, paid tribute to the competence, compassion, dedication and courage of volunteer first aiders, acknowledging their skill in attending to injuries and remaining calm under exceedingly adverse and unfamiliar conditions, and how this translated into a quiet determination in the field. Notwithstanding the exemplary effort, the efforts of the student medical, health and wellness task team were hampered by several challenges.

Competing demands

The need to continue classes, show up at clinical rotations, study and progress to graduation were competing obligations that limited student capacity for continuous volunteer coverage. However, personal sacrifices were made to be on site, prioritising volunteer first aid duties, accepting sleeplessness and also the inherent risks in their roles to sustain this service.

Coordination

The volunteer group size and heterogeneity was a challenge for the training, coordination and credentialing of its members. Whilst any volunteer who had a certificate of first aid training would be welcomed, it was challenging to verify such status with every volunteer. There were fictitious credentials in at least two cases. Coordination of the volunteers was possible only via electronic communication. Given the spontaneity of protest as well as the unpredictable use of force by police and private security, developing a stable roster was challenging, especially the attempt to pair junior with more senior students to ensure a balance of skills and comprehensive coverage of all affected areas on campus. This meant that the students could not be everywhere at the same time and some campuses were on occasion left without an adequate first aid response.

Medical equipment, supplies and signage

Until Medecins Sans Frontieres (MSF) provided emergency first aid equipment and a steady stream of replacement supplies, the first aid kits used were taken off the walls of university residences. These often provided the only clear indication that anyone carrying this box was a first aider. No vests or insignia were available to first aiders. *Ad hoc* demarcations, such as red or white arm bands, surgical scrubs, white coats, etc. were used, but were either misinterpreted or not respected by police.

Confidentiality and breaches

Due to worries about possible victimisation from University authorities, a collective decision was taken among students to respect the confidentiality of the entire first aid effort, including a bar on media contact. This helped to protect the confidentiality and privacy of users and of providers of the service, but in hindsight it may have reduced the efficacy of efforts.

Documentation and record-keeping

Under field conditions it was almost impossible to record the exact numbers of those who were injured, although from interviews with providers a general idea of the type and quantity of injuries encountered became apparent. Many wounded did not provide real names for fear of victimisation. Paper records were impractical. Online record keeping also proved challenging: accessing the internet through cell phone or tablet when attending to the wounded did not work.

Volunteer burnout

There was no monitoring mechanism of who was 'on call' when and how much time people had actually spent attending to the wounded. There was volunteer burn out, symptoms of post-traumatic stress disorder, and at least two hospitalisations for fatigue, depression and anxiety among first aiders. In the context of a broad lack of senior medical consultant and faculty support for volunteer efforts, there were also senses of marginalisation, isolation, loneliness and intimidation amongst some members of the first aid task team.

Scope of practice

It was agreed at the outset that first aiders would not diagnose and treat but provide only Level 1 first aid, stabilising and transferring patients to appropriate further care if necessary. Bottle necks in transfer were created given the challenges with transport from CHWC and ambulance services. First aiders therefore found themselves dealing with conditions beyond their levels of comfort. Rubber bullet injuries to sensitive areas of the body (e.g. the face and eyes) or open wounds from close range rubber-bullet injuries to legs and body required more advanced skills to manage them. Without the necessary experience, student volunteers experienced distress when encountering medical conditions and situations beyond their scope.¹⁶⁸

In one case, a student and known asthmatic, inhaled tear gas and experienced breathing difficulties. When an ambulance failed to arrive, first aid volunteers took her by car to a private hospital where she was simply given oxygen and referred to a public hospital since she had no medical aid. After the hospital refused to transfer her by ambulance, the volunteers felt forced to drive her to the public hospital, but were anxious that she would have a respiratory arrest whilst in transit. In a similar situation, one first aider expressed helplessness, feeling "completely out of [her] depth" in dealing with a traumatic eye injury caused by a rubber bullet, where the globe was protruding from its socket. As she noted, "all I could do was to cover it ... [with wet gauze]".

5.5 Acts against medical functions constituting violations of humanitarian law and human rights

5.5.1 Duty to investigate violations

Despite the many ethical and legal instruments that have been outlined above to protect health care in extreme situations, there are repeated and frequent violations of medical neutrality. Such violations and their causes have been studied by the International Committee of the Red

Cross Health Care in Danger Project (HCID),¹⁶⁹ as well as other human rights agencies and academics.¹⁷⁰

Physicians for Human Rights declare that, “where medical neutrality is undermined or attacked, *international law requires authorities to investigate*” (emphasis added). This statement creates an obligation by those in charge to investigate breaches of medical neutrality, gives credence to documentation projects such as this one and enables witnesses to come forward under protection.

This current documentation project is furthermore aligned with HCID’s recommendation to “encourage interest in academic circles [...] universities, other educational institutions and think tanks [...] on the implications of, and means to address, violence against patients and health-care workers and facilities...”¹⁷¹

Some of the scholarly work into violations of medical neutrality point to a disturbing trend of global non-acceptance of the norms and standards relating to humanitarian protection. They suggest that abuses of medical ethics and transgressions of mechanisms to protect health care professionals and medical functions are in fact “common occurrences that must be understood within their broader social and political contexts.”¹⁷²

They therefore recommend “that addressing social, political and institutional conditions shaping the possibilities of neutrality are a necessary first step, without which appeals to moral or even legal norms are not only insufficient, but may also be counterproductive.”¹⁷³

In applying this approach to the student protests that took part at the University of the Witwatersrand, we examine the institutional conditions affecting the provision of health care services at the university between September to November 2016. This is to better understand: i) the barriers people faced in accessing health care services, ii) whose duty it was to provide such services, and iii) the adequacy of these provisions.

During our investigation, we have documented multiple types of interference in obtaining both routine and urgent health care services. These instances included:

- Obstruction of attempts to reach and treat wounded students, non-students and people living, working or passing through the Braamfontein neighbourhood;

¹⁶⁹ HCID is a global initiative to address issues of “violence against patients, health workers, facilities and vehicles, and ensur[e] safe access to and delivery of health care in armed conflict and other emergencies” supported through a partnership with seven other prominent non-governmental organisations, including the International Federation of Medical Student Associations (IFMSA), the International Council of Nurses (ICN), the International Hospital Federation (IHF), the International Committee of Military Medicine (ICMM), the World Conference for Physical Therapy (WCPT), the World Federation of Medical Education (WFME) and the World Medical Association (WMA). See the HCID project website, available at: <http://healthcareindanger.org/hcid-project/>.

¹⁷⁰ Leonard Rubenstein and Melanie D Bittle, *Responsibility for Protection of Medical Workers and Facilities in Armed Conflict* (2010), pp. 329-340.

¹⁷¹ See the HCID project website, available at: <http://healthcareindanger.org/hcid-project/>.

¹⁷² Adia Benton and Sa’ed Atshan, “‘Even War has Rules’: On Medical Neutrality and Legitimate Non-Violence”, *Culture, Medicine and Psychiatry*, 40(2) (2016), the special issue on “The Clinic in Crisis”, available at: <https://link.springer.com/journal/11013/40/2/page/1>.

¹⁷³ Benton and Atshan, “‘Even War has Rules’”, p. 153.

- A lack of coordination to evacuate injured people from where they got hurt to more appropriate centres of care;
- Ambulances were blocked from entering or too fearful to enter campuses to transport wounded persons;
- Formal health care workers and volunteer first aiders were exposed to tear gas and stun grenades, as well as shot at with rubber bullets while attending to patients;
- Security guards stationed at entry points to the Matrix Building determined when and who could gain access to the CHWC clinic;
- Closure of the Campus Health and Wellness Centre due to an escalation of violence in the vicinity with consequent damage to the clinic's windows; and,
- A request for provider-patient confidentiality to be set aside.

News of these and other events made their way to the Médecins Sans Frontières (MSF),¹⁷⁴ which conducted a two-day site visit to the university campuses to independently investigate the situation on the ground. Their findings are contained in the text box below.

**The importance of ensuring the provision of health care during university protest action through better coordinated efforts:
Lessons from the University of the Witwatersrand**

Garret Barnwell, Representation Coordinator, Médecins Sans Frontières / Doctors Without Borders (MSF), South Africa and Lesotho.

International medical humanitarian organisation Médecins Sans Frontières (MSF) conducted an assessment of the health care in response to the 2016 Wits University protests. The first engagement with the Wits University Campus Health and Wellness Centre, hereafter referred to as “Campus Health”, and volunteer first aid providers was on the 19 October 2016, while more formal assessments took place on 21 October 2016 and 22 of October 2016. The assessment was initiated after an urgent request from health providers on 18 October 2016 and the level of violence that was witnessed by our team, which most notably spilled over into Braamfontein from 10 October onwards.

The initial MSF assessment team consisted of a logistician and a professional nurse. It is common for MSF to put a team together to assess a situation where access to health care may be hindered, as the MSF Charter directs staff to provide “assistance to populations in distress, to victims of natural or man-made disasters and to victims of armed conflict...irrespective of race, religion, creed or political convictions”. MSF received reports during its initial engagement on 19 October 2016 suggesting that the Wits health care team as it was then constituted did not have the capacity to provide and sustain appropriate services, and that access to health care was being constrained with the result that students and volunteers were mostly bearing the burden of the first aid response. These concerns initiated the more formal assessment on the 21 and 22 of October 2016, which was

¹⁷⁴ MSF is an international humanitarian aid organisation that assists “people worldwide where the need is greatest, delivering emergency medical aid to people affected by conflict, epidemics, disasters, or exclusion from healthcare.” For more, see the MSF website, available at: <https://www.msf.org.za/about-us>.

conducted by a medical doctor, logistician and led by myself - a registered clinical psychologist with the Health Professions Council of South Africa.

Our assessment covered formal services, such as those offered by the Wits Campus Health and the Career Counselling and Development Unit (CCDU), as well as *ad hoc* responses such as the temporary first aid point established at the Holy Trinity Catholic Church, which was staffed by voluntary care-givers.

What was conveyed to MSF on the part of some of the interlocutors during these discussions was that the violence peaked on the 14 and 15 October, when the curfew for students on campus was imposed, and the SAPS Public Order Policing increased its presence on the campus. There were high levels of violence reported to MSF during these discussions, involving a range of different actors, including students, private security guards, and police. However, the direct violence endured was almost exclusively experienced by students. Students and staff members also reported severe disruption of routine by daily protests and violent on-campus security interventions. Medical injuries reported by first aiders included: muscular skeletal injuries from falls, skin irritations/reactions from tear gas, shallow open wounds/abrasions from rubber bullets, burns from stun grenades, as well as difficulty breathing from a number of causes, with at least one student requiring nebulisation. There were reports also of increased anxiety, suicidal ideation, dissociative symptoms, sleep disturbances, and other signs of psychological distress associated with the abnormal conditions on campus.

The protests were sporadic and intermittent, but seemed to occur mostly in the evenings; and, I suspected that the curfew, heavy presence of police and associated dispersal of students pushed the violence onto the streets of Braamfontein. I noted at the time that students seemed demonstrably fatigued, tense, and that opinion about what was happening on campus was quite polarised.

As a health care provider, my main concerns were that access to care was being hindered, and I had concerns that under existing conditions health actors would not have the ability to facilitate access to essential services in the event of medical emergencies.

Limited access to health care services was aggravated by a perception that facilities were not safe places. Protests and police action did take place in close proximity to health structures, both formal and informal, with rubber bullets being fired indiscriminately at Campus Health's facility with staff present on site at least once (4 October 2016) when protests were allegedly taking place near to the student union. I was informed that private ambulances were hesitant to enter the campus, most likely fearful of their property being damaged. First aiders expressed concern about delays in transferring injured people to higher levels of care, and of needing to manage their own referrals to the formal health care system outside campus areas. Spaces of refuge, such as the Holy Trinity Catholic Church, were also not immune to violence and threats of violence, primarily from the police. People seeking care were said to be more reluctant to access care under these conditions, as first aiders who were operating from there had also come under fire. As for the formal system (Campus Health and CCDU), disruptive conditions can create delays in outpatient care, health outreach, and contribute to understaffing due to staff not feeling safe to be at work.

There were practical restrictions that Campus Health faced in providing care during the protest action. There were no standard operating procedures for the conditions and injuries resulting from the violence associated with protests. It did not have sufficient staffing or the equipment available to provide a formal and relevant response. Another factor that restricted access to formal first aid care was that the clinic only opens during the daytime on weekdays, and many of the incidents were reported to have taken place in the evenings and over the weekend. In addition, the injuries did not always occur on campus. These circumstances, combined with resource constraints, left formal actors without the capacity to respond to the reality on the ground. In my opinion, the absence of a formal health actor when it was needed mostly meant that volunteers, mostly students, stepped in to provide the needed care.

These student volunteers, mainly Wits medical students, were registered first aiders and provided first aid under difficult conditions. First aiders had difficulty moving around campus and reported being caught in the cross-fire of rubber bullets and rocks being hurled. They struggled on occasions due to a lack of basic first aid supplies, and, as mentioned above, had difficulty facilitating transport when referral was required. While they made attempts to communicate their activities to the police and security, the absence of a broader coordinated response meant that optimal care for more seriously wounded people was not readily facilitated. First aiders reported that people seeking care had difficulty crossing campus at times and that some were afraid of being arrested by the police if they accessed Campus Health or the CCDU. While formal health providers attempted to remain neutral throughout, these unfavourable perceptions created barriers; and, it is also for this reason that some people preferred to seek care from volunteers. In our observations, Campus Health tried to provide support when and where needed.

MSF continued to monitor the conditions, but by the end of October 2016 the abnormal conditions and level of violence on Wits campus had already started to subside.

As an outcome of this assessment, MSF provided nominal donations to Campus Health to ease the burden of health care delivery that it experienced. These donations included first aid kits. We also expressed a willingness to assist to formalise standard operating procedures if such events occur in future.

Despite the relative chaos, I think that one positive sign I saw were the individual efforts of health care providers, both formal and informal, to facilitate access to care where they could. It is strongly recommended that health care be prioritised in the future and that stakeholders should develop university-specific plans, which make allowances for anticipated health care needs during times of protest.

Over the last year, MSF has continued to provide technical support to a multiple constituency effort that developed *Guidelines for the provision of health care services during higher education protest action*. The guidelines emphasise the importance of respect for health care facilities and providers and promote formal coordination to ensure that the provision of health care is ensured because health care should never be targeted and must remain accessible to anyone needing care. This is a very constructive civil society initiative

that has come from Wits health actors who were involved in responding to the protest action and consequences from some police operations. MSF fully supports initiatives such as these that are driven by the desire to provide health care and maintain services under difficult conditions.

5.5.2 Violations of medical neutrality from September – October 2016

The following incidents exemplify the range of violations of medical protections secured in international humanitarian law that have been documented for the period under review. They have been categorised according to the specific target of interference in health care functions on the Wits campuses and in the Braamfontein area that the project team collected as evidence.¹⁷⁵

Interference with wounded and sick individuals

This type of interference includes not only direct targeting of patients, but also “the denial of impartial care to wounded people ... denial of access to health facilities ... unreasonable obstructions of travel for medical care, discrimination and interruption of medical care.” In the context of the University of the Witwatersrand, it also encompassed the non-availability and/or withholding of first aid treatment when it could have or should have been provided or administered.

Some witnesses reported not feeling safe whilst receiving treatment, although there were no direct attacks on wounded individuals once they were within medical facilities nor specific interruptions in the provision of medical care. Witness 2, who was seen at the CHWC clinic immediately after being shot by police using rubber bullets and was in severe pain and required later hospitalisation, recounted how nursing staff were fearful that police were on their way to the clinic to possibly arrest her. Acting on this assumption, those assisting her managed to “hide her” elsewhere in the building until an ambulance arrived and were, she said, “very protective of her” while cleaning and applying dressings to her wounds.¹⁷⁶

During the same incident when Witness 2 was shot with rubber bullets, two other witnesses who had also been wounded attested of police officers not providing them with first aid assistance. Witness 35 received five rubber bullet shots to his right outer thigh, big toe and a shoe with one very forceful impact on the back of one heel by some blunt projectile, was in severe pain and disability, and limping. Instead of assisting, a police officer chased him at gun point:

“He was much taller and bigger than I was. I could feel him right behind me, pushing me. I was afraid I going to be arrested ... but when I couldn’t move any more, I turned and raised my hands up, crying ‘please don’t hurt me’... ‘please don’t shoot me’ ... ‘I’m sorry’”.¹⁷⁷

¹⁷⁵ This classification was developed by Rubenstein and Bittle after reviewing the content of twenty years’ worth of specialised reports from 1989 to 2008. See Rubenstein and Bittle, *Responsibility for the Protection of Medical Workers and Facilities*, pp. 329-340.

¹⁷⁶ Interview with Witness 2 (18 November 2016).

¹⁷⁷ Interview with Witness 35 (7 October 2017). See also above part 4.7, Commentary, section 4 (c).

At this moment, the policeman was no more than two metres away and had his weapon pointed towards Witness 35's abdomen and chest.

In the very same incident, Witness 23, a female student, fled with other students after the explosion of a stun grenade and the police opening fire on them with rubber bullets. She stumbled and fell very hard on concrete pavement onto her left knee with a resultant total knee dislocation and tearing of multiple ligaments. Unable to move as she lay in agony on the ground, she was assisted by several other students who stopped running from the police to help her. Instead of being allowed to assess the situation and call for medical assistance, the students were threatened and the police shot in their direction compelling them to run away



Witness 23 on the side of the road during the incident

Potential breach of patient - health care provider confidentiality

An attempt to breach confidentiality of those who sought medical treatment at the CHWC was ascertained when the University administration requested the register of names of people seen at the clinic and the conditions for which they consulted. Confidentiality and privacy are the cornerstones of health care ethics. Any weakening of this commitment jeopardises trust in the neutrality of the facility in question, thereby undermining the relationship between health care provider and patient. The head of the clinic refused to comply with this request—upholding her professional ethical responsibilities—and supplied the administration with anonymised tallies of the numbers of people being seen daily at the clinic.

Interference with medical personnel

This includes attacks on or any other hindrance or obstruction to health care workers in their attempts to provide ethical health care services to patients.

Witness 7, a medical student volunteer, detailed the challenges she and her first aid colleagues faced in responding to patients injured by the police in their operations against student protest actions.¹⁷⁸ One incident involved a young woman bystander who was shot in or around the eye during a dispersal operation on a street in Braamfontein. She was brought to Trinity Church by Witness 14, an academic monitor, and attended to at the Trinity Church first aid station. Witness 7 described that, while not bleeding profusely, part of the eye had “mushroomed out” on to her face: “the tissues of the eye looked ruptured ... I couldn’t see the architecture [of the globe]”. The witness reported the environment as “hostile, [with] rubber

¹⁷⁸ Group interview with first aid provider (11 March 2017); Interview with Witness 7 (2 June 2017).

bullets being fired through the fence from [Bertha] [S]treet", and she got herself and the patient on to the ground to avoid being hit while attempting to place a wet dressing over the damaged eye as well as attend to the patient's hysteria.

It appeared that this pattern of reckless shooting and intimidation of medical workers had emerged earlier. Witness 7 commented that the police were threatening first aiders with comments like: "We are going to shoot you." She stated in distress: "We were in scrubs, in a group and they could see us treating students who were shot. They knew and they deliberately shot at first aiders." Those assisting the injured were identifiable as members of a first aider group in their medical scrub-suits or in white coats or with arm bands.

Another medical student, Witness 10, who also arrived to assist that day, described the pressure on and cumulative trauma for those treating the injured among these police activities. Other medical first aiders also experienced various forms of harassment from the police during their assistance operations on East Campus. At least two first aiders were shot from behind by police with rubber bullets, despite their having indicated to police their medical roles.

Interference with medical facilities

This includes any type of intrusion or assault on a place where health care is being provided.¹⁷⁹ On 4 October 2016 just after midday, the CHWC sustained collateral damage when its windows were hit with rubber bullets and rocks when the clinic was caught in the escalation of violence between police and students. This incident resulted in the shattering of multiple glass window panes (see images of the clinic windows below) in rooms where patients were undergoing consultations with health care providers.



Shattered windows of the Campus Health and Wellness Centre

¹⁷⁹ This following disruption in service was due to a direct contravention of international humanitarian law and domestic human rights obligations which dictate that all spaces (both formal and informal) where medical care is dispensed, as well as those who deliver it, are protected from becoming sites and/or targets of violent conflict.

The clinic head, who was seeing a patient at the time in one of the rooms where the window shattered, recounted:

“I couldn’t believe what was happening. The student I was treating became so afraid, after thinking he was coming to a safe space to get treated for a rubber bullet injury. We both dove under the examination bed to avoid getting injured.”

The director of CHWC then expressed how her anger propelled her with “superhuman strength” to go out and confront the police about how they should have known that this was a clinic as this had been expressly communicated to the command unit. She then made the decision to close the clinic immediately. The subsequent closure of the clinic regrettably compounded the harm, in that there were people with injuries requiring additional medical attention but had to then be transferred to other off-campus health care facilities, exacerbating confusion, delays and expenses.

Interference with medical transport

This includes the obstruction of ambulances and other vehicles transporting injured people, as well as medical equipment and supplies.

In the case of the bystander who had been hit with a rubber bullet to her eye, the delay in an emergency vehicle compounded the harm of injury. Witness 7 bandaged the eye of the injured patient but knew that she and her colleagues did not have the facilities or expertise to adequately deal with the case and that there was the need to transfer this patient. The ambulance that was called was delayed due to the chaos in the streets, and when the injured woman was eventually taken to a private hospital in Johannesburg, she sat untreated for some hours, as the hospital had not accepted her medical aid insurance. Witness 7 notes that:

“It was alarming.... We knew that the architecture around her eye was destroyed and that she was at risk of losing her sight.”

About nine hours after the incident, according to Witness 7’s estimate, the injured woman was finally attended to in another private hospital, which accepted the family’s health insurance.

Appropriate transport to a hospital emergency department could not be obtained for Witness 23, who sustained a serious knee injury as described above while running away from police firing rubber bullets and stun grenades on 20 October 2017. Instead, the injured patient was transported to the hospital by nursing staff in a Campus Health vehicle. The nurse who had been attempting to reach the patient lying on the pavement for some time recalled feeling afraid of possibly being shot at by police who were still active in the area. An ambulance service that was called to assist also advised the nurse that paramedics were unable to enter the campus. Given the gravity of Witness 23’s condition, the nurse made the decision to transport the patient herself, only to be “scolded by the emergency room staff at the hospital” about the danger of non-specialised emergency medical services transportation of such a wounded individual that could have further compromised her injuries. These choices were difficult for providers of health care to sometimes make.

Improper use of facilities or emblems

We could not confirm allegations of volunteer first aider abuse or misuse of visible insignia that afford protection to health care workers and facilities under humanitarian law.

As highlighted in Parts 2 and 3 of this report, however, we have documented that monitors, humanitarian workers and formal and informal health care providers bearing some form of identification and/or markings or presenting themselves to a police officer or unit, were harassed by police in the performance of their duties.

5.6 Need for guidelines

In an attempt to address the ethical issues of patient injury, access to medical care and the violations of medical neutrality on the University of the Witwatersrand campus during the student protests, the Nelson Mandela Foundation (NMF) facilitated a number of panel discussions in December 2016. The aim of these dialogues was to understand how health care access might have been compromised at the University of the Witwatersrand during the student protests, as well as to develop mechanisms to ensure non-repetition and maintenance of ethico-legal standards to the delivery of medical care to the injured in conflict situations. Participants included senior SAPS officials knowledgeable about and/or who had first-hand experience with the public order police response to student protests on the crisis in higher education, together with health professionals and students who had provided formal and informal health care on campus and in the neighbouring area of Braamfontein during the period in question. Also present were representatives from civil society, including those from security research think tanks with expertise on the use of 'non-lethal' weapons by police and specialists from international humanitarian aid organisations. This engagement resulted in collaboration and the development of a set of guidelines.¹⁸⁰

These *Guidelines for the provision of health care services during higher education protest action* took as their starting point the normative view that medical ethics remain the same whether in times of conflict or in peace. The Guidelines are furthermore consistent with domestic, regional and international legal, humanitarian and human rights standards. With no official status, these Guidelines benchmark best practice, drawing from lessons learned in situations where optimal health care has been compromised—both in the current Wits context as well as from historical incidents of compromised patient access to medical treatment in South Africa under apartheid.¹⁸¹ They act as a voluntary framework for all involved parties to commit to unfettered access to anyone requiring medical care during potential disruptions in health care services that might occur through campus unrest. Such medical care could be routine in nature or arise in response to the need to treat injuries sustained through protest action and the use of force by police, private security, campus security or by students themselves, in higher education institutions in South Africa. The Guidelines provide clear parameters for all stakeholders (including University administration, student leadership, health care providers, emergency medical services, referral centres, psychological services, private

¹⁸⁰ See annexure 7.1 of this report.

¹⁸¹ See, generally, Laurel Baldwin-Ragaven, Leslie London, and Jeanelle De Gruchy, *An Ambulance of the Wrong Colour: Health Professionals, Human Rights and Ethics in South Africa* (1999).

security, internal security, police and others with specific skill sets) to develop institutionally-specific plans well in advance of any conflict situation.

To gather wider input and support from a range of concerned parties, and develop consensus across the higher education sector nationally in South Africa, the Guidelines document was tabled at the Summit on Higher Education (chaired by Justice Dikgang Moseneke) in March 2017. Unfortunately, the meeting was unable to address the issues contained in the guidelines due to abrupt termination of the meeting on the first day. Subsequently, the Policy and Planning (Operational Response Services – Public Order Policing) component of the SAPS presented these Guidelines to a joint session of the Parliamentary Portfolio Committee on Police and the Parliamentary Portfolio Committee on Higher Education and Training in June 2017. According to the report of that meeting by the Parliamentary Monitoring Group,¹⁸² the “SAPS recommended that the initiative between SAPS, the Nelson Mandela Foundation, the Institute for Security Studies (ISS) and Wits Medical School (sic), regarding health care during student protest, be adopted as a best practise and be implemented at all institutions in the country and that emphasis be placed on mass communication regarding government responsibilities in order to ensure effective and pro-active measures.”¹⁸³ In July 2017, the Guidelines were also tabled and discussed at the final sitting of the Expert Panel on Public Order Police which had been established by then National Minister of Police in response to the recommendations made by the Marikana Commission of Inquiry in 2015.

¹⁸² The Parliamentary Monitoring Group (PMG) is a non-profit information service that summarises the proceedings of more than fifty South African Parliamentary Committees.

¹⁸³ Parliamentary Monitoring Group (PMG), “Parliamentary Portfolio Committee on Higher Education and Training: Committee Police Involvement in Student Protests; PSIRA on University Security; SASSETA Annual Performance Plan” (20 June 2017), available at: <https://pmg.org.za/committee-meeting/24650/>.

6. CONCLUSIONS AND RECOMMENDATIONS

International human rights law provides that everyone has the right to peacefully assemble. The ability to peacefully demonstrate and impart potentially controversial ideas is an important means for people to speak out about the issues that affect them and ensure that states and private institutions listen to their concerns. The right to peacefully assemble is therefore a critical political expression of democracy in South Africa.

During 2015 and 2016, students on university campuses across South Africa embarked on large-scale, disruptive protests. Through these protests students brought campuses to a standstill, disrupted classes, interrupted exams, and marched to the seats of government in Cape Town and Pretoria to voice their demands. The students called for the fees associated with tertiary education to be diminished or expunged and for systemic changes to how universities operate and approach education, as well as how academic curricula are structured. The state, university administrators, the police and private security responded to these protests with considerable force in an attempt to shut them down. Universities approached the courts to obtain interdicts preventing students from protesting on campuses. The police frequently used tear gas, water cannons, stun grenades and rubber bullets against protesting students. A number of students were unlawfully assaulted and arrested.

It is in this light that this report carefully, and with respect, documents a number of serious abuses of the use of force at the hand of police that took place during the student protests in September and October of 2016 at the University of the Witwatersrand. In this process, the report expands on the serious injuries sustained by students as a result of the disproportionate and unlawful use of force by police, as well as instances of intimidation, harassment and arbitrary detention. This indicates that calling the police onto the University of the Witwatersrand's campus had seriously negative consequences for the bodily integrity of students and impacted significantly on their right to peaceful assembly.

In addition, the report indicates that a number of students and bystanders suffered additional harm as a result of the lack of preparedness of university authorities, health care service providers, the SAPS and private security to ensure that adequate health care services were provided during the student protests and their aftermath. In the lacunae that arose, medical students and others with first aid training at the university sought to ensure that students and bystanders had access to the health care services that were sorely needed.

Below is a list of some of the recommendations arising from the report:

6.1. Less Lethal Weapons and Incident 4.2

South Africa, as with many policing jurisdictions, has shifted away in the later 1990s from reliance on lethal force and a militarised approach to maintaining 'public order'.¹⁸⁴ The emergence of less lethal weapons has appeared to provide the police with a range of forms of non-lethal force to respond to different threat situations. The use of these weapons still has

¹⁸⁴ That this was not a complete process was disastrously evident at Marikana in 2012 where reliance on tactical units armed with automatic weapons led the operational response to the strike by mine workers.

to comply, however, with the core principles relating to the use of force: legality, necessity and proportionality—as well as the precautionary principle. As evident in part 4 of this report, where the police deployed stun grenades in response to the student demonstration on 21 September 2016, severe injuries were caused to the two victims, Witness 1 and Witness 4. Although an approved weapon for use by the Public Order Police under National Instruction 4 of 2014, the evidence indicates that the police operator used it contrary to instructions, which resulted in excessive harm. The conduct reflected a deficit in suitable training and an absence of appropriate command and control. The victims furthermore were unarmed and posed no threat to the police or anyone else.

Recommendation

The operation itself should be fully reviewed, including command and control aspects and training protocols. The incident should be fully investigated from the point of view of possible disciplinary or criminal charges against the operator.

6.2. The obligation to negotiate, de-escalate, avoid the use of force and Incident 4.7

This incident on 20 October 2016 combined a refusal on the part of the police frontline to negotiate with manifestly unarmed protestors and a rapid resort to the highest permitted level of force. A number of individuals were shot multiple times with rubber bullets at less than ten metres range. The police continued to pursue the dispersing demonstrators aggressively, shot towards individuals at a distance of under ten metres from them while they were trying to assist an demonstrator disabled by her injury and provided no assistance themselves to several manifestly injured individuals. The POP unit's conduct appeared totally at odds with their obligations to negotiate and de-escalate conflict, and the force used was unlawful, including on the grounds that the march was peaceful under international and South African law. As in *Incident 4.2*, were the police poorly informed as the grounds upon which their dispersal operation could be justified, or had they received an unlawful order to disperse a peaceful assembly involving none of the conduct interdicted in the High Court's final order of 25 April 2016?¹⁸⁵

Recommendation

The operation itself should be fully reviewed, in respect of the complete failure to follow procedures under National Instruction 4 of 2014 in respect of the obligations to avoid the use of force through de-escalation strategies or to use graduated levels of force only to achieve a legitimate objective. Criminal investigations should be instituted into the shooting of unarmed individuals at close range who posed no threat to the police or others. Similarly, criminal investigations should be instituted into the unlawful and reckless shooting towards a severely injured person and her helpers and the pursuit at gunpoint of another injured person.

6.3 Arbitrary detention and Incident 4.8

¹⁸⁵ See *University of the Witwatersrand, Johannesburg v Jafta Kolisang and Others*, Judgment, High Court Gauteng Local Division, Case No 2016/00889 (25 April 2016).

The four students in this incident were effectively the victims of a series of unlawful actions by state agents, including arrest on no reasonable basis, and then subjected to arbitrary detention and held in degrading detention conditions, on a charge which violated the principle of legality, before have the charges withdrawn against them in the Magistrate's Court.

Recommendation

The misuse of the criminal justice system to suppress the right to peaceful assembly and freedom of expression requires a wider inquiry.

6.4. Targeted use of force against humanitarian workers and Incident 4.4

This extended situation on 10 October 2016 arose from two dynamics, the dispersal operations of the police on Wits' East Campus and in neighbouring Braamfontein, and the role of Trinity Church contiguous to East Campus in providing a place of safety and treatment for those injured by the police use of force. The former dynamic lead to the flow-through of protestors and others from East Campus into Trinity Church and out into Braamfontein, where incidents of indiscriminate shooting happened. The second dynamic led to open hostility on the part of the police towards Trinity Church and volunteer first aiders. The latter dynamic provided a context but no justification at all for the unjustified use of force, in a deliberate attack, against an unarmed humanitarian worker (Witness 3), nor justification for the indiscriminate shooting into Trinity Church precinct, threatening the safety of volunteer first aiders and those whom they were treating.

Recommendation

A criminal investigation, which appeared to have been announced quickly by a senior police official, but without visible evidence of subsequent progress, must be carried out and into the entire set of incidents at Trinity Church involving the police.

Additionally, the police reliance on what appeared to have amounted to indiscriminate shooting with rubber bullets from Nyalas, in their dispersal operations in Braamfontein, needs urgent review as a 'strategy' for containment of public order situations, even amidst evidence of property damage and use of makeshift weapons against the police. The catastrophic injury suffered by Witness 21 indicates the high risk involved in using rubber bullets, whether in direct fire or 'skipfire'/ricochet mode.

6.5 Indiscriminate and unjustified use of force to enforce university curfew and Incident 4.5

This set of circumstances involving the imposition of a night curfew on the residents of university accommodation in later October brought the university authorities, campus security and the SAPS into daily contact. Evidence of SAPS use of indiscriminate force to enforce the terms of the curfew emerged quickly. Equally quickly emerging was the evidence of the difficulty in obtaining a prompt and impartial investigation into reported incidents. The incident, which occurred less than ten hours after the curfew had been imposed during the evening of 14 October, was remarkable for the degree of impunity with which the police operated. During

a violent incident, which the victim estimated to have lasted less than a minute, three police officers broke into her university room, with two of them assaulting her before the third officer shot her at close range. A year later there is still no outcome from any investigation process, by the police, the Independent Police Investigative Directorate or Wits, despite corroborated evidence that the shooting of Witness 17 was without any justification whatsoever.

Recommendation

The use of force in this incident violated the principles of legality, necessity and proportionality, and additionally was reckless. There must be a criminal investigation, but subjected to independent scrutiny. Other aspects of the police use of force in relation to the curfew, including evidence of the police use of indiscriminate force, should be subjected to a SAPS internal review, with possible referral to disciplinary or criminal proceedings.

Irrespective of the reasons invoked by the university authorities for the curfew, it had due diligence obligations towards those living in official university residences, to take all reasonable measures to protect them from the risk of police use of unlawful force. Speedy publication of the internal investigation report would provide a measure of redress for those affected by the police use of unlawful force.

6.6 Ensuring health care access to those injured and wounded and respecting humanitarian principles of medical neutrality – part 5 of the report

Failure to anticipate the consequences of campus securitisation on people's access to a range of health care services is outlined in part 5 of this report. Whether causing disruption to routine health care or interrupting urgent medical responses through a variety of ways that compromised the principle of medical neutrality, there was no plan in place to ensure necessary health care services to the Wits community while the SAPS were on site. This gap in the provision of essential services generated an *ad hoc* response that, while meeting an urgent need, came at a high price for those student volunteers and formal health care providers involved. Failure of the university administration and the Faculty of Health Sciences to officially acknowledge this effort has had ongoing repercussions. In the interim, further initiatives facilitated through civil society groupings, such as the development of *Guidelines for the provision of health care services during higher education protest action*, have deepened the understanding of the practical aspects regarding ethical and legal obligations to protect access to health care during student protests. While these are important steps to ensuring non-repetition of the events at Wits in 2016 and the minimisation of 'double harm' caused by placing health care "in danger", there are other activities required for the healing process and prevention in other settings.

Recommendation

Documentation efforts to capture the range of medical neutrality violations at Wits during the period of review should continue. Formal recognition and an apology to students who made invidious 'choices' at great personal risk to provide first aid should be put forward by university administrators. This should include the validation of volunteer health care providers' observations, witnessing and testimonies as well as students' efforts to explain to university

officials what was really happening on the ground, which went largely ignored and/or denied. More robust training about ethics, human rights and humanitarian principles that apply in conflict and emergency situations should be integrated into the core curricula of all health professional training programmes at the university, starting first with faculty development and upskilling. Finally, trauma counselling and academic support should be made available to the more than 144 students who volunteered their time and skill to provide first aid in a crisis situation. Wits must now also take the lead in developing a site-specific plan according the Guidelines that will clearly elaborate institutionally focussed contingency arrangements to mitigate, and ideally prevent, harm in the future.

6.7 General comments about the use of force

The scale and range of serious incidents involving misuse of force by the police, as documented in this report, indicates an urgent need for a systematic inquiry. To ensure non-repetition of such abuses, in the event of any future occasion of the police being brought back to campus, the following steps could assist:

- The public clarification of the process of decision-making which led to the deployment of the SAPS on campus; and of the manner in which the university authorities, including Campus Control, were able to supervise the daily operations of the SAPS, while not being in command of them, and/or able to seek rapid action from the police authorities to deal with unlawful conduct;
- The immediate publication of the university's "independent experts" report into certain incidents involving the SAPS and the university student residences;
- Full co-operation by the SAPS with external investigations, including from IPID, into incidents involving *prima facie* unlawful use of force;
- A full internal SAPS review of the specific police operations and, as needed, addressing training deficits, as well as command and control aspects of the SAPS conduct; and institution of disciplinary proceedings;
- Training on and implementation of the agreed *Guidelines for the provision of health care services during higher education protest action*, in which the SAPS "commitment to ensure and/or provide first aid response services" is explicitly stated, and where there should be a clear plan of action put forward by a technical working group composed of representatives from different constituencies; and
- Reporting publicly on these developments and steps to the Parliamentary Portfolio Committee on Police and the Parliamentary Portfolio Committee on Higher Education.

7. ANNEXURES

7.1 Guidelines for the provision of health care services during higher education protest action

In the context of protest action affecting South African institutions of higher education this document lays out principles and offers guidance to ensure access to health care, during periods of potential disruption of usual or routine health care services due to protest action and responses. The document serves as a guide for all parties, including but not limited to: the university management; university health professional staff; volunteer student first aiders; student protestors; staff protestors; South African Police Services (SAPS); private medical services as well as private security, on their roles, acceptable conduct and expectations, towards the realisation of the safe delivery of health care, including but not restricted to emergency medical treatment.

This document should be read as putting forward foundational principles that would support the development of specific plans by institutions of higher education, which should be contextualised to the distinctive circumstances of each institution.

1. PREAMBLE

Recognising that medical ethics remain the same in times of violence, protest action, or states of emergency as in times of peace,

Recalling the neutrality and sanctity of health care services and the need to safeguard access to and delivery of health care services at all times;

Recalling that the maintenance of medical neutrality also necessitates non-interference, meaning that no party may obstruct the duties of health care personnel.

Recalling the ethical obligations of health professionals to maintain patient confidentiality and privacy;

Recognising that SAPS has a commitment to ensure and/or provide first aid response services;

Recognising that the Policy on the Minimum Norms and Standards for Student Housing at Public Universities (2015) obliges university management to provide for adequate provision of access to medical and psychological services to cater for the well-being of student residents during work hours, and must ensure that emergency support is available after hours for those in on-campus and off-campus student housing;

Recognising that law enforcement officials have a duty to ensure the safety and security of the public and to uphold the law;

Recalling the provisions of the South African Police Services (SAPS) Code of Conduct, the Regulation of Gatherings Act 205 of 1993, the National Instruction 4 of 2014 and the National Instruction 1 of 2016;

Recognising the right to assembly as a human right protected under Article 17 of the South African Constitution (1996);

Recalling the provisions of international human rights mechanisms, in particular the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and domestic law, namely the Bill of Rights of the South African Constitution (1996), which affirm the following:

- a. Everyone has the right to life, which is non-derogable.
- b. States must refrain from deliberately withholding or delaying health care to the wounded and the sick in life-threatening circumstances. No one may be denied access to emergency medical treatment.
- c. Whenever the use of force is unavoidable, law enforcement officials must minimise the harmful consequences from the use of force and ensure medical assistance to those affected as early as possible.
- d. Everyone has the right to access health care services on a non-discriminatory basis. States must refrain from arbitrarily denying or limiting such access, for instance, against political opponents.
- e. States must take active measures to enable and assist individuals to enjoy their right to health, including the highest attainable standard of physical and mental health.

Concerned that to date that the provision of health care services is compromised or at risk of such, due to the lack of effective mechanisms to foster communication and negotiation between all relevant stakeholders;

and

Acknowledging the need for a common understanding and implementation approach for all stakeholders during higher education protests to secure unimpeded access to necessary health care services,

The following principles serve as a guide for stakeholder conduct and planning in relation to university protests with the specific aim of facilitating access to health care services during higher education protests and safeguarding the delivery of those health care services.

2. DEFINITIONS

Emergency medical attention: emergency medical services rendered by health care personnel as defined herein.

First aid provider: a type of health care personnel, either volunteer or employed, who is either a medical or nursing student in good standing and/or the holder at a minimum of a valid level

one emergency first aid certificate. The first aid provider is formally recognised as being on duty during protest action by the display of visible identification markings or insignia.

Health care: any activity relating to the prevention, diagnosis, management and treatment of injuries and disease affecting mental and physical health. This also includes services necessary to attain the objective such as transporting the wounded as well as administration of a health care facility.

Health care facility: any location where health care is provided. This includes: temporary facilities—even those reasonably established under a fast-moving situation, mobile clinics, medical transport or any location designated as such.

Health care providers: all personnel working in the area of health care, including professional health personnel, personnel of non-governmental organisations, medical personnel of law enforcement agencies, medical student volunteers and first aiders.

Identification/symbols/insignia: designated, agreed upon, recognisable and visibly displayed markings that indicate where and by whom medical care is being provided.

Injured person: a person who has undergone injury to body, mind or emotions by being subject to harmful external factors.

Law enforcement agencies: mandated, regulated and supervised by legitimate authorities (the State) to ensure safety, security and/or enforce the law. In this context, law enforcement agencies may include private security, campus security and state police services.

Law enforcement official: includes uniformed and ununiformed officers of the law who exercise police powers and extends to include campus security, whether insourced or outsourced, as well as any security privately contracted by the university.

Medical impartiality: the ethical principle whereby health care providers must provide care to those most in need, based on accepted triage norms, regardless of where they are from, their own religious and/or political affiliations, and of those whom they are treating.

Medical neutrality: the ethical principle of health care providers not taking part in protest action while providing health care services.

Medical vehicle or transport: public or private ambulances, university transport or personal vehicles transporting injured people.

Patient: any person who requires health care.

Stakeholder/party: these are synonymous terms including but not limited to: the university management; university health professional staff; volunteer student first aiders; student protestors; staff protestors; South African Police Services (SAPS); private medical services as well as private security

University management: any person or structure so designated and duly authorised in accordance with university/higher educational institution constitutive documents.

3. FACILITATION OF ACCESS TO HEALTH CARE

3.1 Taking into account the various forms of protest action, all parties should, where practicable, formulate a university specific plan to facilitate access to health care services. This plan should enumerate detailed information for the provision of health care services, including contact numbers, command chains, site maps indicating the location of health care facilities and any other relevant matters, in order to ensure the principle of medical neutrality.

3.2 Any health care provided by volunteer first aiders, university staff, the local population, non-governmental organisations or other third parties does not relieve the state of its obligations to provide health care.

3.3 Health care personnel for so long as they are legitimately acting in their capacity as health care workers during periods of protest action may not be attacked, harassed, harmed or punished by anyone at the time of service provision or later as a form of victimisation. Health care personnel, presenting themselves as such, shall not carry out activities outside the course and scope of practice while working or volunteering in their medical capacity.

3.4 Health care personnel must prioritise assessment and treatment without discrimination, based only on the patient's medical condition. Health care personnel decide, in accordance with triage norms, clinical reasoning and ethical principles of health care, which patient receives priority.

3.5 All health care personnel, transport and facilities should be marked with objectively visible markings to indicate the nature of that object, person or location as designated for medical care. Upon adoption of the plan referred to in 3.1 or as soon as is practicable, all stakeholders must agree on distinctive signs, or emblems to be used to distinguish health care services and individuals providing such services during the protest.

3.6 The provision of medical attention must be the first priority for a suspect who requires health care prior to his/her arrest and/or removal from a health care facility. To this end, a dialogue between law enforcement officials and health care personnel will take place before the transfer of the patient into the custody of law enforcement officials.

4. PROTECTION OF HEALTH CARE FACILITIES AND TRANSPORT

4.1 All parties shall respect and protect health care facilities, transport and equipment at all times and these shall not be the object of attack or violence.

4.2 In accordance with the neutral status of health care facilities and in order to protect staff and patients, health care facilities or first aid posts should be weapon-free areas.

4.3 Recognising that protest action may have the potential to hinder access to health care facilities, such access to health care facilities must be ensured at all times by all stakeholders/parties.

4.4 Law enforcement agencies should respect health care facilities and use the principle of precaution by carefully planning their operations to avoid the strict necessity to use force near such facilities and their being harmed. If the use of force is nevertheless unavoidable, the force used must respect the principles of necessity and be strictly proportionate to the threat posed by an individual or group of individuals. This use of force does not justify harm to health care facilities in proximity to any such threat.

4.5 No health care facility should be used for purposes other than for providing health care. Likewise, information about injured persons is privileged.

4.6 Medical vehicles or transport shall be respected by all stakeholders and shall not be subject to violence of any kind from any source. The access of medical vehicles to patients should be unhindered at all times and consideration of this taken into account in the planning of or management of a protest. Designated routes for the transporting of the injured persons should be identified and with coordination among all parties to ensure appropriate medical assistance to injured people.

4.7 Commanders of law enforcement agencies should give suitable operational orders to all law enforcement officials deployed in order to ensure that priority and coordination is given to medical transports and those in need of emergency medical care.

5. COORDINATION AND TRAINING

5.1 All stakeholders must ensure adequate training and credentialing of all relevant personnel. Training should take into account emergency preparedness, risk assessment and management, negotiation, stress management, communication skills and capacity building.

5.2 Where practicable, stakeholders should include social sensitisation on the roles and responsibilities of all stakeholders involved in protest action, or the management of such situations including responses to incidents involving threats of or actual incidents of violence. Such training (sensitisation) should make specific mention of the obligation of state law enforcement officers to provide first aid and ways to ensure minimal disruption for health care facilities.

5.3 First aid providers must receive adequate training on their rights and responsibilities, in particular on their ethical obligations as well as specific training on the delivery of health care services during protest action.

6. IMPLEMENTATION

6.1 Following the acceptance of these guidelines, all stakeholders should establish a university specific plan, as outlined in 3.1 above, which indicates their adherence to the principle of medical neutrality and impartiality through policies and procedures to safeguard health care in situations of protest actions.

6.2 The plan referred to in 6.1 must take into account contingency planning for all possible and anticipated health care needs, which should also conform to the spirit and intention of these guidelines.

6.3 The development and implementation of the university specific plan must be sufficiently resourced to ensure that health care is available and accessible in relation to protest action.

6.4 By endorsing these guidelines, all parties commit themselves to work for the promotion of the stipulated principles within these guidelines, including by appropriate dissemination and training amongst relevant officials and concerned parties.

6.5 The principles enumerated herein apply to all in-sourced and out-sourced services to the university and the compliance thereto should be a condition of the hiring of such services by university management or any other stakeholder.

6.6 A technical working group should be established to operationalise and govern each university specific plan and must include representation from all stakeholders at each institution.

6.7 The technical working group that is responsible for the implementation and governance of the university specific plan arising from these guidelines must include the establishment of appropriate, independent and impartial monitoring and evaluation mechanisms.