

TRAINING MANUAL

Based on the Guidelines for the
Policing of Assemblies by Law
Enforcement Officials in Africa



AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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TABLE OF CONTENTS

AGENDA	iv
1/ Introduction	1
Part 1: Background to the <i>Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa</i>	1
Recommendations for good practice	1
Importance of training of law enforcement officials	2
Structure and main principles informing the <i>Guidelines</i>	3
Approach to this training and manual	4
Part 2: Human rights and policing assemblies	4
Activity: Human rights especially relevant to policing assemblies	5
Why are human rights enshrined in law?	5
Fundamental principles in international human rights law	7
What is democratic policing?	7
Discussion: Criteria for democratic policing and applicability to your situation	7
Discussion: Benefits of democratic policing	8
2/ The right to assembly	9
Discussion: Definition and purpose of assemblies	9
Case study: The right to assembly	11
Notification before an assembly	12
Case study: The right to assembly (cont.)	13
Case study: The right to assembly (cont.)	13
Limitations or restrictions on assemblies	14
Criteria for restrictions or limitations	15
Case study: The right to assembly (cont.)	16
Case study: The right to assembly (cont.)	16
The meaning of 'peaceful'	16
Case study: The right to assembly (cont.)	17

Case study: The right to assembly (cont.)	18
3/ Planning and preparation	19
Processes and procedures to follow	19
Clear command structure	20
Accountability for unlawful acts	21
Discussion: Your current command structures	21
Intelligence gathering	22
Discussion: External communication planning before an assembly	23
Case study: Gathering intelligence for an assembly	23
Risk assessments	24
Case study: Assessing risks for an assembly	24
Contingency planning	25
Case study: Assessing risks for an assembly and contingency planning	26
Internal communication: Briefings	27
Checklists for preparing to police an assembly	27
Keeping records of your preparation	33
4/ Use of force during assemblies	34
Use of force	34
Challenges for law enforcement officials during assemblies	35
Effect of law enforcement attitudes and conduct during assemblies	35
Role play: Attitude and its effects	36
Discussion: Connection between appearance and response	37
All means to avoid force should be tried first: De-escalation	38
Possible de-escalation measures	38
Communication, flexibility and containment	38
Stop, search and arrest	38
Measures of last resort: Force and dispersal	39
Use of force	39

TABLE OF CONTENTS

Different levels of force	40
Non-lethal and less-lethal equipment	41
Activity: The use of force diagram where on the use of force diagram would you put: firearms	41
Dispersal	42
Use of firearms	43
Case study: Possible law enforcement reactions to an unfolding assembly	43
5/ Information, communication and facilitation	47
Communication with stakeholders	47
Relevant stakeholders	48
Communication during assemblies	48
Active listening	48
Positional negotiating	50
Discussion: Achieving a principled positional negotiation	50
Facilitation	51
6/ Review and accountability	53
Internal reviews	53
Discussion: Debriefing processes	53
Checklist for a debriefing	53
External reviews	54
Discussion: External mechanisms for oversight	54
Use of force	54
Oversight mechanisms	55
Reporting	55
Evaluation	56

AGENDA

DAY 1

09.00 – 10.30	MODULE 1: Introduction and approach
10.30 – 10.45	Tea break
10.45 – 12.30	MODULE 2: Right to assembly
12.30 – 13.30	Lunch break
13.30 – 15.00	MODULE 3: Planning and preparation
15.00 – 15.30	Tea break
15.30 – 16.30	Planning and preparation (cntd)

DAY 2

09.00 – 09.30	Questions and recap
09.30 – 10.30	Planning and preparation (cont.)
10.30 – 10.45	Tea break
10.45 – 12.30	MODULE 4: Use of force
12.30 – 13.15	Lunch break
13.15 – 14.30	Use of force (cont.)
14.30 – 14.45	Tea break
14.35 – 16.30	MODULE 5: Information, communication and facilitation MODULE 6: Review and accountability Evaluation and wrap-up

1/

INTRODUCTION AND APPROACH TO THIS TRAINING

Part 1: Background to the *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*

Law enforcement officials play a central role in managing assemblies: their attitude, planning and conduct can influence whether an assembly is peaceful or not. The African Commission on Human and People's Rights (the African Commission) developed the *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (the *Guidelines*) to help law enforcement agents in Africa become more aware of good practice in policing assemblies. The *Guidelines* were adopted on 4 March 2017 at the 21st Extraordinary Session of the African Commission at Banjul in the Republic of the Gambia.

By adopting them, the African Commission hopes that future policing will ensure the peaceful conduct of public assemblies, so protecting the public's right to freedom of assembly.

In addition to these guidelines, the African Commission has recently also adopted the *Guidelines on Freedom of Association and Assembly in Africa*¹ as an additional measure to ensure that the right to assembly is protected. It states that currently:

[It is concerned] that restrictions on the rights of freedom of association and assembly limit the potential for a free public sphere and a free and open democratic society.

Recommendations for good practice

The *Guidelines* are not prescriptive, as they are not law. Rather, they are recommendations for moving police services in African countries towards a rights-based policing of assemblies. Where the *Guidelines* say 'must', this should be read with the understanding that these are recommendations for good practice.

¹ Throughout this manual, we use the draft text of the *Guidelines on Freedom of Association and Assembly in Africa* dated May 2017, as the final wording has not yet been approved.

We use the words ‘good practice’ rather than ‘best practice’. This is because these guidelines, as well as the *Guidelines on Freedom of Association and Assembly in Africa*, recognise that all countries have their own challenges and consequent unique policing situations. For example, there may be laws that conflict with rights-based policing, different socio-economic conditions, political and historic influences on the legal regimes, and different technological and security developments.

The *Guidelines* are premised on law enforcement agencies’ managing and facilitating peaceful assemblies. Although a section deals with when force may be used, the underlying theme is that everything possible must be done to avoid using force.

In this regard, the *Guidelines* focus on:

- Peaceful assemblies as a right, not a privilege, even if there was no notification
- Open, clear, proactive, collaborative communication before, during and after an assembly
- Proper planning and preparation to anticipate peaceful outcomes of assemblies.

Importance of training of law enforcement officials

The *Guidelines* stress the role of training law enforcement officials. In practice, this means that law enforcement officials have to act in a way that protects the human rights of participants, bystanders, journalists, other affected people and, of course, law enforcement officials themselves.

Conversely, law enforcement officials may not hinder or infringe the right to assemble peacefully by use of force, by placing unreasonable limitations on the assembly, or in any other unlawful way. But they must also ensure that the rights of those not participating in the assembly are similarly protected.

This is where the training of law enforcement officials comes in, and why you are here at this workshop. As law enforcement officials, you need to understand the human rights framework in which you operate. You cannot be expected to adhere to human rights principles unless you are made aware of them specifically. Training workshops are one way of disseminating information and raising awareness about standards of conduct for policing assemblies within a rights-based framework.

The *Guidelines* recognise the importance of training in Parts 2 and 6.

Article 27 of the *Guidelines* says:

State Parties must ensure that all officials who are involved in the facilitation or management of assemblies are properly trained in relation to the provisions in these Guidelines.

The provision of these Guidelines and other instruments developed by the African Commission ... should be incorporated into the curricula of all basic and in-service training for relevant public officials.

Article 7 says:

All law enforcement officials, regardless of unit, must receive on-going and continuous training on policing assemblies, with advanced training [for ...] any unit established for the specific purpose of policing assemblies.

Here is a summary of the training that 7.1 – 7.X say law enforcement officials should receive. We hope to go through all, or at least most, of these throughout this training.

At the end of this training, we will ask you to comment on which of these aspects you have a better understanding of after this course.



We encourage you to reflect on which aspects of the *Guidelines* would be easiest to implement, where improvements could be made, where attitudes could change, etc. We consider this an important awareness-raising exercise, an opportunity for reflection on, and learning about, what 'good practice' in policing assemblies within a human rights framework could be. It may be that you leave with possible shifts in attitude towards your own practices and conduct. We also hope that you have the desire to share your learning with others in the police service.

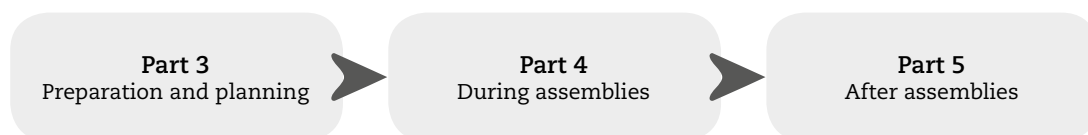
Structure and main principles informing the Guidelines

Part 1 of the *Guidelines* starts with Preliminary Provisions, which contain the general principles governing the right to assemble freely, and the legislative and regulatory framework that provide for the right to assemble freely with others.

Part 2 deals with what is required from an organisational point of view to implement a rights-based

approach to the policing of assemblies. These are:

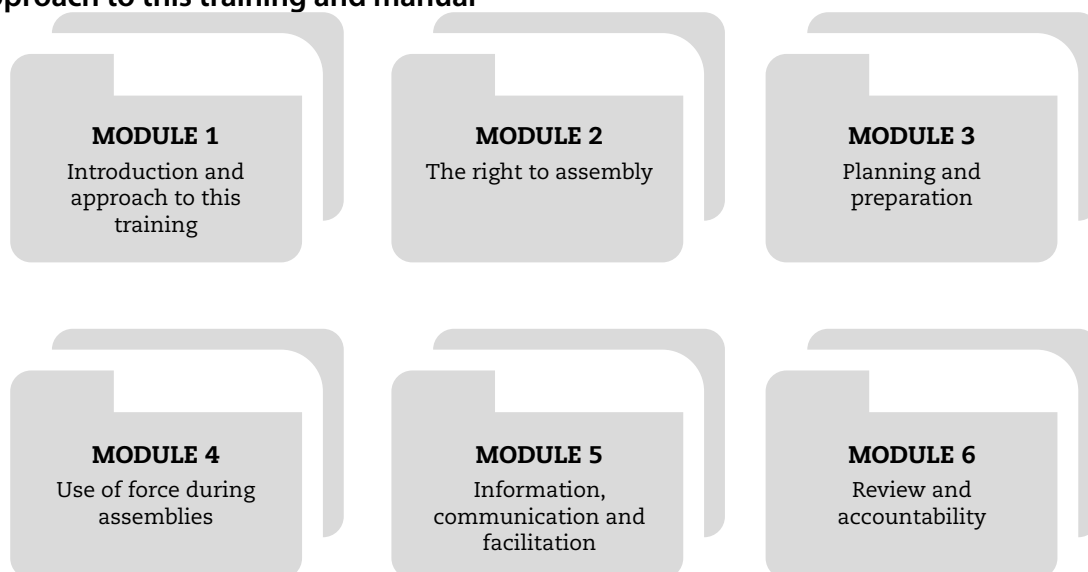
- A regulatory framework
- Command structures
- Information, communication and facilitation mechanisms
- Training
- Oversight, accountability and monitoring.



Parts 3, 4 and 5 take law enforcement officials through the sequence of policing assemblies, beginning with planning and ending with what happens after an assembly. The diagram below shows the structure of Parts 3, 4 and 5 of the *Guidelines*:

Part 6 deals with implementation, which includes who the *Guidelines* apply to, training and reporting.

Approach to this training and manual



This training session and manual follow a thematic approach, as the diagram below sets out. It is similar to the structure of the *Guidelines*, as it follows a sequential approach.

Part 2: Human rights and policing assemblies

The *Guidelines* are based on the understanding that policing assemblies should be done in a human rights (or rights-based) framework. The general concept of human rights refers to rights and values that are:

- Universal – they apply to everyone, everywhere
- Inalienable – they cannot be alienated (given away, bought/sold, or taken away)

- Inherent – they are within us all.

This is so because we are human. These rights are the basis of our humanity.

Human rights are not connected to religion. Every human has the same rights, regardless of their religion or lack of religion.

ACTIVITY

Human rights especially relevant to policing assemblies

What are some human rights? Which are specifically relevant to policing of assemblies?

- Assembly
- Freedom from discrimination
- Freedom of conscience
- Equality of, and equal protection before, the law
- Dignity
- Freedom from torture and other ill-treatment
- The liberty and security of the person
- To have a cause heard
- Freedom of movement
- Life
- Privacy
- To receive and disseminate information
- Freedom of expression
- Free association
- To participate freely in public affairs
- Equal access to public services.

Why are human rights enshrined in law?

To enforce and protect human rights, the principles have been articulated in a range of international, regional and country-specific laws. These laws give legal expression to the concept of human rights and make it more concrete.

International instruments

On an international level, countries sign treaties and conventions embodying human rights. If the treaty or convention is ratified by the country's parliament, it becomes law and the country has a legal duty to respect the treaty or convention and the rights it protects.

The main international sources of human rights law are:

- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Together with the Universal Declaration of Human Rights, these form the International Bill of Rights.

The International Covenant on Civil and Political Rights (ICCPR) recognises the right to peaceful assembly in Article 21:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

African instruments and guidelines

Africa has embraced the rights-based approach through the African Charter on Human and Peoples' Rights. The Charter was adopted by the Assembly of the Organisation of African Unity (OAU) on 28 June 1981, in Nairobi, Kenya, and came into force on 21 October 1986. By 1999, the African Charter had been ratified by all the member states of the OAU. The African Charter established the African Commission on Human and Peoples' Rights, which became operational in 1987. The commission's secretariat is based in Banjul, The Gambia. The Commission is officially charged with three major functions:

- The protection of human and peoples' rights
- The promotion of human and peoples' rights
- The interpretation of the African Charter on Human and Peoples' Rights.

The Charter guarantees the rights to assembly in Article 11:

Everyone has the right to assemble freely with others.

The African Commission has recently developed three instruments relevant to freedom of assembly:

- *Guidelines on Freedom and Association and Assembly in Africa* (to which we refer in this manual)
- *Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa*. These are commonly known as the *Luanda Guidelines*. A training manual has been developed to implement these guidelines. They are referred to throughout this training in relation to arrest
- *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, which is the basis of this training.

Article 1 of the *Guidelines* says:

Everyone has the right to assemble freely with others.

Country- or state-specific protection of rights

Some constitutions enable minorities and other individuals who are most likely to be unfairly oppressed by the government to challenge government action. This is known as constitutional protections. Constitutional protections may include:

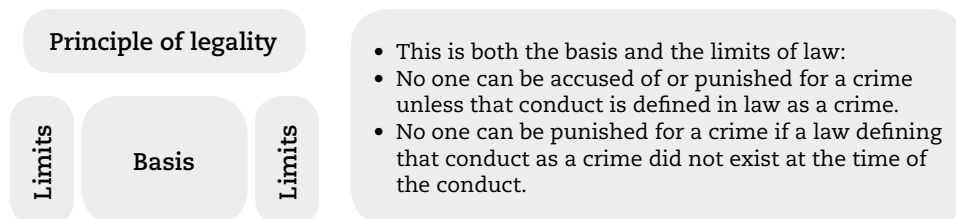
- Requirement for supermajority votes on some issues, such as constitutional amendments or declaring war
- Division of powers, such as one house of a legislature based on population and the other on equal representation of geographic units with unequal populations
- Prohibitions on violations of certain specified rights
- Procedural constraints, such as due process
- Oversight functions, such as petition hearings, ombudsmen, inspectors general, etc., and the power of judges to declare official acts unconstitutional and void.
- Enablement of corrective actions by private citizens, such as citizen arrests and prosecutions, open public meetings and records.

Fundamental principles in international human rights law

There are two fundamental principles that underpin human rights law. They are:

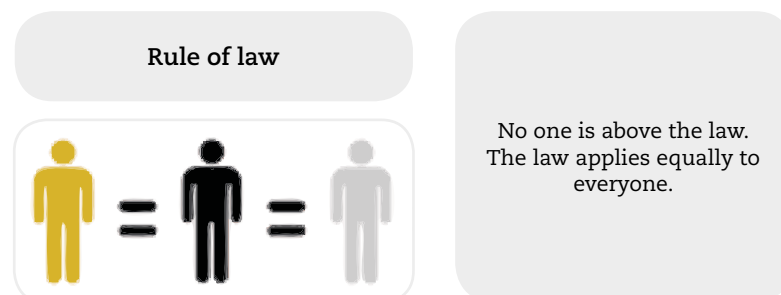
Principle of legality

The purpose of the **principle of legality** is to make sure that people cannot be arrested arbitrarily. There must be a law that states whether certain behaviour is lawful or not. It also promotes the concept that each person is individually legally responsible for his or her actions.



Rule of law

The purpose of the **rule of law** is to prevent people from making their own laws and also allows for every person to be subject to the same laws.



What is democratic policing?

DISCUSSION

Criteria for democratic policing and applicability to your situation

The overarching principle of democratic policing is that it is seen to be, and experienced as, legitimate by the public and by law enforcement officials themselves.

Below are some of the features of democratic policing. Which of these criteria applies to your country's situation?

Democratic policing:

- is orientated towards the service of society rather than the state (or the groups in power)
- is protected from undue political interference
- is adequately and securely funded
- has personnel who are representative of the communities they serve
- has skilled professional members who can perform effectively and efficiently across the organisation
- has governance and management structures that ensure integrity and support democracy
- has members who are treated respectfully and rewarded equitably
- protects democratic rights, including freedom of speech, movement and participation
- provides safety and security
- is characterised by the way in which police conduct themselves
- is characterised by the extent to which members of the organisation enjoy the same rights and privileges as ordinary members of society
- is accountable through multiple mechanisms enacted through law
- is watched and supervised by elected politicians, civil, criminal and administrative courts, the media, and independent ombudsmen and civilian complaint review boards.

DISCUSSION

Benefits of democratic policing

Are there any benefits of democratic policing for law enforcement officials and agencies?

Make a list of possible benefits. _____

2/

THE RIGHT TO ASSEMBLY

This module deals with the right to assembly as a fundamental right. We look at how an assembly is defined, different kinds of assemblies, and their different purposes. We examine the issue of notification prior to assemblies, and the responsibilities of the law enforcement agencies to facilitate assemblies. We look at criteria for when the state may place limitations on assemblies. We discuss what 'peaceful' means in the context of assemblies.

DISCUSSION

Definition and purpose of assemblies

- What is the definition of 'assembly'?
- What is the purpose of assemblies (or, why do people assemble?)

Look at the photos on the next page of different assemblies through the ages. For each one, answer these questions:

- What kind of assembly is it (march, protest, etc.)?
- How would you define an assembly? For example, does it have to be a certain size?
- What is/was its purpose (for or against something, to get something removed, changed, etc.)?
- At whom was it directed (the state, religious institutions, political leadership, private companies, etc.)?
- What was it an expression of (political, economic, cultural, environmental, religious, or racial issues, or other issues)?
- Did it occur in a public or private space?



The *Guidelines* do not give a definition of an assembly, but the *Guidelines on Freedom of Association and Assembly* do:

Assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration.

Article 1 of the *Guidelines* includes these examples of which gatherings may constitute an assembly:

- demonstrations
- marches
- parades
- protests
- meetings
- processions
- rallies
- sit-ins
- funerals
- online platforms.

It is not a definitive list, however. It leaves the door open for other types of assemblies by saying:

- or in any other way people choose.

Assemblies play an important part in any society, not just democracies. They are a tool for:

- promoting economic, social, cultural, educational and personal development in a way that respects the rule of law
- holding governments accountable
- engaging with corporations or religious, educational and cultural institutions
- promoting democratic systems
- amplifying the voices of marginalised people
- presenting an alternative narrative to established interests and thinking

But they can also be used to promote non-democratic regimes and incite violence, racial hatred and other hatred.

CASE STUDY

The right to assembly

Let's examine what the right to assembly means concretely using a hypothetical case study. As we go through the sequence and developments in this case study, we will compare your thoughts on the unfolding of the assembly with what the *Guidelines* say.

The objective of this case study is for participants to have a clear understanding of the right to assembly, including:

- issues about notification, including lawfulness when there is no notification
 - criteria for limitations and restrictions
-

- what 'peaceful' means in the context of assemblies.

One Wednesday afternoon, a message starts to spread via Facebook, WhatsApp and other social media calling for a mass march at 9 a.m. on Friday in the capital city of your country.

The march will start at the train station and continue through the business district. It will end at Parliament.

The participants are calling for the president to step down.

By Thursday, thousands of people have expressed their support for the march. The call is spreading like wildfire. Some people are expressing sentiments like 'yes, let's show our strength', 'aluta continua', 'power to the people', 'speak truth to power', etc. on social media.

You don't know the names of the organisers; in fact, there don't seem to be any. It's an open group and everyone can like and share it.

Nobody has contacted (notified) the police or other authorities to discuss the march.

You are the police station commander.

- What is your opinion about whether the march is unlawful, because no one has notified the authorities?
- What is the purpose of having to notify the authorities of an assembly, in your opinion?
- Should you be allowed to prevent the march from going ahead or dispersing it immediately because there was no notification? Give reasons.
- Which other stakeholders, for example local authorities, would you engage with regarding notification issues?
- If local authorities tell you that you must not allow the march to go ahead, how would you deal with this situation?

Notification before an assembly

Article 9 (summarised) of the *Guidelines* deals with lack of prior notification of an assembly:

- [It] does not [make] it unlawful.
- It should not be the sole basis of a decision to disperse an assembly.

Article 71 (summarised) of the *Guidelines on Association and Assembly* goes further by saying:

- Participating in and organising assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state.
 - A system of prior notification may be put in place.
 - Any notification system should have a presumption in favour of holding assemblies.
 - There should not be automatic penalties because of failure to notify.
 - Lack of notification does not make an assembly illegal.
 - Notification period should be as short as possible, and flexible.
 - Its aim should be for the relevant authorities to prepare.
 - Procedures should be non-burdensome.
-

- Notification must be free of charge.
- If authorities fail to respond to notification, it means the assembly can go ahead as planned.
- No notification is required for small assemblies, or spontaneous assemblies.
- A single, impartial authority trained in human rights law should receive notifications.
- They must communicate it to other agencies.

CASE STUDY

The right to assembly (cont.)

It is now Thursday afternoon. No authority has been contacted yet.

- What do you do?
- Do you try to contact the organisers yourselves?
- Do you wait for someone to contact you?

Article 9.2 of the *Guidelines* places the duty to contact and communicate with organisers squarely on the law enforcement agency:

Law enforcement officials should take all reasonable steps to identify and communicate with assembly organisers and/or participants to prepare the facilitation of the assembly.

This is because:

The state must make sure that the right to assembly can be exercised.

CASE STUDY

The right to assembly (cont.)

Businesses have complained to you that they will lose income. There may be looting.
There may be thousands of people.
Your resources will be stretched.

- What action would you take?
 - Would you place limitations on the march?
 - What would be the purpose of the limitations (e.g. to protect life, to protect property, to stop traffic disruptions)?
 - If you do place limitations, what would they be?
 - Which criteria would you use to determine which limitations (if any) you would place on the march?
 - Would you prohibit the march?
-

Limitations or restrictions on assemblies

The *Guidelines* allow for the state to place limitations on assemblies before and during these assemblies if they are in accordance with regional instruments, such as the African Charter on Human and Peoples' Rights, and international instruments, such as the ICCPR.

Article 2 of the *Guidelines* states that limitations must be:

- the exception, not the norm
- decided on a case-by-case basis
- reviewable by competent, independent and impartial administrative and judicial authorities, in both law and practice, within a reasonable period of time.

Article 19 of the *Guidelines* states that:

- [there must, where possible] first be negotiations and mediation
- limitations must be clearly communicated
- other alternative must be provided to participants
- limitations may not be imposed for technical reasons.

Any limitations cannot take away:

- freedom from discrimination
- equality of, and equal protection before, the law
- freedom of conscience
- the right to dignity and freedom from torture and other ill treatment
- the right to liberty and security of the person
- the right to have a cause heard
- freedom of movement
- the right to life
- the right to privacy
- the right to receive and disseminate information and to express opinions
- the right to free association
- and the right to participate freely in public affairs and equal access to public services.

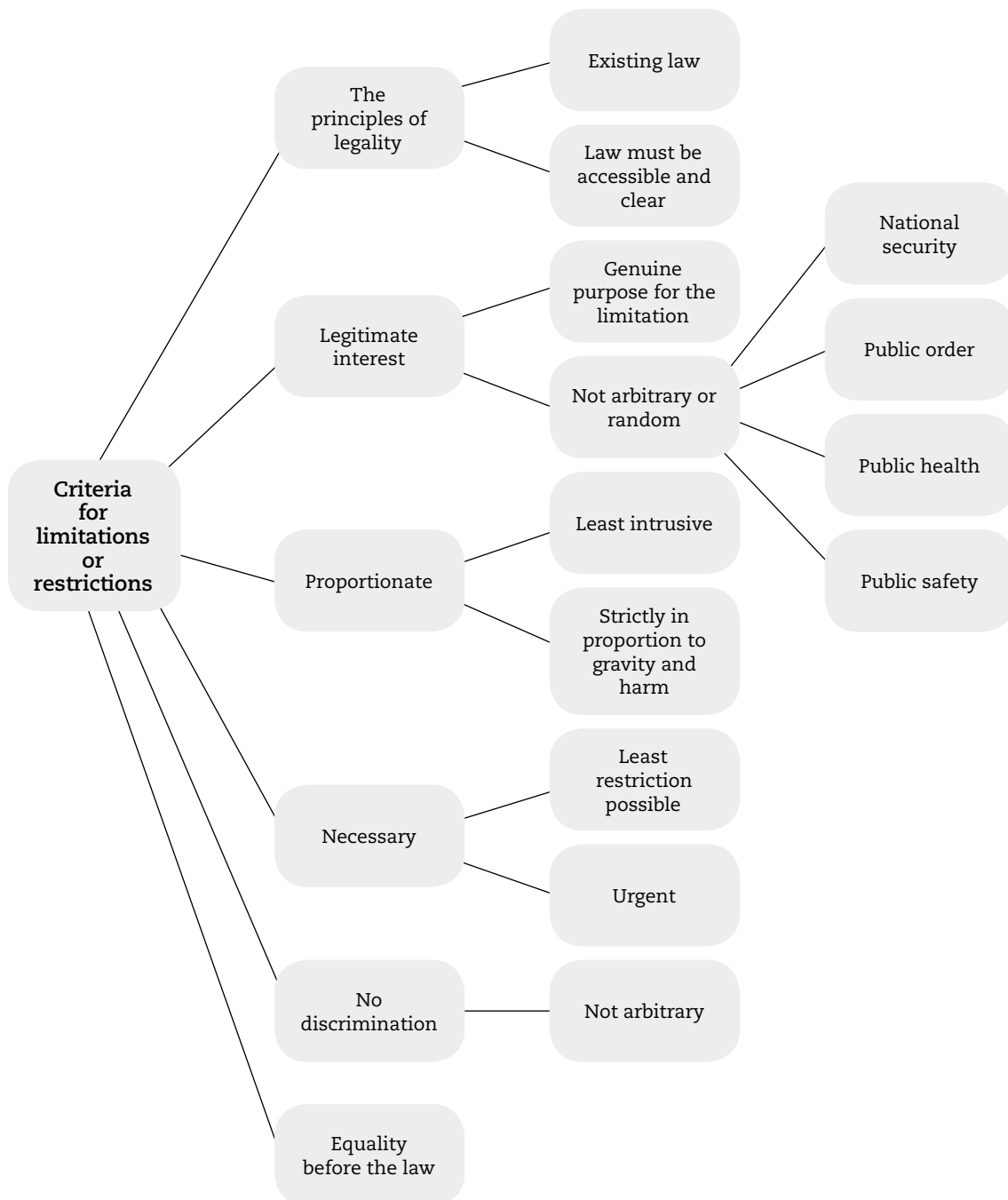
Any limitations imposed must balance the right to assembly against the rights of others – different groups or individuals or those who live, work, or carry out business in the affected locality. The balance should always fall in favour of those asserting the right to assemble, unless there is strong evidence to justify interference with that right.

Least intrusive measures should be considered first and only under strict safety rules for the benefit of the public.

Criteria for restrictions or limitations

Articles 1.2.2 and 19 of the *Guidelines* state the criteria that must be applied when considering a limitation or restriction.

The Guidelines on Freedom of Association and Assembly state that authorities may only apply limitations or sanctions that are strictly proportionate to the gravity of the specific harm and only as a matter of last resort and to the least extent necessary.



CASE STUDY

The right to assembly (cont.)

- Refer back to your responses in light of what you know now about the criteria for placing restrictions on assemblies. Do the limitations you thought suitable in the case study above comply with the criteria of the principle of legality, non-discrimination, necessity, proportionality and equality before the law?

CASE STUDY

The right to assembly (cont.)

On Friday, people start gathering at about 9 a.m. They are holding placards, and there is singing and chanting. By 10 a.m., there are 10 000 people.

Then the march starts moving.

Traffic is at a standstill. Some motorists are hooting. They are angry because they cannot get to work.

Protesters are insulting the president using swear words. There are children around who are hearing the swearing.

Shops start to close. They are fearful of looting.

- What is your opinion about whether this protest is peaceful?

The meaning of 'peaceful'

The *Guidelines* are clear that the right to assembly only applies to peaceful assemblies. They also describe what the word 'peaceful' means in this context. There are two parts to the description:

- The intention of the organisers
- The conduct during the assembly.

Article 2.1.2 of the *Guidelines* says:

An assembly should be deemed peaceful if its organisers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful.

The *Guidelines* give examples of what types of activities 'peaceful' includes:

['Peaceful' include(s)] conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.

CASE STUDY

The right to assembly (cont.)

The march continues.

Some protesters are holding up posters like the ones below, calling for the killing of the president, for war and for ungovernability.



- Is this hate speech inciting violence, in your opinion?

CASE STUDY

The right to assembly (cont.)

One person in the march throws a brick through a shop window. A few people begin looting.



- Is the march no longer peaceful?

Article 21.2 of the *Guidelines* says:

Isolated acts of violence do not render an assembly as a whole non-peaceful.

3/

PLANNING AND PREPARATION

This module deals with issues of planning and preparation that law enforcement agencies need to take into consideration before an assembly takes place. As a service organisation, law enforcement agencies have a duty to serve the people, and that includes facilitating the right to peaceful assembly.

To be able to facilitate this right in a way that anticipates and mitigates risks to all involved in the assembly, law enforcement agencies need to be prepared.

Processes and procedures to follow

Article 9.1 of the *Guidelines* says that law enforcement agencies:

Must have processes and procedures for spontaneous and planned assemblies.

Article 12 of the *Guidelines* deals with the purpose of doing risk assessment and contingency planning, which is:

- to effectively facilitate an assembly, and
- to ensure that any limitations or restrictions are lawful, proportionate, necessary and non-discriminatory, and
- to form the core of briefings to law enforcement officials before an assembly, and
- to communicate these to all interested stakeholders.

The diagram below shows the processes and procedures to follow when preparing to facilitate an assembly:

Appoint relevant role players

- Operational commander
- Negotiation person
- Communication liaison person

Gather intelligence

- From all lawful sources, including organisers, third parties, other law enforcement agencies, observers
- Must be accurate (not rumour)
- Must be a system
- Must be lawful: Right to information, privacy, presumption of innocence, due process, compliant with human rights standards
- Must be necessary and proportionate to a legitimate purpose
- May not be used to harass, intimidate or discourage

Do risk assessment

- Must be evidence-based
- Who/what might be harmed?
- Based on continuous communication and information gathering

Make contingency plans

- What is the best course of action to respond to assembly?

Do comprehensive internal briefing

- Brief law enforcement officials before assembly

Clear command structure

Essential to any best practice in policing assemblies is the command structure. the *Guidelines* recommend that officials have a single command structure whose operations are clear and transparent.

Article 5 of the *Guidelines* calls for clear command structures:

Law enforcement agencies must establish a clear, transparent and single command structure for the policing of assemblies.

The *Guidelines* stress that the roles and responsibilities in the chain of command must be clear and known to all:

The operational roles and responsibilities of law enforcement officials within the chain of command should be clearly established, articulated, and publicly known to ensure a single chain of accountability.

This is to make sure there is a *chain of accountability*. Only a commander, or someone senior on the ground during an operation, should make decisions, especially about the use of force, dispersal, limitations or restrictions.

Accountability for unlawful acts

The *Guidelines* place a heavy responsibility on commanders regarding *unlawful acts of officials*. The commander is ultimately accountable for the decisions of, and can be held liable for any unlawful actions by, law enforcement officials. There are several situations in which commanders could be held liable, namely if the commander:

- knew about the unlawful use of violence or firearms, or
- should have known about it, and
- did not do anything to prevent it, or
- did not do anything to stop it, or
- did not report it.

Operational commanders must be held responsible if they knew, or should have known, that law enforcement officials under their command resorted to the unlawful use of force or firearms, and if they did not take all measures to prevent, suppress or report such unlawful activity.

An individual police officer who acts without the authorisation of a commander or another specified senior official who has been delegated the power will be *individually liable if he or she carried out an unlawful order*.

DISCUSSION

Your current command structures

What do you think of your police agency's command structure in light of what the *Guidelines* say?

- Is there a commanding officer and an operational officer? Or just one?
- Is the chain of command clear and transparent?
- What are the main challenges you are likely to face on the ground concerning a clear chain of command?
- Are briefing sessions held before an assembly?
- Who participates in them?
- What information is relayed?
- Are there discussions about rules of conduct?

- Do you have a team approach or is there sole responsibility for decisions?
- In what circumstances may command and control transfer to another level?
- If there is a hostile response, who should review the approach – that is, rules of conduct, force options, level of authorisation required, levels of force to be engaged, etc.? In what circumstances would it be acceptable to deviate from the predetermined approaches?
- What happens when several police agencies are involved in policing the same assembly? What about the preparation and planning?
- How feasible is it to make changes to the way in which your command structure works to bring it in line more closely with the *Guidelines*?

Intelligence gathering

The *Guidelines* stress the importance of accurate intelligence gathering, with the purpose of conducting risk assessments, making contingency plans and planning police action.

Article 10 of the *Guidelines* says:

To facilitate the right to assemble freely with others, law enforcement officials require accurate information to conduct risk assessments and contingency planning, and to plan for the necessary and proportionate deployment and equipping of law enforcement officials.

The article lists a number of ways in which intelligence can be gathered. Whichever way it is gathered, it must comply with human rights standards, and not violate any rights (such as the right to privacy, presumption of innocence and due process). It must also be proportional and necessary in relation to a legitimate goal.

Information may be collected through:

- a system for the prior notification of assemblies
- communication between law enforcement officials and assembly organisers
- communication with observers or third parties, and
- [other] law enforcement information and intelligence gathering techniques.

One challenge that police must accept is their responsibility to communicate proactively with organisers. This may be a challenge where assemblies are organised through social media, as organisers may not be obvious. Also, some will actively hide from police, but efforts should be made to overcome this by communicating with them.

This is so whether:

- the organisers may have notified the authorities, or
- the organisers have deliberately not contacted the authorities, or
- an assembly arises spontaneously.

In all three cases, it is the police agency's responsibility to have in place a set of processes and procedures at all times for facilitating the right to assembly.

Article 11.2 of the *Guidelines* says:

Police must make every effort to speak to assembly organisers.

DISCUSSION

External communication planning before an assembly

Discuss some of the main challenges in intelligence gathering, and how they can be addressed.

Examples include:

- When organisers do not contact officials before a planned meeting, what practical steps can law enforcement officials take to fulfil their duty to communicate proactively with them?
- If organisers deliberately hide, what could law enforcement officials do?
- With whom else could you meet?
- If you are able to communicate with organisers, what information would you ask them to share with you?
- Which sensitive issues could you identify?
- Which criteria would you use to decide on restrictions?
- Would you discuss these with the organisers, or just impose them?
- Which key messages would you like to impart?
- What is your opinion about consulting other stakeholders who are not part of the assembly, but who are affected by it, such as community and business owners?

CASE STUDY

Gathering intelligence for an assembly

The case study below deals with:

- Intelligence gathering before policing an assembly
- Assessing the risks
- Developing a contingency plan.

You are the law enforcement agency involved in the assembly below. Read the case study.

How would you approach intelligence gathering for this assembly?

Discuss in groups and compare notes.

One Sunday, you get a call from a police official who is stationed in Newtown. She says there are rumours that there is going to be a huge protest on Monday in Newtown. You know that a few months before, there was a devastating fire in this area, and many people lost their homes. They are now living on a soccer field. She tells you there's a rumour that the people are going to burn down the nearby suburb.

So far, it's all rumour.

Risk assessments

Article 12 of the *Guidelines* requires law enforcement agencies to use the evidence gathered in intelligence gathering to make a risk assessment.

To effectively facilitate an assembly and to ensure that any limitations or restrictions on the right to assembly freely with others are lawful, proportionate, necessary and non-discriminatory, law enforcement agencies should adopt a process of evidence-based risk assessment and contingency planning.

Risk assessments should:

- be informed by continuous information gathering and communication with all relevant stakeholders
- favour the presumption of the right to assemble freely with others
- take into account current and historical factors, such as prevailing political or social tensions
- be informed by the protection of persons who are vulnerable to limitations of their right to assemble freely with others.

CASE STUDY

Assessing risks for an assembly

Same scenario, but you have done your intelligence gathering. You now need to do a risk assessment based on your intelligence.

You now know that:

Nearly 10 000 people live in Newtown.

Some are locals, but others are refugees. There are many different languages spoken.

There is one road in and out of the settlement and nearby suburb.

There is a school in the neighbourhood and many young pre-school children.

The people who lost their homes are now living on a soccer field in makeshift homes.

They use Primus stoves for cooking, and fetch water from a kilometre away as there are no water connections.

The weather is bitterly cold.

There is tension between the people who lost their homes and those who didn't.

In groups, use the simple risk assessment framework below to identify 9 possible risks for this assembly, and the contingency plans you could make as a result.

In addition to identifying the risk, the severity of the risk should be noted, which allows for prioritisation in managing or minimising the risk.

Afterwards, compare your risk assessment with those of other groups.

Risk	Possible harm or damage
Example: One route into and out of area	People won't be able to get to work; traffic jams; road rage Police vehicles and emergency services may not be able to get in or out

Contingency planning

Once a comprehensive risk assessment has been carried out, law enforcement agencies can make their contingency plans. This should be done on a case-by-case basis.

Contingency plans should be developed for individual assemblies and be based on a comprehensive risk assessment.

Every measure must comply with:

the principles of legality, necessity, proportionality, freedom from discrimination and equality before the law.

CASE STUDY
Assessing risks for an assembly and contingency planning

Using the same case study and the risks you identified, consider the measures you would take to minimise or prevent the risks. Every measure, including any limitations, must be lawful. If you impose a restriction, you should negotiate an alternative.

Compare your measures with those of other groups.

Risk	Possible harm or damage	Measure	Comply with: - Principles of legality? - Necessity? - Proportionality? - Freedom from discrimination? - Equality before the law?
Example: One route into and out of area	People won't be able to get to work; traffic jams; road rage	Bring in traffic department to ensure flow of traffic	Yes
	Police vehicles and emergency services may not be able to get in or out	Negotiate with organisers to move the assembly to a place where people can get in and out	Yes; alternative venue organised

Risk	Possible harm or damage	Measure	Comply with: - Principles of legality? - Necessity? - Proportionality? - Freedom from discrimination? - Equality before the law?

Internal communication: Briefings

The *Guidelines* recommend that law enforcement officials who are to be deployed at an assembly must be briefed beforehand. The basis of the briefing should be the risk assessment and contingency plans.

Article 12.1 states that:

Risk assessments and contingency plans should form the core of the briefings to law enforcement officials deployed at an assembly.

Checklists for preparing to police an assembly

Here are some checklists you could use for preparing to police an assembly. As you go through them, think about whether you covered each item in the case study we did earlier. What did you leave out? What have these checklists left out?

Intelligence gathering:

What efforts did we make to contact organisers?					
Date/dates	How did we try?	Were we able to contact them?	If yes, what was discussed? Give details.	If no, why not?	Comments

Intelligence gathering (cont.):

Who else did we try to gather intelligence from? Civil organisations? Local authorities? Political parties? Residents? Other law enforcement agencies? The media?					
Date/dates	How did we try?	Were we able to contact them?	If yes, what was discussed? Give details.	If no, why not?	Comments

Communication with organisers:

If you were able to communicate with the organisers, did you discuss:		
	Yes/ no	Give details
Your approach (not to hinder; to respect the rights of protesters; the need to balance the right of freedom of assembly and expression against rights to life, personal safety, etc.)		
Number of expected participants		
Location		
Time		
Duration		
Profile of participants		
Concerns for public safety		
Concerns for safety of participants		
Agree on necessary restrictions, and alternative arrangements		
Policing deployment plans and strategies		
Identify sensitive areas		
Agree on necessary restrictions		
Key messages		
Ways of communicating during assembly		

Risk assessment:

What kind of possible harm or damage did you consider in your risk assessment:		
Stone throwing		
Fires		
Petrol bombs		
Medical injuries		
Looting		
Firearms		
Traffic		
Other?		

In balancing the right to assembly against possible harms/damage, did you take into account:		
The safety and wellbeing of law enforcement officials at the assembly		
The safety of women and children among the protesters		
The safety of people living in the community who are not protesting		
The risk to people's property		
The risk to animals		
The safety of bystanders		
The risk to shops in the area		
The risk to schools and other infrastructure		
The inconvenience to traffic		
The risk to property owners in nearby areas		
Dealing with the media during the assembly		
Other?		

Internal communication (within the law enforcement agency):

Prior to an assembly, once intelligence is gathered and after meeting with organisers and other relevant stakeholders, for example local authorities, commanders should hold comprehensive briefings with law enforcement officials to share information.

Did you hold briefing meetings before the assembly? Give details					
Date/ dates	Where?	Who attended?	Who gave the briefing?	If no, why not?	Comments?

Did you share the approach to policing assemblies within a human rights framework?	Yes/ no	Give details
Right to peaceful assembly		
No harassment or intimidation of participants, observers, media		
Right of third parties to document assembly		
Key messages		
Open communication with all		
Audible communications		
Code of conduct		

Did you share information about Command structures?	Yes/ no	Give details
Name of operational commander		
Who has responsibility for giving commands		
Who will be authorised to deviate from the pre-determined practices and under what circumstances		
Code of conduct		
Liability of individual officials		
Other?		

Did you share information about other relevant law enforcement officials?	Yes/ no	Give details
Appointment of communication liaison person to deal with the media specifically (radio, TV interviews, updates etc.)		

Did you share information about other relevant law enforcement officials?	Yes/ no	Give details
Appointment of negotiator		
Other?		

Information about communication with organisers	Yes/ no	Give details
Who are the organisers?		
When and how you have had communications with them?		
What is their attitude (hostile or collaborative)?		
What is the reason for the assembly, according to the organisers?		
Do the organisers intend the assembly to be peaceful? How have they indicated this?		
Information about the actual assembly date, the time and place of the assembly and its expected duration		
Results of intelligence gathered		
Analysis of intelligence		
Anticipating a range of scenarios		
Other?		

Did you share information about internal protocols?	Yes/ no	Give details
Dedicated phone line to deal with civilian calls relating to assembly/who will manage?		
Who will deal with non-event-related calls?		
Other?		

Contingency planning:

Did you consider and make arrangements about:	Yes/ no	Give details
Law enforcement officials and resources: Logistics		
How many law enforcement officials? Where from?		
Transport to and from assembly?		
Time and place to assemble		

Did you consider and make arrangements about:	Yes/ no	Give details
Vehicle, fuel, parking		
Other?		
Support personnel		
Communication liaison person		
Negotiators		
Interpreters		
Other?		

Police wellbeing and safety	Yes/ no	Give details
Food, water, sunscreen, toilets, rest for law enforcement officials		
Visible identification		
Dress equipment? Masks? Helmets? Vests?		
Other?		

Police equipment	Yes/no	Give details
Equipment required for defensive purposes – shields, Tasers?		
Equipment for lawful use of force – batons, firearms, water cannons?		
Dogs, bicycles, electric bicycles, mounted police, air support?		
Restraining equipment – handcuffs?		
Other?		

Communication during assembly	Yes/no	Give details
Audibility issues: Megaphone and other technology needed? Who supplies? Technical person on hand?		
Interoperability (individual communications—radios, cell phones)		
Other?		

Contingency services	Yes/no	Give details
Traffic department		
Fire department		

Contingency services	Yes/no	Give details
Ambulances		
Helicopters		
First aid and medical personnel		
Backup law enforcement officials		
Safety custody arrangements for people detained		

Keeping records of your preparation

Law enforcement agencies should try to keep comprehensive records of all their preparation activities. The more details law enforcement agencies keep about their preparation plans, the more you will be able to justify and defend your procedures if any questions arise after the assembly.

Records can be in the form of:

- a checklist, listing all the internal agencies engaged
 - a checklist of all internal processes followed a checklist of all external processes followed
 - tapes or video recordings of briefings
 - tapes or video recordings of meetings with organisers
 - recordings of phone calls relating to the planning
 - systems for saving SMS messages, e-mails, etc. relating to the planning.
-

4/

USE OF FORCE DURING ASSEMBLIES

This module deals with the conduct of law enforcement agencies during assemblies. It starts by recognising the challenges that they face when policing assemblies, which often include individuals or groups in the assembly venting their anger on police and directing acts of violence towards them, as police are visible targets.

Using the Batari box, we then look at how the attitude of the police towards the participants influences the chain of events.

We examine what the *Guidelines* say about good practice in policing assemblies, specifically about communication, de-escalation and consideration of non-violent options to maintain law and order and protect life and property, while facilitating the right to peaceful assemblies.

We look at circumstances in which the police may use gradations of force lawfully, and consider the principles underlying the lawful use of force.

Through a detailed case study of an unfolding assembly, we explore good practice police reactions and the justifications or criteria for each.

Use of force

Use of force by police affects many rights, such as the right to bodily security and the right to freedom from torture and cruel, inhuman or degrading treatment or punishment. The ultimate concern about the use of force is the use of lethal force. This is directly related to the right to life.

The right to life has two basic components: 1) the right to be protected against the arbitrary deprivation of life unlawful in terms of international law; and 2) if there is a reasonable suspicion that a death was unlawful, there must be a proper investigation, and there must be accountability. Failure to investigate is in itself a violation of the right to life.

The basic rules for the use of force, particularly requirements for necessity and proportionality, are well established, and there is an increasing emphasis on a third substantive requirement – the duty

of precaution. Necessity is emerging as a factual test of the use of force. It has a qualitative component – is the use of force necessary? It has a quantitative component – is the least force being used? And it has a temporal component – is the use of force urgent?

Proportionality is a value judgement of the benefits of the use of force vs the harm it causes. Force may be used, for example, to prevent a theft or stop an assault or save a life, but it must be proportionate to the harm it is being used to prevent. It may be necessary to use a firearm to stop a thief, but doing so may not be proportional to the aim of preventing a theft.

The third component – precaution – is a duty. Feasible precautionary steps must be taken to avoid the use of force becoming necessary. Police must have proper protective gear, less-lethal weapons, and proper training to avoid having to use force to protect themselves. The duty is moving increasingly upstream. For example, were police ready for a demonstration because they knew it was coming? If they were not prepared, they may end up using force that would not have been necessary had they been properly prepared.

Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that law enforcement officials may only use firearms to kill when there is a threat to life and the threat is imminent. If there is a threat, but it is not imminent (that is, it is not measurable in seconds), officials may only shoot to stop. In the case of serious threats of injury that are imminent, they may only shoot to stop.²

Challenges for law enforcement officials during assemblies

Police can easily become the target of anger and violence in assemblies. The reasons are many:

- Your very presence (you are a visible target)
- You may be perceived as representing government or other interests – in other words, you lack independence
- You may be seen to be taking sides against the protesters
- Your numbers, conduct and equipment may be interpreted as provocative or aggressive.

This is why there must be no doubt that you are doing your job of maintaining public order, and protecting all people and property from harm and damage. It is a challenge to strike the right balance between enforcing the law and preventing violence or damage.

Effect of law enforcement attitudes and conduct during assemblies

We have emphasised throughout his training that the role of law enforcement officials in assemblies is to facilitate the right to assembly, and to limit these rights only when it is proportionate, necessary and non-discriminatory, and complies with the principles of rule of law and legality.

Throughout The *Guidelines*, there is an emphasis on open communication and adequate training of law enforcement officials to deal with assemblies within a human rights framework. The intention of policing must always be to protect the participants' right to peaceful assembly, balanced against the rights of others, and to ensure a peaceful outcome.

² Input by Prof. Christof Heyns to Policing and Human Rights Dialogue, APCOF and SAHRC, 20 and 21 April 2017.

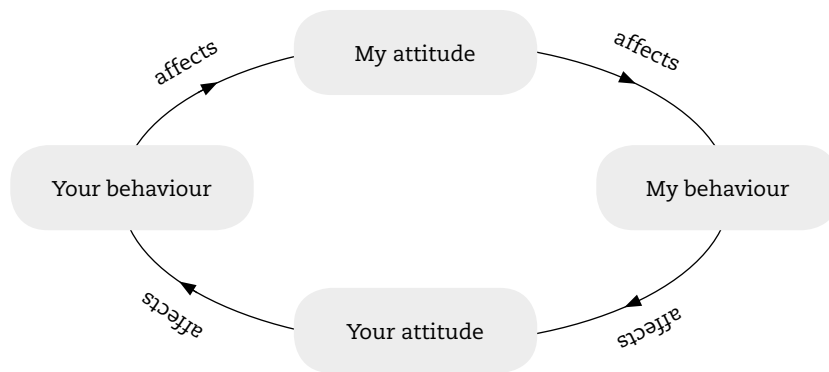
ROLE PLAY
Attitude and its effects

Your attitude and conduct as a law enforcement official affects your ability to achieve the above. You can see why this is so by acting out these two very simple scenarios. Afterwards, discuss the following:

- What are the non-verbal behaviours (gestures, etc.) in each of the scenarios? How are they different?
- What do they tell you about the speaker’s attitude?
- What did you notice about the verbal behaviours in each of the scenarios (words, tone of voice, etc.?)
- What are the likely reactions to the speaker in both scenarios?

	Scenario 1:	Scenario 2:
Clothing	Casual clothes	Camouflage-style uniform
Non-verbal gestures	Smiling and extending hand.	Frowning and speaking loudly in a rough voice.
Verbal	Hi, I’m John. Who are you?	Hey, you! Who the ** are you?

These two scenarios are simple sketches of how attitude affects behaviour, and subsequent reactions. A tool that law enforcement agencies have found very useful in dealing with policing assemblies is the Batari box. The Batari box looks like this:



The box describes the cycle of attitude and response that we create. We express our attitudes through our non-verbal conduct (such as smiling or frowning) and our verbal conduct (what we say, the words we use, our tone of voice).

This affects others’ behaviour towards us.

For example, if I act in an aggressive way towards you, you will interpret this in a certain way. Your attitude is subsequently affected by this, and you will act towards me in a certain way. As a result of how you act towards me, I will act in a certain way towards you. And so, a cycle is created.

Being aware of our attitude is the first step for changing how others perceive us. In that way, we can change the unconscious loop in which we get stuck.

DISCUSSION

Connection between appearance and response

Imagine you are a participant in an assembly.

- What response does the appearance of the officials in Peru, Egypt, and Ireland evoke in you?
- How do these photos relate to the Batari box?



All means to avoid force should be tried first: De-escalation

The *Guidelines* emphasise the need to apply non-violent methods before using force. Every effort should be made to avoid the need to use force in the first place by continuously monitoring assemblies to identify and proactively address issues as they arise.

De-escalation tactics that favour the presumption of the right to assemble freely with others should be priority. De-escalation tactics must take into account the potential adverse influence that the visible escalation of law enforcement tactics can have on the way in which an assembly develops.

Possible de-escalation measures

Communication, flexibility and containment

Article 20 of the *Guidelines* describes good practice in de-escalating tensions. These include:

- open communication, negotiation and dialogue
- where you have discretion to act when people break minor laws during an assembly, you should weigh up the consequence of taking action against the offender versus inflaming the crowd flexibility in the enforcement of restrictions and limitations on an assembly
- tolerance for individual conduct that does not comply with restrictions, limitations or terms of notification
- distinguishing between elements of a crowd that are fuelling violence or committing crime, and the whole assembly
- containing only those elements while allowing the rest of the assembly to go ahead.

However, regarding containment, the *Guidelines* caution:

Crowd control strategies, such as containment, should be implemented with precaution, be lawful and proportionate, and never amount to collective detention. Containment tactics must allow for exit routes for assembly participants and observers who want to leave the assembly.

Stop, search and arrest

Article 16 of the *Guidelines* is clear that the use of stop, search and arrest may only be used in certain situations.

- Stop, search and arrest can only be used for a legitimate purpose in the context of policing assemblies – in other words, to protect and facilitate the right to assembly.
 - The principles of the Luanda *Guidelines* (on Arrest and Detention) apply: legality, proportionality, necessity and non-discrimination.
 - There must be a reasonable suspicion that the individual poses an actual risk of violence or is involved criminal activity.
 - Mere participation in an assembly is not a reasonable ground.
-

- The purpose of arrest is only to remove people who are acting violently or reasonably suspected of committing an offence.

Where arrests are made, evidence will have to be presented in a court of law. Therefore, there has to be a substantive reason for the arrests.

Article 23 of the *Guidelines* points out that where there are inadequate resources for individual arrests, officials should not resort to mass arrests that deprive people of their liberty on a mass scale.

If there is no substantive reason for the arrest or mass arrests, this will be considered arbitrary by a court of law, and therefore not in line with the principles outlined in the *Luanda Guidelines*.

Measures of last resort: Force and dispersal

Use of force

Articles 20 and 21 of the *Guidelines* say:

Resort to the use of force must only be made if and when other, less harmful, means of de-escalation have failed.

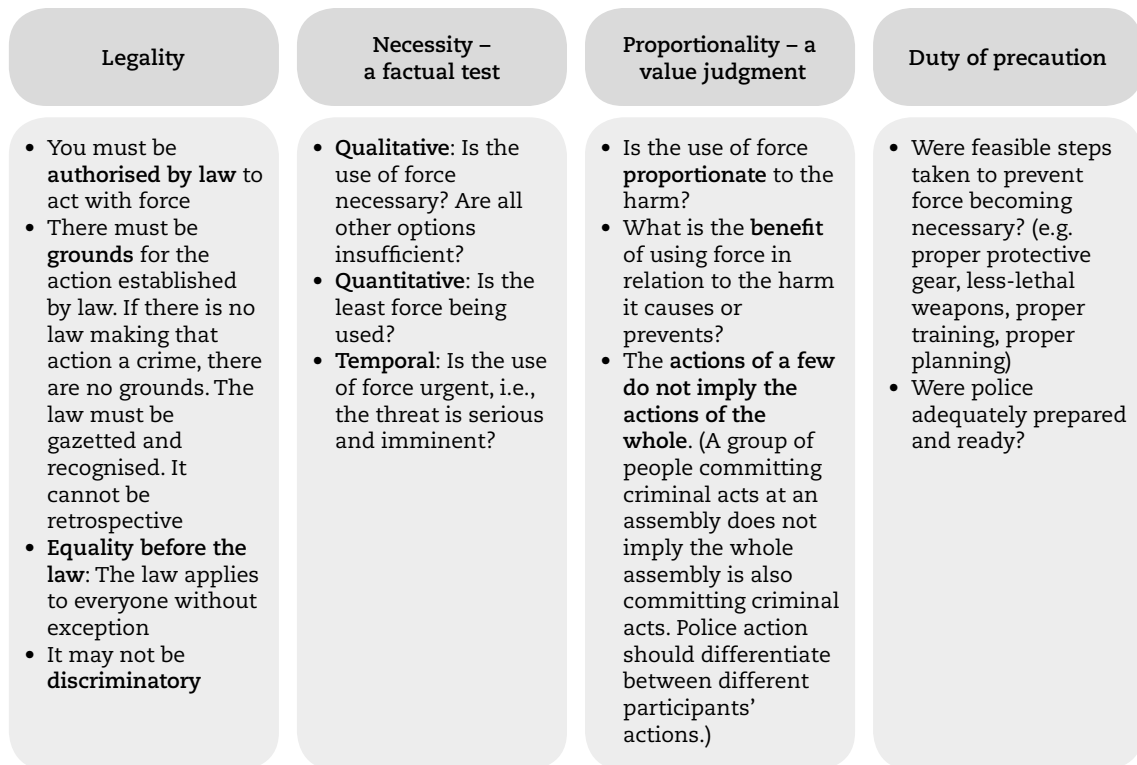
The use of force is an exceptional measure. ... law enforcement officials shall, as far as possible, apply non-violent methods before resorting to the use of force and firearms.

Where the use of force is unavoidable, law enforcement officials must minimise damage and injury, respect and preserve human life, and ensure that assistance is (given) to the injured at the earliest possible moment

Exercise restraint ...

The lawful use of force must therefore only be to prevent and minimise death, injury and harm, and must always satisfy the legal principles below.

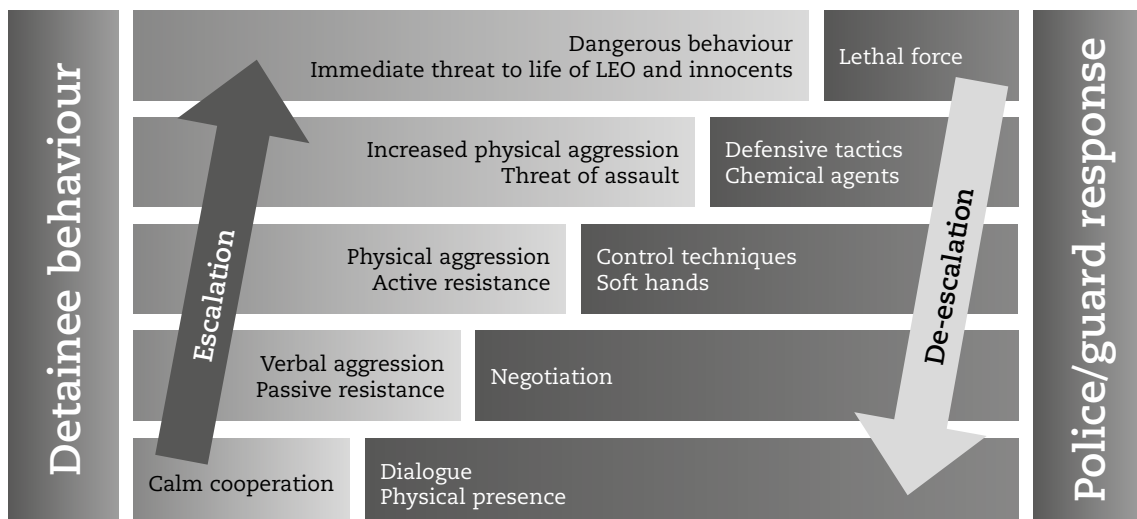
Different levels of force



Although there are prescribed situations in which law enforcement officials can lawfully exercise powers such as arrest, dispersal or use of firearms, these should be used sparingly as there is always the risk that, even though the use of these measures may be lawful, the crowd will turn against you as the only visible target.

- It is generally accepted there is a continuum of force, from least to lethal, as shown in the diagram below.

Use of force continuum



Non-lethal and less-lethal equipment

Article 21 of the *Guidelines* calls on law enforcement agencies to:

provide officials with a range of appropriate personal protective equipment and appropriate less-lethal weapons to reduce reliance on methods that are capable of causing death or serious injury. Appropriate protective and less-lethal equipment includes shields, helmets, batons, bulletproof jackets and other equipment and less-lethal weapons.

It also cautions about the abuse of less-lethal weapons, as follows:

Less-lethal weapons, designed for the purposes of crowd control, may be abused by law enforcement officials who presume that such weapons are never lethal.

Only well-trained officials should be allowed to use less-lethal crowd control weapons:

Therefore, less-lethal crowd control weapons should only be used by well-trained law enforcement officials in order to prevent and minimise deaths, injuries and harm, and in a manner that complies with regional and international human rights standards.

It states that before being allowed to use less-lethal weapons, there must be:

precautionary measures such as appropriate independent testing of and training in the use of each type of device, in a range of situations, and in accordance with international standards.

ACTIVITY

The use of force diagram

Where on the use of force diagram would you put:

- firearms
- shields
- batons
- horses
- Tasers
- water cannons
- pepper spray
- hands
- stop and search
- arrest
- dispersal
- tear gas
- rubber bullets?

- What equipment is normally provided to you for an assembly?
- Judging by the photo below, is there such a thing as non-lethal equipment?



Dispersal

Article 22 of the *Guidelines* deals with dispersal. It says (in summary):

- Dispersing an assembly is only to be considered as a last resort, and only if unavoidable, lawful, proportionate and necessary.
 - Law enforcement agencies may not disperse for technical violations of limitations or restrictions.
 - Dispersal may not be punitive or to prevent assembly.
 - May only disperse after making continuous assessments of the situation.
 - May only order dispersal if there is a serious, widespread and imminent threat to people's safety, substantial damage to property, or to the rights and freedoms of others, and all reasonable attempts have been made to minimise the harm.
 - All attempts to communicate and de-escalate the tension must be made first.
 - Only operational commanders or well-informed officers on the ground are allowed to issue an order for dispersal.
 - The order to disperse should be clearly communicated and participants should have time to follow the order.
 - If force is used to disperse, it should always be at a minimum level. Firearms may not be used.
-

Use of firearms

Using a firearm is a serious threat to the right to life. It may only ever be used, therefore, to protect life. Article 21 of the *Guidelines* details the situations in which firearms may or may not be used (in summary):

- The use of firearms must be prescribed by law.
- They should only be used when there is an imminent threat of death or injury to a person, or to prevent a serious crime that would threaten life.
- Firearms may not be used to protect property.
- Officials must identify themselves and give a clear warning before using a firearm.
- Firearms may not be used to disperse an assembly.
- Officials may not fire into the air as this is a violation of the right to life.
- Officials are personally liable if they use force unlawfully.
- Officials are also personally liable if they know that force was used unlawfully and do not report it.

CASE STUDY

Possible law enforcement reactions to an unfolding assembly

In this hypothetical case study, participants should reflect on the possible responses to an assembly as it unfolds over the course of a night. In each situation, participants must justify the course of action they choose.

This case study deals with:

- Planning for an assembly
- Attitude and responses by law enforcement agencies to events
- Protection of women as a vulnerable group
- Protection of law enforcement officials
- Ways of facilitating the right to assembly, including the use of force
- Legal principles guiding the actions of law enforcement agencies.

Read through the background below.

Students at a university are unhappy with high fees and poor living conditions. They have delivered countless memoranda to university management, but nothing has changed. They decide to stage a protest.

Your law enforcement agency is responsible for policing this assembly. You have met with the various organisers who have expressed their intention to hold a peaceful assembly. They estimate a turnout of 5 000 people. You have shared your concerns with the organisers, and agreed not to impose restrictions if all goes well. You all agree to stay in constant communication with one another to assess the situation.

In the table below is a hypothetical sequence of events for this assembly. As you think through the possible police responses, think about the following:

- How would you de-escalate the tension? For example, consider which defensive actions you could use, such as retreating, ignoring trivial offences, or other non-violent actions. Would these help or hinder the situation?
- Which specific actions would you take? Against individuals? Against groups? Against the assembly as a whole? (For example, arrest, containment, dispersal, other uses of force.) In each situation, assess the effect that police action would likely have on participants. Think about women and children.
- How you would justify your response in terms of legality, proportionality, necessity and non-discrimination?

Time	Planning	Possible police responses? Be specific about each action in relation to the individual, the group or groups, and the assembly as a whole	Does your action fit the principles of: <ul style="list-style-type: none"> • Non-violence • Legality • Equality before the law • Proportionality • Necessity • Non-discrimination?
Before the assembly	In terms of the Batari box, how would you approach this assembly? Think about the planning, numbers of law enforcement officials and equipment for law enforcement officials (uniforms and defensive equipment).		
16:00	The protest starts. Students gather. It seems peaceful. There is lots of singing. Some people have sticks, but no other weapons are visible.		
16:45	The crowd swells to 15 000. A few protesters take a hit-and-run approach to the police, throwing rocks and water bottles at you and then quickly running away.		
17:30	Another group of people starts smashing windows on the campus. Security guards try to stop them.		

Time	Planning	Possible police responses? Be specific about each action in relation to the individual, the group or groups, and the assembly as a whole	Does your action fit the principles of: <ul style="list-style-type: none"> • Non-violence • Legality • Equality before the law • Proportionality • Necessity • Non-discrimination?
18:00	Police see a group of male students suddenly surrounding women students. The women scream. Some of the men form a circle facing the outside while others are inside. It is clear from the screams of the women that they are being sexually molested.		
18:30	It's getting dark. Some people who may not be students have joined the assembly. They are carrying iron bars and have stacked up blocks of pavement to throw at police. Some protesters want to leave the assembly but cannot.		
19:30	Protesters set fire to barricades that you have put up.		
20:00	Someone in the crowd starts shouting loudly, 'Down with women's rights'.		

Time	Planning	Possible police responses? Be specific about each action in relation to the individual, the group or groups, and the assembly as a whole	Does your action fit the principles of: <ul style="list-style-type: none"> • Non-violence • Legality • Equality before the law • Proportionality • Necessity • Non-discrimination?
21:30	Someone grabs a megaphone and says, 'Women aren't our enemies. The police are.' A shout goes up among the protesters to kill the police. A large throng of people moves forward to break through the barricades to where you are standing. They are carrying iron bars and are very threatening.		
20:30	Protestors start beating the law enforcement officials with iron bars.		
21:00	Two police vehicles carrying officers are also attacked. The protesters smash the windows.		

5/

INFORMATION, COMMUNICATION AND FACILITATION

We dealt with aspects of communication in terms of the organisers and internal briefings in the module on planning and preparation. In this module, we look at other responsibilities of law enforcement agencies regarding communication with other external stakeholders, including local authorities, the media and the public.

We also look specifically at negotiating skills that law enforcement officials can use during assemblies.

Finally, we look at the responsibility of law enforcement agencies to facilitate the right to assembly.

Communication with stakeholders

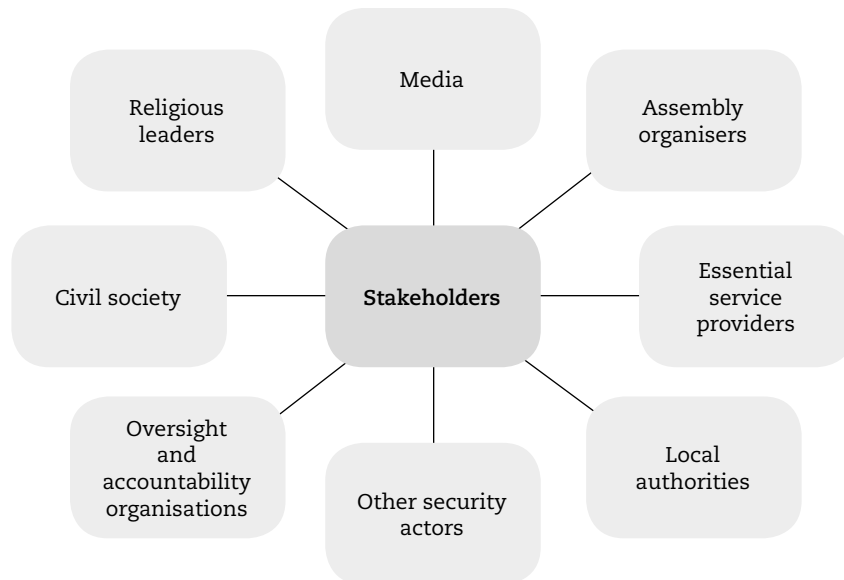
A criterion of democratic policing is that police serve the public, not the state. The manner in which this should be done should be collaborative (rather than adversarial) and transparent (accessible and open). Democratic policing is also inclusive, involving civilians and others. A further feature is accountability (which we will discuss in the next module).

Article 6 of the *Guidelines* says that law enforcement agencies must:

- Promote access to information
- Make information that is relevant to policing of assemblies available in the public domain, such as
 - standing orders, instructions, codes of conduct etc.
 - equipment that law enforcement officials are provided with for assemblies
 - when and how this equipment will be used
 - procedures for placing limitations on the right to assembly
 - internal and external complaints mechanisms.

Relevant stakeholders

Law enforcement agencies should engage and communicate with a range of stakeholders, including:



Communication during assemblies

We have discussed the need to appoint communication liaison people to deal with the media. The *Guidelines* also recommend the appointment of a negotiator to communicate with assembly organisers and participants during the assembly. Where this is not possible, you may have to negotiate with one or more organisers or protesters.

Active listening

How you communicate will affect the outcome of any negotiations, as we already saw with the Batari box. Communication involves not just the words you say (or your silence), but also what your eyes, body posture and tone of voice convey.

In the heat of an assembly, when you may feel afraid or anxious, it is tempting to deal with the situation by enforcing your authority. Sometimes this is done by walking away without completing the conversation, by not communicating at all, or through your tone of voice, eyes and body language.

The cartoons below show how NOT to listen!



Usually, what protesters want is to be heard, accepted and understood. It is more likely that there will be a positive outcome to the assembly if you don't walk away or stamp your authority on the situation, but rather listen and understand what the protestors are saying.

This involves active listening. The objectives of active listening are to:

- show the speaker that his or her message has been heard
- help you (the listener) understand what the issues are
- create an environment that feels safe for both of you to explore the situation.

How to listen actively:

- Be attentive.
- Don't get distracted.
- Don't interrupt constantly.
- Show you care.
- Use appropriate eye contact.
- Nod your head.
- Use 'fillers' like 'mm', 'I'm listening', or 'yes' to indicate that you are listening.
- Relax your body.
- Summarise what the speaker says by restating the facts, the feelings, and the needs. For example: 'If I'm understanding you correctly ...'; 'The way you see it is ...'. Keep your summary short!

If you have succeeded in active listening, the speaker will feel heard and understood, and have a level of trust in you. You can then proceed to negotiation.

Positional negotiating




The aim of negotiating is to resolve a conflict or problem. Parties make offers and counter-offers until a solution is found. In some situations, external stakeholders, such as religious leaders, may be asked to assist in negotiations.

DISCUSSION

Achieving a principled positional negotiation

The table below shows a continuum of positional bargaining, from soft to hard. If policing of assemblies is to be successful, it requires open communication, dialogue and transparency. Any limitations on assemblies must have a legitimate purpose of protecting life while safeguarding the right to assembly. In light of this, law enforcement officials need bottom lines, and to be firm about some things and flexible on others. You would want a middle-ground positional negotiation.

- What would the middle ground look like to you? Fill in the table below.

SOFT POSITIONAL NEGOTIATION (Compromise beyond your bottom line)	PRINCIPLED POSITIONAL NEGOTIATION (Achieve the best solution that protects life and the right to peaceful assembly)	HARD POSITIONAL NEGOTIATION (Win at all costs!)
		
The goal is agreement	The goal is ...	The goal is victory
Soft on people and the problem	Soft on people and hard on the problem	Hard on people and the problem
Change position easily		Dig in to position
Make offers		Make threats
No bottom line		Mislead as to bottom line
Accept one-sided losses to reach agreement		Demand one-sided gains as the price of agreement
Search for the single answer: the one they will accept		Search for the single answer: the one you will accept
Insist on agreement		Insist on your position
Yield to pressure		Apply pressure
Offer no solutions		Ignore other person's attempts to find solutions

Facilitation

We have spoken throughout this training about the need to communicate with organisers and other stakeholders to make the right to assembly possible.

Law enforcement agencies have a duty to:

- facilitate the right to assembly, which includes facilitating the logistics and management of the assembly (stated throughout the *Guidelines*)
- make sure that officials are adequately trained to manage assemblies according to good practice and in line with accepted human rights standards (Articles 7 and 27 of the *Guidelines*)
- facilitate multiple and counter assemblies happening simultaneously, as much as possible, but giving preference if needs be to the first one (Article 18 of the *Guidelines*).

First aid and other emergency services must be on hand to assist. Facilitating the availability of these services is a duty of law enforcement agencies.

Observers, such as the media, human rights bodies, or other oversight bodies, must be allowed – and enabled – to monitor and record the assembly. In addition, all people have a right to document and record an assembly, including the actions of law enforcement officials.

6/

REVIEW AND ACCOUNTABILITY

This module deals with the importance of reviewing the preparation and planning, and conduct, after each assembly, as well as in cases where police have used their powers of stop and search, arrest, or dispersal, or have used force. It looks at the need for adequate internal and external mechanisms for oversight, and the need for reporting.

Internal reviews

After every assembly, law enforcement officials need to have a comprehensive debriefing process. The purpose is to identify both good practice and failings, with a view to improving the management of future assemblies.

DISCUSSION

Debriefing processes

- Does your organisation do a debriefing after an assembly?
- How is it done? Who participates?
- Do you assess the failings and good practices of your conduct in the assembly?
- Do you review preparation planning?
- Are there any follow-ups after assessments?

Checklist for a debriefing

Here is a basic debriefing checklist that law enforcement officials could use for debriefing.

- Which other issues would you add?
-

Issue	Assessment of issue	Comments/notes
Quality of risk assessment?		
Effective contingency planning?		
Communication with organisers?		
Communication with other stakeholders?		
Deployment of law enforcement officials and tactics?		
Use of less-lethal equipment?		
Use of force?		
Wellbeing of law enforcement officials?		
Chain of command and decision-making?		
Future training needs?		
Other?		

External reviews

The state has a duty to create independent and competent external mechanisms for oversight, which have appropriate power. Consider the adequacy/competence of your own external mechanisms.

DISCUSSION

External mechanisms for oversight

- Which external mechanisms for oversight exist in your situation (for example, an ombudsman or human rights commission)?
- Are the mechanisms independent and impartial?
- Are they able to make recommendations for internal discipline, or refer cases to prosecutors?
- What other powers do they have?

Use of force

If law enforcement officials used force during an assembly, there must be (Article 24.3 of the *Guidelines*):

an automatic and prompt review by a competent and independent authority.

If a person dies as a result of law enforcement action during an assembly, there must be (Article 24.6 of the *Guidelines*):

a prompt and impartial inquiry into the cause of death by an independent judicial authority. [...] The investigator must have access to all relevant information and people.

Oversight mechanisms

The *Guidelines* call for oversight mechanisms that are established by law, with a mandate and resources to:

- Receive complaints about misconduct and criminal behaviour of law enforcement officials
- Receive reports about all deaths resulting from actions of law enforcement officials
- Instigate and conduct their own investigations of any human rights violations
- Monitor and report on all law enforcement operations
- Have powers to compel law enforcement agencies to cooperate
- Have full investigatory powers
- Make recommendations, such as referring officials for internal discipline, prosecution, impose disciplinary measures, make and enforce orders of restitution, compensation, rehabilitation or damages.

Reporting

This section looks at the duty of police to collect and disseminate information, and facilitate access to it.

The *Guidelines* specify that the public should have access to information to all police information regarding assemblies.

Article 8 of the *Guidelines* states the principles on which the law enforcement agencies must collect information. There must be:

transparency and freedom of information.

The state is responsible for establishing processes for data collection and public dissemination. These include:

reports and findings of investigations and debriefings.

EVALUATION

At the beginning of this training, we discussed what the *Guidelines* identify as issues for training of law enforcement officials. We have tried to incorporate these issues in this introductory training course.

We would like to know whether you feel that any aspects of your knowledge about policing assemblies have been enhanced as a result of this course. Please rate your understanding by comparing the knowledge and understanding you had when you started and finished the course.

	What I knew before this course Nothing – A little – A lot	What I know now Nothing – A little – Much more than before
The law and conventions regarding policing assemblies		
The preparation and planning of policing assemblies (clear chain of command, information gathering, risk assessment, contingency plans)		
The lawful, proportionate, necessary use of force		
Protecting groups and people who are vulnerable, for example women, children, refugees		
Group behaviour, and being able to differentiate between group and individual behaviour		

	What I knew before this course Nothing – A little – A lot	What I know now Nothing – A little – Much more than before
Techniques for minimising conflict, for example negotiation and mediation skills		
Tactics for de-escalating tension and violence		
Why it is better to use less-lethal equipment, and specific training on all forms of equipment		
Principles of internal and external accountability		
Understanding the duty that law enforcement officials have to cooperate with oversight and accountability structures		
Understanding the duty of all officials to report conduct by colleagues that is against the law		

Is there anything that you found especially useful in this training? _____

Is there anything you'd like to know more about? _____

Thank you!