

Crowd Management

**Division Human Resource
Development**



Module 1

Legal Framework

Learning Programme for platoon members

Version Control

When the last revision of this document (as shown below by the revision number and date) is authorised and distributed, all previous issues are to be disposed of or returned to the South African Police Service for safekeeping or disposal.

-REVISION NUMBER	PAGE NUMBERS OF AMENDMENTS	DATE	AUTHORITY/ DESIGNATION	FILE NAME	SIGNATURE
Ver01	Module 1 P11 (1.3.2.1) P36 (4.2) P4 P34,42,43,44,45 ,46 –54 and chapter 3 etc	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Gatherings Act, 205 of 1993 	
Ver01	Module 1 Chapter1 (new) Def p 5/content	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Labour Relations Act, 66 (Act 66 of 1995) 	
Ver01	Module 1 Chapter1 (new)	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Safety at Sports And Recreational Events, Act 2 (Act , 2 of 2010) 	
Ver01	Module 2 Chapter 1 & 2 (new)	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Publicviolence Statement taking 	
Ver01	Module 3 Chapter 3 1. intro	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Integration in the use of force 	
Ver01	Module 4 All chapters	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Use of equipment 	
Ver01	Module 5 Chapter 1 P 6,8,9,11 etc	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Technique on foot 	
Ver01	Module 5 Chapter 2 All :formations	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Platoon and section formation 	
Ver01	Module 5 Chapter 4 P 3,4,8,9,11 etc	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Indoor techniques 	
Ver01	Module 5 Chapter 5 new	01-06December 2013	Lt-Colonel TV Molaudzi	<ul style="list-style-type: none"> Outdoor techniques (manoeuvres) 	

Version Control

When the last revision of this document (as shown below by the revision number and date) is authorised and distributed, all previous issues are to be disposed of or returned to the South African Police Service for safekeeping or disposal.

-REVISION NUMBER	PAGE NUMBERS OF AMENDMENTS	DATE	AUTHORITY/ DESIGNATION	FILE NAME	SIGNATURE
Ver01	Module 5 Chapter 6 (new)	01-06December 2013	Lt-Colonel TV Molaudzi	Outdoor techniques • (Arresting tech)	
Ver01	Module 5 Chapter 8 (new)	01-06December 2013	Lt-Colonel TV Molaudzi	Outdoor techniques • (Dismantling of barricades)	
Ver01	Module 6 Chapter 3.4.5 (New)	01-06December 2013	Lt-Colonel TV Molaudzi	• Tactical use of grenade • Night Operation • Wounded Person	

Copyright

**COPYRIGHT RESERVED BY SOUTH AFRICAN POLICE SERVICE,
2014**

**Copyright is reserved in terms of Section 77 of the Copyright
Design and Patent Act, 2002 (Amendment Act No. 9 of 2002)**

No part of this document may be reproduced, stored in a retrieval system, or transmitted by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior permission in writing of the copyright holder. No patent liability is assumed with the respect to the use of information in this document, and the copyright holder assumes no responsibility for errors or omissions, neither is any liability assumed for damages resulting from the use of the information contained herein. The copyright holder may have patents or pending patent applications, trademarks, copyrights or other intellectual property rights covering subject matter in this document the furnishing does not give you the licence to these patents, trademarks, copyrights or other intellectual property expert with the permission in writing that has been referred to.

Graphic design and compilation by the working committee, South African Police Service.

SA Police Service Head Office
Training Division
Private bag x 177
PRETORIA
0001

Title Page

LEARNING PROGRAMME	Crowd Management for Platoon Members (CMPM)
MODULE NO	1
MODULE TITLE	Legal Framework
SAQA UNIT STANDARD TITLES, NUMBERS AND NQF LEVELS	
ORGANISATIONAL STANDARD TITLES AND NUMBERS	345: Demonstrate an understanding of crowd management
TARGET GROUP	Line function members
ISSUE DATE	
REVIEW DATE	02-06/12/2013

Module Contents

No	TITLE	PAGE No
1	HOW TO USE THIS MODULE	
2	ICONS	
3	MODULE OUTCOME	
4	DEFINITIONS & ABBREVIATIONS	
5	ACKNOWLEDGEMENTS	
6	SOURCE LIST	
CHAPTER	CHAPTER TITLE	PAGE No
1	LEGISLATION	
2	STANDING ORDER (GENERAL) 262	
3	Public Violence	
ANNEXURES		
A	THE REGULATION OF GATHERINGS ACT (ACT 205 OF 1993)	
B	LABOUR RELATIONS ACT, 66 (ACT 66 OF 1995)	
C	SAFETY AT SPORTS AND RECREATIONAL EVENTS, ACT 2 (ACT , 2 OF 2010)	
D	NATIONAL INSTRUCTIONS	
E	DIRECTIVES IN THE USE OF FORCE	
F	STANDARD OPERATIONAL PROCEDURE	

How to use this module

- This module deals with abbreviations, definitions and the comprehensive understanding of the regulatory framework for Crowd Management.
- This module has been arranged in a logical step by step approach so that learners can improve their competence and understanding the concept of Crowd Management.
- You will be exposed to the different legislations and SAPS directives to enable you to effectively deal with crowd management.
- The legislation are as follows:
 - Regulation of the Gatherings Act, 1993 (Act 205 of 1993)
 - The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
 - The Road Traffic Act, 1989 (Act 29 of 1989)
 - National Road Traffic Act, 1996 (Act 93 Of 1996)
 - Police Service Act, 1996 (Act 68 of 1996)
 - Criminal Procedure Act, 1977 (Act 51 of 1977)
 - Labour Relations Act, 66 (Act 66 of 1995)
 - Safety at Sports and Recreational Events, Act 2 (Act , 2 of 2010)
 - Standing Order (G) 262 and National instruction (hands out)
 - Public violence
- The learner will give the opportunity to apply the legislation during the execution of the crowd management exercises.

Icon Page

This icon alerts you to a **definition** that is important for you to analyse, comprehend and commit to memory.



This icon alerts you to a **practical example** that will assist you in understanding and or comprehending a particular concept, model, or specific learning material.



This icon alerts you to an **activity** that you must perform in the workbook in order to master the material.



This icon alerts you to a **tip** that will assist you in mastering the material.



This icon alerts you to a **particular source** that should be used in addition to the Learner's Guide at a particular point during learning.



This icon alerts you to the **list of sources** used to compile the module or chapter.

Module Outcome

On completion of this module the learner will have a basic understanding of the regulatory framework relevant to crowd management.

Definitions & Abbreviations

DEFINITIONS

PUBLIC ORDER

Public order is the state of tranquillity and security that is needed in a society and that should be pursued by the State in order to ensure the constitutional rights and to benefit thus a harmonic development of society.

MAINTAINING PUBLIC ORDER

Is the policing of assemblies, mass actions, and/or gatherings of persons, whether peaceful or of an unrest nature.

SITUATIONAL APPROPRIATENESS

is the intervention principle which demands that the commander ensures that his/her intervention will solve the problem and not create one. If the risk of a major incident exists due to the intervention, he/she will decide to not intervene in another manner. (See chapter on intervention principles)

OPTIMIZATION

is the intervention principle which demands that the commander uses his means with a maximal output (See chapter Intervention principles 4.2.....).

PROPORTIONALITY

Proportionality is the intervention principle which demands a delicate balance between the use of the means of the crowd management operational commander in relation to the threat and actions by the participants. (see chapter on intervention principles)

CONVENOR

The convenor is:

Any person who, of his own accord, convenes a gathering; and in relation to any organisation or branch of any organization, any person appointed by such organization or branch in terms of section 2(1); (xi) of the Regulation of Gatherings Act (Act 205 of 1993)

RESPONSIBLE OFFICER

Responsible officer means a person appointed in terms of section 2 (4)(a) as responsible officer or deputy responsible officer, and includes any person deemed in terms of section 4 (2)(b) to be a responsible officer.

AUTHORIZED MEMBER

The authorized member in accordance with the Regulation of Gatherings Act means a member of the Police authorized in terms of section 2(2) to represent the Police as contemplated in the said section.

DEMONSTRATION

A demonstration according to the Regulation of Gatherings Act 1993 (Act No 205 of 1993) is any demonstration by one or more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action.

GATHERING

A gathering according to the regulation of Gatherings Act 1993 (Act No 205 of 1993) means any assembly, concourse or procession of more than 15 persons in or on any public road, or any other public place or premises wholly or partly open to the air-

- (a) at which the principles, policy, action or failure to act of any government, political organization, whether or not that party or organization is registered in terms of any applicable law, are discussed, attacked criticized, promoted or propagated; or
- (b) held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for or opposition to the views, principles, policy actions or omissions of any person or body of persons or institution, including any government, administration or government institution.

PARTICIPANT/S

Any person who participates in a demonstration or gathering.

LOCAL AUTHORITY

The local authority according to the regulation of Gatherings Act 1993 (Act No 205 of 1993) means any Local authority as defined in section 1 of the Promotion of local Government Affairs Act, Act 1993 (Act No 91 of 1983), within whose area of jurisdiction a gathering takes place or is to take place, but does not include a regional services council or joint services board in respect of the area of jurisdiction of another local authority.

STRIKE

A strike involves a concerted refusal to work by employees. The refusal to work may be partial or complete or complete or may involve retarding or obstructing work (including refusing to work overtime).

PICKETING

As defined in section 69 of Labour Relation Act, Act 1995. (Act 66 of 1995) a Picket comprises of peaceful demonstration in support of a protected strike by employees, showing of placards with demands, whilst singing, chanting and dancing at a strategic point at or near place of work.

PUBLIC VIOLENCE

Public violence consists in the unlawful and intentional commission, together with a number of people, of an act or acts which assume serious dimensions and which are intended forcibly to disturb public peace and tranquillity or to invade the rights of others.

TACTICAL OPTION

A tactical option is a standardized manner of handling and solving an operational problem according to the principles of action.

A TECHNIQUE

A technique is the use of specific knowledge or the appropriate use of the means to achieve a well defined and limited objective.

ASSESSMENT

Assessment is a technique of reasoning by an operational commander as soon as he is confronted by an operational problem (receiving a mission or deciding to impose a mission upon himself).

NEUTRAL ZONE

A neutral zone is an area in which the operational commander has complete control and freedom of action. Access to the neutral zone is strictly controlled.

MEANS

The “means” are the personnel (SAPS, and other departments), equipment (vehicles, protection equipment and other crowd management aids) and any other possible aid at the operational commanders disposal.

OPERATIONAL COMMANDER

The operational commander is a commander who is responsible for a specific mission during an

operation as determined by the overall commander.

OVERALL COMMANDER

The overall commander is the person who is responsible for the overall plan and responsible for the operation to the local authorities.

PREVENTIVE OPERATIONS

Preventive operations are actions by SAPS members during public order situations, which are taken in advance according to the possible threats as determined by the operational commander.

When members takes measures in advance by controlling or isolating the area in which the intended public order is to take place.

REACTIVE OPERATIONS

Reactive operations are actions by members which are in reaction to the actions of the participants during a gathering. The action being the restoring of public order.

KEY POINTS

A key point is any point which will have an influence on the actions of the members or participants during a gathering.

POSITIVE ATTRACTION POINT

A positive action point is a key point which will attract the participants during a gathering or have a positive influence on the public order operation.

NEGATIVE ATTRACTION POINT

A negative attraction point is a key point which is considered important by the participants which will have a negative influence on the public order operation.

WORK METHOD

the work method is the study of all the activities which are needed to achieve the mission and the classification of these in a programme, following a logical sequence.

DEGREES OF READINESS

is the degree of preparation demanded by the commander, to make sure his subordinates will be able to intervene in time.

a) **To keep ready to immediately:**

with this degree of readiness, the execution level is able to start the operation without any delay.

It means that the members of the concerned unit/section are already deployed in the action zone but are just waiting for a signal to execute the mission (e.g practically they stand behind the corner of the street).

b) **To keep ready to:**

with this degree of readiness, the execution level keeps ready to start an operation within a delay of two minutes. It means that everybody of the concerned unit/section

subordinates during which they will not ask them to intervene.

MODUS ELEMENTS

The modus elements are all of the parameters which determine an action mode. There are five (5) modus elements which must be considered during the assessment of a public order operation. They are:

- Purpose
- Action zone
- Direction
- Line-up
- Time frame

Purpose

The purpose is the action mode that will be used to solve the problem.

Action zone

The action zone is the terrain which has to be in the hands of SAPS members. Before the operation, the action zone will be free of participants (for preventive measures) or occupied by the participants (for reactive operations).

Direction

It is the direction in which the personnel has to protect, control, progress, etc for the tactical option.

Line-up

The line up is how and where each section/platoon/company would be positioned before the start of the operation.

Time frame

is the time at which the operation will start. A decision about this modus element will also determine the time for other activities (Mov, briefing, PWT, etc).

ABBREVIATIONS

Abbreviations are an integral part of the planning and briefing process. By using abbreviations the commander will be able to save time. As they are standardised for everybody, the use of abbreviations will avoid confusion. It is therefore imperative that all commanders and members know and are able to interpret the abbreviations so that the operation is executed as planned by the commander,

2nd in Command	2 IC
Acknowledge	Ack
Action Zone	AZ
Administration	Admin
Administrative Order	AdminO
Annexure	Ann
Aerial Observer	Aobs
Arrested Persons	AP
As soon as possible	ASAP
Authority	Aut

Barb wire	Bw
Canalize	Can
Centre for arrested persons	CAP
Co-ordinating Instructions	Coord Instr
Co-ordination lines	CoordLn
Co-ordination	Coord
Command Post Exercise	CPX
Command Post	CP
Commander	Comd
Company Splitting Point	CSP
Company	Cy
Contingency Plan	ContPlan
Control	Ctl
Counter Demonstrators	CPrt
Crossing	Cros
Crowd Management	Cman
Date time group	DTG
Definitive Decision	DD
Departure line	DL
Deployment Position	Depl Posn
Direction	Dir
Dispersion limit	DispL
Dispersion Point	DispP
Document	Doc
Elements	Elm
Encircle	Encr
Equipment	Eq
Essential Elements of Information	EEl
Excluded	Excl
Expected encircling position	EEP

Field Training Exercise	FTX
Forward Rendezvous	FRV
Group	Gp
Helicopter	Heli
Immediately	Imm
Incident	Inc
Included	Incl
Individuals vehicles	IndVeh
Information	Info
Initial Point	IP
Intelligence	Int
Intergration Order	IntegrO
Information Services	Info Serv
Joint Operational Centre	JOC
Joint Coordinating Committee	JOCCOM
Key Point	KeyP
Liaison Officer	LO
Logistics	Log
Maintenance	Maint
Material	Mat
Medical post	MedP
Message	Msg
Movement Order	MovO
Movement	Mov
National Economic Development and Labour counsel	NEDLAC
Observation Post	OP
Obstacle	Obst
Operation	Ops

Operational Plan	Ops Plan
Order group	Ogp
Participant	Prt
Particular Order	PartO
Platoon Splitting Point	PSP
Platoon	PI
Police station	Pol St
Position	Posn
Preliminary Warning Time	PWT
Preliminary Decision	PD
Public Order	PO
Preventive measures	Prev M
Provincial Joint Operational Centre	ProvJOC
Radio Operator	Ropr
Re-enforcements	Rft
Reconnaissance	Recce
Reserve	Res
Reserve operational plan	ROP
Section	Sec
Service	Sv
Situation	Sit
Situation Report	SITREP
Tear gas	CS
To keep ready to	TKRT
Transmissions	Tr
Transport	Tpt
Vehicles	Veh
Visual Police	VisPol
Warning Order	WarnO
Water point	WP

Water Cannon

Wcan

QUESTIONS

1. Define of the following terminology used in Crowd Management.
 - 1.1 Public Order.
 - 1.2 Convenor.
 - 1.3 Authorised member.
 - 1.4 Demonstration.
 - 1.5 Gathering.
 - 1.6 Tactical Option.

2. Name and describe the four (4) degrees of readiness.

3. Name and describe the 5 modus elements.

4. What do the following abbreviations stand for ?
 - Disp P
 - EEI
 - FRV
 - JOC
 - PWT
 - PO
 - TKRT

5. What are the abbreviations for the following :
 - 2nd in command?
 - Section

Reserve
Platoon Commander
Operational Plan
Platoon Splitting Point
Reconnaissance
Warning Order

ANSWERS

QUESTION 1

- 1.1 Public order is the state of tranquillity and security that is needed in a society and that should be pursued by the State in order to ensure the constitutional rights and to benefit thus a harmonic development of society.
- 1.2 Any person who, of his own accord, convenes a gathering; and in relation to any organisation or branch of any organization, any person appointed by such organization or branch in terms of section 2(1);(xi) of the Regulation of Gatherings Act.
- 1.3 The authorized member in accordance with the Regulation of Gatherings Act means a member of the Police authorized in terms of section 2(2) to represent the Police as contemplated in the said section.
- 1.4 A demonstration according to the Regulation of Gatherings Act 1994 (Act No 205 of 1994)

is any demonstration by one or more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action.

1.5 A gathering according to the regulation of Gatherings Act 1994 (Act No 205 of 1994) means any assembly, concourse or procession of more than 15 persons in or on any public road, or any other public place or premises wholly or partly open to the air-

(a) at which the principles, policy, action or failure to act of any government, political organization, whether or not that party or organization is registered in terms of any applicable law, are discussed, attacked criticized, promoted or propagate; or

(b) held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for or opposition to the views, principles, policy actions or omissions of any person or body of persons or institution, including any government, administration or government institution.

1.6 An action mode is a standardized manner of handling and solving an operational problem according to the principles of action.

QUESTION 2

To keep ready to immediately - execution level is able to start the operation without any delay.

To keep ready - execution level keeps ready to start an operation within a delay of two minutes.

ASAP - preparation and deployment of personnel, as well as equipment must be done as fast as possible within the shortest time frame.

Immediately - immediate execution of the order, which means that the commander does not have any time to assess or to prepare his manpower.

QUESTION 3

- a. Purpose - Is the tactical option mode that will be used to solve the problem.
- b. Action zone - Is the terrain which has to be under control of the members.
- c. Direction - Is the direction in which the personnel has to protect, control, progress etc for the tactical option.
- d. Line-up - Is how and where each section / platoon / company would be positioned before the start of the operation.

- e. Time-frame - Is the time at which the operation will start.

QUESTION 4

Dispersion Point

Essential Elements of information

Forward rendezvous

Joint Operational Centre

Preliminary Warning Time

Public Order

To keep ready to

QUESTION 5

21C

Sec

Res

PI Comd

Ops Plan

PSP

Recce

Warn O

ACKNOWLEDGEMENTS

Instructional Package Developer:

LT Colonel TV Molaudzi
Division
HRD
Pretoria

Subject Matter Experts:

Brigadier Z Mkwphanazi
Division
Operational
Response
Service

Colonel DD Damane
Colonel AH Kapp
Colonel CS Sanders
POP KZN
Marian hill
Provincial
POP
KZN
Provincial
ORS
Northwest

LT Colonel V Day
Division
Operational
Response
Service

LT Colonel A Mtsweni
Division
Operational
Response
Service

LT Colonel PD Maluleke
Provincial
POP
MP/Langa

LT Colonel AG Bosch
Provincial
ORS
Northern
Cape

LT Colonel S Moodley
POP KZN
Marian hill

Capt P. Maphanga
Division
Operational
Response
Service

Capt (f) T.M. Beesnaar
Division
Operational
Response

Crowd Management for Platoon Members (CMPM) Module1:

W/O	G. Terblanche	POP George
W/O	A.R. Stephanus	POP Western Cape
W/O	J Dikela	POP Eastern Cape
W/O	B Campher	POP Eastern Cape
W/O	L Human	POP Kimberly Northern Cape
W/O	M Hlongwane	POP Limpopo
W/O	GJ Pitso	POP Gauteng
W/O	P Ramapa	POP Gauteng
W/O	RL Madavha	POP Limpopo
W/O	PS Maluleke	POP Rueterburg
W/O	BJ Masanabo	POP Mpumalanga
W/O	HJ Lourense	POP Northern Cape
W/O	KL Shabalala	POP KZN
W/O	TE Rantso	POP Welkom

Legislation

Chapter

1

Chapter Outcome

On completion of this chapter you will be able to demonstrate an understanding of the Regulation of the Gatherings Act (Act No 205 of 1993).

Learning Outcomes

1. Provide definitions for the following terms:
 - Public Order
 - Key Points
 - Degrees of readiness
 - ASAP; and
 - Modus Elements.
2. Explain what the Regulation of the Gatherings Act (Act No 205 of 1993) provides for.
3. Discuss the effect of the Constitution of the Republic of South Africa (Act 108 of 1996) on Gatherings.
4. Discuss the effect of the Constitution of the Republic of South Africa (Act 108 of 1996) on the policing of gatherings.
5. Distinguish between two kinds of gatherings as described in the Gatherings Act (Act 205 of 1993)
6. Define the term “public road” in terms of the Road Traffic Act, Act 29 of 1989.
7. Define the term “public place or public premises in terms of the Road Traffic Act, Act 29 of 1989.
8. Interpret “grey areas” in the broad definition of gathering through a practical example.
9. Identify the role-players who, in terms of the Gatherings Act, need to work closely together to make a planned event possible and discuss their individual roles.
10. Discuss discretion with regard to arresting of offenders in terms of the Gatherings Act. (Act 205 of 1993)
11. Describe the procedure to be followed after an arrest.
12. Define Intimidation Act 72 of 1982
13. Discuss Dangerous Weapons Act 2013
14. Define Labour Relation Act ,1996 (Act 66 Of 1996).
15. Explain Safety at Sport and Recreational Event Act, 2010 (Act 2 of 2010).
16. Discuss Firearm Control Act ,2000 (Act 60 of 2000)

Chapter Contents

No	Topic	Page
1	INTRODUCTION	
1.1	Using this Guide	
1.2	Background of the Regulations of the Gatherings Act (At 205 of 1993)	
1.2.1	The effect of the Constitution on gatherings	
1.2.2	The effect of the Constitution on the policing of gatherings	
1.3	When is a gathering subject to the Gatherings Act (At 205 of 1993)?	
1.3.1	Demonstrations	
1.3.2	Gatherings	
2	ROLE PLAYERS	
2.1	The Convenor	
2.2	The Responsible Officer	
2.3	The Authorised Member	
3	THE AUTHORISED MEMBER	
3.1	Introduction	
3.2	The Convenor and the Responsible Officer	
3.2.1	Register of conveners	
3.2.2	Notice of gathering	
3.3	The Responsible Officer and the Authorised Member	
3.4	General	
3.4.1	Gathering in terms of Section 7	
3.4.2	Offences and penalties	
3.4.3	Conflict of laws	
3.4.4	Dangerous weapons and firearms	
4	POLICE POWER	
4.1	Introduction	
4.2	Charging Offenders	
4.3	Arresting Offenders	
4.4	Procedure after arrest	
4.4.1	Release	
4.4.2	Bail	
4.5	Crowd Management	
4.5.1	The legality of operational methods such as encirclement and push back	
4.5.2	Use of Force	
4.5.3	Amending conditions while the gathering is in process	
4.5.4	Convincing a responsible officer to impose conditions	
4.5.5	Troubleshooting	

GATHERINGS ACT, ACT 205 OF 1993

Chapter2/ pg 15

1. INTRODUCTION

1.1 USING THIS GUIDELINE

This guideline introduces the responsibilities and duties of Authorized Members of the South African Police Service, flowing from the **Regulation of the Gatherings Act, 1993 (Act No. 205 of 1993)**. The guide provides a broad outline of these functions, responsibilities and duties plus suggested working procedures. While studying the provisions of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993) is still necessary, we trust that Authorized Members could use this guide as a reference together with other acts or sources.

1.2 BACKGROUND OF THE REGULATION OF GATHERINGS ACT

The Regulation of Gatherings Act¹, emanates from an inquiry by the Goldstone Commission into the regulation of gatherings and marches, to limit disruption and violence during such gatherings as far as possible.

The inquiry consisted of a panel of South African and international experts who produced a report on 9 July 1992 to serve as a model for the regulation of gatherings.

1. Act No 205 of 1993 (as amended). The Act came into operation on 15 November 1996 by proclamation no R69, 1996 published in Government Gazette No. 17632 of 15 November 1996.

This panel consulted extensively with representatives of several parties, including the African National Congress, Inkatha Freedom Party, the (former) South African Police, the (former) South African Defence Force, and the Department of Justice.

The authorities drafted and published a draft bill based on the report by the inquiry (Government Notice No. 153 of 1993 in Government Gazette No. 14590 of 12 February 1993) for general information and comments. More than 35 bodies and organizations commented upon the draft. These comments were incorporated into further drafts and even further comments on these drafts were, where feasible, included in the final draft.

The resultant bill was therefore a negotiated and cooperative effort deemed an essential instrument in maintaining peace and public order during the run-up to the general election in 1994.

At the inquiry, the panel agreed on important aspects such as the right to peaceful public expression and peaceful assembly and the right to State protection in the enjoyment of these rights. This agreement is fundamental to the procedures to regulate the exercise of these rights and the preamble to the Regulation of Gatherings Act, enunciates this.

3	Section 2(4)
4	Section 3
5	Section 4
6	The authorised member appointed into section 2(2).
7	Section 6
8	Section 8 (4)
9	Section 9
10	Section 11
11	Section 12

Chapter2/ pg 16

The Regulation of Gatherings Act, among others, provides for:

- the appointment of a convener of the gathering²;
- the notification of a responsible officer (appointed by a local government structure) of the fact that a gathering will take place, prior negotiations with interested parties, including the South African Police Service;
- judicial review of decisions by responsible officers;
- the general conduct of participants and their protection by the South African Police Service; and
- circumstances under which the South African Police Service may disperse a gathering and use force to achieve this civil liability of organizers, and certain offences.

2. Section 2 (1) of Gatherings act (Act 205 of 1993)

These aspects will all play an important role in safeguarding the rights of people who wish to exercise their democratic rights on the one hand and protecting the rights of non-participants on the other.

We submit that the Regulation of Gatherings Act can play an important role in the community, as the Act provides for a partnership between local government, the South African Police and the community.

1.2.1 The effect of the Constitution¹² on gatherings

The Constitution of the Republic of South Africa provides in section 8(1):

(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

The effect of the Constitution is therefore an important consideration in the interpretation and application of the Regulation of Gatherings Act, as the Act limits an entrenched rights. Whereas section 16 entrenches the right to freedom of expression, section 17 provides that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions. The right to freedom of speech or assembly, however, is not absolute, as the right may be limited in terms of section 36:

Chapter2/ pg 17

application to the extent that limitation is reasonable and justifiable in an open and democratic society based on human dignity; equality and freedom, taking into account all relevant factors including-

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation
- (c) the nature and extent of the limitation;

12. The Constitution of the Republic of South Africa, Act 108 of 1996, referred to as the "Constitution",

Further detail : section—16,17,36 and 205 (par 3)

- (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of rights.

13. Such as the Regulation of Gatherings Act 205 of 1993.

Section 36 makes it clear that any law of general application¹³ restricting the fundamental right to freedom of expression or assembly, must serve a substantial and pressing governmental interest. Such a law must also be proportional to the objective - in other words legal limitations of the freedom of assembly should be minimal to withstand constitutional muster.

The effect of the Constitution is therefore that we must interpret an infringement on the fundamental right to expression or freedom of assembly restrictively. This is to reduce the effect of the infringement on the freedom, unless the law must serve a substantial and pressing government objective.

Seen in this light, the express (and general) limitations on the right to freedom of assembly in terms of the Regulation of Gatherings Act ought to withstand the scrutiny of the Constitutional Court.

The focus of the Act moved away from permission to hold a gathering to the situation where notice of an intended gathering is sufficient.

Consequently, the fact that the Act does not expressly require expression or assembly in an a way that is reasonable and justifiable in our society.

A purpose of the regular of Gatherings Act is clearly not only to preserve and protect the rights to freedom of expression and assembly, but also to protect the rights of non-participants. This objective is of overriding concern and the rights of non-participant should be taken into account when the local government conduct any negotiations with conveners and place conditions upon the event.

It logically follows that we should interpret the Regulation of Gatherings Act as narrowly as possible to comply with the requirements of section 36 of the Constitution¹⁴. A local government must therefore prohibit gatherings only when a substantial danger exists that the gathering will threaten the life or property of another duly.

Chapter2/ pg 18

1.2.2 The effect of the Constitution on the policing of gatherings

In terms of the Constitution¹⁵ the South African Police Service is responsible for the maintenance of public order. As such, it is the responsibility of the South African Police Service to protect the rights of all people affected by gatherings, whether they

14. *This is also in accordance with accepted principles of statutory interpretation, where it is presumed that the legislature intends to infringe on existing rights as little as possible.*

15. *Sections 218(1) (k) and 219(1) (c) of the Constitution of the Republic of South Africa, Act 200 of 1993. These section continue to be in force by virtue of section 24 of Schedule 6 of the Constitution of the Republic of South Africa, Act No 108 of 1996.*

participate or not.

Consequently, the South African Police Service adopted policy designed to regulate the management of crowds within these parameters.

1.3 WHEN IS A GATHERING SUBJECT TO THE GATHERINGS ACT?



The Gatherings Act describes two kinds of gatherings:

1.3.1 DEMONSTRATIONS¹⁶

The South African Police Service will regard a gathering of people as a demonstration when a group of less than 15 people gather to demonstrate their feelings about some person or some cause. One example is an event where 15 workers or less gather to express their demands for better salaries or working conditions.

We often ignore the second part of the definition. We will deem a gathering as a "demonstration" if the object is to protest against somebody or something only.

1.3.2 GATHERINGS



When more than 15 people decide to be part of a meeting, rally or march, which they hold on a public road, the South African Police Service will regard it as gathering.

16. The regulation of Gatherings Act 1993 defines it as such:
"Demonstration" includes any demonstration by one or more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action.

An example of a gathering is an event where more than 15 people of a political party or trade union decide to march through their town or city and present petition to the authorities.

Chapter2/ pg 19



The definition of a gathering as contained in the Regulation of Gathering Act, is important, as this is the basis upon which the authorities can act.

The Regulation of Gatherings Act, 1993 provides that:

“Gathering” means any assembly, concourse or processions of more than 15 persons in or any public road as defined in the Road Traffic Act. 1989 (Act No 29 of 1989), or any other public place or premises wholly or partly open to the air-

- (a) at which the principles, policy, actions or failure to act of any government , political party or political organization, whether or not that party is registered in terms of any applicable law, are discussed, attacked, criticized, promoted or propagated; or
- (b) held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for or opposition to the views, principles, policy; actions or omissions of any person or body of persons or institution, including any government, administration or

knows their job in their foreseen mission.

In this case, the concerned units/sections can foresee several hypothesis at the same time. When he/she will have to intervene, they will be able to choose one of the missions he prepared and to start with it.

c) **ASAP**

The preparation and deployment of personnel, as well as equipment must be done as fast as possible within the shortest time frame.

c) **Immediately**

The degree of execution is that of immediate execution of the order, which means that the commander does not have any time to assess or to prepare his manpower. It may only be given to personnel who are capable of such an execution.

It is usually given to personnel who are:

Ready to immediately

-Given to personnel with insufficient manpower to handle the situation who are threatened by physical integrity or when property is being threatened with serious damage. In situations when personnel can proceed without any preparation (e.g. when personnel are being thrown with stones).

(e) **Preliminary Warning Time (PWT)**

is the time given by the commander to their



governmental institution.

Reading the second part of the definition in subsections (a) and (b) with the first part is important. Whilst the second part of the definition is reasonably clear, we often misunderstand the phrases public road and public place/premises.

1.3.2.1 Public road

The Road Traffic Act, 1989¹⁷ provides that:

“Public road” means any road, street or thoroughfare or, ... any other place (whether a thoroughfare or not), which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes-

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or subject forming part of or connected with or belonging to such road, street or thoroughfare;

From this definition we can clearly interpret the definition of “public road” widely. No golden rule exists and every situation will have to be measured up against the above definition.

18. Section 316(5) of the National Road Traffic Act, 1996 (Act 93 of 1996). Further outline

Restrictions imposed on public road for pedestrian: no pedestrian on a public road shall conduct himself/herself in such a manner as or as is likely to constitute a source of danger to himself/herself or to other traffic which is or may be on such road.

Pedestrian, in Public Order Police context refer to protestors

19. Section 319(1) of the National Road Traffic Act, 1996 (Act 93 of 1996). Outlines: the hindering or obstructing of traffic on public Road.

No person shall wilfully or unnecessarily prevent, hinder or interrupt the free and proper passage of traffic on a public road.

Section 319(2) Hindering or obstructing traffic on a public road: no person shall place or abandoned on a public road any object that may endanger or cause damage to traffic on such a road.

20. Section 321 (c) Damage to public roads, no person shall on a public road use any vehicle or thing or move any vehicle or thing on the roadway in a manner causing or likely to cause damage thereto.

See sections: 66 (3), 89, 304, 305 and 323 as well.

1.3.2.2 Public place or public premises wholly or partly open to the air

Chapter2/ pg 20

This phrase causes a lot of doubt, as people often interpret it to mean a sport stadium which will include sports events under the definition of gatherings. It is true that we will regard stadiums for sports, most amphitheatres and other open structures as public places.

Subsections (a) and (b) are of vital importance, as the object of the gathering will usually determine whether a meeting of persons is a gathering for purposes of the Act. The Control of Access to public Premises and Vehicles Act defines "Public premises" as such:

"Public premises means any building, structure, hall, room, office, convenience, land, enclosure or water surface which is the property of, or is occupied or used by, or is under the control of, the state or a statutory body, and to which a member of the public has a right of access, or is usually admitted or to which he may be admitted.

1.3.2.3 Grey areas

Because of the fact that definitions in statutory enactments are often in broad and general terms, we may perceive some gatherings to fall within a grey area. Because the legislature includes as many individual factual permutations as possible, the effect is often that we gloss over definitions.

The definition of “gathering” is an example of a broad definition that, when glossed over, seems confusing. We recommend that the definition of “gathering” be read within the framework of the preamble to the Regulation of gatherings Act. The preamble clearly enjoins the state to protect people in the exercise of the right to assemble and demonstrate. This shows that we ought not to interpret the definition narrowly.



Example:

A teacher college wishes to advertise its existence and recruit students by arranging a gathering. There are 50 students involved who will march with banners of the college. The march will be a gathering for purposes of the Act, as it is “a procession of more than 15 persons in or on any public road ... held to ...mobilize or demonstrate support for ... the principles (or) policy ... of any ... institution”.

Where the definition excludes a gathering, for instance in a gathering within a roofed structure, such as a shopping centre, the gathering will clearly not fall within the parameters of the Act.

2. THE ROLE PLAYERS

The Gathering Act refers to three persons²⁰ who will work together closely to make the planned event possible. The persons are:

Chapter2/ pg 21

- The convener
- The responsible officer of the land government
- The authorised member of the South African Police Service

Let us first meet these people to see who they are:

2.1 THE CONVENER

The convener is the person who wants to have a gathering, demonstration, march or rally to express some demand or grievance, or to make public some view.

The convener may act out of this own or on behalf of a political party, trade union or group. The convener is a very important person because he or she will have to plan for this march and is responsible for the conduct of the participants.

2.2 THE RESPONSIBLE OFFICER

The responsible officer is someone who acts on behalf of the local government in the area where a gathering or demonstration takes place. The responsible officer will see to it that the gathering or demonstration is properly planned and that everything will go smoothly.

The responsible officer is also a very important person, because he or she will consult and negotiate with different people who are also part of the process. The responsible officer will help the convener to arrange with the police, traffic police etc. to see to arrangements such as road safety.

The responsible office will help the convener to organize the event.

2.3 THE AUTHORIZED MEMBER

The National Commissioner of the South African Police Service appoints certain police members to help with the arrangements of a gathering or demonstration. He or she will be responsible for seeing to it that the gathering or demonstration takes place and that they protect all people who participate, and all people who do not participate.

The authorized member is an important person because he or she will be part of the negotiations between the convener and the responsible officer.

3.1 INTRODUCTION

In terms of section 2(2) (a), the National Commissioner must authorize a suitably qualified and experienced member to perform the functions, exercise the powers and discharge the duties of an Authorized Member²¹. The office of Responsible Officer is the primary axis around which Regulation of Gatherings Act revolves, but the responsible

21. The National Commissioner authorized Area Commissioners to appoint Authorized Members in consultation with the Provincial Commissioner. The minutes from the National Commissioner 31/1/5 dated 12 November 1996 refers

Officer cannot function properly without the assistance and support of the Authorized Member.

Chapter2/ pg 22 The Act clearly sets out the duties and responsibilities of the Authorized Member and it is therefore essential that he or she is familiar with the provisions of the Act.

Close cooperation between the Responsible Officer and the South African Police Service is as essential as cooperation with the convener.

In this section, the main duties and responsibilities of the Responsible Officer and Authorized Member will be set out, with a suggested working procedure between the responsible Officer and the Authorized Member. As far as possible, we will follow the sequence in which events should take place.

3.2 THE CONVENER AND THE RESPONSIBLE OFFICER

3.2.1 Register of conveners

Every organization wishing to stage a gathering, must supply the Responsible Officer in terms of section 2(1)(b) with the particulars of a convener appointed in terms of section 2(1)(a) for the arrangements for the gathering, plus the particulars of his or her deputy.

The organization may, in terms of section 2(1)(c) appoint someone else as convener in certain circumstances, but any further appointments must be with the approval of the Responsible Officer. Section 2(1)(b) also enjoins the responsible Officer to provide that information to the Authorized Member.

In a similar guide for responsible Officers, we have suggested that the responsible Officer keep an alphabetical register of appointed conveners and deputy conveners. Although every responsible officer may use his or her own format for this register, such a suggested register should at least contain certain information, necessary for reference purposes.

We enclose a suggested format as Annexure "B". Authorized Members should request responsible Officers in their areas to keep such a register, as this may be important to the SAPS in cases where conveners are unknown etc.

To simplify reference, the Authorized member of the appointment of conveners and the date, time and manner of notification must be recorded in the appropriate column of the register. This register may be an important source of information, as will become apparent later.

3.2.2 Notice of gathering

Section 3(1) provides that a convener must give notice of an intended gathering. The responsible Officer must help the convener to reduce the notice to writing if he or she is unable to do so.

In terms of section 3(2), a convener must give notice not later than seven days before the date of the gathering, but if this is not reasonably possible, at the earliest opportunity.

Chapter2/ pg 25

If the convener gives notice less than 48 hours, the responsible Officer may prohibit the gathering by notice to the convener. The Responsible Officer therefore has a discretion in following a shorter notice period. To comply with the requirements of section 3(3), the notice must contain at least the following information.

If a notice does not contain the information required in section 3(3)(a) to 3(3)(j), the responsible Officer must not regard the notice as a valid notice in terms of the regulation of Gatherings Act. The responsible Officer should, however, if he or she knows the convener's particulars, help the convener with the required form. We append the suggested form of a notice in terms of section 3(3) as Annexure "A".

The Authorized Member should check the information contained in the notice to establish whether they cover all aspects. These details are important for operational planning and should therefore be comprehensive.

3.3 THE RESPONSIBLE OFFICER AND THE AUTHORIZED MEMBER

Good relations between the responsible Officer and Authorized Member are important for the effective application of the regulation of gatherings Act. If a working relationship does not exist, the protection of participants and non-participants may be in serious danger.

Every local government must appoint a responsible Officer in terms of section 2(4). When the local government do not appoint such a Responsible Officer, the chief executive officer of the local government structure must fulfill the functions of the responsible Officer.

We must convey the name, rank and address of the Authorized Member to the Responsible Officer or concern local authority in terms of section 2(2). Another SAPS member may be designated as Authorized Member if the Authorized Member becomes unable to fulfil his or her duties, but we may only make any further appointments with the approval of the responsible officer. In this section we will discuss the duties of the Authorized Member.

3.3.1 Notification of a Gathering

Section 4(1) provides that, on receipt of a notice of an intended gathering, the responsible Officer must immediately consult

with the Authorized Member.

This consultation is to decide the necessity for negotiations with the convener(s) concerning any aspect of, or any condition about, the proposed gathering.

Although notifying the Authorized Member in writing is not necessary, we suggest that the notice be faxed or delivered to the Authorized member as well. The Responsible Officer will enter the particulars in the register above and will state which steps he or she took to consult with the Authorized Member.

Similarly, the Authorized Member will enter the relevant particulars in his or her register. The responsible Officer and Authorized Member will decide that negotiations are not necessary, or that negotiations are necessary:

3.3.1.1 Negotiations are not necessary - section 4(2)(a)

If the Responsible Officer, after consultation with the Authorized Member, is satisfied that negotiations are not necessary, and the gathering may take place as set out in the notice, he shall notify the convener and the gathering will take place. The Responsible officer may even agree with the convener to amend the notice to avoid formal

negotiations.

Example:

A convener gives notice of an intended gathering of 50 people in front of the municipal library to protest against the membership fees at 09:00 on a Saturday. The Responsible Officer consults with the Authorized Member and decides that negotiations are not necessary: Because the gathering will disrupt traffic, the convener may agree to hold the gathering at 15:00. The Responsible Officer will then notify the convener that the gathering may take place in terms of the amended notice.

When Responsible Officer notifies the convener that negotiations are not necessary, the gathering may go ahead as set out in the notice (section 4(3)). To establish a working procedure, we recommend that copy of this notification be forwarded to the Authorized Member as well. The Authorized Member will then take the necessary steps to plan for the policing of the event.

3.3.1.2 Negotiations are necessary - section 4(2)(b)

If the Responsible Officer, after consultations with the Authorized Member, thinks negotiations are necessary, he or she must call a meeting between him or herself and -

The composition of the meeting will vary according to the situation, but the responsible Officer and the first three people in the above list must be called to

attend. We should note that section 4(2) (2) (iv) provides that the Act includes the community police forum and local authority representatives as representatives of public bodies.

Chapter2/ pg 26 The section does therefore not limit the representatives of public bodies to those people, but could include other people such as traditional leaders or business leader. When, for instance, the gathering is to be held on the parking area of a shopping centre, the owner or manager of such centres may be included.

We recommend that the Authorized member helps the responsible Officer in this, as the Authorized Member will probably suggest attendance by certain identified role players.

We identify these role players in the Crowd Management Policy and we should make proper preparation for planning in the SECOM structure.

We could hold this meeting at any venue - the offices of the Responsible Officer will probably be regarded as neutral ground. The facts will guide the Responsible Officer and may determine any venue that is, in his or her discretion, suitable.

At this meeting the purpose is to find ways of making the gathering possible by discussing the contents of the notice, or amending the notice, or imposing certain conditions.

Should a party be absent from the meeting, the meeting may go ahead nevertheless. In terms of section 2(3) consultation or negotiations without the convener or SAPS, are binding upon the convener and the SAPS.

Examples:

A convener gives notice of an intended march of seven thousand participants through the street of the town or city to commemorate a political leader's death at the hands of their political opponents. Because of the emotional tensions, this type of march could result in violence.



By changing the route and imposing certain conditions, we could defuse the situation. At the meeting, we must discuss the possibility of damage or injury and negotiate an alternative solution.

We recommend that the proceedings at the meeting be minuted, to prevent subsequent disputes. We should bring the provisions of section 8 to the attention of the convener, minute this fact minuted and append a copy to the amended notice or the conditions.

When everyone agrees, the Responsible Officer must draft and sign a written notice with amendments and conditions by the Responsible Officer, the convener and the Authorized Member.

The Responsible Officer must see to it that he or she hands a written copy of the notice and any amendments or conditions, to the convener and the authorized member, and every party attending the meeting - section 4(5) (a).

If the meeting fails to yield positive results and they cannot agree, the Responsible Officer may impose conditions out of his or her own accord, or if the Authorized Member requests him or her to impose certain conditions, provided reasonable grounds to do so exist - section 4(4) (b).

The Responsible Officer will aim these conditions at ensuring that the gathering do not impede traffic unduly, participants maintain an appropriate distance between themselves and participants in another gathering, that access to property and workplaces is possible, the prevention of injury to person or damage to property.

Chapter2/ pg 27

The Authorized Member must request the responsible Officer to impose the necessary conditions for holding the gathering. When the Responsible Officer decides to impose conditions, he or she must give the convener written reasons for doing so.



If, on the other hand, he or she refuses to impose conditions as requested by the Authorized Member, the Authorized Member is entitled to written reason for the refusal -subsection c) of section 4(4) refers.

The Responsible Officer may, however, not impose conditions relating to the operational independence of the Authorized Member.

Example:

The Responsible Officer imposes a condition on the SAPS to the effect that the SAPS may not use any rubber bullets, teargas or firearms as a method to manage the crowd at a march. This condition will not be binding on the SAPS, as the SAPS are authorized by virtue of section 9 of the Act, to use these methods.

Where the whereabouts of the convener is unknown or if urgency requires it, other ways in which we may bring the contents of the notice and amendments to the attention of the convener, are possible. Section 4(5) (a) sets out ways in which to public the notice.

The Responsible Officer must in his or her discretion determine the most effective manner of publication. Although the practical application of this section may be problematic, the facts will dictate which actions are necessary. If other means of publication seems more practicable, publishing the notice in at least one of the prescribed ways is important to ensure compliance with the section. The Responsible Officer will have to effect the publication, but many request the SAPS to help.

If they postponed or delayed the gathering, the

convener must notify the Responsible Officer. The Responsible Officer may call another meeting in terms of section 4(6)(a), but if the convener calls off the gathering, the notice will lapse - section 4(6)(b). The Responsible Officer must notify the Authorized Member immediately - section 4(7).

If the Responsible Officer fails to take steps within 24 hours to call the convener to the meeting in terms of section 4(2)(b), the gathering may take place as planned -section 4(3). Immediate consultation with the Authorized member is therefore important to the Responsible Officer to prevent any such situation.



Should the Authorized member not be available immediately, we recommend that the Responsible Officer call a meeting - the Authorized Member must then comply with the requirements.

3.3.2 Gathering where they give no notice

In this section, we will concentrate on the situation where the Responsible Officer receives no notice of a gathering , or when he or she does not receive the notice timeously.

Chapter2/ pg 28

3.3.2.1 Late note - section 3(2)2and section 5(1)

Where a convener does not give notice of the gathering timeously, the Responsible Officer may prohibit the gathering because of the insufficient time to make reasonable preparations for the

gathering. Section 3(2) provides that a Responsible Officer may prohibit a gathering by notice to the convener if he or she receives the notice from the convener less than 48 hours before the intended gathering.

Similarly, the Responsible Officer may prohibit a gathering if the convener gives no notice and information under oath is brought to the attention of a Responsible Officer of a proposed gathering that will disrupt traffic, result in injury or damage to property and that the SAPS or traffic officers probably cannot manage.

As with a regular gathering, the Responsible Officer must meet the Authorized Member, the convener and other interested party. If time does not allow for a meeting, the Responsible Officer may consult with these parties. We recommend that this may be done telephonically.

At this meeting or during the consultation, the Responsible Officer will consider a course of action. When the gathering may take place, we should follow the steps as set out above.

If, however, no possibility of managing the gathering properly exists, the Responsible Officer may prohibit the gathering.

The Act does not specify the format of the information under oath. It is clear, however, that the affidavit must at least contain information that will establish reasonable grounds for a prohibition

of the gathering.

The South African Police Service must prove these grounds through proper investigation. Mere rumours or information from unidentified sources will not suffice. We submit that the requirements are similar to the requirements to obtain an arrest or a search warrant.

3.3.2.2 Prohibition of gathering - section 5(2)

In terms of section 5(1), The Responsible Officer may prohibit a gathering if he or she is convinced on reasonable grounds that an amendment or imposition of a condition will not prevent serious traffic disruption, injury or property damage. If he or she decides to prohibit the gathering, the Responsible Officer must inform the convener Authorized Member and every other person consulted, of such prohibition - section 5(3). We recommended that notification to the Authorized Member be effected by fax.

3.4 GENERAL



3.4.1 Gathering in terms of Section 7

An exception to the general rule of notification is found in section 7 of the Act. In this section, the Act prohibits gathering and demonstrations in the vicinity of Courts, buildings of Parliament and Union Buildings.

Chapter2/ pg 29

It may happen that a convener wishes to organize a march that passes within the area described in section 7(1) - for instance, within 100 meters of a court building. A Responsible Officer may impose a condition that the convener obtains permission from the relevant authority, should the notice reveal that the proposed route of a march will fall within such an area. Negotiating other routes for marches and venues for gathering away from these areas when possible, is advisable.

Gatherings at courts may present a problem when a court hears bail applications or urgent applications outside normal court hours.

The relevant portions of Section 7 of the Regulation of Gathering Act, Act 205 of 1993 read as follows:

- 7(1) Subject to the provisions of subsection (2) all demonstrations and gatherings-
- (a) in any building in which a courtroom is situated, or at any place in the open air within a radius of 100 meters from such building, on every day of the week, except Saturdays, Sundays and Public Holidays;.. are hereby prohibited.
- (2) The provisions of subsection (1) shall not apply-

- (a) to any demonstration or gathering referred to in subsection (1)(a) for which permission has, on application to the magistrate of the district concerned, been granted by him in writing;...

- (3) any application for permission contemplated in subsection (2) shall be made to the person empowered to grant such permission, within a reasonable time before such demonstration or gathering is to take place.

Whereas this section is reasonably clear on the fact that demonstrations and gatherings in or near court buildings are to be treated in a specific manner, the section does not state whether the section applies to bail applications or special court sessions held after normal court hours, during weekends or on public holidays. We submit that civil proceedings such as urgent applications outside normal court hours may also fall in to this category.

One purpose of the section is clearly to preserve the dignity and independence of the court. Whether this objective is of such overriding concern to limit the right to freedom of assembly to the extent that it does, is perhaps arguable. For purposes of this discussion we accept that the legislature intend that the section would state a higher level of limitation.

It logically follows that we should interpret section 7 as narrowly as possible to comply with the

requirements of section 36 of the Constitution. This is also according to accepted principles of statutory interpretation, where we presume that the legislature intends to infringe on existing rights as little as possible.

“On ever day of the week”

Section 1 of the Criminal Procedure Act 51 of 1977 contains definitions relating to the Criminal Procedure Act that are relevant for purposes of this discussion. The Act defines the word “day” to mean “the space of time between sunrise and sunset”.

Court sessions on Saturdays, Sundays and public holidays as well as court sessions on weekdays before sunrise and after sunset, falls outside the scope of the specific prohibition contained in section 7(1)(a) of the regulation of Gatherings Act. Persons planning any demonstration or gathering in a court building or within a radius of 100 meters of such building, will therefore not have to comply with he provisions of Section 7(2) and 7(3).

Chapter2/ pg 30

“Within a radius of 100 meters”

Another question that arises is whether a procession or march that passes within a radius of 100 meters from a court building is also subject to the provisions of Section 7. Accepting that we ought to interpret the section narrowly, we submit that the convener will not have to comply with Section 7, especially if the object of the march does not relate

to any court proceedings.

This does not, of course, mean that the responsible officer of a local government may not impose a condition requiring the convener to obtain permission from the relevant magistrate.

Section 7 regulates a *specific* type of demonstration or gathering, whereas the more general provisions contained in chapter 1(Section3) will apply to demonstrations and gatherings in general. Chapter 1 therefore regulates all demonstrations and gatherings except the specific situations expressly set out in section 7. The general provisions of the Act will regulate the factual situations outside the narrow scope of section 7.

One may very well argue that such special court proceedings are often urgent and giving notice of an intended gathering to protest at, for example, a bail application on Saturday, would be impossible. This argument, however, does not hold water. Section3 of the regulation of Gatherings Act provides for a seven day notice period, but section3 (2) specifically states that:

3.(2) The convener shall not later than seven days before the date on which the gathering is to be held, give notice of the gathering to the responsible officer concerned: provided that if it is not reasonably possible for the convener to give such notice earlier than seven days before such date, he shall give notice at the earliest opportunity: Provided further that if such notice is given less

than 48 hours before the commencement of the gathering, the responsible officer may by notice to the convener prohibit the gathering.

Since section 33 of the Constitution requires the public officials performing an administrative function to exercise their discretion lawfully, reasonably and procedurally fair, we submit that notice shorter than 48 hours will not always attract a prohibition.

3.4.2 Offences and penalties

Section 12 provides for certain offences and penalties. We recommend that the Responsible Officer be familiar with these offences, as this knowledge will be of assistance during consultations and negotiations.

3.4.3 Conflict of laws

Section 14 of the Regulations of Gatherings Act provides that the Gatherings Act enjoys preference to any other law with conflicting provisions.

3.4.4 Dangerous weapons and firearms

By virtue of section 2(3) of Dangerous Weapons Act No 71 of 1968, the Minister for Safety and Security prohibited the possession of any firearm at any time at any gathering or in a public place. The National Commissioner issued instructions in this regard and we advise Authorised members to study these instructions carefully.

Gatherings Act, Section 8(4) Participants at a gathering or demonstration shall abide by any law in respect of the carrying of dangerous weapons, and the convener and marshals, if any, shall take all reasonable steps to ensure that the said laws are complied with.



In addition : whereas the constitution of the Republic of South Africa, 1996 entrenches the right to security of persons and the right to be free of violence; the constitution guarantees the right, peacefully and unarmed, to assemble, to demonstrate, picket and to present petitions.

Dangerous weapons Act, 2013 (Act no 15 of 2013) section 3 (1) any person who is in possession of any dangerous weapon under circumstances which may raise a reasonable suspicion that the person intends to use the dangerous weapon for an unlawful purpose, is guilty of an offence.

Section 3 (2) in determining whether a person intends to use the object as a dangerous weapon for any unlawful purpose, factors to be considered:

Regulations of gatherings Act, 1993 (Act 205 of 1993) section 8 (4) as amended.

Participants shall abide by any law in respect of the carrying of dangerous weapons,

No participants at a gathering or demonstration may have in his/her possession;

4(a) any airgun, firearm, imitation firearm or any muzzle loading firearm, as defined in section 1 of the Firearm Control Act, 2000 (Act 60 of 2000), or any object that resembles a firearm and that is likely to be mistaken for a firearm or any dangerous weapon, as defined in the Dangerous weapons Act, 2013 and convenor and marshal, if any shall take reasonable steps to ensure that said law are complied with.

Chapter2/ pg 31

By virtue of section 2(2) and 2(5) of the Dangerous Weapon Act, the Minister also prohibited the possession of dangerous weapons at any time at any gathering at or in a public place. The National Commissioner also issued instructions in this regard.

We must circulate an updated duty list of Authorized Members to the Responsible Officer monthly.

4. POLICE POWERS

4.1 INTRODUCTION

Regulation of the Gatherings Act (Act 205 of 1993) Section 9 sets out all the power conferred by the Act on members of the South African police Service. The section does not distinguish between “legal” and “illegal” gatherings and demonstrations. is important. This means that we must also manage gatherings and demonstration that do not comply with the provisions of the Act, within the framework of the powers conferred in section 9.

This is a further indication of the paradigm shift required from police members. Whereas a clear distinction existed between “legal” and “illegal” gatherings before the Act came into operation, this line is not so clear anymore. The Act requires of police members to manage gatherings and demonstrations according to the provisions of

section 9 even if the gathering is, strictly speaking, not in compliance with the Act (and therefore “illegal”).

Instead of repeating the provisions of section 9, the following section will concentrate on specific issues that are of practical and operational importance.

4.2 CHARGING OF OFFENDERS



The responsible Officer and the Authorized Member must see to it that offenders are charged for contravention of the Regulation of Gatherings Act. The only way in which we can contribute towards a culture of legality, is to apply the Act uniformly.

Chapter2/ pg 32

The Authorized Member or operational commander must ensure that the correct person is charged with the relevant offence. It is neither prudent nor possible to postulate a general rule for all situations. In some possible to postulate a general rule for all situations. In some instances, we should charge a convener with an offence, while in other situations we ought to charge an instigator for violence or leader.

4.3 ARRESTING OFFENDERS

As with charging offenders, the circumstances of every situation will be different and we cannot postulate a general rule. The discretion whether to arrest or not, lies with every member on the scene.

The purpose of arrest is to bring an offender before

the court. In the previous dispensation, police members often arrested “troublemakers” and released them immediately after a gathering.

These so-called “preventative arrests” are illegal and may result in civil claims, as the police member has no intention of charging that person or bringing that person before a court.

Offenders will mostly be arrested under section 40 (1) of the Criminal Procedure Act 51 of 1977, as a police member may without an arrest warrant, arrest a person who commits an offence in his or her presence. Section 49(1) sanctions the use of reasonable necessary force in arresting such an offender.

However, section 13(3)(b) of the South African Police Service Act 68 of 1996 provides that only the minimum force which is reasonable in the circumstances may be used.

Section 12(1) offences are classified as Schedule 1 offences, as it may attract imprisonment of more than 6 months without the option of a fine.

Police members must, when deciding whether to arrest or not, exercise this discretion judiciously. Arrests may lead to increased violence in some cases and thus defeat the principles of crowd management. In those circumstances it would often be more effective to wait for an opportune moment after the gathering, or to charge offenders (or the

Supplementing gatherings act, Intimidation Act 72 of 1982

Should a peaceful procession turn to unrest or violent, the police officers have an authority to arrest those who intimidate or influence others to cause violent where properties or people's lives are threatened.

*(section (1)a,b,c.d)
(Section 4)*

Section 49 (1) © of Criminal Procedure Amendment Act 09 of 2012) refers;

(c) 'deadly force' means force that is likely to cause serious bodily harm or death and includes, but is not limited to, shooting at a suspect with a firearm.

*49(2)(a)
(a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
See also all subsection of section 49*

conveners) at a later stage.

When effecting an arrest, the arresting member must comply with the requirements of a legal arrest as set out in the Criminal Procedure Act. Firstly, the arresting member must inform the arrested person of the reason for the arrest. Secondly the arresting officer must physically subject the arrested person to his or her control, unless the arrested person unequivocally subjects him or herself thereto.

4.4 PROCEDURE AFTER ARREST

Police members are often uncertain about the proper procedure to follow after an arrest. The Criminal Procedure Act provides for the various ways in which an arrested person may be treated.

4.4.1 Release

The arresting member must take the arrested person to a police station as soon as possible. If the police member decides not to charge the suspect, the suspect must be released, or he or she must bring the suspect before a court within 48 hours. The arresting member must release the suspect if he or she does not bring the suspect before a court within that period. Form J127 may be used for this purpose.

If the arresting officer releases the suspect without charging him or her, the suspect may still be issued with a summons to appear before a court at a later stage. The summons will be issued in terms of

section 54(1) by the clerk of the court after the police present the prosecutor with a docket and the prosecutor decides to prosecute.

4.4.2 Bail

The suspect is entitled to bring a bail application *immediately* after arrest. The arresting officer may also release the suspect on bail in terms of section 59(1) (a) if he or she has the rank of inspector, or higher.

Although we regard an offence in terms of the Regulation of Gatherings Act as a Schedule 1 offence, it is not an offence, referred to in part I or Part III of Schedule 2. A suspect may therefore be released on “police bail” - Form SAPS 533 may be used for this purpose.

Chapter2/ pg 33

Detention is a serious infringement on a person’s right to freedom of movement and the arresting member must carefully weigh up the circumstances of each case before deciding to detain a suspect without bail. Where the arresting member can ascertain the identity and particulars of an offender, we submit that the offender should in most cases be released.

4.5 CROWD MANAGEMENT

The policy Document on Crowd Management is a valuable guideline in the application of the regulation of Gatherings Act. The policy is designed

to comply with the requirements of the Constitutions and the Regulation of Gatherings Act. Every Authorized member and operational commander should know the principles enunciated in the policy by heart. Despite the fact that the policy is firmly built on a legal foundation, some questions still arise.

4.5.1 The legality of operational methods such as encirclement and push back

Section 9(1) (c) empowers a member of the police to restrict the gathering to a place, or to guide participants along a route in certain circumstances. The provisions of section 9(1) (e) and (f) provides:

9.(1) If a gathering or demonstration is to take place, whether or not it is in compliance with the provisions of this Act, a member of the police -

(f) shall take such steps, including negotiations with the relevant persons, as are in the circumstances reasonable and appropriate to protect persons and property, whether or not they are participating in the gathering or demonstration.

This section clearly authorizes the use of any reasonable and appropriate method of crowd management, including (but not restricted to) negotiations. The circumstances will determine the reasonableness and appropriateness of the methods as enlightened by the crowd control policy. Clearly these principles are also appropriate when considering to redirect a crowd.

4.5.3 Use of force

Section 9(2) sets out the conditions for the use of force sufficiently. The Crowd Management Policy dovetails with these provisions and no further discussion is necessary.

4.5.3 Amending conditions while the gathering is in process

The provisions of the Act aims at making the parameters within which the gathering may take place, known to the local government, police, convener, marshals and participants - see section 4 (5) (b). If these conditions may be charged willy-nilly, the police may frustrate the purpose of the Act. The function of the police is to manage the crowd and maintain public order. Should public order be threatened, section 9 (especially section 9(1) (f) provides the means to maintain public order.

4.5.4 Convincing a responsible officer to impose conditions

In some instances, the Authorized Member may deem it necessary for the Responsible Officer fails to understand the importance of such a condition, there are review procedures available whereby a

magistrate or judge may review this decision. The appropriate steps to take are the following:

Step 1: Request conditions in terms of section 4 (4) (b)

- Step 2:** Responsible Officer must give written reasons for refusal
- Step 3:** Forward reasons within 24 hours (section 6(3) refers) to Legal Services with a factual report to obtain authority to Initiate review proceedings in terms of section 6(1) (b)

Chapter2/ pg 32

- Step 1:** Bring information under oath in terms of section 5(1)
- Step 2:** Attend meeting
- Step 3:** Receive section 4(5) a Notification
- Step 4:** Consult Legal Services within 24 hours (section 6(3) refers) regarding the notification and to initiate review proceedings in terms of section 6(1) (b)



In support of the Gatherings Act, 1993(Act 205 of 1993) the Labour Relation Act,1995 (Act 66 of 1995).

A distinction between Gatherings Act, 1993(Act 205 of 1993) and Labour Relation Act,1995 (Act 66 of 1995). Dealing with strikes/picketing.

The gatherings Act governs relation between the state and its citizens whilst the Labour Relations Act Governs relations between the employer and its employees. Therefore a protected action taking place at a tertiary institution is not governed by the LRA, There is no employer employee relation.

A STRIKE

A strike involves a concerted refusal to work by employees. The refusal to work may be partial or complete or may involve retarding or obstructing work (including refusing to work overtime.

WHEN IS A STRIKE PROTECTED(Section 64)

Two main requirements:

- first the strike must be valid ie it must concern a matter of mutual interest between employee and employer and it must be prohibited by section 65 (1) of the LRA. ie if :
- A collective agreement binding on both the parties prohibits the strike or that it must be resolved through arbitration.

The issue in disputes in terms of LRA must be referred to either the labour court(for example, automatic unfair dismissal or to arbitration(e.g unfair labour practice.

Consequently arising from the labour court decision in SAPS vs Pocru and others (2007) ILJ2611(LC)

The Court found that only members employed in terms of SAPS Act ie. Police officers) fell under essential services (section 213 of LRA)

And were prohibited from striking.

A Notice to strike is given to the employer at least 48 hours once a certificate is issued by the CCMA stating that the matter between employer and employees remains unresolved and applicants elect to strike.

23. NB. Employer does not have to remunerate employees on strike, but payment and benefits in kind must continue

Consequences of protected strike (section 67)

- Employees may not be dismissed, however employer is not precluded from disciplining or dismissing employees for misconduct committed during the strike or for genuine operational reasons (economic loss)
- The employees are not in breach of their contractual obligation
- Civil action or loss of production cannot be instituted

*24. Section 68: consequences of unprotected strike :
The participants by the employees constitute misconduct and result in dismissal
Employer may seek interdict in labour court
Employer may seek damages 'just and equitable compensation' for Losses suffered as a result of the strike*

NB. LRA does not state that it is an illegal gathering if the strike is unprotected.

PICKETING

A Picket comprises of peaceful demonstration in support of a protected strike, showing of placards with demands whilst singing, chanting and dancing at a strategic point at or near place of work (section

When is a Picket protected (Section 69(1))

- The picket must be authorised by registered trade union
- It must be peaceful
- It must be in support of the protected strike
- It must be outside the employer's premises unless the employer consents to a picket on its premises.

26. Consequences of authorised picket: Similar to that of protected strike employees may not be dismissed or disciplined or employer may not claim damages based on its production losses.

Consequences of an unauthorised picket

Similar to unprotected strike it constitute dismissal or discipline.



THE CODE OF GOOD PRACTICE: PICKETING

The National Economic Development and Labour Counsel (NEDLAC) has issued under section 203 (1) of the LRA a Code of good practice on picketing as set out on the schedule. (NEDLAC) set out guidelines for those participating in a picket.

There are four elements that need to be complied with for the gatherings Act to be disregarded during picket;

Authorisation

- It must be issued in writing by a registered trade union
- Authorisation must be served on the employer
- Authorisation applies only to trade union members

Picketing rules

- The union and employer should seek to agree on the picketing rules
- Collective agreement may contain picketing rules
- The employer usually issues picketing rules which the trade union can agree/disagree
- If disagree CCMA Commissioner will negotiate on agreement

Conduct of Picket

- The trade union must appoint a convenor
- At all times have a copy of section 69, guidelines on picket, resolution, formal authorisation of picket in his/her pocket

The above assist the employer and the South African Police Service to establish the lawfulness and protected nature of the picket.

- The convenor must notify the employer and the responsible officer appointed in terms of section 2 (4) of the Gatherings Act 205 of 1993
- **Particulars of Picket notice contains:**
 - * In compliance with section 69 of LRA
 - * Name, address, telephone numbers etc
 - * Detail of picket, date of commencement and location
- Employer must provide a convenor with particulars
- Union must appoint a picket marshals with recognised arm-bands
- The participants must be unarmed
- The picket must be peaceful and lawful
- Picket participants should intimidate anyone or prevent from gaining access or leaving employer's premises
- The participants should guard against violence and unlawful actions

Role of the South African Police Service

- It is not the function of the police to take any view on the merits of the dispute between employer and employees
- The duty of the police is to uphold the law
- The police may assist the court and its officers in enforcing an order when there is a breach

Of peace (for example, contempt of court)

- If interdict was granted in labour court then the application must be made in the labour court for contempt
- The police may arrest picketers for violent conduct
- The police may take steps to protect the public if picket is not peaceful and is likely to lead to public violence—deal with the situation under public violence

Safety at Sports and Recreational Event Act, 2010(Act 2 of 2010) in support of the Gatherings Act

Risk categorization of events

6. (1) An event organizer must, at least six months before the start of—
- (a) a calendar year for a specific sport, recreational, religious, cultural, organizational or similar activity, or
 - (b) a season, in the case of a seasonal sport, recreational, religious, cultural, organizational or similar activity, submit an annual schedule of events to the National Commissioner.

The schedule of events, referred to in subsection (1) or (3), must contain—

- (a) the prescribed information; and
 - (b) sufficient particulars of the planned events, to enable the National Commissioner to make a categorization of the safety and security risk associated with each event contained in the schedule.
- (3) Where an event—
- (a) cannot, by virtue of its unforeseen nature, be planned to fall within the schedule of events referred to in subsection (1); and
 - (b) is scheduled to take place within the six months contemplated in that schedule for that event to enable the National Commissioner to make a risk categorization.

- 4) The National Commissioner may require the event organizer to provide additional information or particulars necessary to make a decision regarding the risk categorization of an event.
- (5) The National Commissioner must, subject to subsection (6), consider the schedule referred to in subsection (1) or (3) and, if the schedule complies with all of the requirements of this section, make a risk categorization of each event contained in the schedule
- (6)(a) The National Commissioner may refuse to make a risk categorization if the schedule, and where applicable, the additional information submitted, do not meet the requirements of subsection (2).
- (b) In the case of a refusal, the National Commissioner must give the event organizer notification and reasons in writing for the refusal
- (7) In making a risk categorization for an event the National Commissioner must take the following factors into account—
 - (a) the popularity or reputation of any team or person participating in an event;
 - (b) the expected attendance at an event and, where available, a historic record of attendance at similar events
 - (c) the location where the event is to be held
 - (d) the suitability of a stadium, venue or route, having regard to its physical structure, spectator facilities, precinct layout, or any other factors that impact on its suitability for hosting an event;
 - (e) the level of physical, human resource and electronic safety and security infrastructure, as well as the state of readiness of such infrastructure for an event

- (f) the historic record of safety, security and medical incidents at similar events, where available;
- (g) any relevant crime statistics and trends;
- (h) any threat analysis information regarding an event, where available;
- (i) the certified safe capacity of a stadium, venue or route and respective precincts
- (j) the age profile of attendees at an event, where available;
- (k) any information regarding the consumption and sale of liquor to spectators at an event and the safety and security impact thereof on previous similar events;
- (l) the day of the week on which an event is scheduled to be hosted including factors impacting thereon;
- (m) the commencement time and estimated duration of an event including the expected arrival or departure of participants and spectators;
- (n) the relevance of the outcome of a competitive event;
- (o) the level of intensity of the rivalry between competing sports teams or sports persons participating in an event and any tensions which may exist between the supporters of those sports teams or sports persons;
- (p) the positions of the teams on the league or the rankings of the persons participating in an event;
- (q) any international, national, local, social, economic, political or security related factors which might have an impact on an event from a safety and security perspective
- (r) the availability of police officials, emergency and essential services to assist at an event,
- (s) the weather or other natural conditions which are anticipated to prevail before or on the day of an event;

- (t) the nature of pre-event spectator entertainment and marketing promotions of any person contemplated in section 4(1); and
 - (u) any other factor that the National Commissioner considers appropriate.
- (8) In making the risk categorization of each event, the National Commissioner may, if necessary—
- (a) consult any person; and
 - (b) take into account any other information
- (9) The National Commissioner must categorize each event reflected in the annual schedule of events as being either low-risk, medium-risk or high-risk.
- (10) Upon making the risk categorization contemplated in this section, the National Commissioner must give written notification—
- (a) to a local authority of the events which are scheduled to be hosted within its jurisdiction and the risk categorization of such events; and
 - (b) to the event organizer concerned of the risk categorization of the events reflected in the schedule of events submitted by such event organizer
- (11) An event organizer dissatisfied with a risk categorization may provide additional written information to the National Commissioner and request him or her to reconsider such risk categorization.
- (12) After considering the information contemplated in subsection (11), the National Commissioner must where he or she has refused to amend the risk categorization furnish such event organizer with written reasons for his or her decision

Prohibition notices (Sec 21)

21. If the admission of spectators to a stadium, venue or route involves a serious risk to any person at the event, the

National Commissioner or the authorized member may, after consulting the event safety and security planning committee, issue the prescribed prohibition notice prohibiting or restricting the admission of spectators to a stadium, venue or route.

27. Read Section

5(1)4(1,2,44(a)44
(b),4(5)(a),4(7)
5(2),14(6),
8,9,10,11,12,22

Offences and penalties : Sec 44

44. (1) A person is guilty of an offence if that person—
- (a) organises the event in contravention of section 5(1);
 - (b) fails to comply with the provisions of section 4(1), 4(2), 4(4)(a), 4(4)(b), 4(5)(a) and 4(7);
 - (c) contravenes or fails to comply with section 5 (2);
 - (d) fails to comply with section 14(6);
 - (e) organizes the event without obtaining a valid certificate contemplated in section 8;
 - (f) undertakes construction of a stadium or venue without obtaining a valid certificate contemplated in section 9;
 - (g) effects alterations to or extends a stadium or venue without obtaining a valid certificate contemplated in section 10;
 - (h) organizes the event, where the event has been categorized as a high-risk event, without obtaining a certificate contemplated in section 11;
 - (i) fails to comply with the conditions of a safety certificate contemplated in section 12;
 - (j) fails to comply with a prohibition notice contemplated in section 21;

- (k) fails to comply with a spectator exclusion notice contemplated in section 22;
- (l) contravenes the event ticket condition, or written conditions of entry into a stadium or venue or route;
- m) is in possession of a prohibited or restricted object or substance within a stadium or venue or along a route;
- (n) fails to comply with a lawful request of or directive given by a police official, or hinders, interferes with or obstructs a police official, a private security service provider, a member of the event safety and security planning committee, an access control officer, a peace officer, a member of the emergency or essential services, or a member of a local authority, in the carrying out of their duties.
- (o) hinders or interferes with or obstructs an authorized member or VOC commander in the carrying out of his or her duties;
- (p) throws, kicks, knocks or hits any object within a stadium, venue or along a route or its respective precincts at or towards—
 - (i) the playing area, or any area adjacent to the playing area to which spectators are not generally admitted; or
 - (ii) any area in which spectators or other persons are or may be present, without authorization .
- (q) damages or destroys any movable or immovable property inside a stadium or venue or along a route or its respective precincts without authorization;
- (r) engages in delinquent and anti-social behaviour inside a stadium or venue or along a route or its respective precincts, including engaging in racist, vulgar, inflammatory, intimidating or obscene language or behaviour;

- (s) enters a designated area or traffic-free zone inside a stadium, venue or route or its respective precincts, without the prior written authorization of a controlling body, event organizer or stadium or venue owner.
- (t) conducts commercial activities at the event without authorization of the event organizer; or
- (u) parks a motor vehicle, without the written authorization of an event organizer, authorized member or VOC commander, within a designated traffic free zone or any area or zone demarcated or marked as a traffic free zone or where parking of a motor vehicle is prohibited inside or outside of a stadium or a venue.

27. (2) A person convicted of an offence in terms of this Act, is liable—

- (a) in the case of a contravention of subsection (1)(a), (b), (h), (j) or (n) to a fine or to imprisonment for a period not exceeding 20 years, or to both a fine and such imprisonment;
- (b) in the case of a contravention of any of subsections (1)(c) to (g), (i), (m), (o) to (u), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment; or
- (c) in any other case, to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

4.5. TROUBLESHOOTING

Wherever a problem concerning the application of the Acts crops up, consult Legal Services immediately, as this problem may also exist in other provinces or areas. Although anyone of the Legal Officials may be consulted, the contact person is Mr J A van der Walt.

Tel: (012) 421 - 8022

(012) 421 - 8086

fax: (012) 421 - 8088

OR

ADVOCATE Kevin James ORS Legal Advisor
Contact Number

* OFFICE : 031 9080008/ 3255796

* CELL : 082 4509207

* EMAIL : KZN:Legalservices.adv.james

PRINCIPLES AND RULES OF INTERVEN- TIONS

Chapter

2

t

Chapter Outcome

On completion of this chapter you will be able to demonstrate an understanding Rules of intervention during crowd management

Learning Outcomes

1. Define Public order
2. Discuss principles of legality
3. Explain principles of situational appropriateness
4. Demonstrate the understanding of Rules for Implementing situational appropriateness
5. Apply Principles of proportionality between goals and means
6. Apply rules regarding principles of proportionality
7. Explain principles of optimisation

No	Topic	Page
1	DEFINITIONS	
2	PRINCIPLE OF LEGALITY	
3	PRINCIPLE OF SITUATIONAL APPROPRIATENESS	
4	RULES FOR IMPLEMENTING SITUATIONAL APPROPRIATENESS	
5	PRINCIPLE OF PROPORTIONALITY BETWEEN GOALS AND MEANS	
6	RULES REGARDING THE PRINCIPLE OF PROPORTIONALITY	
7	PRINCIPLE OF OPTIMIZATION	
8	SUMMARY	

1. INTRODUCTION

Definition of public order

Public order is the state of tranquility and security that is needed in society and that should be pursued by the State in order to ensure the constitutional rights and to benefit thus a harmonic development of society.

POP is an executive tool, operating under the responsibility of the Minister for Safety and Security, and according to a number of rules, namely:

- The need for a legal basis,
- To pursue a legal purpose,
- To pursue good relations with the community,
- To be cost-effective.

2. THE PRINCIPLE OF LEGALITY

“WHAT IS THE LEGAL BASIS OF MY ACTION ?”

It is very important that each operational planning process complies with the legal instructions, as already stated in paragraph 3.1. of the policy document on crowd management.

Before engaging in an operation, a clear answer should be found as to whether the planned intervention falls within the legal framework.

It must be clear that, in every circumstance the interventions of POP and the way in which POP is engaged by the authorities in all circumstances shall be legal in terms of the law. (Ask for a written request from the university if they want you to act/intervene on the campus).

The instructions and requests of the Minister for Safety and Security from the provincial and local administrative authorities as well as the interventions on the initiative of POP need to have a legal basis.

The engagement of the means (deployment of personnel, etc) and the execution of police actions to maintain and to restore public order must be considered as expressions of the use of force against individuals.

This use of force can sometimes involve violence. Both the use of force and of violence are justifiable in terms of the Constitution, which makes provisions for a compromise between individual rights and the general, or public interest.

The instructions of the Minister for Safety and Security to the National Commissioner of the SAPS regarding matters which concern public order, or instructions which concretize the laws are of an obligatory nature and will determine the attitude of the SAPS.

Parliament will hold the Minister for public safety and security in the Republic and he will also have to be accountable for the above orders and instructions and the way in which POP has implemented them during public order activities.

Given the responsibility and accountability of the Minister he should be kept informed immediately of any eventuality as soon as the situation requires it.

3. PRINCIPLE OF SITUATIONAL APPROPRIATENESS

“MY INTERVENTION HAS TO SOLVE A PROBLEM OF PUBLIC ORDER AND NOT TO CREATE A BIGGER ONE”

The principle of legality should not be the sole intervention principle in crowd management. The actual situation before and during an event will make it necessary to make a decision which is appropriate to each action.

This assessment should be made by the local authorities according to the circumstances, and for the POP operational commander, if possible, after consultation.

The purpose of POP operations is to prevent unrest and criminal behavior, and if necessary, to restore public order in terms of the law. Consequently the actions of POP may never transgress the limits of the Law.

This could mean that the local authorities and/or operational commanders will sometimes have to make concessions to the participants.

It is not necessary, in every circumstance to intervene in order to recover a peaceful demonstration/gathering and thus not go for the maximum of what the Law permits POP to do.

The main idea of this principle is that if public order will be more disturbed by an immediate POP intervention than by doing nothing, then it is definitely better to opt for another solution to the problem: either stand back and do nothing, or negotiate and enter into dialogue with the parties concerned, or postpone the planned operation.

The boundaries between the economic, social and political fields become more and more blurred. This means that in the near future POP will most certainly be faced with situations in which local authorities will intervene in social conflicts.

To enable these authorities to interpret the Law and to make the best decision (situational appropriateness), POP will have to provide them with all the necessary information for doing so. Insofar the decision to intervene are legal, POP should not discuss them, but try to put them into practice in the best possible manner.

4. RULES FOR IMPLEMENTING SITUATIONAL APPROPRIATENESS

Rule 1: Knowledge of the demonstrators and of the circumstances in general

A good knowledge of the demonstrators is an important starting point. The best assessment is worthless if it is not based upon correct and complete information about the demonstrators. Knowledge of demonstrators is obtained in two different stages:

Long term (or during calm periods)

During this period the goal of the intelligence function is to collect the maximum information about the potential demonstrators and about the circumstances in general.

POTENTIAL DEMONSTRATORS

- Knowledge of philosophical doctrines
- The projection of these doctrines into the organization, functioning and general goals of the groups (pressure groups, subversive groups, etc);
- The keeping of documentation about and the surveillance of these groups whose actions may generate a conflict situation or that may endanger public order

- The keeping of documentation about persons whose activities can be linked directly with the potential disturbance of public order.

POSSIBLE INTERVENTIONS

- Knowledge of political, social, economical, cultural, ideological, etc institutions;
- Investigate those events which can eventually generate drifts of public opinion, that can provoke violent reactions in the political, social, economical, etc situation.
- Keeping documentation that can help, in periods of unrest, determine the boundaries of possible POP interventions; eg the internal organization of institutions and enterprises that could form an objective for participants.

Short term (period of unrest or threat)

During the preparation phase of operations the intelligence function should:

- determine the real causes of the conflict;
- determine the degree in which this issue is sensitive for the entire or part of the -
- determine how the parties concerned are planning to exert pressure upon the authorities, etc.

Will they go over to action in public places?
Will they seek confrontation with
opponents?

- go through the legal aspects of all possible actions;
decide upon the moment that POP should engage in preventive action:
- enter into a dialogue with the administrative authorities, establish contacts with other authorities, and enter into dialogue with the parties concerned.

Rule 2: Dialogue (consultation) with the local authorities

The authorities of POP have to play the role of an active technical advisor in favour of those local authorities responsible for public order.

They must be informed about the evolution of public order and about the most important elements, which will enable the authorities to decide in time upon the possible administrative measures they can take to minimise the risks for incidents.

Incidents occur when local authorities are not equipped to tackle the difficulties relating to public order, and are wary to take measures which may be regarded as being of a political nature.

In some circumstance it will be the task of POP commanders to convince the local authorities that the efficiency of POP operations is aimed at the maintenance of public order.

The need to prevent unrest becomes more apparent when decisions are taken and measures adopted, ensuring the safety of the people and property threatened, to ease the spirits and to ensure the individual freedom.

The advice that is given and the agreements reached should always be documented and sent to the authorities concerned.

Rule 3: Entering into Dialogue with the parties concerned

In every conflict situation it is necessary to talk to the groups who are actually living in the area where the conflict takes place, or the people who are affected by the conflict.

The participants and POP should exchange their various points of view about the legality of the actions of the participants and about the interventions by POP. The participants should know the limits of tolerance for their actions.

In this regard it is the responsibility of POP to take the first step to create a climate of mutual trust. During these discussions POP may never take a stand about the reason for the conflict, but merely state the concern for public order. The constitutional rights of all persons should be kept in mind by the operational commander.

Whatever the parties agree on should be documented and distributed to all the parties concerned. The relevant authorities must be continuously informed on the evolution and the results of the discussions.

This dialogue has to take place before the event (planning committee) but also during the event by keeping contact with the convener and trying to let them first intervene in case of problems. Only if he cannot keep his people within the limits of tolerance POP will have to find a solution.

Rule 4: Dissuasion

During discussions between the operational commanders and the parties concerned (planning committee meeting), no doubt may remain about the severity and rigor with which POP will intervene should unlawful behavior of the parties involved be of such a nature that POP is forced to taken action.

These discussions will also make it possible for the operational commander to decide whether or not he wants to show his deployed forces to the participants right from the beginning.

The preventive display of power that obviates the need to use it in a repressive manner can be considered a valuable way of dissuasion on condition that the people are not roused too much.

When the crowd is no longer rational only an operational commander who has experience in crowd management and has a good insight into mass psychology, and the particular crowd (knowledge of the participants and the circumstances surrounding the event) will be able to choose the right moment to show his/her forces.

If the incorrect moment is chosen then the POP actions will be considered as provocative.

Rule 5: Minimization

The notion of "minimization" is used in the sense of dedramatization, in other words doing away with all passions on our side.

Before executing offensive actions, POP commanders should consider the balance of the advantages they are counting on, with the negative outcome for public order.

If one is considering offensive action with the sole aim of making people obey the Law and not with the purpose of the immediate protection of persons and property, it will only be possible to justify this intervention in exceptional circumstances.

Finally, the operational commander, who has to decide upon an action, may not forget that in principle human life will be of far greater importance than that of material losses.

5. PRINCIPLE OF PROPORTIONALITY BETWEEN GOALS AND MEANS

“IS THE BALANCE REASONABLE BETWEEN WHAT I WANT TO ACHIEVE AND THE MEANS I NEED TO DO IT”

Definition:

The purpose of proportionality is to ensure that the means which have to be used in order in order to reach the aimed goal are still reasonable. If they are not, then two solutions remain:

- either adapt the goal;
- or find another way to achieve it.

For example, During a march an operational commander wants to arrest a violent participant. But he sees that the person still remains in the group of other participants who probably will make trouble if the commander decides to arrest him.

If he decides to, he will have to use a complete platoon to get into the group and arrest the person. Is it reasonable ? He can probably arrest him at a later stage (when he will be alone) of identify him by other means (video, etc).

6. RULES REGARDING THE PRINCIPLE OF PROPORTIONALITY

Rule 1: Knowledge of the demonstrators and of the circumstances within the framework of intervention

This knowledge will enable the POP operational commander to find the elements of assessment in order to prepare for his/her missions.

DEMONSTRATORS:

- Who are the demonstrators?
- The potential or real number of demonstrators?
- Are there counter demonstrators?
- What are the means available to the demonstrators?
- What their state of mind?
- Do they have specific plans, or what are their possible plans, etc
- During the demonstration: what is the intentional time of regrouping?
- Do they have declared plans?

FRAMEWORK OF INTERVENTION:

- Determine the probable places of unrest
- Identify the key points
- Locality of the place where the gathering is to take place
- Reactions of the public or community towards the announced demonstration

Rule 2: Knowledge of one's own means

The extent of one's own means is just as for the demonstrators, not the simple sum of quantitative elements.

The following elements can play a role:

- the nature of the POP units
- the level of preparedness and training
- the professionalism of the commanders, the staff and personnel
- the cohesion of the unit
- the morale, based on the belief in the values of POP and the importance of the mission of POP
- the equipment and armour

The means have to be considered as a combination of intellectual, moral and material values.

The purpose of using the principle of proportionality is to achieve a sense of moderation.

This implies that only the measures and means that are essential for the execution of an operation should be used. On the other hand it means to prepare and execute only operations that are feasible, and to take into account the available means.

Should operational commanders require reinforcements, the sense of moderation must also be taken into consideration.

The commanders should bear in mind that all manpower engaged in this one operation may endanger the capacity and the freedom of action of the entire SAPS.

7. PRINCIPLE OF OPTIMIZATION

“CAN I GET THE MAXIMUM OUTPUT OF MY MEANS”

This principle means that the operational commander has to use his means in a good way, which means:

- either adapt his goals to the means he has;
- or ask for reinforcements for the goals he wants to reach.

Once he has decided about the actions that will take place, he still has to distribute the several missions without wasting capacity.

In order to respect the principle of optimisation the operational commanders must apply the following rules:

- **freedom of action**
- **optimal effect of means**

FREEDOM OF ACTION

Definition:

In order to optimize his/her decision the operational commander should be able from an operational point of view, at any moment execute their decision, and not be obliged to do what the participants impose upon him/her.

Operational commanders must remain in control of the operations without being vulnerable, and must also be able to balance the force used against demonstrators with the manpower and means.

If he/she permits the participants to impair the activities of his/her units, he/she loses his/her freedom of action completely or in part. This can, in general, be countered effectively by taking the following tactical measures in time.

Information gathering

The systematic collecting of information about demonstrators by Information Collecting Services (patrols, etc) before and during the event in order to be fully informed about the actual situation and the real situation of the event in order to be fully informed about the actual situation and the real situation of the demonstrators.

Members in reserve.

Members in reserve

In order to ensure he can at all times have a good answer regarding an unforeseen action of the participants, the overall commander should always have some members in Res, under his command.

At the same time, every commander at each level (up to the level of PI Comd) should have a reserve.

The operational commander who are surprised by the actions of participants, can be forced to engage his members as soon as secondary unrest erupts and start to spread. This will make the operational commander lose control (freedom of action) and will have to engage far too early in fierce actions in order to compensate for the lack of reserves.

The missions of the Res will be possible action modes for each possible threat for which the commander did not foresee a measure in-line.

Joint efforts

Instead of working separately to tackle minor problems, operational commanders should join forces to point out the priorities and to regroup when sub-units are needed to deal with a limited number of more important incidents.

This will ensure that these issues are dealt with according to the priorities quickly and effectively. If offensive measures or interventions need not be taken, it can be more interesting to work with smaller units and to work in the entire area of action in a preventive manner.

The flexibility of the units is important, should the commander want to change the approach.

Natural/manmade obstacles

In general it can be stated that the operational commanders need to have enough time and space to execute their planned operation.

They can do so by using obstacles, either to secure the flank of their operation, or to prevent the participants from entering an area into which the conditions (eg open spaces, rough terrain, possible projectiles for demonstrators) may hamper an effective operation, or would cost them too much in manpower.

Routes for interventions

To ensure his freedom of action, the operational commander should have a plan on how to move the units easily from one position to another.

When isolating a key point, the operational commander will have to move along with his reserve and his special means (eg water cannon) to a place where one of his sections is under pressure. Preplanned route for intervention are necessary to ensure the swift movement of reinforcements.

THE OPTIMAL EFFECT OF MEANS

Definition

In order to obtain the optimal effect from the means and as a result of the principle of situational appropriateness , the principle of proportionality the operational commander must decide between goals and means. He/she must engage these means to obtain the maximum intensity at the desired moment and place with the minimum damage on both sides.

This rule requires the following tactical measures

Intensity and continuity

As soon as the operational commander decides to intervene, he/she must strive for a mass-effect. During public order operations the method of adding "small packages" of units every few minutes would prove to be counterproductive, because the time factor and the lack of supervision would work in favour of the participants.

Once an operation starts and the unit becomes involved with the demonstrators, the operational commander will have to ascertain that he only has to use force once, in order to get the demonstrators moving. Each discontinuation in the operation will add further use of violence by both sides, (POP and participants) which should be prevented.

Cohesion

To ensure that a unit intervenes in cohesion, understandable and clear orders, reglementary formations, discipline of movement, interventions in closed ranks, calm and impassiveness are required. Such a way of intervening will create the impression of power, resolution and effectiveness.

At the same time, it appears to the common sense of participants and helps to dissuade them from acting rashly.

Most of the time individual acts of violence during mass demonstrations are generated by the fact that individual POP members lose contact with their colleagues and see no other way out than the use of violence for their own protection or for the protection of key-points.

Arrests

In some cases an operation will only have an effect if the real troublemakers (authors of criminal activities, instigators) can be removed and arrested.

As soon as the instigators have been isolated from the rest of the crowd of participants, it will be much easier to end or control the incidents.

Nevertheless one must be very careful not to provoke the participants and by doing so create even more incidents. In some cases it will be necessary to make arrests at a later stage, by applying the principle of situational appropriateness.

it takes place at the most suitable place. In public order this is the place where the greatest threat or danger exists.

Speed

During public order operations one must bear in mind that there will be people in danger somewhere, or will cause trouble.

To prevent this the time spent on controlling the situation should be kept short as possible. This will hasten the speed of interventions and keep the duration and of the incidents that POP has to deal with within reasonable or acceptable boundaries.

This does not mean that operations are executed without any preparations: on the contrary, the very detailed study and knowledge of participants and what they may do will enable POP to engage in the execution of planned operations almost without being notice.

Line of communication

Effective communication between, the operational commander and the platoon commander, the platoon commander and the section leaders, is very important. This line of communication should be uninterrupted.

Uniformity

Uniformity in the manner members are dressed, equipt and organized during public order operations is extremely important to obtained effective cohesion as well as to have an optimum impact on the participants.

Neutral zone

The operational commander must always take control over an area large enough from which to launch an operation and at the same time be used as a basis from which to organise and control. No participants or innocent bystanders are allowed to enter or interfere with the neutral zone.

8. SUMMARY

The analysis of the rules that make it possible to apply to the principle of optimization clearly show that all rules favour the offensive operations, while the commander who is in charge of protective measures can only take advantage of but a few of them.

For offensive operations one chooses the moment and place, while during defensive operations, the forces are spread over a larger area.

Nevertheless, it needs to be stated that, according to the general goals of public order and crowd management, operational commanders should always favour preventive actions and try to find other ways towards a peaceful settlement, other than intervening offensively.

Whenever, at a certain moment reserve units have to engage in an offensive operation, they should be well-prepared and according to the various principles and rules.

ACKNOWLEDGEMENTS

Instructional Package Developer:

LT Colonel TV Molaudzi
Division
HRD
Pretoria

Subject Matter Experts:

Brigadier Z Mkwhanazi
Division
Operational Response
Service

Colonel DD Damane
Colonel AH Kapp
Colonel CS Sanders
POP KZN
Marian hill
Provincial
POP
KZN

Provincial
ORS
Northwest

LT Colonel V Day
Division
Operational Response
Service

LT Colonel A Mtsweni
Division
Operational Response
Service

LT Colonel PD Maluleke
Provincial
POP
MP/Langa

LT Colonel AG Bosch
Provincial
ORS
Northern
Cape

LT Colonel S Moodley
Capt P. Maphanga
POP KZN
Marian hill
Division
Operational Response
Service

Capt (f) T.M. Beesnaar
Division
Operational Response

ACKNOWLEDGEMENTS CON'T

W/O	J Dikela	POP Eastern Cape
W/O	B Campher	POP Eastern Cape
W/O	L Human	POP Kimberly Northern Cape
W/O	M Hlongwane	POP
W/O	GJ Pitso	POP
W/O	P Ramapa	POP
W/O	Madavha	POP
W/O	PS Maluleke	POP
	Rusternburg	
W/O	BJ Masanabo	POP
	Mpumalanga	
W/O	HJ Lourens	POP
	Upington	
	Cape	
W/O	KL Shabalala	POP KZN
W/O	TE Rantso	POP
	Welkom	