

Crowd Management

**Learning Programme
for platoon members**

**Division
Human Resource
Development**



**LEARNER'S GUIDE
Module 1
Legal Framework**

Version Control

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REVISION NUMBER	PAGE NUMBERS OF AMENDMENTS	DATE	AUTHORITY/ DESIGNATION	FILE NAME	SIGNATURE
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Ver01	<u>Module 1</u> 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) 	
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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
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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 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 Convencr.
 - 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
 - EEl
 - 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

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W/O	GJ Pitso	POP Gauteng
W/O	P Ramapa	POP Gauteng
W/O	RL Madavha	POP Limpopo
W/O	PS Maluleke	POP Rueterenburg
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 (At 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. (At 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)

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GATHERINGS ACT, ACT 205 OF 1993

Chapter 2/ 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 5
8	Section 8 (4)
9	Section 9
10	Section 11
11	Section 12

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.

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

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.

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

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:

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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;

- (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.

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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.



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

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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:

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- 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.

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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.

Chapter 2/ 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.

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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.

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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.

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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).

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“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.

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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.

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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)

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- 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 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), (i) 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), (l), (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

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OR

ADVOCATE Kevin James ORS Legal Advisor
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PRINCIPLES AND RULES OF INTERVEN- TIONS

Chapter

2

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) or 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 Pl 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.

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Crowd Management

**Learning Programme
for platoon members**

**Division
Human Resource
Development**



**LEARNER'S GUIDE
Module 2
Public Violence**

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SA Police Service Head Office

Training Division

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PRETORIA

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Title Page

LEARNING PROGRAMME	Crowd Management for Platoon Members (CMPM)
MODULE NO	5
MODULE TITLE	CROWD MANAGEMENT STATEMENT TAKING
SAQA UNIT STANDARD TITLES, NUMBERS AND NQF LEVELS	
ORGANISATIONAL STANDARD TITLES AND NUMBERS	
TARGET GROUP	LINE FUNCTION MEMBERS
ISSUE DATE	
REVIEW DATE	

Module Contents

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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 master the material.



This icon alerts you to a **particular source** that must 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.

How to use this module

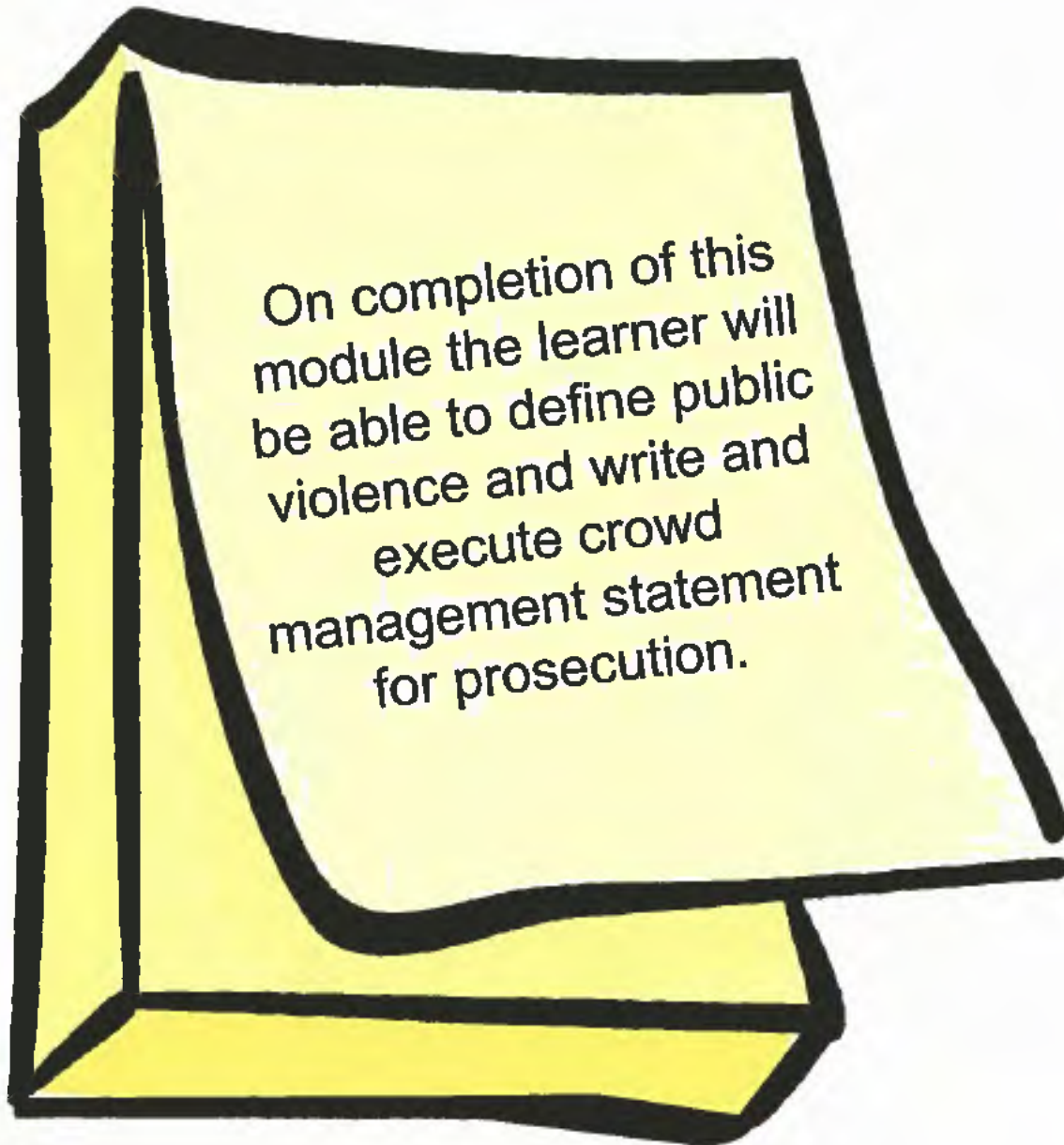
This module should be used in conjunction with all the chapters contained in the learning material for all modules. The contents of the statement will contain most of the topics reflected based on crowd management incidents on public violence and Gatherings Act (Act 205 of 1993).

Information that are not contained in the learning material shall be outsourced from other sources: for example, Common law and statutory law crimes etc.

Legal advisors should be invited ad an ad-hoc basis as guest speakers to co- facilitate with trainers in identifying elements of crime for statement taking when deemed necessary.

A step by step guideline check list will assist leaners to master the taking of statement.

Module Outcome



Public Violence

Chapter 1

Chapter Outcome

On completion of this chapter you will be able to demonstrate the understanding of public violence for crowd management operations

Learning Outcomes

At the end of this chapter, the learner should be able to:

1. Define Public Violence
2. Describe POP actions taken during crowd management operation
3. List different type of crime against the state
4. Discuss the elements of crime
5. Explain the extent of public peace during crowd management operation
6. List the example of conduct that constitute public violence
7. Discuss serious dimensions of public violence

1. BACKGROUND

The Advent of democracy in South Africa is characterised by act of violence, intimidation, arson, damaging of properties by protesters, or demonstrators who loot shops barricades roads preventing road user from accessing the road freely thus by infringing the rights of other road users.

The challenges the country faces is the unrest , peaceful procession turning into casualties.

The Constitution of RSA provides that everyone "has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions". However, if the demonstration does not take place peacefully the participants in the demonstration may render themselves guilty of public violence .

2 DEFINITION

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

Provide description of and reasons for police action – Standing Order (General) 262 on Crowd Management during Gatherings and Demonstrations.

- If the use of force is unavoidable, it must meet the following requirements:

(a) the purpose of offensive actions are to de-escalate conflict with the minimum force to accomplish the goal and therefore the success of the actions will be measured by the results of the operation in terms of cost, damage to property, injuries to people and loss of life;

3. EXAMPLES OF CRIMES AGAINST THE STATE

- Treason (Common Law)
- Sedition (Common Law)
- Public Violence (Common Law)
- Riotous behaviour (statutory)

3.1 Elements of the crime:

- (a) an act;
- (b) by a number of people;
- (c) which assumes serious proportions;
- (d) which is unlawful and
- (e) Intentional, including more specifically an intention (e(i)) to disturb the public peace and order by violent means, or (e(ii)) to infringe the rights of others.

Interests protected: public peace and tranquillity or, "public peace and security"

May sometimes overlap with the interests involved in other crimes against the state e.g. the acts are accompanied by hostile intent - high treason;
if impairs or challenges the authority of the state - sedition

The Constitution of RSA provides that everyone "has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions". However, if the demonstration does not take place peacefully the participants in the demonstration may render themselves guilty of public violence.

Overlaps with a number of other crimes

Such as assault, malicious injury to property, arson, robbery, murder and intimidation.

At least one of these crimes is usually committed in the course of the commission of public violence, yet because of the dangerous dimensions of the conduct a person is charged with public violence and not with one of these

It is not possible to specify the minimum number of people required - depended upon the circumstances of each case.

Having regard to the character and dimensions of the disturbance of the peace - some cases three to five persons have been held to be sufficient to commit the crime, whilst in other cases where, the quarrel was of a restricted nature and duration and the disturbance of the peace did not take on serious dimensions, six, eight and even ten people have been considered insufficient.

Acting in concert : The participants in disturbing the peace must act with a common purpose.

Once it is established that a person knowingly took part in a disturbance with its aim to endangering the public peace or security it is unnecessary to prove specifically what particular act of violence each of the individual participants committed.

No premeditation or preconceived plan is required. The common purpose may involve spontaneously or tacitly.

3. EXAMPLES OF CONDUCT CONSTITUTING PUBLIC IOLENCE:

- Faction fighting
- Violent resistance to the police by a mob (provided the police are acting lawfully)
- Rioting
- Forcible coercion by strikers of other workers
- Breaking up and taking over of a meeting
- Either public or private property.
- Not necessary that the participants be armed.
- There must be violence or threats of violence.
- Tactual disturbance of public peace or security, or invasion of the rights of others. It is sufficient if the conduct is intended to disturb the peace or invade rights.

4. SERIOUS DIMENSIONS

The mere disturbance of the peace, or a threatened or intended disturbance of the peace even by a number of people, is not sufficient to constitute the crime.

The violence or intended violence by the group must further assume serious or dangerous dimensions.

Though vague, this criterion is necessary to prevent abuse of the crime. It may be abused by using it as a convenient way of bringing quarrelsome people to justice, when several of them were involved and identification was difficult.

The safety of persons other than the participants, their safety will be threatened only if the disturbance of the peace is of a serious nature.

Various factors may cause the conduct to assume serious dimensions

-most importantly the number of people involved (not conclusive).

-other factors include the time, locality and duration of the fight, the cause of the quarrel, the status of the persons engaged in it, the way in which it ended, whether the participants were armed or not, and whether there were actual assaults on people or damage to property committed.

5. UNLAWFULNESS

Both the acts of the group and the individual participating in the group must be unlawful.

The individual's participation may, for example, not be unlawful if he/she was coerced into joining the group and the group's conduct may be justified e.g. private defence.

6. INTENTION

The individual participant must be aware of what the group is doing or aiming to do, and it must be intentional.

There must also be a common purpose amongst the members of the group to forcibly disturb public peace and tranquillity.

R v Cele 1958

On a charge of public violence a magistrate's court had found

(1)that the accused, a body of delivery boys at a dairy, whose claim for higher wages had been refused, had armed themselves with sticks and driven away other employees, i.e. workers at the factory of the dairy, who were lawfully engaged in the performance of their duties;

(2)(2) that, shortly afterwards, when the police had been called to restore peace and order, the same body of natives, armed with sticks and other weapons, had advanced in a hostile body on the police singing war cries and throwing stones and other missiles at the police.

-He had accordingly convicted them all of public violence in respect of both phases and sentenced them.

-In an appeal, the Court found that the evidence was not sufficient to establish the second phase , that the conduct of the accused set out in the first phase constituted public violence and that in the circumstances the sentence should not be disturbed.

Statement Taking

Chapter 2

Chapter Outcome

On completion of this chapter you will be able to write and execute statement for prosecution

Learning Outcomes

At the end of this chapter, the learner should be able to:

1. Identify elements of crime .
2. Explain the date and time of incident during crowd management operations
3. Identify the name of affiliation or participants
4. Determine the number of participants during crowd management operations
5. Distinguish between different type of procession or
For example, picket, strike, march etc
6. Demonstrate the understanding of different type of crimes committed by participants during public violence
7. Described the nature of duties performed during crowd management operations
8. Explain the nature of demands made by participants
9. Identify leaders of affiliate or participants operations

Chapter Outcome

On completion of this chapter you will be able to execute tactical options

Learning Outcomes con't

10. Describe crowd management equipment used during Operations
11. List and describe suspects arrested for public violence
12. Identify Public order Police members deployed-(sections platoon) etc
13. Identify number of people injured and damages incurred during crowd management operations
14. Explain the behavior of the group that disturbed public peace and Tranquility
15. Mention method of intervention used by POP members to overcome resistance or to calm the situation

1. INTRODUCTION

The successful prosecution of public violence criminal cases depends on the quality, completeness, relevance and accuracy of statement taken by Public Order Police members, for example, it should have correct preamble and contain all elements of crime.

The statement will enable the investigating officer to conduct a full investigation, and the public prosecutor to have all facts, at his/her disposal to successfully prosecute an offender/s

2. OPERATIONAL ACTIONS AND EVIDENCE FOR SUCCESSFUL PROSECUTION OF PUBLIC VIOLENCE CASES BY POP IN TERMS OF GATHERINGS ACT.

2.1 STATEMENTS

The compiling of statement for crowd management incidents by POP members must contain all the elements of crime. Even the elements of the second charge if any.

2.1.1 Member in charge of the operation (Commander)

- The members should focus his/her statement on elements by the actions of the group [the act; number of people; serious proportions; unlawfulness and intention, including more specifically an intention (e(i)) to disturb the public peace and order by violent means, or (e(ii)) to infringe the rights of others]
- common purpose
- Faction fighting Violent resistance to the police by a mob (provided the police are acting lawfully)
Rioting.
- The following questions should be used to obtain all relevant information on the incident being reported.

- What happened?
- When did the incident happen?
- Who was involved?
- Where did the incident happened?
- Why were there?
- How did the incident happened?

2.1.2 Identity of members under command

- uniform/civil, firearms and ammunition, vehicles
- Provide proper record – mention in statement log sheets, shooting incident reports, video, photo's,
- Command and Control
- Other forces – ID, actions etc.

2.1.3 Provide description of and reasons for police action –

Standing Order (General) 262 on Crowd Management during Gatherings and Demonstrations

- If the use of force is unavoidable, it must meet the following requirements:
 - (a) the purpose of offensive actions are to de-escalate conflict with the minimum force to accomplish the goal and therefore the success of the actions will be measured by the results of the operation in terms of cost, damage to property, injuries to people and loss of life;
 - (b) the degree of force must be proportional to the seriousness of the situation and the threat posed in terms of situational appropriateness;
 - (c) it must be reasonable in the circumstances;
 - (d) the minimum force must be used to accomplish

the goal; and

- (e) the use of force must be discontinued once the

objective has been achieved.

- Reasons why lesser measures not used – water cannon etc.
- Warnings given
-

2.1.4 Factors to consider when an act of public violence is committed

- Once it is established that a person knowingly took part in a disturbance with its aim to endangering the public peace or security it is unnecessary to prove specifically what particular act of violence each of the individual participants committed.
- This is what your statement must prove when arresting persons for Public Violence.
- Confusion between members and Prosecutor
- Problem later at court: Prosecutor must prove group to Public Violence and link suspect to group. Member must link suspect to group.

How?

-...a person knowingly took part in a disturbance with its aim to endangering the public peace or security knowingly took part in a disturbance with its aim to endangering the public peace or security

-R v Cele 1958 Judge Milne

4.1.5 Identifying suspects

How ? Clothing, appearance, features etc.

Why did you arrest the suspect?

What did the suspect do?

-To prove that they are part of the group and is taking part in the activities of the group.

The suspect must have done something to make himself part of the group and the actions the group are taking.

Prove that he was the suspect: describe clothing actions etc.

Where there is only one statement for the actions of all the suspects arrested - the one statement must indicate the same information as would have been were there several arresting statements.

There must be an indication who arrested who and why. ones that participated in the Public Violence. In absence of supporting evidence such member will struggle

Proper record kept can be used e.g. log sheets

This must be supported by other measures photo's etc

Problems are created where the member who supplied the statement testifies, he must be able to identify the suspects in court as the ones that participated in the Public Violence. In absence of supporting evidence such member will struggle in court.

Crowd Management for Platoon Members(CMPM)

5. Operational actions and evidence for successful prosecution of cases related to public violence and regulation of gatherings act	
1. Guidelines for compiling of statements for public violence	1.1. section 12(1)(a) – regulation of gatherings act, act 205 of 1993
2. Example of offence: Any person who convenes a gathering in respect of which no notice or no adequate notice was given in accordance with the provisions of section 3 shall be guilty of an offence.	
3. What to proof in court	<p>3.1 What does "convenes" mean. According to the dictionary, it means "call together". How can this be done? By means of addressing the public and the group, by means of issuing pamphlets, etc.</p> <p>What is gathering? Definition and explanation Any assembly concurs or procession of more than 15 people in or any public road as defined in the Road Traffic Act or any other public place or premises wholly or partly open to the air: at which the principles, policy, actions or failure to act of any government, political party or political organisation, whether or not that party or organisation is registered in terms of any applicable law are discussed, attacked, criticized, promoted or propagated or held to form pressure groups to hand over petition to any person, or to mobilise 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.</p> <ul style="list-style-type: none"> • Proof that organizer convened a gathering. (to call together, the way in which it was done) • Proof that gathering took place (that people assemble, form a concourse or procession, that they consist of more than 15 people, that it was done in a public road, that it was done in a public place and that public place was open or partially open to the air) • Proof the aim of the convener (to discuss, attack, criticize, promote or propagate to form pressure groups, to hand over petition, to mobilize, to demonstrate support....) • Proof that no notice was received by the responsible officer. • Proof that it is a requirement by law that notice must be given
4. How It is proofed in court	<p>4.1 Statement of the operational commander/commander on the scene</p> <ul style="list-style-type: none"> • Position in SAPS • Date time and place of the gathering. • How many people gathered (more than 15?) • Clothing, placards, signing, slogans (to proof common purpose). • Mood of the crowd. • Information that was received pertaining to the planned actions. • Any prior negotiations that took place. • An overview of the possible reasons and history relating to this incident. • Any prior negotiations that took place. • An overview of the possible reasons and history relating to this incident. • How did you identify the convenor, what did he physically do. • Who is the convenor? • What was the reaction of the gathering when the convenor addressed them? • Words uttered by the convenor to bystanders or the gathering. • Response from the bystanders or the gathering. • Time you informed him/her time to disperse. • Did you give him/her time to disperse? • What was his/her reaction thereafter? • Did you liaise with the responsible officer about any notice that was given? • Reason for arrest (did not adhere to your instruction to disperse). • To who did you gave instruction to arrest. • The reaction of the participants.

Crowd Management for Platoon Members(CMPM)

<p>5. Statement of the member who affect the arrest</p>	<p>5.1 Arrests by a member</p> <ul style="list-style-type: none"> • Date, time and place of the incident • What did you observe arriving at the scene (stones, fires, looting or peaceful singing and dancing?) • Where were you posted and what and what was your job to do • Time when important actions occurred and what exactly took place at that time. • From whom did you receive the instruction to affect the arrest? • Who did you arrest (clothing name, prominent speaker, person with the megaphone etc). • How did you arrest him/her, by taking him by his arm? • Did you inform him/her of the reason for the arrest and what was the reason (what did he contra-vened?). • What was his / her reaction? Co-operate, resist, screaming • What were the actions of the bystanders?
<p>6. Public Violence</p>	<p>6.1 Public violence is the unlawful and intentional commission, together with a number of people, of an act or acts which assume serious dimension and which are intended forcibly to disturb public peace and tranquillity or to invade rights of others.</p>
	<p>6.2 The elements of the crime</p> <ul style="list-style-type: none"> • An act or number of acts • Committed by a number of people This assumes serious proportions • Which is unlawful, with the intention to disturb the public peace and order by violent means or to infringe on the rights of others.
<p>7. What must be proved in court?(elements)</p>	<p>7.1 An act or a number of acts</p> <ul style="list-style-type: none"> • That crimes or conduct took place: i.e. faction fighting, violent resistance to the police by a mob, forcible coercion by strikers of other workers, breaking up and taking over a meeting, assault, malicious damage to property, arson, robbery, barricading of roads, setting tyres alight in a street to prevent pedestrian or vehicular movement, etc.

Crowd Management for Platoon Members(CMPM)

8. How it is proofed in court	8.1 Statement of the operational commander <ul style="list-style-type: none">• Position in SAPS• Duties and responsibilities during the day• Information received prior to the arrest• Actions taken prior to the arrest• Any negotiations or attempts to diffuse the situation• Period of violence experienced in the particular area• What instruction given to SAPS members• Summary of incidents that took place• How large was the groups and what were there tactics• Was there an immediate danger to the ordinary public• Was there an immediate danger to property of the public• Summary of property damaged, persons killed by the group or people injured by the group.• Did people act individually from a group or did the whole group participate in their actions.• Did they were the same T-shirt, did they sing, shoaling slogans etc. to proof common purpose.• Did they protest peaceful or were their action of a violent nature.• Was their actions creating disorder (what was the situation in ton before these actions)• To what extent was the services disrupted• Were roads barricaded• Could public move freely• Could people go to work, was lexis operating and busses transporting workers.• Could ambulances and fire engines move freely• Were people attacked, shops looted.• An overview of the possible reasons and history relating to this incidents• Were warnings issued to the groups and what was their reaction?
--------------------------------------	--

	<p>8.2 Statement of the member who affects the arrest</p> <ul style="list-style-type: none">• Date, time and place of the incidents• What did you observe arriving at the scene (stones, fires, looting or peaceful singing and dancing?)• Where were you posted and what was your job to do• Time when important actions occurred and what exactly took place at that time.• From whom did you receive the instruction to affect the arrest or did you act on your own discretion• Who did you arrest: clothing name, prominent speaker, person with the megaphone etc.• What did this person physically do (did you see him/her throwing stones, setting a light, etc. Remember the word to "damage" must not be used. The exact actions must be mentioned in your statement)• How did you arrest him/her , by taking him by his arm• Did you inform him/her of the reason for the arrest and what was the reason (what did he contravened?)• What was his/her reaction? Co-operate, resist, screaming• What were the actions of the bystanders?
--	---

5.1 An illustration of the statements for gatherings act and public violence by commander/s and member/s

- Read the scenario below carefully and write an A1 statement and an arrest statement on the scenario.

'You are the **platoon commander** on the scene, it is important that all the elements of the different crimes per crime are reflected in your statement. Your statement need to identify and prove the elements of the crime'

- ◊ When writing the arrest statement the following must be included:
 - ◊ Date, time and place of the incident
 - ◊ What did you observe when arriving on the scene
 - ◊ Where were you posted and what was your job to do
 - ◊ Time when important actions occurred and what exactly took place
 - ◊ From whom did you receive the instruction to affect the arrest or did you act on own discretion
 - ◊ Who did you arrest, clothing name, description of clothing the person wore
 - ◊ What did this person physically do, explain the actions of the perpetrator
 - ◊ How did you arrest him, using force or taking him by his arm etc.
 - ◊ Did you inform him of the reason for the arrest
 - ◊ What was the reaction of the crowd when the person was arrested.

SCENARIO 1

On 2013-12-03 at approximately 04:10, members of the community of Crouseville blockaded the R12 Provincial road at the crossing of Crouseville and Mapeng. The route is very busy in terms of vehicular traffic.

The first members on the scene found 4 burning tyres on the road with no protestors present. The members extinguished the burning tyres and cleared the road, and after monitoring, withdrew from the scene.

At 05:20 on the same day information was received that the same road has been obstructed with trees, burning tyres and stones. When the members arrived on the scene they found a crowd of approximately 260 people toy-toying on the road. The protestors were burning tyres on the road and stopping vehicles.

When the platoon commander engaged into negotiations with the group, two people namely Koos Saunders and Michael Ramane identified themselves as the leaders of the group. They demanded that the Premier must come and address them regarding the lack of houses and sanitation and on the issue of unemployment. They have on numerous occasions addressed the matters with the Mayor and Municipal representatives, with no actions taken on the matters. The Premier was not available to address the protestors.

At 10:12 the group decided to march to the Mayor's office to raise their concerns. On arrival at the municipality they resorted to violent protest, overturning dustbins and barricading the doors to the Municipal buildings. The POP Commander issued a warning to the crowd to disperse with no response from the crowd.

At 11:00, after the crowd failed to disperse, the members did a pushback and used stun grenades to disperse the crowd. The crowd started stoning the police and set fire to tyres in front of the building. Part of the building was also set alight. On arrival of the fire brigade in response of the fires, people within the crowd assaulted the firemen whilst they were trying to extinguish the fires. Police used tear gas and rubber rounds to disperse the crowd and 14 people were arrested.

After the arrests, the situation normalised and POP maintained a monitoring capacity to prevent further violent protest.

within the crowd assaulted the firemen whilst they were trying to extinguish the fires. Police used tear gas and rubber rounds to disperse the crowd and 14 people were arrested. After the arrests, the situation normalised and POP maintained a monitoring capacity to prevent further violent protest.

Video footage was taken of the whole incident.

Charges for Scenario 1

- ◇ Public Violence
- ◇ Road Traffic Act – Placing of obstacles on the road.
- ◇ Malicious damage to Property
- ◇ Arson
- ◇ Assault GBH
- ◇ Section 3 Regulation of gatherings Act

STATEMENT BY A COMMANDER

Hendrick Matjila declares under oath in English:

1.

I am an adult male, 46 Years of age, ID nr. 670820 5118 08 5, Residing at House 2045, Ext. 4, Crouseville, Cell Phone nr. 084 2222 111, working as a Captain in the South African Police Service, Public Order Police Crouseville. Tel. nr. 015 575 8629. Persal Nr. 04137884

2.

I am a Platoon Commander for Public Order Police, Crouseville. On Tuesday 2013-12-03 I was on duty. I was informed by the Public Order Police operational room about the blockading of the R12 Provincial road at the crossing of Crouseville and Mapeng.

3.

On arrival at the scene at approximately 04:10 I found four (4) tyres that were burning on the tarmac of the road, but with no people at the scene. We extinguished the fires and removed the tyres from the road in order for the traffic to return to normal. We departed from the scene and continued with our normal duties. At about 05:20 I was again contacted via radio and informed that the same road was blocked again. I went to the scene and found the road obstructed with trees, burning tyres and large stones, which prevent vehicular traffic from passing. There was also a crowd of approximately 260 people on the scene. They were toy-toying on the road, burning tyres and stopping traffic on the road. The behaviour of the group disturbed the public peace and tranquillity in serious dimensions they also invaded the rights of other road users and passers by. Pedestrians and vehicles could not freely move in the area due to the aggressive conduct of the protestors.

4.

I went to the group to establish negotiations and to see whether I could identify the leaders of the group. When I requested who the leaders were Koos Saunders and Michael Ramane identified themselves as leaders and started to negotiate with me on behalf of the group. Koos Saunders was dressed in blue denim pants and a red golf shirt with no logos on the shirt. Michael Ramane was dressed in black trousers and a plain grey shirt.

He also had a blue "Billabong" golf cap on. They demanded from me that the Premier should come and speak to them about service delivery issues. They were unhappy about the lack of housing, sanitation and the high unemployment rate in the area. They mentioned that they spoke to the Mayor several times, but that nothing came from their discussions. I tried to get hold of the Premier via her office, but she was not available to address the protestors.

5.

At 10:12 the group was still gathered and blocking the road. The group then started marching to the Mayor's office. They were peaceful along the route and we managed the crowd and traffic along the route with no further incidents. I informed Koos Saunders and Michael Ramane that I would be opening a case docket against them if they march as they did not give notice in terms of the Regulation of Gatherings Act, 205/1993. When they reached the office of the Mayor, the crowd suddenly turned violent. They barricaded the entrance doors of the municipality with wooden benches that they pulled out of the ground. By blocking the entrance to the municipal building they took away the rights of the general public to use the building. They also overturned dustbins in front of the municipal buildings and dumped its contents on the roads.

6.

As the violence erupted, I could clearly see how Koos Saunders and Michael Ramane were instigating the crowd to more violence. I also gave my video operator an order to capture everything on video and to focus in the process on Koos Saunders and Michael Ramane. They were clearly distinguishable in the crowd. At 13:00 the violence escalated to such a level that I had no other option but to do a pushback on the crowd. I warned them in two official languages, English and Zulu, and requested them to stop their violent behaviour immediately. When it did not stop, I ordered three of my sections, Section 1, 2 and 3 to do a pushback with their tonfas and shields. When the crowd however started stoning the SAPS members and the police vehicles, I ordered my Reserve Section, Section 4, to disperse the crowd with stun grenades.

They also refused to listen to my warnings and continued with their collective violent behaviour even after instructed to stop and disperse.

10.

Two police vehicles were damaged in the protest. The first vehicle is a Mercedes Vito with SAP nr BPN262B which was damaged when protesters stoned the vehicle, breaking the windscreen and causing numerous dents on the front of the vehicle. The other vehicle was a Nissan Hardbody, of which all four tyres were slashed by participants in the crowd. The amount of the damage caused to the vehicles and the municipal property is unknown at this stage. At this stage it is unknown if any of the protesters were injured, three fire fighters were treated for open wounds due to the assault on them by the protesters.

11.

I know and understand the contents of this declaration.
I have no objection in taking the prescribed oath.
I regard the prescribed oath as binding to my conscience.

Crouseville
17:15

2013-12-03



H Matjila

7.

The crowd continued their violent protest and started burning tyres in front of the building. They continued stoning the SAPS members and also set a part of the municipal building alight. We managed however to keep them at bay until the Fire Department arrived to extinguish the fires before it leads to further damage and possible loss of life. The crowd started to assault some of the firemen who came to extinguish the fire. At that stage it became evident that the violent attack by the crowd would not stop. At that stage Koos Saunders and Michael Ramane also refused to negotiate with me any longer.

8.

In order to curb any further public violence, I had no other choice but to disperse the crowd. I re-organized my platoon and gave the violent crowd a second warning to disperse in English and in Zulu. I made another warning to innocent bystanders that there would be SAPS action and that tear smoke and rubber bullets would be used. I did this to allow any innocent bystanders in the vicinity to depart from the scene. As the violence further escalated, I gave a final warning to the crowd to disperse as the escalation was threatening to cause more damage and increased threat to life and property. The crowd did not respond and I then ordered my sections to use one tear smoke grenade each and I also ordered my reserve section, Section 4 to disperse the crowd with rubber bullets. I then instructed sections 1,2 and 3 to arrest protestors involved in the public violence. Fourteen (14) suspects were arrested that were part of the violent crowd.

9.

During the whole scenario, the whole group moved together, they were also accompanied by us and no people joined the group along the route or while they were at the municipal building. They acted as a group with a common purpose and all of them partook in the violence that erupted. The whole situation from start to end, with all the negotiations were captured on video by my video member on the platoon. The crowd was focussed on violent behaviour at the municipal building and they were clearly instigated by Koos Saunders and Michael Ramane.

6. INSTRUCTIONS TO THE LEARNER

Read the scenario below carefully and write an A1 statement and an arrest statement on the scenario.

'You are the platoon commander on the scene, it is important that all the elements of the different crimes per crime are reflected in your statement.'

'Your statement need to identify and prove the elements of the crime'

- When writing the arrest statement the following must be included:
 - ◊ Date, time and place of the incident
 - ◊ What did you observe when arriving on the scene
 - ◊ Where were you posted and what was your job to do
 - ◊ Time when important actions occurred and what exactly took place
 - ◊ From whom did you receive the instruction to affect the arrest or did you act on own discretion
 - ◊ Who did you arrest, clothing name, description of clothing the person wore
 - ◊ What did this person physically do, explain the actions of the perpetrator
 - ◊ How did you arrest him, using force or taking him by his arm etc.
 - ◊ Did you inform him of the reason for the arrest
 - ◊ What was the reaction of the crowd when the person was arrested?

SCENARIO 2:

Members of the organisation Women Against Crime gave notice to have a march on 2013-06-15 with the aim of handing over a memorandum of demands to the station commander. At the section 4 meeting the following information were confirmed.

Participants - 200

Assembling time - 07:00

Initial point – open space at Justine Street

March will commence - 08:00

Dispersal time - 13:00

Marshalls - 20 that will be clearly identifiable with red arm bands

Convener: Patricia Pitso

Deputy Convener: Mali Lennert

The route: From Justine Street, into May Street, into van Gog Street, left into Boulder Street toward the Swartkop police station.

Restrictions:

Whole of section 8

Only far left lane to be used

No sitting in intersections

Not allowed to march within 100 m of a court building

No deviation from the set route.

On the day of the march the convener and deputy convener was not present and only three marshals were identified.

The marshals were not briefed on the restrictions and prohibitions as agreed on at the section 4 meeting.

The march started at the agreed upon time of 08:00. The participants however failed to restrict the march to the far left lane as per restrictions, and used the full width of the road. Participants carried placards with vulgar and racist remarks.

The marchers also deviated from the route and picketed outside the High court building.

Video footage was taken of the whole situation.

Charges: Scenario 2

Charge 1: Contravention of the Regulation of gatherings act, sections 8(1), section 12(b), section 8(3), section 7(1) (a), read with Section 12(a),section 8(5), section 12 (b),section 12(c) and section 12(f) of act 205 of 1993.

Charge 2:Regulation 319(1) of the National Road Traffic Act 93 of 1996

I Japie Lourens declares under oath in English.

1.

I am an adult male 30 years of age with ID: 000000 0000 000. Residing at 10 Langboom str, Swartkop, 8301. Contact number: 082 234 5893. I am a Warrant Officer employed by the South African Police Service and stationed at Swartkop Public Order Police. I am a platoon commander at the Unit. Contact number: 031- 838 1234.

2.

On Wednesday 2013-06-15 and between the hours of 06:00 and 18:00 I was officially on duty and monitoring a march in Swartkop. The Women Against Crime movement was set to start with a march to the Swartkop Police Station to hand over a memorandum of demands to the Station Commander.

3.

At 07:00 approximately 200 participants gathered for the march on an open area next to Justine Street. On my arrival I could only identify three marshals. I met with the marshals who identified themselves as Lydia Louw, Sue Howard and Penny Small. I enquired about the whereabouts of the convenors of the march and the marshalls informed me that the organisers had to go to Johannesburg for an urgent meeting. I also asked them where the rest of the marshals were and was informed that only three marshals could be secured for the march. The agreed upon number of marshals as per the section 4 meeting was set at 20 Marshalls and the conditions of the march has thus not been met. This is a contravention of Sec 8(1) of the regulation of Gatherings act. The convenor, Patricia Pitso and the deputy convener, Mali Lennert were found absent from the march which is a direct violation of section 12(b) of Act 205 of 1993.

4.

The Marshalls did not know which route was approved for the march and they indicated that no feedback was given to them by the convenor and deputy convenor. I provided the marshals with a copy of the notice as well as the restrictions and prohibitions set out therein. The convenors failed in their responsibility to take reasonable steps to ensure that all marshals and participants at the march are informed properly of the conditions of the march.

5.

The marshals further informed me that they were promised by the convenor that they could go to the court building to picket. I informed the three marshals that they are not allowed to deviate from the route or to go to the court building.

6.

The march started at 08:10. During the march the participants decided to deviate from the agreed route and went to the court house. This is in direct violation of section 8(3) of the act. On arrival at the court they participants picketed outside the court building. No permission was given for the picketing at the court house and the actions were thus in direct contravention of section 7(1)(a), read with Section 12 (a) of the regulation of Gatherings act.

7.

Some of the participants carried placards containing racial and vulgar slogans. Video footage was taken of the placards. Display of placards of such nature is in direct contravention of section 8(5) of Act 205 of 1993.

8.

On completion of the march a case was opened against the convenor and deputy convenor for contravention of sections 12(b), 12(c) and 12(f) of the Gatherings Act 205 of 1993.

Alternatively the convener can also stand accused of Reg 319(1) of the National Road Traffic Act 93 of 1996, for the blocking or hindering of normal traffic flow. Swartkop CAS 234/06/2013 refers.

Video footage were taken and filed under video ref.33/06/2013.

9.

I know and understand the contents of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience.

PLACE: _____

Signature of deponent

Time : ____: ____

Date : _____

SUMMARY :

By means of information submitted, the court should, without difficulty have a clear picture of the incident or occurrence. It relies solely on the quality of the information on statements to reach a logical conclusion. Poorly obtained statements do not only damage the image of the service, but impair the smooth running of the administration of justice.

It is therefore, important that every member of the service realises the importance of taking good statements.



BIBLIOGRAPHY

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2010:Cape Town**

Further applicable Reference for assistance

- SO(G) [Par 1-2] 301[par1.1] 321[par 4 &9]322,327,341 [par 10]
- Head Office circular 31/11/1: 25/9/1 dated 2005-5-20
- Section 13(8) of the South African Police Service Act 1995 (Act 68 of 1996).
- Justice of the Peace and Commissioner of oaths Act,1963(Act 16 of 1963)



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W/O	GJ Pitso	POP Gauteng
W/O	P Ramapa	POP Gauteng
W/O	RL Madavha	POP Limpopo
W/O	PS Maluleke	POP North west
W/O	BJ Masanabo	POP Mpumalanga
W/O	HJ Lourens	POP Upington
W/O	KL Shabalala	POP KZN
W/O	TE Rantso	POP Welkom

STATEMENT TAKING : ADVISOR

Colonel JB Mahape

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**LEARNER'S GUIDE
Module 3**

Crowd Management Incident

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Title Page

LEARNING PROGRAMME	Crowd Management for Platoon Members (CMPM)
MODULE NO	2
MODULE TITLE	Prepare for crowd management incidents
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	

Module Contents

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2	CONFLICT RESOLUTION	
3	INTEGRATION OF THE USE OF FORCE PRINCIPLES	
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How to use this module

1. This module deals with crowd dynamics, the 5C Stairs conflict resolution and the six use of force principles for Crowd Management.
2. the learner will be exposed to the different types of use of force and instructions to enable him/her to effectively deal with crowd management. It will be expected from the learner to know and understand the scale of use of force and the legislation on the use of force during the execution of crowd management operations.
3. A knowledge questionnaire as well as an observation checklist will be utilized to assess learners against the criteria to demonstrate an knowledge and practical understanding of the use of force principles and scale of use of force.

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 master the material.

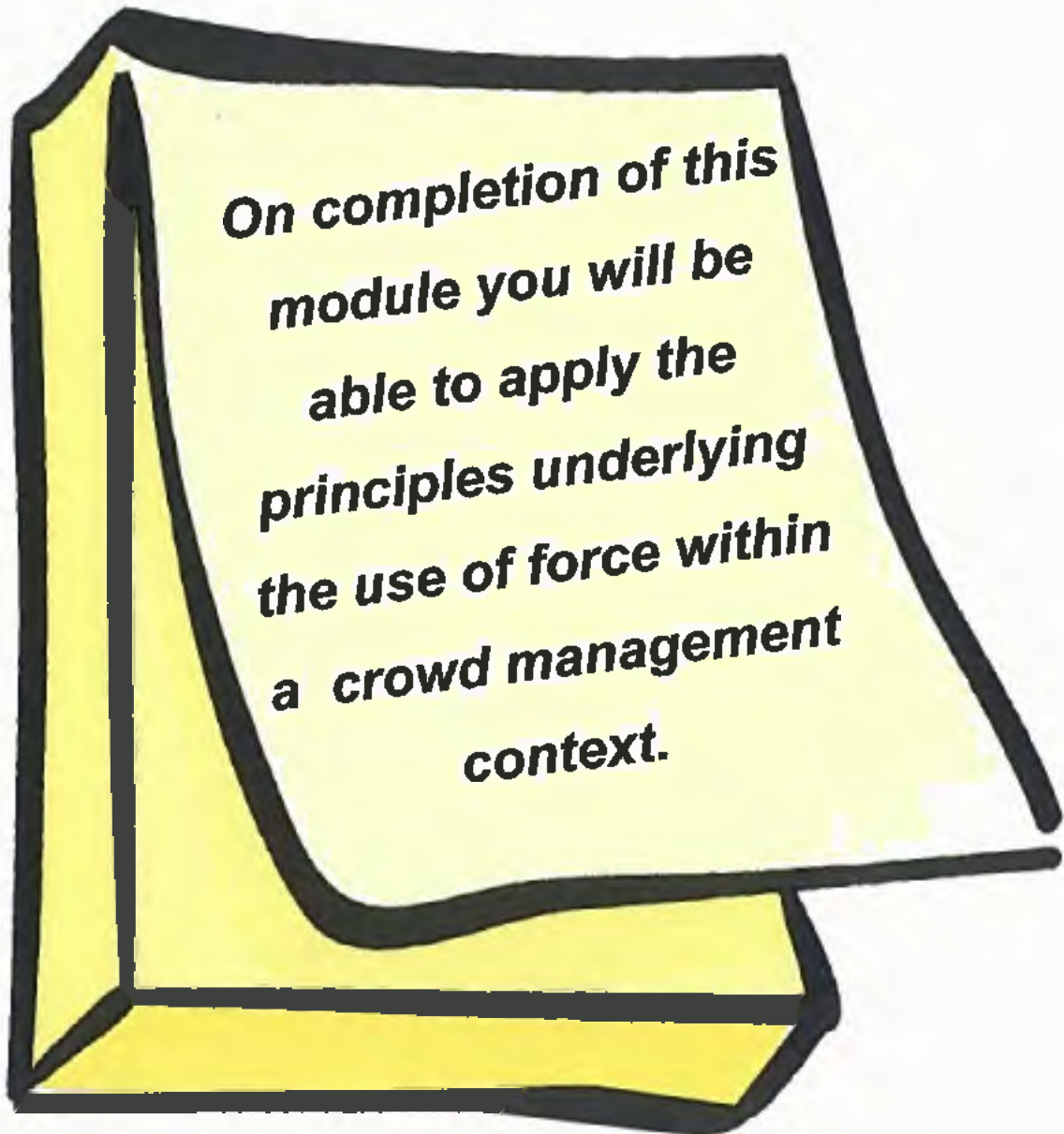


This icon alerts you to a **particular source** that must be used in addition to the Learner's Guide at a particular point during learning.



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

Module Outcome



Crowd Dynamics

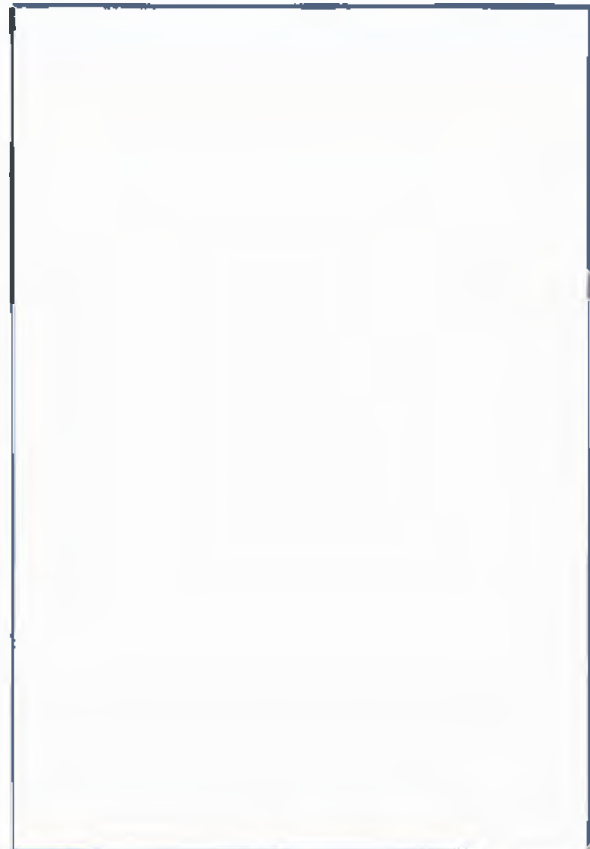
Chapter 1

Chapter Outcome

On completion of this chapter you will be able to demonstrate an understanding of crowd dynamics

Learning Outcomes

1. Discuss the reasons for protesting.
2. Discuss the three main theories concerning crowds and the dynamics surrounding them.
3. Describe the characteristics of crowds.
4. Illustrate the context of a gathering with a diagram and explanatory notes.
5. Describe the social context of crowds.



Chapter Contents

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1. INTRODUCTION

The history of the policing of demonstrations in South Africa is very controversial and has, undergone a dramatic change since 1990. Events such as the release of Nelson Mandela and the unmaning of the ANC and other political parties which had been banned and considered to be enemies of the State have influenced the way in which policing is viewed.

With the unmaning of political parties came mass protests. For the first time since the banning of the ANC, people were allowed to hold mass rallies and protest marches. Rallies were held in which the crowd numbers reached 20 000. Such rallies had a dramatic effect on the infrastructure of the police and other security agencies. After the 1994 elections, the focus of protest marches shifted from strictly political issues to economic and community-related issues.

This shift placed the police in a new crowd policing environment, as the participants of protest marches are from the very same community as the police. Along with these changes came a community policing strategy which allows for the community to play a greater role in the manner in which policing is conducted in the community.

Since 1996, the police has implemented a policy on the management of crowds. This policy is based on the principles of community policing and the Bill of Rights in the Constitution of South Africa (Act 108 of 1996).

The policing of crowds in a democratic society is challenging because the police must consider the rights of the demonstrators and the society in general. Both groups have rights which are entrenched in the Constitution and have the right to be protected.

Protest is essential to the sustain ability of democracy. However, each protest, by its very nature, represents an actual or potential threat to the public order; and the manner in which a protest is policed can have a direct impact on the outcome of the protest (that is to say, whether or not the threat becomes a reality (Storey, 1997))

The application of force against a community or group of people who protest in a democratic society is considered to be a drastic measure. In a democratic society, the community entitles the police to use force against them. However, there is a contract between the police and the community that, when force is applied during social conflict, the force that is applied must be proportional, consistent and appropriate in the circumstances.

The police must also consider the democratic balance. When the police use too much force to retain the balance, another protest condemning the police's actions could follow.

2. CROWDS IN PERSPECTIVE

The manner in which we, as the police and people, view crowds determines how we will respond to a crowd. If you fear a crowd or group of people who have a common goal or purpose, then you will either stand and fight or will flee when you are confronted with such a situation (fight or flight reflex). In the policing environment, the same can be said about the way in which crowds are

managed or confronted.

There are three main theories concerning crowds and the dynamics surrounding them. One view is that crowds are dangerous, another that crowds cannot be trusted and lastly, that crowds are a part of society and are normal. We will now look at each of these theories in more detail to see how they influence the way in which the police react to crowds, with each of these views in mind.

2.1 CROWDS ARE DANGEROUS

According to this theory, people lose themselves in the dynamics of the crowd and become barbaric. They lose all control over their actions and are no longer accountable.

Le Bon does not mention the role that the police or authorities play concerning crowds. The behaviour of a crowd is primitive, aggressive and violent. The police are not able to negotiate or to communicate with the crowd.

Crowds are therefore seen as a threat to society and should not be tolerated at all. The only manner in which to police crowds is to eliminate them or to repress any behaviour related to gatherings. This approach is called **crowd repression**.

In terms of this approach, policing organisations

blindly follow the instructions received from the authorities. This constitutes a strict law-and-order approach to policing. The policing structures are far removed from society and only 'come out' when the crowds must be repressed. This type of policing is still seen today in some countries in Africa and South America.

2.2 'CROWDS CANNOT BE TRUSTED'

According to Turner and Smelser's theory, a crowd develops an identity and the people who make up the crowd take on that identity. The control mechanism of a crowd comes from within the crowd.

A crowd determines the social norm it follows and determines what changes need to be brought about and how. The concerns of the crowd are directed towards a common goal. Violence is considered more rational and is only used when certain conditions are present, as the crowd calculates the cost of its actions. The crowd will use violence if the consequences of such action will be in its favour.

From the police and authorities' point of view crowds are considered to be more legitimate. Therefore, the police and authorities show understanding. The police do not trust crowds as they are considered to be calculating. The police also plan for the worst case scenario. Thus there are always more resources than necessary on site.

The crowds are controlled strictly according to the law. This approach is called **crowd control**.

3.3 'CROWDS ARE PART OF SOCIETY'

According to this approach individuals maintain their identity in a crowd, but also identify themselves with the identity of the crowd. Crowds rarely become violent and the control mechanism is found to be inside the crowd. Violence is also seen as rational and is only used once other means have failed to bring about the desired changes.

4. CHARACTERISTICS OF CROWDS

People come together to form a crowd in which they identify with one another, by means of banners, T-shirts or other identifiable items which express their common purpose.

Violence sometimes erupts due to the presence of an out group or an opposing party. The police are also considered to be an out group and the mere presence of the police can bring about an escalation of violence. Although violence does not always occur, it does happen sometimes and the police need to identify such situations early on to ensure that the police are prepared.

Although, violence is an element of protest marches, it occurs in fewer than five per cent of the total number of protest marches held every year.

Demonstrators only use violence when all other measures have failed to bring about the necessary changes or to focus attention on issues in the community.

5. CROWD MANAGEMENT

To enable the police to manage crowds there must be an effective information-gathering process. The information collected prior to the march/gathering will enable the police to negotiate better and have the necessary insight into the reasons for protest. The ability to build better community relations must be based on open communication. The police can play a leading role in guiding the community through a peaceful and successful march.

The police if they act in accordance with the Regulation of Gatherings Act (Act 205 of 1995), together with the relevant role-players, can build lasting relationships with the communities and organisations that protest regularly. Every march that is managed successfully builds stronger relationships and promotes trust.

By understanding the role and purpose of a protest march, the police are able to be more tolerant towards the participants. The police are also able to manage the democratic balance better. If information concerning a protest march is acquired in time, the police are able to inform the community in time, allowing people to plan their day according to the route of the procession. Better planning will lead to more tolerance and understanding. The ultimate goal is that neither the police nor the participants in the protest display force during the march.

Furthermore, the police empowers the community to manage the protest from within its structures and prescribe what would be the normal behaviour for the crowd. The community would also be able to apply the requirements set out by the Regulation of Gatherings Act (Act 205 of 1995). It is in this particular area that the police can play an advisory and consultive role in empowering the community to abide by the regulations.

6. THE CONTEXT OF GATHERINGS

Every gathering occurs within a specific context and for specific reasons. Waddington (Waddington *et al.* 1994) states that for every incident, to which he refers as a **flashpoint**, occurs within a specific context.

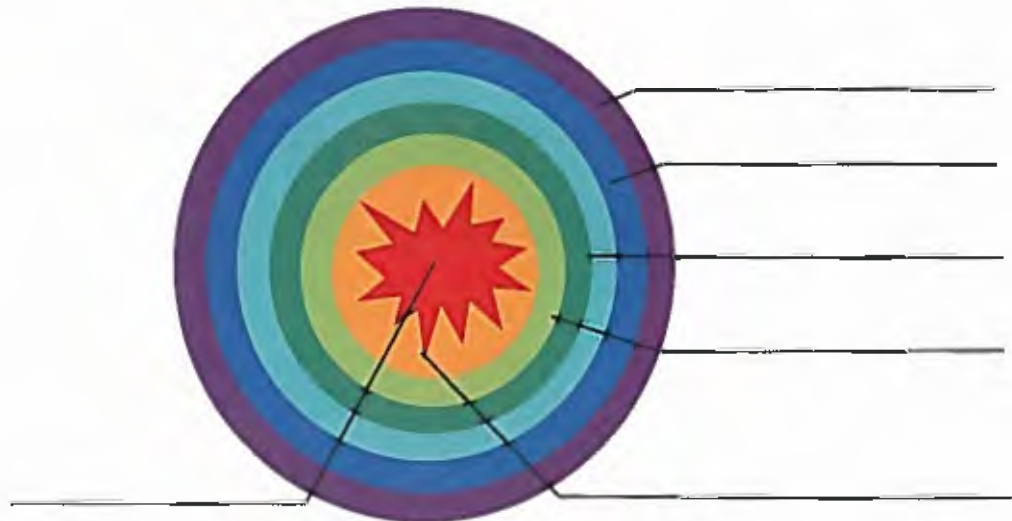
Each **flashpoint** is surrounded by ever-widening contexts. The incident occurs between two or more parties which interact with one another in a defined space, called the **situational level**. Every situation has its own history or events leading to the present situation, called the **contextual level**.

The manner in which the participants relate to the current situation is often based on the way they perceive the situation. Their perceptions are often based on their **cultural** views and understandings. This is most common in our country, as the various cultures have their own perceptions concerning the way that certain situations need to be handled.

Most often, an incident is discussed or debated at the **political or ideological level**. Politicians may have other motives for the managing a situation in a certain manner such as gaining economic or political power within the region of conflict. An incident can therefore be linked to the underlying **structural** conflict within society.

Understanding the context in which conflict takes place enables the police to better negotiate with and assist the community to finding a solution in which all parties are winners. Although the police are not capable of or responsible for resolving the conflict, they will inevitably play a role if the conflict is not resolved. If the police play an active role early on in the process, the community will trust the decisions and the advice of the police.

Complete the figure below.



7. SUMMARY

To enable police to make the best possible judgement call about the management of crowds they must know what the legal powers are that are applicable to the current situation. If there is legal basis for the decided action, is it the best action considering the result of such actions.

The Five Stairs Conflict Resolution

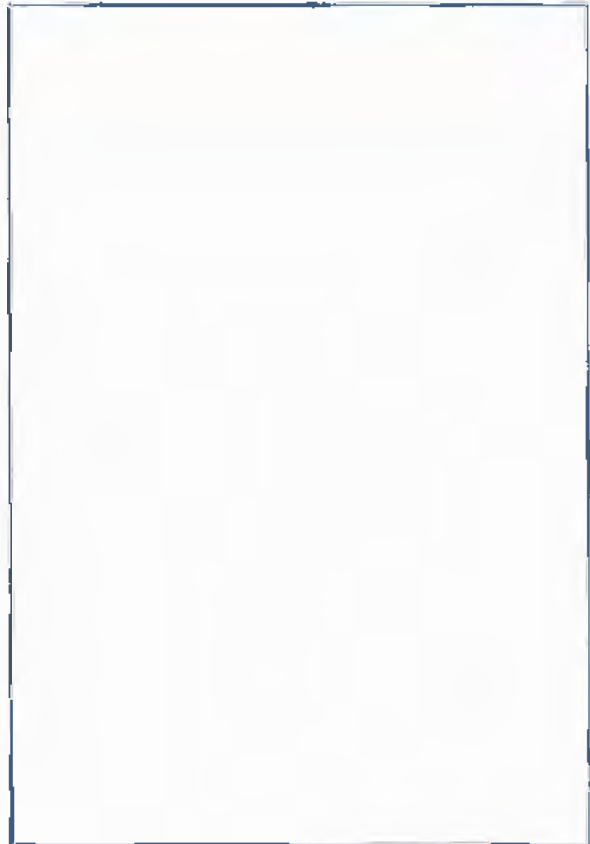
Chapter 2

Chapter Outcome

On completion of this chapter you will be able to apply the “Five Stairs Conflict Resolution Model” in solving crowd related conflict at the lowest level.

Learning Outcomes

1. Illustrate and analyse the Five Stairs Conflict Resolution Model with a diagram and explanatory notes.
2. Apply the Five Stairs Conflict Resolution Model in a simulated Crowd Management situation.



Chapter Contents

No	Topic	Page
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1. INTRODUCTION

The application of **force** against a community or group of people who protest in a democratic society is considered to be a drastic measure. In a democratic society, the community entitles the police to use force against them. However, there is a contract between the police and the community that, when force is applied during social conflict, the force that is applied must be proportional, consistent and appropriate in the circumstances. The police must also consider the democratic balance. When the police use too much force to retain the balance, another protest condemning the police's actions could follow.

2. FIVE C STAIRS

The five C stairs is a model that shows the relationship between the police and the crowd. The aim of crowd management is to solve conflict at the lowest level, thus being in a position to use as little force and constraint as possible.

To achieve this you must start at the level of comprehension and understanding. You must obtain insight into the conflict and the driving factors behind the conflict and protest. You must understand the conflict within the context: different interests, multicultural attitudes, importance, etc.

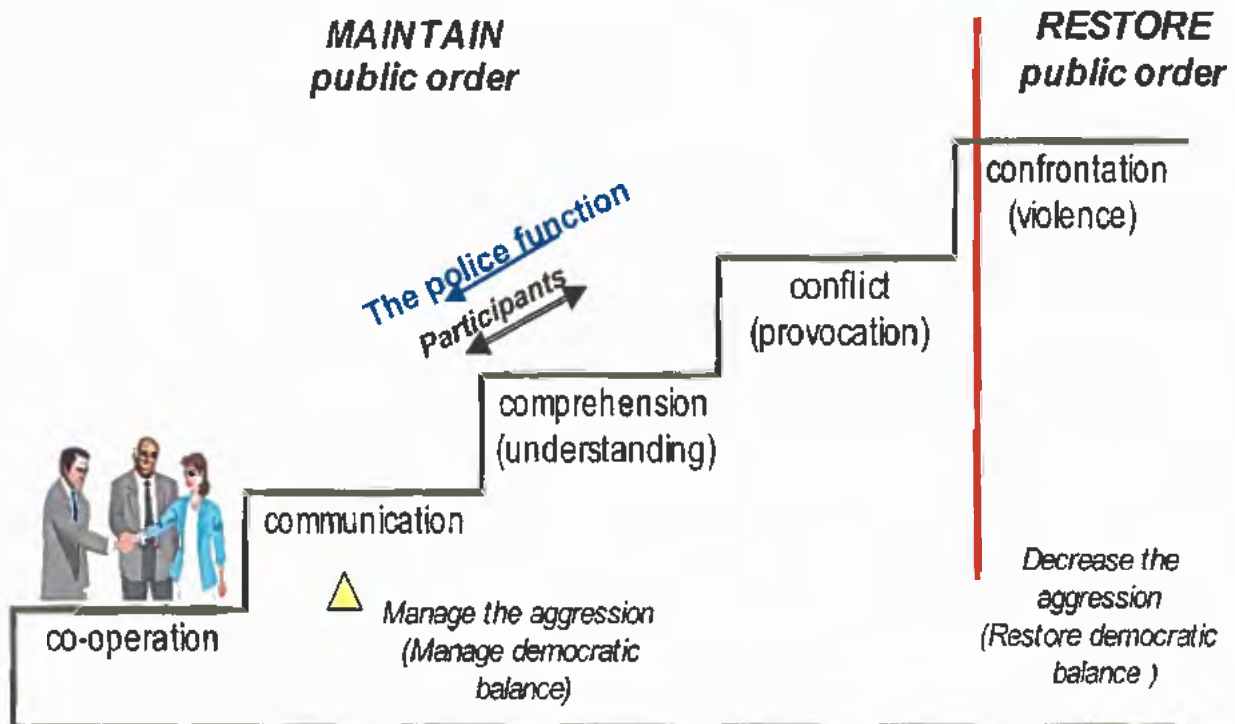
Once you comprehend for the situation, you can step down to other levels of communication and if possible achieve full co-operation with the convener and other role-players. This enables you to achieve the ultimate (*optimum remedium*) in that should there be a march it will be well controlled and the rules will be respected by all the parties involved in the conflict.

To achieve the ultimate there must be trust between all persons involved with the protest and conflict. If you have the view that crowds are dangerous you will not have any comprehension for the participants.

The FIVE C stairs



Limit of tolerance



The open communication and co-operation as solutions to the conflict situation. Since you have started at the level of incomprehension, the only options available is repression which inevitably leads to conflict and confrontation.

If you feel that crowds cannot be trusted you might comprehend the situation, but will not achieve open communication and co-operation. In such a situation you will probably plan for the worst case scenario and have more resources than would normally be necessary to police the protest. You will probably not assist the convener to arrange the march or support to preparations, because your relationship with the role-players is without trust.

Once you have made the mind shift that crowds and protests are a part of a developing society, are not dangerous and can be trusted, you will be able to understand crowds better. You have access to the full spectrum of the five stairs if you understand crowds.

All of the options become available to you during the negotiations for the protest marches that are going to take place within your area of responsibility. The police are able to play an important role in the society they serve when there is conflict within the community that needs to be managed and expressed.

If you understand that crowds are normal and that they can be trusted you can communicate openly with the parties that are involved in the conflict and you can build trust by giving and receiving cooperation from all parties involved with the conflict.

If you consider an event from the perspective that crowds are a normal part of society, you must apply constraint in the deployment of force during the protest. You will understand where the participants are coming from and what their frustrations are.

Some of the participants will try to get the police to react to what they are saying and doing, to obtain political support through the media to further their goals. If the participants are allowed to express their frustrations in limited actions, the protest can be managed effectively and the possibility of total riots and damage to property will be reduced.

However, participants do not have the right to misuse the trust of the police. If the participants overstep the limit of tolerance established before the march the police will take the necessary actions to restore public order.

The police must clearly communicate the actions that they are going to take as stipulated by law and the policy for crowd management.

The type of force that is going to be used can also be stipulated during the golden triangle meeting in which all the respective role-players are present.

As soon as the objective has been achieved for which force against the participants was used the use of force must be stopped. After the use of force, the police must once again follow negotiations to allow for open communication. Negotiations is a continuous link with the leadership of the participants in crowd management.

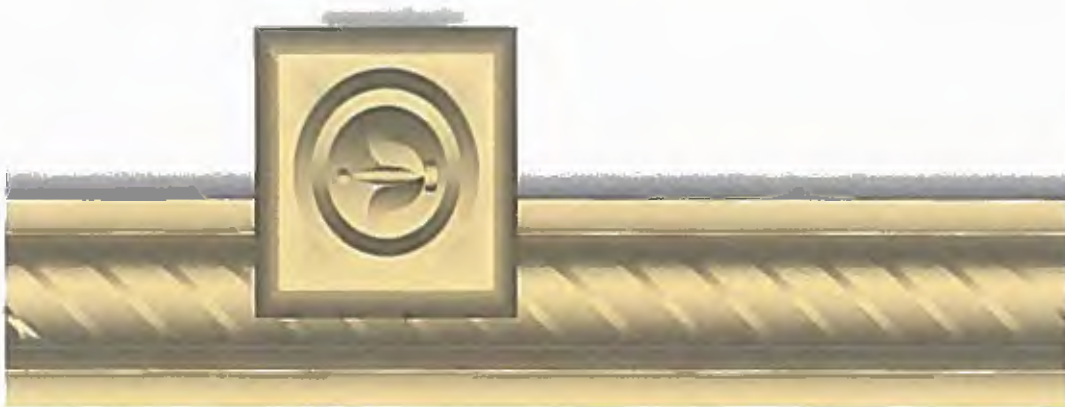
You should never leave a victim at the negotiation table, because you never know when you will need that person's support in the future. The force used must also comply with the democratic balance. If you use too much force against participants more protest can be expected.

3. SUMMARY

The actions taken, or not taken, must not cause the current levels of violence to rise, as the purpose of police actions should be to de-escalate the levels of violence (get the participants to go down the stairs). Any levels of violence that are considered abnormal must be as short as possible to allow the community to return to normal. All possible evidence that was left from the conflict must be removed as soon as possible so that the community can forget the past conflict, and rather focus on solving the conflict.

MINDSETS

Five C-Stairs



The FIVE C stairs



Limit of tolerance

MAINTAIN
public order

RESTORE
public order

The police function
Participants

conflict
(provocation)

confrontation
(violence)

comprehension
(understanding)

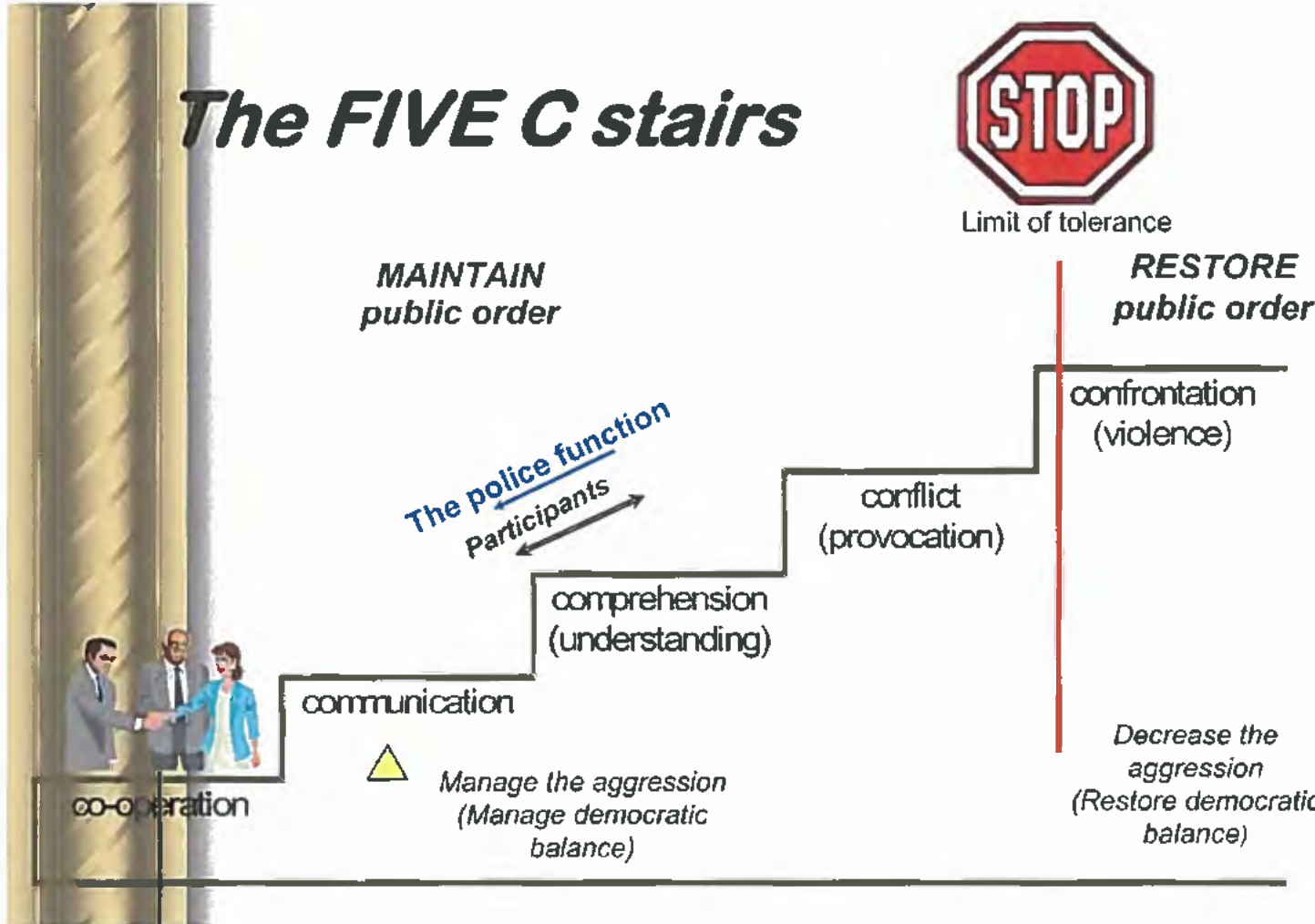
communication

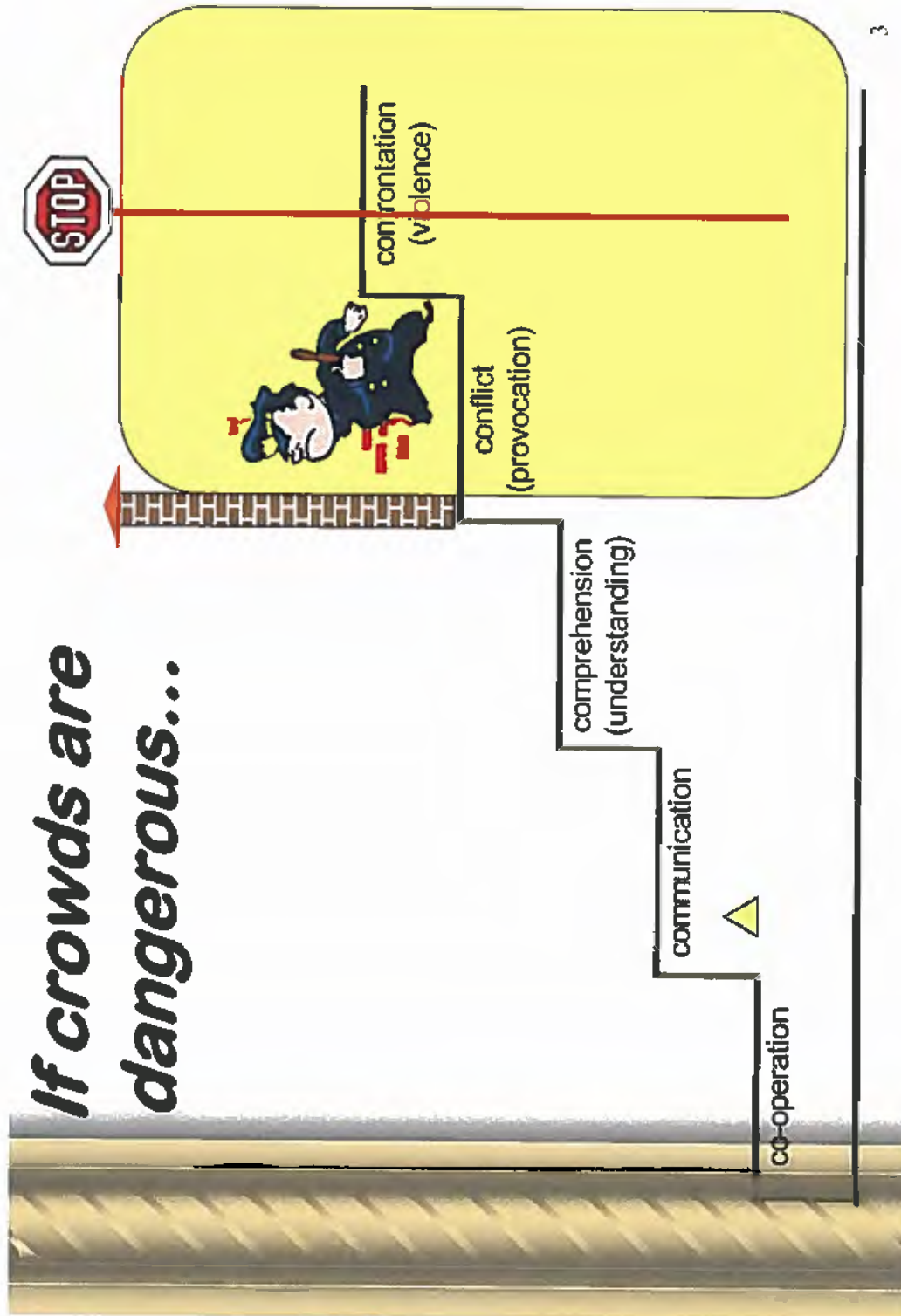
Decrease the
aggression
(Restore democratic
balance)

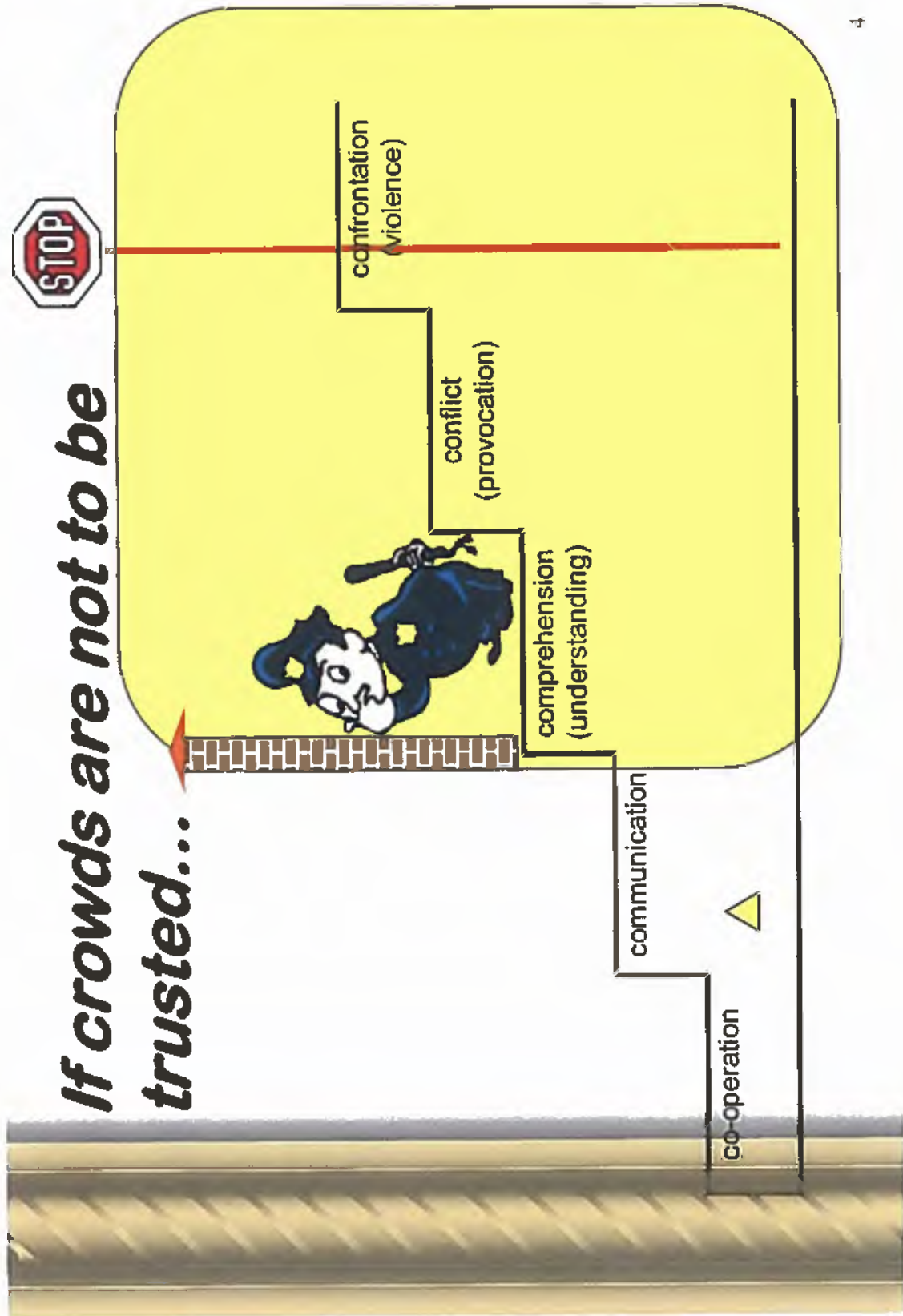
co-operation



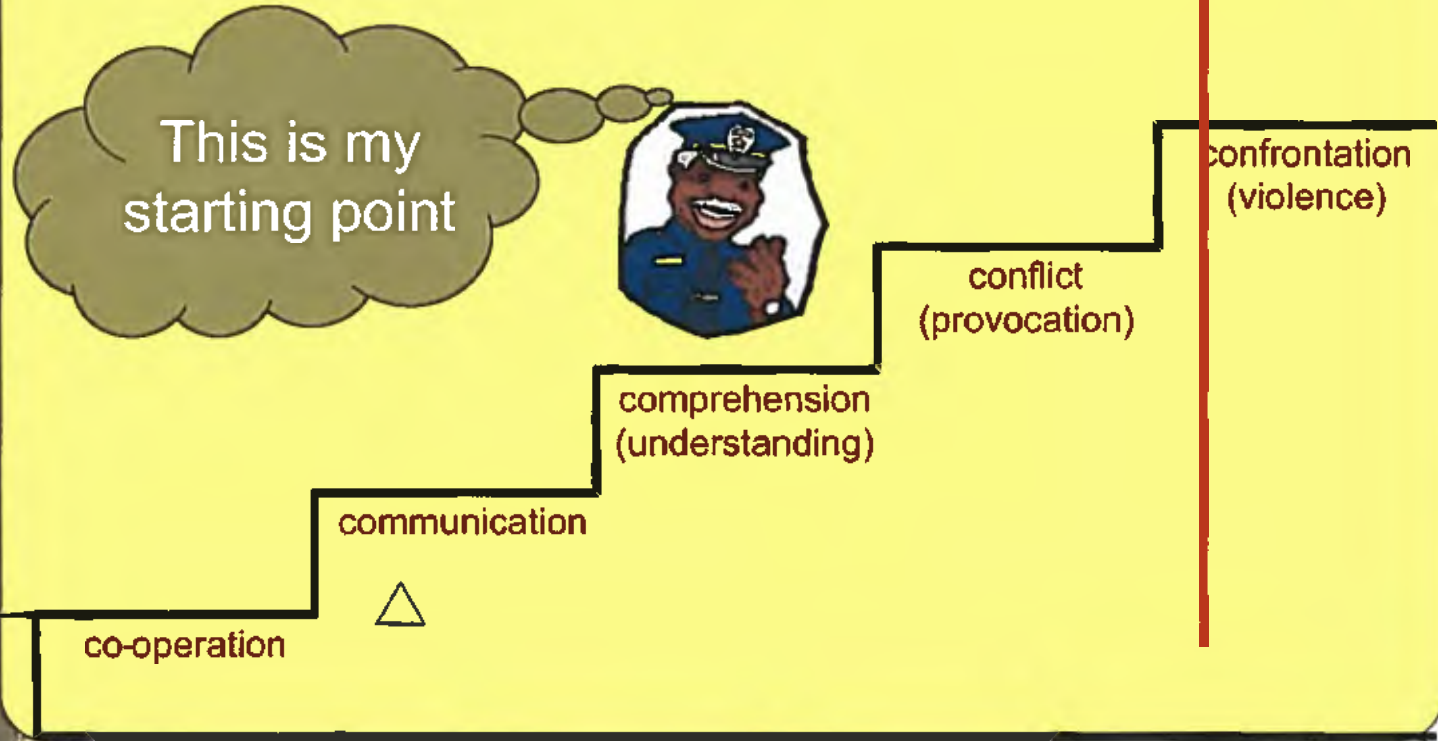
Manage the aggression
(Manage democratic
balance)







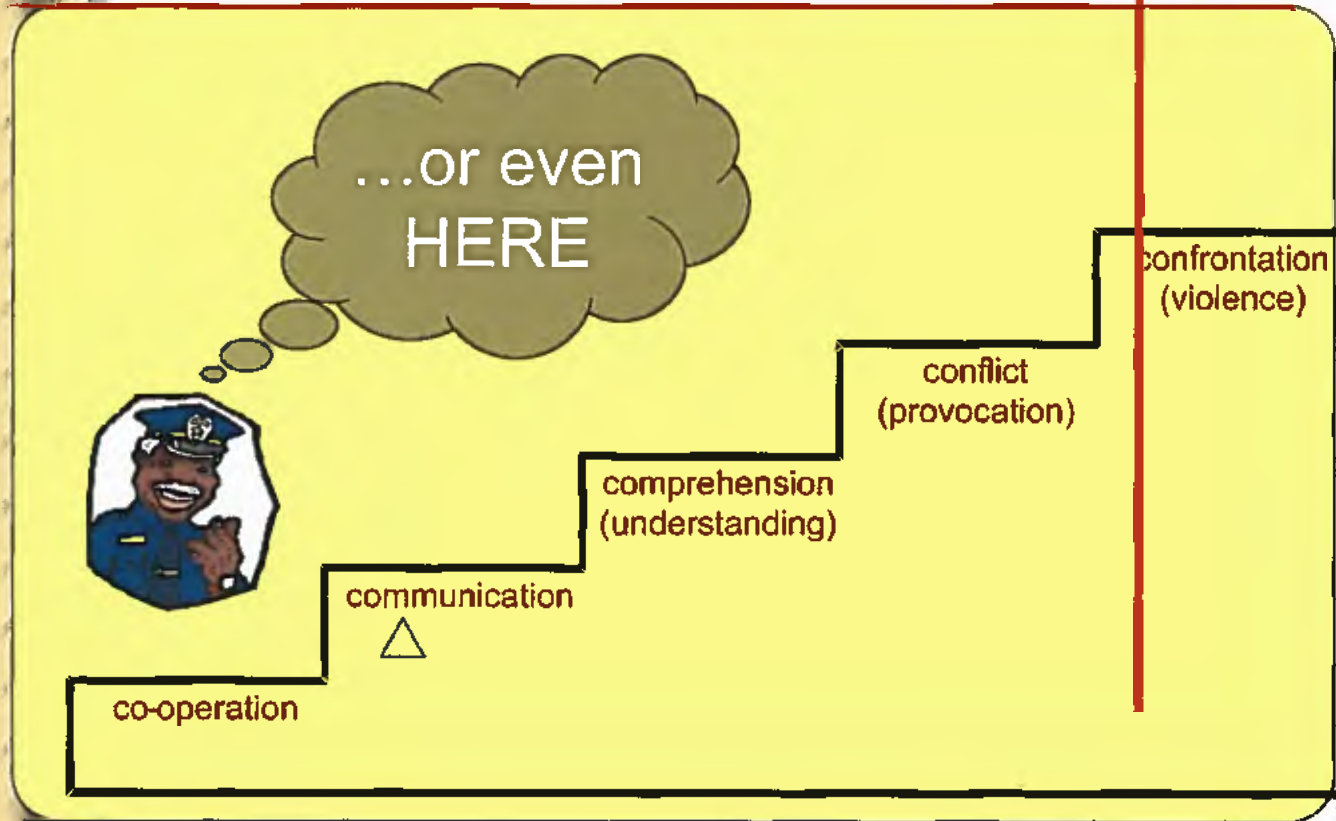
If crowds are constructive...



If crowds are constructive...



If crowds are constructive...



...or even
HERE



confrontation
(violence)

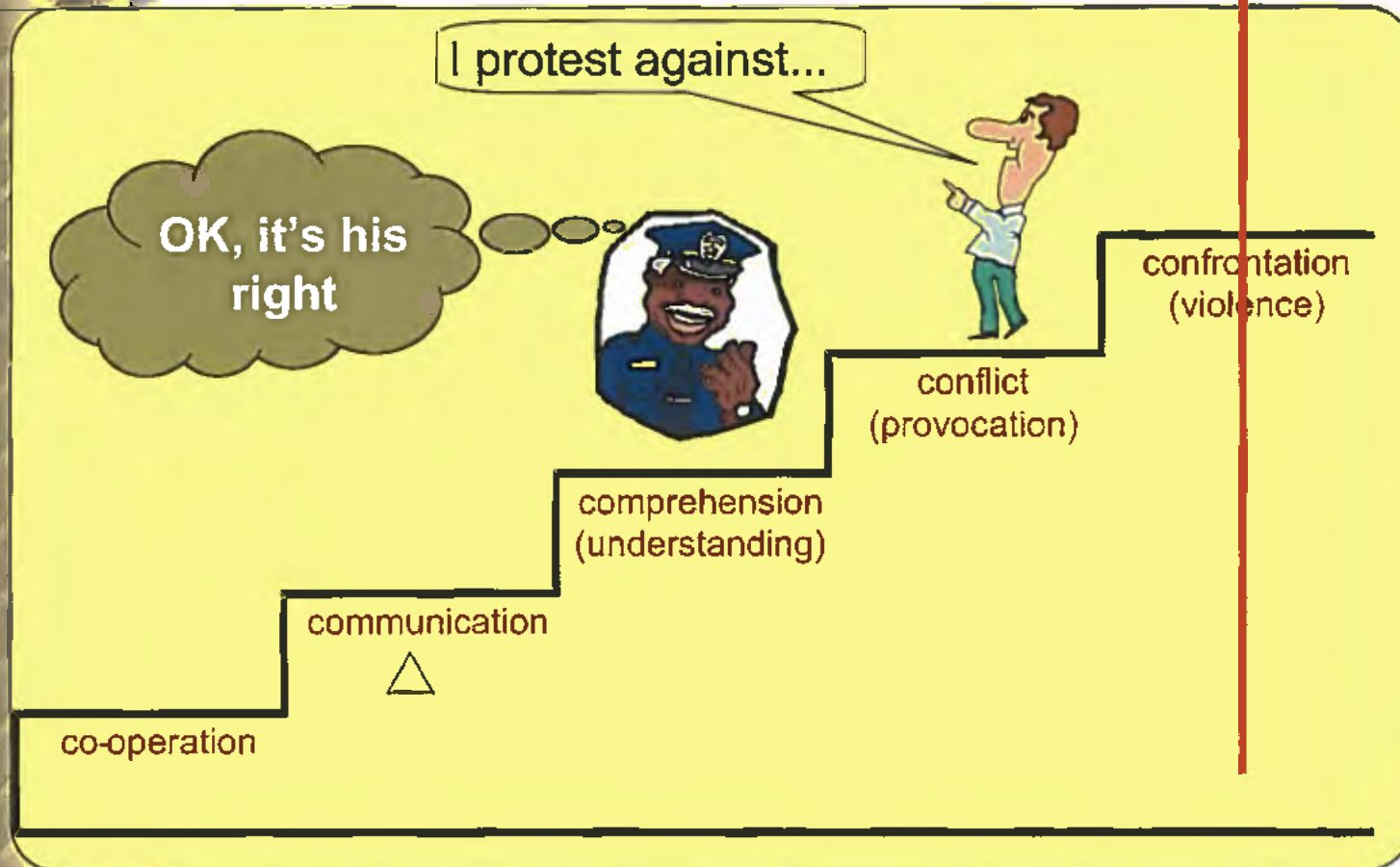
conflict
(provocation)

comprehension
(understanding)

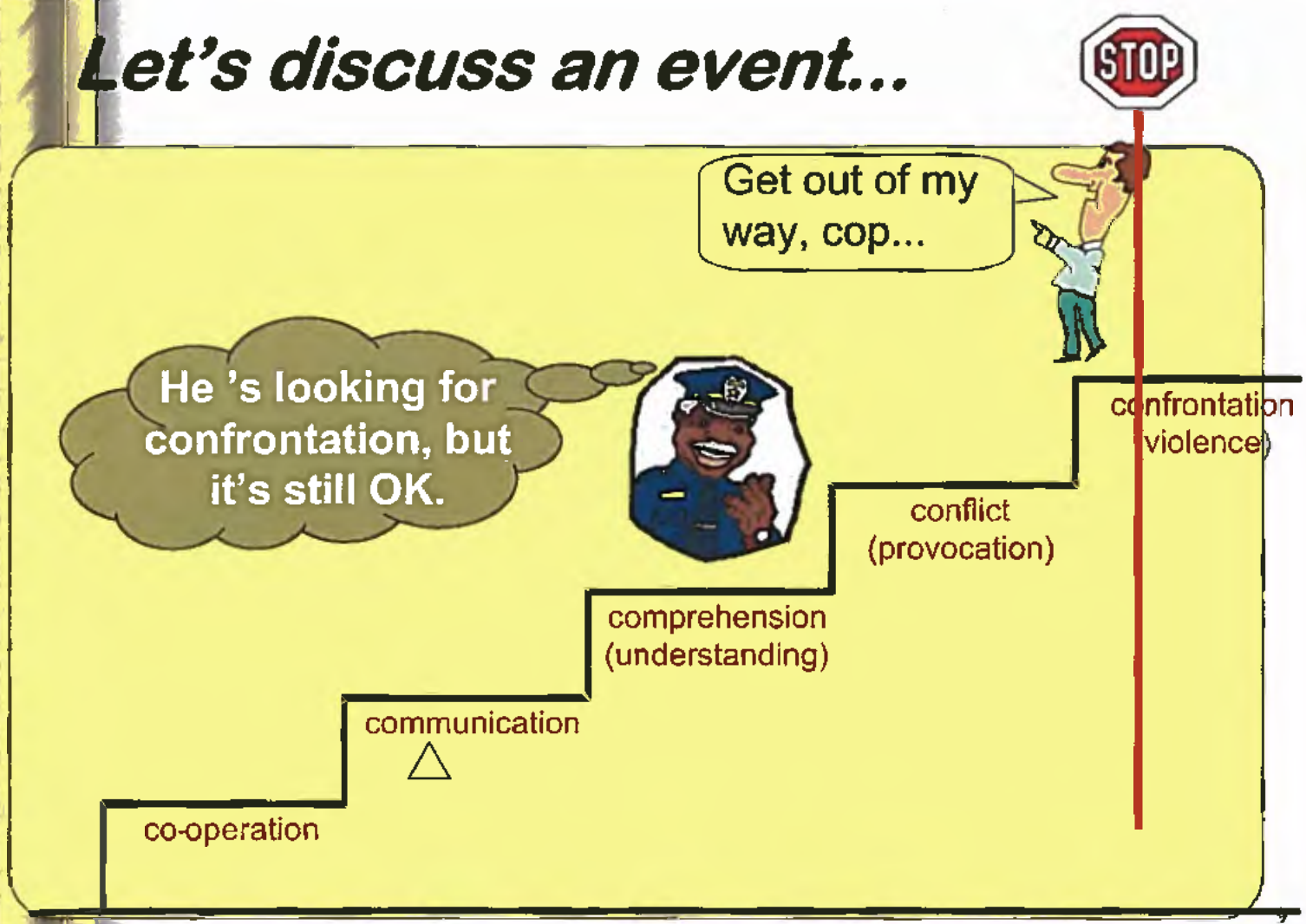
communication

co-operation

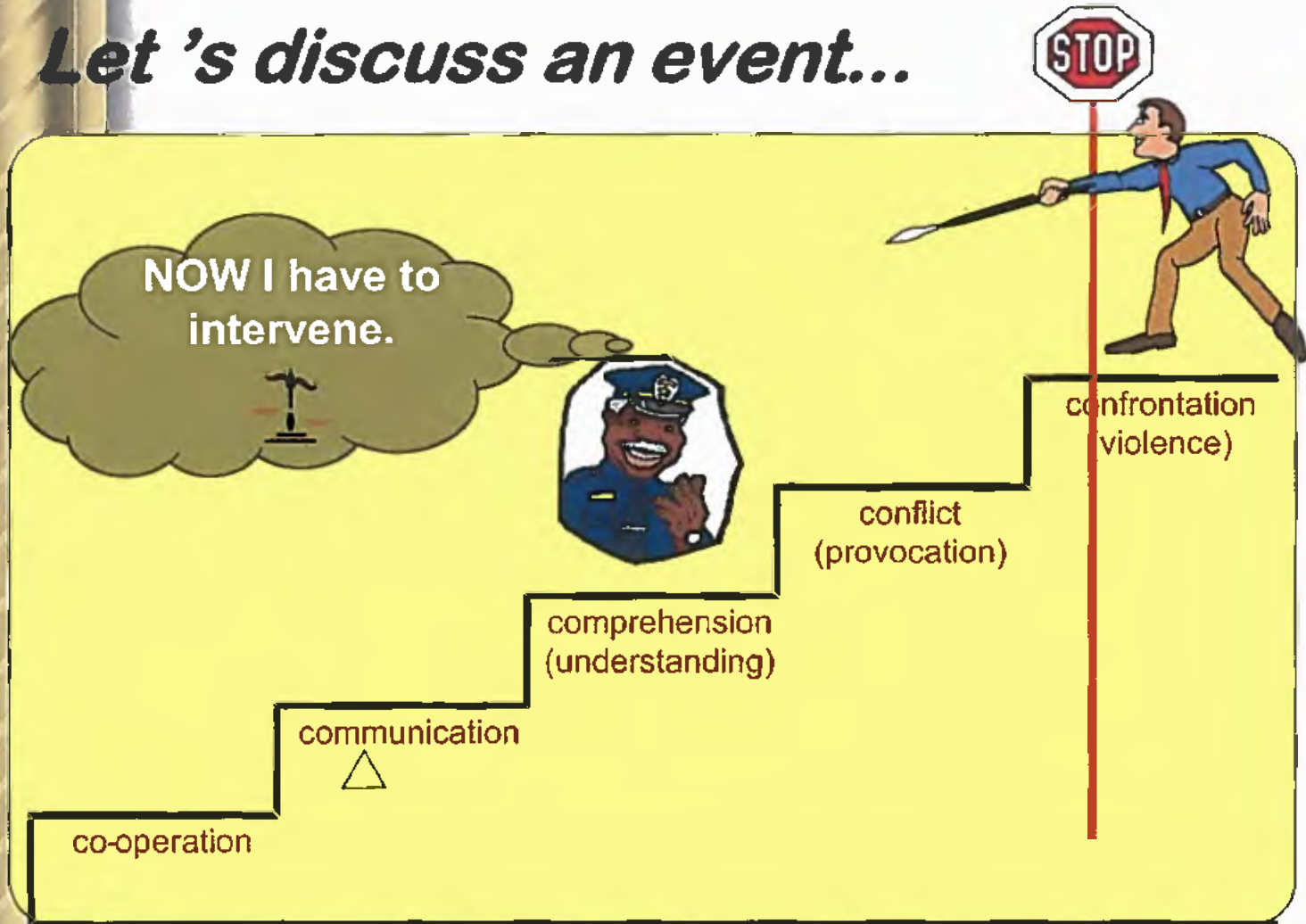
Let's discuss an event...

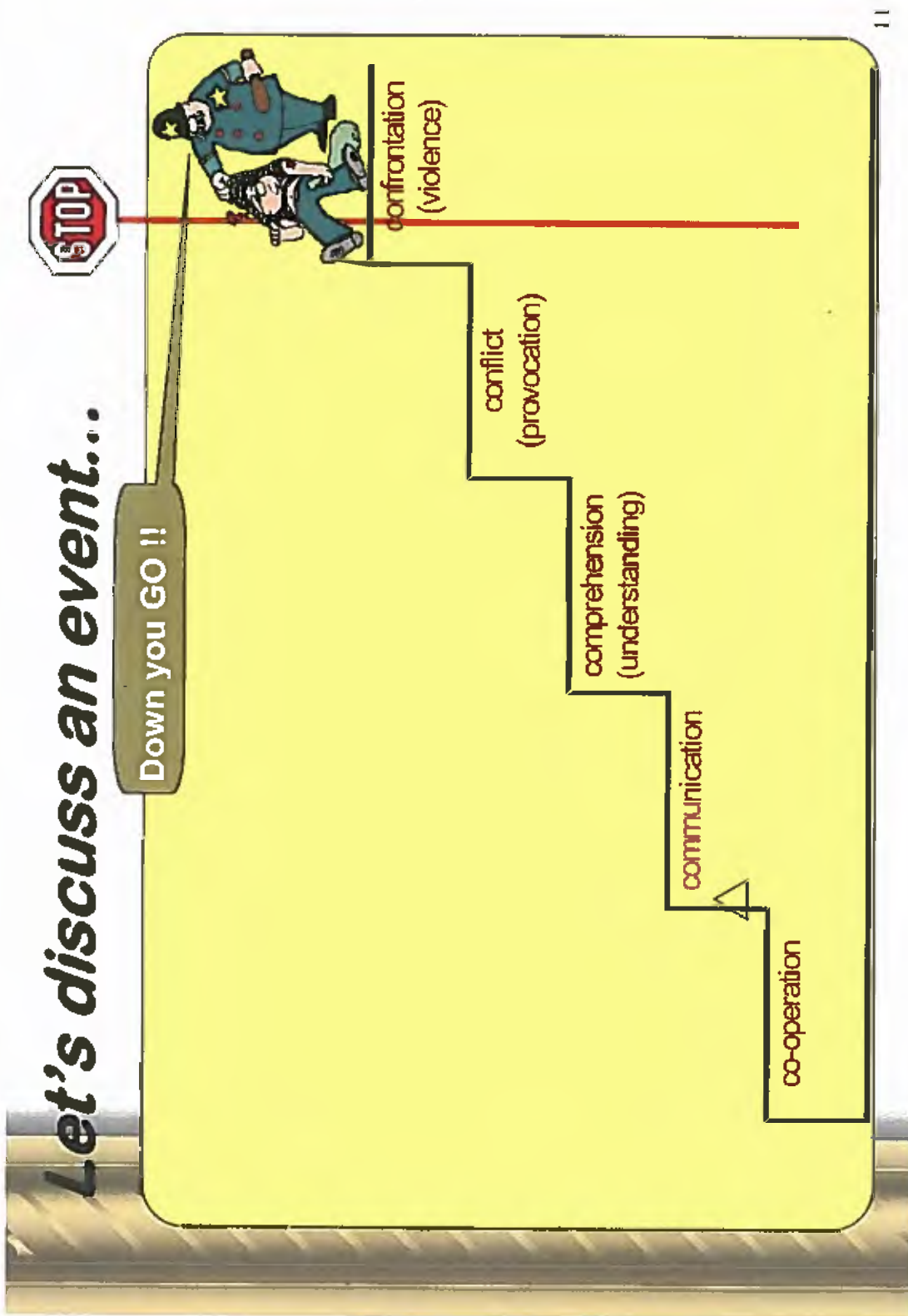


Let's discuss an event...



Let 's discuss an event...





Let's discuss an event...

Down you GO !!



confrontation
(violence)

conflict
(provocation)

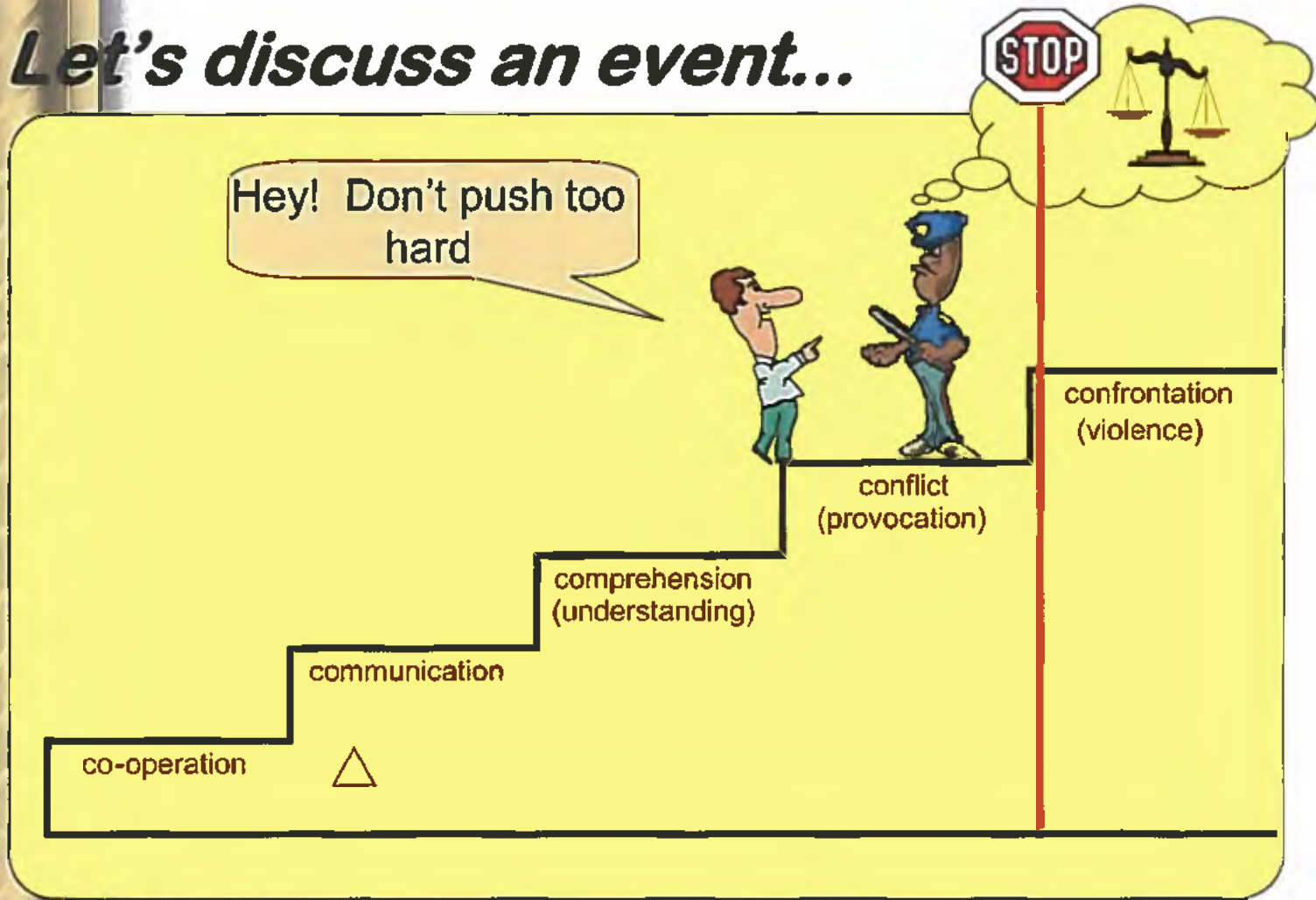
comprehension
(understanding)

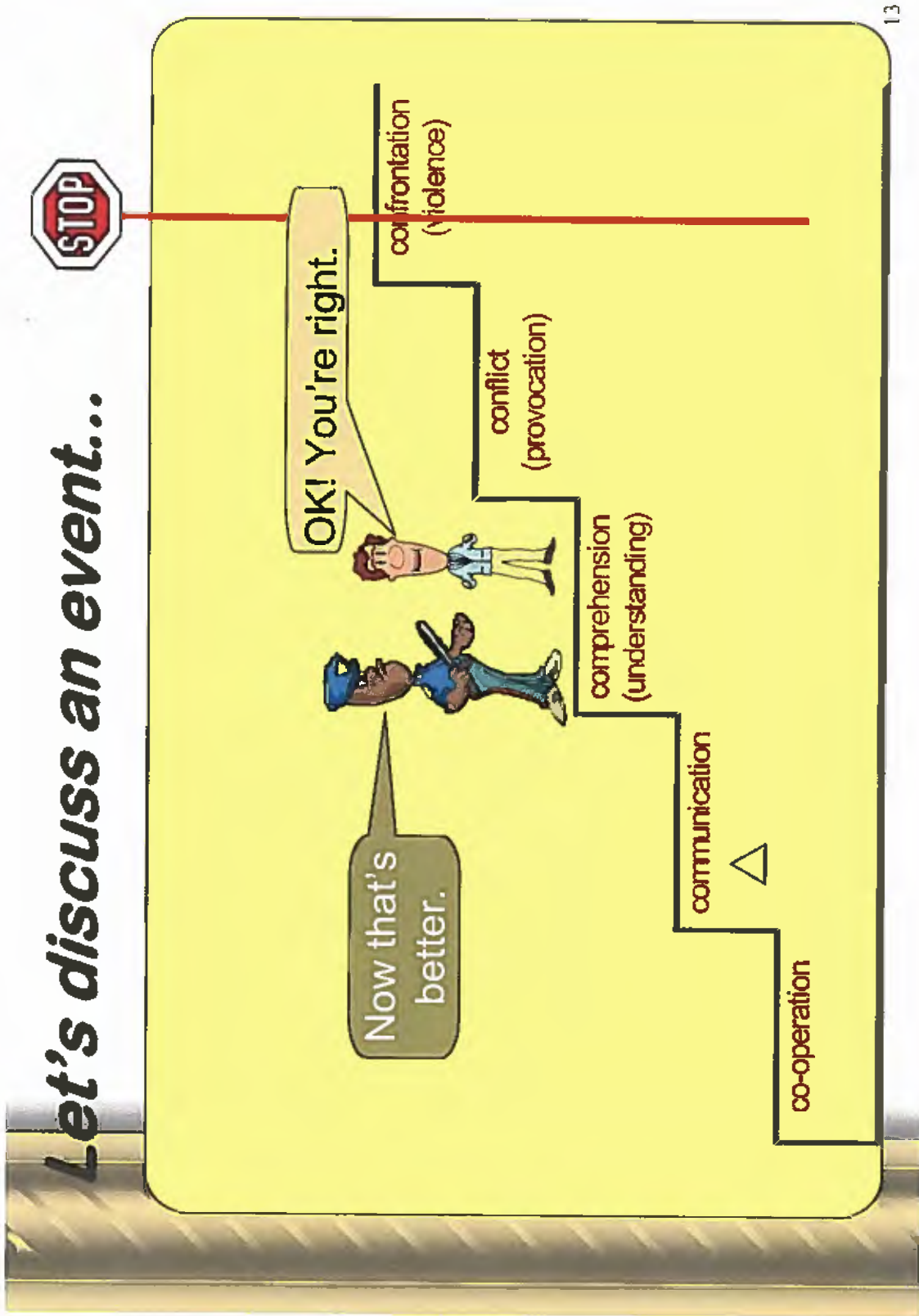
communication

co-operation

11

Let's discuss an event...





During this session we discussed:

- **The five C stairs**
- **How the way we see crowds affects our decisions**
- **Next – Legal Framework of Operations.**



The Integration of the Use Of Force Principles

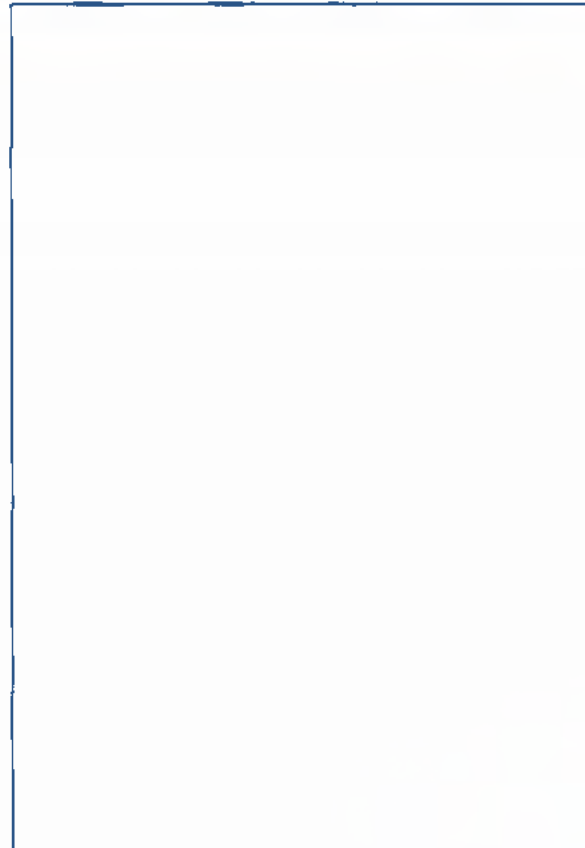
Chapter 3

Chapter Outcome

After completion of this chapter, you will be able to apply the six principles of the use of force.

Learning Outcomes

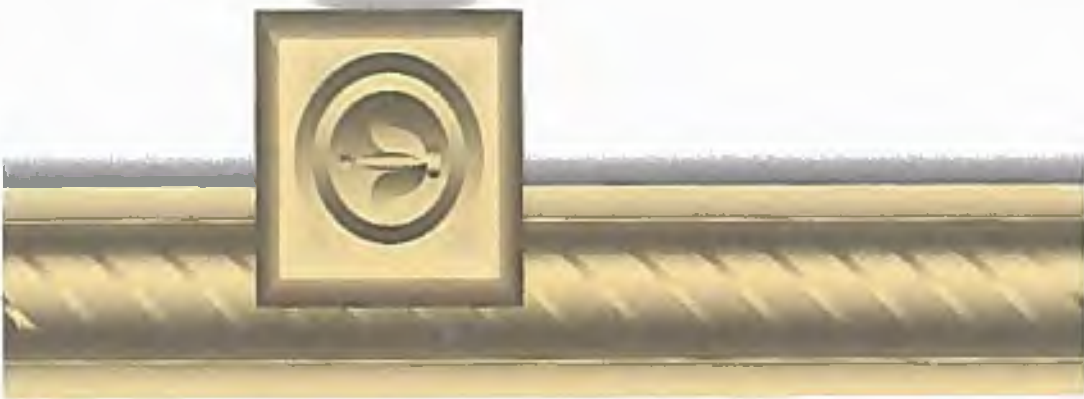
1. Be ALERT during the execution of policing tasks to prevent unplanned reactive actions.
2. Obtain the initiative in the execution of policing tasks to ensure control over the situation
3. Apply tactical communication to limit the need for the use of physical force.
4. Operate all personal equipment to ensure safety of people within the requirements of the Constitution and Police Service Act.
5. Make use of force decisions that meet legal, organizational and public requirements.
6. Function as member of a structured cohesive team in executing crime combating tasks.

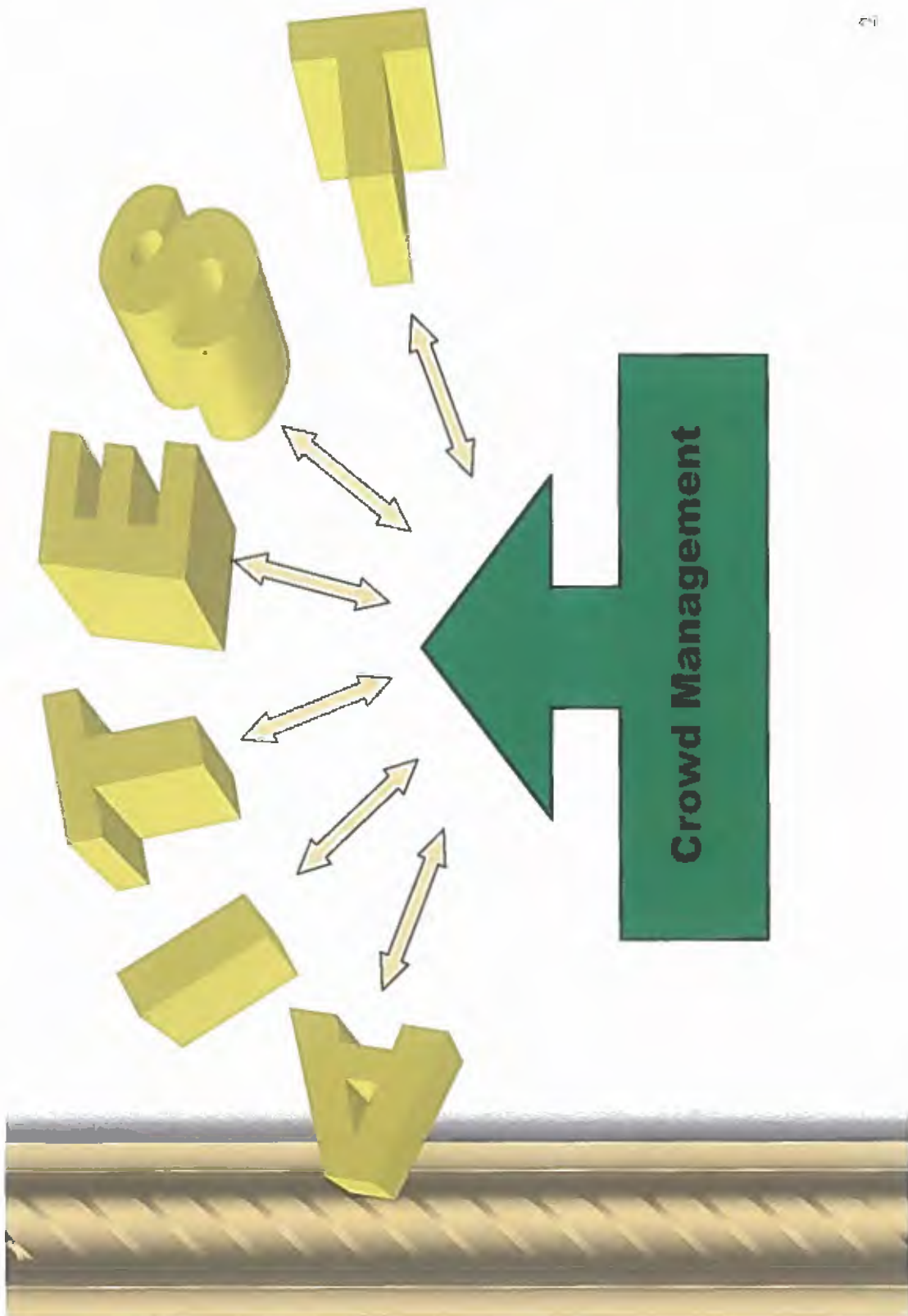


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3	SCALE USE OF FORCE	
4	CONSTITUTIONAL POWERS OF THE POLICE	
5	POWERS OF THE POLICE GIVEN BY THE LAW	
6	PRIVATE DEFENCE ACCORDING TO COMMON LAW	
7	CONSTITUTION FOR PRIVATE DEFENCE	
8	DEADLY FORCE TRIANGLE	
9	JEOPARDY	
10	TEAMWORK	
11	TACTICAL COMMUNICATION	
12	EQUIPMENT AND RESOURCE VITALISATION	
13	SCALE (TACTICAL LEVEL)	
14	SUMMARY	

AI TEST and Crowd management





AI TEST- Alert

- Understand the crowd
- Observe the danger signs
- Avoid being caught up in the crowd
- Continuously collect information and evaluate the situation
- Determine the needs of the crowd and their leaders

AI TEST- Initiative

- Control the situation and your environment
- Ensure safe progression
- OODA-LOOP - stay within the loop
- Bring the leaders out to your ground

AI TEST- Tactical communication

- Ask questions
- Reflect verbal attacks
- Focus on the bigger goal (be flexible)
- Strive towards “win more, win more”. “For your safety and mine please”
- Build trust and apply active listening
- Be aware of -
 - communication filters
 - non-verbal signals and tone of voice

AI TEST- Equipment

- Well-maintained
- Prepared for duty
- Regular inspections
 - expiry dates
 - damage.

6

AI TEST- Shooting Decision

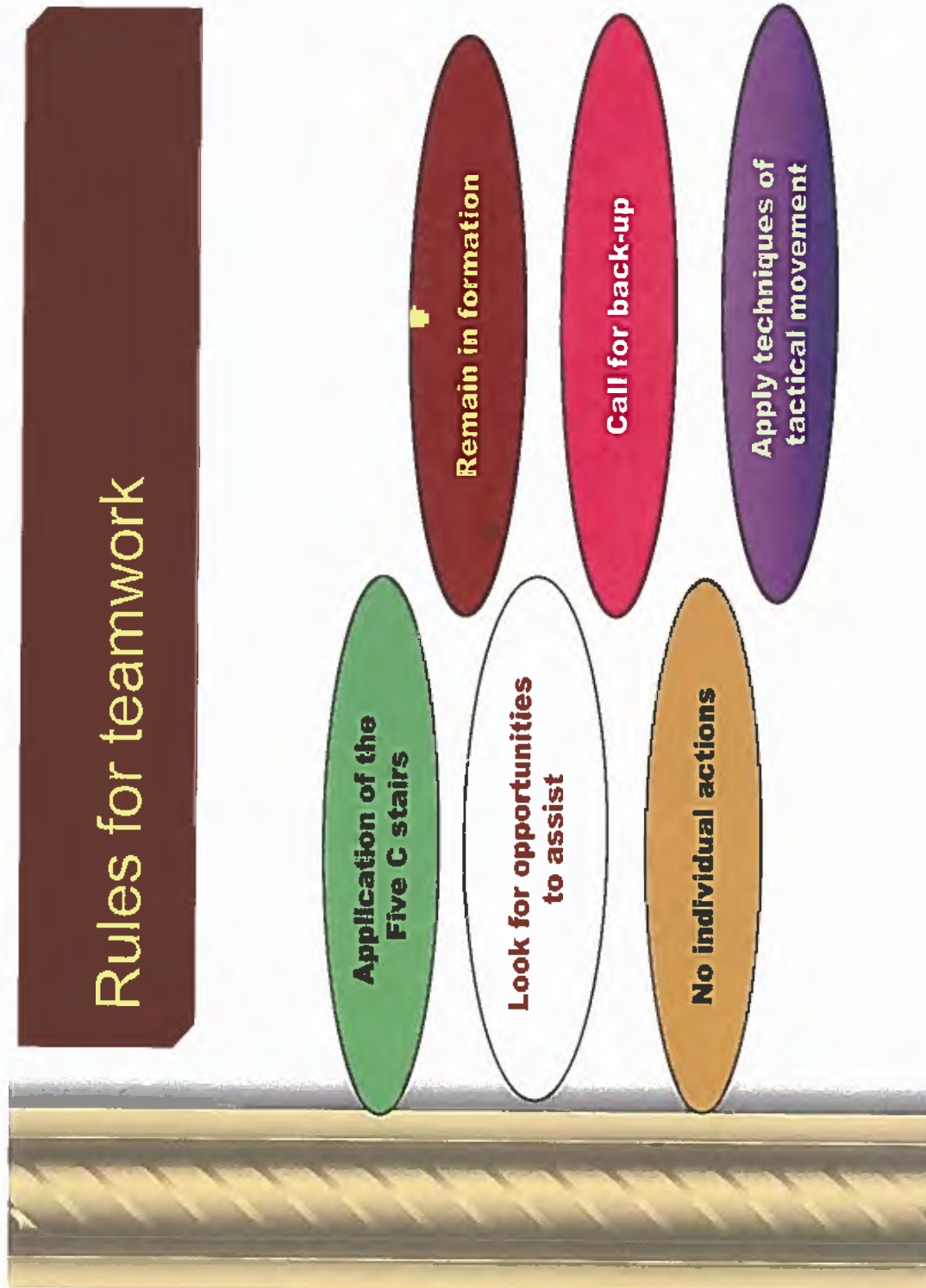
- The democratic balance
- Principles of community policing
- Use-of-force decisions
- Five C stairs
- Implications for future marches/
gatherings
- Policing functions
- Code of Conduct

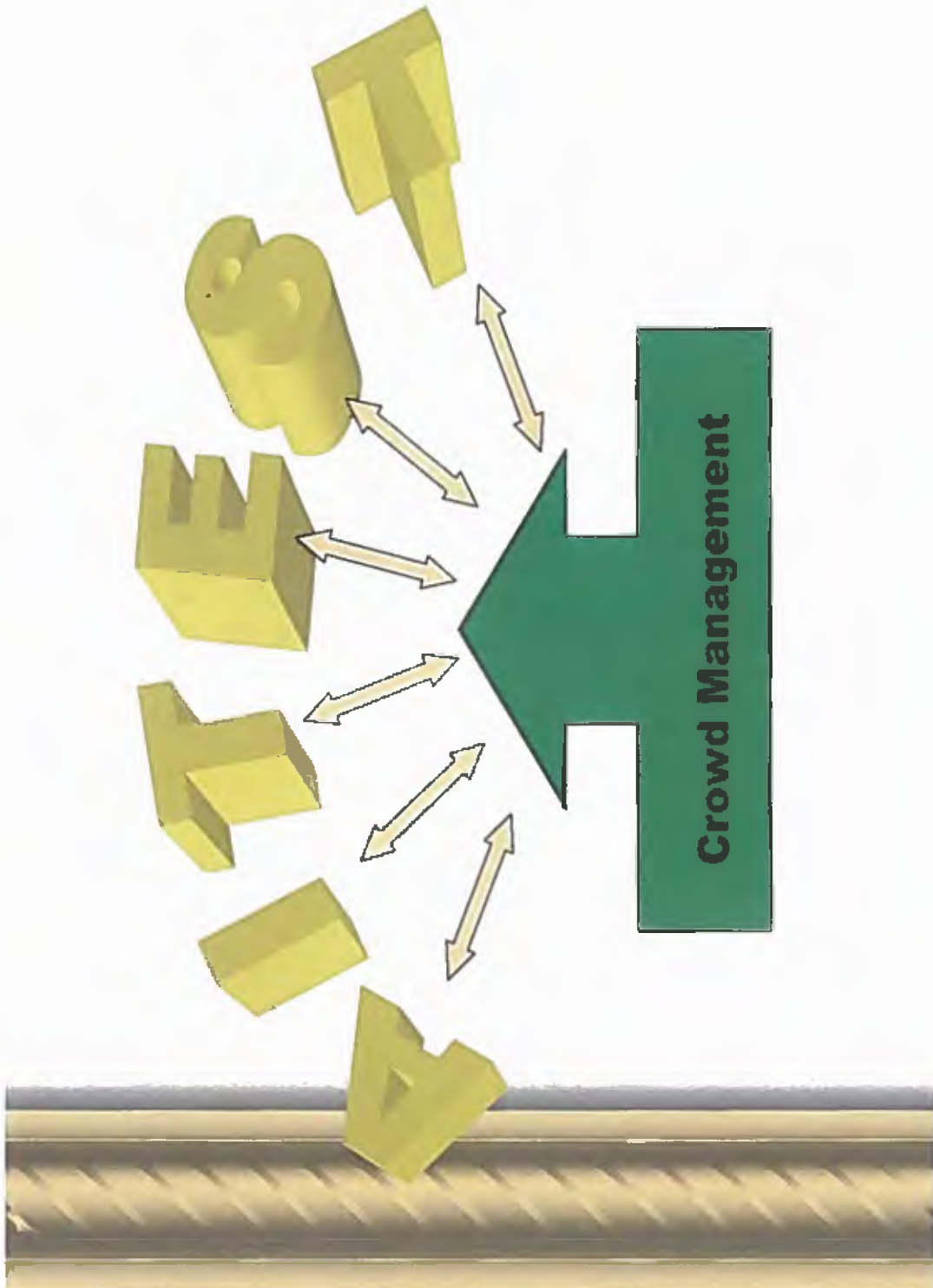
AI TEST- Teamwork

Teamwork is when a group of people work towards a **common goal** in a **unified** and **cohesive** manner.

The opposite of teamwork is **individual actions** which divide power and result in risky, unplanned, isolated actions.

36





1. INTRODUCTION

The principles of use of force are based on the safety of police members during crowd management exercises for the purpose of reasonable, justifiable and appropriate use of force.

2. A1 TEST

2.1 AI-TEST ACRONYM

- A** - Alert
- I** - Initiative
- T** - Tactical Communication
- E** - Equipment
- S** - Scale for use of force decisions
- T** - Team work

Note: All six principles must be applied to all policing tasks.

2.2 ALERT AI-TEST

- Knowledge of the threat
- Awareness of personal circumstances
Mentally switched on,
- Read the signs or ID danger clues
- The ability to anticipate danger
- Avoid "threat" situations
- Continuous action planning
- Plus one rule
- Tactical breathing

- Visualization
- Programming the proper response
- Programming back-up plans

2.3 I—INITIATIVE AI-TEST

1. Safety is only possible if there is full control over the object
2. Safe progression through cohesive action
3. Pre-containment phase
4. Containment
5. Isolation
6. Action

When control is lost move back one phase

1. Tactical Communication Approach
2. Arrogance can be a trigger of violence
3. Professional Presence
4. Do not lose temper
5. Tolerant
6. Open
7. Flexible
8. Unbiased
9. Have a plan

2.4 TACTICAL COMMUNICATION APPROACH

1. Arrogance can be a trigger of violence
2. Professional Presence
3. Do not lose temper
4. Tolerant
5. Open
6. Flexible
7. Unbiased

Have a plan

2.5 TACTICAL COMMUNICATION NEGOTIATION

1. Reflect verbal attacks.
2. Focus on bigger goal (be flexible).
3. Strive towards Win more Win more. "For your safety and mine please....."
4. Build trust and apply active listening.
5. Be aware of:
 - Communication filters
 - Non verbal and voice

The following tactical communication are as follows:

- Active listening
- Verbal abuse
- Voice tone
 - Strip phrases for example.
 - " I understand that, but.....Oh yes, butYou have a point, but"
Maybe so, but..... "
- There are two basic laws during communication namely: " They can say what they want as long as they do what I say"
- This is the only profession that requires us to be in control when everyone around us is out of control
- The visual control are as follow:
 - Opposite of tunnel vision
 - Use peripheral vision
 - Ensure no surprise

During body language the following are important, namely:

- Show confidence & in control
- Assertive
- Control body movements

Positioning:

- Always put something between you and the suspect
- Closing of distance
- Let people sit

Demonstrate readiness

Closing the distance

- Do not attempt this without good back-up cover!

2.6 EQUIPMENT

What Equipment problems do you experience?

Holster covered by body armour

What is your responsibility?

- Make list of equipment you need to be competent in the use of.
- What could you look out for or be conditioned in when preparing for duty?

3. SCALE FOR USE OF FORCE

- Constitutional Authority to police
- Law Gives Powers to Police

- Framework for discharging Discretionary Powers
- Reasonable Police Official

4. CONSTITUTIONAL POWERS TO POLICE

- Prevent, combat and investigate crime
- Maintain Public Order
- Protect and secure the inhabitants of RSA and their property, and
- Uphold and enforce the law

5. POWERS OF POLICE GIVEN BY LAW

- Criminal Procedure act, 1977 (Act 51 of 1977)
- Police Service Act, 1996 (Act 68 of 1996)
- Regulations of the Gatherings Act, 1993 (Act 205 of 1993)
- The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

6. PRIVATE DEFENSE ACCORDING TO THE COMMON LAW

Defense of self or somebody else against an unlawful attack on life, body, property or person.

7. CONSTITUTION FOR PRIVATE DEFENSE

- Must be unlawful
- Attack must still be threatening
The attack can be against a third party and not the defender
- Must be the only way out
- Must do no more damage than what is necessary to protect against the attack
- Must be aware of the fact the action is out of private defense

7.1 DISCRETION

- Discretion is given in empowering provisions in law by using the words "Can or May"
- The police official must carefully consider all the different options and prevent infringing the rights of individuals as far as possible.

7.2 POLICE DISCRETION

- Do you have the power?
- Is it reasonable and justifiable to do it?
- What about the constitution?
- What about the Code of Conduct & Police Service Act?
- Don't you have professional ethics as police officials?

7.3 REASONABLENESS

Force used is reasonable when:

- A person believe it is appropriate to act
- The belief is based on facts
- Any reasonable person in the same circumstances and view of the ground would have the same belief.
- The reasonable man test will be used to test reasonableness of all use of force decisions.

7.4 SECTION 36(1) CONSTITUTION

Contained in law of general application.

Reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

7.5 Code of Conduct SAPS

Police officials promised to:

- Uphold the constitution
- Uphold and protect the fundamental rights of every person &
- Exercise the powers conferred upon them in a responsible and controlled manner.

7.6 POLICE SERVICE ACT, 1996 (ACT 68 OF 1996)

Section 13 subsection (3)(b) states:

Police Officials who are authorized by law to use force, may use only minimum force which is reasonable in circumstances

7.7 ETHICAL PRINCIPLES

- Integrity
- Respect for diversity
- Obedience to Law
- Service Excellence
- Public approval

7.8 THE REASONABLE POLICE OFFICIAL

- Have extensive knowledge of police powers given by law
- In second nature act in private defense
- Understands the dynamics of the society he/she serves
- Comply to the ethical principles of the Service and by doing so serve the Constitution and Code of Conduct

8. DEADLY FORCE TRIANGLE

- Improper shooting decisions carries the potential for
- costly civil claims,
- criminal prosecution,

- strained community relations and
- ruined professional and personal lives
- such decisions takes place under high stress situations
- officials are afraid of consequences
- In most cases the decision is complex and risky
- applying the AI TEST and
- being well trained.

will simplify shooting decisions.

- The Deadly Force Triangle will improve high stress shooting decisions.

9. JEOPARDY

Jeopardy exist when the suspect takes advantage of his/her ability and opportunity to place a person in imminent physical danger.

10. TEAMWORK

- Teamwork is when a group of people work towards a common goal in a unified and cohesive manner
- The opposite of teamwork is individual action which divide power and result in risky unplanned isolated action.

11. TACTICAL COMMUNICATION

- Preventative communication to resolve conflict. (Forums etc)
- Establish communication and negotiate always as first option.
- Deployment of Forces also communicate a message.

12. EQUIPMENT AND RESOURCE UTILISATION

- Deploy resources to match the threat. Why?
- Deploy appropriate equipment and technology. Why? What can go wrong?
- What is the consequences of always planning for the worst case scenario?
- What assessments must be conducted to be able to deploy appropriate physical resources?

13. SCALE (TACTICAL LEVEL)

Legal framework remains the same

To prevent individual action there is a need for quick decisions which can be achieved through.

- Written use of force policy
- Contingency plans
- Accurate, direct and timeous information
- AI-TEST as integrated system



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W/O	J Dikela	PROV ORS 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	Madavha	POP Limpopo
W/O	PS Maluleke	POP North west
W/O	BJ Masanabo	POP Mpumalanga
W/O	HJ Lourense	POP Upington Cape
W/O	KL Shabalala	POP New Castle
W/O	TE Rantso	POP Welkom