



African Policing Civilian Oversight Forum

Submission on the proposed revised national policing standards for Municipal Police Services on Crowd Management During Gatherings and Demonstrations

9 July 2024

1. Introduction

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to make this submission to the National Commissioner of the South African Police Service in response to the call for public comments on the proposed revised national policing Standards for Municipal Police Services on Crowd Management During Gatherings and Demonstrations (the proposed Standards). We are a not-for-profit trust based in Cape Town, working on issues of police accountability and governance in Africa. More information about APCOF is available at www.apcof.org.za.

Our submission is divided into two parts. The first part provides general observations about the proposed Standards and seeks clarity on a range of core issues. The second part makes specific recommendations aimed at strengthening the proposed Standards.

In preparing this submission, APCOF has considered the provisions of key national legislative instruments that regulate policing and crowd management in the country, all of which have been cited in the proposed Standards. These include the South African Police Service Act 68 of 1998 (the SAPS Act); the Regulations of Gatherings Act 205 of 1993 (the RGA); and the Critical Infrastructure Protection Act 8 of 2019. We have also reviewed and considered the contents of the National Municipal Policing Standards for Crowd Management During Gatherings and Demonstrations, published on 20 March 2008. These instruments, together with the provisions of other binding regional and international human rights instruments, form the basis of our submission.

2. General observations about the proposed Standards

APCOF welcomes the serious attempt by the drafters to draw on the international and continental soft law on policing of assemblies.

However, we note the absence of a guiding or explanatory note in the introductory section of the proposed Standards. Such an explanatory note will assist in understanding the purpose of the standards and their relationship to the existing standards published on 20 March 2008 (the 2008

African Policing Civilian Oversight Forum

Building 23B, Suite 16, Waverley Business Park, Wyecroft Road, Mowbray, Cape Town, 7925

PostNet Suite 63 Private Bag x11, Mowbray, 7705

Tel: +27 21 447 2415

www.apcof.org.za

Trust no. IT1900/2012

PBO 930041858, NPO 119 688- NPO

Trustees: A van Wyk (Chair), G Cronje (Treasurer), S Africa, T Gandidze, P Tlakula, E van der Spuy

Standards) and the relationship, if any, to the recommendation of the Panel of Experts on Policing and Crowd Management that:

“The Panel is of the view that the South African Police Service Act, 1995, should be amended to confirm that municipal police services have a mandate in respect of crowd management.”¹

The Municipal Police are established in terms of section 64A of the SAPS Act. Section 64E of the Act articulates the powers and functions of Municipal Police, as:

- Traffic policing, subject to any legislation relating to road traffic;
- The policing of Municipal by-laws and regulations which are the responsibility of the Municipality in question; and
- The prevention of crime.

While we acknowledge the Regulations of Gathering Act (RGA) of 1993 establishes a role for a range of law enforcement role players, including Municipal Police, in crowd management, confirming this role through regulations to the SAPS Act is not appropriate.

We are of the view that a legislative amendment to section 64E is required to expressly provide crowd management as part of the functions and mandate of Municipal Police Services.

Using language from the RGA, such as “first responder”, which is defined in the proposed Standards as “the first official who responds to and arrives at the scene of a spontaneous *gathering* (such an official may be a member of *the Service*, a *member* or other law enforcement agency)”, creates confusion and could be read to erroneously expand the scope of the regulations beyond the ambit of Municipal Police Services and the powers provided in the SAPS Act.

Furthermore, the proposed standards will place additional responsibilities on Municipal Police Officers to be sufficiently trained, equipped and capacitated to ensure they manage gatherings in accordance with their human rights obligations and the values and principles set out in the proposed document. However, APCOF observes with concern that no additional information on the costing of this has been provided.

Recommendation

It is therefore recommended that the draft Standard be withdrawn.

If the intention of the proposed Standard is to confirm the role Municipal Police in crowd management, we recommend the SAPS Act be amended to explicitly provide for this role.

If the intention of the proposed Standards is to inform the conduct of first responders, we recommend that the standards be developed in terms of the RGA.

Alternatively, we recommend that new Standards be drafted, which confines themselves to issues which are appropriate to a Standard (such as training and equipment) and which purport to bind only Municipal Police Service.

¹ Final report of the Panel of Experts on Policing and Crowd Management (2018 at page 308. The Panel was convened on the recommendations of the Marikana Commission of Enquiry. The final report was released in March 2021.

3. Observations and recommendations aimed at strengthening the proposed Standards

In addition to the general observations above, APCOF has engaged the contents of the proposed standards, and makes the following observations and recommendations aimed at strengthening the text.

3.1. Separate Public Order Duties and Event Management

APCOF acknowledges the need for clarity on the role of Municipal Police and other first responders in public assemblies and protests. However, rather than overburdening the proposed standards with event management, we recommend that this be provided for under section 15 of the Safety at Sports and Recreational Events Act (SASREA), which the Minister responsible for sport is empowered to make.

3.2. Strengthen provisions on contingency planning

While we welcome the detailed explanation set out in the proposed Standards in relation to operational planning, we are concerned that limited guidance has been proposed on risk assessment and contingency planning. International standards, including the African Commission on Human and Peoples' Rights' [Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa](#), provide that effective planning and preparation for gatherings require police officers to conduct a risk assessment and threat analysis, and develop contingency plans to mitigate risk. In addition, risk and threat assessments allow for proportionate deployment and equipping of police officers. Therefore, in our opinion, risk assessment and contingency planning need to form part operational planning and preparation.

Recommendation

To enhance the extent to which they facilitate public gatherings and demonstrations in accordance with their human rights obligations, the proposed Standards should expressly require members of Municipal Police Services to include risk assessment and contingency planning as part of their operational planning. In particular, contingency plans must provide members of the Municipal Police Services with a course of action to help them respond effectively to the gathering, and should include:²

- The provision of essential services, including emergency services, traffic management and medical services;
- Considerations relating to adverse weather conditions and other environmental factors;
- Measures to minimise harm in all scenarios, including the protection and safety of law enforcement officials, assembly participants, independent monitors and bystanders, with special measures in place to identify and provide specific protection to groups vulnerable to rights abuses in the context of assemblies;
- For the eventuality that non-coercive measures are not effective, the graduated use of any coercive measures and force in accordance with the Standards and other relevant regional and international human rights standards;
- Maintenance of regular internal communication and adequate record-keeping to ensure that all law enforcement officials deployed to an assembly operation are aware of the tactical and other operational plans;

² This guidance has been drawn from Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, adopted in 2017 by the African Commission on Human and Peoples' Rights, page 16.

- Other hazards and risks identified in the risk assessment that are specific to the context of the particular assembly; and
- Contingency planning must include measures for the safe custody of persons arrested and held in detention at the assembly site and their safe and timely transfer to a recognised place of detention.

3.3. Strengthening command transfer to the Public Order Policing Unit

The proposed Standards seek to regulate crowd management by members of Municipal Police Services, including as first responders to spontaneous gatherings. However, more clarity is required regarding how operational command will be handed over by MPS members to the Public Order Policing Unit (POP Unit), including during threat level one or two.

A clear chain of command and control at all stages of the management of an assembly is a basic requirement of police accountability. International standards require that in the management of public gatherings, it should always be possible to establish the identity of superior officers and operational commanders responsible for policing decisions or unlawful use of force.

Recommendation

To strengthen the existence of a clear chain of command at all stages of the management of gatherings and demonstrations, the proposed Standards should clearly set out a procedure for how command and control is to be handed over by members of the Municipal Police Services to POP Unit, including in the context of spontaneous gatherings.

3.4. Guidance on the role of monitors and observers

The role of journalists, independent monitors and observers, and National Human Rights Institutions has been recognised in international and regional standards on freedom of assembly. Generally, these standards provide that police officers should not obstruct or limit their work, and should put in place clear measures aimed at facilitating their work. APCOF is concerned that the proposed Standards do not make provision for the role of these key stakeholders, or provide guidance on how members of Municipal Police Services should facilitate their work.

Recommendation

To ensure members of Municipal Police Services manage gatherings and demonstrations in a rights-based, transparent and accountable manner, the proposed Standards should include a provision on the role of journalists, independent monitors, observers and the South African Human Rights Commission. In addition, the proposed Standards should provide guidance for the Municipal Police Service on facilitating the work of observers and monitors. We recommend that the proposed Standards be amended to include provisions that require Members of Municipal Police Services to:³

- Establish communication channels with journalists, independent monitors, observers, the South African Human Rights Commission and other oversight stakeholders, and notify

³ These guidance have been drawn from the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, (2024), page 14.

them of anticipated protests and to exchange any relevant information before, during and after a protest.

- Refrain from conducting accreditation processes or requiring formal accreditation or other forms of authorization for media workers, monitors and other observers, lawyers and medical personnel to gain access to a protest site;
- Ensure that media workers, monitors and other observers are able to photograph or record actions and activities at a protest, including law-enforcement operations, and that such recordings are not confiscated, seized and/or destroyed without due process and may be used as evidence in relevant disciplinary, administrative or criminal proceedings;

3.5. Use of surveillance and digital technologies

APCOF is concerned that the proposed Standards do not contain guidance on the use of digital technologies and surveillance systems. These are increasingly being made available to police agencies, and clear guidance is required to ensure that their use is consistent with fundamental rights, including the right to privacy.

Recommendation

We recommend that the proposed Standards be revised to include safeguards with respect to the use of surveillance and digital technologies. In particular, proposed Standards should provide for the following:⁴

- That surveillance on the basis of group affiliation and the targeted use of spyware in the context of protests are actions that are incompatible with international human rights law and must not be used;
- That members of Municipal Police Services employ the least intrusive methods while gathering information, conducting assessments and collecting evidence during a protest, which should be done in full compliance with protections against arbitrary or unlawful infringement of participants' rights;
- That any decision to utilise surveillance strategies and/or to record participants is exceptional and limited to legitimate law enforcement purposes, such as directly aiding the prevention, investigation and prosecution of a specific criminal offence occurring within the context of the protests. Facial recognition technologies and other biometric systems must not be utilised to identify individuals who are peacefully participating in a protest;
- That members of Municipal Police Services establish strict law enforcement protocols to govern the collection, retention and use of data collected during a protest, in accordance with a commitment to safeguard the rights and privacy of individuals;
- That they refrain from interpreting with suspicion any tactics utilised by an individual or group of individuals during a protest with the ostensible intention of preserving their anonymity. Individuals have a legitimate expectation of a degree of anonymity in online and offline spaces;
- That they develop and implement a human rights-based approach to govern the authorisation and use of digital technologies for information-gathering in the context of protests. Decisions should be made on a case-by-case basis and aligned with the specific law enforcement objective and circumstances; and
- That any use of digital technologies to facilitate a protest should be solely aimed enabling the right to freedom of peaceful assembly.

⁴ These guidance have been drawn from the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, (2024), pages 6, 12, 15 & 16.

3.6. Cooperation with independent investigations

APCOF is concerned that the Proposed Standards do not compel members of Municipal Police Services to cooperate with independent investigative processes and comply with requests for information. Accountability is one of the founding norms our Constitution.⁵ In our view, one of the core elements of accountability is the obligation of law enforcement officials to cooperate with oversight and accountability mechanisms, including with investigations into public assembly operations.

Recommendation

To strengthen the extent to which they manage public gatherings in transparent and accountable manner, the proposed Standards should require members of Municipal Police Services to actively cooperate with independent investigations, and comply with requests for information, including requests for the production of documents. Officials under investigation or charged/prosecuted for unlawful acts during assemblies should not be deployed to assembly operations.⁶

3.7. Counter-protests

Proposed Standard 13(1) indirectly addresses counter-protests. However, the proposed Standard should go further by providing guidance on measures to manage situations of counter-protest.

Recommendation

Further guidance should be provided in the proposed Standard on how to manage counter-protests.

3.8. Deficits in the provision on carrying of weapons during protests

Proposed Standard 13(4) states that carrying weapons during a protest is unlawful. However, this should not be interpreted as depriving the assembly of its peaceful nature. The presence of weapons does not automatically warrant a disarmament action. This section is problematic concerning the safety of participants and upholding the law. Officers should be duty-bound to disarm any armed participant. This action can be taken without destabilizing the entire assembly.

Recommendation

To strengthen the provision, APCOF recommends that proposed Standard 13(4) should read: "Carrying weapons during a protest is unlawful. The presence of weapons among participants does not automatically deprive the assembly of its peaceful nature. Law enforcement officers are duty-bound to disarm any armed participant to ensure the safety of all participants and the public. This action must be executed in a manner that does not destabilize the entire assembly."

A disarmament protocol could include:

⁵ Section 1 of the Constitution of the Republic of South Africa, 1996.

⁶ Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, (2024), page 9.

- Identifying and isolating the individual carrying a weapon.
- Engaging the individual calmly and requesting the voluntary surrender of the weapon.
- If the individual does not comply, law enforcement officers may proceed with disarmament using minimal force necessary to ensure compliance.
- Ensuring that the disarmament process respects the rights of the individual and maintains the overall peace of the assembly.

4. Conclusion

APCOF, again, welcomes the opportunity to comment on the proposed Standards. We hope that the recommendations contained in this submission will be incorporated into any revised draft, to ensure that guidance on arrest and detention for members of Municipal Police Services complies with international standards. APCOF is available to provide further information related to any aspect of this submission on request.