

# NATIONAL HUMAN RIGHTS COMMISSION (NHRC)



## Guidelines on Policing Public Assemblies in The Gambia



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## FOREWORD

The National Human Rights Commission of The Gambia (NHRC) was established by the National Human Rights Commission Act 2017 with a general mandate of protecting and promoting human rights in The Gambia. Section 12 (e) (v) of the NHRC Act 2017 empowers the NHRC to publish guidelines, manuals, and other materials to educate, inform and explain the obligations of public officials in the protection of human rights.

The 1997 Constitution, as the supreme law of the land, guarantees in Section 25 (1) (d) and (e) the right to freedom of assembly and freedom of association, respectively. These rights are also sine qua non for effective political participation and accountability. However, the right to freedom of assembly and association has been frequently flouted by the former Alliance for Patriotic Reorientation and Construction (APRC) government under President Yahya Jammeh. With the advent of a new government led by President Adama Barrow in 2017 and the increased demand by the people of their fundamental rights and freedoms, the right to freedom of association and assembly has been severely tested in The Gambia. Crowd control, assembly management, unruly behaviour of some protesters, and the non-adherence to international Standard Operating Procedures of policing assemblies remain significant challenges for law enforcement officers during public processions.

In line with its mandate and considering the prevailing circumstances in relation to public processions, the NHRC has issued an advisory note on the right to freedom of association and assembly vis-à-vis the Public Order Act Cap 22.01 Laws of the Gambia –a remnant of a 1955 colonial law. By the adoption of these guidelines, we hope to ensure respect for human rights, protect public order, peace and security and enhance law enforcement which meets international standards as per regional and international legal instruments which guarantee right to association and assembly.

The guidelines, adopted and contextualised mainly from the African Commission Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, address issues affecting the right to freedom of association and assembly with specific focus on policing public assemblies. Whilst these guidelines will undoubtedly enhance the organisation of peaceful assembly in The Gambia, I urge the police command to embrace and strictly adhere to and enforce the provisions of the guidelines in their operations.

Emmanuel D. Joof  
Chairperson

## PREAMBLE

The National Human Rights Commission (NHRC) established by the National Human Rights Commission Act of 2017;

**Recalling** its core mandate to promote and protect human rights in The Gambia;

**Recognising** its obligation to assist the Government of The Gambia in formulating appropriate policies to guarantee human rights as part of its promotion mandate pursuant to section 12 (iii) and (v) of the NHRC Act 2017.

**Recalling** the NHRC's advisory note on the right to freedom of association and assembly vis-a-vis the Public Order Act;

**Further Recalling** Chapter IV of the 1997 Constitution dealing with fundamental rights and freedoms of all persons without discrimination;

**Considering** the African Commission Guidelines on Policing Assemblies in Africa;

**Recognising** the right to assemble and demonstrate peacefully and freely with others is a corner stone of democracy and provides individuals and groups with a platform to express civil, political, economic, social and cultural and environmental rights, to hold government to account, and to raise and defend issues of common or national interest;

**Recognising further** the central role played by the police in ensuring the peaceful conduct of public assemblies and consequently protecting freedom of expression and assembly.

**Noting** the need to promote and strengthen mechanisms to foster negotiation and communication between all relevant stakeholders involved in public assemblies including organisers, law enforcement agencies and local authorities.

**Recognising** that particular individuals and groups are especially vulnerable to experiencing limitations on their right to freedom of assembly and to other human rights violations in the context of policing assemblies due to their status or to an intersection of one or more statuses, such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability, sexual orientation and gender identity, or being journalists or human rights defenders;

**Concerned** about the several unfortunate incidents which have disrupted public peace, order, and security.

**Noting** that Section 5 of the Public Order Act of The Gambia impede the enjoyment of the right to demonstrate/ protest by unreasonably requiring the issuance of permit and grants wide discretionary powers to the police to prevent, stop or restrict the venue of public assemblies;

**Concerned** about the lack of effective and appropriate monitoring mechanisms and independent police oversight coupled with inadequate training and resources availability of resources to police officers to promote and protect a rights-based approach to the policing of assemblies;

**Recognising** the urgent and important need to formulate and lay down principles and guidelines to strengthen the promotion, protection and fulfilment of human rights in the context of policing assemblies in The Gambia;

**Hereby** adopts the following Guidelines on Policing Assemblies in The Gambia by Police Officers:<sup>1</sup>

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<sup>1</sup> These guidelines are principally adopted from the African Commission Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa with necessary modification to suit The Gambian context.

## PART 1: PRELIMINARY PROVISIONS

### 1. General principles governing the right to assemble freely with others

- 1.1. Everyone has the right to assemble freely with others. The right to assembly may be exercised in several ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, using online platforms, or in any other way people choose.
- 1.2. Any limitations/restrictions imposed by the police command on people's right to assemble freely with others must:
  - 1.2.1. Be reasonable and justifiable, strictly in accordance with limitations on the right to assemble in accordance with the Constitution, and regional and international human rights standards.; and
  - 1.2.2. Comply with the principles of Proportionality, legality, Accountability and Necessity (PLAN)
- 1.3. Participants and organisers of assemblies shall exercise the right to assemble with due respect to the right of others and in compliance with the laws in place which themselves should be consistent with the constitution, other relevant national laws, regional and international human rights standards.

### 2. Regulatory framework governing the right to assemble freely with others

- 2.1. The drafting and implementation of Standard Operating Procedures (SOPs), policies and guidelines by the Police force governing the right to assemble freely with others must:
  - 2.1.1. Require Police responses that favour the presumption of the exercise of the right to assemble freely with others by all persons involved, or believed to be involved, in the assembly;
  - 2.1.2. Be consistent with the Constitution, regional and international human rights instruments ratified by The Gambia;
  - 2.1.3. Recognise that limitations and restrictions on the right to assembly freely with others must be treated as an exception, and that any limitations or restrictions imposed must be legal, necessary, non-discriminatory, and proportionate, and be:
    - 2.1.3.1. Decided on a case-by-case basis; and

- 2.1.3.2. Reviewable by competent, independent, and impartial administrative, judicial, or quasi-judicial authorities, in both law and practice, within 72 hours.

## PART 2 ORGANISATIONAL AND OPERATIONAL REQUIREMENTS FOR A RIGHTS-BASED APPROACH TO THE POLICING OF ASSEMBLIES

### 3. General principles

- 3.1. Police officials as agents of the State are under an obligation to respect and protect the right to assembly. For the purpose of these Guidelines, Police officials are all members of the Police Force or other competent persons or authorities directly or indirectly authorised by the State to exercise policing powers during the coverage an assembly.
- 3.2. Generally, the military should not be used to police assemblies and must only be used in exceptional circumstances and only if necessary. Military personnel deployed to assembly operations must be subordinate to, and under the command of, the police authorities; be fully trained, in and be bound by, the relevant national laws, regional and international human rights standards, as well as any national Police policy, guidelines and ethics; and be provided with all necessary instructions, training and equipment to enable them to act in full respect of this legal framework.
- 3.3. The primary role of Police officials in policing assemblies is to ensure the safety of the public and to safeguard human rights of all persons.

### 4. Regulatory framework governing the policing of assemblies

- 4.1. All regulatory instruments and information about Police procedures relating to assemblies must be made accessible in accordance with the right of access to information as expressed in the African Charter on Human and Peoples' Rights and other regional and international human rights standards. Information includes records held by a public body at any level or by a private body performing a public function.
- 4.2. The Police command should have in place, make available, and promote, in the public domain, enforceable standards of conduct (Code of Conduct) for Police officer. Such standards should be consistent with regional and international human rights standards of conduct for Police officials.

4.3. Police officers shall be subject to accountability mechanisms and noncompliance by Police officers with laws and regulations governing assemblies must be treated as an offence. In particular, the use of arbitrary and excessive force and torture or other cruel, inhuman, or degrading treatment or punishment is prohibited at all time in all circumstances. Furthermore, disciplinary and or criminal procedures for Police officials must accord with the principle of procedural fairness.

## **5. Command structures**

5.1. There shall be established a clear, transparent, and single command structure for the policing of assemblies. The operational roles and responsibilities of Police officials within the chain of command should be clearly established, articulated, and publicly known to ensure a single chain of accountability.

5.2. Operational commanders shall be held responsible if they knew, or ought to have known, that Police officials under their command resorted to the unlawful use of force or firearms, and did not take reasonable measures to prevent, suppress, report or punish such unlawful activity.

## **6. Information, communication, and facilitation mechanisms**

6.1. The Police force has an obligation to promote access to information and should make available, in the public domain, information relevant to the policing of assemblies. Such information should include all regulations, standing orders and instructions, codes of conduct and information about chain of command and operational decision-making. The Police should provide information on the type of equipment generally available to Police officials when policing assemblies and the circumstances in which such equipment will be deployed, as well as procedures and reasons for imposing limitations on the right to assembly by public authorities and information on how to access internal and external complaints mechanisms.

6.2. The Police force should have and make known a communication mechanism to promote a collaborative and inclusive approach to the preparation, planning and policing of assemblies. The mechanism should be underpinned by principles of transparency, community partnership, and the proactive dissemination of all key information to stakeholders. Stakeholders in this context includes, but is not limited to, assembly organisers, essential service providers, local authorities, the media, other security sector actors, oversight and accountability mechanisms such as National



Human Rights Commission, Independent Police Civilian Oversight Authority if available, Ombudsmen, and Civil Society.

6.3. To facilitate effective communication, the Police force should appoint specially trained officials to act as communication liaisons with stakeholders.

6.4. The Police force must allow for and facilitate the involvement of third parties in dialogue and mediation with assembly organisers prior, during and after assemblies, and provide prompt and relevant information to such third parties for this purpose. Such third parties may include Ombudsmen, National Human Rights Commission, local authorities, and civil society organisations.

## **7. Training**

7.1. Police officers shall be adequately trained to facilitate the exercise of the right to assemble freely with others. Elaborate training on policing assemblies shall be incorporated into police training school curricula.

7.2. All Police officers, regardless of unit, shall receive on-going and continuous training on policing assemblies, with advanced training available to personnel other the Police Intervention Unit or any other unit established for the specific purpose of policing assemblies. the main aspects of the training curricula should include the following:

7.2.1. The normative framework for the right to assemble freely with others, as well as a clear explanation of the relationship between the right to assembly and other regional and international human rights standards as set out in 1.2.1;

7.2.2. Communication skills training to ensure the effective facilitation of assemblies, including the possible ways non-verbal or other forms of indirect communication can be perceived by assembly organisers and participants as intimidating (for example, the presence or use of certain equipment and the body language of officials);

7.2.3. Understanding participant behaviour, including the different types of group behaviour, and techniques for differentiating between various groups and people and their individual behaviours, rather than dealing with assembly participants as a single, homogenous group:

7.2.4. Techniques in minimising conflict, including the development of negotiation and mediation skills;

7.2.5. Tactics to promote the de-escalation of tension and violence, and methods for minimising the risk of harm to assembly participants, observers and bystanders;

- 7.2.6. The lawful use of force and firearms in accordance with Guideline 21 of these Guidelines and other regional and international human rights standards;
- 7.2.7. The proper use of less lethal weapons to minimise the risk of abuse by Police officers. Specific training regimes should be devised for each weapon and should include both theoretical and scenario-based training, as well as shooting at static or interactive targets;
- 7.2.8. The safety and protection of persons and groups who are particularly vulnerable to limitations on their right to assemble freely with others and/or other human rights violations in the context of assemblies, due to their status or an intersection of one or more statuses. This includes, but is not limited to, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, economic status, fortune, birth, disability, sexual orientation and gender identity, or being journalists or human rights defenders;
- 7.2.9. The roles and mandates of internal and external accountability mechanisms, and the obligation of Police officers to cooperate with oversight and accountability structures;
- 7.2.10. Principles of accountability, including the internal and external mechanisms to which officials are answerable, and the obligations of a Police officers to report conduct by colleagues that is excessive, arbitrary or otherwise in violation of law.

## **8. Oversight, accountability, and monitoring**

- 8.1. The responsibility of The Gambia Police Force as a state agency to respect, protect, promote and fulfil the right to assemble freely with others extends to establishing effective procedures for reporting and reviewing any unlawful use of force, and to providing an adequate, effective and prompt remedy to persons who experience human rights violations due to the policing of assemblies. To fulfil this obligation, the Police Force should establish effective internal accountability mechanisms. In the absence of the internal accountability mechanism, the National Human Rights Commission may fulfil the external oversight function.
- 8.2. The Oversight mechanisms as mentioned above without prejudice to the powers and functions of any other authority established by law will be mandated to:
  - 8.2.1. Receive complaints from any person concerning misconduct of Police officers;
  - 8.2.2. Receive reports from Police officers of all deaths resulting from the actions of Police officers;

- 8.2.3. Conduct thorough, prompt, and impartial investigations of all complaints received, and, at its own investigate all suspected cases of arbitrary use of force and/or other human rights violation by Police officers
  - 8.2.4. Monitor and report on the preparation and execution of all Police operations, including recording and tracking complaints and abuses and maintaining comprehensive records;
  - 8.2.5. Solicit the Police force to cooperate with investigations and have full investigatory powers, including the power to compel the production of any document or other form of evidence;
  - 8.2.6. Make recommendations or findings; refer or recommend cases for internal police discipline and or prosecution;
- 8.3 The Police command shall ensure respect for the ability to lodge complaints with monitoring and oversight mechanisms for all persons without fear of reprisals or punishment.
- 8.4 The Police Force should establish and disseminate information concerning internal disciplinary and accountability mechanism, systems, and processes on police conduct, to guarantee the right of access to information for all persons in accordance with regional and international human rights standards.
- 8.5 The Police force should establish processes for the systematic collection, documentation and public dissemination of disaggregated data and other information about the policing of assemblies on an annual basis. Information may include the number of assemblies, the number of assemblies prohibited, the number of assemblies during which Police officials resorted to the use of force, the number of assemblies dispersed, and information about persons injured or killed as a result of police action during assemblies.
- 8.6 The right to monitor the observance of human rights in each society includes the right to engage in active observation of an assembly and to collect, verify, and use information related to the assembly. All persons have the right to seek and receive information and to freedom of expression and enjoy the right to observe and independently monitor public assemblies without fear of reprisal. This includes civil society organisations, human rights defenders, monitors, journalists, and other media workers.

## PART 3 PREPARATIONS AND PLANNING FOR THE POLICING OF ASSEMBLIES

### 9. Preparation for assemblies

- 9.1. Recognising the important expressive role that spontaneous assembly can play in a democracy, Police force shall have in place processes and procedures to ensure the facilitation of spontaneous assemblies, including in relation to known or scheduled political or social events, commemorative days, and in anticipation of decisions made by courts, parliaments and other state authorities. Lack of permit or notification should not render an assembly unlawful and should not form the sole basis of a decision by Police officials to disperse an assembly.
- 9.2. As soon as practicable after knowledge is gained of an intended or actual assembly, Police officials should take all reasonable steps to identify and communicate with assembly organisers and/or participants to prepare the facilitation of the assembly in accordance with these Guidelines.

### 10. Information gathering by Police officials

- 10.1. To facilitate the right to assemble freely with others, the Police require accurate information to conduct risk assessments and contingency planning, and to plan for the necessary and proportionate deployment and equipping of Police officers. Information may be collected through a system for the prior notification of assemblies, through communication between the Police and assembly organisers, observers or third parties, and through Police information and intelligence gathering techniques that comply with regional and international human rights standards.
- 10.2. The collection and processing of information, and the tactics permitted to be used by Police officers in pursuit of this objective, shall be in accordance with the law in a manner consistent with the right of access to information, the right to privacy, the presumption of innocence, and the guarantees of procedural due process pursuant to regional and international human rights standards. Any information collected and processed by Police officers must be limited to what is necessary and proportionate to a legitimate law enforcement purpose, and must not be used to harass, intimidate, or discourage persons from exercising their right to assemble.

## **11. Communication and facilitation with assembly organisers and other stakeholders**

11.1. The Police should prioritise communication with all stakeholders in their approach to the facilitation of assemblies. This approach will foster trust and confidence in the policing of assemblies, assist with risk assessment and contingency planning, and assist in preventing the escalation of tension and violence.

11.2. As soon as practicable after notification of intention to hold an assembly is given or knowledge is gained of an intended assembly, Police through the appropriate authority shall make every effort to communicate with assembly organisers and/or participants and must be able to evidence their attempts to engage in such communication. To promote effective communication, the Policies encouraged to establish formal communication mechanisms in terms of section 6 of these Guidelines.

11.3. Communication by the Police with assembly organisers and/or participants prior to the start of an assembly should be for the purposes of:

11.3.1. Gathering information to assist in risk assessment and contingency planning for the facilitation of an assembly. This includes information such as the expected size and modality of the assembly; the location, time and expected duration of the assembly; the profile of participant groups or persons; any subsequent change in circumstances or context; and any concerns about the security and public safety measures, deployment or policing operation;

11.3.2. Providing information, negotiating, and promoting consensus about planned security and public safety measures (including any limitations or restrictions placed on the assembly), proposed deployment, and the outcomes of risk assessments and contingency planning.

11.4 The Police should also prioritise advance communication with other key stakeholders, including the intended target(s) of the assembly, essential service providers, local authorities, and the media, to provide information and to facilitate coordination, where necessary.

## **12. Risk assessment and contingency planning**

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

plans should form the core of the briefings to Police officers deployed at an assembly and be communicated to all interested stakeholders.

12.2. Contingency plans should be developed for individual assemblies and be based on a comprehensive risk assessment. Measures foreseen in such plans must satisfy the principles of legality, necessity, proportionality, freedom from discrimination and equality before the law.

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

12.4. Contingency plans must provide Police officers with a course of action to help them respond effectively to the assembly and should include:

12.4.1. The provision of essential services, including emergency services, traffic management and medical services;

12.4.2. The facilitation and management of counter-assemblies or simultaneous assemblies;

12.4.3. Measures to be taken to de-escalate tension, to contain any escalation of tension and to deal with the potential for violence during assemblies;

12.4.4. For the eventuality that non-coercive measures turn out not to be effective, the graduated use of any coercive measures and force in accordance with these Guidelines, national laws and other relevant regional and international human rights standards;

12.4.5. Measures to minimise harm in all scenarios, including the protection and safety of Police 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;

12.4.6. Considerations relating to adverse weather conditions and other environmental factors;

12.4.7. The availability of Police officers and the obligation of the Police force to ensure that officers have adequate training in the management of assemblies, and enough rest, access to food and water.

12.4.8. Maintenance of regular internal communication and adequate record-keeping to ensure that all Police officers deployed to an assembly operation are aware of the tactical and other operational plans;

12.4.9. Maintenance of regular external communication with assembly organisers and participants, independent observers, the media and oversight authorities, including on any changes to the tactical or operational approaches of Police officers during the conduct of an assembly operation;

12.4.10. Other hazards and risks identified in the risk assessment that are specific to the context of the assembly.

12.5. The outcome of risk assessments and contingency plans should form the basis of a comprehensive briefing for Police officers by operational command prior to deployment to an assembly operation.

## PART 4 POLICING DURING ASSEMBLIES

### 13. Communication

13.1. The Police should engage in continuous dialogue and negotiation with assembly organisers and participants to proactively address any issues that may arise during the conduct of an assembly operation. The Police should deploy specially trained negotiators to assembly operations for this purpose, based on any need identified during risk assessment and contingency planning.

13.2. The Police should maintain open communication with all relevant stakeholders, including assembly organisers and participants, other essential services providers and stewards. The Police shall proactively and continually communicate the intention of the assembly operation, any limitations or restrictions imposed on the assembly and contingency planning in place with stakeholders and should consider the appointment of a specially trained communication liaison as a focal point for communication with stakeholders.

13.3. All communication to assembly participants should be clearly audible and made in a language understood by the intended audience, providing the intended audience with sufficient time to follow the instructions of Police of their own accord, including any warnings or directions provided.

## **14. Deployment**

- 14.1. The Police force shall ensure the visible identification of all Police officers deployed overtly in an assembly operation on an individual basis such as their name or service number.
- 14.2. In the deployment of officers to an assembly, Police force shall take into account the potential adverse influence that the visible appearance of Police officers, deployment tactics and equipping of officers at an assembly can have on the way in which an assembly develops.
- 14.3. The Police generally should deploy only the minimum number of officers commensurate to the size of the assembly, necessary to ensure the protection and safety of officers, participants, observers and bystanders, and take a graduated approach to any increase of visible policing numbers during the course of an assembly. Any reinforcement units should be stationed out of the sight of assembly participants to the extent that the Police command has assessed this to be appropriate in accordance with Guideline 12.

## **15. Documenting assemblies**

- 15.1. The Police should document the conduct of an assembly operation, including through the use of photography, providing that such recording and surveillance have a basis in law, are in pursuit of a legitimate interest which is consistent with the national laws and regional and international human rights standards as set out in 1.2.1, are a necessary and proportionate measure to achieve that end within a democratic society, and satisfy the principles of equality before the law and non-discrimination as set out in 1.2.2.
- 15.2. The documenting of assembly operations by the Police shall be regulated in national law in compliance with regional and international human rights standards, as set out in 1.2.1.
- 15.3. Police officers must not use recording and surveillance tactics to harass or intimidate assembly participants, or to discourage persons or groups from exercising their right to assemble freely with others. The Police shall not disseminate information to third parties in violation of the right to privacy, due process, freedom of expression or the right to assemble freely with others.



- 15.4. The Police shall notify assembly organisers and participants of the intention to document an assembly and the purpose thereof. Communication should be in a manner that is precise and well understood.
- 15.5. The retention and use of information gathered through the documentation of an assembly by the Police shall be regulated by national law and in compliance with regional and international human rights standards. Retention and use should be limited to circumstances where the use of force by Police officers or their exercise of the powers of arrest and detention is recorded; where a complaint about the conduct of Police officers is made; where recordings provide evidence of misconduct by Police officers; or where recordings provide evidence of a crime committed by Police officials or others. Recordings should be retained only for so long as is necessary for the relevant purpose.
- 15.6. All persons have the right to record an assembly, including the right to record the Police presence and action. This right must be protected by law with disciplinary procedures in place for Police officials who seize or damage any equipment, except where such seizure is authorised by an independent judicial authority. Disciplinary procedures refer to internal disciplinary sanctions effected through policing procedures, as well as external criminal procedures.

## **16. Stop, search and arrest**

- 16.1. All persons have the right to liberty and security of the person. The use of stop, search and arrest by Police officials should be strictly limited to circumstances in which there is reasonable suspicion that the individual poses an actual risk of violence or is involved in criminal activity, and only where the use of stop and search is in compliance with the national laws and regional and international human rights standards.
- 16.2. The participation of a person in an assembly is not in itself a reasonable ground to stop, search and/or arrest that person.
- 16.3. The use of arrest for the purpose of removing persons who are acting violently or who are otherwise reasonably suspected of committing an offence has a legitimate function in the context of the policing of assemblies to protect and facilitate the right to assembly freely with others by all persons. In this regard, arrest powers must only be exercised on grounds and procedures established by law. Such laws and their implementation must be clear, accessible, and precise, and consistent with the

Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa and with other relevant regional and international human rights standards.

## **17. Facilitation of first aid and other essential services**

- 17.1. Contingency plans shall include the provision of prompt assistance by medical service providers for any person injured during an assembly. Police officers shall receive first aid training and ensure that assistance and medical services are provided to any injured person at the earliest possible moment after the use of force and firearms.
- 17.2. Police officers should be subject to clear and precise protocols for communicating with medical service providers in an assembly context. Police officers should ensure that traffic management and other contingency planning facilitate the prompt access to medical services for assembly participants, observers, and bystanders.
- 17.3. The provision of first aid and other essential services during an assembly must be provided free of charge to assembly participants.

## **18. Facilitating multiple assemblies**

- 18.1. The right to assemble freely with others extends to the right to engage in simultaneous or counter-assemblies.
- 18.2. If the Police impose limitations or restrictions on simultaneous or counter assemblies, such restrictions must be legal, necessary, proportionate and comply with the principle of non-discrimination and equality before the law.
- 18.3. If the Police deem it impossible to facilitate counter or simultaneous assemblies precisely as planned, preference should be given to the facilitation of the first notified assembly and alternatives must be provided to the other assemblies. The alternatives should take into account any need for the counter or simultaneous assembly to occur within the sight and sounds of the other assembly, and any additional policing resources required to ensure the facilitation of all assemblies and the protection of all assembly participants, observers and bystanders. This should be based on a progressive assessment of the situation.

## **19. Enforcing conditions on assemblies**

- 19.1. The Police typically will merely enforce prior decisions imposed by the appropriate authorities. Restrictions may be imposed during an assembly, where

necessary and proportionate, as for instance in cases where the situation rapidly deteriorates and becomes violent.

19.1.1. The grounds under which such restrictions may be imposed by the Police authorities shall be strictly according to the way it is clearly laid out by our constitution and other relevant laws.

19.1.2. Negotiation and mediation shall be employed prior to imposition of conditions during assemblies, where feasible.

19.1.3. Any limitations imposed shall be clearly communicated.

19.1.4. Any limitations imposed must be based on a clear evidence base and calculation of risk, and satisfy the requirements of legality, necessity, proportionality, and non-discrimination.

19.1.5. Where the Police deem that limitations should be imposed during an assembly, they must provide alternatives to assembly organisers and participants, which are consistent with the right to assemble freely with others. This includes alternatives that facilitate an assembly within the sight and sound of the target audience.

19.2. If assembly organisers and/or participants do not comply with conditions imposed before or during the assembly, the response by Police officers must be legal, proportionate, necessary and non-discriminatory.

19.3. The Police force must not disperse assemblies simply for technical violations of limitations or restrictions without other serious cause, and any dispersal should be based on the obligation to make continuous assessments of the situation.

## **20. De-escalation**

20.1. All action taken by Police officers during the management of assemblies where participants are not acting peacefully must satisfy the requirements of legality, necessity, proportionality, freedom from discrimination and equality before the law, and accord with regional and international human rights standards.

20.2. Operational commanders must continuously monitor assemblies with the aim of identifying and pro-actively addressing issues as they arise. Their response to any situations must give priority to de-escalation tactics that favour the presumption of the right to assemble freely with others, such as open communication, negotiation and dialogue with assembly organisers and participants. The tactics must demonstrate flexibility in the enforcement of restrictions and limitations on an assembly, and tolerance for individual conduct that does not comply with restrictions, limitations, or

terms of notification. De-escalation tactics must also consider the potential adverse influence that the visible escalation of Police tactics can have on the way in which an assembly develops.

- 20.3. Police officers should be trained to differentiate between individual and group behaviour, and to identify and remove specific persons identified as acting in an unlawful or violent manner while continuing to facilitate the enjoyment of the right to assemble freely with others for all other persons.
- 20.4. Crowd control strategies, such as containment, should be implemented with precaution, be lawful and proportionate, and never amount to collective detention. Containment tactics must allow for exit routes for assembly participants and observers who want to leave the assembly.
- 20.5. Resort to force must only be made when other, less harmful, means of de-escalation have failed. The use of force by Police officers shall be in strict compliance with Guideline 21, the relevant national laws, and other regional and international human rights standards.

## **21. Use of force and firearms**

- 21.1. General principles
  - 21.1.1. The use of force and firearms by Police officers shall be regulated under the relevant national laws in conformity with General Comment No. 3 on the African Charter on Human and Peoples' Rights on the Right to Life (Article 4) and other relevant regional and international human rights standards.
  - 21.1.2. The use of force is an exceptional measure. In carrying out their duties, Police officers shall, as far as possible, apply non-violent methods before resorting to the use of force and firearms. Force and firearms may only be used if other means of achieving a legitimate Police objective are ineffective or unlikely to be successful. Police officers must, as far and for as long as possible, differentiate between peaceful assembly participants and those who engage in violent acts. An assembly should be deemed peaceful if its organisers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful. 'Peaceful' shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes, or obstructs the activities of third parties. Isolated acts of violence do not render an assembly non-peaceful.

21.1.3. Where the use of force is unavoidable, Police officers must minimise damage and injury, respect and preserve human life, and ensure at the earliest possible moment that assistance is rendered to any injured or affected person and that their next of kin is notified.

21.1.4. The intentional use of lethal force by Police officers and others is prohibited unless it is strictly unavoidable in order to protect life, thus making it proportionate, and all other means are insufficient to achieve that objective, thus making it necessary. Assessment of legality, necessity and proportionality should be based on the relevant facts with a requirement for reasonable grounds, rather than mere suspicion or presumption, of risk or harm.

## **22. Dispersing assemblies**

22.1. The dispersal of assemblies should be a measure of last resort, and Police officers must act on the presumption that although they have powers to intervene in an assembly, they should only do so in circumstances in which it is legal, necessary, proportionate and non-discriminatory to do so.

22.2. If assembly participants are generally behaving peacefully, Police officers must avoid the use of force to disperse the assembly. Where force is deemed to be a lawful and proportionate response, Police officials must only use the minimum level of force necessary.

22.3. Where participants in an assembly are acting non-peacefully or in violation of the law, Police officers should use, to the extent possible, communication and de-escalation strategies and measures for the containment of individuals committing or threatening violence or, if necessary and proportionate, the arrest of individuals who are committing or preparing to commit violent acts, before attempting to disperse an assembly.

22.4. When the dispersal is unavoidable, lawful, proportionate and necessary, Police officers must clearly communicate an intention to disperse the assembly to participants and provide participants with a reasonable opportunity to disperse voluntarily, before taking any action. Force must never be used against peaceful demonstrators who are unable to disperse from the assembly.

22.5. The authority to issue an order for dispersal should be limited to operational commanders who are present at the operation or to well-informed officers on the ground. Such orders should only be given in situations where there is a serious,

widespread and imminent threat to the safety of persons, of substantial damage to property, or to the rights and freedoms of others, providing that all reasonable attempts have been made to minimise the harm. Use of force in the dispersal of assemblies must comply with these Guidelines and other regional and international human rights standards.

22.6. Firearms may never be used simply to disperse an assembly.

22.7. Observers of an assembly, including journalists, must not be prevented from observing and recording the dispersal operation.

## **23. Detained persons**

23.1. Detention by Police officers should only be used as a measure to enforce criminal law, and no person must be held in detention for more than the constitutionally sanctioned limit without access to a judicial authority in conformity with the laws of The Gambia and other international instrument ratified by The Gambia. Policies, training and standard operating procedures, including those specifically in relation to the policing of assemblies, must promote the use of alternatives to police custody.

23.2. The use of detention by Police officers in the context of assemblies must conform to the provisions of the Constitution, Africa Charter, and other international human rights instruments. These includes the provision of safeguards, such as presumption of innocence, the presumptive right to bail; the right to have detention reviewed without delay by a competent authority; and access to confidential and independent complaints mechanisms, legal services where applicable, family, interpreters and medical assistance; and the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.

23.3. 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. This should include planning for occasions involving public assemblies where numerous arrests are deemed necessary, although mass arrests, which may amount to arbitrary detention, must be avoided. Police officers should not deprive persons of their liberty if there are inadequate resources to facilitate individual arrests.

## 24. Debriefing and review

- 24.1. The Police force must have in place post-assembly debriefing processes. These processes should promote monitoring, evaluation and learning, and identify both failings and good practices in the Police operation in relation to facilitation of the right to assemble freely with others; the effectiveness of risk assessments and contingency planning, internal and external communication, deployment and equipment; the use of force; the health, safety and working conditions of Police officers deployed to the operation (in particular where Police officers died or were seriously injured); and tactics, decision-making and future training needs.
- 24.2. The Police are encouraged to make reports of the debriefing available to any person, including but not limited to, assembly organisers, participants, oversight authorities and other relevant stakeholders.
- 24.3. Any use of force by Police officers during the conduct of an assembly operation should be subject to an automatic and prompt review by a competent and independent authority. Police officers who are the subject of a review must not be deployed to assembly operations until the conclusion of such review.
- 24.4. The discharge of a firearm by a Police officer during an assembly operation must be promptly reported by operational command to a competent authority, such as any oversight authority with a mandate to review and report on police conduct and operations.
- 24.5. The Police shall cooperate with the conduct of a thorough investigation and account of circumstances surrounding every case of death or serious injury of persons in the context of assemblies.
- 24.6. If a person dies as a result of Police action, a prompt, impartial and independent inquiry into the cause of death must be undertaken by an independent judicial authority. The purpose of the investigation is to determine the cause, manner and time of death, the persons responsible, and any pattern or practice that may have brought about that death. The investigating authority must have access to all necessary information and persons to conduct their inquiry.
- 24.7. The Police force should publicly communicate the findings of any internal debriefings and/or investigations, whether internal and external, resulting from each assembly operation.

## **25. Sanctions and Remedies**

- 25.1.** All criminal sanctions shall be specified within the penal code and not elsewhere. Assemblies shall not be governed by provisions of criminal law different from the generally applicable provisions of the penal code.
- 25.2.** Sanctions shall be applied only in narrow and lawfully prescribed circumstances, on the basis of generally applicable law, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.
- 25.3.** Liability shall be personal. Neither the organizers nor fellow participants of a public assembly shall be subjected to sanctions of any kind based on acts committed by others.
- 25.4.** Excessive responsibilities or liabilities shall not be imposed on assembly organizers.
- 25.5.** Where the right to peaceful assembly has been infringed, organizers and participants shall have a right to a remedy.

ADOPTED THIS..... DAY OF ..... 2020