POLICE ATTITUDES AND CROWD MANAGEMENT IN AFRICA

EXPLORING THE IMPACT OF SOFT-LAW INSTRUMENTS AND TRAINING IN MALAWI

Thomas Probert

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THE DANISH
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HUMAN RIGHTS

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The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

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Introduction

With the advent of the Arab Spring, and other moments of widespread public mobilisation across the globe in recent years, the ways in which the State responds to large numbers of people protesting on the streets has become an important bellwether for the international human rights community.[1] Of course, in many contexts, the policing of assemblies has been a contentious and much debated subject for several decades. As flashpoints of public violence, the way in which law enforcement officials respond to public demonstrations is an important focus for those interested in exploring the nexus between violence reduction and human rights.

This report begins by briefly introducing recent international standard-setting work related to the policing of assemblies, and discusses the challenges posed by lack of information about what impact such documents or processes have in the real word, compounded by lack of information about how police officers in Africa think about their work, and particularly their work around assemblies. It will then describe the initial steps taken to explore this space, arising out of an opportunity related to the roll-out of a training programme designed to accompany the African Commission's *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (the Guidelines). It will also present some preliminary indications of the impact of such a training programme based on a trial conducted in Malawi.

The international and continental landscape

Assembling peacefully together is a fundamental part of the human social condition. Moreover, the ability to assemble and act collectively is vital to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes.

In recent years, international human rights mechanisms at both global and regional level have been paying particularly close attention to the question of the management of assemblies, and the role of law enforcement. The mandate of a UN Special Rapporteur on the enjoyment of the rights to freedom of peaceful assembly and of association was created in 2011 and became a dynamic focal point for consideration of these important rights. Nonetheless, before he had submitted his first report, the specific challenges of the *policing* of assemblies, which the Arab Spring was putting squarely on the international

agenda, was addressed by a different Special Rapporteur, the one on extrajudicial, summary or arbitrary executions, who dedicated a thematic report to the use of force in such contexts.[2]

At the regional level, Article 11 of the African Charter on Human and Peoples' Rights provides that:

> *Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*

Meanwhile, the African Commission on Human and Peoples' Rights had been similarly preoccupied with the question of how best to respond to the multiple human rights challenges posed by the policing of assemblies. In 2012, it added the question of freedom of assembly to the mandate of a study group established in 2009 to examine freedom of association.[3] That study group produced a report that was published by the Commission in 2014.[4] The following year, the Commission resolved to develop guidelines on freedom of association and assembly.[5]

Somewhat on a separate track, in 2014, partly responding to initiatives at UN level, and with more of a direct policing focus, the Commission passed a resolution on the right to peaceful demonstrations.[6] This resolution came only a month after the Human Rights Council had adopted Resolution 25/38, in which it requested that the Special Rapporteur on the enjoyment of the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions prepare a compilation of practical recommendations for the proper management of assemblies.[7] After a two-year process of reviews and consultation, this report was presented to the Council in January 2016.[8] This report has become a reference point for civil society and other actors working in this space, and has been translated into more than ten languages.[9]

Recognising the extent to which assemblies both rely upon and facilitate the enjoyment of a number of intersecting human rights, a number of the Commission's special rapporteurs took an interest in this area of work, including the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on Freedom of Expression and Access to Information in Africa, and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa. The interaction between these mechanisms made clear a need to develop guidelines on the policing of assemblies in Africa.[10]

As part of the process of developing and adopting this guidance, the Commission and its partners conducted a baseline study into the protections afforded to participants of assemblies in various African States.[11] They also conducted regional consultation meetings with a wide range of stakeholders (including, crucially, the police) as well as other relevant experts in Nairobi, Pretoria, Ouagadougou and Cairo.[12] In March 2017, the Commission adopted its *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (the Guidelines), which were launched in May 2017 at the 60th session of the Commission in Niamey, Niger.

Assessing impact and exploring attitudes

At one level, of course, the process of working to adopt soft-law instruments is an exercise in normative clarification and advocacy on the part of the Commission vis-à-vis State parties. But it is nonetheless the case that, by conducting baseline studies and holding consultations that directly speak to 'practitioners' – in this case the police – the Commission is also looking directly to impact practice. This direct interface with police officers themselves is something the Commission has been attempting more and more over recent years, particularly through the mandate of its Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa. The involvement of police forces in the consultation process leading to the adoption of the Guidelines seems to greatly enhance the likelihood of their subsequent use.

With this application in mind, the Commission and its partners also developed a two-day training module designed to introduce the content of the Guidelines to ordinary police officers, or perhaps as a human-rights sensitisation course of those officers who specialise in public order management. The training was designed alongside the Guidelines, benefiting from the same consultation process (and the same involvement of police officers).

Developing a training package about their content seems a likely way of increasing the impact of a set of guidelines such as these. A wide range of stakeholders have an interest in establishing more concretely the extent to which both the Guidelines and the training are achieving this impact. It is now not unusual for donor organisations to expect evidence-based assessments of impact for human rights interventions they fund. In one sense the impact of a project designed to facilitate consultation on and progress adoption of a set of guidelines at the African Commission can be shown to have achieved its objectives by simply looking at the Commission's Activity Reports. However, as noted above, the purpose of adopting such guidelines is to achieve impact in terms of legal, institutional or behavioural reform. This study is aimed at assessing the latter of these.[13]

Given the practical and potentially political difficulties of monitoring the full process of managing assemblies in countries in which this training is being given, it is contended that an alternative metric of 'impact' is going to be needed than a quantitative approach to assessing the enjoyment of the rights concerned. Instead, an attitudinal survey-based approach aimed at the target audience, before, immediately after, and at a later point of time after the training may be a more effective measure.

Beyond this practical purpose, the design and implementation of an impact assessment protocol around training delivered on this subject also provides an opportunity to test a number of assumptions that surround human rights work around public assemblies, in Africa and elsewhere:

a)   that the violation of human rights in the context of assemblies in Africa is at least partly attributable to a lack of awareness by both of 'rank and file' and 'officer-class' law enforcement officials of basic tenets of international human rights standards; and

b)   that international soft-law instruments can be useful not only in guiding legislators with respect to law reform, but also can be directly targeted at 'practitioners' – in this case the police.

If it were to be fully administered around a continental roll-out of training concerning the African Commission's Guidelines, an attitudinal survey such as this could also provide some indicators concerning the impact of soft-law instruments in general on law enforcement officials and other practitioners.

Aside from its use as an impact assessment of a particular training module, however, conducting this kind of attitudinal survey of law enforcement officers in a comparative setting also constitutes novel research in the area of human rights and policing in Africa.[14] Some limited work has been done with respect to police officers' attitudes toward use of force in studies of American policing, but very little is known about the attitudes of police officers in an African context.[15] There has been, in recent years, the beginning of ethnographic studies of African policing, but the field is very sparse, especially outside South Africa.[16]

Devising the questionnaire

Based on prior work on the violations that take place around assemblies in Africa, including the baseline study originally conducted during the development of the Guidelines, the following is a non-exhaustive list of some of the most common problems:

  •   notification regimes being treated as authorisation regimes;
  •   authorisation regimes being implemented as a means of political control;

- poor planning, lack of coordination and ambiguous lines of command and control;
- indiscriminate policing (with isolated incidents being used as a pretext for action against the whole assembly);
- discriminatory policing (assemblies of different types being treated differently); and
- excessive use of force.

The Guidelines are designed to provide key stakeholders (of which the police are clearly a major one, for whom the training module was particularly designed) with guidance around international human rights standards concerning many of these issues. When translated into attitudinal frames, these problems can be thought of as conveying some or several of the following questions:

- What does it mean to have a 'presumption in favour' of assembly?
- In what circumstances can limitations on assemblies be justified?
- What are the primary obligations or objectives of law enforcement officials in the context of an assembly?
- How should law enforcement prepare fully for complications that may arise during an assembly?
- In what circumstances is it necessary and proportionate to use force in the context of an assembly?
- What weapons or other equipment are appropriate or necessary for the policing of assemblies?
- What does it mean for policing actions around assemblies to be accountable?
- In what ways can or should law enforcement officials collect information about or carry out surveillance during assemblies?

In the development of the draft questionnaire, a methodological question was whether to employ open-ended or closed questions. To gather a more granular understanding of police attitudes around these sometimes-sensitive questions, open questions would probably be preferable. To employ such a methodology, though, would lead to a number of challenges in terms of implementation – principally the amount of time it would take to collect the information (problematic both in terms of the time-cost of the researchers, but also in terms of the time consumed by on-duty police officers). Open questions would also require a great deal of close analysis and coding in order to produce results that could be contrasted with a follow-up.

The first draft of the questionnaire therefore largely used closed questions, but it has also experimented with 'ranking' questions, which aim to assess from among a list of competing priorities, which the participants would view as *most* important. It has also used a small number of Likert questions to gain an impression of overall attitude (at the beginning) as well as satisfaction with the specifics of resourcing/ management (at the end).

The questionnaire was designed so that it could be presented in a one-on-one or small group oral delivery, or in a larger group written form. Depending on the number of participants being surveyed, either option may prove most effective.

The questionnaire was trialled in the context of two preliminary trainings that were given to multi-national African policing groups – the East African Police Chiefs Cooperation Organisation (EAPCCO) and (in a French translation) a West African policing forum called POLiDH. One challenge that emerged through these trials was that of length – a 15-question questionnaire could take participants nearly an hour to complete. As the first item on the agenda of a two-day training, this could be a rather deflating exercise.

One challenge that is, of course, faced by an attitudinal survey of this type, particularly one which is delivered in the context of a 'human rights training', is that respondents will report attitudes and opinions they believe researchers want to hear. This is difficult to control for, but because the study is

longitudinal rather than comparative, it can be assumed that the inclination of police officers to apply a human rights varnish to their true feelings will be relatively constant. The extent to which the training provides officers with a better understanding of how to frame this presentation is of course part of the impact being assessed.

The Malawi trial

Malawi is a small but densely populated country in southern Africa. Shortly after having gained independence in 1964, it became a one-party state under the rule of Dr Hastings Banda, with multi-party democracy only arriving 30 years later. Police reform, though a priority for certain significant donors of Malawi, was not legislatively entrenched for more than another decade, with a new Police Act in 2010. This legislative reform was, however, severely challenged by a major public order policing crisis in 2011, when mass demonstrations against the incumbent president Bingu Mutharika were badly managed, deteriorated into violence, and resulted in 20 people being killed. A subsequent commission of inquiry attributed a proportion of the blame for this event to the Malawi Police Service, and in its aftermath the police have been looking for means of undertaking structural reforms.[17]

In this context, representatives from the Malawi Police Service (MPS), who had played an active role in the consultations surrounding the development of the Guidelines, invited trainers from the African Policing Civilian Oversight Forum (APCOF) to visit Malawi to provide training to police in a variety of locations around the country.

Just before the training, a paper version of the questionnaire was administered to all participants (but to nobody else) and then collected by the trainers. By contrast to the two trial versions, this represented a significantly larger sample. Based on the insights gleaned from the trials the questionnaire had been shortened to only ten, slightly simpler, questions.

The questionnaire was completed by 139 police officers, forming the 'before' population, with 10% of the most incomplete being removed from the sample, leaving an analysed group of 126 responses. Within this group, 81% were men and 19% women. Of the members of the group, 78% were over the age of 41, with only 1 respondent under the age of 27. Roughly a quarter of the group reported having attended fewer than 10 assemblies on duty, more than half reported attending between 10 and 100.

The follow-up questionnaire was administered with assistance from the MPS some six weeks after the training. It is unknown to what extent this (smaller) group represents a random sample of the former. The MPS transmitted the responses of 77 police officers, which were reviewed, with 10% of the most incomplete or inappropriate being removed,[18] leaving an analysed group of 70 police officers. Among these (of those who answered the personal data questions) 73% were men and 27% women. 82% were over the age of 41, again with only 1 respondent under the age of 27. Again, roughly a quarter reported having attended fewer than 10 assemblies on duty.

Comparable results

Identifying the context: what is an assembly?

The first substantive question of the pre-training questionnaire concerned the identification of an assembly – respondents were asked to choose to define an assembly 'for the purposes of public-order policing' either as:

    a)   a rally for political purposes, where large numbers of potentially disruptive individuals (usually opposed to the government) have gathered, and may pose a risk to public order;

b) any gathering of individuals in a public space for a specific purpose, be it a sporting event, a funeral or a march; or

c) any instance where police officers are confronted by groups of people posing a threat.

While not phrased in especially provocative terms, options (a) and (c) were designed to evince opinions about assemblies couched in politicised, or at least overly securitised attitudes (not all assemblies 'pose a threat'). The 'expected' answer is therefore (b) but, during the initial survey, this was only selected by 40% of respondents. That was only marginally more than the 37% who chose option (c), the securitised option, while the remainder chose the politicised option (a).

In the post-training questionnaire, participants were presented with a similar list:

a) A potentially unruly crowd of disruptive individuals who are liable to break the law and must be observed closely by police so as to be able to protect the rights of others and to make arrests.

b) A group of individuals gathered in public for a specific purpose, whose activities should be facilitated even if they cause inconvenience to others.

c) A status conferred to a group of individuals for a time during which their rights trump the rights of others.

d) Any instance in which the police encounter more than five people at the same time and called upon to respond appropriately.

Again, the 'expected' is (b), with (a) being a securitised attitude that sees assemblies has an inherent threat of disruption or infringement of others' rights, (d) being a catch-all approach that doesn't recognise particular facilitative responsibilities of the police regarding assemblies. Response (c) was added in order to assess whether police leave the training with the impression that assembly participants' rights trump those of others. After the training, 73% of participants chose the 'expected' answer, with 19% choosing the 'troublemakers' option.

With respect to this technical or definitional issue, the training appears to have had significant impact, with an 83% increase in the proportion of respondents choosing an answer from a limited list that best matches the approach of the Guidelines.

The function of the police during an assembly

Respondents were next asked about what they viewed as being the priorities for the policing of assemblies. They were presented with a list of potential objectives or purposes for police officers in the context of an assembly, from which they were asked to select the most important three. The most popular options (i.e. those selected as either 'most', 'second-' or 'third-most' important) were 'Preventing damage to public and private property' (61%); 'Protecting the rights of the people protesting' (45%); and 'Gathering intelligence on likely troublemakers' (44%). That third option was 'most important' for 35%. Only 11% of those who answered the question felt that 'being poised to arrest people perpetrating a crime' was sufficiently important to be in the top three, and only 13% felt that 'Protecting those not involved in the assembly but that are close to it (bystanders)' was important. 40% felt that 'facilitating' the protest was important, but an alarming 26% felt that a police priority should be 'Preventing too many people from joining the assembly as large crowds can pose a risk to public safety'.

This was a challenging question, as there are deliberately more than three 'legitimate' priorities.[19] But there may also have been an unfortunate order effect, where a page break in the written questionnaire interrupted the question in the 'after' sample. This *may* account for the fact that the most dramatic

change after the training was an increase in the proportion of participants who considered gathering intelligence on likely troublemakers as an important priority *increased* from 44% to 64%. The proportion of participants who felt that 'preventing too many people from joining the assembly' reduced by half, to 13%. The proportion who answered without mentioning either ensuring the visibility of state officials or this limitation of the size of the assembly increased from 72% to 83%.

Preventing damage to public and private property remained the most frequently selected priority (selected by 72% of participants after the training). While of course a legitimate law enforcement priority, it is striking that both before and after the training so many more officers viewed this as a priority than the protection of bystanders (mentioned by only 12% of participants after the training).

The results of this question are unclear – complicated by challenges in collection – but it would appear the training had limited impact on attitudes concerning policing priorities in the context of managing public assemblies.

Procedural requirements before an assembly

The next question addressed the question of notification and authorisation. This is a matter about which the Guidelines offer clear guidance that 'Lack of prior notification of an assembly does not render an assembly unlawful and should not form the sole basis of a decision by law enforcement officials to disperse an assembly.'[20]

In the 'before' questionnaire, respondents were reminded of the practical advantages of prior notification, and then asked which of the following statements they agreed with (and were allowed to choose more than one):

a) Therefore, people's right to assemble depends upon the authorities giving authorisation in advance – without authorisation, any assembly is illegal, and all participants are committing a crime.

b) Assembling together peacefully is a right not a privilege, and while prior notice is preferable it is not always possible, so long as they are not unreasonably interfering with the rights of others, and are acting peacefully, the assembly should go ahead.

c) It is not the function of the police to determine the status of an assembly; if the public authorities establish that an assembly is unlawful then the police should intervene to prevent it from occurring, or, if it has already started (and regardless of whether it is peaceful), should immediately disperse it.

The responses indicate a degree of confusion before the training. The majority of respondents chose at least one of (a) or (b), with noticeably more (63% to 51%) choosing the problematic (a) than the 'expected' (b). However, 32 respondents (27% of those who answered), chose *both* of the apparently contradictory (a) and (b). It could be argued that while the normative framings are distinctly opposite, there could feasibly be a continuity at the practical level: an assembly can be unlawful, all participants can be committing a crime, and yet officers can use their discretion not to proceed to disperse it. However, the same cannot be said of the 21 respondents (18% of those responding) who chose both (b) – that a technically unlawful assembly, provided it is peaceful and not unreasonably interfering with the rights of others, should be allowed to continue – *and* (c) – that, regardless of the peaceful conduct, an assembly deemed unlawful should immediately be dispersed.

In the follow-up, the question around procedural issues was asked in a more practical way. A scenario of a spontaneous assembly outside the Supreme Court being planned for that evening was described, one in which the police have received no notification from anyone claiming to be the organiser. Participants were provided a list of potential next steps (before the assembly had begun) and allowed to select as

many as they liked. 87% of respondents selected that, even without formal notification, a risk assessment should be conducted. 65% selected to deploy additional officers to the area of the Supreme Court during the late afternoon to assess whether or not people were in fact turning up. 39% thought it would helpful to liaise with the staff at the Supreme Court to ensure there wasn't undue disruption.

Despite the fact that the training would have covered spontaneous assemblies explicitly, 26% of participants felt it would be appropriate to 'make public announcements (including through social media) that, without authorisation from the police, such an assembly would be unlawful, and [to] discourage people from joining it.'

In a more directly comparable follow-up, participants were then asked for their impression of the legality of a different spontaneous assembly taking place outside Parliament. 61% of respondents now agreed with the statement that 'Though technically the organisers have failed to notify, peaceful assembly is a right of the public, not a privilege gained by filling out paperwork'. More practically, 63% of respondents agreed that 'Further officers should be deployed to the area, to look out for acts of violence or destruction of property, but until that happens no further law enforcement response is necessary'. These responses show a modest increase from the 51% of pre-training participants who agreed with the 'right not a privilege' language. Similarly, after the training, only 24% agreed that 'Without notification this is an unlawful assembly. Regardless of its conduct, the police should immediately disperse the crowd'. This represents a significant reduction from the 63% of pre-training participants who felt that without authorisation any assembly is illegal, and the 39% who felt that such an assembly should be dispersed by the police.

There were also significantly fewer contradictory answers, with only 4% of respondents agreeing both that assembly is a right not a privilege and that without the procedure the assembly is unlawful, and with only 9% agreeing both that the assembly should be immediately dispersed and that, beyond additional officers, no further police action is required. This may be because in follow-up the issue was addressed with reference to a specific scenario rather than a collection of abstract statements, or it could be that the training had helped to clarify officers' thoughts.

The training seems to have slightly increased acceptance among police officers of one of the core ideas of the Guidelines, namely that assembly is a right not a privilege. Perhaps more importantly, it seems to have diminished the extent to which officers believed that procedural irregularities amount to cause to intervene and disrupt an assembly.

Tactical options to disperse an assembly

Participants were canvassed about tactical options in a scenario where they needed to disperse a crowd. These ranged from deploying tear gas, 'showing' dogs or horses, strategic arrest, a baton/shield charge, 'using' dogs or horses, firing warning shots above the crowd, to using a 'show of force' (treating leaders of an assembly harshly to deter others). Responses to this question were very varied, with the exception of the two options concerning dogs and horses, which were only selected by 14% and 10% of respondents before the training, and 12% and 1% after the training, suggesting that they are not options familiar to Malawian police officers.
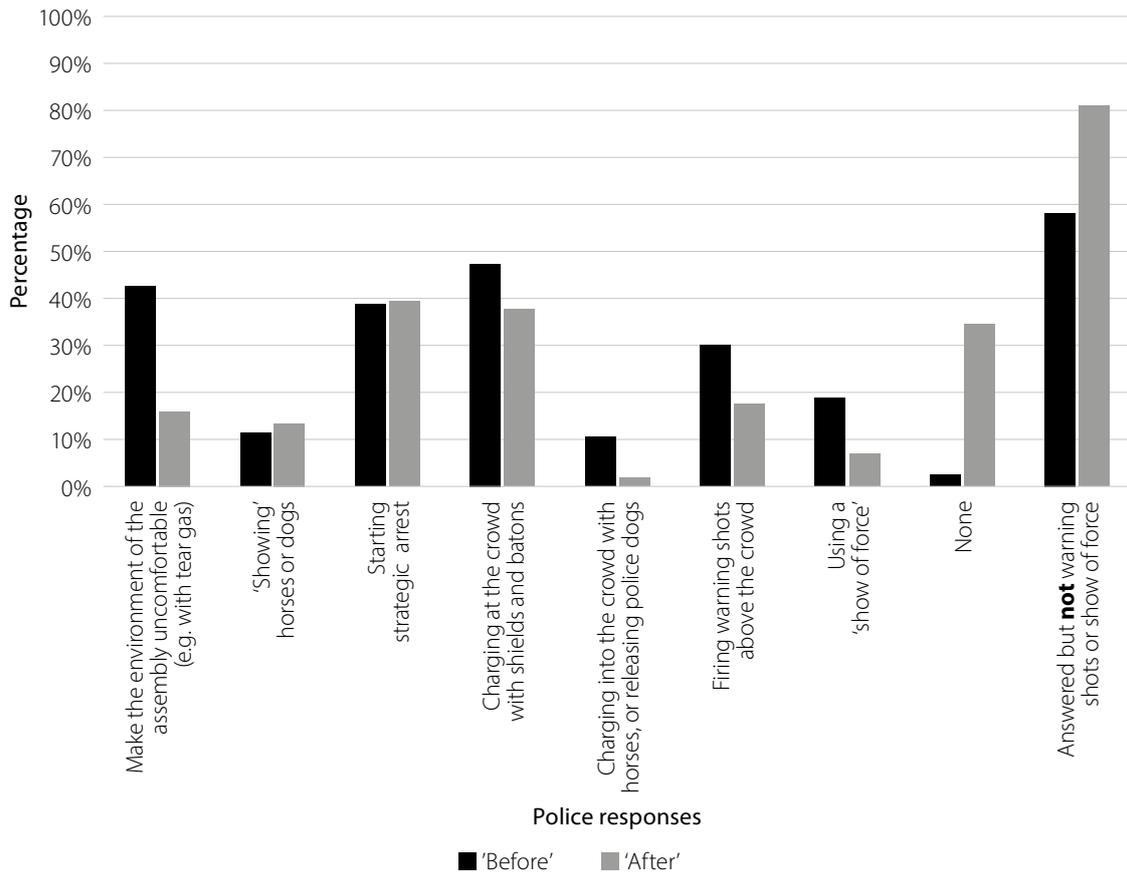
Before the training, the most frequently selected options were the close-knit baton charge (47%), making continued presence uncomfortable using a weapon such as tear gas (42%), and starting to arrest people (39%). Alarmingly, 31% of respondents thought that firing warning shots over the crowd was appropriate (and 12% selected this as the only appropriate option).

After the training, the most frequently selected options were strategic arrest (39%) and baton charge (38%). The proportion who selected tear gas dropped by nearly two-thirds to only 16%. The most noticeable difference was the proportion who selected 'None', which increased to 35%.

Assuming that the reason to disperse the crowd is appropriate (and one thing that would be underlined during the training is that dispersal is often tactically inadvisable even if legally permissible – which may account for a proportion of the increase in 'None' after the training), the two very problematic options in this list are the firing of warning shots and the use of force for intimidatory purposes. Before the training, 58% of respondents chose tactics that did not include these two options; after the training this proportion had increased to 83%.

The results of this particular comparison lend themselves to graphical representation in Figure 1.

Figure 1. Perception of appropriate tactical responses to disperse an assembly, before and after training

The training clearly impacted officers' attitude towards dispersal, with approval for the use of firearms even for warning shots, and for the use of a 'show of force' both significantly declining, along with comfort concerning the use of tear gas. The increase in the number of officers choosing not to select any of the suggested techniques could indicate a tactical aversion to dispersal, or could reflect their becoming more reticent to use force at all, even to achieve a legitimate law enforcement purpose.

Conduct that requires a police response

Participants were further canvassed for their opinion about the types of behaviour among members of an assembly that would amount to unlawful conduct and that might prompt police reaction. The limitation of this question was that, in order to maintain the plausibility of a wide range of possible behaviours, the threshold was kept as low as police 'reaction' – which of course could describe a very broad range of responses. Agreeing that the police should 'react' to members of an assembly pushing and shoving each other by issuing verbal commands, or even by arresting selected individuals, is a very different proposition to agreeing that police should 'react' to the same event by forcibly dispersing the entire assembly.
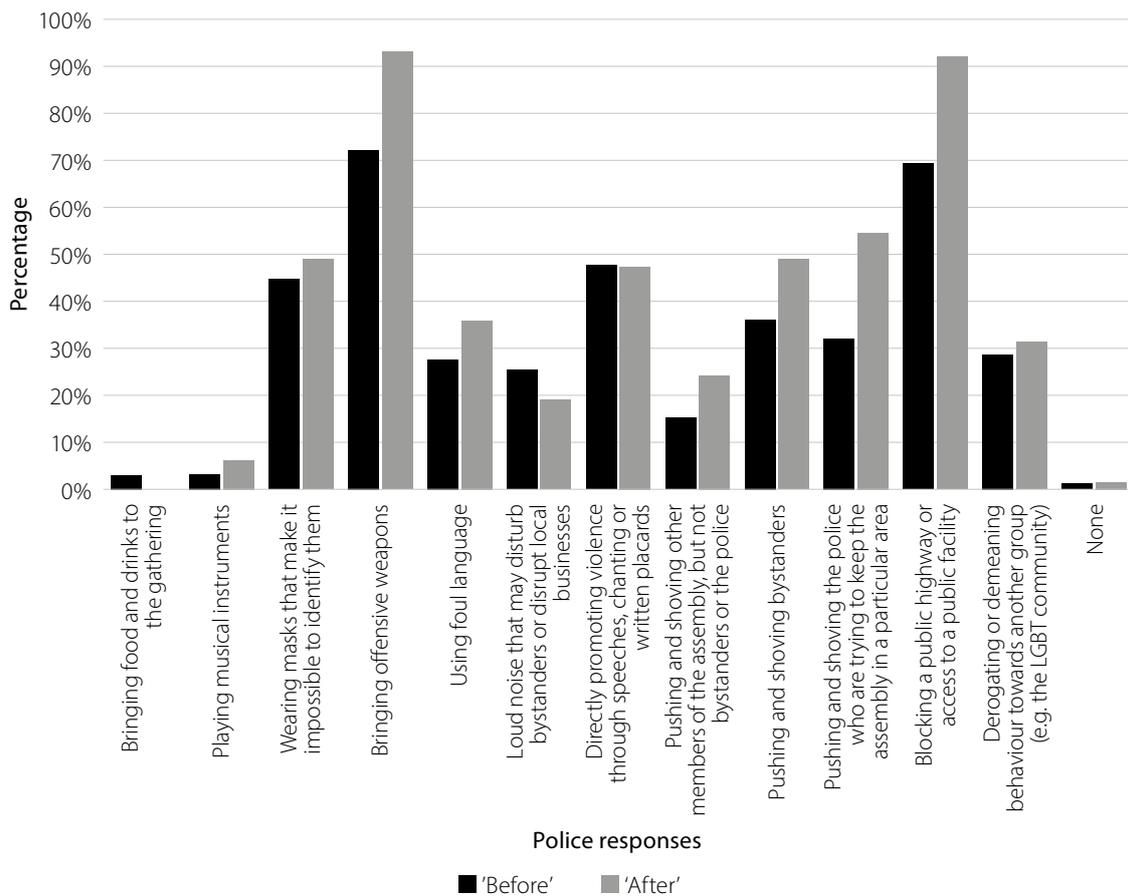
A more sophisticated version of this survey question – and an opportunity for further attitudinal research – could involve asking this in a multi-variant way, not only *whether* police should react, but also *in what way* they should react.

Nonetheless, the responses give a reasonable indication of what police officers perceive the most serious risks associated with policing assemblies to be, and their priorities when managing them. Both before and after the training, the most frequently selected concerns were people bringing offensive weapons, and assemblies blocking a public highway or access to a public facility. After the training, both of these options were selected by more than 90% of respondents.

More worryingly, nearly half of respondents were concerned by assembly participants covering their faces to avoid identification. Nearly a third of respondents, both before and after the training, thought a police reaction would be justified in the case of assembly participants 'using foul language' or behaving in a derogatory or demeaning fashion. This kind of content-specific reaction would raise concerns, but, for the reasons mentioned above, it is difficult to draw too firm a conclusion about what kind reaction is conceived. Interestingly, both before and after the training, fewer than half of respondents felt it would be appropriate for the police to react in some way to people directly promoting violence.

There is not a strong indication of movement on particular issues that can be attributed to the training, but the overall shift can best be illustrated graphically, in Figure 2.

Figure 2. Crowd behaviour that would amount to unlawful conduct that might prompt police reaction

In general, it is difficult to discern, from the available data, the impact of the training on police attitudes toward particular kinds of conduct on the part of assembly participants. In general, after the training the respondents were more likely to think it appropriate to 'react', but without more granular data it cannot be judged whether this is the kind of facilitative reaction envisioned in the Guidelines or a more suppressive attitude.

The use of firearms

Though firearms should never be a central part of the policing of assemblies, a question on the policies surrounding their use was considered a helpful indicator concerning officers' attitude about use of force more broadly. The question may – in both instances – have been presented in an overly complex way, as it yielded confused results in certain respects. Officers were asked whether they agreed with a number of propositions about the use of firearms. In the first instance, that ordinary police officers do not carry firearms and only a specialised unit do so: before the training, 25% of officers believed this statement to be true; after the training, 46% of officers did so. In fact, ordinary police officers *can* carry firearms (though not all do); but it is not the case that only a specialised unit carry them.

Secondly, officers were asked whether they agreed that 'We usually carry firearms, but it is almost never appropriate to use firearms (with live ammunition) in or near an assembly as we cannot be confident of not hitting innocent bystanders'. Before the training, 60% of participants agree with this statement; after the training, slightly more, 67%, agreed.

Conversely, officers were also asked whether they agreed that 'It would be unthinkable not to arm every police officer involved in policing crowds, you never know what might be needed'. The double negative in this question may have caused some confusion, but 32% of respondents agreed before the training. After the training this proportion had dropped by 37% to only a fifth of respondents.

Officers were also presented with a number of more problematic opinions: firstly that 'Even if not used to fire at violent protesters, firearms with live ammunition can be useful in the policing of assemblies – it makes clear that we are in charge and if things go wrong we can use them for warning shots'. The use of firearms to intimidate a crowd, and the use of live ammunition for warning shots, would both be highly concerning tactics, yet before the training 42% of respondents agreed. After the training this figure had dropped by a quarter, but still stood at 31% of respondents.

After the training, reflecting the African Commission's clear statement that firearms should never be used merely to disperse an assembly,[21] an additional attitude was tested: officers were asked whether they agreed that 'Firearms can be useful to disperse an assembly – they are easily distinguished above the routine noise and chaos of an assembly that has reached the point of dispersal'. Concerningly, even after the training, 19% of officers agreed with this proposal.

The training appears to have had modest impact on officers' attitudes toward the use of firearms in the context of policing assemblies. This may partially reflect a complexity not easily captured by questionnaire, but also probably also reflects a broader problem around training on the appropriate use of firearms in law enforcement that was beyond the scope of the training.

'Incidental collection': Insights into police attitude

Part of the process of developing the questionnaire, to ascertain the best way to frame questions and capture relevant attitudes, entailed trialling questions that (not least for reasons of length, as discussed above) were not duplicated in both before and after questionnaires. The results captured with these questions cannot necessarily inform evaluations of the impact of the training, but they do provide some interesting insights into policing attitudes in Malawi.

One such question, asked before the training, probed officers' opinions concerning the violent tendencies of crowds.[22] The survey primed the participants with the following observation: 'While people have the right to assemble *peacefully*, public gatherings in Africa sometimes degenerate into violent clashes and in some cases even riots'. It then asked which of the following statements they agreed with:

a) Sometimes violent individuals will try to cause trouble during a peaceful assembly. These individuals may be committing a crime or be threatening the rights of others and should be removed, but the rest of the assembly should continue.

b) If people have gathered for the purpose of expressing a message and some of them are using violence then the whole group is effectively using violence to express a message, which amounts to a form of riot or even insurrection and should immediately be suppressed, with the organisers held criminally responsible.

c) Once violence has started within a large group of people, it's likely that it will spread – it may be safer to disperse the assembly before this happens.

Answer (a) would probably be the 'preferred' or expected outcome: treating the right to peaceful assembly as something that relates to the individual rather than the group, and therefore distinguishing between peaceful and non-peaceful participants. However, (c), in which an objective assessment is made in the interest of public safety, may in some circumstances be (at least according to its own premises) human rights-compliant. Of those answering, 64% agreed with (a), while 52% agreed with (c). Within those figures, 33% agreed with both. **Far more problematic, 40% of the respondents agreed with (b), which attributes the violence of some onto the expression of all, and which advocates a form of collective punishment.**

Another question, again from before the training, introduced a hypothetical scenario of a demonstration directed at and located proximate to a Department of National Defence. The question proceeds from the premise that police have been advised that an assembly in this location would 'endanger national security'. They were asked to prioritise three of six potential next steps. 71% of those who responded to this question felt that having enough officers on duty at the time the assembly takes place should be one of these top three priorities. 39% felt that finding an alternate venue, within sight and sound of the Department, should be a priority. 34% felt that the staff of the Department, whose work is critical to the country's national security, should not be prevented from entering the building. These three answers would represent the 'expected' outcome, and while individually they attracted a number of favourable responses, the identification of all three as priorities only occurred in three cases (2.5% of respondents).

Concerningly, the second most popular priority was that 'On account of the likely confrontation, the organisers should be persuaded that the assembly should not occur at all' (which attracted 43% of respondents), and 28% felt 'that the Department of National Defence is made aware of the identities of the organisers, who may well be subversives'.

After the training, an attempt was made to assess the next steps officers would take following the use of firearms. This was perhaps an overly grave use of force with which to try to capture necessary next steps. Officers were presented with a situation in which they could lawfully have used a firearm but in which it was not clear that the target had been killed. They were asked in an open question what their next step would be.

Only 9% of respondents gave an answer involving first aid. A further 44% gave a plausible answer involving taking the injured person to hospital. However, this left nearly half the sample proposing neither to administer first aid nor to take the targeted individual to hospital.

Given that much of the training focused on the role that can be played by police oversight, officers were also asked a question after the training about how they perceived the role of both internal and external review of police conduct. Respondents were offered four phrases and asked which they felt best described the role:

a) External review is an exercise of producing documents so that the relevant ministry can say that they have looked into a complaint that may have arisen.

b) As a professional body the police should constantly be looking to demonstrate to the outside world (and the media) how well it does its job.

c) A mechanism for making a public example of cops who make mistakes.

d) A means whereby a professional police force can learn from its mistakes.

9% of respondents chose the first option, but the majority (59%) chose the second. Encouragingly, nobody selected the 'public example' option; but only 24% selected the option embodying the principle that constant improvement is a function of professionalism.

While it is encouraging that respondents had a positive impression of the role that accountability mechanisms can play in reinforcing the image of the police, this privileging of the image of accountability over the substantive content of professional improvement is concerning. The results of this question are helpful, however, and in future would be a meaningful contrast if also asked before training.

Perception of preparedness

As a final question in the post-training questionnaire, officers were asked for their impression of their readiness for the management of public assemblies, based presumably on their own experience as well as the training received.

92% of respondents either agreed or strongly agreed with the proposition that 'I have received the training I need on how peacefully to de-escalate potentially violent situations including large groups of people'.

Opinion was almost precisely divided concerning the idea that 'Generally, people involved with large assemblies understand the role the police should play, and are supportive of our work'. 35% agreed and 35% disagreed.

80% of officers agreed or strongly agreed that 'My superior officers and other relevant officials are generally well prepared for large-scale public assemblies, and we always have a plan in place for how we should respond'. 84% agreed or strongly agreed that 'I am confident that were a mistake to occur during our management of an assembly, the responsible officer would acknowledge what went wrong and the police force would ensure that lessons were learned'.

35% agreed that 'I am routinely supplied with all the defensive equipment I need in order to feel safe while managing a large public assembly'; however, 38% disagreed. Interestingly, 63% of respondents either strongly disagreed, disagreed or were uncertain about whether 'I am routinely supplied with all the equipment I need in order to manage a large public assembly in a way that conforms with international standards'.

Conclusion

This exercise has made promising steps toward a greater understanding of policing attitudes around the policing of assembly and the extent to which training based upon soft-law instruments developed at regional level can be employed to shift opinion within a targeted group.

Malawi represented a useful case study of how this impact could be measured. The country's police service was a willing partner both in the training programme and in the logistics of undertaking the surveys. The training was given at an opportune time, with general elections planned for 2019, and indeed the inspector general of police subsequently requested a follow-up training be given to his own staff and to the High Command so as to reflect their own organisational practice and assess where Force Standing Orders needed to be amended.[23]

Anecdotally, it is also interesting to note that, a few weeks after the training was administered, Malawi experienced a wave of anti-corruption marches and public demonstrations, the first nationwide protests since 2011. The police reaction, though, was starkly different to the tragic events seven years previously, with a professional response ensuring that there were no violent incidents. However, a historical coincidence such as this in not the best means of assessing the impact of a training session – there likely were other differences between the context of 2011 and the protests of April 2018. What has been demonstrated in this paper is that it is at least possible to measure the opinions of police officers about critical issues likely to influence the way in which they police an assembly.

Of course, an attitudinal assessment of this character has a number of limitations, the most salient being the means of delivery/collection: written questionnaires allowed the assessment to be made remotely and cost-effectively, but their formality will surely have impacted the way in which officers responded. The fact that, at the trial stage, the length of the questionnaire had proved problematic meant that the shortened version used in this larger assessment was not itself settled, and not all questions were used both before and after. Moreover, further work is needed to develop better means of assessing how officers translate background opinions about assembly participants into tactical decisions about their actions.

Nonetheless, even in its limited form, this trial data suggests tentative indicators of impact for the training that was given. There appears to have been very dramatic change in officers' perception of what an assembly is, and modest increases in their appreciation of the fact that assembling together is a right and not a privilege. It proved more difficult to capture officers' attitudes toward the legitimacy of certain practical tactics in the context of assemblies but, to the extent that it was possible, modest improvements could be discerned in terms of indicators such as the proportion of officers thinking that firing warning shots above the crowd is a legitimate dispersal tactic.

More broadly, there is a tentative 'proof of concept' that it is possible to identify shifts in attitude among police officers in Africa with respect to fundamental human rights challenges in a way that, with greater investment in more sensitive collection, could be employed to guide training and other interventions aimed at incremental improvement.

Endnotes

1. For a recent discussion of this, see Christof Heyns (2017) How should states manage assemblies in the new age of protest? *openDemocracy*: online. Available at https://www.opendemocracy.net/protest/state-management-assemblies [accessed 27 July 2018]

2. Christof Heyns (2011) *Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions* (23 May 2011) [A/HRC/17/28]. Available at http://www.icla.up.ac.za/images/un/hrc/A%20HRC%2017%2028_thematic%20-%20demonstrations.pdf [accessed 27 July 2018]

3. ACHPR Resolution 229 (LII) (October 2012)

4. African Commission on Human and Peoples' Rights (2014) *Report of the Study Group on Freedom of Association and Assembly in Africa*

5. ACHPR Resolution 319 (LVII) (November 2015)

6. ACHPR Resolution 281 (LV) (May 2014). Back in 2011, during the same session that had established the new special procedure mandate on association and assembly, the UN Human Rights Council had adopted a decision that at its next session it would convene a special panel discussion on the promotion and protection of human rights in the context of peaceful protests, with a particular focus on the ways and means to improve the protection of these rights in such contexts in line with international human rights law (Human Rights Council Decision 17/120 [A/HRC/DEC/17/120] (6 July 2011)). After that panel, the Council called upon the Office of the High Commissioner for Human Rights to prepare a thematic report, drawing upon treaty bodies, regional mechanisms, national human rights institutions, and receiving state and civil society input (Human Rights Council Resolution 19/35 [A/HRC/RES/19/35] (23 March 2012)). The Office produced Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests [A/HRC/22/28] (21 January 2013). Based on this report, the Council then in 2013 adopted Resolution 22/10 on 'The Promotion and protection of human rights in the context of peaceful protests' which encouraged 'all States to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force' (Human Rights Council Resolution 22/10 [A/HRC/RES/22/10] (21 March 2013) para 7)

7. Human Rights Council Resolution 25/38 [A/HRC/RES/25/38] (11 April 2014). For a general discussion of the Council's process up to this point, also see Milena Costas Trascasas & Stuart Casey-Maslen (January 2014) *Facilitating Peaceful Protests* [Geneva Academy Briefing No.5]

8. Maina Kiai & Christof Heyns (4 February 2016) *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies* [A/HRC/31/66]

9. For the full range of languages available, as well as other advocacy resources related to the joint report, see http://freeassembly.net/reports/managing-assemblies/. For a recent civil society report that draws heavily upon the report's principles, see International Network of Civil Liberties Organisations (INCLO) (June 2018) *Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest*

10. This impetus was formalised quite late in the process, through ACHPR Resolution 363 (LIX) (November 2016), distinguishing between the Guidelines on Policing Assemblies and the broader Guidelines on Freedom of Association and Assembly in Africa.

11. Japhet Biegon, Abdullahi Boru & Delly Mawazo (2017) *Domestic Adherence to Continental and International Norms in the Practice of Policing Assemblies in Africa*. Cape Town: APCOF & DIHR

12. The Commission and its partners were assisted in undertaking this consultation by a grant from the EU's European Instrument for Democracy and Human Rights (EIDHR), as part of an action entitled 'Policing and Freedom of Expression and Assembly in Africa' (2015–2016).

13. Another means of assessing the impact of the African Commission's Guidelines would be to monitor legal reform around legislation regulating police use of force as well as regulations around broader questions of assemblies. On at least one count, the question of the use of force, it is worth noting a recent new global database curated by researchers at the University of Pretoria, the Law of Police Use of Force Worldwide online resource, available at www.policinglaw.info.

14. One comparable piece of research was conducted by the Human Rights Implementation Centre at the University of Bristol, looking at awareness among law enforcement officials of the Robben Island Guidelines. However, in this case the interviews focused on knowledge of the existence of the Guidelines, rather than of their content.

15. In the American context see, for example, Eugene A Paoline and William Terrill (2011) Listen to me! Police officers' views of appropriate use of force *Journal of Crime and Justice* 34: 178-89. Also see Anthony J Micucci & Ian M Gomme (2005) American police and subcultural support for the use of excessive force *Journal of Criminal Justice* 33: 487-500

16. For a recent – and unusually diverse – collection of research essays about the police in Africa, see Jan Beek, Mirco Göpfert, Olly Owen & Jonny Steinberg (eds) (2017) *Police in Africa: The Street Level View* London: Hurst & Co.

17. Regarding the 2011 events and the Commission of Inquiry established to investigate them, see John Kotsopoulos (2018) A slow but steady search for accountability and justice: The Commission of Inquiry into the July 2011 deaths and destruction of property in Malaw. In Thomas Probert and Christof Heyns (eds) *National Commissions of Inquiry in Africa* Pretoria: Pretoria University Law Press

18. One response was completed by a police officer who had not participated in the training. Being too small a sample to act as a control, this response was excluded as inappropriate.

19. In the 'before' questionnaire, some respondents tried to obviate this complication by simply ranking all of the options, ignoring the question's direction to pick three. In those instances, the question was taken as having been answered, but only the first three selections were recorded. In the 'after' questionnaire, the presentation of the question was changed to force the selection of only three options.

20. *Guidelines* para. 9.1

21. In the *Guidelines*, (para. 21.1.1), the African Commission referred back to the broader description of necessary limits on the use of force and firearms in its *General Comment No.3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (2015). This general comment makes clear (para.28) that 'Firearms may never be used simply to disperse an assembly.'

22. Questions of crowd psychology are complex and contested. For two introductions, see Donatella della Porta and Herbert Reiter (eds) (1998) *Policing Protest: The Control of Mass Demonstrations in Western Democracies* Minneapolis: University of Minnesota Press and David Waddington (2007) Policing Public Disorder: Theory and Practice Cullompton: Willan Publishing. Also see A/HRC/17/28 (supra n.2) para. 105-18.

23. The context of the 2019 elections was highlighted by Mr Rodney Josse (Ag. Inspector General of Police) at the opening of this later training in June 2018.

In March 2017, the African Commission adopted its *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*. During the same process of consultation that led to their development, the Commission and its partners also developed a training module designed to introduce the content of the Guidelines to police officers. This paper describes the process of developing an impact assessment tool for this training, and particularly its use with respect to the implementation of the training with police officers in Malawi in 2018.

Given the obvious practical challenges of assessing impact in terms of the conduct of trained officers, this research has focused on assessing attitudinal change. While further sophistication is needed in order better to understand how these background attitudes are translated by the officers into tactical decisions, it was nonetheless possible to discern a clear impact of the training with respect to certain fundamental attitudes about the role of the police in the context of public assemblies.

As part of the same process, this research has also provided a useful insight into how police officers in Malawi perceive some of the decisions they confront, an insight that could help senior officers, trainers and policy-makers better tailor their interventions to a challenging environment.

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