



SETSOTO

Head Office

P O Box 116
Voortrekker Street
FICKSBURG
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**LOCAL MUNICIPALITY
PLAASLIKE MUNISIPALITEIT
MASEPALA WA LEHAE
DEPT:CORPORATE SERVICES**

P O Box 116
FICKSBURG
9730
Tel: (051) 933 9300 Fax: (051) 933 9309
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All correspondence addressed to Head Office /Alle korrespondensie gerig te word aan Hoofkantoor / Mangolo ohle a lebiswe Ntlokolo.

	OUR REF: Administration
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13 January 2017

South African History Archive (SAHA)
P B Box31719
Braamfontein
2017

Email : foip@saha.co.za
Attention : Boitumelo Maleke

Dear Sir/Ma'am

RE: REQUEST FOR INFORMATION RELATING TO GATHERINGS WITHIN SETSOTO MUNICIPALITY

Your PAIA Request Number SAH 2016 SST 0001 has reference.

Firstly as indicated in the previous email it is critical for our municipality to deal with all PAIA requests in respect of the required legislation, thus we further take this opportunity to express our apology for not timeously responding.

The Request for Information has since been approved by the Information Officer and all fees relating to request has been waived.

Herewith the information as requested:

- 1. Gatherings template**
Find the template as annexure A
- 2. Details of the responsible officer**
Mr Moshodi Mosholi
Assistant Security Manager

Setsoto Municipality
27 Voortrekker Street, Ficksburg
Tel : (051) 933-9300 or (051) 933-9366
Fax : (051) 933-9307
Email : moshodi@setsoto.co.za

3. Details – See also the Register of Gatherings attached as Annexure B

3.1 The number of notices of gathering : 13

3.2 The number of convener's meeting : 13

3.3 The number of gatherings prohibited : 3

The reasons for prohibition of these gatherings were all as a result of the procedures not being followed. They were informed of the process to be followed.

3.4 The number of gatherings authorized with conditions : 0

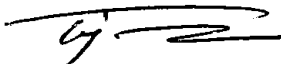
3.5 The number of gatherings authorized : 13

4. Training manuals and training materials used

Find as annexure C

I hope the above will be in order.

Yours faithfully



T P MASEJANE
DEPUTY INFORMATION OFFICER

ANNEXURE A

Gatherings Template

0519339307

NOTICE OF GATHERING

TO BE COMPLETED BY THE CONVENER IN ACCORDANCE WITH SECTION 3 OF THE REGULATION OF GATHERINGS ACT 205 OF 1993
(PLEASE ATTACH COPY OF ID DOCUMENT OF CONVENER, DEPUTY- AND CHIEF MARSHALS)

1. PARTICULARS OF CONVENER

CHIEF CONVENER	DEPUTY CONVENER
Initials and Surname: _____	_____
ID Number: _____	_____
Address: _____	_____
Contact number: _____	_____

2. PARTICULARS OF ORGANISATION

Name of Organisation: _____
 Address of Organisation: _____
 Contact Number: _____ Fax / E-mail: _____

3. PARTICULARS OF GATHERING

Date: _____ Nature and Purpose: _____

Number of participants: _____ Number of Vehicles: _____ Type: _____

CHIEF MARSHAL: _____ (Name, Address, ID nr)

Number of Marshals: _____ How will Marshals be identified: _____

Place of Commencement: _____ Time: _____

Destination: _____ Arrival time: _____

Proposed route/s to be followed to destination(s): _____

Will Memorandum(s) be handed over? _____ If so, to whom: _____ Or else: _____

Arrangements for acceptance of Memorandum must be made before commencement of the gathering. With whom did you make the arrangements? _____ If acceptance of Memorandum confirmed, attach proof of such confirmation

Are speeches to be made? _____ If so, by whom? _____

Time when move to place of adjournment: _____ Proposed route to place of adjournment: _____

Place of adjournment: _____ Time: _____

Manner of transport of participants to and from gathering: _____

Is this Notice given 7 days before the gathering? _____ If not, attach written reasons in terms of section 3(3)(f) why not

The contents of sections 8, 11 and 12 must be taken note of. Conditions on the reverse of this notice and any additional conditions agreed upon during the negotiations in terms of section 4, must be adhered to. Non-compliance therewith constitutes an offence. A list of Marshals must be handed in at the authorised member of the SAPS and / or responsible officer at _____ Municipality. This gathering will not be protected under the distinguished patronage of the _____ Municipality. This notification is only applicable within the municipal boundaries of the _____ Municipality.

SIGNATURE OF CONVENER

ORGANISATION

CAPACITY

DATE

0519339307

CONDITIONS APPLICABLE TO THE GATHERING MENTIONED IN THE ATTACHED NOTICE, AS PER SECTION 8 OF ACT 205/1993

1. The convener shall appoint a number of marshals mentioned in the notice, or as amended; to control participants in the gathering and to take the necessary steps to ensure that the gathering proceeds peacefully and that the provisions of section 8 and the additional conditions hereunder, if any, are complied with and such marshals shall be clearly distinguishable.
2. The convener shall take all reasonable steps to ensure that all marshals and participants in the gathering / demonstration, are informed timeously and properly of the conditions to which the holding of the gathering is subject.
3. The gathering shall proceed and take place at the place, on the route, in the manner and during the times specified in the notice, or, as amended, and in accordance with the notice and additional conditions hereunder, if any.
4. No participant at a gathering / demonstration may have in his or her possession any airgun, firearm, imitation firearm or any muzzle loading firearm, as defined in the Firearms Control Act, 2000, or any dangerous weapon, as defined in the Dangerous Weapons Act 2013 and the convener and marshals shall take all reasonable steps to ensure that this is complied with.
5. No person at or participating in the gathering / demonstration shall by way of banner, placard, speech, singing or otherwise incite hatred of other person or groups on account of differences in culture, race, sex, language, religion.
6. No person present or participating in the gathering / demonstration shall perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or group of persons.
7. No person shall at the gathering / demonstration wear any form of apparel that resembles any of the uniforms worn by members of the security forces, including the SA Police Service and the SA Defence Force or any disguise or mask or any other apparel or item which obscures his / her facial features and prevents his / her identification.
8. Marshals shall take all reasonable steps to ensure that no entrance to a building or premises is so barred by participants that reasonable access to such building or premises is denied to any person, and also that no entrance to a building or premises where a hospital, fire- or ambulance station or other emergency services is situated, is barred by participants.
9. No person shall, in any manner before or during the gathering, compel / attempt to compel any person to attend, join or participate in the gathering and the convener and marshals shall take all reasonable steps to prevent such actions.

10. ADDITIONAL CONDITIONS AGREED UPON DURING THE NEGOTIATIONS IN TERMS OF SECTION 4

- 10.1 _____
- 10.2 _____
- 10.3 _____
- 10.4 _____

***** INDEMNITY *****

I, the undersigned, hereby indemnify the _____ Municipality against any claims of whatever nature that may arise or result from the above mentioned gathering, on the date and place indicated in the Notice attached hereto, or in the vicinity thereof and I also accept responsibility for any damages, loss of life, injuries or other loss caused by or resulting from the gathering to any Municipal property, equipment or accessories

NAME & ADDRESS OF ORGANISATION GIVING INDEMNITY: _____

SIGNATURE of authorised person: _____ CAPACITY: _____ DATE: _____

DUTIES AND RESPONSIBILITIES OF MARSHALS AT GATHERINGS

In terms of the Regulation of Gatherings Act no. 205 of 1993, all Marshals appointed in terms of the Act, shall be responsible for the following at each gathering in respect of which they have been appointed:

1. To control participants in the gathering and to take the necessary steps to ensure that the gathering at all times proceeds peacefully.
2. To ensure that the notice of the gathering is complied with in respect of the route which must be followed and that times for commencement and departure are adhered to.
3. To ensure that the conditions which apply to the gathering are adhered to.
4. To be identifiable as marshals and clearly distinguishable from the other participants in the gathering.
5. To ensure that no person participating in the gathering carries a dangerous weapon, firearm, imitation firearm, muzzle loading firearm or anything that resembles a firearm.
6. To take reasonable steps to ensure that no entrance to any building or premises is so barred by participants that reasonable access to the said building or premises is denied to any member of the public.
7. To ensure that no entrance to a building or premises in which a hospital, fire station or ambulance services or any other emergency services is situated, is barred by the participants in the gathering.
8. To take reasonable steps to ensure that no person is compelled to attend, join or participate in the gathering, either before or during the gathering.

I, _____ (name) being the convener / deputy convener of the gathering to be held on _____ (date), hereby confirm that the above responsibilities, the contents of the notice applicable to the gathering and all conditions that apply to the said gathering, have been explained by me to all marshals appointed for the intended gathering, as prescribed in terms of section 4(5)(b) of the Act.

Signature: convener /deputy convener

Date: _____

ANNEXURE B

Marches and Picketing Registering 2015 and 2016



MARCHES AND PICKETING REGISTER 2015 & 2016

ORGANISATION	TOWN	DATE OF MARCH/ PICKETING	PURPOSE	CHIEF CONVENER
Congress of the People	Ficksburg	12 April 2015	Tatane Memorial Activity	Mr SL Nkopane
PYA	Ficksburg	09 July 2015	March against crime	Mr MV Mohlakoana
Hlohlolwane/ Clocolan Concern Community	Clocolan	07 September 2015	March against theft, house braking, rape, domestic violence and murder	Me MC Nakase
South African Communist Party	Ficksburg	11 September 2015	FET	Mr T Sehloho
HMT Productions	Ficksburg	23 October 2015	Anti- substance & drug abuse awareness	Mr LS Rakhajane
South African Communist Party	Senekal	30 October 2015	Farm evictions, garnish orders, job creation & house eviction	Mr P Khumalo
Economic Freedom Fighters	Ficksburg	12 November 2015	FET	Mr TL Maduna
Clocolan Stakeholders Concern Community	Clocolan	09 February 2016	Opposing bail	Mr M Moahloli
Moemaneng Community Forum	Marquard	11 March 2016	Service delivery	Mr MP Matsau
Economic Freedom Fighters	Clocolan	31 March 2016	Service delivery	Mr LG Mokoakoe
Clocolan Sports Stakeholders	Clocolan	27 May 2016	Demands regarding sport facilities	Mr SJ Potsane

Meqheleng Community	Ficksburg	31 May 2016	Demands	Mr L Likhoele
Meqheleng Small Business Association	Ficksburg	22 June 2016	Demands	Mr M Makupane

ANNEXURE C

Training manuals and training materials

NO. 205 OF 1993: REGULATION OF GATHERINGS ACT, 1993.
STATE PRESIDENT'S OFFICE

No. 132. 28 Januray 1994

NO. 205 OF 1993: REGULATION OF GATHERINGS ACT, 1993.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:

ACT

To regulate the holding of public gatherings and demonstrations at certain places; and to provide for matters connected therewith.

(English text signed by the State President.)

(Assented to 14 January 1994.)

PREAMBLE

WHEREAS every person has the right to assemble with other persons and to express his views on any matter freely in public and to enjoy the protection of the State while doing so;

AND WHEREAS the exercise of such right shall take place peacefully and with due regard to the rights of others:

BE IT THEREFORE ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

Definitions

1. In this Act, unless the context otherwise indicates-

- (i) "authorized member" means a member of the Police authorized in terms of section 2(2) to represent the Police as contemplated in the said section; (iii)
- (ii) "branch", in relation to an organization, includes -
 - (a) any section or committee of the organization; and
 - (b) any local, regional or subsidiary body forming part of the organization; (xii)
- (iii) "Commissioner" means the Commissioner of the South African Police appointed in terms of section 3 of the Police Act, 1958 (Act No. 7 of 1958), and includes a regional commissioner as defined in the said Act;
- (iv)

or organization is registered in terms of any applicable law, are discussed, attacked, criticized, promoted or propagated; or

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

(vii) "local authority" means any local authority as defined in section I of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983), within whose area of jurisdiction a gathering takes place or is to take place, but does not include a regional services council or a joint services board in respect of the area of jurisdiction of another local authority; (ix)

(viii) "magistrate" means a magistrate appointed in terms of the Magistrates, Courts Act, 1944 (Act No. 32 of 1944); (v)

(ix) "marshal" means any person appointed as such in terms of section 8(1):

(xiii)

(x) "Minister" means the Minister of Law and Order; (vi)

(xi) "organization" means any association, group or body of persons, whether or not such association, group or body has been incorporated, established or registered in accordance with any law; (viii)

(xii) "peace committee" means a local committee or a regional committee

as defined in section 1 of the Internal Peace Institutions Act, 1992 (Act No. 135 of 1992), and contemplated in the National Peace Accord signed at Johannesburg on 14 September 1991; (xv)

(xiii) "Police" means the South African Police mentioned in section 2 of the Police Act, 1958 (Act No. 7 of 1958), and includes any body of persons established or enrolled under any law and exercising or performing the powers, duties and functions of a police force, but does not include any body of traffic officers; (x)

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

(xiv)

(xv) ".riot damage" means any loss suffered as a result of any injury to or the death of any person, or any damage to or destruction of any property, caused directly or (b) Such organization or branch, as the case may be, shall forthwith notify the responsible officer concerned of the names and addresses of the persons so appointed and the responsible officer shall notify the authorized member concerned accordingly.

(c) If a person appointed in terms of paragraph (a) is or becomes unable to perform or to continue to perform his functions in terms of this Act, the organization or branch, as the case may be, shall forthwith appoint another person in his stead, and a person so appointed shall be deemed to have been appointed in terms of paragraph (a): Provided that after the appointment of a person in terms of this paragraph, no further such appointment shall be made, except with the approval of the responsible officer concerned.

(2) (a) The Commissioner or a person authorized thereto by him shall authorize a suitably qualified and experienced member of the Police, either in general or in a particular case, to represent the Police at consultations or negotiations contemplated in section 4 and to perform such other functions as are conferred or imposed upon an authorized member by this Act, and shall notify all local authorities or any local authority concerned of every such authorization. and of the name, rank and address of any authorized member concerned.

(b) If an authorized member is or becomes unable to perform or to continue to perform his functions in terms of this Act, the Commissioner or a person authorized thereto by him shall forthwith designate another member of the Police to act in his stead, either in general or in a particular case, and the member so designated shall be deemed to have been authorized in terms of paragraph (a) for the purposes contemplated in the said paragraph: Provided

that after the designation of a member of the Police in terms of this paragraph, no further such designation shall be made, except with the approval

of the responsible officer concerned.

(3) If any consultations, negotiations or proceedings in terms of this Act at which the presence of a convener or an authorized member is required, are to take place and such convener or member is not available, such consultations or negotiations or other proceedings may be conducted in the absence of such convener or member, and the organization or Police, as the case may be, shall be bound by the result of such consultations, negotiations or proceedings as if it or they had agreed thereto.

(4) (a) A local authority within whose area of jurisdiction a gathering is to take place or the management or executive committee of such local authority shall appoint a suitable person, and a deputy to such person, to perform the functions, exercise the powers and discharge the duties of a responsible officer in terms of this Act.

(b) If, for any reason, a local authority has not made an appointment for the convener to give such notice earlier than seven days before such date, he shall give such notice at the earliest opportunity: Provided further that if such notice is given less than 48 hours before the commencement of the gathering, the responsible officer may by notice to the convener prohibit the gathering.

(3) The notice referred to in subsection (1) shall contain at least the following information:

(a) The name, address and telephone and facsimile numbers, if any, of the convener and his deputy;

(b) the name of the organization or branch on whose behalf the gathering is convened or, if it is not so convened, a statement that it is convened by the convener;

(c) the purpose of the gathering;

(d) the time, duration and date of the gathering;

(e) the place where the gathering is to be held;

(f) the anticipated number of participants;

(g) the proposed number and, where possible, the names of the marshals who will be appointed by the convener, and how the marshals will be distinguished from the other participants in the gathering;

(h) in the case of a gathering in the form of a procession-

(i) the exact and complete route of the procession;

(ii) the time when and the place at which participants in the procession are to assemble, and the time when and the place from which the procession is to commence:

(iii) the time when and the place where the procession is to end and the participants are to disperse;

(iv) the manner in which the participants will be transported to the place of assembly and from the point of dispersal;

(v) the number and types of vehicles, if any, which are to form part of the procession;

(i) if notice is given later than seven days before the date on which the gathering is to be held, the reason why it was not given timeously;

(j) if a petition or any other document is to be handed over to any person, the place where and the person to whom it is to be handed over.

(4) If a local authority does not exist or is not functioning in the area where a gathering is to be held, the convener shall give notice as

contemplated in this section to the magistrate of the district within which that gathering is to be held or to commence, and such magistrate shall thereafter fulfil the functions, exercise the powers and discharge the duties Consultations, negotiations, amendment of notices, and conditions

4. (1) If a responsible officer receives notice in terms of section 3(2), or other information regarding a proposed gathering comes to his attention, he shall forthwith consult with the authorized member regarding the necessity for negotiations on any aspect of the conduct of, or any condition with regard to, the proposed gathering.

(2) (a) If, after such consultation, the responsible officer is of the opinion that negotiations are not necessary and that the gathering may take place as specified in the notice or with such amendment of the contents of the notice as may have been agreed upon by him and the convener, he shall notify the convener accordingly.

(b) If, after such consultation, the responsible officer is of the opinion that negotiations are necessary, he shall forthwith call a meeting between himself and-

- (i) the convener;
- (ii) the authorized member;
- (iii) any other responsible officers concerned, if any; and
- (iv) representatives of such other public bodies, including local authorities, police community consultative forums and peace committees, as in the opinion of such responsible officer or officers ought to be present at such meeting,

in order to discuss any amendment of the contents of the notice and such conditions regarding the conduct of the gathering as he may deem necessary.

(c) At the meeting contemplated in paragraph (b) discussions shall be held on the contents of the notice, amendments thereof or additions thereto

and the conditions, if any, to be imposed in respect of the holding of the gathering so as to meet the objects of this Act.

(d) The responsible officer shall endeavour to ensure that such discussions take place in good faith.

(3) If a convener has been notified in terms of subsection (2) (a) or has not, within 24 hours after giving notice in terms of section 3(2), been called to a meeting in terms of subsection (2)(b) of this section, the gathering may take place in accordance with the contents of the notice and in accordance with the provisions of section 8, but subject to the provisions of sections 5 and 6.

(4) (a) If agreement is reached at the meeting contemplated in subsection (2) (b) the gathering may take place in accordance with the contents of the notice, including amendments, if any, to such contents, on which agreement was reached at the meeting, but subject to the provisions of sections 5 and 6.

(b) If at a meeting contemplated in subsection (2)(b) agreement is to in subsection (2)(b): Provided that if the identity or whereabouts of the convener is unknown, or if in view of the urgency of the case it is not practicable to deliver or tender the said written notice and reasons to him, the notice shall forthwith, notwithstanding any provision to the contrary in any other law contained, be published in one or more of the following manners:

- (i) In a newspaper circulating where the gathering is to be held; or
- (ii) by means of the radio or television; or
- (iii) by the distribution thereof among the public and the affixing

thereof in public or prominent places where the gathering is to be held; or

(iv) by the announcement thereof orally where the gathering is to be held; or

(v) by affixing it in a prominent place at the address of the convener specified in the notice.

(b) The convener and the authorized member shall, respectively, ensure that every marshal and every member of the Police at the gathering know

the contents of the notice, including any amendment or condition, if any.

(6) (a) If a gathering is postponed or delayed, the convener shall forthwith notify the responsible officer thereof and the responsible officer may call a meeting as contemplated in subsection (2)(b), and thereupon the provisions of subsections (2)(c) and (d), (3), (4) and (5) shall apply, mutatis mutandis, to the gathering in question.

(b) If a gathering is cancelled or called off, the convener shall forthwith notify the responsible officer thereof and the notice given in terms

of section 3 shall lapse.

(7) If a responsible officer is notified as contemplated in subsection (6) (a) or (b), he shall forthwith notify the authorized member accordingly.

Prevention and prohibition of gathering

5. (1) When credible information on oath is brought to the attention of a responsible officer that there is a threat that a proposed gathering will

result in serious disruption of vehicular or pedestrian traffic, injury to participants in the gathering or other persons, or extensive damage to property, and that the Police and the traffic officers in question will not be

able to contain this threat, he shall forthwith meet or, if time does not allow

it, consult with the convener and the authorized member, if possible, and any other person with whom, he believes, he should meet or consult, including the representatives of any peace committee or police community consultative forum in order to consider the prohibition of the gathering.

(2) If, after the meeting or consultation referred to in subsection (b) Whenever an authorized member in terms of section 4(4)(b) requests that a particular condition be imposed and the request is refused, or whenever

information contemplated in section 5(1) is brought to the attention of a responsible officer and the gathering in question is not prohibited, an authorized member may, if instructed thereto by the Commissioner or the district commissioner of the South African Police for the area where the gathering is to be held, apply to an appropriate magistrate to set aside such refusal or to prohibit such gathering, as the case may be, and the magistrate may refuse or grant the application.

(2) The rules made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), if any, shall apply mutatis mutandis in respect of an application referred to in subsection (1).

(3) (a) An application in terms of subsection (1) (a) or (b) shall be made within 24 hours after the responsible officer has given notice in terms of section 4(5)(a) of the imposition of, or the refusal to impose, the condition in question or the prohibition of, or the refusal to prohibit, the gathering in question, and under no circumstances later.

(b) Such condition shall, subject to any amendment thereof, remain in force until set aside and such prohibition shall remain in force until set

aside.

(c) No order as to costs shall be made by a magistrate in respect of an application under subsection (1).

(4) A convener or authorized member referred to in subsection (1) (a) or (b), as the case may be, may by means of an urgent application in accordance with the Uniform Rules of the several Provincial and Local Divisions of the Supreme Court of South Africa, appeal against any order made by a magistrate in terms of the said subsections.

(5) Notwithstanding the provisions of subsections (1), (2) and (4), the convener, authorized member or any person whose rights may be affected by the holding of a gathering or by its prohibition or by any term in a notice or any condition imposed or failure to impose any condition in relation to a gathering may by means of an urgent application in accordance with the Uniform

Rules of the several Provincial and Local Divisions of the Supreme Court of South Africa, apply to an appropriate court for the striking, out or amendment

of any, such term or condition or the imposition of any other condition or for

permission to hold or for a prohibition of, the gathering, and the court may strike out or amend any such term or condition or impose any other condition or

grant such permission or prohibit the gathering, as it deems fit.

(6) (a) If a responsible officer or the Minister, or a court on application in terms of the common law, has prohibited a gathering at any place, or if a magistrate or court has upheld the prohibition of a gathering and Union Buildings

7. (1) Subject to the provisions of subsection (2) all demonstrations and gatherings-

(a) in any building in which a courtroom is situated, or at any place in the open air within a radius of 100 metres from such building, on every day of the week, except Saturdays, Sundays and public holidays; and

(b) in the areas defined in-

(i) Schedule 1; and

(ii) Schedule 2,

are hereby prohibited.

(2) The provisions of subsection (1) shall not apply

(a) to any demonstration or gathering referred to in subsection

(1)(a) for which permission has, on application to the magistrate of the district concerned, been granted by him in writing; or

(b) within the area contemplated in subsection (1)(b)(i), to any demonstration or gathering within such area for which permission has, on application to the Chief Magistrate of Cape Town, been granted by him in writing; or

(c) within the area contemplated in subsection (1)(b)(ii), to a demonstration or gathering within such area for which permission has, on application to the Director-General: Office of the State President, been granted by him in writing.

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

(4) When credible information on oath that there is a threat as contemplated in section 5(1), is brought to the attention of a person who has

already granted permission in terms of subsection (2), he may, subject to the application, mutatis mutandis, of the provisions of section 5, revoke such permission, and thereupon the provisions of section 6(6) shall, mutatis mutandis, apply to the demonstration or gathering in question.

CHAPTER 3

Conduct of gatherings and demonstrations

8. The following provisions shall apply to the conduct of gatherings and, where so indicated, to the conduct of demonstrations:

(1) The convener shall appoint the number of marshals mentioned in the notice or, if it was amended in terms of section 4, in the amended notice, to marshals, if any, shall take all reasonable steps to ensure that the said laws

are complied with.

(5) No person present at or participating in a gathering or demonstration shall by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of other persons on account of differences in culture, race, sex, language or religion.

(6) No person present at or participating in a gathering or demonstration shall perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or group of persons.

(7) No person shall at any gathering or demonstration wear a disguise or mask or any other apparel or item which obscures his facial features and prevents his identification.

(8) No person shall at any gathering or demonstration wear any form of apparel that resembles any of the uniforms worn by members of the security forces, including the Police and the South African Defence Force.

(9) The marshals at a gathering shall take all reasonable steps to ensure that-

(i) no entrance to any building or premises is so barred by participants that reasonable access to the said building or premises is denied to any person;

(ii) no entrance to a building or premises in or on which is situated any hospital, fire or ambulance station or any other emergency services, is barred by the participants.

(10) No person shall, in any manner whatsoever, either before or during a gathering or demonstration, compel or attempt to compel any person to attend, join or participate in the gathering or demonstration, and the convener and marshals, if any, shall take all reasonable steps to prevent any person from being so compelled.

Powers of Police

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

(a) may, if he has reasonable grounds to believe that the Police will not be able to provide adequate protection for the people participating in such a gathering or demonstration, notify the convener and such people accordingly;

(b) may prevent people participating in a gathering from proceeding to a different place or deviating from the route specified in gathering or demonstration specified by him;

(c) may, when an incident, whether or not it results from the gathering or demonstration, causes or may cause persons to gather at any public place, by notice in a manner contemplated in section 4(5) (a) specify an area considered by him to be necessary for-

(i) the movement and operation of emergency personnel and vehicles; or

- (ii) the passage of a gathering or demonstration; or
- (iii) the movement of traffic; or
- (iv) the exclusion of the public from the vicinity; or
- (v) the protection of property;

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

(2) (a) In the circumstances contemplated in section 6(6) or if a member of the Police of or above the rank of warrant officer has reasonable grounds to believe that danger to persons and property, as a result of the gathering or demonstration, cannot be averted by the steps referred to in subsection (1) if the gathering or demonstration proceeds, the Police or such member, as the case may be, may and only then, take the following steps:

(i) Call upon the persons participating in the gathering or demonstration to disperse, and for that purpose he shall endeavour to obtain the attention of those persons by such lawful means as he deems most suitable, and then,

(ii) in a loud voice order them in at least two of the official languages and, if possible, in a language understood by the majority of the persons present, to disperse and to depart from the place of the gathering or demonstration within a time specified by him, which shall be reasonable.

(b) If within the time so specified the persons gathered have not so dispersed or have made no preparations to disperse, such a member of the Police may order the members of the Police under his command to disperse the persons concerned and may for that purpose order the use of force, excluding the use of weapons likely to cause serious bodily injury or death.

(c) The degree of force which may be so used shall not be greater than is necessary for dispersing the persons gathered and shall be proportionate to the

circumstances of the case and the object to be attained.

(d) If any person who participates in a gathering or demonstration or any person who hinders, obstructs or interferes with persons who participate in a gathering or demonstration -

(i) kills or seriously injures, or attempts to kill or protection of property shall be affected by the provisions of this Act.

Regulations

10. The Minister may, subject to the provisions of section 9(2), make regulations in regard to-

(a) the procedure to be followed when a gathering or demonstration is dispersed;

(b) the use, and procedure to be followed before the use, of force against participants in a gathering or demonstration; and

(c) any other matter in regard to which it may be necessary to make regulations in order to achieve the objects of this Act.

CHAPTER 4

Liability for damage arising from gatherings and demonstrations

11. (1) If any riot damage occurs as a result of-

(a) a gathering, every organization on behalf of or under the auspices of which that gathering was held, or, if not so held, the convener;

(b) a demonstration, every person participating in such demonstration,

shall, subject to subsection (2), be jointly and severally liable for that riot damage as a joint wrongdoer contemplated in Chapter II of the

Apportionment of Damages Act, 1956 (Act No. 34 of 1956), together with any other person who unlawfully caused or contributed to such riot damage and any other organization or person who is liable therefor in terms of this subsection.

(2) It shall be a defence to a claim against a person or organization contemplated in subsection (1) if such a person or organization proves

(a) that he or it did not permit or connive at the act or omission which caused the damage in question; and

(b) that the act or omission in question did not fall within the scope of the objectives of the gathering or demonstration in question and was not reasonably foreseeable; and

(c) that he or it took all reasonable steps within his or its power to prevent the act or omission in question: Provided that proof that he or it forbade an act of the kind in question shall not by itself be regarded as sufficient proof that he or it took all reasonable steps to prevent the act in question.

(3) For the purposes of-

(a) recourse against, or contribution by, any person who, or organization which, intentionally and unlawfully caused or adequate notice was given in accordance with the provisions of section 3; or

(b) after giving notice in accordance with the provisions of section 3, fails to attend a relevant meeting called in terms of section 4(2)(b); or

(c) contravenes or fails to comply with any provision of section 8 in regard to the conduct of a gathering or demonstration; or

(d) knowingly contravenes or fails to comply with the contents of a notice or a condition to which the holding of a gathering or demonstration is in terms of this Act subject; or

(e) in contravention of the provisions of this Act convenes a gathering, or convenes or attends a gathering or demonstration prohibited in terms of this Act; or

knowingly contravenes or fails to comply with a condition imposed in terms of section 4(4)(b), 6(1) or 6(5); or

(g) fails to comply with an order issued, or interferes with any steps taken, in terms of section 9(1)(b), (c), (d) or (e) or

(2)(a); or

(h) contravenes or fails to comply with the provisions of section 4(6); or

(i) supplies or furnishes false information for the purposes of this Act; or

(j) hinders, interferes with, obstructs or resists a member of the Police, responsible officer, convener, marshal or other person in the exercise of his powers or the performance of his duties under this Act or a regulation made under section 10,

shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) It shall be a defence to a charge of convening a gathering in contravention of subsection (1)(a) that the gathering concerned took place spontaneously.

Interpretation

13. (1) The provisions of this Act shall not be so construed as to detract from-

(a) the provisions of the-

(i) Control of Access to Public Premises and Vehicles Act, 1985 (Act No. 53 of 1985); or

(ii) Dangerous Weapons Act, 1968 (Act No. 71 of 1968);

or

(iii) Arms and Ammunition Act, 1969 (Act No. 75 of 1969); or

(iv) Trespass Act, 1959 (Act No. 6 of 1959); or

(v) Criminal Procedure Act, 1977 (Act No. 51 of 1977); attend that gathering.
Conflict and repeal of laws

14. (1) In the case of a conflict between the provisions of this Act and any other law applicable in the area of jurisdiction of any local authority the provisions of this Act shall prevail.

(2) The Acts specified in Schedule 3 are hereby repealed to the extent set out in the third column of that Schedule.

Application of Act in self-governing territories

15. (1) The State President may, at the request of the Minister after consultation with the government of the self-governing territory in question,

by proclamation in the Gazette declare this Act to be in force in that self-governing territory.

(2) After such a proclamation has been issued this Act shall, notwithstanding anything to the contrary contained in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), or any other law, apply in the self-governing territory in question as if the legislative assembly and the executive government of that self-governing territory do not have legislative and executive powers in respect of matters dealt with in this

Act or any regulation made thereunder.

Short title and commencement

16. This Act shall be called the Regulation of Gatherings Act, 1993, and shall come into operation on a date fixed by the State President in consultation with the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993), by proclamation in the Gazette.

Schedule 1

The area bounded by the following streets in the City of Cape Town, namely Queen Victoria Street from the point where Queen Victoria Street and Museum Avenue meet, up to the point where Queen Victoria Street and Wale Street meet, up to the point where Wale Street and St. George's Street meet, up to the point where St. George's Street and Longmarket Street meet, up to the point where Longmarket Street and Corporation Street meet, up to the point

where Corporation Street and Barrack Street meet, up to the point where Barrack Street and Coffee Lane meet, up to the point where Coffee Lane and Commercial Street meet, up to the point where Commercial Street and Nieuwmeester Street meet, up to the point where Nieuwmeester Street and Hope Street meet, up to the point where Hope Street and Tuinplein Street meet, up from the said junction up to where it intersects the line referred to in paragraph (a).

(c) To the east, from the junction of Government Avenue and the tarred road referred to in paragraph (a), the line extending due north up to the crest of Meintjieskop and the line extending due south from the said junction up to where it intersects the line referred to in paragraph (a).

(d) To the north, the line along the crest of Meintjieskop extending between the northern points of the first-mentioned lines referred to in paragraphs

(b) and (c).

Schedule 3

ACTS REPEALED

--
-
No. and year of Act Short title Extent of repeal

--
-

No. 52 of 1973 Gatherings and Demonstrations in the The whole
Vicinity of Parliament Act, 1973

No. 71 of 1982 Demonstrations in or near Court The whole
Buildings Prohibition Act, 1982

No. 74 of 1982 Internal Security Act, 1982 Sections 46(1) and
(2), 47, 48, 49, 51,
53, 75 and 62

No. 103 of 1992 Gatherings and Demonstrations at or The whole
near the Union Buildings Act, 1929



FREEDOM OF EXPRESSION INSTITUTE

MANUAL: REGULATION OF GATHERINGS ACT, 205 OF 1993

Draft 3.0

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OBJECTIVES OF THE TRAINING MANUAL

In developing this training manual, FXI's aim is to empower civil society organizations and paralegal advice offices with the necessary knowledge and skills to successfully organize and hold a gathering. It is also intended to assist local authorities to correctly interpret the various provisions of the Act thus ensuring that the right to assemble, demonstrate and picket is protected.

CHAPTER 1: UNDERSTAND AND INTERPRET THE ACT

LEARNING OUTCOMES

At the end of this learning unit, participants should be able to:

- *Demonstrate an understanding of the various instruments governing freedom of assembly.*
- *Understand the importance of the Regulation of Gatherings Act.*
- *Define the important definitions contained in the Act.*

1. What is freedom of assembly?

S Woolman sees freedom of assembly as an important feature of any democracy as it creates the space both to speak and to be heard. He believes that it provides an effective means of communication for those who feel that their demands are not being given serious

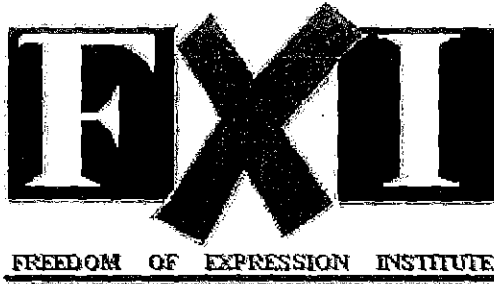


consideration by the state particularly in a country like South Africa where there is growing disenchantment as a result of the growing gap between the rich and the poor. Freedom of assembly therefore serves as a powerful tool of political engagement that is used by organized labour, landless people, anti-privatisation movements, students, squatters and even the police to press their demands.

1.2 Background and Introduction

Freedom of assembly is widely recognized and protected in international instruments. Article 20(1) of the Universal Declaration of Human Rights (UDHR) states that “everyone has the right to freedom of peaceful assembly...” According to article 21 of the International Covenant on Civil and Political Rights (ICCPR), the “right of peaceful assembly shall be recognized.” It further states that “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” As such, limitations to this right – prohibition or restriction of assembly by local authorities and the police – may be imposed only if the above provisions are met.

At the regional level, the African Charter on Human and Peoples’ Rights (African Charter) recognizes that “every individual shall have the right to assemble freely with others” (art. 11), without explicitly requiring that the assembly be “peaceful”. The American Convention on Human Rights (American Convention) recognizes the right of “peaceful assembly, without arms” (art. 15) while article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), and the article 24.6 of the Arab Charter on Human Rights (Arab Charter) recognize the right to “peaceful assembly”.



In phrasing similar to that of the International Covenant on Civil and Political Rights, the regional instruments stipulate that any restrictions on this right must be in conformity with the law and necessary "in a democratic society" (European and African instruments) or in a society that "respects freedom and human rights" (Arab Charter) in the interest of national security, public safety, public order, protection of health and morals, or "ethics" (African Charter), or protection of the rights of others. Legal provisions that circumscribe the terms under which limitations may be imposed should not be so open-ended as to give the State carte blanche.

Limitations placed on those wishing to exercise their assembly rights should be proportionate and necessary, and be subject to appeal in an independent court of law. The positive obligation on the State to facilitate peaceful protest has been recognized in several international cases.

In South Africa, the recognition of this right as a fundamental human right was first entrenched in the Interim Constitution No. 200 of 1993. Before this, various pieces of legislation were passed in order to stifle any form of dissent. An example of these laws is the Suppression of Communism Act that gave the Minister of Justice powers to prohibit a gathering or an assembly if he believed that the objects of communism would be furthered at such a gathering. As the struggle for liberation of the country intensified so was the passing of laws to quell dissent. A relaxation was only noted in 1990 when the then State President F.W. de Klerk unbanned the liberation movements.

This was followed by a Commission of Inquiry that was appointed by the then State President F.W. de Klerk in 1993 and led by Justice Richard Goldstone to inquire into the question of assemblies and demonstrations during the transitional period. This Commission comprised of a panel of experts drawn from South Africa and abroad whose mandate was to



create a legislative framework that would regulate public political activities prior to the holding of the first democratic elections in 1994. This resulted in a Bill that later became the Regulations of Gatherings Act which was assented to on 14 January 1994 and came into operation on 15 November 1996.

At the same time an Interim Constitution (200 of 1993) was passed and it recognized the right to assemble as a fundamental right. It provided as follows:

“Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions”. While the final Constitution (Act 108 of 1996) formulated this right under Section 17 as follows *“Everyone has a right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions”.*

Note

Peacefully and unarmed

An assembly which is not peaceful is the one where picketers employ tactics that intimidate the general public and as such interfere with the rights of others. In Germany for example, an assembly is not peaceful only if acts of physical violence against person or property are committed or threatened.



1.3 REGULATION OF GATHERINGS ACT, 205 of 1993

1.3.1 Purpose

The purpose of this Act is “to regulate the holding of public gatherings and demonstrations at certain places; and to provide for matters connected therewith”.

1.3.2 Preamble

When seeking to interpret a piece of legislation, one looks not only at the content but at its Preamble as this gives a sense of understanding of what the legislatures intended when passing that particular law.

The Preamble to this Act recognizes the right of every person to assemble with other persons and to express his views on any matter freely in public and to enjoy the protection of the State while doing so.

It further states that “*the exercise of such right shall take place peacefully and with regards to the rights of others*”.



REFLECTIVE EXERCISE 1

What would you consider to be a peaceful gathering?

Name at least two rights of other persons that may be affected by a demonstration.

1.3.3 Definitions

While the Act defines various terms or actions, the focus is going to be on the following as they are considered important.

Authorized Officer means - a member of the Police authorized in terms of Section 2 (2) to represent the Police as contemplated in the said section.

Convenor means -

(a) any person who, of his own accord, convenes a gathering; and

(b) In relation to any organization or branch of any organization, any person appointed by such organization or branch in terms of Section 2 (1).

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



Gathering means - *any assembly, concourse or procession of more than 15 persons in or on any public road as defined in the Road Traffic Act, 1989 or any other public place or premises wholly or partly open to the air –*

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

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

Local authority means – *any local authority body established in terms of any law which applies in an area which forms part of the national territory referred to in section 1 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), and in areas where only a regional authority body, established in terms of a law, has jurisdiction, that regional authority body.*

Marshal means – *any person appointed as such in terms of section 8(1).*

Organization – *means any association, group or body of persons, whether or not such association, group or body has been incorporated, established or registered in accordance with any law*



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

Riot damage – means any loss suffered as a result of any injury to or death of any person, or any damage to or destruction of any property, caused directly or indirectly by, and immediately before, during or after, the holding of a gathering.



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CHAPTER 2: PROVISIONS OF THE ACT	
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LEARNING OUTCOMES

At the end of this learning unit, participants should be able to:

- *understand the various provisions of the Regulation of Gatherings Act.*
- *correctly complete and file a notice for a gathering with the relevant authorities.*
- *competently participate in the consultations that follow filing of the notice for a gathering.*
- *clearly outline the expected conduct of a participant in a demonstration.*
- *demonstrate an understanding of the roles and responsibilities of the various stakeholders during a gathering.*

2.1 Notice of gatherings

The Act requires that a Convenor be appointed by the organization that intends to hold a gathering. This person is responsible for the arrangements of the gathering from submission of a notice to the relevant local authorities to taking part in negotiations that may be called by the responsible officer. The Commissioner of the Police or an authorized person represents the Police at negotiations and consultation that may be held between the three



parties, In essence this section creates a tripartite framework within which the relevant parties must work.

A consultation meeting or negotiations can be held even if the Convenor or an authorized person is not present and those who are not present are bound by the results of such consultations or negotiations.

A Convenor of a gathering is required to give notice of an intended gathering in a prescribed form no later than 7 days before the date on which the gathering is to be held. The Act also provides that a notice may also be given within 48 hours. The Convenor must give reasons why it could not be given timeously. In cases where the notice is given within 48 hours, the responsible officer may prohibit the gathering.

The notice should have the following information:

- The name, address and telephone and facsimile numbers if any of the Convenor and his deputy;
- The name of the organization or branch on whose behalf the gathering is convened;
- The purpose of the gathering;
- The time, duration and date of the gathering;
- The place where the gathering is to be held;
- The anticipated number of participants;



- The proposed number and names of marshals.

In cases where the gathering will take a form of a procession, the following information must be submitted:

- ✓ The exact and complete route of the procession;
- ✓ The time when and the place at which participants in the procession are to assemble, and the time when and the place from which the procession is to commence;
- ✓ The manner in which the participants will be transported to the place of assembly and from the point of dispersal;
- ✓ The number and types of vehicles which are to form part of the procession.

It should be noted that all the above requirements are only applicable to a gathering as a demonstration does not require any notification at all.

Note

What is a procession?

A procession is a number of people or vehicles moving forward in an orderly fashion.



REFLECTIVE EXERCISE 2

Complete a Notice for a gathering.

2.2 Consultations, negotiations, amendment of notices and conditions

The responsible officer is not mandated to hold consultations. He has the discretion to call the consultations. Amendments of the content of the notice may be agreed upon telephonically between the responsible officer and the Convenor.

The purpose of the negotiations is to discuss the contents of the notice and any necessary conditions for the conduct of the gathering. These negotiations should be between the Convenor, authorized member, responsible officer and representatives of public bodies.

A responsible officer is required to call a meeting within 24 hours after notice is given by the Convenor. In cases where no such meeting is called, the gathering can take place in accordance with the notice. However, the gathering has to take place in line with other sections of the Act.



2.3 Why do local authorities impose conditions on gathering?

If the responsible officer has reasonable grounds to believe that the gathering will result in injury to other persons or damage to property, s/he can impose conditions or amend the notice. These conditions may be imposed to ensure:

- That vehicular or pedestrian traffic, especially during traffic rush hours, is least impeded; or
- An appropriate distance between participants in the gathering and rival gatherings; or
- Access to property and workplaces; or
- The prevention of injury to persons or damage to property.

Note

Reasonable grounds – means “a set of fact or circumstances which would cause a person of ordinary and prudent judgement to believe beyond a mere suspicion.



2.4 What happens if the identity or whereabouts of the Convenor is unknown to the responsible officer?

In instances where the responsible officer is unable to hand a written copy of the notice to the Convenor or it is not practicable to deliver the written notice with its amendments or conditions imposed, the notice can be published in the following manner:

- Publishing the notice in a newspaper circulating where the gathering is going to be held;
- Use of radio or television;
- Distribution among the public and affixing it in public or prominent places where the gathering is going to be held;
- Announcement in a prominent place at the address of the Convenor that is specified in the notice.

2.5 Prevention and prohibition of gathering

Section 5 of the RGA gives a responsible officer the power to prohibit a gathering if there is credible information that the planned gathering will result in:

- serious disruption of vehicular or pedestrian traffic;
- Injury to participants in the gathering or other persons; or
- Extensive damage to property.



In addition to the above, it should be established that the police and traffic officers will be unable to contain this threat.

Once this has been established, the following procedures must be followed:

- Consultation with the relevant people including Community Policing Forum before taking such a decision;
- There must be reasonable ground to believe that not even an imposition of a condition or amendment of the notice can avert the perceived threat.
- The information that is used to prevent and prohibit a gathering must be credible and on oath.
- This information should relate to things like serious disruption of vehicular or pedestrian traffic, injury to participants in the gathering or any other persons or extensive damage to property.
- When conditions are imposed or a request is refused, the responsible officer should reduce his reasons into writing.
- Notify the Convenor, authorized member and every other person that he held the consultations with.

This section clearly places a limitation on the right to assembly and in instances where the limitation clause is invoked, Section 36 of the Constitution should serve as a guide. This section states as follows:



“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

- *The nature of the right*
- *The importance of the purpose of the limitation*
- *The nature and extent of the limitation*
- *The relation between the limitation and its purpose; and*
- *Less restrictive means to achieve the purpose”.*

In the recent past, various local authorities have issued guidelines that are clearly not in line with the above requirement. Examples of these were found in Tshwane where the Department of Community Safety Pro Active Policing Services issued a directive on 11 March 2011 which amounted to a blanket ban of all marches in the City of Tshwane. In Mpumalanga, the Council passed a resolution that effectively bans any demonstrations within the Middelburg municipal area.

REFLECTIVE EXERCISE 3

You are a Convenor of a march where your community has planned to march to your local mayor’s office. At the section 4 meeting your community was denied the permission to march because in the local authority’s opinion-

“the community has held marches in the past that have been disruptive and therefore the



community cannot be allowed to march. Further, in any case the police do not have enough capacity to police the march”

Draft a letter to the local authority responding to the above mentioned extract using the various sections in the Act to challenge the unlawful prohibition.

2.6 What happens if a gathering is postponed or cancelled?

In cases where the gathering is postponed or delayed, the responsible officer has to be notified. If a gathering is cancelled or called, the convenor must inform the responsible officer. It is unclear from the Act as to how much time is required for informing the responsible officer of such cancellation. It is however submitted that this should happen within a reasonable time to ensure that no resources are wasted. A notice that had been given for a gathering that is later cancelled or called off lapses. Furthermore, a permission already granted may be revoked if there is credible information on oath that there is a threat.

2.7 Reviews and appeals

What is a review?

A review is concerned with the process and on the way the decision maker came to the decision. These include checking whether the decision maker was impartial as well as admissibility of evidence that was taken into account.

There are various types of reviews in South African law. However, we are only going to mention the special statutory review which is often conferred by the legislature as is the



case with the RGA. When such reviews take place, the grounds are found in the statute and nowhere else.

What is an appeal?

An appeal is concerned with the merits of the case. It is considered appropriate where it is thought that the decision maker arrived at a wrong decision on the facts or the law.

There are two types of appeal in South African law and these are appeals from lower court to higher courts and administrative appeals. The RGA provides for an administrative appeal to an ordinary court.

Processes to follow when submitting an application for a review

An organization that is aggrieved by the decision of a responsible officer imposing a condition or prohibiting a gathering may file an application with an appropriate magistrate for setting aside of such refusal, condition or prohibition. Equally, an authorized member may, through the Commissioner of Police apply to an appropriate magistrate to have a refusal set aside or gathering prohibited. These applications may be made in terms of the Rules Board for Courts of Law. They must be made within 24 hours of imposition of or refusal to impose the condition or prohibition.

Process to follow when submitting an appeal against the decision of a Magistrate

Appeals against any order made by the Magistrate may be made to a High court as an urgent application.



The act also empowers any person who feels that his/her rights may be affected by the holding of a gathering may file an urgent application at the High court with jurisdiction to hear such an application.

In instances where a gathering has been prohibited by an order of court, the authorized member shall prevent access to such place or any area opposite it for as long as it is necessary to prevent the gathering from taking place.

REFLECTIVE EXERCISE 4

An Animal Rights group has submitted a notice to hold a gathering outside the Limpopo Provincial Legislature seven days ago. The purpose of the gathering is to put pressure on the provincial government to take action against rhino poaching. There has been no communication from the local authorities until two days before the gathering is held. This communication is by way of a faxed letter prohibiting the gathering on grounds that there is reliable information that the gathering will result in violence and destruction of property as the group's previous gatherings have been violent. The organization is concerned about the latest prohibition of all their gathering with similar reasons being advanced. They are particularly concerned that the local authorities did not even call a consultation meeting to discuss the notice prior to such prohibition.

What legal remedies are available to this group at such short notice?

How should they go about accessing such remedies?



2.8 Are demonstrations and gatherings allowed in the vicinity of courts, buildings of Parliament and Union buildings?

Demonstrations and gatherings in any building in which a court room is situated as well as in the vicinity of Parliament in Cape Town and Union buildings in Pretoria is prohibited in terms of the RGA except on Saturdays, Sundays and public holidays. However, permission may be obtained in writing from a Magistrate through an application. In the case of Cape Town, a Chief Magistrate of Cape Town can grant permission in writing. While in Pretoria, permission may be granted by the Director General of the office of the President.

If credible information is subsequently received that indicates a threat, such permission may be revoked by the person who granted it.

The *Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 4 of 2004* provides for prohibition of certain acts in respect of Parliament and its members. **Section 7 (e)** states that “a person may not while the Parliament or House of Committee is meeting create or take part in any disturbance within the precincts”.

Section 11 gives power to the Speaker or Chairperson or any designated to order arrest and removal of a person who creates or takes part in any disturbance in the precincts of Parliament.

The above sections also apply to Provincial Legislatures.

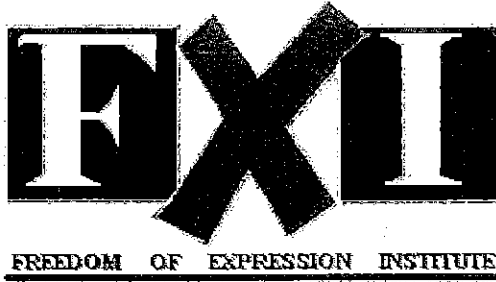


2.9 Are demonstrations and gatherings allowed in the vicinity of United Nations and specialized agencies in South Africa?

In 2001 Parliament passed a law that provides for immunities and privileges of diplomatic missions and consular posts and their members, heads of states, special envoys and certain representatives of the United Nations, and its specialised agencies, and other international organisations. It also makes provision regarding immunities and privileges pertaining to international conferences and meetings. This law is called *The Diplomatic Immunities and Privileges Act, 37 of 2001* and it states that the following Conventions have a force of law in South Africa:

- 1946 Convention on the Privileges and Immunities of the United Nations;
- 1947 Convention on the Immunities of the Specialized Agencies;
- 1961 Vienna Convention on Diplomatic Relations; and
- 1963 Vienna Convention on Consular Relations

In as far as demonstrations and gatherings at the premises of these organizations, Article 22 (1) of the Vienna Convention states that “the premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission”. Section 22 (2) further states that “the receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity”



Whereas Article 31 of the Vienna Convention on Consular Relations, 1963, provides for inviolability of consular premises. A duty is placed on the receiving State to “take all

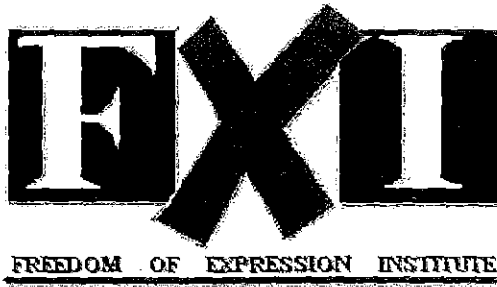
appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.....”

2.10 What are the do’s and don’ts during a gathering?

The convenor has a duty not only to appoint marshals but s/he should inform them of the conditions attached to the gathering. Furthermore, all participants to the demonstration or gathering should be informed of these conditions.

Those participating in a demonstration or gathering are not to:

- Carry any dangerous weapons;
- Carry banners, placards, speak, sing or in any other manner incite hatred of other persons or any group of other persons on account of differences in culture, race, sex, language or religion;
- Perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or group of persons;
- Wear a disguise or mask or any other apparel or item which obscures his facial features and prevents his identification;



- Wear any form of apparel that resembles any of the uniforms worn by members of the security forces, including the Police and the South African Defence Force;
- Compel or attempt to compel any person to attend, join or participate in the gathering or demonstration.

2.11 What is the role of the marshals during a demonstration or a gathering?

The convenor is required to ensure that every marshal is aware of the contents of the notice including any amendments or conditions imposed.

The marshals are required to take all reasonable steps to ensure that:

- No entrance to any building or premises is so barred by participants that reasonable access to the said building or premises is denied to any person;
- No entrance to a building or premises in or on which is situated any hospital, fire or ambulance station or any other emergency services, is barred by the participants.



REFLECTIVE EXERCISE 5

Role play

A protest march is organized by municipal workers in Pretoria CBD. More than 3,000 people attend the march. While marching down Pretorius Streets, marchers attack innocent bystanders, litter garbage in the streets and smash cars that are parked along the road.

2.12 Powers of the police

Section 9 of the RGA gives the police powers to conduct a number of activities that may be necessary to prevent the killing or serious injury of persons or the destruction or serious damage to immovable property or valuable movable property. It requires that necessary, moderated and proportionate force may be used. However section 9(2)(d) explicitly provides for use of 'firearms and other weapons' if other methods of quelling such conduct are found to be ineffective or inappropriate.

The authorized member has a responsibility of ensuring that every member of the Police present at the gathering is also aware of these.

On 20 March 2008, the then Department of Safety and Security gazette The National Municipal Policing Standard for Crowd Management During Gatherings and Demonstrations.



FREEDOM OF EXPRESSION INSTITUTE

Some of the issues addressed in this document include threat assessment, pre-planning, briefing of members and execution of the tasks during a gathering or demonstration. It further states that a specific instruction must be issued by a relevant commander before rubber bullets, pepper prays, firearms and sharp ammunition including birdshot and buckshot may be used. In fact it is stated that use of force may only take place based on an instruction of the Commander of the Joint Operational Centre (CJOC) or operational commander.

REFLECTIVE EXERCISE 6

The ANC Youth League organizes a march from the library gardens to Luthuli house in Sauer Street, Johannesburg. On arrival there, there is no one to receive their grievances. This angers the young people and they go on rampage throwing stones at buildings and cars. The police first use rubber bullets and live ammunition to quell the violence. Scores of young people are injured while others are killed.

Can criminal charges be laid against the police officers concerned?

Can the affected marchers sue the police for damages suffered?

2.13 Liability for damages arising from gatherings

Chapter 4 of the Act creates what is termed as 'strict liability'. This is found in crimes created by statutes and it requires no culpability. This strict liability is placed on every organization on behalf of which or under the auspices of which that gathering was held including the Convenor for damage arising from gatherings and demonstrations as well as every person participating in a demonstration.



The same section allows for a defense to be raised by a person or organization against whom a claim has been instituted if it can be established that:

- He or it did not permit or connive at the act or omission which caused the damage in question; and
- That the act or omission in question did not fall within the scope of the objectives of the gathering or demonstration in question and was not reasonably foreseeable; and
- That he or it took all reasonable steps within his or its power to prevent the act or omission in question: provided that proof that he or it forbade an act of the kind in question shall not by itself be regarded as sufficient proof that he or it took all reasonable steps to prevent the act in question.

La Grange in his Opinion to the FXI in July 2004 raised concerns about this Section as it does not only extend ordinary civil liability on ground that would not normally be recognized in a delictual action but it also places the onus on the defendant to disprove liability something which constitutes a serious infringement of the common law rights of a defendant in an action for damages.

Furthermore, this provision is considered by constitutional law experts like Woolman as a *“powerful set of mechanisms for chilling assembly”* as it has the potential to discourage members of the public to participate in public demonstrations or gatherings for fear of being held liable for damages that may be caused by unruly participants.

Woolman argues that the right to assembly that is enshrined in our Constitution should be enjoyed by all and not only by a few who would be willing to risk personal bankruptcy to challenge some undesirable state of affairs.



Professor Pierre de Vos in his article titled "*A problematic limitation on the right to freedom of assembly*" dated 6 October 2011 shares the same view and further expresses a concern that the State may indeed use Section 11 to hamstring or even destroy social movements who mount large protest against service delivery problems or any other social ills that currently engulf South Africa.

However, the Supreme Court of Appeal (SCA) does not share the same view as is evidenced by its decision in the *South African Transport and Allied Workers Union v Garvers and Others* where it ruled that the Union was liable for the damage caused during the protest.

It is hoped that this question will finally be settled by the Constitutional Court where an appeal has been lodged by the trade union.

Note

Culpability – means *mens rea* or "guilty mind". Put simply, "there must, in the eyes of the law, be grounds for blaming X personally for his unlawful conduct". It involves an intention or negligence.

2.14 Offences and penalties

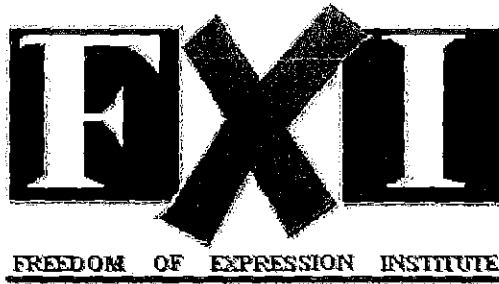
There are a number of acts and/or omissions that may result in punitive measures being taken against a person who contravenes this Act and these include a fine not exceeding R20,000.00 or imprisonment for a period not exceeding one year or both such fine and such imprisonment. However, a person charged with convening a gathering without a notice as



required by section 3 can raise a defence that the gathering concerned took place spontaneously.

Note

Spontaneously – means “said or done without having been planned or written in advance”.



YOUR RIGHTS: ARRESTS AND COURT PROCESSES

What happens if you are arrested for participation in a gathering?

The law says that the police can ONLY arrest you if:

They want to charge you and take you to court; or

If they are investigating something, and they think you might have had something to do with it.

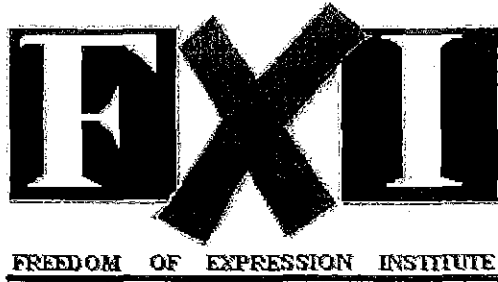
There are also rules that the police must follow when they arrest you:

The police must tell you that you are being arrested. If the police ask you to come with them to the police station, you do not have to go unless they arrest you.

The police must make sure you cannot run away. So if you try to run away, or stop them from arresting you, they can use force. But they can only use as much force as they need to stop you from running away. This is why it is better not to try to stop them from arresting you.

The police officer must tell you why you are being arrested (what crime you have done), unless you are actually doing a crime at the time they arrest you.

If the police do not follow these rules, then they have broken the law. So if the police arrest you and there is no good reason for them to think you have done something wrong or if they arrest you just to scare you, they have broken the law. If the police did not tell you



that you were being arrested, and you were not doing anything wrong, then they have broken the law.

If the police arrest you, you can usually pay bail money to the police or court and go home until the date of your court case.

Going to court

You must be taken to court within 48 hours of being arrested. If the 48 hours ends after 4 pm on a weekday, then you must be taken to court on the next day before 4pm. If the 48 hours ends on a weekend or a public holiday, then they must take you to court on the first court day, before 4pm. If you are not taken to court within 48 hours, the police are breaking the law.

Bail: means the money one pays so that s/he does not have to stay in jail until your court case.

What can you do if you think that the police have broken the law?

There are four things you can do if you think that the police have broken the law:

- You can complain to the Independent Complaints Directorate.
- You can complain to the police.
- You can lay a criminal charge against the police.



- You can make a civil claim against the police.

Complaining to the Independent Complaints Directorate

The Independent Complaints Directorate (ICD) deals only with complaints about the police. It was set up by the government to investigate when police do something seriously wrong. It is not part of the police. It has presence nationally.

Complaining to the Police

If you believe that a police officer acted wrongly, you can complain about him or her to the police.

If you want to complain about a police officer, you must find out his or her name, and the name of the police station where he or she is from. You can telephone the station commissioner of the police station and say that you want to complain. You can also go to the police station and speak to the Station Commissioner. All complaints will be written down (or if you complain over the telephone, recorded) so that there is a record of all complaints that have been made about police. This means that if you complain about a police officer, the police cannot later say you did not complain.

If the station commissioner does not help you, or does not help you enough, then you can complain to the area commissioner. The police station you complained to must give you the name, telephone number and address of the area commissioner.

Laying a criminal charge against the police



If you think the police broke the law in the way that they arrested you, or if you were hurt by the police, then you can lay a criminal charge against the police.

Ask to see a lawyer as soon as possible after you arrive at the police station. If you do not know a lawyer, then ask to see your family and ask them to get you a lawyer. If you do not have money to pay a lawyer, the government will pay for one. This is called Legal Aid. The Constitution says that this is your right.

If you have been hurt, see a doctor as soon as possible. If you have been arrested, ask to see a doctor (this will be a district surgeon, who is paid by the government). This is your right. Make sure you write down the doctor's name. Make sure the doctor makes a medical report. It will be used in the criminal case against the police.

Make a statement to a lawyer as soon as possible. They will help you to lay a charge against the police officer or officers who hurt you.

If you are charged, tell the judge or magistrate as soon as you get to court that you were hurt by the police. If the police would not let you see a lawyer or a doctor, tell the magistrate or judge this. Then these things are written down in the court record, and will be part of the evidence.

Making a civil claim against the police

This is when you take the police to court to ask for money to pay you for the harm the police have done to you. This is also called suing. You sue the Minister of Police, because the Minister is responsible for anything that is done by a police man or woman while they are on duty.



To sue the police, you need to get help from a lawyer. You must sue within 12 months of when the police harmed you including 1 months' notice that you are going to sue.