

# Human Rights in **Community Protest**



south african  
**human  
rights  
commission**



# BACKGROUND



Many of the protests in South Africa have their roots in poverty and inequality. The structural and institutional inequalities that continue in South Africa find form largely in inadequate access to basic services for poorer sections of South African society. In many cases the community, or sections of it, have expressed their frustration at the slow pace of change and non-provision of basic services such as water, electricity and sanitation, through protest action. These protests, which are commonly known as service delivery protests, have on occasion degenerated into destructive and obstructive conduct, which has undermined other rights such as that of basic education.

It is estimated that South Africa has more than 13 500 protests every year, of which the vast majority are non-violent<sup>1</sup>. The State's obligation to respect the right to protest means that it must not unreasonably hinder people from protesting, but must ensure that measures are in place that enable individuals and groups to exercise their rights to protest.

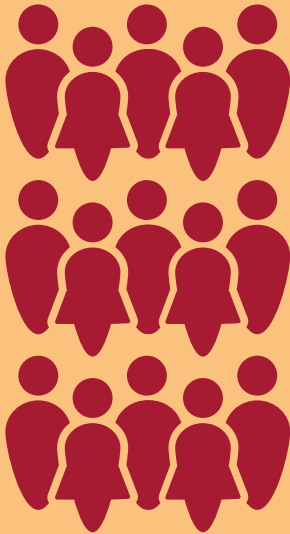
## What does the Constitution say?

**Every person has the right to assemble with others and express their views on any matter freely in public and to enjoy the protection of the state while doing so.**

**Section 17 of the Constitution provides that: everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.**

**The exercise of such rights shall take place peacefully and with regard to the rights of others.**

<sup>1</sup> Information provided by SAPS during the SAHRC's national investigative hearing into impact of protest-related action on the right to a basic education in South Africa



## What is the regulation of Gatherings Act, 1993

In South Africa, protests of more than 15 people are governed by the Regulation of Gatherings Act, 205 of 1993. This Act was enacted to regulate the holding of public gatherings and demonstrations at certain places and to provide for matters connected therewith.

This legislation regulates matters associated with gatherings that express any form of protest, contest or criticism in a public space.

Related to the Regulation of Gatherings Act is the Dangerous Weapons Act 15 of 2013 which provides for certain prohibitions in respect of the possession of dangerous weapons.

## What is a public space?



A public space means any street or road, a park, a public square, the steps or grounds of a building or other similar space.

## ! Notice to protest

You do not need to ask for permission to protest but you must give notification to do so.

Section 3 (2) of the Regulation of Gatherings Act provides that the convenor shall no later than seven (7) days before the date on which the gathering is to be held, give notice of the gathering to the responsible officer concerned provided that if it is not reasonable for the convenor to give such notice earlier than seven (7) days before such a date, he shall give notice at the earliest opportunity provided. Further, if such notice is given less than 48 hours before the commencement of the gathering, the responsible officer may by notice to the convenor prohibit the gathering.

Any gathering that happens without a notice being given is an illegal gathering.

## What is a convenor?



The convenor means any person who of his own accord convenes a gathering or any person who is appointed by an organisation or any branch of an organisation to convene a gathering.

## What should be contained in the notice

The following information must be included in the notice:

- Details of the convenor
- Name of the organisation
- Purpose of the gathering
- Time, duration and date of the gathering
- Place where the gathering is to be held
- Anticipated number of attendees.



## What is the constitutional mandate of the South African Police Service (SAPS)?

The South African Police Services (SAPS) has a responsibility to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property. Furthermore, the SAPS are mandated to uphold and enforce the law and create a safe and secure environment for all people in South Africa. The police also have to prevent anything that may threaten the safety or security of any community, investigate any crimes that threaten the safety or security of any community, ensure criminals are brought to justice, and participate in efforts to address the causes of crime.

police line

police line

police line

police line

### The role of the SAPS during gathering or demonstration actions

If a gathering or demonstration is to take place, the police may:

- If they have reasonable grounds to believe that they will not be able to provide adequate protection for the people participating in such a gathering or demonstration, notify the convenor or such people accordingly.
- May prevent people participating in a gathering from proceeding to a different place or deviating from the route specified in the relevant notice or amendment thereof or for disobeying any condition to which the holding of the gathering depends.
- May order any person or group of persons interfering with a gathering or demonstration to cease such conduct and to remain at a distance from such gathering or demonstration.
- May arrest any person who commits any offence during the gathering.

## What are the rights and responsibilities of the protesters?

Each protestor has the right and responsibility to:

- Freedom of religion, belief and opinion. This means that you have the right to think, believe and worship however you choose.
- Freedom of expression. Every person has the right to say, read and study whatever you want. Hate speech is not allowed.
- Assembly, demonstration, picket and petition. Everyone has the right to hold or participate in a demonstration, picket and present a petition. This must always be done peacefully.
- Labour relations. You have the right to join trade unions and go on strike. Every worker and/or employer has the right to organise and negotiate to further their aims. This must be done legally and with no intimidation towards non-striking workers.



## The role of the SAHRC



**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (THE COMMISSION) IS A NATIONAL HUMAN RIGHTS INSTITUTION MANDATED BY THE CONSTITUTION TO PROTECT, PROMOTE, AND MONITOR HUMAN RIGHTS IN THE COUNTRY. FURTHERMORE, THE COMMISSION HAS A MANDATE TO INVESTIGATE, REPORT, FACILITATE REDRESS WHERE APPLICABLE, CARRY OUT RESEARCH, AND EDUCATE ON HUMAN RIGHTS.**

The Commission is empowered in terms of Section 13 and 14 of the South African Human Rights Act 40 of 2013 to conduct investigative hearings on matters of public interest in order to make recommendations that seek to guard against human rights violations.

During 2016, the Commission conducted a National Hearing on the Impact of Protest-Related Actions on the Right to Basic Education. The Commission held amongst other findings that:

- The right to basic education is affected by protest-related action arising from causes that in most cases may be unrelated to the provision of basic education.
- Protesters who deny access to basic education are violating the right to basic education of the affected learners.
- The learners are disadvantaged by certain protest related actions in that they are consequently physically barred or intimidated from attending schools, and infrastructure on which learners rely on to access education is damaged or destroyed.





- The Department of Basic Education and the SAPS response has in some cases been slow and it appears that no uniform policy or approach in dealing with such incidents is in place.
- The lack of proper and efficient communication between authorities and affected communities seeking ways to draw attention to their plight. By targeting schools, children's right to basic education is undermined.
- The responsibility to ensure the safety of learners, educators and schools does not rest with one department, and it was unclear which department took the lead in cases where protest-related action targeted schools.
- In some instances the breakdown of leadership at the local government level has a negative effect on efforts to address problems that arise, thereby undermining the right to basic education.
- There is a need for government departments, especially at local level to better engage with communities on important community matters.
- There is a need to encourage people to find new ways of expressing their concerns so that their actions do not negatively impact on other rights such as the right to basic education.

## Community protests in numbers

Information provided by the SAPS during the SAHRC's National Investigative Hearing into Impact of Protest Related Action on the Right to Basic Education in South Africa held in Braamfontein during 2016 revealed that:

- In the 2012 – 2014 three year period Gauteng experienced more protests than any other province.
- Cape Town was the most protest-prone municipality with 84 protests, followed by Johannesburg, eThekweni, Tshwane and Ekurhuleni. Between them these five metro municipalities accounted for half of all the protests recorded.
- The prevalence of violence associated with protests has continued to increase. The number of violent protests reached a record high in 2014. In 2007 just less than half of the protests were associated with some violence. In 2014 almost 80% of the protests involved violence on the part of the participants or authorities.

### Useful links

The Office of the High Commissioner for Human Rights – [www.ohchr.org.za](http://www.ohchr.org.za); [freeassembly@ohcr.org.za](mailto:freeassembly@ohcr.org.za) (United Nations Special Rapporteur on the right to freedom of peaceful assembly and association).

The freedom of Expression Institute – [www.fxio.org.za](http://www.fxio.org.za)

The report is available on the website [www.sahrc.org.za](http://www.sahrc.org.za)

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