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***Research Report***

**Establishing A Historical Record Of Violations Of The Regulation Of Gatherings  
Act & The Right To Freedom Of Assembly Amongst Social Movements in  
Johannesburg**

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**Introduction**

While the Regulation of Gatherings Act No. 205 of 1993 (RGA) recognises that "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", for as long as this is done "peacefully and with due regard to the rights of others", the experiences of some new social movements in Johannesburg expose how the RGA has been used by authorities to frustrate and prevent the exercise of the right to freedom of assembly by these movements.

This research project arose out of the repeated experiences of the Anti-Privatisation Forum (APF) and the Landless People's Movement (LPM) of the curtailment of their right to freedom of assembly through the deployment of the RGA by local authorities and the police. The Freedom of Expression Institute (FXI), on being approached by the APF and LPM, established a project called 'Challenges To Violations Of The Regulation Of Gatherings Act ('RGA') & the Freedom Of Assembly', with the aim of investigating the abuses of existing legislation and the possibility of defending this right through interventions within the legal framework. This research report forms part of this project, aimed at building for a legal challenge against the Johannesburg Metropolitan Police Department (JMPD). As such, its focus and scope is framed by the requirements for such a challenge. Research & Education in Development (RED), a collective of

activists/researchers closely involved with social movements, has worked together with the FXI in conducting this research and compiling this report.

While the report tries to be comprehensive with regard to its immediate aims, it is by no means comprehensive in terms of approaches to the RGA. It must, therefore, be seen as one part of the struggle for the protection of the right to freedom of assembly. It must also be seen as the beginning of processes within movements towards challenging violations of the RGA, and possibly, more longer term, towards challenging the content of the RGA itself. This report is only a contribution to a much bigger discussion and process within movements, assisted by the FXI, about freedom of assembly and expression.

### **Research Aims**

The primary purpose of this research project would be to contribute towards a legal challenge being developed against the abuse of the RGA by local authorities against the interests and rights of social movements, in particular the APF and the LPM, by the FXI in consultation with the Centre for Human Rights (CHR) at the University of Pretoria.

Through discussions between the legal unit of the FXI, the CHR, and RED, it was decided that the main objectives of this research project would be:

- to establish patterns of abuse or violation of the RGA in the experiences of social movements in Johannesburg.
- to establish whether local authorities and the police discriminate against or favour certain social movements in their implementation and enforcement of the RGA.
- to record any other abuses of the right to freedom of assembly that are experienced by social movements in their engagement with the police and local authorities as they implement the RGA.

While it was recognised that the RGA itself could be challenged in various ways for preventing the exercise of the right to freedom of assembly<sup>1</sup>, it was agreed that an investigation into the constitutionality of the RGA would not be an overt aim of this particular research project.

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<sup>1</sup> For more detail see Stuart Woolman, *Constitutional Law in South Africa*, in Chaskalson, M. et al, unpublished draft, 2005.

Instead, it was felt that there would be sufficient evidence coming from movements to prove that the existing RGA was being violated by local authorities, and therefore to mount a legal challenge of these authorities in this way.

In addition to building for this legal challenge, it was agreed that this research project should contribute towards the building of capacity within movements to understand and engage with the RGA. Central to this would be the building of capacity for the establishment of a historical record of violations of the RGA and the right to freedom of assembly within movements. This would both assist with the legal challenge and allow for movements to engage meaningfully, and in a consistent manner, with the law.

### **Research Methodology & Limitations**

With the limitations of time, distance and funding, as well as the particular aim of building for a specific legal challenge against the JMPD, the project focused on the experiences of the following social movements in Johannesburg: the Anti-Privatisation Forum (APF), the Landless People's Movement (LPM), Jubilee South Africa, the Congress of South African Trade Unions (COSATU) and the Treatment Action Campaign (TAC). It was felt that these movements represented a large enough sample to reflect differences in experiences of the RGA amongst a group protesting similar issues in similar ways. It was also decided that the project should focus on the period from 2000 until the present as the APF and the LPM had emerged during this period, and as it would represent a significant period over which to measure social movement experiences of the use of the RGA by the JMPD.

Noting that this project was initiated by the APF and LPM and that the researchers had greater access to these movements, priority was given to these movements in terms of the project. This meant that the researcher did not allow the entire project to hinge on the contributions of the latter movements. The focus on Johannesburg also made sense for the two movements on behalf of which any legal challenge will be mounted i.e. the APF and LPM - the APF is Gauteng-based, with most protests taking place in Johannesburg, and while the LPM is national, a significant number of its protest actions have taken place in Johannesburg.

Noting the limited time and other resources available to us, it was also decided that the primary source for information about these experiences would be the records of the JMPD and those of

the five social movements, in particular records of the notices filed to hold gatherings in terms of the RGA, the engagements around them, and the outcomes of these processes (i.e. permissions and prohibitions). It was argued that there would, in all likelihood, be enough information emanating from these records to suggest certain pattern and practice violations of the RGA on the part of the JMPD, arising in the processes preceding gatherings, to warrant the mounting of a legal challenge. While it was noted that movements have experienced violations of the RGA in the actions of police during gatherings and arrests emanating from gatherings, this would not be the primary focus of this project. If related information were to emerge from the institutional records being investigated, they would be considered. However, no special effort would be made to source such information.

Noting the particular aims of this project, it was agreed that no in-depth interviews would be conducted. Instead, relevant people would be noted in movements from whom the FXI's legal unit could take affidavits at a later stage in the bigger project. This would assist in keeping the project focused and manageable within the given time period.

From the beginning of May to the beginning of July 2005, therefore, the five social movements and the JMPD were approached for access to their records related to their interactions around and engagement with the RGA i.e. through notices given for gatherings, responses to them from the JMPD, interactions between movements and the JMPD around these, and their outcomes. This report is based on a close analysis of these records, with specific attention to the ways in which they confirm or point to violations of the RGA by the local authorities.

## **Findings**

### ***Accessibility & Institutional Records***

Access to JMPD records was facilitated by Deputy Director General of Central Operations, Andries Mathyser; Chief of Police, Elwyn Pelsler; and Inspector Isaac Maake of the JMPD's Special Events Division, with whom two meetings were held. During these meetings, Inspector Maake provided information on gatherings from August 2002 to December 2004. This took the form of databases of notices of gatherings received and the JMPD's responses to them (i.e. permissions or prohibitions granted). While these databases provided useful information and appeared to be comprehensive at first glance, for the large part, they did not contain the reasons given by the JMPD for the prohibition of gatherings under the RGA. A request was therefore

made to see the hard copies of prohibition letters in order to determine the reasons behind these prohibitions. This was to prove difficult for the JMPD because, as Inspector Maake explained, he had, in the process of moving offices twice, lost track of the files containing these reasons as they had been removed from his original office without his knowledge. He only had full records from August 2004 to the present. His filing system was in some disarray and, as he was to show, his remaining archive was stored in the boot of his car. The records received from the JMPD were therefore not comprehensive, largely because of the deficiencies in the JMPD's own record-keeping systems. The manner of record-keeping (very basic databases set up on MS Word and Excel) also does not allow for regular updating of records. While we had access to databases that went back as far as 2002, recording events that had been permitted and prohibited, we only had access to records of the reasons for prohibitions for a limited number of cases from 2004 on. Nevertheless, the records that we were able to access did prove invaluable when looked at together with records from movements and clarifications from Inspector Maake received in conversation during the two meetings. *Annex 1* provides an overview of the records received from the JMPD.

While access to the records of the social movements targeted was, for the most part, made possible without any problems, the actual records kept by these movements were seriously lacking. Firstly, the records of social movements do not cover all the years under review (2000-2005). There are no records for the period before the establishment of offices, and there are no systems for the filing of documentation related to the RGA even today. In most cases, such storing of records has been done by individual activists, involved at the time of a particular gathering, who see the necessity for keeping such information. None of the movements involved in this study had a central database or store of this kind of information. This is discussed in more detail relevant to each movement below.

In general, then, this project was not able to establish a comprehensive set of records pertaining to the RGA from institutional records for the period 2000-2005. From the material we have been able to source, records relevant to this study begin only in 2002. However, the information that we have been able to source from the JMPD, when looked at together with the records of movements, is still sufficient for the purposes of preparing the envisaged legal challenge. What follows is a discussion of the composite records obtained from the JMPD and social movements, supplemented by clarifications obtained through verbal communication with relevant people. As far as possible, the report will try to reflect how information has been sourced. Where it might be

necessary for the legal unit of the FXI to conduct follow up work, the report reflects the appropriate people or documentation to consult.

### ***The JMPD: Administering the RGA***

Perhaps most telling of the JMPD's attitude to the administration of the RGA is the engagement that Isaac Maake had with one of our researchers during a meeting to collect data. In response to inquiries, Maake expressed his opinions on the RGA. These related mainly to the difficulties faced by the JMPD in protecting the basic right to freedom of assembly and expression. He explained that all notifications of gatherings are approved, often at the discretion of his office. To illustrate this, he cited a dispute between a gay and lesbian rights party and the organisers of the gay pride parade. Drag queens participated in the parade, in contravention of the RGA provision that no masks or disguises be worn by demonstrators. His discretion in allowing the parade to proceed is now subject to judicial inquiry. But, more significantly, Maake went on to state that all notifications to march are approved, *"except those made by the LPM, APF, and the Traders' Crisis Committee"*. He explained that the reasons for refusing permission for the APF and LPM marches related to the past conduct of these movements - their propensity for obstructing traffic; "destruction of meters", "the burning of accounts there on Jorrisen", and "stoning cars there at Thembelihle". He also claimed that these applications only began to be refused from "some time last year" after the APF had allegedly removed prepaid meters and burnt account statements on a march. Similar sanction has been applied to the LPM for the alleged violent conduct of its Thembelihle branch, and to the Traders' Crisis Committee after violence broke out during one of its marches. He indicated that since these incidents, any application from any organisation associated with the APF or LPM has been refused outright. (Meeting between Isaac Maake & Nicolas Dieltiens, 11/07/2005).

A close look at the responses from the JMPD to notices that movements have filed of gatherings they intend holding, also shows a number of violations of the RGA with regard to processes followed by the JMPD after it has received notification of a gathering.

Some of these relate to the JMPD's abuse of Section 3 (2) of the RGA, which states, "The convenor shall not later than seven 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 reasonably possible for the convenor 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 convenor prohibit the gathering." Records show that this section is used to refuse any gatherings that do not comply with the seven day notice period, without due consideration being given to possible reasons for late notification.

In addition, JMPD officials often do not comply with the RGA's stipulation that it should respond to a notification within 24 hours of receiving it if it intends to hold a meeting about the gathering or to seek to prohibit it. Section 4 (3) states "If a convenor 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 ..., the gathering may take place in accordance with the contents of the notice ..." Records from both the JMPD and movements show the violation of the RGA through the response to notices well after 24 hours. Often this works in conjunction with the seven day notice period required of movements against the right of movements to seek the intervention of a magistrate to overturn the prohibition of a gathering. If the JMPD responds after the 24 hour period with the request to meet with a movement and then proceeds to prohibit a gathering, it may be impossible for a movement to apply to a magistrate within the necessary time period to get permission for a march to proceed on the intended day. However, with responses beyond this 24 hour response period, the possibility for overturning a prohibition timeously following all legal routes is reduced.

Section 5 of the RGA states, "(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 convenor and the authorised member ... in order to consider the prohibition of the gathering."

There are a number of suggestions in the evidence outlined below that the JMPD has been in violation of this section. Firstly, there is a lack of any significant records of "credible information on oath" preceding the calling of such meetings. In the 2 cases where there are such records, it would appear that the information on oath has been forthcoming after the meeting in order to prohibit the gathering. Secondly, it would seem that the meetings have become common practice

in attempting to prevent gatherings from taking place rather than being spaces in which the authorities should be trying to facilitate the peaceful occurrence of the gathering in question. The prohibition letters following several of these meetings verify this as they contain the same language and represent no attempt on the part of the JMPD to assist the convenors in facilitating the gathering. This would also suggest that the meetings do not take place in "good faith" as the RGA prescribes. Lacking in both the records of the JMPD and movements, is documentation relating to the content of the meetings described above.

The actual prohibition letters from the JMPD also constitute several violations of the RGA, through their identification of the potential adverse effects a gathering may have on traffic and their allegations of past indiscretions by people associated with the convening group as reasons for prohibition. According to Stuart Woolman, "These pro forma banning orders violate the RGA in three discrete ways. First, The RGA's 4(4)(b), actually acknowledges that gatherings will, inevitably, disrupt traffic and contemplates an agreement between the responsible officer, the convenor and the police that will ensure that 'vehicular or pedestrian traffic, especially during traffic rush hours, is least impeded'. Second, reasonable suspicion 'of lawlessness and damage to property' - the language used in these pro forma prohibitions - is not the standard set out in the RGA for the prohibition of a gathering. RGA's 5(1), demands 'credible information on oath...brought to the attention of a responsible officer.' Third, the orders fail to recognise that the time, place and manner of an assembly are often its most essential features. The disdain shown for these critical elements of an assembly constitutes a violation of RGA's 2(d)'s requirement that the responsible officer ensure that all discussions demonstrate the state's willingness to negotiate in 'good faith'."<sup>2</sup>

While it is not the brief of this project, there is also some evidence in social movement records (although very sketchy) of the JMPD's violations of the RGA during gatherings through the fixing of the times that marches are permitted to last, arrests, and so on. An historical record of these kinds of violations will only be able to be built up through in-depth interviews and the taking of affidavits from relevant people.

From the records that this project has been able to source, however, it would seem that there is sufficient evidence to prove that the JMPD has violated and does violate the RGA in the processes leading up to a gathering or its prohibition. This is outlined in detail below.

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<sup>2</sup> Stuart Woolman, *Memorandum on the RGA*, prepared for FXI, LPM & APF, March 2005

### ***Social Movement Experiences of the RGA***

Records of permissions and prohibitions of gatherings do suggest that there are certain social movements that are more likely to be prohibited from holding gatherings than others. While COSATU, TAC and Jubilee South Africa have had almost no problems with their holding of gatherings, the APF and the LPM, as well as other groups with similar targets and tactics of struggle to these movements (e.g. the Traders' Crisis Committee) have, over time, come to be slapped with blanket prohibitions for gatherings, and their attempts to exercise their right to freedom of assembly deliberately thwarted time and time again, clearly against the spirit of the RGA. It would seem that as certain movements have become more effective in their struggles, the RGA has been deployed to prevent their success in targeting their stated enemies, usually private companies and local municipalities in the persons of the local Councillors.

#### ***The Treatment Action Campaign (TAC)***

For the period August-December 2002, JMPD records show that TAC had 4 gatherings in Johannesburg approved and none prohibited. From January-November 2003, 2 were approved and none prohibited. From 2004 records, TAC had 1 gathering approved and none prohibited. According to Gauteng Campaigns Co-ordinator for TAC, Xolani Kunene, no records of notices or correspondence around the RGA have been kept by TAC since his tenure in 2003. However, to his knowledge, only 1 notification to gather has been filed since 2003 and this was permitted. In general, it would seem that TAC has experienced no violations of the RGA in its interactions with the JMPD.

#### ***Jubilee South Africa (Jubilee)***

According to JMPD records, Jubilee had 1 gathering approved and none prohibited for the period August-December 2002; 1 permitted and none denied from January-November 2003; and 2 approved and none prohibited in 2004. While Jubilee has no records of correspondence with the JMPD, Ndade Mxunya, a Jubilee (Gauteng) Co-ordinator since February 2004, explained that all communication with the JMPD had been telephonic and that no notification served of any

gathering that he had been convenor of or that he had knowledge of, had been refused. Jubilee's right to assemble had always been acceded to.

*The Congress of South African Trade Unions (COSATU)*

According to JMPD records, for the period August-December 2002, COSATU had 3 gatherings approved and none prohibited. In 2003, 1 gathering was organised and was prohibited on the grounds that "short notice" was given. With the intention of this gathering being to demonstrate outside the US Consulate and to pray for the people of Iraq on 18 March 2003, it is likely that this was a last minute decision made as war was declared on Iraq.

An initial meeting with Oupa Bodibe (former Co-ordinator in the COSATU Secretariat; now Director of Naledi) revealed that COSATU has an ongoing internal discussion about the constitutionality of the RGA and would be interested in a constitutional challenge to the RGA. In particular, COSATU had not been pleased with its recent engagements with the authorities around the RGA with specific regard to its protests against events in Zimbabwe. Bodibe also indicated that the only real memory of difficulties encountered around the RGA would be a few years ago in Cape Town when COSATU wanted to gather outside Parliament. He indicated that he thought COSATU officials would not have difficulty making their records of engagements around the RGA accessible to us. However, on trying to access these records through the relevant person, the National Campaigns Co-ordinator, Theo Steele, we have met with some difficulties. On Ms Steele's advice, a letter was written to the COSATU secretariat requesting access to their archives. Numerous delays, caused by COSATU's CEC co-ordination and the national jobs strike, have prevented their prompt response to our letter (sent on 13 May 2005), and no response has been received to date. Attempts to contact Ms Steele telephonically have been in vain as she has been ill recently. It would, however, seem that access to these records has been frustrated purely by process and circumstance, and it would be possible, in time, to see these records if necessary.

Anti-Privatisation Forum (APF)<sup>3</sup>

In the period between August and December 2002, the APF had 2 gatherings approved and 1 prohibited by the JMPD.

The first of these gatherings was a march held during the World Summit on Sustainable Development (WSSD) on 31 August, which was originally prohibited by the JMPD. Neither JMPD nor APF documentation contain records of the meetings, discussions and negotiations that went on around this march. Instead, JMPD records very simply state that a march by the APF of 4 000 people was granted permission to proceed on 31 August. Missing is the tremendous struggle that occurred around getting this march legalised. Also missing is the fact that the LPM and APF (which had both had their marches for the same day initially prohibited) joined forces in the final march of approximately 20 000 people that took place on 31 August 2002. It will only be possible to piece together what happened over this period through in-depth interviews with the key people involved in this issue in the APF and Social Movements Indaba (SMI) at the time, namely Trevor Ngwane, Dale McKinley and Ahmed Veriava. The second gathering permitted in this period was a march against evictions in the inner city on 13 December. JMPD records state that 1 000 people were expected to march. The 1 prohibition for this period refers to a march of an expected 2 000 people to hand over a memorandum to the Mayor of Johannesburg in Jabulani, Soweto, planned for 2 October. Without any record of the reasons that JMPD furnished for this prohibition, it is difficult to comment on these different experiences of 2002.

Between January and November 2003, the APF gave notice for 7 gatherings that were permitted, and 4 that were prohibited. There was 1 prohibition of a gathering planned by the Soweto Electricity Crisis Committee (SECC) for which no notice was given to the JMPD. There is missing documentation from both JMPD and APF records for a march planned for 21 May 2003 - JMPD records state 'not yet approved' and there is only a copy of the notice of the intention to gather submitted by the APF to the JMPD in APF files.

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<sup>3</sup> We have included all community affiliates of the APF under the name 'APF'. Records of notices for gatherings submitted by affiliates of the APF are therefore also included here.

The following is a list of those *gatherings that were permitted*:

1. 12 April - march of an expected 600 people in Pimville, Soweto to hand over a memorandum to the Ward Councillor.
2. 26 April - march of an expected 3 000 people in Soweto to hand over a memorandum to a Councillor.
3. 6 June - march of an expected 1000 people from Mapetla to Protea SAPS against prepaid electricity meters.
4. 16 June - commemoration of Youth Day in Soweto with an expected 1000 people.
5. 22 August - march of an expected 500 people in Senoane, Soweto against prepaid water meters.
6. 23 October - inner city march of an expected 1000 people against cut-offs and evictions.
7. 26 October - Soweto Electricity Crisis Committee (SECC) meeting in Soweto.

The following *gatherings were prohibited*:

1. 21 March - march of an expected 5 000 people in Orange Farm on the Council offices in Extension 6, against prepaid electricity meters.
2. 17 May - march of an expected 1000 people in Diepkloof to the local ESKOM offices to deliver a memorandum to ESKOM.
3. 18 October - march of an expected 400 people in Thembelihle to the local City Power offices to protest the lack of electricity in the area.
4. 20 September - gathering at Phiri Hall in Soweto.
5. 28 June - notice not submitted for march from Meadowlands SAPS to Dobsonville in Soweto to hand over a memorandum.

Unfortunately, the JMPD's reasons for these prohibitions were not available from its records. From APF records, there were only some of the records related to the first and fourth prohibitions.

For the action planned for 21 March, notice was given to the JMPD on 15 March. A letter of prohibition, dated 20 March, states "your application for a march on Friday, 21 March 2003 at the Johannesburg Metro Council Offices in Orange Farm is not acceded to because there is credible information on oath that your march will result in lawlessness and damage to Eskom property". It is unclear from the records available to us whether there was a response from the JMPD within the required 24 hour period or whether there was a meeting convened by the JMPD to discuss

concerns with the convenors prior to declaring the prohibition. The contact person for the APF in all related correspondence here is Jan Sithole. There are no records of the "credible information on oath" that is referred to by the JMPD in either its records or the correspondence to the APF.

For the gathering planned for Phiri Hall for 20 September, there is no record in the JMPD databases. From APF records, a prohibition letter was found, stating that the SECC (Phiri Residents) had filed a notice with the JMPD on 16 September, and that the gathering was prohibited because there had been "extensive damage to Council property in Phiri" in a previous march by the organisation; that "trenches that were intended for water pipes were damaged by participants" of the march; and that "construction workers were intimidated and obstructed in the performance of their duties". In addition, the letter states that the convenors did not attend a meeting convened by the JMPD for 17 September. There are no records of correspondence about this meeting. The contact person for the SECC (Phiri Residents) in this regard is Veronica Shipalane.

While there are no records from which to ascertain the exact reasons for the prohibitions of these marches as opposed to the former that were permitted, it would be reasonable to assume that the prohibitions were declared during periods of heightened tensions between the APF and the police as the latter tried to protect the private interests of those companies that the communities were beginning to hate for denying them access to electricity and water.

For 2004, from the composite records available to us, 3 of the gatherings that the APF gave the JMPD notice of were permitted, and 5 were prohibited.

The following *were approved*:

1. 12 September - march of an expected 300 members of SAMANCOR in the inner city.
2. 27 September - march of an expected 100 people from SAMANCOR in the inner city.
3. 15 December - march of an expected 500 members of the Inner City Forum to protest cut-offs and evictions in the inner city.

*The following were prohibited:*

1. 3 March - march to Jorissen place organised by the SECC and APF (Convenor: Bongani Lubisi).
2. 21 March - march to the opening of the Constitutional Court (Convenor: Tebogo Mashota).
3. 21 September - march of an expected 500 members of the Motlana Concerned Residents Forum in Soweto to the Merafe Council offices to protest the installation of prepaid water meters (Convenor: Matome Matome).
4. 8 November - picket of an expected 100 people, organised by the Thembelihle Crisis Committee (TCC) in Lenasia against the lack of development in Thembelihle (Convenor: SIpfiwe Segodi).
5. 24 November - second attempt at picketing by the TCC in Lenasia.

While there were no JMPD records of the first two prohibitions, APF files did contain both prohibition letters. With regard to the gathering planned for 3 March, notice was given to the JMPD on 9 February. A letter from the JMPD, dated 17 February, prohibited the march for the following reasons: "(1) Jorissen Place is in the centre of Braamfontein and business will be severely affected especially during lunchtime and afternoon peak. (2) Your proposed gathering will result in serious disruption of vehicular traffic because of the duration of the march, your refusal to adhere to 2 hours restriction and the number of participants. (3) The unlawful removal of prepaid meters and intimidations to contract workers tasked to lay underground water pipes. It is therefore clear... that your march will result in injury to other persons and damage to property." There are no records from the JMPD or the APF of any meetings convened between the JMPD and the convenor to discuss the march prior to the prohibition letter being issued.

In relation to the planned gathering for Constitution Hill, the APF gave notice to the JMPD on 9 March and received a letter of prohibition on 18 March, 3 days before the scheduled gathering. The letter cited the following reasons for the prohibition:

"(1) Your proposed gathering will result in serious disruption of vehicular traffic because of the official opening of the Constitutional Court and the tendency of your participants who deliberately stop while marching to obstruct traffic. (2) The unlawful removal of prepaid meters and the damaging thereof by throwing them on the ground and tramping on them. (3) The making of fire in a public place with the intention of burning summonses and account statements. It is therefore clear...that your march will result in injury to other persons and damage to property.

Your organisation has shown no ability to control its members in the past." There are no records on the part of the JMPD or the APF of any meetings or negotiations that might have taken place prior to this prohibition letter being issued.

From JMPD records, a prohibition letter was found for the march planned for 22 September. It states that the notice from the Motlana Concerned Residents Forum was received on 17 September and gives the following as reasons for the prohibition:

"(1) Section 3 notice in terms of the RGA was not received within 7 days. (2) There is reasonable suspicion that your march will result in lawlessness and damage to property."

There are no records of any meetings that might have happened prior to the prohibition.

With regard to the prohibition of the TCC gatherings, there are full sets of records from the JMPD and the APF. The first notice to gather was delivered to the JMPD on 2 November. On 2 November, Isaac Maake informed the TCC of a meeting to take place on 3 November "to discuss the planning and logistics of the event", which the convenors attended. On 3 November a prohibition letter was written to the TCC citing the following as reasons for the prohibition: "(1) The proposed times for the gathering ... will result in serious vehicular traffic because it is peak hour period. (2) There is also reasonable suspicion that your gathering will result in lawlessness and damage to property. Because of incidents of the past i.e. blockage of the road and the stoning of vehicles, there is no guarantee that such conduct will not be repeated." On oath is the testimony of an Inspector Mawela Gideon Ndou who claims that the TCC has been violent in its protests in the past, burning tyres, throwing stones and stoning vehicles. He states that he suspects that the picket will result in "lawlessness and blockade to traffic [sic]", and that TCC representatives have not adhered to agreements reached in meetings held with the police in the past. His testimony on oath is dated 5 November, some time after the meeting and after the prohibition letter is sent out.

The TCC then, on 15 November, resubmitted a notice to picket on 29 November in Lenasia to the JMPD. On 22 November, the JMPD notified the convenors of a meeting to happen on 23 November "to discuss the planning and logistics of the above event". After the meeting took place, the JMPD wrote a letter to the TCC prohibiting the gathering on the following grounds: "(1) The proposed times for the gathering ... will result in serious vehicular traffic because it is peak hour period [sic]. (2) There is also reasonable suspicion that your gathering will result in lawlessness and damage to property." On oath is the testimony of an Inspector Esrael Mondli

Maupa who refers to the meeting held with the convenors and claims that it became clear through the convenors refusal to change the time of the picket that they were planning to disrupt traffic. He states, "I immediately realised that these people [the convenors] are planning to cause a problem. In the past I have policed the gatherings of Thembelihle along the same route and we experienced street blockade with rocks, stones were thrown at passing vehicles including police vehicles. A senior member of SAPS sustain injuries and the invasion of the neighbouring school [sic]. I therefore object to said gathering taking place because it will result in lawlessness, damage to property and injury to innocent people." While this testimony on oath is not dated, its contents clearly reflect that it was written *after* the meeting held with the convenors.

For 2005, some interesting records were found amongst the JMPD files relating to a gathering given notice for by the APF planned for 2 March 2005. The APF filed its notice on 21 February to march on 2 March from Noordgesig to the Orlando East Council offices in Soweto. On 21 February, a letter was sent to the convenor inviting him to a meeting with the JMPD on 23 February to "discuss the planning and logistics of the event". Interestingly, the photocopy of the letter filed in Isaac Maake's archive has the words "Don't approve", scribbled on the top left hand corner. Stapled to the rest of the related correspondence is a letter from Councillor Sizakele Nkosi-Malobane, Chairperson for Public Safety & Security of the Mayoral Committee, addressed to Isaac Maake, dated 21 February, "informing" him of the prohibition of this gathering. This certainly suggests that the meeting held "to discuss the planning and logistics of the event" could not have happened in "good faith" as demanded by the RGA. Instead, it would seem that the meeting was being called as a mere formality with no possibility for any terms or conditions to be reached between the convenors and the police. In fact, it would seem that the prohibition of the gathering came on 21 February well before the meeting happened on the 23rd. The convenor of this gathering from the APF was Kanapi Moeketsi.

#### *Landless People's Movement (LPM)*

Composite records for 2002 show that the LPM gave notice of the following gatherings and received permission to proceed with them:

1. 24 July - march of an expected 4 000 people to deliver a memorandum to the Gauteng Premier through the inner city.
2. 21 August - march to deliver a memorandum to Gauteng Premier against forced removals.

### 3. 31 August - march during WSSD

While there are no real records of the negotiations that preceded these gatherings, an article written by Ann Eveleth, a member of the LPM, entitled 'State Repression Against The LPM: Incidents Report, August 2003' recounts the fact that each of these gatherings was met with some form of resistance from the JMPD. With regard to the march on 24 July, notice was given in due time and a meeting called by the JMPD. At this meeting, "the police attempted to deny permission on the grounds that people from the Thembelihle informal settlement were expected to participate in the march", and refused to agree to the proposed route and times for the gathering, "citing inconvenience to traffic flows". According to Ann, it was only through the intervention of the Human Rights Commission and numerous phone calls that the march proceeded peacefully. Similarly, the march on 21 August went ahead only after lengthy negotiations with the police after they tried to prohibit the march when the Premier informed them that he would not avail himself to collect the memorandum addressed to him. The march, once it did happen, ended in 77 arrests.

The LPM does have some record of the negotiations surrounding the march planned for 31 August during the WSSD. The LPM submitted a notice to march to the JMPD on 23 July, and received a letter on 1 August to inform the convenors of a meeting to be held on 6 August to "discuss the planning and logistics of the event". LPM records show that the convenors attended this meeting and subsequently wrote a letter to Mr Isaac Maake that implies that the march had been prohibited. In this letter, the LPM accuses the JMPD of violating the 24 hour notification provision made by the RGA, amongst other things. JMPD records, however, indicate merely that a march was permitted to go ahead on this date, completely removing any sign of struggle around this gathering. As described earlier, this march was eventually combined with the APF/SMI's in what came to be known as the Social Movements United (SMU) march.

For the period between January and November 2003, JMPD records show that the LPM gave notice for 7 gatherings that were approved. These included:

1. 21 January - march of an expected 400 people from Thembelihle to Lenasia to force a local Councillor to resign.
2. 5 February - march of an expected 3 000 people in the inner city to protest forced removals of Eikenhof settlers.

3. 7 February - march of an expected 2 000 people from Protea to Jabulani to deliver a memorandum to Director of Region 6.
4. 10 March - picket of an expected 100 people at the Premier's office.
5. 12 March - march of an expected 400 people from Thembelihle to Lenasia SAPS to demand removal of Lenasia police station commander.
6. 8 May - march of an expected 400 people from Thembelihle to the South Eastern Municipality to protest their forced removal to Vlakfontein.
7. 11 July - march of an anticipated 400 people from Thembelihle to Lenasia SAPS to demand the station commander's transfer.

There are no LPM records related to the above gatherings.

During this period existing records are unclear about a gathering that the LPM planned to hold on 20 March, for which LPM records contain a letter from the JMPD inviting the convenors to a meeting. However, the outcome of this meeting is not recorded in either the JMPD or the LPM's files, with the latest JMPD record stating 'not yet approved'.

There were no available records for 2004 from the JMPD or the LPM.

For 2005, LPM records show that the Thembelihle branch notified the JMPD on 13 April of its intention to hold a gathering on 22 April at the Department of Safety & Security offices in the city. On 16 April, the JMPD summoned the convenor to a meeting to be held on 19 April. In a letter dated 19 April and faxed to the LPM on 20 April, the JMPD prohibited the gathering, citing the following reasons: "(1) You have shown no control of your marchers in the past who stop and sit on the roadway deliberately with the intention to obstruct vehicular traffic. (2) There is also reasonable suspicion that your gathering will result in lawlessness and damage to property." The LPM subsequently wrote a letter to Inspector Maake dated 29 April outlining its problems with the prohibition, in particular drawing attention to what it saw as violations of the RGA, including the JMPD's response after 24 hours to the initial notice served, that the meeting convened did not take place 'in good faith' but served to prevent the gathering from taking place, and that there is no 'credible information under oath' to prove that the gathering would result in violence.

On 5 May the LPM served notice again for the march at the Department of Safety & Security, this time planned for 17 May. On 9 May, the JMPD wrote a letter asking the LPM to attend a

meeting "to discuss the planning and logistics of the event". This was followed by a letter on 11 May prohibiting the gathering for the following reasons: "(1) There is a reasonable suspicion that participants will sit on the roadway Simmonds and Fox Streets in a deliberate attempt to obstruct vehicular traffic [sic]. (2) Your proposed march will result in serious disruption to vehicular traffic as it was in the past because of your refusal to co-operate with the police thus resulting in massive arrests. (3) There has been incidents of violence in Thembelihle in the past and there is no guarantee that such conducts will not be repeated [sic]."

## **Conclusions**

The experiences of the social movements responsive to our requests as part of this project certainly give flesh to the contention that the JMPD is currently discriminatory in its attitude and actions towards the APF and the LPM. While TAC and Jubilee have had all their gatherings permitted from 2002 until the present, the APF and LPM have, over this period increasingly been met with prohibitions of their planned gatherings, often entailing violations of the RGA. It would also appear that COSATU has not experienced any such violations of the RGA, but would want to take issue with the RGA itself for preventing certain forms of protest or spontaneous gatherings.

Isaac Maake's own memory of prohibitions for 2004-2005 being that all notices given were permitted except for those submitted by the APF, LPM and the Traders' Crisis Committee, speak strongly to the fact that the JMPD has over the course of a two year period come to issue blanket prohibitions of gatherings planned by the APF and LPM, in direct contravention of the RGA in many ways. From the records compiled in this project, with the APF, these prohibitions began on a small scale in 2003, with the JMPD working to protect primarily the private interests of ESKOM, City Power and Johannesburg Water in the struggles against prepaid electricity and water in Orange Farm, Thembelihle and Soweto. By 2004, no gatherings organised in the name of the APF or SECC were being permitted, with the obligatory meetings being called and followed with letters of prohibition that began to speak the same language. The only gatherings permitted in 2003, related to the APF, were those organised in the name of affiliates marching in the inner city. By 2005, these prohibitions have become a site of struggle for the APF through the TCC's repeated attempts to hold a picket in Lenasia and the repeated prohibitions issued by the JMPD.

With the LPM, signs of potential for abuse of the RGA by the JMPD begins as early as 2002, interestingly with previous actions in Thembelihle featuring as the possible reason for prohibiting a broader gathering of the LPM. However, it ceases for a long period until 2005, when the LPM (Gauteng) is repeatedly prevented from holding a gathering outside the MEC for Safety & Security's office in the city centre, with violence in Thembelihle being cited as one of the reasons for prohibition.

Significant is the fact that the previous actions of the Thembelihle affiliates of the APF and the LPM have been used by the JMPD to prohibit gatherings of the broader membership of these two movements. It is also interesting to note the similarity of the language that is used to prohibit the gatherings of both the APF and the LPM, with reference to Thembelihle.

With regard to all the prohibitions issued across these two movements, there have been several recognisable violations of the RGA. Already contained in the records collected for this project are violations of the 24 hour response period for the JMPD; abuse by the JMPD of the seven day notification period required of convenors of gatherings in the ideal situation; violation of the requirement that all meetings between the JMPD and convenors take place in 'good faith'; and neglect of the requirement for 'credible information on oath' for the convening of meetings to discuss possible prohibition to take place.

However, the records kept by the JMPD and the movements surveyed are seriously deficient. There is a dire need for some training of activists from social movements to understand the importance of building a historical record of engagements around the RGA and to develop the skills and systems to facilitate establishing this historical record.

This report should, then, be treated as the start of establishing this historical record in the further development of a legal challenge against the JMPD for its violations of the RGA. With the existing record of knowledge compiled in this report, further legal work can be initiated and capacity building within social movements can begin.

## **Recommendations**

1. The legal unit of the FXI should pursue work around further developing a legal challenge of the JMPD using this report.
2. A popular version of this report should be made available to the social movements involved in the project.
3. A workshop should be run for social movements on the RGA and the ways in which to establish a historical record within movements.
4. A more comprehensive research project should be undertaken to take forward this project on a national level and to include other social movements and organisations, such as the Traders' Crisis Committee.

## **Annex 1: Summary of JMPD Records**

### **23/08/2002 - 30/12/2002**

Total Number of Records = 127

Total Number of Cancelled Events = 1

Total Unapproved Events = 20

Total Approved Events = 105

Total with 'not yet approved' = 1

	Approved	Not Approved	Not Yet Approved	Cancelled
APF	2	1	0	0
LPM	2	1	0	0
TAC	4	0	0	0
COSATU	3	0	0	0
Jubilee	1	0	0	0

### **11/01/2003 - 12/11/2003**

Total Number of Records = 174

Total Number of Cancelled Events = 3

Total Unapproved Events = 10

Total Approved Events = 142

Total with 'not yet approved' = 19

	Approved	Not Approved	Not Yet Approved	Cancelled
APF	6	3	1	0
LPM	7	0	1	0
TAC	2	0	0	0
COSATU	0	1	1	0
Jubilee	1	0	0	0

**08/09/2004 - 11/12/2004**

Total Number of Records = 52  
Total Number of Cancelled Events = 5  
Total Unapproved Events = 2  
Total Approved Events = 40  
Total with 'not yet approved' = 5

	Approved	Not Approved	Not Yet Approved	Cancelled
APF	3	0	1*	1
LPM	0	0	0	0
TAC	0	0	0	0
COSATU	0	0	0	0
Jubilee	2	0	0	0

\* From APF records, this march was prohibited.