

**A CRITICAL REVIEW OF THE IMPLEMENTATION  
OF THE REGULATION OF GATHERINGS ACT 205  
OF 1993-**

**A LOCAL GOVERNMENT AND CIVIL SOCIETY  
PERSPECTIVE**

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## Executive Summary

This study was commissioned by the GOF Foundation to the Freedom of Expression Institute (FXI) to investigate the practical difficulties in the implementation of RGA from a local government, civil society and social movement's point of view. This report comprises two separate research processes that the FXI oversaw- one undertaken by the Research Education and Development (RED) and another undertaken by the FXI's Legal Unit and a team of researchers. The RED research is reflected in the earlier section of the report dealing with the experiences of civil society and social movement's experiences whilst the rest of the report deals with major South African cities and hotspots of Harrismith- Intabazwe, Khutsong and Middelburg. The research focused on the interface between the two main actors in the implementation of the RGA<sup>1</sup>- local authorities and; civil society and social movements- particularly the implications of the practical application of sections 3 and 4 of the RGA.

Section 3 deals with the process of preparing and submitting the notice of gathering; and section 4 regulates the process of holding consultation, negotiations, amending the notice where necessary and the imposition of conditions for the requested gathering. The importance of the two sections lies in the possibilities it creates for the facilitation of the right to freedom of expression on the one hand and proscribing it on the other. It is within the ambit of sections 3 and 4 that the scope and reach of the constitutional right to freedom of expression is tested.

Other sections of the RGA are also important in certain respects- for instance- sections 5 and 6 providing for the prevention and prohibition of a gathering; and the review and appeals process respectively have important implications particularly for civil society's continued engagement with the effects of the RGA on their work. The intention of the project has however been to focus on the point at which the ingenuity of the RGA is acutely contested- and thus the focus has been on sections 3 and 4.

The research utilised an approach to information gathering that employed a range of sources- ranging from face to face interviews, the administering of an e- mailed set of questions to the respondents combined with a literature review on the practical difficulties borne out by the application of the RGA more recently. Thus- two main avenues of research were pursued. First a series of role- player interviews were conducted with representatives of civil society, social movements and local authorities. Secondly a survey of recent cases involving the implementation of the RGA is undertaken.

The RED research findings revealed the following: 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

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<sup>1</sup> In terms of the RGA- district magistrate's courts are also entrusted with the role of administering the RGA in areas where no local authority exists. In such instances and in terms of section 3(4) of the RGA- a magistrate of the district within which the gathering is to be held or to commence shall fulfil the functions, exercise the powers and discharge the duties conferred or imposed by the RGA on a responsible officer in respect of such gathering. As will be apparent in this report- the metro centre and hotspots surveyed in this research have local authorities established in terms of sections 151 and 155 of the *Constitution of the Republic of South Africa 108 of 1996* (FC).

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.

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, individual activists, involved at the time of a particular gathering, who see the necessity for keeping such information, have done such storing of records. 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, the RED research 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.

The second leg of the research undertaken by the FXI legal unit and a team of researchers on the other hand revealed- that overall, there is a gap between what the role players perceive the RGA to be providing for in certain instances and what the legislation actually says. Role players tend to regard what has generally evolved through practise and implementation over the years to mean that this is what the RGA provides for within its four corners. The cases in point are for instance: the notion held by local municipalities that once faced with an application for a gathering, they must either allow or prohibit a gathering as opposed to finding the best possible way to facilitate a gathering as provided for under section 4; secondly the notion widely held within the labour movement that the RGA should regulate political gatherings as opposed to gatherings organised by labour; and the widely held perception that the RGA requires in the case of a gathering in the form of a procession that if a petition or any other document is to be handed over to any person there should be a confirmation letter from such a person who will be receiving the memorandum or document. Section 3(3)(j) of the RGA states that in the case of a gathering in the form of a procession- a notice of the proposed gathering shall contain amongst other details<sup>2</sup> information about the place where and the person to whom it is to be handed over. No mention of a confirmation letter is made in the RGA. What is also apparent from the role player interviews is

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<sup>2</sup> Section 3(3)(a)-(v) requires the following information to be furnished in the notice of the proposed gathering: the name, address and telephone and facsimile numbers, if any, of the convenor and his deputy; the name of the organisation or branch on whose behalf the gathering is convened or, if it is not so convened, a statement that it is convened by the convenor; 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 where possible the names of the marshals who will be appointed by the convenor, and how the marshals will be distinguished from the other participants in the gathering; - in the case of a gathering in the form of a procession- the exact and complete route of the procession; the time when and place at which participants in the procession are to assemble and the time when and place from which the procession is to commence; the time when and the place where the procession is to end and the participants are to disperse; 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, if any, which are to form part of the procession; and if a petition or any document is to be handed over to any person, the place where and the person to whom it is to be handed over.

that there are generally divergent views about what various provisions of the RGA state. These are explored in the role-player interviews and the body of the report.

On the whole, the role-players view the RGA as a good piece of legislation albeit for different reasons. Local authorities cite the problem of the seven-day notice period as insufficient to conclude logistics mainly around personnel required for the proposed gathering. Local authorities also note that organisations sometimes give a wrong estimate about the number of people who will be participating in the protest gathering and this over-stretches their personnel for no apparent reason. Under-resourced-municipalities point out that the term ‘responsible officer’ is too confining and should be broadened to responsible officials in cases where there is an institutional lack of capacity. Civil society organisations and social movements also point out that the RGA imposes more onerous provisions on gatherings scheduled with less 48-hour notice.<sup>3</sup> Failure to meet the 48-hour-notice in advance deadline for notice gives the local authorities almost unfettered discretion to issue prohibitions. The powers granted to local authorities in this regard are extraordinary.

Trade union organisations- particularly SATAWU indicate that there should be clarity between the applicability of the RGA vis-a-vis the LRA. There is a widely held misconception within the labour movement that the RGA should regulate political gatherings whilst labour related issues should be dealt with under the LRA. Almost all the labour movements interviewed ventilate this view. The point is made in the body of this report that the RGA’s objective is “to regulate the holding of public gatherings and demonstrations at certain places; and provide for matters connected herewith”<sup>4</sup>. No mention is made in the RGA of the distinction between labour and/ or political gatherings. Within the ambit of ‘public gatherings’ would be various formations, including the labour movement seeking to express their views. Amongst the recommendations that this report makes for civil society engagement with the RGA is the need for education around this aspect of the RGA within the labour movement.

It is also clear from the role-player interviews that the seven-day period presents practical problems. Another point that is made is that the seven-day period does not take into account the fact that gatherings are a form of protest that are often an immediate response to actions- by the state or private actors in society. The seven-day notice period not only works to suppress dissent, it grants the government a grace period to thwart the proposed gathering.<sup>5</sup>

Another difficulty experienced by civil society organisations and social movements is that local authorities often take more than a week to reply to a properly filed notice. This practise in essence violates the 24-hour response requirements of the RGA<sup>6</sup>. Similarly the golden triangle meeting<sup>7</sup> for most organisations- does not appear to be designed to discuss any amendment of the contents of the notice and such conditions regarding the conduct of the gathering appear to be imposed by the local authorities and SAPS in the meeting.

The case studies on the other hand show a disturbing pattern where organisations that stridently oppose the government’s macro-economic strategy and those who denounce the continued impoverishment and immiseration of the masses are finding themselves isolated and targeted by local municipalities and its law enforcement machinery.

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<sup>3</sup> Section 3(2) of the RGA.

<sup>4</sup> Preamble of the RGA.

<sup>5</sup> Section 12(2) of the RGA states that: “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.” Woolman S in Constitutional Law of South Africa (2<sup>nd</sup> Edition, Original Service: 02- 05) at 43-9 notes that while the defence of spontaneity creates some breathing room, it is decidedly a narrow exception to the notice provisions and penalties for non compliance.

<sup>6</sup> Section 4(3).

<sup>7</sup> As required by section 4(2)(b).

## **List of Abbreviations**

TAC	Treatment Action Campaign
APF	Anti- Privatisation Forum
ANC	African National Congress
BEC	Branch Executive Committee
PEC	Provincial Executive Committee
ANCYL	African National Congress Youth League
CPA	Criminal Procedure Act 51 of 1977
DMPS	Durban Metro Police Service
SACP	South African Communist Party
COSATU	Congress of South African Trade Unions
JMPD	Johannesburg Metro Police Department
MPS	Metro Police Services
LRC	Legal Resources Centre
FXI	Freedom of Expression Institute
FC	Constitution of the Republic of South Africa Act 108 of 1996
SATAWU	South Africa Transport and Allied Workers Union
SAPS	South African Police Services
SECC	Soweto Electricity Crisis Committee
LPM	Landless People's Movement

## 1. Introduction and Background

In 2005, the FXI secured the services of Research and Education in Development (RED) to conduct research into the experiences of social movements in the implementation of the Regulation of Gatherings Act 205 of 1993 (RGA) with a view to developing a better understanding of a civil society response to the RGA particularly within the context of rising litigation around the provisions of the RGA and sensitising social movements on the legal implications of organising and doing work in the context of an institutional and legal framework for the presentation of demands provided for by the RGA.

This initial phase of the research project was limited to a fact- finding and information-gathering phase in Johannesburg into the responses of the Johannesburg Metropolitan Police Department (JMPD) and social movements to the scope and application of the RGA. The findings of the RED research showed serious violations of the RGA by the JMPD and a lack of a proper understanding of the ambit of the RGA's applicability by both the JMPD and social movements. Most importantly, according to the findings of RED- the basis for legal action against JMPD was evident in most cases. The findings also highlighted the importance of a nation- wide research into the responses of both local municipalities and civil society actors in the implementation of the RGA.<sup>8</sup> The RED research is incorporated in this report under section 4.1.

Flowing from above mentioned recommendations to extend the reach of the study- the FXI legal unit commissioned a team of researchers to undertake an in-depth and nation- wide analysis of the responses of civil society organisations and municipal local authorities to the implementation of the RGA. Thus, this report represent the second phase of an extensive research study analysing the responses of civil society organisations, social movements and local authorities to the implementation of the RGA and more specifically for current purposes- on the challenges experienced by all actors in the notification process and the consultation process under sections 3 and 4 respectively. The report covers the major metropolitan centres<sup>9</sup> of South Africa, namely: Johannesburg, Ethekwini and Cape Town and the recent hotspots of Harrismith, Midvaal, Middleburg and Khutsong.<sup>10</sup>

As highlighted above- the focus of this report is on the notification process and the holding of the consultation between the convenor, responsible officer and an authorised member of the SAPS.<sup>11</sup> Section 3 and 4, being the points of entry into the scheme of the RGA forms the basis of the research into the perspectives of civil society organisations and the local authority on the efficacy of the RGA. In its analysis, the report therefore takes a critical look at the treatment of the above-mentioned sections from a practical point of view by those seeking to utilise the RGA and those administering the RGA. The report will tend to be more detailed in its examination of the process of lodging the notice up to the point of receipt by the responsible officer and the holding of the golden triangle meeting. The areas of contestation between the key role- players in the RGA are examined and recommendations on how these should be carried forward are also explored- particularly under heading 6 of the report.

The report-thus proceeds in five stages: A brief background into the RGA itself; secondly- the RED research and its findings; a detailed exposition of role- player interviews is provided combined with a survey of recent cases that have tested the ingenuity of the RGA (section 3 and 4- in particular). The final section draws together the findings emerging from the different research

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<sup>8</sup> See: RED Research Report- Establishing a Record of Violations of the Regulation of Gatherings Act and the Right to Freedom of Assembly Amongst Social Movements in Johannesburg, 2005.

<sup>9</sup> The White Paper on Local Government, 1998, p58- defines metropolitan areas as: *'large urban settlements with high population densities, complex and diversified economies, and high degree of functional integration across a larger geographic area than the normal jurisdiction of a municipality. On the other hand metropolitan governments are governments whose areas of jurisdiction cover the whole metropolitan area.'*

<sup>10</sup> Social movements and civil society organisations are not covered in this report as they were extensively dealt with in the Red research report.

<sup>11</sup> This tripartite meeting is commonly referred to as the 'Golden Triangle'.

components outlined above and attempts to analyse the responses of civil society organisations and local authorities to the RGA and make recommendations.

## **2. Methodology**

The methodological approach of this research is two- fold. It is a descriptive fact finding research aimed at establishing the facts about the implementation of sections 3 and 4 of the RGA from a civil society and local authorities' point of view. Secondly- it combines information gathered from a series of role- player interviews and notifications submitted to the municipal local authorities with a literature review into recent cases on the experiences of social movements and civil society organisations in the administration of sections 3 and 4 of the RGA and finally provides an analysis of the extent to which sections 3 and 4 of the RGA permits or proscribes meaningful institutional space for the presentation of community grievances- at the same time the challenges experienced by the local authorities are also explored.

As far as possible- attempts were made to secure the responses of national and/ or regional organisers who are involved in the notification process and the organising of gatherings in their organisations- i.e. social movements and trade unions. Similarly- directors of protection services departments and events management officers in local authorities were engaged from a local authority perspective.

Researchers developed a questionnaire and an approach to information gathering, which utilised a range of sources:

- Publications and websites
- Telephone and face-to-face interviews
- Written requests for information and e-mailed questions to respondents.

Examples of notices submitted to council could not be obtained from the Maluti Aphofung Municipality<sup>12</sup> whose area of jurisdiction also includes Harrismith- Intabazwe. Notices from the Ethekwini and Tshwane Metro Councils could not be obtained at the time of writing this draft report. Otherwise the rest of the councils and civil society organisations surveyed were co-operative and provided information on the requests and notices made.

All the interviews were based on one or other of the two questionnaires (see appendices attached). One questionnaire being directed at social movements and trade unions and the other on local authorities. Questionnaire 1, which contains a slightly longer list, was administered on local authorities and Questionnaire 2 was administered on trade unions, social movements and civil society organisations

No distinction is made between telephonic and face-to-face interviews in the text of this document. The majority of the face-to-face interviews were recoded on audiotape and a summary made from the transcription of the tape. The transcriptions themselves are available for inspection at the FXI offices.

In the case of telephonic interviews where no recording was made, the summary of the interview that appears in this document was sent to the interviewee for perusal and comment. Every effort has been made to ensure that the summaries accurately reflect what was said during the interview.

Three researchers conducted the interviews: Mzi Memeza (principal researcher), Linn Hjort and Molefhi Ndlovu.

## **3. Brief Overview of the Regulation of Gatherings Act 205 of 1993**

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<sup>12</sup> A municipality located within the Orange Free State province.

The RGA is a product of the Goldstone Commission of Inquiry's attempt to bring South Africa's assembly jurisprudence in line with international practise. The enquiry's deliberations flowed from a basic principle that the right to assemble, demonstrate, protest and petition is a necessary condition for making good a democratic society's commitment to universal political participation.<sup>13</sup> In the end, legislation was drafted which sought to give effect to the right to assembly that breaks away from the draconian apartheid jurisprudence on the right to gather and demonstrate.

The RGA was given Presidential accent on 14 January 1994 and came into operation two years later on 15 November 1996. It was the product of discussions and recommendations made by the Goldstone Commission of Enquiry that had been appointed by the then South African President FW De Klerk to inquire into the question of assemblies and demonstrations during the transitional period. The main objective of the RGA was thus- the creation of an enabling legislative framework for public activities prior to the holding of the country' first democratic elections.

The enactment of the RGA saw the immediate scrapping of three draconian laws dealing with demonstrations, namely: the Gatherings and Demonstrations in the Vicinity of Parliament Act,<sup>14</sup> the Demonstrations in or near Court Building Prohibition Act,<sup>15</sup> and the Gatherings and Demonstrations at or near Union Buildings Act.<sup>16</sup> The passing of the RGA also saw the repeal of section 46(1) of the Internal Security Act of 1982.<sup>17</sup>

The Goldstone Commission's report encapsulated the transitory nature of the RGA of 1993 when it stated:

*“Not to believe that the draft bill contains any errors or that it cannot be materially improved. Indeed, appropriate amendments, may be considered necessary by a future legislature...but due to the urgency of the situation...the subject could not be deferred and...legislation is desirable even before the completion of the present period of transition.”*

What was meant to be a merely transitory bill pending the ushering of a democratic South Africa became a fully-fledged Act regulating the holding of demonstrations and gatherings in post-apartheid South Africa in 1996.<sup>18</sup>

In the main- the RGA sets out to regulate the holding of public gatherings and demonstrations and to provide for matters connected with such activities. It attempts to create space for consensus and co-operation between those who intend to hold a gathering<sup>19</sup> on the one hand and the local authorities and South African Police Services (SAPS) on the other. The triumvirate provided by

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<sup>13</sup> See P Heymann (ed.) *Towards Peaceful Protest in South Africa: Testimony of a Multinational Panel Regarding the Lawful Control of Demonstrations in the Republic of South Africa before The Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation* (1993).

<sup>14</sup> 52 of 1973 as amended in 1992.

<sup>15</sup> 71 of 1982- sections 46(1) and (2), 47, 48, 49, 51, 53, 57 and 62.

<sup>16</sup> 103 of 1992.

<sup>17</sup> With the enactment of the RGA in 1996- these laws were repealed in 1996.

<sup>18</sup> The preamble to the RGA states:

*“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 right of others...”*

<sup>19</sup> Although the RGA provides for a legislative framework for the regulation of demonstrations and gatherings. This report, however, concerns itself with gatherings as opposed to demonstrations. Under the RGA, demonstrations require no notification at all. Demonstrations consist of 15 people or less. In terms of section 1 of the RGA: *‘Demonstrations include a 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 assemble or concourse or procession of more than 15 persons in or on any public road as defined in the Road Traffic Act 29 of 1989 or any other public place or premises wholly or partly open to the air.’* This report therefore concerns itself with gatherings and particularly sections 3 and 4.

the RGA consists of the convenor, the responsible officer and an authorised member.<sup>20</sup> Where an organisation seeks to hold a protest 'march' or gathering- a notification form must be filled in terms of section 3<sup>21</sup> providing for the following:

- the name and address of the convenor(s), telephone numbers and address;
- the name of the organisation requesting the gathering- if the gathering is not called by an organisation- the convenor must make a statement that it is called by himself;
- the purpose of the gathering;
- the date, time and duration of the gathering;
- the place where the gathering will commence;
- the number of participants expected to attend the gathering;
- the proposed number of the marshals;
- if the gathering is going to take the form of a procession- where it will commence- and the routes to be taken;
- where a memorandum is going to be handed over- the organisation or individual accepting the memorandum and the place where such a memorandum or petition will be accepted;
- a letter confirming that the organisation or individual will accept a memorandum and
- the mode of transport to be used to deliver the participants in the gathering.<sup>22</sup>

After the submission of a notice- and after consultation with a member of SAPS the responsible officer may decide to call or not to call a consultation or meeting<sup>23</sup> in terms of section 4 of the RGA.<sup>24</sup> Section 4 of the RGA provides for the holding of a meeting after the submission of section 3 notice to discuss the contents of the notice and whether amendments should be effected to the proposed facts so as to meet the objectives of the RGA.<sup>25</sup> In this meeting- parties must agree on whether the gathering should proceed or not taking into account all the factors that the SAPS member and responsible officer may be pertaining to the impact that the gathering will have on the flow of traffic, the preferred routes and the safety and danger of the public and private property. Ultimately the responsible officer makes a ruling. If the responsible officer decided that the gathering may proceed- he/she may do so and lay down the conditions with regard to the holding of the gathering to ensure:

- that vehicular traffic or pedestrian traffic especially during rush hour is less impeded; or
- an appropriate distance between participants in the gathering and rival gatherings; or
- access to property and workplace; or
- the prevention of injury to persons or damage to property.

A responsible officer who refuses a request in terms of the notice shall give written reasons.<sup>26</sup>

Critical to this research are the above- mentioned sections: namely sections 3 and 4 and to a certain extent section 5 dealing with the prevention and prohibition of a gathering. The scope and reach of section 5 is important to the extent that it is informed by the totality of factors surveyed under sections 3 and 4.

As will be apparent later in the report- the areas of contestation between the role- players relate to sections 3 and 4. Sections 3 being the access- point to the exercise of the benefits conferred by the

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<sup>20</sup> The convenor is the person who is requesting the gathering; the responsible member is a representative of the SAPS, the responsible officer is a Metro Police official dealing with Special Events and Management in the council or an appointed Metro Police official entrusted with the administration of the RGA.

<sup>21</sup> Section 3 of the RGA- one of the important sections in this research- provides for the submission of the notice of the proposed gathering to an organisation or individual seeking to hold a gathering.

<sup>22</sup> Section 3(3) of the RGA.

<sup>23</sup> Sections 4(2)(a) and (b).

<sup>24</sup> In the event that a meeting is called and the convenor or SAPS member is not present- the responsible officer may make a ruling about whether or not the gathering should proceed.

<sup>25</sup> Section 4(2)(c)

<sup>26</sup> See an example of a prohibited gathering and written reasons in Appendices section of the report.

of the entire scheme of the RGA- and combined with the conditions and the implications of the decisions made in golden triangle meeting under section 4- the two provisions applied in different context are bound to beg the question about the import of the RGA as giving effect or limiting the constitutionally protected right to assemble under section 17 and the right to freedom of expression under section 16.

It is also worth- noting that- notice of the proposed demonstration must be given within 7 days and not less than 48 hours of the proposed gatherings or demonstration. If notice is given in a period outside of the 7 days and in less than 48 hours- the responsible officer may prohibit the gathering or request reasons why the notice was not given timeously.<sup>27</sup> A convenor shall give notice of an intended meeting to the local authority (responsible officer) atleast 7 days prior to the date of the meeting.<sup>28</sup>

Secondly, where a member of the South African Police Services (SAPS) receives information regarding a proposed demonstration or gathering for which s/he has reason to believe that no notice has been given to the local authority, then such officer shall communicate the said information to a responsible officer for handling notices in terms of the RGA.<sup>29</sup>

Further, where there is no local authority in existence in a particular area, notice must be given to a Magistrate.<sup>30</sup>

The decision to prohibit the gathering under section 5 may be taken on review or appeal before a Magistrate Court.<sup>31</sup>

The purpose of this section has been to provide a brief overview of the RGA- the procedural and substantive issues around the application of sections 3 and 4 of the RGA are dealt with hereunder in the interviews the role payers. A trenchant analysis of the procedural and substantive implications of these sections for the right to freedom of expression can only be undertaken with these role- player interviews in mind. The role player interviews are divided into the three major metropolitan centres of South Africa, namely: Johannesburg, Ethekwini and Cape Town and the recent hotspots of Harrismith, Midvaal, Middleburg and Khutsong.

#### **4. Role- player interviews**

##### **4.1 Gauteng province**

The Johannesburg, Tshwane metro police departments and Midvaal municipality are located within the Gauteng province. The social movement experiences with the RGA in Johannesburg as explored by RED are dealt with under this section.

###### **4.1.1 The Treatment Action Campaign**

The Treatment Action Campaign was founded on 10 December 1998 in Cape Town, South Africa. It campaigns for treatment for people with HIV and to reduce new HIV infections.

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, TAC has kept no records of notices or correspondence around the RGA since his tenure in 2003. However, to his knowledge, only 1 notification to gather has been filed since 2003 and this was permitted inter. In

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<sup>27</sup> Section 3(3)(j).

<sup>28</sup> Section 3(1) and (2).

<sup>29</sup> Section 3(5).

<sup>30</sup> Section 3(4).

<sup>31</sup> Section 6.

general, it would seem that TAC has experienced no violations of the RGA in its interactions with the JMPD.

#### 4.1.2 Jubilee South Africa

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.

#### 4.1.3 The Congress of South African Trade Unions Wits Branch

COSATU is the biggest federation of trade unions in South Africa- representing over 2 million workers nationally and over 500 000 in the Gauteng- Wits region. Matsirane Wama Pena-Regional Organiser<sup>32</sup> of COSATU contends that COSATU, in analysing its approach to the RGA- firstly sees itself as steeped in a triangular relationship incorporating itself as labour- business and government. It therefore follows that the relationship between the three will necessarily be antagonistic and accommodating in certain instances.

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.

The seven- day notice period is problematic for COSATU particularly in instances where there are urgent labour issues that have to be addressed in a short space of time. Mapena notes that certain labour and macro- economic related issues are effective when ventilated whilst the momentum allows for that- and this would have to be in less than seven- days. COSATU also indicates that it is organised in terms of the requirements provided for under sections 3 and 4 and proceeding with a gathering in a short space of time is not a problem for it. The problem is when the local authority seeks a different date and thereby defeating the currency and the momentum that the issues to be canvassed has acquired.

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<sup>32</sup> Interview held on 17 July 2006.

A concern that is also raised by COSATU- that does not necessarily lie within the purview of the RGA- is the difficulty that trade unions encounter in procession gatherings, where an employer or company representatives refuse to accept a memorandum of grievances. However the misconception for COSATU as with various role players from both sides, is that the RGA enjoins the requestor to furnish a confirmation letter from an organisation or person who will be receiving a memorandum or document in the case of a procession gathering.

A point that has to be made is that, a gathering is not illegal if there is no confirmation letter. This is an incorrect reading of the RGA that has been enforced over time on requestors by municipalities. There is no such requirement in terms of the RGA.

Similarly the requirement that marshals should comprise 10% of the total number of participants is not provided for under the RGA. The notice for applying for a gathering stipulates that the requestor should furnish 10% marshals of the total number of participants in the gathering. Most civil society organisations have construed this requirement to mean that failure to comply with it means that the gathering is illegal and will not proceed.

A point that is also made by COSATU is that the RGA should have a position regarding picketing. It needs to be made clear that a picket is a species of the LRA and not the RGA. A distinction should thus be made between a gathering as provided for under the RGA and a picket under the Labour Relation Act.<sup>33</sup>

Another problem for COSATU is that SAPS and the MPS insist on the golden triangle meeting that after the gathering- participants should disperse. This condition is regarded as inconsiderate and oblivious of the character of a trade union movement where consultation is key. In practice- a trade union must report back to its members and the leadership must review the day's proceedings and chart the way forward. On the whole, whilst the RGA provides for times to be adhered to in the organisation and facilitation of a gathering, COSATU's concerns point to some flexibility on the part of the municipality whilst at the same time begging questions about the respect for the rights of others who are not part of a gathering to utilise public spaces.

#### 4.1.4 Anti- Privatisation Forum (APF)<sup>34</sup>

The Anti- Privatisation Forum is a social movement comprising of affiliates advancing socio-economic justice in the areas of education access to water and electricity and housing.

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

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<sup>33</sup> 66 of 1995.

<sup>34</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.

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.

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*

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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: Siphwe 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 Israel 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 sustained 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.

#### 4.1.5 Landless People's Movements (LPM)

The Landless People's Movement is an organisation of landless and homeless people advocating for access to land and land redistribution in South Africa.

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 2005 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]."

#### 4.1.6 Johannesburg Metro Police Department

The Johannesburg Metro Police Department is one of the six divisions at a metro level located under the administrative authority of the Greater Johannesburg Metropolitan Council (GJMC). The GJMC is the co-ordinating body of four local councils (the Western, Southern, Eastern and Northern local councils) in Johannesburg. At the GJMC Metro level, one of the six divisions is the Public Safety division, which consist amongst other clusters of the traffic management, by-law enforcement and licensing cluster.<sup>35</sup> The Johannesburg Metro Police Department is part of this cluster. The events management section of the Johannesburg Metro Police department handles notifications under the RGA.

Inspector Isaac Maake of the JMPD events management section<sup>36</sup> contends that one has to distinguish between three types of gatherings to understand how the RGA works in practice: namely, protest action, awareness gatherings and symbolic gatherings.<sup>37</sup>

According to Maake- a protest gathering is one that typically excites media and public attention. The participants in this form of gathering project issues of national or international significance. Maake cites the example of gatherings organised by the Congress of South African Trade Unions (COSATU), the Palestine Solidarity Committee (PSC), Jubilee- South Africa, National Coalition

<sup>35</sup> See: [www.csvr.org.za/papers/papmzi3.htm](http://www.csvr.org.za/papers/papmzi3.htm)

<sup>36</sup> Interview held on 13 and 14 June 2006.

<sup>37</sup> It is worth- pointing out that these categories are not provided for the under RGA but can be discerned from a practical point of view within the broad contours of what is provided for under the RGA itself specifically under the definitions section 1.

of Gay and Lesbians, Anti- Privatisation Forum (APF), Friends of Jacob Zuma, People Opposing Women Abuse (POWA), the African National Congress Youth League (ANCYL) etc. The second category is that of symbolic gatherings, and assumes almost the same character as protest gatherings albeit low in its intensity. The public interest that this gathering generates is at par with that of a protest gathering as in many instances it concerns the commemoration of a day or event or the death of a leader or prominent political or community figure i.e. youth day, women's day, anniversary of a leader's death etc. The gathering is symbolic and the processions are likely to be peaceful and without incident. A section 4 consultation or golden triangle meeting may be necessary for this form of gathering particularly because of the sheer volume of participants in attendance at the gathering.<sup>38</sup> The third form of gathering is an awareness gathering. Awareness gatherings carry much less profile and public allure. It is most likely to proceed peacefully without any major disruptions to city traffic and the Metro Police Department does not stipulate many conditions. The procedure that would ordinarily ensue in the case of a protest gathering may not necessarily obtain in this particular form of gathering. For example a section 4 consultation may not be necessary.<sup>39</sup> According to Maake- awareness gatherings would typically involve animal rights groups, awareness gathering etc.

Protest gatherings- according to Maake are the source of many conflicts the MPS has had with organisations. Protest gatherings are easily discernable from the notice that is submitted- for example the convenor will state a number of participants exceeding 500 and the choice of routes would be varied.<sup>40</sup> Maake also states that: *'you can sometimes tell that there is anger and frustration involved in this type of gathering- there are a set of grievances to be tabled.'*

A golden triangle meeting is convened under section 4 comprising of the convenor, the authorised member of the SAPS and the responsible officer within the MPS.<sup>41</sup> Taking into account the factors stated under section 4(4)(b) of the RGA<sup>42</sup> the responsible officer will make a ruling about the route to be taken during the procession or in the event of a place where participants will be gathered- a ruling will be made about the parameters to be occupied. Most importantly the convenor must provide the responsible officer with a statement or proof that there will be a person to receive a memorandum during the gathering.<sup>43</sup> Maake contends that it is sometimes practical for the organisation to have its members gather at a designated area i.e. library gardens, Gandhi Square and also have the memorandum accepted in that area as well. This has obvious advantages for the JMPD in that its personnel will not be stretched, as would have been the case had the gathering proceeded to a particular venue for the handing of a memorandum. The reality according to Maake is that this barely happens because organisations want to make a statement and generate media and public interest for their plight. So- organisations do not accede to a request by the JMPD that gathering must be held in one place and a memorandum also handed there.

Maake also states that the seven-day period provided for under section 3 of the RGA is insufficient for the entire demands attendant upon organising and facilitating a gathering.

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<sup>38</sup> See example of protest and symbolic gathering notification in the Appendices section of the report.

<sup>39</sup> Although the RGA enjoins the responsible officer to consult with the convenors and the SAPS before the commencement of the gathering-in practise, the responsible officer may dispense with this procedure where all the parties do not envisage any vehicular or pedestrian traffic being impeded during the gathering and where the gathering does not pose a danger to private property and the safety of the public.

<sup>40</sup> See example of notice with varied routes- i.e. Movement for Democratic Change notice (2006) under the Act in the Appendices section of the report.

<sup>41</sup> In terms of section 4(2)(b) of the RGA.

<sup>42</sup> The factors to be taken into account are:

- that vehicular or pedestrian traffic, especially during traffic rush hours is least impede,
- an appropriate distance between participants in the gathering and rival gatherings,
- access to property and workplaces and
- the prevention of injury to persons or damage to property.

<sup>43</sup> As per section 3(3)(j) of the RGA.

*“Within the seven days- we must plan, assemble manpower from both the SAPS and MPS and await confirmation letters from the persons who will be receiving the memorandum from the convenors. In addition- the convenors must confirm the number of marshals from their organization to be deployed on the day.”*

For Maake- whilst the golden triangle meeting is essential from a logistical and planning of the gathering side- the legislative framework provided by the RGA nonetheless renders the MPS and SAPS powerless to prohibit a gathering where on proper examination of the facts mentioned in the notice and during the meeting, it is clear that the gathering does not meet the requirements laid down under section 4(4)(b) of the RGA, in practise the gathering will nonetheless proceed.

Maake also alludes to instances where a protest gathering takes place spontaneously. The MPS generally dispenses with the formalities of sections 3 and 4 of the RGA.<sup>44</sup>

Overall the MPS is in full support of the legislative framework for the presentation of demands and grievances provided for under the RGA except for a few concerns which according to Maake need to be addressed: namely;

- a gathering should take place as a last resort measure by aggrieved organisations,
- the LRA also provides for the right to picket<sup>45</sup>- this must be explored by organisations as it obviates the problems that go with a gathering that takes the form of a procession and
- research should be conducted particularly in cases where the Labour Relations Act<sup>46</sup> is best suited to deal with gatherings in the labour law context

It comes as no surprise that the Johannesburg metropolitan council, situated in one of the largest urban centres in South Africa with the highest inequalities in South Africa and where the effects of the government’s macro- economic strategy are hotly contested handles the biggest volume of applications under the RGA.

#### 4.1.7 South African Transport and Allied Workers Union (SATAWU)- Gauteng

The South African Transport and Allied Workers Union (SATAWU) was established at an historic founding Congress in May of the year 2000. The founding Congress was the culmination of a long process of building the unity of transport, security and cleaning workers under the banner of the Congress of South African Trade Unions. This, according to regional organiser- Philemon Bembe<sup>47</sup> was in line with the principle 'One Industry, One Union' and a founding resolution of COSATU. SATAWU brings together 82 000 workers into COSATU's seventh largest affiliate. SATAWU is the union for all workers in the transport, cleaning and security sectors. This includes rail and road passenger and freight, maritime and aviation, contract cleaning, contract security, car hire and toll roads.

SATAWU recently came under sharp focus for its nation- wide strike commencing on 23 March to 22 June 2006 where the workers in the private security sector demanded a 11% salary increase. In a statement issued during the strike COSATU stated that- *“more than half of the security guards earn less than R1500 a month, most have no benefits and many impermanent jobs, while they face danger every day. The private security industry is one of the most conservative, exploitative and backward, right after the farm and domestic workers’ industry.”*<sup>48</sup>

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<sup>44</sup> The RGA is silent on spontaneous gatherings or demonstrations.

<sup>45</sup> Section 69 of the Labour Relations Act 66 of 1995.

<sup>46</sup> 66 of 1995.

<sup>47</sup> Interview held on 03 July 2006.

<sup>48</sup> See COSATU statement on Solidarity with the Private Security Workers Strike: [www.cosatu.org.za/news/weekly/20060505.htm](http://www.cosatu.org.za/news/weekly/20060505.htm)

SATAWU considers the seven-day notice period as problematic. Its cumulative effect is to prohibit the gathering before it actually takes place. For SATAWU it has been impossible to meet all the logistical requirements of section 3 pursuant to submission of the section 3- notice.<sup>49</sup>

Bembe concedes that in recent gatherings- SATAWU has taken advantage of the fact the MPS and SAPS are unlikely to stop a prohibited gathering once it has commenced.

The recent wave of SATAWU strikes and gatherings commencing on 23 March to 22 June<sup>50</sup> has drawn significant attention on the efficacy of the RGA and the recent events for SATAWU underscore the need for drastic amendments to the RGA. What is also worrying and deserving of clarity is that the basis for labour's demand for amendments to RGA are based on a misconception that the LRA is better suited to facilitate labour gatherings. It could be that this misunderstanding has in part contributed to the recent violent action in protest gatherings reflecting a generalised sense of resistance towards this mechanism of regulating protest action.

#### 4.1.8 Tshwane Metro Police Department

The Tshwane Metro Police Department co-ordinates its functions<sup>51</sup> in three local jurisdictions: namely, the city of Pretoria, Northern Pretoria and Centurion. Notices under section 3 of the RGA submitted to the Tshwane Metro Police Department relate to gatherings commencing or being held in one of the local jurisdictions.

According to Inspector Lorraine Mamadise- a responsible officer in the Events Management Department- there are several problems with the RGA in its current form- particularly sections 3 and 4.<sup>52</sup> The first is that the RGA requires that notice of gatherings be provided to local authorities seven days in advance. The notice according to Mamadise creates practical problems because within this time frame a golden triangle meeting must be called and some of the conditions imposed on that golden triangle meeting will need to be evaluated within those seven days as well. The organising of a unit within the metro police to take care of the demands of the gathering depending on its nature and size is a case in point. Bearing in mind that the Metro Police Department must liaise with the SAPS in its preparation for the facilitation of the gathering- the seven- day notice period<sup>53</sup> is not practical. Mamadise also contends that the seven-day notice period is also not practical for the convenors as well. Within this seven-day period- the convenors must satisfy the Metro Police Department that they have sufficient marshals to facilitate the gathering and control their members.

Secondly, Mamadise states that:

*The other problem is that organisations come to the metro police department with a confirmed date and route and a plan about the preparations on the schedule day of the gathering. As a metro police department in the capital city of South Africa- facilitating a substantial number of gatherings and*

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<sup>49</sup> See examples of SATAWU notices and prohibitions from council in Appendices section.

<sup>50</sup> See the unfolding of events of the recent SATAWU strike action in an update provided by COSATU at: [www.cosatu.org.za/news/weekly/20060505.htm](http://www.cosatu.org.za/news/weekly/20060505.htm)

<sup>51</sup> The Tshwane metro Police identifies its functions as comprising:

- Metropolitan municipal policing,
- Law enforcement,
- Traffic safety services and
- Community safety and liaison services.

<sup>52</sup> Interview held on 17 July 2006.

<sup>53</sup> Section 3(2) of the RGA reads:

*“The convener 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 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.”*

*demonstrations in a space of a month- it is difficult to accommodate the organisers sometimes and this gives rise to unnecessary conflict between us and the organisers”*

Mamadise raises the issue of a confirmation letter from the person who will be receiving the memorandum as a source of delay within the seven days provided for under RGA. Local municipalities generally seem to be adamant that the RGA provides for this requirement though not explicitly fleshed out in the legislation itself.

The adversarial nature of gatherings and protest action- is also deemed as a source to delays that render the seven-day period impracticable to observe. Mamadise also notes that they have encountered many instances where forms are incorrectly filled in. This occurs mainly in cases where small formations and interest groups submit a notice for a demonstration- where the number of people consists of 15 or less.

Section 4 of the RGA also poses serious problems for the Tshwane Metro Department. Mamadise states that:

*“In this consultation process, parties sometimes don’t understand when the Metro Police Department refuses permission for the use of a particular route either because it is a highway or it will disrupt the flow of traffic in the city significantly. Organisations engage us on the golden triangle having already decided on their preferred route, date and time of the gathering and this seems to be the source of conflict.”*

It is against this background that the golden triangle is often the site where gatherings are prohibited. In addition to the above-mentioned considerations- it is also during the golden triangle meeting, according to the council, that a confirmation letter from an individual who is going to accept a memorandum is sought. Conversely- where there is no timeous response- the seven-day period becomes insufficient for purposes of proceeding with the gathering.

Overall, the Tshwane metro council maintains that it is in rare instances that a gathering is prohibited- and in fact even where it is prohibited- organisations continue with a prohibited gathering and the Metro Police Department then facilitates it. Key issues that emerge from the Tshwane experiences are that there needs to education amongst the more localised groups and community based organisations utilising the RGA about its use- instance of incorrectly filled in forms and notices are widespread in Tshwane; and further, as will be apparent with other municipalities there is a need for clarity on the provisions on section 3(3)(j) of the RGA that it is not a requirement for the holding of a gathering that a confirmation letter be furnished to the municipalities, what is required is the name and place where the memorandum or document will be handed be furnished in the notice. What the RGA envisages is that a gathering is not condition- precedent upon a confirmation letter, so that once the gathering has proceeded up to the place where a memorandum or document is to be handed and there is no one to receive it- participants will read out the memorandum or document and thereafter disperse.

#### 4.1.9 Mid- Vaal Municipal Local Authority

The Midvaal Local Municipality falls under the Sedibeng District Municipality. The municipality considers notices in terms of the RGA for demonstrations or gatherings commencing or being held within its area of jurisdiction. The Midvaal Municipality covers the areas of: Vereeniging, Kopanong, De Deur, Walkerville, Eikenhof, Randvaal, Vaal Marina and Suikerbosrand.

The Municipality considers many requests by mainly the African National Congress (ANC), African National Congress Youth League (ANCYL), the Congress of South African Students (COSAS), the Meyerton Residents Association and the Mamello Residents Association.<sup>54</sup>

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<sup>54</sup> See Appendices section of the report.

AM Nkgapele- Director of Protection Services notes that- “overall the RGA is effective except for the seven- day notice period within which the notice must be lodged before the gathering or demonstration”. Nkgapele suggests that 21 days would be reasonable for both sides from a planning point of view. Nkgapele also cites the issue of wrong information being furnished in the notice. For example- inaccurate information about the number of participants- the provision of marshals- the route to be taken and the time for the commencement of the gathering is provided.

Nkgapele’s concern about the seven- day period rests on the inadequate time this period allows for the municipality to organise its personnel and also investigate possible threats that the gathering may pose. The Midvaal Municipality has been the site of gatherings organised by the Congress of South African Students (COSAS) in recent years and the experiences of the municipality has necessitated a degree of caution to be exercised before proceeding with the planned gathering.

Nkgapele also states the fact that there is confusion within the municipality about whether the RGA applies to public servants, so that in considering a section 3 notice- the municipality is not certain whether it is empowered by the RGA to approve or prohibit a gathering organised by public servants. The RGA, according to Nkgapele ought to be clear and unambiguous in this regard. Its preamble does not specifically mention how this sector should be treated.

Nkgapele also notes that the RGA is not authoritative and decisive in its exposition of the requirements that must be met under sections 3 and 4.

Karen Van Vollenstein- the Chief Superintendent of Traffic Services in the Midvaal Municipality also highlighted that the RGA is not strict on compliance.<sup>55</sup>

## **4.2 Orange Free State province**

Maluti- Aphofung municipal council falls within the Orange Free State. Harrismith- Intabazwe is located within this province as well.

### **4.2.1 Maluti- Aphofung Municipal Local Authority**

Maluti Aphofung is situated in the eastern part of the Free State Province and it is one of the five local municipalities of Thabo Mofutsanyane District Municipality. It has three main towns or centres: namely, Harrismith, Kestell, and Qwaqwa with Phuthaditjaba as the town centre. Harrismith is approximately 60 km north of the Maluti Aphofung Municipal offices. It serves as a major employment centre for people living in Tshiame, Qwaqwa and the nearby Intabazwe. It is because of this proximity to Harrismith that Intabazwe has assumed most of the elements of a ‘black township’ urban planning setting. It is quite different from the adjoining areas, which are predominantly agricultural and have the typical sand stone houses that can be found in most of the Eastern Free State.

Requests under the provisions of the RGA are handled by the Maluti Aphofung Municipality offices- the seat of local authority administration is situated in Qwaqwa- that is about 30km from Harrismith.

AM Matshile- Director of Protection Services in the local municipality stated during the interview<sup>56</sup> that - pursuant to our request for a meeting to discuss the RGA and the difficulties that the local authority is experiencing with its implementation- he convened a meeting with officials and officers responsible for the administration of the RGA to discuss the questions we raised.

Matshile notes that the problem that they have with the RGA is that it confers the responsibility of meeting the roles assigned under sections 3 and 4 to a responsible officer. The problem with

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<sup>55</sup> Interview held on 28 July 2006.

<sup>56</sup> Interview held on 28 July 2006.

sections 3 and 4 is that they do not take into account the attendant problems of lack of capacity that often characterise local authorities in rural areas. Matshile states that- with the inadequate staff component in the Municipal Policing Section- the term responsible officer should be changed in the RGA to responsible official so that other members of the local authority other than traffic officers are empowered to handle the demands that the RGA imposes particularly those in sections 3 and 4.

In the main- it would seem that the application of sections 3 and 4 of the RGA do not present problems in this municipality. As will be apparent hereunder with the Harrismith- Intabazwe case, the issues for contestation and debate arising from the implementation of the RGA relate to the powers of the police and liability for damage arising from a gathering<sup>57</sup>. Thus the municipality of Maluti- Aphofung did not see any other problems with the RGA in its current form. It is also worth noting that the views of the council regarding the application of sections 3 and 4 accord very well with those of community activists interviewed about the implementation of the RGA except that both disagree on the aftermaths of the demonstration of 23 July 2004 in Harrismith that led to the violent confrontation between the police, traffic officials and the Greater Harrismith Concerned Residents Association on the N3 highway.

#### 4.2.2 Greater Harrismith Concerned Residents Association- Intabazwe

The Greater Harrismith Concerned Residents Association was established in order to highlight the concerns of the residents of Intabazwe with regard to the poor levels of service delivery in the area. Their method of operation is to mobilise the community and make presentations to both the local and provincial authorities.<sup>58</sup>

Intabazwe is situated within the Maluti Aphofung Municipality. It is over fifty- years old- having been established as a location to service the predominantly white and economically active Harrismith.<sup>59</sup> A recent study undertaken by the Demarcations Board in 2002 showed that the overall unemployment rate in the Maluti Aphofung Municipality is over 51%. The Demarcation Board further noted that 69% of all households earned less than R1000 per month (53% earning less than R500 a month), thus making Maluti Aphofung the poorest local municipality in the Free State.<sup>60</sup> Members of the Greater Harrismith Concerned Residents Association also emphasised the socio- economic challenges of Intabazwe and notably inadequate provision and maintenance of infrastructure and the provision of access to basic services such as clean water were noted as major problems that still subsist.<sup>61</sup>

According to Sam Radebe<sup>62</sup> of the Greater Harrismith Concerned Residents Association- the local authority does not understand the RGA, which makes the implementation the RGA a mammoth task. Radebe cites that at some stage the local authority was invited to be part of a workshop meant at educating both civil society structures in Harrismith and local authorities but they did not attend. In a later workshop held dealing with the various sections of the RGA- representatives

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<sup>57</sup> Sections 9 and 11.

<sup>58</sup> See: FXI Harrismith workshop entitled: *Linking the Free State into a national FXI network: Report on a workshop in Harrismith, Free State*, Jeenah N, 20 March 2006.

<sup>59</sup> See: A unpublished report on Intabazwe- Harrismith- A Portrait of a Revolt- 2006 pp.5-6 by Hlatshwayo Z- gives an overview of the demography of Intabazwe Harrismith: "*Intabazwe is located in the far eastern corner of the Free State along the northern Lesotho boundary and the western Kwa Zulu Natal provincial boundary. Intabazwe is located within Maluti Aphofung Municipality, which comprises of the former Qwaqwa homeland, Harrismith and the smaller but also formerly white agricultural town of Kestell. These areas were racially separated by the apartheid policy of separate development. The municipal population is estimated at 450, 000- mainly female comprising 98.5% African, 0.12% coloured and 0.11% Asian and an estimated 1.26 white. The overall population is relatively young, with almost 50% of the population being 20 years or younger. The Maluti Aphofung Municipality is one of the smallest Free state municipalities by area (4.469.5 km), but has by far the highest population density in the district as a result of the former Qwaqwa's incorporation into the municipality.*"

<sup>60</sup> See: [www.dplg.gov.za/html/progs/isrdpNodes/Maluti.htm](http://www.dplg.gov.za/html/progs/isrdpNodes/Maluti.htm)

<sup>61</sup> Interviews held on 21 July 2006.

<sup>62</sup> Interview held on 21 July 2006.

from local authorities admitted that they did not understand the RGA and that there is a need for further training on the contentious provisions of the RGA.

Despite the above- mentioned difficulties a notice that was made in terms of section 3 of the RGA for a demonstration of 8000- 9000 residents of Harrismith comprising- youth, the elderly, unemployed, student and other formations within Harrismith was submitted to the local authority. A golden triangle meeting was subsequently held which Radebe attended on behalf of the association and the demonstration went ahead on 23 July 2004.

A memorandum of grievances was handed to the Mayor of Maluti Aphofung- Balekile Mzangwa.<sup>63</sup> For current purposes- it would seem that the key provisions of the RGA- sections 3 and 4 were duly complied with from both sides. Baba Ngubane<sup>64</sup> - one of the organisers in the association notes that the association met the requirements provided for under section 3 of the RGA. The prescribed form- according to Ngubane is easy to understand and they had no problems addressing the questions in it. Other organisers of the association- Tshepo Masiloane, Thulani Mabanga and Lindi Msimango, shared a similar view.<sup>65</sup> Most respondents indicated that even the period within which the request and golden triangle meeting is to be held is sufficient.

As stated above, it would seem therefore that sections 3 and 4 of the RGA- did not present problems for the association. Considering that the Intabazwe community has only tested the RGA once- the situation- according to Radebe needs to be closely monitored, as the material conditions that necessitated the demonstrations in the first place still exist. A recent report on the protest actions in Intabazwe however shows that there were infractions on the right to assemble and expression- *“there is a growing perception that the authorities have used the RGA, particularly section 3(2) to deny activists their basic civil rights. The RGA, according to activists, is used by the ruling elite to criminalise genuine grassroot political actions, deligitimize and discredit civil society organisations and social movements. Activists further caution that the RGA’s provisions might seem harmless- but in essence pose a serious challenge to the poor- who might not be able to comply for a variety of reasons. At the same time, basic freedoms of association, expression and assembly are seriously and adversely affected by the onerous regulations, which some activists argue might be unconstitutional.”*<sup>66</sup>

### **4.3 North West province**

The Khutsong area is located within the North West province.

#### **4.3.1 Greater Khutsong Concerned Residents Association**

Khutsong is situated in the Merafong Local Municipality, which forms part of the West Rand District Municipality together with Randfontein Local Municipality, Mogale City and Westonaria. Khutsong itself is situated in the heart of the richest gold mining belt as well as developing agricultural area.<sup>67</sup> In 2005- Khutsong became the focus of popular mass action reminiscent of the political upheavals of the 1980’s in Apartheid South Africa when residents under the banner of the Greater Khutsong Concerned Residents Association protested against the proposed incorporation of Merafong Municipality into North West from Gauteng. According to Noxolo Dlamini of the Anti Privatisation, whilst the protests began as a response to the proposed incorporation of Khutsong into the North West province- it also provided the space for the presentation of community grievances such as the privatisation of water, the rising electricity costs and the generally low levels of service delivery at a municipal local level.<sup>68</sup>

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<sup>63</sup> The demonstration proceeded on 23 July and the memorandum of grievances was handed over to the Mayor.

<sup>64</sup> Interview held on 21 July 2006.

<sup>65</sup> Interviews held on 13- 14 June and 12- 13 July 2006.

<sup>66</sup> Hlatshwayo Z, Intabazwe- A Portrait of a Revolt, 2006, p.11- an unpublished report.

<sup>67</sup> Merafong in Sesotho means- a mining place. The surrounding areas of Khutsong include Blybank, Welverdiend (Caltornville), Foschville, Kokosi and Wedela.

<sup>68</sup> Interview with Noxolo Dlamini of the Anti- Privatisation Forum held on July 2006.

The Greater Khutsong Concerned Residents Association derives its existence from the Merafong Community Services Forum- an affiliate of the Anti Privatisation Forum (APF). The Merafong Community Services Forum was originally a loose community outlet for cultural and sport but mainly choral activities. It was after extensive research undertaken by the APF in 2004 and the intervention of the Bophelong Community Services Forum- another affiliate of the APF that a need for a coercive community structure to co-ordinate community grievances became apparent. Khutsong Community Development Forum was formed and later changed to Greater Khutsong Concerned Residents Association in 2005. According to Dlamini- section 3 and 4 of the RGA did not present problems during the recent upheaval in Khutsong. The requirements under these two sections were met and duly complied with. What is interesting however, in light of this and the Harrismith- Intabazwe experience is that even though sections 3 and 4 of the RGA did not raise difficulties of implementation- confrontation ensued afterwards. This brings into sharp focus the reach of sections 9 and 11 in instances where sections 3 and 4 are duly complied with by both the municipalities and civil society organizations.

The gathering in 2005 by the community aimed at addressing the question of the incorporation of Merafong into the Gauteng province from the North West province did not take place under the auspices of the RGA. What has also detracted attention away from the RGA is that the protest action took the form of a direct confrontation with local government and its representatives at a municipal local level coupled with a sense of a generalised non- negotiability of the demands put by the community before the authorities. In essence, the inability of local and national leaders to hear out the community fuelled the antagonistic approaches that were adopted by the community.<sup>69</sup>

#### **4.4 Mpumalanga province**

The Middelburg area is situated within the province of Mpumalanga.

##### **4.4.1 Greater Middelburg Concerned Residents Association**

Middelburg is situated in the south east of Johannesburg in the low-veld- Mpumalanga province. The Middelburg Concerned Residents Group is the precursor of the Greater Middleburg Concerned Residents Association. In 2004 it was formally established with a constitution and a membership register. The circumstances around the formation of the association are almost similar to the Greater Harrismith Concerned Residents Association discussed above. In 2004- a demonstration was organised by the association to hand over a memorandum of grievances to the mayor- Manhlakeng Mahlangu. The associations' grievances ranged from issues relating to the council's unilateral changing of town names without consultation, and the rising rates of electricity and water services within the municipality. Since its inception- the association has been refused permission to gather or demonstrate in terms of the RGA. Ben Mokobe, who is General Secretary of the Greater Middelburg Concerned Residents Association, refers to a council resolution that was passed effectively barring the association from meeting and demonstrating within the municipality.<sup>70</sup> The starkest example of the application of the council's resolution was in September 2004 when the association sought to hold a meeting in the community hall and was barred by the council. Mokobe states this difficulty succinctly:

*“Due to this council resolution- it is difficult to organise anything in the name of the community in Middelburg. This resolution is still in force. It has not been rescinded despite the recent local government elections where as the association we hold 4 seats which are insufficient to overturn the resolution.”*

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<sup>69</sup> The protests resulted in the burning two houses belonging to councillors on 12 December 2005- the residents subsequently boycotted the local government elections in 2006.

<sup>70</sup> Interview held on 20 June 2006.

With the council resolution<sup>71</sup> in place- whose legal validity has not yet been tested in so far as it relates to the RGA- the Middelburg community has not been able to exercise their right to freely express themselves using the provisions of the RGA. The Middelburg experience is a unique case of a social movement that is being intimidated through a political process aimed at effectively undermining a constitutionally enshrined to freedom of expression.

#### 4.5 **Western Cape province**

In the Western Cape province, organisations surveyed include: COSATU, Treatment Action Campaign (TAC) and SATAWU- Western Cape branches, the Vrygrond Action Committee and the Cape Town metropolitan council.

##### 4.5.1 **Congress of South African Trade Unions (COSATU)- Western Cape**

Notifications in terms of section 3 of the RGA are submitted to the Cape Town Metro Council in the Community Services Emergency Services and Disaster Management Centre, which falls under Corporate Services in the Metro Council.<sup>72</sup>

Depending on the number of participants involved in the proposed gathering- the council may or may not call a golden triangle meeting. The logistics of the gathering are sometimes decided informally over the phone when the council has decided that the nature of gathering does not necessitate a golden triangle meeting.

Over the past two years the Western Cape Branch of COSATU has submitted several notices under section 3 of the RGA. In 2005- notices were submitted in support of gatherings for COSATU's Jobs and Poverty Campaign. One was 27 June 2005 and the other on 23 October 2005. The June gathering had between 20 000- 30 000 participants, whilst the October gathering had participants ranging from 10 000- 15 000 in number. According to Mike Louw<sup>73</sup>- the regional organiser of COSATU- the above- mentioned two gatherings stand out amongst the various notices they have made in the past two- three years totalling about 15.<sup>74</sup>

In 2006- the Cape Town metro council refused permission for a gathering scheduled for 18 May 2006 pursuant to the 16 May SATAWU strike action that resulted in violent action and damage to property in the city. Further, another gathering planned to coincide with the World Economic Forum on 02 June 2006 was prohibited and the council cited the violent SATAWU strike as the reason for refusing permission. Louw states that on 02 June 2006- COSATU sought to gather outside the Cape Town International Convention Centre and show solidarity with the rest of the worker's movement on the historic meeting of the World Economic Forum.

Louw makes the point that in addition to the SATAWU strike having made it difficult for COSATU to take advantage of the institutional space provided by the RGA- there seems to be a concerted effort to use the SATAWU strike action to unjustifiably deny COSATU the right to assemble and protest even though COSATU has a demonstrable record of non violent peaceful protest action. A recent example is a notice that was submitted for a 15 June gathering at the French embassy in support of the Jobs and Poverty Campaign and in protest against the WTO round.<sup>75</sup> The gathering was prohibited on 18 June after the golden triangle meeting despite having complied with the requirements in terms of sections 3 and 4 of the RGA. Louw notes that:

*“In the interest of the safety of our members, we decided that we would not proceed with the protest action as we were not sure how the SAPS would react with the permission having been withdrawn.”*

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<sup>71</sup> See council resolution in Appendix section of the report.

<sup>72</sup> See example of notice in the Appendices section of the report.

<sup>73</sup> Interview held on 07 June 2006.

<sup>74</sup> Examples of notices attached in the Appendices section of the report.

<sup>75</sup> See notice in the Appendices section of the report.

Louw argues that in light of the recent arbitrary prohibitions- attention ought to be given to the RGA and how the recent events of the Western Cape can be avoided. The COSATU experience in the Western Cape illustrates the propensity by state bodies to suppress dissent and be hostile towards civil society organisations in an environment of panic. It is clear that the SATAWU strike generated panic and insecurity in the city of Cape Town and social movements, civil society organisations and the labour movement felt out the effects. Council, through its law enforcement agencies moved to frustrate every effort at holding a gathering in the city pursuant to the SATWU strike. The COSATU experience is similar to that of SATAWU and TAC experiences in the aftermath of the SATWU strike.

Like COSATU in the Johannesburg- Wits region, the Western Cape region also raised concerns about the seven- day period within which the notice must be made before the proposed gathering. It would also seem that within the Cape Metro- once the council makes a ruling- it then becomes final. There is no attempt to find an amicable compromise between the parties. The philosophy of the RGA and the constitutional right to freedom of expression informing such a rights is not appreciated. The attitude of the council- from a proper reading of the notices and records of prohibitions has been to prohibit a proposed gathering in- advance within the city centre.

#### 4.5.2 South African Transport and Allied Workers Union (SATAWU)- Western Cape

SATAWU in the Western Cape has utilised the RGA mostly for gatherings meant at handing over a memorandum to employers and/or the business community. In the last three years- 3 gatherings have been prohibited in the Western Cape.<sup>76</sup>

In most instances, according Evan Abrahamse- Regional Secretary of SATWU in Western Cape:<sup>77</sup>

*“A section 4 (golden triangle) meeting comprises of the convenor, SAPS, Metro Police department, a representatives from Corporate Service within the Metro Council, anti- crime community forums and the Council’s legal services department”.*

More recently with the violence that erupted between SATAWU members and SAPS- the emphasis has been on SATAWU making guarantees that their members will not carry traditional weapons or dangerous objects. Other concerns that have predominated the golden triangle meeting has been the insistence by council that unions should give an assurance that no damage to property will result during the gathering. Abrahamse however notes that they have not given council an assurance in this regard as they have no control over rogue elements that hijack the gathering for their own criminal ends. Abrahamse argues that the 16 March 2006 gathering organised by COSATU and SATAWU was prohibited on this basis and COSATU is taking legal action against the prohibition. The difficulty, according to Abrahamse is that some of the individuals who join the gathering are not necessarily SATAWU members- their responsibility is to SATAWU members upon whom they can exercise control and effectively communicate with. The reality of the recent protest gatherings has been that most security industry workers are not unionised and this has had a grave impact in asserting the authority and responsibility of SATAWU in the gatherings.

What also seems to be emerging out of the SATAWU, TAC (discussed hereunder) and COSATU (discussed above) experiences is that the RGA is not being applied consistently across the Cape Town Metro area. In the city centre the council tends to be stricter in laying down the requirements under the RGA and the conditions that have been imposed are similarly repressive. The same however cannot be said of gatherings in areas outside of Cape Town for example- in the predominantly coloured and black areas.

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<sup>76</sup> See examples of prohibitions in the Appendices section of the report.

<sup>77</sup> Interview held on 08 June 2006.

There seems therefore to be an inconsistent application of the RGA- where it has become normative that in certain areas a section 3 notice is required and in others gatherings proceed without a notice and the SAPS and Metro Police will facilitate it once it has commenced.

#### 4.5.3 Vrygrond Acton Committee

The Vrygrond Action Committee (VAS) submits its notices as required under section 3 of the RGA to the Disaster Management section of the Cape Metro. The notice is made with the South Peninsula Local Municipality administration. Peter van Heusden, a member of VAC<sup>78</sup> states that the submission of the section 3 notice generally commences with a process of phoning the responsible officer to obtain a copy of the relevant form- which form is then faxed to their offices. VAC has not had problems with the filling- in of the form.

Instances where VAC has been refused permission to organise a protest gathering have been where a gathering is taking place on the same day as their proposed one- and owing to lack of personnel to facilitate two gatherings on the same day - their proposed gathering was prohibited.

Van Heusden argues that the use of faxes to receive and send the section 3 notice is cumbersome. The RGA should make it easy for organisations to easily access the framework it has created for the expression and presentation of concerns. A telephone call according Van Heusden should suffice for the purposes of making a notice under section 3.

Further- Van Heusden cites the seven- day notice period as insufficient in instances where there is a need to respond to events on an urgent basis. Most importantly, according to Van Heusden-

*“The RGA should be clear in its provision of a presumption that a gathering is allowed- and thereafter the council would then have to give reasons why a gathering is prohibited”*

#### 4.5.4 Cape Town Metro Police Department

The Cape Town Metro Police Department co- ordinates six MLC’s in Cape Town. Notifications in terms of section 3 of RGA are submitted to the Cape Town Metro Council in the Community Services Emergency Services and Disaster Management Centre, which falls under Corporate Services in the Metro Council. After the notice has been submitted in terms of section 3 of the RGA- the Council convenes a golden triangle meeting that in addition to the responsible officer in the council, SAPS and the convenor may also comprise of interested members of the public. According to Brian Schippers<sup>79</sup>- Chief Inspector in the Cape Town Police Department the issues that weigh heavily for the council during the golden triangle meeting is the safety of the public and the probability of damage to property during the gathering. Most importantly- the possibility of criminal activity ensuing during the gathering is strongly considered. Schippers states that the preferred routes are critical because through experience-

*“we know that certain routes- for instance where there is a liquor store or shebeen, participants will take advantage of this and this might lead to criminal conduct as the gathering progresses. So we discourage certain routes for several reasons.”*

Schippers states that- according to their records- gatherings have been refused mostly on the basis of the factors stated in section 4(4)(b) of the RGA- in addition to those factor, an assessment as to whether the climate is conducive to criminal conduct and the volatility of the environment at the time is taken into account. It is in rare instances that a gathering is prohibited because of non-compliance due to the incorrect filling in of the form- the council is flexible in this regard. Lack of personnel has also led to some gatherings being prohibited according to Schippers.

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<sup>78</sup> Electronic response to set of questions via e- mail: 19 June 2006.

<sup>79</sup> Interview held on 12 June 2006.

Overall- for Schippers- the RGA is comprehensive, easy to understand and comply with and the Cape Town Metro does not have problems with sections 3 and 4 of the RGA.<sup>80</sup>

#### 4.5.5 Treatment Action Campaign- Western Cape

The TAC submits the section 3 notices to the Corporate Services department within the Cape Town Metro. From 2003- the Treatment Action Campaign (TAC) has made several applications under the RGA. The Cape Town Metro Council permitted a TAC gathering planned for 14 February 2003 reluctantly because it coincided with the opening of parliament on 14 February 2006. Thembeke Majali- Provincial Coordinator states that although the gathering was permitted- one of the conditions was that the time for the commencement of the gathering should not coincide with the opening of parliament.<sup>81</sup> TAC was scheduled to gather at 10:00 outside Kaizergracht and then proceed to the US embassy to hand over a memorandum and then proceed to Aderley Street to parliament. The procession to parliament was prohibited.

The TAC organised a two- day a civil disobedience campaign commencing from 20 March – 21 March 2006. According to Majali- no permission was sought for the gatherings from the city council. The civil disobedience campaign centred on gatherings in the Caledon Square the Human Sciences Research Council, a sit in at the Department of Trade and Industry offices and a meeting at the Holiday Inn in Woodstock.

In September 2003- the TAC held a gathering in the Gugulethu Sports Complex meant at welcoming the government’s antiretroviral operation plan. In March 2004- another gathering was held in demand of and the government’s time frames and roll out timetable. Both gatherings were legal in that permission was sought and notices were submitted in term of section 3 of the RGA.

In other subsequent gatherings- notices were submitted to the city council and gatherings went ahead as planned. The TAC did not have problems with filling- in of the form. Most interestingly- even after the recent SATAWU gathering- TAC gatherings have been permitted. Majali however notes that:

*“It is not clear whether the situation would have been the same if the gatherings were organised around the city centre. There is therefore still a concern that if a gathering is planned in the city centre- it is not likely to be permitted.”*

Prohibitions on gatherings in the city centre have been more prevalent where it proceeds on Aderley and Strand Streets. The city council has also been loath to permit gatherings that go on until 12:00- 15:00 in the city centre.

The TAC does not have difficulties with the preparations for the golden triangle meeting. According to Majali:

*“...before the golden triangle meeting, we would have informed our membership about the purpose of the demonstration- and identify marshals and chief marshals- what is the nature and purpose of the gathering- how many people are we expecting- what time it is starting and finishing. So we apply- fortunately we do have forms for each and every year, because council updates them. After filling in the forms we fax them to Corporate Services and they will call us to arrange a meeting, and then we discuss the nature of the demonstration- how many people we are expecting and whether we have spoken to the person who is going to receive the memorandum.”*

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<sup>80</sup> Recent notices submitted to the Cape Town Metro Council attached in the Appendix section of the report.

<sup>81</sup> Interview held on 15 June 2006.

With regard to the conditions that the council imposes in the golden triangle meeting- Majali argues that the RGA's weaknesses is that it gives the council a discretion to privilege the interest of business over those organised civil society. This preference plays itself out in the determination of routes and times for the gathering to proceed. Whilst no mention is made in the RGA itself about the weighing up of these competing interests, through practise in Cape Town even civil society organisations believe that these are legitimate interests that are codified in the RGA. This goes back to an earlier question raised this report about what the RGA is perceived to be saying and what it actually provides for. In addition to this anomaly the TAC experience the inconsistent application of the RGA- where it has become normative that in certain areas a section 3 notice is required and in others gatherings proceed without a notice and the SAPS and Metro Police will facilitate it once it has commenced. Most notably, gatherings in coloured and black areas proceed without much intervention from the municipality. A similar practise discerned by COSATU and SATAWU seems to be emanating in the TAC experiences was that of council's attitude to prohibit a proposed gathering in- advance within the city centre.

The TAC also expressed concerns that the form itself is problematic, as it does not take into account poor community organisations with no adequate infrastructure to receive and fax the notice in terms of section 3 of the RGA. The effect is to limit the extent to which poorer communities can benefit from the framework provided by the RGA.

#### 4.6 **Kwa Zulu Natal province**

Organisations surveyed in Kwa Zulu Natal include Abahlali base Mijondolo, the Chatsworth Flats Concerned Residents Association and the Ethekewini metropolitan council.

##### 4.6.1 EThekwini metropolitan council

Ethekewini Metropolitan Council is the controlling administrative body of the Durban Metro area, and currently consists of six structures known as the Metro Local Councils (MLC's). The competency of the six MLC's in the areas of traffic management, security and by- law enforcement is located within the Ethekewini Metropolitan Council.<sup>82</sup> The notices submitted under section 3 of the RGA are handled in the Special Events unit of the metro council within the Durban Metro Police Department. There are about three notices filed each week for the holding of a gathering or a demonstration in any of the six local council jurisdictions falling under the Ethekewini Metro Council. Inspector Stevens- a Processing Officer in the Special Events section of the Durban Metro Police Department adds that- most notices have been submitted in the run up to the local government elections early this year.<sup>83</sup> Stevens however notes that in recent years there has been a marked increase in gatherings focusing on demands around the provision of water, houses, electricity and other services at the municipal local level. Factors that the council takes into account after the notice has been submitted is whether the seven-day time frame is met, whether the council can provide personnel for the facilitation of the gathering<sup>84</sup>

Generally community based organisations struggle with the filling- in of the section 3 notice. What the council generally does is to assist such organisations with the filling in of the form. There is- according to Stevens a need to educate such organisations on the provisions of the RGA and how they should be applied in practise. Trade unions and social movements generally do not have a problem with filling- in of the form. Stevens also notes that in the Ethekewini Metro gatherings proceed as planned in the section 4 – golden triangle meeting. In other words – the convenors observe the conditions agreed upon in the golden triangle meeting.

The council has identified the following problems with the RGA in its current form: - the RGA is not specific about instances where a gathering should prohibited; the RGA should make a gathering a form of protest that is a last resort, social movements don't have the necessary

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<sup>82</sup> This is as a result of an agreement that was reached in 1999 between the six MLC's and the then Durban Metropolitan Council. See: [www.csvr.org.za/papers/papmzi2.htm](http://www.csvr.org.za/papers/papmzi2.htm)

<sup>83</sup> Interview held on 27 June 2006.

<sup>84</sup> December is generally a bad time – festive season beachfront etc.

resources to ensure that marshals are distinguishable from the participants in the gathering i.e. arm- bands, uniform etc. The most pressing problem for the council- is that organisations sometimes exaggerate the number of participants and resources are mobilised by the council in anticipation of a bigger group of participants and the gathering ends up with for instance 300 participants instead of the earlier figure of 3000.

#### 4.6.2 Chatsworth Concerned Flat Residents Association

The Chatsworth Concerned Flat Residents Association was formed in 1997 to address the issues and grievances of the residents of Chatsworth. According to Orlean Naidoo<sup>85</sup>- chairperson of the association- the main area of struggle of the Association recently has been the resistance of evictions of poor residents, the raising of awareness about the fight against the privatisation of basic services such as water and electricity and the general lack of delivery of services at a municipal local level.

The recent notice submitted for a gathering under the RGA was for a protest gathering against the granting of bail of a relative who had raped a minor young girl residing at the Westcliffe flats. Naidoo adds that in this particular instance and in most instances- *“we have been fortunate, we have never had any applications rejected. I think we have developed a close relationship between community members and the metro police and the SAPS”*.

The main issue for Naidoo is that the RGA is not well understood by the council and SAPS- on the other hand; social movements and community-based structures understand the RGA very well.<sup>86</sup> There is a need for education and training on the RGA within city government and law enforcement agencies.

The Chatsworth experience demonstrates that where there is a proper appreciation of the philosophy that underlies the RGA, communities are bound to cooperate. The Chatsworth example contrasted with the Abahlali base Mijondolo experience is the best case study of how the triumvirate has joined forces to fulfil the mandate of the RGA.

#### 4.6.3 Abahlali base- Mijondolo

Abahlali base Mijondolo is a social movement that was formed in 2001 and seeks to bring together all poor people living in informal settlements- in the flats, the unemployed and marginalized across the length and breadth of South Africa. Since its formation in 2001, the organisation’s membership has grown significantly and it now has affiliates from all over Kwa Zulu Natal. The organisation seeks to advance the cause of the poor by fighting for decent housing, access to reproductive land, employment and access to further education opportunities.<sup>87</sup>

Recently Abahlali base Mijondolo were refused permission to gather in terms of the RGA on 27 April 2006. According to Hlongwa- General Secretary of Abahlali base Mijondolo:

*“During the local government elections our organisation submitted a notification with the Durban Metro Police department full weeks in advance of the 27 April 2006 planned gathering. We met all the requirements in terms of section 3 and 4 and on the day of the gathering we were told that the gathering has been cancelled. We were told that the buses and comrades entering the city must be sent back as the gathering has been declared illegal. We decided to proceed with the planned protest action and the police stopped the procession- arrested our comrades and many were fetched at their homes and sent to CR Swart police station where they were tortured and harassed”*.

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<sup>85</sup> Interview held on 13 June 2006.

<sup>86</sup> Training by FXI on RGA.

<sup>87</sup> Interview with the General Secretary of Abahlali base Mijondolo held on 26 June 2006.

The matter has since been taken to the High Court where the court ruled in favour of Abahlali base Mijondolo.<sup>88</sup>

The problems with the RGA according to Hlongwa is that the authorities seems to treat their notices as if they are doing social movements a big favour by allowing a gathering to continue- whence in essence this is a right in law and protected under a constitutional framework- *“the RGA needs to be clear that the council and the SAPS are merely fulfilling a facilitative role in the whole exercise and that protest action is allowed in South Africa.”*

Overall the RGA is well understood by social movements according Hlongwa and sections 3 and 4 provide a right legal framework for social movements to present their demands to the authorities- what the RGA lacks however is a clear statements that the right to assemble and expression are protected in the legislation and the role players are there merely to facilitate and not frustrate this right. Such clarity has implications for how the council interprets and applies the provisions of sections 3 and 4. The Abahlali base Mijondolo case taken together with the Harrismith- Intabazwe, Khutsong and Greater Middelburg Concerned Residents Associations and social movements and civil society organisations in Johannesburg and Cape Town bring to bear the challenges of social movements in South Africa. The state is either swift in prohibiting a gathering and where permission is given for a gathering to take place after due compliance with the provisions of sections 3 and 4- violent confrontation has been shown to ensue begging questions about the ingenuity of section 9 and 11 of the RGA which are outside the remit of the current enquiry.

## **5. Survey of Cases on the Regulation of Gathering Act 205 of 1993**

### **5.1 Object of the exercise**

The purpose of this section is to review recent cases involving implementation of the RGA with a view to drawing common themes emerging with respect to the implementation of sections 3 and 4 of the RGA. Gatherings that do not deal specifically with the treatment or application of sections 3 and 4 have been deliberately excluded. Contemporaneous with the focus of this report- the case studies selected deal specifically with cases where sections 3 and 4 of the RGA have been applied arbitrarily. Most cases relate to police violence and reckless crowd control measures undertaken by both the SAPS and the Metro Police- an area that is not within the ambit and scope of this research.

### **5.2 Selection of cases**

On 9 February 2004, The Soweto Electricity Crisis Committee (SEC) made an application to protest on 03 March 2004 outside the rates and taxes payment offices at Jorissen Place 66 De Korte Street in Johannesburg. On 17 February- the organisers of the proposed gathering received a notice that gathering was prohibited because peak traffic would be disrupted<sup>89</sup> and that the committee has previously been engaged in ‘the unlawful removal of pre- paid meters and intimidations to contract workers tasked to pay the underground water pipes.’ The local authorities and SAPS stated that it was clear that the gathering would be violent.<sup>90</sup>

On 9 March 2004, the Anti Privatisation Forum (APF) made an application for a protest gathering to the Constitution Hill o the day of its opening. On 19 march 2004- the Chief of the Metro Police Service; Chris Ngcobo advised the organisers that the gathering was prohibited, as it would disrupt traffic along constitution hill area. Ngcobo also stated that the gathering was prohibited as the organisation hade previously been involved in violent protest action before.

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<sup>88</sup> See Appendices section of the report.

<sup>89</sup> Section 4(4)(b)(i) of the RGA.

<sup>90</sup> Section 4(4)(b)(iv) of the RGA.

On 27 April 2004- fourteen residents were arrested for participating in an illegal gathering because they had gathered to commence with the approved gathering an hour earlier. The gathering was organised to demand a solution to the housing situation and the scrapping of the rates on basic services.

In November 2004- protest a gathering by the Thembelihle Crisis Committee was prohibited. The SAPS stated in the golden triangle meeting that they are refusing permission for the Committee because of the history of violent protest action by the committee and that the committee members put blockages on the streets when permission is given for a gathering.

On 20 April 2005- the Johannesburg Metro Police department prohibited a demonstration organised by the Landless People's Movement (LPM) and scheduled to take place on 22 April 2005. The reasons cited for the prohibition were that the LPM had 'shown no control of its participants in the past who stop and sit on the roadway deliberately with the intention to obstruct vehicular traffic and that there is also a reasonable suspicion that the gathering will result in lawlessness and damage to property'.<sup>91</sup>

On 10 November 2005- Jubilee South Africa had submitted a notice in terms of section 3 of the RGA for a gathering outside the Cape Convention Centre in protest against the world Trade Organisation. The day before the gathering- Jubilee South Africa was informed that the golden triangle meeting will not take place and that the proposed venue and time for the commencement of the gathering in the notice. A further change was effected through a telefax by the council to the propose gathering effectively barring the participants from the Cape Convention Centre.

On 14 November 2005- the Foreman Development Committee was prohibited from engaging in a protest gathering meant a heading a memorandum of grievances to the Health, Safety and Social Services Cluster of the Ethekwini Municipality- because the Mayors office has no feedback for the Committee. Further the Ethekwini Metro Police prohibited the gathering because there was no one to meet the Committee members.

On 16 March 2006 the Soweto Concerned Residents engaged in a protest gathering against the planned installation of pre- paid water meters in Orlando – Soweto. During the gathering the SAPS arrested the organisers informing them that a day before the gathering a letter had been handed to them informing them of the council's decision prohibiting the gathering- and therefore the gathering is illegal.

On 22 February 2006- the Johannesburg Metro Police prohibited a protest gathering scheduled to take place on 25 February 2006 organised by the Anti Privatisation Forum<sup>92</sup> because the organisers did not apply within seven- days.

Ten cases involving the implementation of section 3 and 4 of the RGA show a glaring violation of the provisions of the RGA and most importantly the constitutionally enshrined right to freedom of expression and assembly.<sup>93</sup> Four of these cases<sup>94</sup> show a prohibition of the proposed gatherings based on the following ground:

- The gathering will disrupt vehicular traffic,
- The organisation in question has previously been involved in violent protest action and there is reasonable apprehension that violence will ensue during the proposed gathering.
- The organisation in question always erects blockages on the streets whenever permission is granted and

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<sup>91</sup> Notice of the prohibition and response attached in the Appendices section of the report.

<sup>92</sup> Notice of the prohibition attached in the Appendices section of the report.

<sup>93</sup> Section 15 and 17 of the FC.

<sup>94</sup> The Soweto Electricity Crisis Committee gathering on 03 march 2004; the Anti Privatisation Forum proposed gathering for 10 March 2004; the Thembelihle gathering in November 2004; and the 22 April 2005 by the Landless People's Movement.

- The organisation concerned has demonstrated no control of its members during previous protest actions and there is a reasonable suspicion that the gathering will lead to lawlessness and damage to property.

It is worth- pointing out that in all four instances- a section 4 meeting was not held. So that no assessment of the factors stated above was discussed with the convenors. In terms of section 5(2)- a gathering may be prohibited after a golden triangle meeting contemplated in section 4 has been held and the responsible officer in on reasonable grounds convinced that no amendment contemplated in section 4(2) and no condition contemplated in section 4(4)(b) would prevent the occurrence of any circumstances contemplated in section 5(1). It therefore goes without saying that the actions of the council in prohibiting the above- mentioned gatherings were illegal. The list of organisation who have been denied prohibition is also interesting- the organisations are urban social movements that have recently burgeoned in South Africa and very critical of governments' neo liberal economic policy framework and land reform policies. This accords very well with the prohibited gathering on 16 March 2006 by the Soweto Concerned Residents where the gathering was stopped on the grounds that a notice prohibiting the gathering was handed to the organisers the day before. The matter has since been take to court and the court found in favour of the Soweto Concerned Residents. Recently (25 February 2006)- the Johannesburg Metro Police Department prohibited a gathering organised by the anti Privatisation Forum on the grounds that the organisers did not give council seven days notice.

The prohibited gathering on the basis of the arrival of participants in an approved gathering an hour earlier is very unfortunate and reminiscent of the overzealous policing of the past.

The proposed gathering at the Cape Town Convention Centre on 10 November by Jubilee South Africa which was approved and thereafter conditions were unilaterally changed represents a serious violation of the provision of the RGA. Similarly the prohibition of a protest gathering by the Foreman Development Committee to the mayor's office on the grounds that there is no one to meet the protestors to receive the list of demands points to one of the flaws enunciated by role players above- the reliance that the RGA places on the other parties for its effective implementation.

## 6. Summary and Analysis of Research Findings

The research into the RGA takes place during a defining moment in the history of South Africa.<sup>95</sup> In a report on State Repression and Post Apartheid Social Movements- Veriava and McKinley (2005) note that the emergence of post apartheid social movements in the first decade of democracy has been dramatically shaped by the context of the South African transition. A point made is made that:

*“As the practical consequences of GEAR begin to bear down on the lives of workers and poor communities, groups of people organized at community level to resist the effects of the policies of cost recovery and privatisation, flexibilisation, and causalisation of labour, cuts in social spending and the general extension of the rule of the market into all aspects of people's lives.”<sup>96</sup>*

It is against this background that the RGA becomes the focal point for the mediation of conflict between state actors and civil society organisations and social movement over basic socio economic struggles for access to local government services, land etc. Local authorities- as is

<sup>95</sup> Hlatshwayo Z (2006) in an unpublished report titled: Intabazwe: Harrismith- A Portrait of a Revolt – notes that “...in the past 18 months South Africa's townships, informal settlements and rural areas have been deluged by a growing number of intensity of social protests, most of which have erupted around issues of local non- delivery of basic services and/ or community dissatisfaction with levels of local political accountability and consultation”

<sup>96</sup> See McKinley and Veriava report on Arresting Dissent: State Repression and Post Apartheid Social Movements (2005) at: [www.csvr.org.za/papers/papvtp10.htm](http://www.csvr.org.za/papers/papvtp10.htm)

apparent from the Harrismith, Khutsong, Middleburg and Ethekewini case studies above have come to represent the primary conduit of community resentment.

Overall- organisations and local authorities surveyed support the architecture of the RGA albeit for different reasons. Most civil society organisations and social movements indicated that the scheme of the RGA is progressive and provides a viable institutional space for the presentation of community and socio- economic related demands. On the other hand local authorities suggest that whilst the RGA is a good piece of legislation- it is not clear and authoritative enough about its powers. As a result they have landed in court on several occasions for non- compliance with the provisions of the RGA. In addition- local authorities indicate that they are under pressure from the local business community to limit the number of gatherings held in the city as this has an adverse impact to the local economy.<sup>97</sup>

An interesting aspect about the RGA is that it holds the notion of a demonstration as a right. Demonstration as a right means the ability to hold a public gathering, assembly or demonstration is not contingent upon approval by the state.<sup>98</sup> Unfortunately the state actors in the triumvirate relationship do not seem to appreciate this key thrust of the RGA. This is sharply demonstrated by the case studies of the Western Cape, where the modus operandi of the council seems to be either to accept or prohibit a gathering without recourse to a viable alternative between the two extremes. The Abahlali base Mijondolo and the Johannesburg social movements are unfortunate examples where certain organizations are blacklisted and their gatherings are prohibited even before the due process provided for under section 4 takes place. The RED research also showed glaring instances of prohibitions without written reasons.

What is also worth pointing out is that in instances where local authorities appreciate the notion of gathering as a right, it is articulated as a disadvantage for effective law enforcement and regulation than a commitment by the legislature to ground the RGA firmly in constitutional jurisprudence of the right of to freedom of expression and assembly.

In an analysis of the interface between the role players in the implementation of the RGA- the starting point seems to be nature of the contestations around this notion. As indicated above, there seems to be wide- ranging misunderstanding about what the RGA actually provides for and what has evolved over time through practise. The latter has in many instances been mistaken to mean what the RGA professes to regulate. The cases in point are the following: - the requirement of a confirmation letter in the case of a procession gathering is not provided for under the RGA but is a function of every day usage in the administration of the RGA by municipalities. Similarly- the requirement that 10% of the marshals comprising the total number of participants in a gathering must facilitate the gathering is not enshrined in the RGA; and the commonly held notion amongst municipalities that when faced with a notice in terms of section 3 of the RGA, they must either allow or prohibit a gathering.

There is also need to educate the labour movement about the reach of the RGA. The RGA is applicable to every instance that is a public gathering. A public gathering is wide enough to include within its ambit- labour movement gatherings, hawkers' gatherings, students gatherings, civil society gatherings and so on.

The difficulties with the implementation of sections 3 and 4 of the RGA relate mostly to these existential misconceptions between what the RGA says and what the actors perceive it to be saying.

On the one hand civil society organisations and social movements understand the RGA to be directing the convenor to give notice of the intended gathering to local authorities who must then after a consideration of factors presented in the golden triangle meeting present a plan to all parties

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<sup>97</sup> See letter addressed to the Johannesburg Metro Council by the business community in the Appendices section of the report.

<sup>98</sup> Woolman S in Constitutional Law of South Africa: Freedom of Assembly p. 43-7, 2<sup>nd</sup> Edition, Original Service 02-05.

involved about the facilitation of proposed the gathering. On the other hand- local authorities are of the view that the RGA confers albeit not expressly- a right on law enforcement agencies to prohibit a gathering if on a proper construction of the facts it is of the view that the gathering does not satisfy the requirements enunciated in section 4(4)(b). It seems therefore from the perceptions of role players on both sides- the different interpretations accorded to the RGA in this regard blunts the potentially progressive vision that the RGA postulates. Even more- the different interpretations also reflect the difficulties that local authorities have to contend with from an attitudinal point of view with the growing political climate typified by a presentation of demands against the state and its organs. There is therefore need for clarity on the ambit of the RGA. Clarity on this question would see a mutually enforcing relationship between all the actors where as a matter of principle the right to hold a gathering is seen as a right- and local authorities merely play a facilitative role taking into account the factors enunciated in section 4(4)(b) of the RGA. This report has demonstrated that this is possible through an interrogation of the Chatsworth Flats Concerned Residents Association case.

It is also clear from the role- player interviews that the seven- day notice period presents practical problems. The RGA requires that notice of gatherings be provided to local authorities seven day in advance. The reality, as highlighted above- is that for most organisations this is not practical in light of the difficulties of securing a confirmation letter in case of a gathering where a memorandum will be presented. Further- the seven- day notice period does not take into account the fact that gatherings are a form of protest that are often an immediate response to actions- by the state or private actors in society. The seven-day notice period not only works to suppress dissent, it grants the government a grace period to thwart the proposed gathering.<sup>99</sup> In fact the local authorities in many instances have become the unintended beneficiaries of the RGA through the seven- day notice period requirement.

Another difficulty experienced by civil society organisations and social movement is that local authorities often take more than a week to reply to a properly filed notice. This practise in essence violates the 24-hour response requirements of the RGA<sup>100</sup>. Similarly the golden triangle meeting<sup>101</sup> according to organisations mainly based in the Western Cape- does not appear to be designed to discuss any amendment of the contents of the notice and such conditions regarding the conduct of the gathering appear to be imposed by the local authorities and SAPS in the meeting. In more than one instance in the Western Cape- the organisations have submitted to stringent conditions as laid down by the local authorities. What is particularly interesting in the Western Cape is that in the wake of the SATAWU strike several notices were turned down with the local authority citing imminent violence. There has clearly been arbitrariness and inconsistencies in the application of the RGA in the Western Cape. Activists contend that local authorities are more concerned when the procession is going to proceed in the city particularly near parliament or in major streets in Cape Town- such as Strand and Aderley streets. It is this discretion- earlier alluded to that has placed civil society organisations and social movements at the whim of local authorities.

Local authorities widely expressed a similar concern regarding the seven- day period for launching the notice albeit for different reasons.<sup>102</sup> Local authorities have also raised concerns about the seven-day notice period that it does not allow reasonable time to plan, assemble manpower from both the SAPS and metro police section and assess other parallel gatherings around the same period.

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<sup>99</sup> Section 12(2) of the RGA states that: “*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.*” Woolman S in Constitutional Law of South Africa (2<sup>nd</sup> Edition, Original Service: 02- 05) at 43-9 notes that while the defence of spontaneity creates some breathing room; it is decidedly a narrow exception to the notice provisions and penalties for non compliance.

<sup>100</sup> Section 4(3).

<sup>101</sup> As required by section 4(2)(b).

<sup>102</sup> See pages 12, 13 and 15- interviews with responsible officers in Tshwane, Mid- Vaal and Johannesburg.

The perspectives of civil society organisations and social movements also show that the RGA imposes more onerous provisions on gatherings scheduled with less 48-hour notice.<sup>103</sup> Failure to meet the 48-hour- notice in advance deadline for notice gives the local authorities almost unfettered discretion to issue prohibitions. The powers granted to local authorities in this regard are extraordinary.

There is also the question of under resourced municipalities- and the difficulties they encounter as a result of the powers and responsibilities conferred only to a 'responsible officer' for handling notices in the RGA should be extended to include officials that even where there is a lack of capacity- council officials are able to handle notices and exercise the functions of a responsible officer under the RGA.

The inconsistent application of the RGA was also brought to attention- for instance pursuant to the SATAWU gatherings most organisation have been denied the right to gather because of the violence that was metted out during the SATAWU strike action. Local authorities seem to be exercising more caution following the recent events and in the process closed down the space for organisations to present their demands and concerns.

Overall- no significant amendments were suggested to sections 3 and 4 as they currently stand. Parties accept that the RGA is an important piece of legislation- the most glaring difficulties have been with the 48 hour notice to prohibit the gathering without providing reasons as mentioned above and the discretion that obtains within local authorities to tinker excessively with certain provisions despite the fact that the RGA allows for such discretion.

The case studies on the other hand show a disturbing pattern where organisations that stridently oppose the government's macro- economic strategy and denounce the continued impoverishment and immiseration of the masses are finding themselves isolated and targeted by local municipalities and its law enforcement machinery.

## **7. Recommendations**

The recommendations flowing from this study are the following:

- There is a need to engage local municipalities about the underlying philosophy of the RGA- being the realisation of the constitutional right to freedom of expression;
- There is need for a nationwide workshop to sensitise all actors about the importance of according the RGA its proper meaning in its implementation;
- A legislation review process should be undertaken to look into those aspects of implementation that have evolved over the years with a view to codifying them- for instance; the allocation of marshals;
- Workshops should be undertaken to appraise municipalities about the need to view prohibition as a last resort;
- The seven day notice period should not be reviewed- instead, the power to exercise a discretion in cases of complex logistical arrangements from both actors should be accommodated;
- The 48 hour notice period, considering its potential unconstitutionality should be revised;
- There is a need for a thorough study on the relationship between sections 3 and 4 and the violent confrontations that ensue and the conduct of actors in light of sections 9 and 11 of the RGA;
- The legal unit of the FXI should strengthen its capacity in dealing with work around violations of the RGA considering the whole sale violations of the RGA by the municipalities;
- A simpler and accessible version of this report should be made available to the social movements, civil society organisations and municipalities;

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<sup>103</sup> Section 3(2) of the RGA.

- The FXI legal unit should investigate the case of Middelburg municipality where the social movements are prohibited from gathering in terms of a council resolution and
- A workshop should be held for all actors on the paucity of proper record keeping on the administration and use of the RGA.

## **Appendices**

1. Questionnaires 1 and 2.
2. Applications for a gathering by the APF, SECC and LPM.
3. Midvaal Municipality notice.
4. Middelburg Municipal Council resolution.
5. SATAWU notices.
6. COSATU notice in the Western Cape: Jobs and Poverty Campaign.
7. TAC notices in terms of section 3 of the RGA.
8. Cape Town Metro notices.
9. SATAWU notices and prohibitions.
10. Court ruling in favour of Abahlali base Mijondolo.
11. Letter from Johannesburg business community.

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Labour Relations Act 66 of 1995

Constitution of the Republic of South Africa 108 of 1996