

By Siphiwe Segodi

## **THE RIGHT TO PROTEST IS CONSTANTLY UNDER THREAT**

**South Africa's hard-won constitutionally protected right to protest is under threat. South African government institutions, authorities and officials are failing to comply with the tenets of the Constitution in recognising that communities have the right to protest. Public concerns have been particularly raised about how local municipalities undermine the right to protest of local communities.**

**Alarming, across the country, protesters have regularly been arrested for staging peaceful protests outside or nearby municipal office bearers' offices, whether against poor public services, official corruption or official neglect.**

**Public officials are increasingly using the excuse that communities have not officially notified authorities of the protests to clampdown on the protests.**

On June 14 and 15, 2017, the Western Cape High Court was asked to consider the constitutional validity of section 12(1)(a) of the Regulation of Gatherings Act which criminalises the failure to notify the authorities of a protest or demonstration. The legal representatives for Social Justice Coalition, a Khayelitsha-based non-governmental organisation, argued that the provision in the Regulation of Gatherings Act limited the right to protest which was not reasonable and justifiable in an open and democratic society.

In September 2013, more than 20 members of the Social Justice Coalition were arrested for staging a peaceful protest outside the offices of the Cape Town Mayor, Patricia de Lille, chaining themselves to the railings of the Civic Centre. Of those arrested, ten were convicted under section 12(1)(a) of the Regulation of Gatherings Act. While they were not sent to prison the conviction meant that they now have criminal records, and it is on this basis that the challenge is before the Western Cape High Court.

On June 12, 2017, a coalition of community organisations, Care Givers Organisation, constituting of various centres around the country providing social services in impoverished communities approached the Freedom of Expression Institute for assistance on requirements the City of Johannesburg imposed on the community-based organisation in order to hold a purportedly lawful protest. These demands include a permission letter from the ward councillor and from the owner of the place where the protest will be held commenting on the gathering. Also, the City of Johannesburg requires a "planning cost" and a letter from the institution against which the protest or demonstration is directed that it will indeed receive the petition. The Johannesburg section of the Care Givers Organisation had grievances and demands concerning remuneration and conditions of service against the department of Social Development. It is apparent that the sole purpose for these requirements is to stifle the notice process, and consequently the right to protest.



Encumbering the process to exercise a constitutional right to protest and demonstrate has the effect of discouraging communities from exercising this right – and if so, in a peaceful manner.

Protest action is an important and readily available tool for communities to express their discontent in the assertion of their rights. Approaching courts to ventilate bread-and-butter issues is not an option for impoverished communities. Recent protests for improved service delivery and the access to the right to education in the “Fees must Fall” protests and demonstrations are such cases.

Protest action by its very nature is disruptive, with varying degrees of course, and the law acknowledges this reality. Section 5(1) of the Regulation of Gatherings Act recognises the disruptive nature of protest by making provision for the prevention and prohibition of planned protest where, on evidence provided under oath to the authorities that “a proposed gathering will result in serious disruption” – such as disruption to traffic and damage to property. A decision to prevent or prohibit a protest or demonstration may be over-turned on review or the conditions for the protest or demonstration may be changed in order to protect the right to free expression.

Section 17 of the Constitution enshrines the right of everyone to assemble, demonstrative, picket and present petitions peacefully and unarmed. The Regulation of Gatherings Act requires a notice to be served on the local authorities at least 48 hours before the event – and not permission – as the local authorities seem to believe, an incorrect premise.

The Regulation of Gatherings Act replaces legislation in the pre-constitutional era where protests were regulated in such a manner that the authorities effectively repressed the right to free expression through assembly and demonstration. To criminalise the failure by the convenor of a protest or demonstration to serve a notice on a local authority is to curtail the right to free expression.

**-ENDS-**

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**About the Freedom of Expression Institute (FXI):**

The FXI was formed in 1994 to promote and defend the right to freedom of expression and information. The FXI contributes to the creation of a society where everyone enjoys the right to



free speech and the right of access to information and knowledge. We engage in litigation, research and civic education and advocacy. The FXI educates the public about the dangers of censorship and we collaborates with a wide range of local and international organisations. The FXI is challenging the criminalisation of protests. Any community member can contact the FXI if they fear their right to protests is being undermined.