



Demonstrations in or near Court Buildings Prohibition Act 71 of 1982

What does the law do?

This law prohibits certain kinds of demonstrations and gatherings close to courts.

What is the purpose of the law?

The law ensures that no one intimidates judicial officers in the exercise of their duties. This is why it applies *only* on days when courts would be in session, and *only* to demonstrations and gatherings *connected with or coinciding with court proceedings or inquests*.

(An “inquest” is a court investigation of the circumstances of a death that may have resulted from a criminal act rather than from natural causes.)



When did the law come into force?

15 June 1985. This law is a South African law that was made applicable to Namibia by the Security Matters Proclamation, AG 29 of 1985. It will remain in force in independent Namibia until it is changed by Parliament or declared unconstitutional by a Namibian court. The original motivation for the law was apparently to prevent public support for accused persons in political trials during apartheid times.¹ During this era, over-reactions on the part of police led to unnecessary injuries and loss of lives from the application of excessive force during protest marches and gatherings, “as a result of which violence and disruptions became the order of the day”.²

What is prohibited?

The law prohibits demonstrations and gatherings inside a building with a court-room or within 500 metres from a building containing a court-room, on any day *except* weekends and public holidays. This restriction applies **ONLY** to demonstrations and gatherings connected with or coinciding with a court proceeding or an inquest. Other demonstrations and gatherings are allowed to take place close to the court.

¹ [Political trials in South Africa: judicial instruments of repression](#), SATIS: Southern Africa – The Imprisoned Society, May 1985; [Truth and Reconciliation Commission of South Africa Report: Volume Two](#), 1998, paragraph 58; Joseph Lelyveld, “[South Africa Recasting Its Security Laws](#)”, *The New York Times*, 15 May 1982

² [Tsoeli and Others v S](#), South African High Court, Free State Division, Bloemfontein, 2016, paragraph 22

What is the difference between a demonstration and a gathering?

A “*demonstration*” is where one or more people indicate views for or against a person, a cause, an action or failure to take action that is “*connected with*” or “*coincides with*” a court proceeding or an inquest. A “*gathering*” is any assembly of any number of people relating to a demonstration. For instance, the people who are demonstrating might be identified by the placards they are carrying or the slogans they are shouting. The gathering might be persons who have come to watch the demonstration, but are not directly participating in it.

Are there any exceptions?

The magistrate of the district where the demonstration will take place can give permission for it.

Who can be punished for violating the law?

The law provides penalties for anyone who was involved in any way with a demonstration or a gathering that violates the law. This includes:

- a person who convenes or organises the demonstration or gathering
- a person who encourages, promotes, or forces attendance at the demonstration or gathering
- a person who presides over or speaks at the demonstration or gathering
- a person who makes or circulates notices about the demonstration or gathering
- a person who attends or takes part in the demonstration or gathering
- a person who demonstrates all by themselves in a way that violates the law.

What are the penalties for violating the law?

A fine of up to N\$1 000, or prison for up to a year, or both.

Has this law ever been used to stop a demonstration in independent Namibia?

Newspaper reports show that the law has been used at least once to stop a demonstration in independent Namibia. In 2013, police stopped a group of demonstrators from the Home Owners Association from continuing a march to the High Court to present a petition about evictions involving poor households. The Registrar of the High Court asked the police to stop the demonstration, referring to this law. Police stopped the demonstrators before they got close to the court.³

Is the law constitutional?

The Namibian Constitution, under Article 21, guarantees freedom of speech and expression, freedom to assemble peacefully and without arms, and freedom of association – all of which are connected with public demonstrations. These rights are important in a healthy democracy – but, like all constitutional rights, they are not absolute.

Under Article 21(2) of the Namibian Constitution, fundamental freedoms may be reasonably restricted by law where restrictions are necessary to protect the sovereignty and integrity of Namibia, national security or public order – which are also crucial for a healthy democracy. In this case, the law protects the integrity of the judiciary by preventing intimidation of the courts, and protecting their independence – which is a key aspect of Namibia’s democratic system. The question is whether all of the restrictions in the law are really necessary for this purpose.

³ Catherine Sasman, [Homeowners' petition stopped in tracks](#), *The Namibian*, 11 February 2013



Criticism

The basic idea of this law seems reasonable since it seems to apply *only* to demonstrations relating to a court case or an inquest that take place *close to a court* and *at a time when the court could be in session*. But there are some aspects of the law that could be improved.

- (1) Definition of “demonstration”:** One problem concerns the definition of “*demonstration*” and the related definition of “*gathering*”. What exactly does it mean for a demonstration to be “*connected with*” or to “*coincide with*” a court proceeding? Does this mean that the demonstration must be about the decision that the court is expected to make? Does the law apply if the demonstration concerns a more general issue that is somehow related to the court case? Or does “*coincide with*” mean that a demonstration close to the court about *any* topic is prohibited if the court could be in session? The law should apply only to demonstrations that might interfere with the independence of the courts or intimidate court personnel.⁴
- (2) Distance of 500 metres from the court:** Another problem concerns the 500-metre distance set by the law. A 2006 report by Namibia’s Law Reform and Development Commission questioned whether 500 metres (half a kilometre) might be excessive. A similar law in South Africa prohibits *all* demonstrations and gatherings within 100 metres of a court, unless a magistrate has given permission.⁵ This is more restrictive in some ways than the Namibian law, but the South African law applies a much shorter distance from the court. Namibia’s Law Reform and Development Commission recommended that the Namibian law should be amended to change the 500-metre distance to a 150-metre distance.⁶
- (3) Criminal sanctions:** Internationally, there is increasing criticism of using criminal law against people who exercise their right to assemble peacefully.⁷ There are other less drastic ways to make sure that the courts are protected.⁸ For example, if a demonstration is too close to a court, police could assist the group to move a different location.

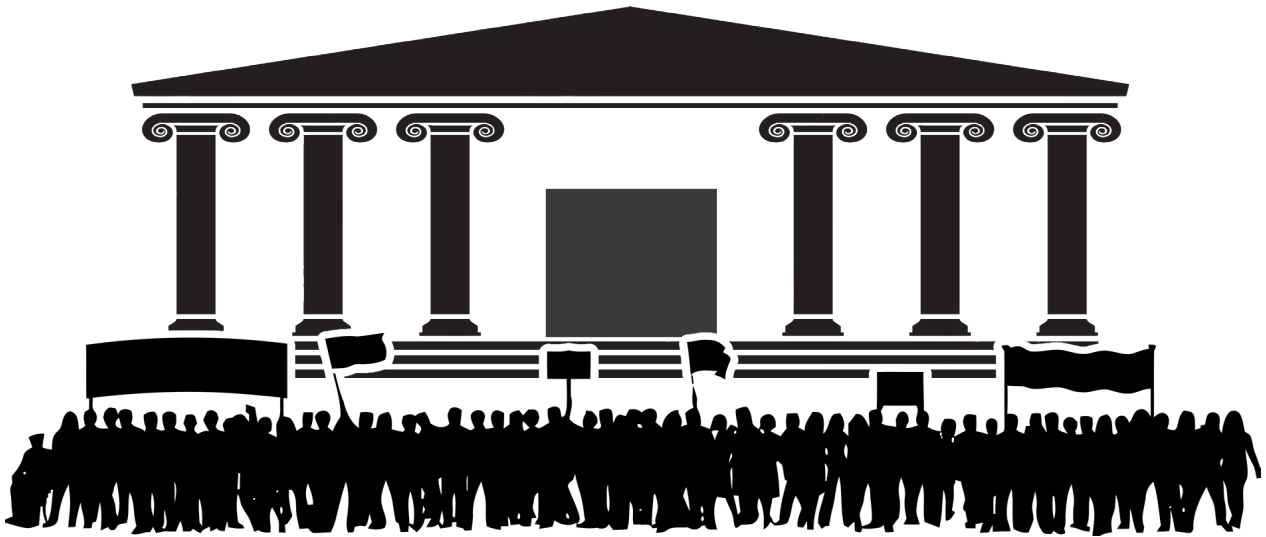
⁴ Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, FOAA Online! [The right to freedom of peaceful assembly](#), 2017, section 9.4

⁵ South African [Regulation of Gatherings Act 205 of 1993](#)

⁶ Law Reform and Development Commission, [Report on Public Gatherings \(Project 10\)](#), LRDC 14, March 2006

⁷ Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, FOAA Online! [The right to freedom of peaceful assembly](#), 2017, section 5.2

⁸ See [Mlungwana v S](#), South African Constitutional Court, 2019, which discusses less restrictive ways of dealing with demonstrations that violate the law.



Demonstrations should not be carried out in a way that threatens courts. But courts have taken note of the views of the public expressed through peaceful demonstrations that do not violate the law, as an expression of “public interest” on certain issues – such as calls for stiffer sentences for crime.⁹



⁹ Some examples are [S v Tcoelib](#), High Court, 1993 and [S v Kapia](#), High Court 2018.