



LEGAL ASSISTANCE CENTRE
Fighting for human rights in Namibia since 1988



Pro **Bono**

INFORMATION ABOUT NAMIBIA'S LAW ON ...

Understanding the Public Gatherings Proclamation and the Demonstrations Act

The Demonstrations in or near Court Buildings Prohibition Act 71 of 1982 and the Public Gatherings Proclamation AG 23 of 1989 are legal frameworks that regulate public gatherings and demonstrations to ensure public order and safety. While both laws aim to balance the right to freedom of speech, assembly, and association with the need to maintain law and order within society, they have a slightly different focus.

As the name implies, the former relates specifically to the gatherings/demonstrations conducted which are connected to court proceedings. The law prohibits **demonstrations and gatherings** inside a building with a court-room or within 500 meters from a building containing a court-room, on any day *except* weekends and public holidays. The overall purpose of this law is to ensure that no one intimidates judicial officers in the exercise of their duties.

The Public Gathering Proclamation, on the other hand, is the legal framework which aims at ensuring that public gatherings in general take place in a safe and orderly manner.

Article 21(1) of the Constitution guarantees, amongst others, the rights to freedom of speech, expression, assembly, and association. However, these rights are not absolute and can be limited by acts of parliament that “are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. (Article 21(2)). This article provides a legal basis for authorities to manage public events effectively, prevent disruptions, and protect individuals’ rights during demonstrations or gatherings.

Moreover, legal regulations on public events safeguard the rights of all individuals involved in public gatherings and demonstrations by providing a framework for peaceful expression while also safeguarding public safety and security. This balance between individual freedoms and societal interests is essential for maintaining a harmonious environment where diverse opinions can be expressed without jeopardising public order.

While the law referring to demonstrations near court buildings is very specific, the Public Gatherings Proclamation refers to any assembly of more than 20 persons relating to a demonstration in a public place.

Organisers of public gatherings must notify the local police in writing at least three days before the gathering takes place. The notice must be given to the station commander of the police station nearest to the place where the gathering will be held. The intention is for the

police to ensure that the gathering proceeds peacefully and in accordance with the conditions set by the police. They must also take reasonable steps to prevent any public nuisance or disorder.

This notification should include details such as the place and time of the gathering, the nature of the gathering, the person or organisation organizing the meeting and the names and addresses of persons who will preside, speak or otherwise officiate at the gathering.

Public gatherings such as church services, funerals, family gatherings, entertainment or sports events are exempted from the notice requirements. This list is not exhaustive.

The police have the authority to impose conditions on the conduct of the gathering to ensure public safety and order. The police presence at public gatherings helps deter criminal activity and manage crowds and they can act as mediators between different groups, helping to de-escalate tensions and prevent conflicts from arising.

These conditions may include restrictions on the time, place, and route of a procession. It is fundamental to note that **the police have no jurisdiction to stop a demonstration** and or gathering from happening but can only impose conditions for public interest.

Some examples of recent events:

In 2023 a protest was organised by religious leaders to condemn the historic Supreme Court ruling that recognised same-sex marriages conducted in other countries for purposes of immigration. Approximately 150 anti-LGBTQI+ protestors gathered and marched in Windhoek on 31 May 2023, holding a prayer session and submitting a petition to the Ministry of Home Affairs, Immigration, Safety and Security.

During the march, 2 LGBTQI+ members were arrested. The two activists were seen waving pride flags at the demonstrators protesting against the judgement. Our personal beliefs aside, this action by the police was most crucial for a peaceful demonstration despite the different moral views of citizens.

Also, in 2023, a protest organised by youth against unemployment, escalated into a situation where police intervention was necessary to prevent potential violence and ensure safety for both protesters and the general public. While this protest had been prohibited by a court judgement, same had not been communicated timeously. The chaos that ensued confirmed that legislation is necessary to protect both persons and property.

It is important to keep in mind that transgressing these laws can lead to substantial fines, currently between N\$1000 and N\$4000, in addition to prison sentences currently of 1 or 2 years, depending on which of the laws are flouted. It is therefore of some importance that one should be aware of the requirements before planning assemblies or protests.

Namibia has faced increasing demonstrations and public gatherings raising human rights issues in the near past and it is conceivable that there will be more leading up to the elections. It is therefore imperative that the provisions of these legislations are made abundantly clear to both the public and law enforcement to ensure that there will be no cause for disruption, conflict or violence.

*This article was made possible by support from the Hanns Seidel Foundation (HSF).
The contents expressed in this publication are those of the authors
and do not purport to reflect the views and opinions of the HSF*