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Pro **Bono**

INFORMATION ABOUT NAMIBIA'S LAW ON ...

PUBLIC DEMONSTRATIONS

ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.

The Namibian Constitution guarantees freedom of speech and expression, freedom to assemble peacefully without arms and freedom of association, which includes the freedom to form and join trade unions and political parties. Public demonstration is an activity that engages all of these freedoms.

Assemblies, pickets, marches and demonstrations are important instruments of dialogue in society and thus essential features of a healthy democracy. But, like all rights guaranteed by the Constitution, these freedoms are not absolute. Reasonable restrictions may be placed on these freedoms by law, where restrictions are justifiably necessary in a democratic society to protect interests such as national security or public order.

One important limitation is that the right to assemble and demonstrate is protected under the Constitution only if it is peaceful. Violent conduct directed at other people or property would fall outside the boundaries of constitutional protection. As an example, in a 2013 South African case (*SATAWU v Garvas*), the Constitutional Court had to consider whether requiring an organisation responsible for a gathering to pay damages from a resulting riot was a justifiable limitation on the right to freedom of assembly. The Court concluded that, while the rule did have a chilling effect on the exercise of the right of assembly, it was a justifiable way to protect members of society.

In Namibia, the 1989 Public Gatherings Proclamation imposes requirements on the planning of public gatherings. Persons who want to hold a public gathering must notify the police in advance. The notice must be in writing and given to the commander of the police station nearest to the place where the gathering is to be held, at least three days before the gathering. The notice must list the place and time of the gathering, the nature of the gathering, the person or organisation that is holding the gathering and the names and

addresses of the persons who will preside, speak or otherwise officiate. Failure to follow these rules can lead to a fine or even imprisonment.

This law does not give police the power to prohibit a public gathering altogether, but they are empowered to place conditions on the public gathering if, for example, the commander believes it may endanger the public, lead to violence, or restrict other people's rights. The law also prohibits the carrying of weapons at public gatherings and gives the police power to disperse riots. In practice, police can and often do help to make sure that a demonstration is safe and orderly.

However, there is some risk that this law could be applied to discourage public demonstrations, especially those that critique government or promote unpopular issues. In other parts of the world, and in Namibia's own history, we have seen examples of law enforcement actively suppressing protest and persecuting activists. If overly onerous restrictions on protest were to be imposed in Namibia today, the law might be vulnerable to a constitutional challenge for failing to strike the appropriate balance between the rights of the group demonstrating and the rights of the public.

In addition to the Public Gatherings Proclamation, which applies to all public gatherings, there are special rules for public gatherings near courts and Parliament and during election campaigns.

The 1982 Demonstrations in or near Court Buildings Prohibition Act prohibits demonstrations and gatherings within 500 metres of a courtroom, except on weekends and public holidays (when court would not normally be in session). However, this restriction is limited to demonstrations connected with a court proceeding or inquest. Public gatherings about some other issue outside a court are acceptable. The purpose of this law is to ensure that no one intimidates judicial officers in the exercise of their duties.

The 1996 Powers, Privileges and Immunities of Parliament Act makes it a crime to interrupt Parliament or to assault, obstruct or intimidate MPs or staff. It also makes it a crime to refuse to withdraw from the precincts of Parliament if ordered to do so by the Speaker or Chairperson. Notably, "precincts of Parliament" is defined broadly to include every part of the building in which the Chamber is situated and even the surrounding yard and garden. Although these rules are not specific to public demonstrations, it is easy to see how they might apply to gatherings in the vicinity of Parliament. As in the case of the rules about gathering near courts, these rules seem to be designed to ensure that no one in the legislative branch is hindered from performing their duties.

There are also special rules about political activities during election campaigns by political parties, associations, organisations and independent candidates. A notice issued under Namibia's Electoral Act includes a number of guidelines aimed predominantly at promoting public safety. For example, intimidation is forbidden, and weapons are banned at rallies, meetings, marches or demonstrations. Speakers at political rallies are also forbidden to use language which incites violence against any person or group.

By following these rules, it is possible to hold a successful public demonstration, which contributes to the kind of public dialogue which is so important to Namibia's democracy, without endangering public safety or infringing the rights of others.