

NAMIBIA: LAND OF THE FREE?

Police and public gatherings

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The protest which was in the news this week was about domestic violence, but the events surrounding that protest are of even broader significance.

What is the law on public demonstrations?

Peaceful public demonstrations are recognised in democracies worldwide as being important and acceptable forms of public expression on topical issues. Such public protests, even in the face of severe state repression, were a prominent feature of the struggle against apartheid in Namibia. What is the status of this form of activity in an independent Namibia?

Article 21 of our Constitution guarantees all persons in Namibia “freedom of speech and expression” and “freedom to assemble peaceably and without arms”. But the Constitution goes even further on the right to express public opinions. Article 17(1) gives all citizens the right to participate in peaceful political activity intended to influence the policies of Government, while Article 95(k) declares that government will *promote* policies aimed at “encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions”.

Of course, most rights are not absolute. The Constitution says that the fundamental freedoms can be subject to reasonable restrictions imposed in the name of national security, public order, decency or morality. However, Article 21 requires that such restrictions must be imposed *by law*. Article 115 also says that the Namibian Police must have “*prescribed* powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order”. “Prescribed” means that the powers of the police must be set out in law, they cannot be vague and uncertain. This is an important form of protection against unbridled power on the part of law enforcement agencies.

There is some legal basis for limited restrictions on public protests. The **Police Act 19 of 1990** empowers police officers to cordon off roads or public places and exclude people and vehicles - - but they may not do this at will, only when it is “*necessary for the maintenance of law and order or for the prevention and detection of crime*”.

There are also two pre-independence statutes still in force which deal directly with public gatherings and demonstrations. One is the **Demonstrations in or near Court Buildings Prohibition Act 71 of 1982**, which prohibits demonstrations and gatherings within a five-hundred-metre radius of a building containing a courtroom, except on weekends and public holidays.

The other is the **Public Gatherings Proclamation (AG. 23 of 1989)**, which requires advance notice to the police of public gatherings involving more than 20 people (with exceptions for events such as church services, funerals and sport). This law gives the police powers to place conditions on public gatherings if there are specific reasons for doing so. The grounds for imposing conditions are limited to serious threats of harm -- serious endangerment of the “public peace”, a threat to “public order”, a danger that someone will be seriously injured or killed, a danger that valuable property will be destroyed or damaged, or a possibility that the gathering will encourage “feelings of hostility between different sections of the population” or interfere with the exercise of someone’s valid legal rights. If one of these concerns is applicable, then the police are empowered to impose conditions which are “reasonably necessary” to prevent the

problem. (Interestingly, it is also illegal in terms of this law to carry a weapon at a public gathering, but there is an exception which makes it legal to bring along pistols or revolvers as long as they are completely concealed.)

These two laws are supplemented by the **Criminal Law Amendment Act 8 of 1953**, another hold-over from the apartheid era, which provides increased penalties for crimes which are committed in the course of protests or campaigns against any law.

A related apartheid law which remains in force is the **Protection of Fundamental Rights Act 16 of 1988** which contains a range of offences relating to boycotts and protest stay-aways. (Portions of this draconian law were already declared invalid even before independence.)

So there is a legal framework in place, even though most of it comes from the old days when Namibia was not a democracy and even the most peaceful protests were viewed as a challenge to state authority.

What happened this week

This week, Government de-railed a plan for a peaceful protest by members of the Multimedia Campaign on Violence against Women and Children, an umbrella body for some fifteen organisations active around the issue of violence. The organisers of the demonstration had been making their plans in consultation with members of the Namibian Police Force at every stage, in an effort to ensure an orderly event. However, on the day before the planned protest, they were suddenly told that no demonstration could be held. Rumour had it that this move was based on orders that came directly from the Minister of Home Affairs.

After some further negotiations, the police offered to let the demonstration go ahead on the condition that the people who took part would stand at three designated areas – all of which were completely out of sight of both Parliament and the route driven by the President and arriving dignitaries. In other words, the demonstration could proceed as long as the people whom the demonstrators were trying to reach with their message could neither see nor hear what was going on.

Further conditions were that the demonstrators' placards must be brought to the police in advance to be approved, and that six individuals from amongst the group would be allowed inside the "security area" around Parliament as long as they presented themselves personally in advance of the event to be approved by the police.

These restrictions had the effect of undermining the entire purpose of the demonstration, which was to show the President and policy-makers the breadth and intensity of public support for the Combating of Domestic Violence Bill. Members of the public, some of whom travelled from outside Windhoek to attend the protest, wanted a chance to be seen personally by the law-makers who represent them.

The organisers of the protest were sympathetic to police concerns about security on such an important occasion, and were happy to compromise by agreeing to remain outside of the immediate area of Parliament if they could at least stand somewhere along the route of the official motorcade. But while cultural groups and schoolchildren who were to wave at the President were accommodated, there was seemingly no room for a group with an important message to convey.

When all else failed, the organisations involved approached the High Court to request that the police restrictions be declared unreasonable. Their application was dismissed. What is frightening about this outcome is that the police were apparently not held to any legal framework by the Court. The applicants argued that the police could not be acting validly in terms of the law on public gatherings, since the conditions for restrictions in that law were not satisfied.

The respondents did not even bother to assert the legal authority for the conditions they had imposed, nor did the Court ask them this question. In fact, Judge Manyarara seemed to indicate that the police have broad powers to act as they see fit to ensure security on important occasions, even where they cannot point to any particular security threat. He emphasised the need to avoid causing any inconvenience to the police in their security arrangements, and seemingly endorsed an extremely broad degree of police discretion. Since the demonstration had not been completely forbidden, the fact that the conditions imposed completely prevented the protesters from reaching their intended audience did not seem to trouble the Court.

Why we should be worried

At the end of the day, this particular protest probably received more publicity because it was blocked than it would have otherwise. The message was heard this time.

But what will happen next time a group of people want to engage in a peaceful march or protest about a controversial issue?

Will the police try to impose conditions which will have the effect of silencing people's voices? Will the courts allow last-minute restrictions imposed in the name of security to undermine freedom of speech and peaceful assembly? Will the police be required to act within the boundaries of the laws that set forth their powers, or will they be given free rein to act as they see fit? Will our society allow the rights gained by long struggle and sacrifice to be so easily eroded? Does Namibia have a future as a democracy, or are we evolving into a police state?

If the events which took place this week are any guide, we may end up organising protests to demand the right to protest.