



PUBLIC PROTESTS

Public Gatherings Proclamation AG 23 of 1989

What does the law do?

This law requires advance notification to police of certain public gatherings involving more than 20 persons.



What is the purpose of the law?

The law ensures that public gatherings take place in a safe and orderly manner. It does *not* give police the power to *forbid* a public gathering altogether, but the police do have the authority to place *conditions* on a public gathering if they believe that it may endanger the public, lead to violence or restrict other people's rights. In practice, police often escort a march or attend a gathering to make sure that it takes place without causing problems such as blocking traffic or creating a risk of injury to others.

When did the law come into force?

21 July 1989. This law is a South West African Proclamation issued by the Administrator-General of South West Africa shortly before Namibia's first democratic elections took place, to replace some repressive South African laws that were repealed in anticipation of the election. It remains in force in independent Namibia until it is changed by Parliament or declared unconstitutional by a Namibian court.

What is a public "gathering"?

The term "*gathering*" means any gathering, meeting, march or procession in a public place. "*Public place*" includes any place that is generally open to the public or to some segment of the public, or a place that is open to the public only at specific times or only for a specific gathering. It also includes any place occupied by State authorities, or by any government or educational institution. Advance notice to the police is required if more than 20 persons are expected to be present at the gathering at any time. Some other rules apply to gatherings of *any* size.

How does the notice requirement work?

Persons who want to hold a public gathering where more than 20 people are expected must notify the police at least three days before the gathering takes place. The notice must be in writing and given to the commander of the police station nearest to the place where the gathering will be held. The notice must list:

- the place and time of the gathering
- the nature of the gathering
- the person or organisation organising the gathering
- the names and addresses of persons who will preside, speak or otherwise officiate at the gathering.

Failure to follow these rules can lead to a fine of up to N\$4 000 or prison for up to 2 years, or both.



Are there any exceptions to the notice requirement?

Yes. No advance notice to the police is required for these types of gatherings:

- church services
- funerals
- gatherings connected with the domestic affairs of any household
- meetings of the members of a statutory body
- gatherings for the purpose of education
- sports events
- entertainment events
- meetings of any assembly, council, committee or other body established by or under any law.
- meetings for official administrative or judicial purposes.

Conditions

The police do not have the power to prevent a public gathering from taking place. But the Inspector-General of the Namibian Police can impose conditions on a gathering that could endanger persons or valuable property, endanger public order or contribute to “feelings of hostility between different sections of the population”. Any conditions imposed by police must be communicated in one of the following ways:

- publication in the *Government Gazette* or in a newspaper, or by means of announcement on radio or television
- written notices distributed to the public and posted where the gathering will take place
- announcements where the gathering will take place
- a written notice delivered to the person who is organising or convening the public gathering.

The *Government Gazette* is a regular government publication that anyone can subscribe to. You can find all of Namibia's *Government Gazettes* on the [LAC website](#).



Weapons at public gatherings

No one other than police may carry weapons at a public gathering, with one exception. The law allows persons to have pistols or revolvers at a public gathering if they are completely concealed. But the rule completely prohibits many other kinds of weapons, including real or imitation firearms, knives with blades longer than 10 centimetres, spears, batons, crowbars, axes, hammers and various other items that could be used as weapons.

When can police disperse a public gathering?

Police can disperse a gathering if anyone present appears to be endangering persons or valuable property, or if anyone is encouraging “insurrection” or “forcible resistance” to a government authority. If the gathering is dispersed, police have a duty to do this with caution, using only the minimal force necessary to protect persons and property.



Is this 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 gatherings. 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. It is not clear that all of the restrictions contained in the law are reasonable or necessary for the purposes listed in the Constitution, but the law has not yet been challenged on constitutional grounds in any court case.



Positive points

A positive feature of the law is that it does require anyone to ask for *permission* to hold a gathering, but only to give a simple advance *notice* of the gathering to the police three days in advance. There is no authority for police to prohibit a public gathering. Police have only the power to impose conditions, and there is a high threshold for justifying any conditions.

Criticism

The **International Commission of Jurists** (a group of 60 judges and lawyers from all over the world who work to ensure that laws follow international human rights standards) has said that the Public Gatherings Proclamation should be repealed or revised because it does not follow all of Namibia's international legal obligations.¹ Namibia has joined the International Covenant on Civil and Political Rights. Article 21 of this international covenant protects the right of peaceful assembly and says that no restrictions may be placed on the exercise of this right other than what is necessary in a democratic society in the interest of national security or public safety. Namibia is also a party to the African Charter on Human and Peoples' Rights. Article 11 of this Charter says that the right to assemble freely with others can be limited only by necessary restrictions provided for by law in the interest of national security or to protect the safety, health, ethics, or rights and freedoms of others.

In 2006, Namibia's **Law Reform and Development Commission** made some recommendations for a new law on public gatherings, but the research behind these recommendations is now long out-of-date.²

One good source of guidance on the best ways to regulate public gatherings without violating the right to assemble peacefully is a 2017 study by the **United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association**, which summarises court cases on this issue from around the world.³

These are some aspects of Namibia's law that could be improved.

(1) Need to clarify the overly-broad definition of gathering:

The definition of a "*gathering*" and a "*public place*" are both very wide. Meetings in Namibia which are not really intended for the public at large often take place outdoors under trees, especially in rural areas, simply because there is no large private space available – but not all meetings that take place in the open are really public gatherings. For instance, in 1997, police attempted to disperse a consultation between a large group of Himba clients and a Legal Assistance Centre attorney that was taking place outdoors in a rural area, even though this was actually a private meeting covered by the rules on attorney-client confidentiality.⁴



(2) Need for clearer standards for imposing conditions on gatherings:

The law should set out clearer criteria for allowing police to impose conditions, and limit conditions to measures that are necessary to prevent violence or protect public order.⁵

¹ [Namibia: authorities must investigate police abuse of people protesting Gender Based Violence](#), 13 October 2020.

² Law Reform and Development Commission, [Report on Public Gatherings \(Project 10\)](#), LRDC 14, March 2006.

³ 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.

⁴ *Kapika v Government of the Republic of Namibia*, High Court, 1997.

⁵ Clemens Artz, "[Preventive Powers of Police in Namibia – A Rights-Based Approach](#)", *Verfassung und Recht in Uebersee*, 2019, page 522.

(3) Improved guidance on use of force by police at public gatherings:

The current law allows the use of lethal weapons (firearms and other weapons that can cause death) to disperse a gathering if there is danger to human lives or “valuable property”. But current international standards say that lethal force should be used only as a last resort, and only when necessary to protect life or to prevent serious injury.⁶

The steps that police can take to control a public gathering that turns violent should be carefully laid out and further restricted to comply with current international principles on policing.⁷



(4) Do not make it a crime to fail to give advance notice of a public gathering: In South Africa, the Constitutional Court struck down a similar crime in South Africa’s law on public gatherings. The Court said that making it a crime to fail to give notice of a gathering might discourage the exercise of the important right of assembly. The Court also said that there are many less restrictive ways of encouraging the public to comply with the notice requirement, such as administrative fines (which do not create a criminal record), or allowing the police to restrict a gathering that is convened without proper notice to a particular place, or to guide the participants along a particular route.⁸

(5) Need for better rules about conduct at gatherings:

- **Firearms:** It is odd that the law allows concealed firearms at public gatherings, while prohibiting so many other weapons. The similar law in South Africa prohibits all kinds of firearms at public gatherings, concealed or not, including even harmless objects that look like firearms.⁹
- **Reasonable rules for participants:** It might be useful to have some rules in the law about participation in public gatherings, such as prohibiting discriminatory hate speech, prohibiting the use of force to get anyone to take part in the gathering or prohibiting participants from blocking the entrance to any building or blocking the path of any emergency vehicles. The law could also require the organisers to supply a reasonable number of marshals in light of the expected size of the gathering, to assist in keeping the gathering orderly. It could also prohibit disruption of public gatherings organised by others at a similar time and place. South Africa prohibits people at a public gathering from wearing any clothing that might make them look like members of the security forces when they are not.

(6) Competing gatherings: It might be helpful to give the police power to set reasonable conditions to make sure that competing gatherings do not take place close together at the same time, or to prevent a gathering from interfering with other gatherings – without allowing the police to prevent any gathering from taking place.

(7) Spontaneous gatherings: The law should have an exception to the notice requirement for gatherings that take place without being organised by anyone. No one should be held responsible when a group of people simply come together without any advance warning or planning.

In general, the Namibian government has respected the public’s right to freedom of speech, and many peaceful political protests have taken place unhindered by police. But there is some risk that the law on public gatherings could be applied to discourage public gatherings that criticise government or promote unpopular issues.

Public assemblies are important in democracies and should be regulated to the minimum extent necessary to protect public order. As the South African Constitutional Court pointed out, people without political and economic power have only protests as a tool to communicate their concerns. The right for people to gather together to make their views known should be carefully safeguarded.

⁶ See Legal Assistance Centre, [Use of force by law enforcement officials in Namibia](#), November 2019 and 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 13.

⁷ [The Law on Police Use of Force Worldwide: Namibia](#), Centre for Human Rights, University of Pretoria, updated 2021.

⁸ [Mlungwana v S](#), South African Constitutional Court, 2019.

⁹ South African [Regulation of Gatherings Act 205 of 1993](#).



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 life 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.

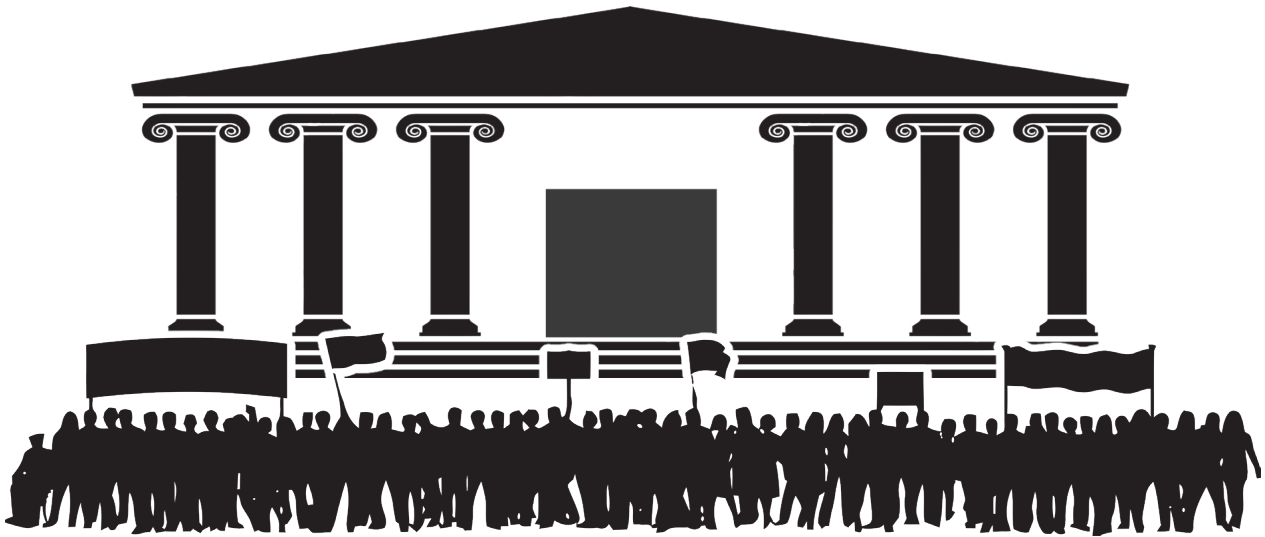
⁴ Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, FOAA Online! [The right to freedom of peaceful assembly](#), 2017, section 9.4.

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 Examples are [S v Tcoeb](#), High Court, 1993 and [S v Kapia](#), High Court 2018.



Other laws relevant to public demonstrations

The key laws on public demonstrations are the *Public Gatherings Proclamation AG 23 of 1989* and the *Demonstrations in or near Court Buildings Prohibition Act 79 of 1982*. These are summarised separately. There are also a few other statutes with rules about public demonstrations.

Intimidation Proclamation, AG 24 of 1989

This pre-independence law makes it a crime to threaten to kill or harm a person, or to threaten to damage a person's property, as a way to get someone do something or to adopt a certain standpoint.

This rule could be applied even to signs at demonstrations, if the language used would reasonably cause the person who is targeted to fear for the safety of themselves or some other person. The constitutional right to freedom of speech does not generally protect speech that is intended to encourage immediate harm to other people.



Powers, Privileges and Immunities of Parliament Act 17 of 1996, section 24

It is a crime to refuse to leave the “precincts of Parliament” after being ordered to leave by the Speaker or Chairperson. This includes:

- the Chamber where Parliament meets
- galleries, lobbies, offices or other parts of the same building
- any outside area around a building used for the purposes of Parliament.

It is also a crime –

- to create or join in any disturbance that might interrupt the proceedings of Parliament
- to assault, obstruct, molest, threaten or insult any Member of Parliament in the precincts of Parliament or while they are entering or leaving Parliament
- to use force, insults, or threats to try to get a Member of Parliament to take a particular position on a matter being considered by Parliament
- to assault, harass, threaten or obstruct Parliament staff or police at Parliament while they are carrying out their duties
- to enter the precincts of Parliament with a firearm or any other object that could cause serious injury.

This law is intended to prevent intimidation of members of the legislature.



Labour Act 11 of 2007, section 76

The *Labour Act* specifically permits pickets at workplaces during legal strikes. It is permissible for employees, or members or officials of registered trade unions, to communicate information about the strike and to try to persuade individuals not to work during the strike, as long as this is done peacefully.



Electoral Act 5 of 2014, sections 178-180 & Code of Conduct

The *Electoral Act* makes it a crime to disturb or obstruct the functions of election officials or activities at polling stations, or to cause a disturbance at a polling station. It is prohibited to organize a procession or demonstration within 500 metres of a polling station on an election day. It is also illegal to put up posters for any party or any candidate, or to canvass for votes, within 500 metres of a polling station.

It is a crime to threaten violence or any other kind of harm to try to influence someone to vote or not to vote in an election, or to vote or not to vote for a particular party or candidate. It is also a crime to use violence or any other kind of harm to punish a person for voting or not voting, or for how they voted.



The Code of Conduct for political parties and candidates prohibits any form of intimidation. It also forbids all weapons, including traditional weapons, at any political rally, meeting, march or other demonstration. Speakers at political rallies are not supposed to use language that encourages violence against any person or group. The same rule applies to campaign materials. Political parties must avoid holding opposing rallies, meetings, marches or demonstrations close to one another at the same time, and party members and supporters must not disrupt other parties' events or obstruct persons from attending these events. They are also forbidden to damage or destroy the campaign materials of other parties.

This law is intended to prevent intimidation of voters and to ensure that elections are free and fair.

