

The right to peaceful protest is dying in South Africa

It has been nearly 20 years since the first democratic election in South Africa and public protests are as much a feature of our lives now as they were in the 1980s. For the most part, media coverage of these protests focuses on the ones that go bad and turn violent.

By Stuart Thembisile Lewis

Professor Jane Duncan, the Highway Africa Chair of Media and the Information Society at the Rhodes School of Journalism and Media Studies, argues that this depiction fails to take into account the bureaucracy used by South African municipalities to illegally prohibit protests.

Our Constitution holds that “[e]veryone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions”. This is reflected in our legislation. The Regulation of Gatherings Act (RGA), originally proposed by the Goldstone Commission, is designed to protect public protests and gatherings as essential to the democratic process.

The RGA only allows the prohibition of protests in very certain circumstances. There must be evidence that a proposed gathering will seriously disrupt traffic or result in violence that the South African Police Service (SAPS) will not be able to contain. This information must be deemed credible as well as given under oath.

With Andrea Royeypen, a Masters student in the Rhodes Political and International Studies Department, Duncan has conducted extensive research into the state of the right to protest in South Africa over the two-year period of 2011 to 2012, focusing in particular on the Rustenburg Municipality.

This research will form part of Duncan’s new book project, provisionally titled *The Rise of the Securocrats?* This book seeks to evaluate the claim made by Paul Holden, co-author of *Who Rules South Africa?*, that the

African National Congress (ANC) has fallen under the sway of the “securocrats and fat cats”.

Duncan presented the research in a seminar entitled “The Regulation of Protests under Jacob Zuma” earlier this year that I was lucky enough to attend. The research is also available to the public online at *The Daily Maverick* site in a two-part series: “Inside Rustenburg’s banned protests” and “Death by a thousand pinpricks – South Africa’s ever vanishing right to protest” <http://www.dailymaverick.co.za/article/2013-03-07-inside-rustenburgs-banned-protests/>. The statistics that made up the research were sourced from the Rustenburg Municipality’s own records as well as the SAPS’s Incident Registration Information System (IRIS).

In Rustenburg, the overall number of gatherings increased from 162 in 2011 to 226 in 2012. Roughly 19% of both these figures were classified as protests, forming the minority of applied-for gatherings over the time period.

In 2011, only 32% of protests were approved while another 39% fell into the murky category of not being specified as approved or not. In 2012, the number of approved protests remained steady at 33% while those not approved spiked dramatically from 29% to 53%. The unspecified protests shrank to only 14%.

Duncan attributes this massive change in percentages to the municipality becoming “more categorical in their decisions... [and] more prone to prohibiting protests”. The unspecified protests may very



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well be indicative of the common complaint among activists that municipalities often notify protesters of a prohibition verbally so as not to leave a paper trail, says Duncan. This means that the number of prohibitions could well include the entire not-specified figure.

Whether or not this is true, the prohibited figures in Rustenburg far outstrip the “unrest-related” incidents in the IRIS database for the same period. IRIS records all violent and peaceful marches in the country. “Unrest-related” incidents make up around 10% of the annual national total number of gatherings. These incidents are ones that the SAPS noted as becoming violent and the ones that the media tend to focus on.

Duncan blames the municipality for these radically-skewed figures, saying that they have illegally set the bar for lawful gatherings far too high. The RGA only requires the convener of a gathering to provide a municipality with notification of their intention to gather as well as furnishing them with details regarding the leadership of the gathering, its purpose, proposed route, time and date and similar details.

The Rustenburg Municipality, however, requires a list of letters to be provided. These include a permit to use a public road, a letter of permission from the local tribal council and an acknowledgement letter from the intended recipient of any memorandum of demands. None of these letters are mentioned at all in the RGA and are therefore illegal requirements.

Duncan also noted that this practice is not unique to Rustenburg, or even ANC municipalities, but

occurs nationally, even in the Makana municipality of which Grahamstown is a part. Activists with local organisations like the Unemployed People’s Movement (UPM) or Abahlali baseMjondolo can attest to this. I have covered several stories in which UPM protests were prohibited illegally, including at least one when the notification of the prohibition was given telephonically to the convener on the day of the event.

Duncan also notes that the police are also engaging in more aggressive tactics and their attempts to enforce the prohibition of protests or to disperse violent protests have become more violent. In the past, the SAPS employed the Belgian method of crowd control and policed protests from a manageable distance.

Recently though, paramilitary police units like the Special Task Force and Tactical Response Teams have become the norm in crowd control. This has often resulted in more violent police responses to protests. The SAPS have also switched to the French method of crowd control used heavily by the Sarkozy administration in France, a much more violent and in-your-face style than the Belgian method, that they learned when Sarkozy’s government helped train 8 500 South African police prior to the 2010 Soccer World Cup.

Duncan’s conclusion is clear: South Africans’ right to peacefully protest is being swallowed by manipulative bureaucratic practices and violent policing practices. This is also passing by unnoticed by most mainstream South African media institutions.



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