



## **SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

### **Response to the OHCHR call for information regarding HRC Resolution 38/11 on the impact of new technologies in the context of peaceful protests**

*October 2019*

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#### **1. Introduction**

The South African Human Rights Commission (SAHRC) acknowledges the correspondence from the OHCHR regarding the request for information on the Human Rights Council resolution 38/11: “The promotion and protection of human rights in the context of peaceful protests”.

The SAHRC is an ‘A’ status national human rights institution (NHRI) and is constitutionally mandated to promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights domestically,<sup>1</sup> including the right to freedom of peaceful assembly.

In response to the OHCHR request, the SAHRC provides information relevant to Resolution 38/11, specifically as it relates to new technologies in the context of peaceful protests in South Africa. The information provided herein includes also reference to research conducted by the SAHRC.

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<sup>1</sup> Constitution of the Republic of South Africa (Constitution), Section 184.

## **2. Responses to requested information**

### **2.1 Laws, policies and programmes that have been developed to address the impact of new technologies, including information and communications technology, on human rights in the context of assemblies, including peaceful protests:**

Public demonstrations in South Africa are regulated by the Regulations of Gatherings Act, 1993 (RGA).<sup>2</sup> South Africa is yet to develop legislative interventions regarding the implications of new technologies in the context of peaceful assemblies.

### **2.2 Effective use of such technologies as enablers of the exercise of human rights in the context of assemblies, including peace protests (eg. How technologies have facilitated the organisation of assemblies, including peaceful protests)**

Online media platforms, such as Facebook and Twitter, have been used successfully to generate public support to organise peaceful assemblies in protest of human rights violations frequently experienced in South Africa. Such platforms have facilitated mass protest action against gender-based violence (such as the #MenAreTrash and #AmINext campaigns) and the lack of access for many poor South Africans to tertiary education institutions and universities (for example, #FeesMustFall campaign). Online media campaigns have also been used to highlight challenges with the slow pace of social transformation in the country, leading to peaceful assemblies (for example, the #RhodesMustFall campaign). These protest gatherings often involve members of vulnerable groups, including women and children, and are a means of demonstrating frustration with the slow realisation of the human rights aspirations as provided for in the Constitution of the Republic of South Africa, 1996 (Constitution).

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<sup>2</sup> No. 205 of 1993.

**2.3 The human rights challenges posed by interferences with the availability and use of such technologies in the context of assemblies, including peaceful protests (eg. Through networks disruptions, blocking of internet services or restrictions on secure and confidential communications)**

The SAHRC has not received any complaints, or been made aware of any incident, where peaceful assemblies organised through the use of new technologies have been deliberately disrupted by limiting the access to such technologies, with a view of intimidating organisers.

**2.4 The human rights challenges posed by the use of new technologies, including information and communications technology, in the context of assemblies, including peaceful protests (eg. The use of surveillance and monitoring tools by the authorities, including biometrics-based recognition technology to identify protestors)**

While the SAHRC has not received any complaints or been made aware of any incidents where surveillance technology has been used by authorities to identify protestors, the SAHRC has noted incidents where new technologies have been used as tools of censorship. For example, during 2016, the South African Broadcasting Corporation (SABC), the country's public broadcaster tasked with providing a platform to all in the country to participate in the country's democracy, came under scrutiny amidst claims of political interference. In September 2016, the Supreme Court of Appeal found that the use of a 'signal jammer' by the State Security Agency to prevent journalists from screening scenes of disorder in Parliament, to be unconstitutional and unlawful, amounting to censorship.<sup>3</sup>

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<sup>3</sup> SAHRC, Civil and Political Rights Report (2017).

## 2.5 The impact on human rights of the use of new less-lethal weapons and ammunition technology in the context of assemblies, including peaceful protests.

The SAHRC has not received any complaints, or been made aware of any incident, of the use of new less-lethal weapons used in the context of assemblies.

## 2.6 Additional information

- i. In 2018, the SAHRC released a research brief on the status of human rights defenders in South Africa.<sup>4</sup> In accordance with the framework presented in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders), the purpose of the SAHRC report was to document the nuanced nature and multiple forms of human rights violations experienced by human rights defenders facing heightened risk in South Africa. Despite the rights and protections afforded in the South African Constitution, such as freedom of assembly, association, and the ability to actively participate in decision-making processes that shape their lives and promote good governance - all of which comprise the right to freedom of expression, and are fundamental for the full realisation of socio-economic rights – human rights defenders frequently experience multiple violations of these rights.
- ii. The report thus sought to highlight the inextricable link between civil, political, social, economic and cultural rights, and document the experiences of human rights defenders advocating for the advancement of substantive equality, socio-economic rights, access to information and justice, and the protection of the most vulnerable and marginalised in society.
- iii. In relation to exercising the right to freedom of assembly, the SAHRC welcomes the 2018 Constitutional Court judgment declaring section 12(1)(a) of the RGA unconstitutional and invalid. The relevant section criminalised the failure to give notice of a protest comprising more than 15 protestors.<sup>5</sup> Until section 12(1)(a) was

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<sup>4</sup> The report is available at <https://www.sahrc.org.za/home/21/files/Human%20Rights%20Defenders%20Publication.pdf>

<sup>5</sup> *Mlungwana and Others v S and Another*, CCT 32/18.

declared unconstitutional, bureaucratic obstacles and misinterpretations of the RGA by local government authorities had led to an increasing number of unauthorised and unregulated gatherings taking place, thus deemed “illegal”.<sup>6</sup>

- iv. The SAHRC has since recommended that relevant State departments engage the relevant local governments throughout the country in the necessary training for their officials to ensure that the RGA is understood in the context of facilitating the right to freedom of assembly, as opposed to restricting its intended implementation, and to ensure that communities are not unjustly denied the right to voice their concerns through protest action. Moreover, the SAHRC recommended that the South African Police Service (SAPS) ensure that excessive and disproportionate use of force by law enforcement officials in the context of public protests in South Africa is halted. To this end, the SAHRC has entered into a memorandum of understanding with the SAPS to ensure that a culture of right-based public order policing is embedded in South African society, particularly in light of the crucial role of the right to free and peaceful assembly plays in sustaining South Africa’s nascent democracy.

### **3. Conclusion**

Freedom of assembly and peaceful protest has long played a role in shaping the trajectory of South Africa’s democracy, providing significant insight to the needs and frustrations of the country’s majority. The SAHRC however emphasises the need for improved partnerships between all stakeholders, including civil society and national government in developing and enforcing policy and legislation that creates and maintains, a safe and enabling environment in which civil society can operate and contribute to the promotion and protection of civil, political, economic, social and cultural rights.

The SAHRC wishes the OHCHR well in the preparation of the thematic report to the Human Rights Council and is avails itself for further information if required.

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<sup>6</sup> Lizette Lancaster, *At the heart of discontent: Measuring public violence in South Africa*, *Institute of Security Studies*, 2016.