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LEARNING FROM TRAGEDY: THE MARIKANA MASSACRE AND THE RIGHT TO PROTEST



While discussing the subject of protests in South Africa, the host of a popular talk radio show asked how much we as a nation have learnt from the tragedy which left 44 people dead in Marikana three years ago. The short answer is that we have not learnt enough.

This is in spite of an extensive Commission of Inquiry set up to investigate ‘matters of public, national and international concern’ arising out of the tragedy. However, the findings of the Commission of Inquiry released earlier this year do not explicitly reaffirm the right to protest by holding those responsible for the tragedy to account. Furthermore, many of the families who lost their sole breadwinners are still left without recourse for the pain and loss they have suffered.

One of the recommendations of the Commission of Inquiry was that the South African Police Service (SAPS) establish a panel of senior officials from the SAPS legal department and Public Order Policing unit to revise the approach of the SAPS in dealing with crowd management. However, without any accountability and legal liability established from the Marikana massacre and many other violations that take place in the country, the chances of a reviewed approach to crowd management seems unlikely to impact positively on the right to protest.

Legal recourse is imperative in enabling a balance of power and ensuring supremacy of the Constitution. A part of the interventions initiated by the Freedom of Expression Institute have been aligned towards the capacitation of vulnerable communities on the practical ways of effectively exercising their right to protest and further providing legal assistance against unlawful detention or arrest during protest. In facilitating this, the Institute developed a comprehensive curriculum to capacitate paralegal advice officers in the North West, Northern Cape, Mpumalanga and the Free State. As from July, a series of workshops have been conducted that build on on-going research aimed at compiling a record of the practices in the administration and facilitation of the right to protest in the respective provinces.

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In Potchefstroom (North West), the paralegal capacitation workshop established that most advice officers had at least some knowledge of the Regulations of Gatherings Act, and an appreciation for the purpose of the Act itself in administering the right to free expression through the various forms of public gatherings. However, the participants noted that the practical implementation of the Act was not without problems. A primary concern was the perceived imbalance of power between most ignorant communities and highly knowledgeable authorities. Furthermore, advice officers noted that the position of authorities was reinforced by the substantial amount of resources at their disposal, particularly when engaged in negotiations required within Section 4 meetings.

Community advice officers in Kimberly (Northern Cape) highlighted that activists and communities are less likely to engage in protest action, even in cases where communication channels are non-existent between residents and their local municipality. This self-censorship was primarily a result of persistent targeting and victimization of leaders by local municipal authorities. In the cases where advice officers have been engaged by frustrated communities, it has often been in response to situations which usually escalated to arrests and destruction of property. In such cases, it was noted that the training provided would allow advice officers to be more proactive in assisting communities to exercise their right according to the stipulations of the Regulations of Gatherings Act.

Another notable concern among the paralegals was that some of the local authorities and representatives from the SAPS were not aware of the law and required training similar to that provided by the Institute since it is an interested but independent facilitator.

The experience of advice officers in the North West and Northern Cape attest to the flagrant disregard for Constitution, Regulation of Gatherings Act and Standing Order 262 in the facilitation of gatherings and other forms of public expression by the SAPS and local municipal authorities. If these violations of the right to protest are allowed to go unchecked, another Marikana may soon be witnessed.

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