

LEGAL SAFETY TOOLKIT



FOR YOUTH CLIMATE JUSTICE LEADERS
IN SOUTHERN AFRICA

ACKNOWLEDGEMENTS

Authors: Centre for Applied Legal Studies, Right2Protest Project

Published by: Project 90 by 2030

Design and Layout: Kyle Brent De Vree (devreedeign)

Contact details:

Project 90 by 2030

Address: Office 204, 16 Beach Road, Muizenberg, 7945, South Africa

Tel: +27 87 806 3501

Email: info@90by2030.org.za

Website: www.90by2030.org.za

Copyright © is shared between Project 90 Centre for Applied Legal Studies, and Right2Protest Project. The authors and publisher have made every effort to obtain permission for and acknowledge the use of copyrighted material. Please refer enquiries to the publisher. Views expressed in this publication do not necessarily reflect those of the publisher. Commercial use of all media published by Project 90 is not permitted without the written consent of Project 90. Readers are encouraged to quote or reproduce material for their own publications, as long as they are not being sold commercially. As copyright holders Project 90 by 2030, Centre for Applied Legal Studies, and Right2Protest Project request due acknowledgment and a copy of the publication in which this material is cited.



Who is Project 90 by 2030

Project 90 by 2030 is a social and environmental justice organisation inspiring and mobilising South African society towards a sustainably developed and equitable low-carbon future.

What is the Youth Support Hub

Project 90 by 2030's Youth Support Hub is a youth-led initiative which aims to bring young people in the climate justice movement together and develop their skills, by connecting them to each other and to expert coaches who can help them grow.

More information here:

www.youthsupporthub.org.za

Disclaimer:

The information in this resource is provided for general information purposes only and does not constitute legal or other professional advice. While we have taken every care to ensure that the content is accurate, the content is provided as is and your use of and reliance on the information contained herein is entirely at your own risk. All the information is not intended to stand alone as legal advice. Before making any decision or taking any action, you should take appropriate advice from a suitably qualified person regarding your circumstances. We accept no responsibility for any loss or damage which may arise from reliance on information contained in these pages.

01

Terminology

02

Introduction

03

Political context of the Southern African region

04

**An overview of the Civil and Political rights
in Southern Africa**

05

**Legal tactics used by the state and corporations
to suppress youth climate justice climate leaders**

06

**Legal Strategies for Climate Justice Climate
leaders in Southern Africa**

07

**Resources for Youth Climate Justice
Climate leaders**



**TOOLKIT
OUTLINE**



TERMINOLOGY

1. **REPRESSION:** The act of suppressing someone by force, this can also include attempts to put an end to their views or human rights causes. Repression can be both emotional and physical.
2. **VICTIMISATION:** When someone treats you badly or disadvantages you because you complain about discrimination/a human right violation/ corruption or poor service delivery or help someone who has been the victim of the above.
3. **SURVEILLANCE:** Close observation and monitoring of an individual, which is often not lawful and violates one's right to privacy and freedom of movement. Unauthorised surveillance can be undertaken by spies or even criminals.
4. **CENSORSHIP:** Acts directed at limiting freedom of speech and/or digital media freedom. The suppression or prohibition of any information that is considered offensive or politically unacceptable. This can extend to individuals being denied access to certain platforms where they express their opinions.
5. **TACTICS:** An action or strategy carefully planned to achieve a specific end.
6. **SLAPP SUITS:** Strategic lawsuits against public participation (also known as SLAPP suits) are lawsuits intended to censor, intimidate, and silence critics by burdening them with the cost or threat of court action until they abandon their criticism or opposition.
7. **PUBLIC INTEREST:** Any matter that is of concern to the public or is for the benefit of the public.
8. **PUBLIC PARTICIPATION:** The active involvement of individuals or groups in matters of public interest. This includes but is not limited to protests, movement building, public engagements, petitions, complaints, participation in public hearings, academic research, journalism and whistleblowing activities concerned with the public interest





INTRODUCTION

Climate leaders and human rights defenders in Southern Africa are constantly finding it difficult to navigate and fight for their causes as defenders because of the threats and immense repression they face at the hands of the state and corporate actors. Climate Justice Climate leaders are not immune to this problem, as they experience repression both from the extractive [SM1] companies and the state but in many instances the state and corporations collude in a concerted manner to repress climate leaders. Young climate leaders are particularly affected by repression not only because of the impact of the concerted effort to destabilise their movements, but also because they lack the knowledge and expertise to defend their rights using legal mechanisms.

The purpose of this toolkit is to assist youth climate justice climate leaders navigate often complicated legal systems, mechanisms and protocols that are often imposed by states in the Southern Africa. The legal systems can often be overwhelming for climate leaders who are often faced with the task of defending themselves against the legal systems. This toolkit has been designed to breakdown and decode the relevant laws[SM2] as it relates to both rights and obligations of climate leaders when exercising their civil and political rights. It is also designed as a self-learning guide for youth climate justice climate leaders to navigate how they responsibly exercise their civil and political rights within the parameters of the law.

Whilst the legal frameworks in the various parts of Southern Africa differ, there are also several similarities in some of the laws. The Constitutions , serving as the supreme legal authority, are often drafted in the same or similar manner, which in influences the structure and trends of enabling legislations. Law Enforcement agencies and the courts also tend to apply and interpret the laws in comparable ways. However, in some countries, the application and interpretation of the law is more heavily biased against climate leaders than in other countries.





POLITICAL CONTEXT OF THE SOUTHERN AFRICAN REGION

Outlining the political and economic context in Southern Africa is essential in understanding the impact of repression on climate leaders. This is a context that is strongly linked to the way in which states have been responding to the voices of dissent and the struggle by climate leaders for the realisation of human rights.

Alongside the different country specific challenges caused by the negative impacts of climate change, economic stagnation, and political instability, we have also seen how democracy within the region has been impacted. One area this has been seen is the corruption in the re-election of political leaders making space for intense intra-party conflict that has resulted in the death of many and citizens migrating in search for stability. This was exacerbated by the COVID-19 pandemic, which further marginalised the most vulnerable communities within the region. The pandemic opened an opportunity for the law to be misused by governments to suppress dissenting voices of society, by limiting the exercising of civil and political rights.

We have seen that the populations in the region have become more radicalised and conscious through their living conditions with protesters across the region calling for reforms, change in leadership and accountable governments. However, this has not been well received by the states who have employed repression tactics such as arbitrary arrests, torture, kidnappings, assassinations and societal exclusion. Climate leaders across the region face similar threats as they mobilise towards social justice in their context.

Despite these challenges the networks of activities, whistleblowers and civil society organisations continue to stand in solidarity with each other. The solidarity efforts have been calling for amongst other things an increase in funding to protect human rights defenders, calling for the release of all political prisoners in the region and protection of freedom of assembly, association, and expression. The exchange in strategy and intervention using the law to protect action has been impeccable and inspiring.





AN OVERVIEW OF THE CIVIL AND POLITICAL RIGHTS IN SOUTHERN AFRICA

Civil and political rights comprise a collection of human rights and freedoms to ensure and allow for the ability to participate in the civil and political life of a society and state without fear of being intimidated, discriminated, or repressed through the infringements of different stakeholders. However, as despite provisions given in the United National Universal Declaration of Human Rights and African Charter on Human and People's Rights (The African Charter), these rights are infringed upon more often through the law by states, social organisations and private individuals.

For instance, in[SM3] South Africa, the Bill of Rights in the Constitution provides for the right to freedom of expression (Section 16) and the right peacefully and to unarmed, assemble, demonstrate, picket and present petitions (Section 17). These rights and freedoms have been tried and tested in the courts by climate leaders, civil society organisations and social movements in an effort to enforce the rights and to also progressively develop legislation enacted in support of the rights. This has resulted in the development of progressive jurisprudence in civil and political rights. Despite the Bill of Rights, progressive jurisprudence and legislation, climate leaders are constantly engaging in these rights and continue to face fierce opposition from the state and corporate actors.

In Namibia civil and political rights are provided for under the fundamental freedoms clause in Article 21 which provides for the right to freedom of expression and speech; the right to assemble and freedom of association. Article 17(1) of the Constitution allows all citizens the right to participate in political activity peacefully. In Article 95(k) of the Constitution, government commits to promote policies aimed at encouraging mass population through education and other activities, geared at influencing Government policy. Overall, the rights appear good on paper and the Constitution appears to be progressive in nature. This is a common trend in most jurisdictions within Southern Africa that the laws on paper appear to allow for a healthy space for democracy where political leaders and members of parliament can be challenged based on the Constitution and enabling legislation. This position is unfortunately in theory, the practical experience usually presents a different picture.

In Zimbabwe, Section 58 of the Constitution provides for the right to freedom of assembly and association. Section 59 provides for the right to demonstrate and present petitions, peacefully. Section 61 provides for the right to freedom of expression and freedom of the media. These three rights are guaranteed in the Constitution but unfortunately, they are as good as they are in the Constitution as it is often extremely difficult to exercise them due to the suppression of these rights by the state. The state selectively decides when and how the rights can be exercised.

The disclaimer to rights and how they are enforced is that they are not absolute, and they are subject to limitations. In the Namibian Constitution, the term "reasonable restriction" is used, and states that the rights may be subject to the imposition of restrictions. Motivation for restrictions according to the Constitution is national security; maintenance of public order; decency and morality.

FREEDOM OF ASSEMBLY

FREEDOM OF EXPRESSION

SOUTH AFRICA



The right to peaceful assembly is safeguarded within Section 17 of the constitution - "Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, picket, and present petitions.". This is further regulated by the Regulation of Gatherings Act 205 of 1993 (RGA).

This right to Freedom of Assembly has a long and powerful history in South Africa, and alongside it comes a set of responsibilities. e.g. Actions of 16 or more people requires the organiser to notify local authorities. Should demonstrations occur with 15 or fewer people you do not require notice.

The state's response to protest has varied in the different regions in South Africa. In parts of the country, the state approaches the courts to stop protests and even prevent future protests that may erupt. In other parts, the state deploys public order police to brutalise and out-number protestors. This has often resulted in injuries and some occasions death during protest. This inevitably has a chilling effect on the right to protest in South Africa.

The right to Freedom of Expression is a guaranteed right under section 18 of the Constitution. Whilst the protections within the constitution are quite strong and have a solid track record in court, it is important to note that there is a widening gap between policy and reality.

The contrast between the 1994 promise of freedom and the persistent realities of inequality and poverty, between government pledges to uphold free speech and the flawed laws being proposed in Parliament that threaten to erode it. In such a deeply unequal society, with the increase in crime, corruption, political assassinations, and killing of whistleblowers many will not feel at ease to use their voice and exercise their freedom of speech.

ZIMBABWE



FREEDOM OF ASSEMBLY

The right to freedom of assembly is provided for in Section 58 of the Constitution, which stipulates that every person has the right to freedom of assembly and association, and the right not to assemble or associate with others, and no person may be compelled to belong to an association, meeting, or gathering.

That provision is limited by Section 86 which restricts or limits gatherings on private property, and during a period of a pandemic or risk of terrorism. The right to freedom of assembly can be limited by the need to adhere to certain requirements or administrative procedures, as in the case of the Maintenance of Peace and Order Act (MOPA). However, these requirements must be reasonable and justifiable in a democratic society. The state uses repressive provisions in the MOPA to not only limit and impose conditions on the right to peaceful protest but to dismantle protests. The Criminal Law (Codification and Reform) Amendment Bill "Patriotic Bill" is also used to prevent protests that concern "unpatriotic" causes or causes that are against the functioning of the existing government. In Zimbabwe the notice forms in theory serve the purpose of notifying authorities of an intended protest however in practice they are implemented as permission seeking documents, depending on the specific individual authority.

FREEDOM OF EXPRESSION

Freedom of expression is provided for in Section 61 of the Constitution of Zimbabwe. It safeguards the freedom to seek, receive, and communicate ideas and other information, academic freedom, freedom of artistic expression, and scientific research and creativity.

Freedom of expression is limited in two ways:

1. Section 61 excludes freedom of expression in which one incites public violence, and it further excludes the use of hate speech, malicious injury to a person's reputation or dignity, or unwarranted breach of a person's right to privacy.
2. Section 86 of the Constitution of Zimbabwe provides that one's rights cannot be exercised in a way that undermines other people's rights. It encompasses a law of general application, where the law must be applied similarly or equally to any other citizen in the country. For instance, Section 27 of the POSA, which was recently repealed and replaced by the MOPA, cannot be justified in a democratic and open society, despite being laws of general application. Section 87 of the Constitution provides limitations that may be invoked during a period of public emergency, to the extent that the limitation is temporal, therefore it calls for a sunset clause, as the limitation cannot be permanent.

FREEDOM OF ASSEMBLY

FREEDOM OF EXPRESSION

NAMIBIA



The Constitution in Namibia under Article 21 guarantees all persons in Namibia “freedom of speech and expression” and “freedom to assemble peaceably and without arms”, yet these rights are increasingly being undermined in practice with authorities using tactics to reduce the number of protests, restricting where people may protest, and charging protesters a fee to mobilise.

Protestors are also targeted by officials as they arbitrarily arrest and detain for lengthy periods, climate leaders and human rights defenders who are known and popular in specific region for their action. These practices limit, directly and indirectly the right to protest in Namibia.

The right to freedom of expression which is protected in the Namibian Constitution under, Article 21 of Chapter 3 states that all persons shall have the right to freedom of speech and expression, which includes freedom of the press and other media. The country in its political legacy and current landscape has not robustly used similar tools of expression as its Southern African counterparts.

This is due to Article 22 of the Namibian Constitution, which imposes significant limitations on fundamental rights and freedoms, including freedom of expression and media freedom. As a result, civil society organisations across the country have raised concerns over the potential threats to freedom of expression over the years, along with the actions of state actors.

This has had a chilling effect on communities who wish to express themselves against political parties, politicians and the conduct of the state as whole, to prevent SLAPP suits and defamatory cases against them. The use of law to silence climate leaders in Southern Africa have become increasingly common, particularly targeting traditional and mining-affected communities.

04.1



RIGHT TO FREEDOM OF EXPRESSION

The **African Charter on Human and Peoples' Rights (ACHPR)**, in Article 9, protects the right to free expression. This means that everyone has the right to share their opinions and access to information. It's an important right because it allows people to participate in society, stand up for themselves, and hold leaders accountable. Freedom of expression also helps promote democracy and fairness across Africa.

In the **Southern Africa** freedom of expression is a key part of our democracy and is protected by all national Constitutions. Courts in the region, including Constitutional Courts, have defended this right, especially when it comes to speaking out on public issues. Even speech that criticizes those in power is protected, as long as it doesn't promote violence, hate, or discrimination.

Sometimes, freedom of expression can be limited, for instance to protect public safety, national security, or other people's rights. However, these limitations must follow clear rules: they should be legal, necessary, and reasonable. The **ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa** warns against vague or excessively stringent restrictions that could silence individuals or prevent them from speaking out.

While freedom of expression is your right, it's important to recognise that some tactics are used by governments and private actors to limit it. Please see the next page for examples to watch out for.





LEGAL TACTICS USED BY THE STATE AND CORPORATIONS TO SUPPRESS YOUTH CLIMATE JUSTICE CLIMATE LEADERS

Legal Repression Tactics

When exercising their rights, in particular, civil and political rights climate leaders need to be alive and aware of the repressive tactics that may be implemented against them. Repression tactics and strategies may come, both from the private and public actors. The tactics are usually implemented through the use of the law, mostly through malicious legal processes.

SLAPP Suits

SLAPP suits (Strategic Litigation Against Public Participation) are baseless legal actions that aim to intimidate, threaten, and dissuade climate leaders from speaking out against private actors (companies). These are difficult to identify because they are not recognised in terms of the law in most Southern African countries and generally in the global south, and because they have similar traits with other legal mechanisms used to quash action on issues in the public interest.

Prohibitory Interdicts

The purpose of interdicts are to either prohibit or compel conduct. They are often used against climate leaders, to stop them from exercising their rights. These interdicts are pre-emptive and seek to dampen action and dissent.. Their legality is highly questionable.

Defamation Cases

Defamation suits are legal actions used to suppress action by claiming that an climate leader's statements have been harmful to someone, organisation, or a company. Whilst the nature of the case may have some merit and not completely meritless, they are used against climate leaders. Defamation is when one complains of their name and reputation being tainted due to an act or omission of another. If not a natural person, it would have to be an institution that is legally recognised by the law as having legal standing. The key aspect of defamation is that it needs to result in tangible loss, which must be directly linked to the act/omission of the defendant. The law further holds that one cannot be defamed for something that is true or factual. The act of defamation needs to be a misrepresentation of factual information for it to succeed before a court of law. Defamation cases are also notorious for their link to legal costs and monetary compensation claimed by the Plaintiff, which needs to correlate with the loss incurred.



RIGHT TO FREEDOM OF ASSEMBLY

The **ACHPR** says everyone has the right to protest as part of their freedom to speak, come together, and organise (Articles 9, 10, and 11). This means that people can express their views, join groups, and participate in peaceful gatherings to stand up for what they believe in. These rights are important for democracy and protecting human dignity.

In **Southern Africa**, the right to protest is also protected by national constitutions and court decisions. For example, the **Southern African Development Community (SADC) Protocol on Gender and Development** highlights that peaceful protests are important for promoting fairness and justice. Regional courts, like the SADC Tribunal (before it was suspended), have said governments must respect and protect peaceful protests because they are key to holding leaders accountable and promoting good governance.

There are instances where limits can be placed on protests to protect public safety, national security, or other people's rights. However, these limits must be fair, necessary, and not destroy the purpose of the right to protest. The **ACHPR Guidelines on Freedom of Association and Assembly in Africa** urge governments to support peaceful protests rather than obstruct them, ensuring they adhere to regional human rights standards.





LEGAL STRATEGIES FOR CLIMATE JUSTICE CLIMATE LEADERS IN SOUTHERN AFRICA

1. **Legal Challenges:** Climate leaders can challenge the constitutionality of specific provisions in the Police Act and Public Gathering Proclamation that infringe on the right to freedom of assembly. They can do this through public interest litigation, seeking court rulings that clarify or overturn these provisions.
2. **Advocacy and Awareness:** Climate leaders can raise awareness about the problematic areas among the public, media, and policymakers. By highlighting the negative impact of these provisions on civil liberties and democratic rights, climate leaders can build public support for reform.
3. **Engagement with Authorities:** Climate leaders can engage with law enforcement authorities, such as the police and relevant government agencies, to advocate for changes to the laws and regulations governing public gatherings. This could include submitting proposals for legislative amendments or participating in consultations on police practices.
4. **Capacity Building:** Climate leaders can provide training and resources to communities and civil society organisations on their rights related to freedom of assembly. This can empower individuals to exercise their rights effectively and challenge unlawful restrictions.
5. **International Advocacy:** Climate leaders can engage with international human rights bodies and organisations to raise awareness about the situation in Namibia and seek support for reform efforts. This could include submitting reports and participating in international forums on human rights.
6. **Monitoring and Documentation:** Climate leaders can monitor, and document incidents of police abuse or misuse of powers related to public gatherings. This information can be used to build a case for reform and hold authorities accountable for their actions.
7. **Community Mobilisation:** Climate leaders can mobilise communities to peacefully protest unjust restrictions on public gatherings. By organising peaceful demonstrations and rallies, communities can demonstrate the importance of the right to freedom of assembly.





RESOURCES FOR CLIMATE JUSTICE CLIMATE LEADERS

Right2Protest Protest Guide

<https://protestguide.org.za/>

Centre for Applied Legal Studies Social and Labour Plan Toolkit

<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/SLP%20Community%20Toolkit%202%20March%202017.pdf>

Right2Protest Private Security Guide

<https://twitter.com/ProtestZa/status/1595355297446518784/photo/1>

Southern Human Rights Defenders Network Guide

<https://southerndefenders.africa/resources/#holisticsecurity>

African Defenders Emergency Contact and Safe Chat

<https://defenddefenders.org/get-help/>

Frontline Defenders Emergency Line and Safe Chat

<https://www.frontlinedefenders.org/en/emergency-contact-human-rights-defenders>

Centre For Studies of Violence and Reconciliation (Trauma Clinic)

<https://www.csvr.org.za/>

Southern African Resource Watch

<https://securesustain.org/abstract/southern-africa-resource-watch-sarw/>

<https://www.sarwatch.co.za/resources/#>

Benchmarks Foundation

<https://online.fliphtml5.com/xjgia/rfap/#p=1>

[SM1]extractive
[SM2]Relevant laws
[SM3]For instance,