



# The State of Protest Report

Right2Protest Project report on the state of protest in South Africa

2020 – 2021



# Acknowledgements

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The Right to Protest Project (R2P) wishes to thank all those who have supported the work outlined in this report. In particular, R2P would like to thank its funding partners at the Open Society Foundation for South Africa and the Wallace Global Fund for their guidance and support. Without their financial assistance, this report and the work of R2P outlined here would not have been possible.

R2P also sends its appreciation to the steering committee that provides leadership and guidance to the R2P team. The steering committee consists of the Centre for Applied Legal Studies (CALS), Community Advice Offices South Africa (CAOSA), the Freedom of Expression Institute (FXI), Lawyers for Human Rights (LHR) and the Right2Know Campaign (R2K).

R2P further thanks its ordinary members for their support, devotion and continued partnership in the network.

R2P is grateful to the following individuals who worked tirelessly to produce this report:

Busisiwe Zasekhaya (Project Co-ordinator)

Omhle Ntshingila (Communications and Engagement Officer)

Vuyokazi Yokwe (Attorney)

Stanley Malematja (Former Attorney)

**WALLACE  
GLOBAL FUND**



**OPEN SOCIETY FOUNDATION  
FOR SOUTH AFRICA**





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# SECTION 1



# 1 Introduction

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## 1.1 What is the Right2Protest Project?

R2P is a coalition of civil society organisations that aims to protect and advance the constitutional right to protest through advocacy and litigation. Founded in 2016, the Project is housed at the Centre for Applied Legal Studies and based at the University of the Witwatersrand, though it operates nationally. It is staffed by a project co-ordinator, a communications and engagements officer and an attorney. The Project has a dedicated toll-free hotline number that protesters can use to enquire about their right to protest and obtain legal advice as well as request legal assistance. The Project also provides communities around the country with workshops informing them of their right to protest and legal procedures that need to be followed in exercising this right. R2P acknowledges the *pro bono* legal assistance provided by its member organisations, civil society organisations and private attorneys as part of this project in the reporting period.

## 1.2 What is the vision of R2P?

R2P envisions a South Africa and a world where we all have the right to protest, peacefully and unarmed; and where this right is regulated by the authorities in compliance with the law, in pursuance of an open, accountable and participatory democracy. R2P aims to achieve this vision through providing non-partisan, peace-building, intersectional and innovative interventions in order to defend and advance the realisation of the constitutional right to assemble, particularly for poor and marginalised communities. R2P seeks to be a reliable and reputable coalition that offers quality legal services and assistance to protesters through either the R2P attorney or the R2P referral network. R2P also hopes to provide a collaborative platform for activities as well as people who defend and advance the right to protest.

## 1.3 What is the current state of protest?

Since the onset of the COVID-19 pandemic, we have seen activists using different forms of protest in order to comply with the various lockdown regulations. We have also noted an increase in those seeking to protest proactively reaching out to organisations such as R2P in order to acquire information on the limitations placed on protests due to the regulations. In 2021, R2P has received fewer requests for legal assistance from people arrested during protest action and this can likely be attributed to the proactive approach that those exercising their right to protest have taken to ensure compliance with the law.

Since South Africa has moved to lockdown alert level 1, we have generally seen an increase in protest action across the country. However, we remain concerned by the manner in which the misinterpretation of

lockdown regulations read with the Regulation of Gatherings Act continues to be used to stifle protest. This report reflects on the state of protest in South Africa in 2021, drawing on the work conducted by the Right2Protest Project. The thematic areas of this report include the misapplication of the Regulation of Gatherings Act, excessive use of force by private security and police forces, the conduct of responsible officers and an analysis of the July unrest.

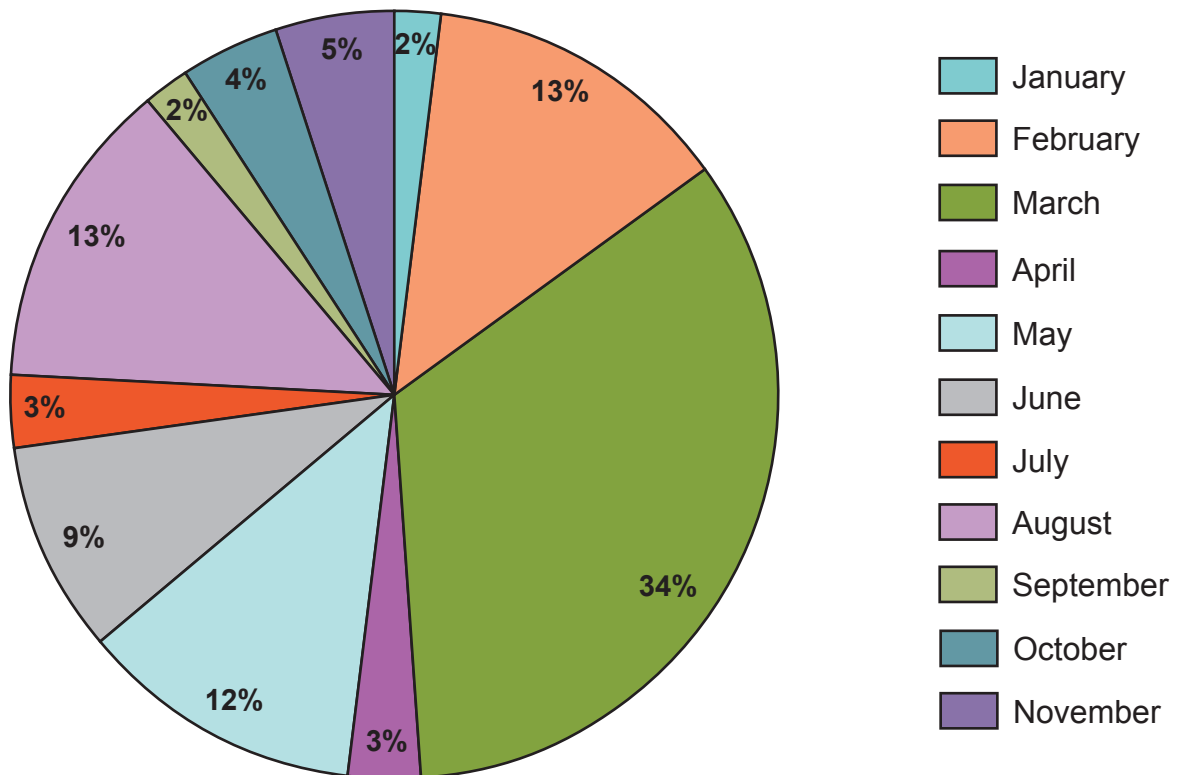
## **1.4 What trends has R2P observed?**

The section that follows will go into more detail about the observations from the reporting period, as well as provide case studies to illustrate them. The major trends in our work for this period include:

1. The largest number of calls that R2P received came from the Free State followed by the North West and Limpopo Provinces. This is a shift from the previous reporting period where most of the calls received came from Gauteng.
2. R2P received the largest number of calls in March this year, which can be attributed to the student protests taking place during that month.
3. We have also noted a significant decrease in the number of calls for legal assistance for arrested protesters.
4. The most common issues identified on our hotline are the following:
  - Fee increments in universities
  - Requests for information and support on how to organise a protest under the current lockdown regulations
  - Requests for assistance when dealing with municipal officials hindering the notification process
  - Reporting private security company violations
  - Requests for assistance with interdicts
  - Climate justice
  - Universal Basic Income Grant
  - Issues related to Expanded Public Works Programmes and their implementation



***Calls per month***



# SECTION 2



## 2 Case studies and observations

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This section provides case studies and observations from the work done by the Right2Protest Project in 2021. While the right to protest is a constitutionally guaranteed right, since the inception of the Project, we have identified common themes aimed at stifling this right.

### ***Misapplication of the Regulation of Gatherings Act***

The misapplication of the Regulation of Gatherings Act and its misinterpretation by responsible officers remains one of the biggest obstacles for those seeking to exercise their right to protest. This year, for example, R2P assisted the Vaal Environmental Justice Association (VEJA) with an arbitrary requirement by a municipal manager who insisted that VEJA obtain written confirmation from the person who would be receiving the memorandum that they would hand over at the protest, essentially acknowledging the protest action. The municipal manager threatened that failure to obtain the written confirmation would result in the protest being prohibited, although this is not a lawful requirement.

#### **Case Study**

#### **JMPD requires a protest ‘fee’**

The City of Johannesburg is one of the few municipalities which essentially charge protesters a fee to protest. Those seeking to exercise their right to protest in this municipality are required to pay a fee which the City refers to as ‘planning costs’. In the past, protesters have been warned that the failure to pay this fee means that there won’t be any law enforcement officers present at the protest. From our experience, the amount varies depending on the type of organisation convening a protest and the number of protesters expected. However, we have not seen a clear guideline that outlines how the City of Johannesburg calculates the fee which it charges protest organisers.

The Right2Protest Project is of the view that this practice is unconstitutional and that it infringes on the rights of those seeking to exercise their right to protest. This practice discourages marginalised communities from voicing their dissent as they do not have the means to pay this amount. In response to this, R2P’s member organisation the Centre for Applied Legal Studies (CALS) is representing the Right2Know Campaign in litigation against the Johannesburg City Manager and the Johannesburg Metropolitan Police Department’s Chief of Police.

On the page that follows is an example of an invoice from the City of Johannesburg received by organisations that R2P assisted in 2021.

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<b>Please email the proof of payment including the REFERENCE NUMBER to:</b> <b><i>(If you have any questions regarding this quotation, contact the following JMPD Finance Officials):</i></b> <b>JMPD Finance Officials</b> <b>Attention: Tanya Hobbs and Mara Pienaar</b> <b><a href="mailto:TanyaH@joburg.org.za">TanyaH@joburg.org.za</a></b> <b><a href="mailto:MaraPie@joburg.org.za">MaraPie@joburg.org.za</a></b> <b>Telephone No.: 011 490 1805 and (011) 490 1626</b>																																																
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## Excessive use of force by private security companies

The Right2Protest Project continues to receive calls related to human rights violations by private security companies during protest action. We have noted with great concern the manner in which private security companies are used to target activists, especially in mining affected communities. We have found that the mechanisms in place to report private security companies for their conduct are not sufficient. Often, in



these communities, activists are unable to open a case against private security personnel due to collusion between mining companies, security companies and the police. We have, for example, received reports of officials from the South African Police Services (SAPS) in these communities refusing to issue injured activists with J88 forms, which are used to complete medico-legal reports for evidence when laying charges like assault.

In the last year, we have noted reports regarding private security personnel using excessive force against protesters in Gauteng, Kwa-Zulu Natal, Limpopo and the North West. All cases reported to the Right2Protest Project have related to mining companies.

### **Case Study**

### **Complaint against private security**

In February 2021, The Right2Protest Project lodged a complaint with the Private Security Regulatory Authority (PSiRA) after receiving numerous reports of a private security company using excessive force against protesters in Mononono, North West. R2P was first contacted about these incidents by Mining Affected Communities United in Action (MACUA). Since February, we have not had any substantial feedback from the Regulatory Authority. When following up with a consultant from the Regulatory Authority, we were told to be patient and wait for the individual in charge of our complaint to communicate with us.

### ***Excessive use of force by South African Police Services***

The SAPS Standing Order on Crowd Management obliges police to avoid the use of force at all costs and instructs members deployed for a given operation to exercise the highest degree of tolerance. According to section 11, the use of rubber bullets is prohibited in crowd management unless less restrictive means are ineffective to disperse the crowd. Since rubber bullets can cause serious bodily harm, they must be used only as measure of last resort. Further, the Ministry of Police has promulgated policies and guidelines on the policing of public protests, gatherings and major events.

These measures seek to ensure that the policing of gatherings is consistent with the Constitution, respond to the demands of effective and peaceful crowd control, and take an approach that does not promote tension between the police and the community and does not promote the violence it seeks to control in public spaces. Unfortunately, in our experience, police officers do not always follow the guidelines set out from them, may not be adequately trained in crowd control measures and resort to brutal responses to protest long before they have exhausted all other means of ‘dispersing’ groups.

## Case Study

### Wits University student protest

In March 2021, students at the University of the Witwatersrand staged a protest calling for the University to allow students to register despite historical debt. As protest action moved into Braamfontein, police began firing at protesting students. A man named Mthokozisi Ntumba was caught in the line of fire, shot at close range by members of the police service and died as a result. Mthokozisi Ntumba was an innocent bystander who had been in Braamfontein for a medical appointment. His death at the hands of the police highlighted what civil society organisations have been warning against for many years: SAPS members sent out to police protesters are ill-equipped to do so without resorting to excessive force. Furthermore, the SAPS National Instruction fails to provide clear guidelines on situations such as these.

Subsequent to the protest action, the Right2Protest Project submitted a letter of complaint to the South African Human Rights Commission regarding the excessive use of force by SAPS during this protest – along with our partners at Lawyers for Human Rights, Sonke Gender Justice, the Socio-Economic Rights Institute of South Africa, the African Policing Civilian Oversight Forum and ActionAid South Africa.

## *Conduct of responsible officers*

## Case Study

### #CodeRed march to Constitution Hill

In August 2021, the Right2Protest Project joined the #CodeRed feminists in solidarity and action. #CodeRed is a collective of feminists that came together at the height of the uprising in July. In August, the #CodeRed collective organised protests across South Africa to mobilise for a feminist response to the unrest and its underlying causes by our government, and to advocate for a Universal Basic Income Grant (UBIG), an end to corporate and government looting, and a move towards a care economy amongst other things.

The R2P team was on the ground at the #CodeRed protest outside the Constitutional Court. With the assistance of the Right2Protest, the convenors of the protest obtained special permission to gather outside the Court as required by the Regulation of Gatherings Act. Despite this, members of the #CodeRed collective who gathered there on the day were met with hostility by members of SAPS who would not allow #CodeRed to gather within 100 metres of the Court as per the order granted earlier by the Magistrates Court. Engagements between the Right2Protest, the convenors of the march and the police were fruitless and protesters consistently met with aggression from police who, it seems, were not well versed with in the relevant laws around protest. While trying to engage with the members of SAPS present to find a solution that was amicable, officers threatened to arrest the convenors and the Right2Protest team.

The type of attitude displayed by SAPS officers at the #CodeRed march is one of many examples of how protesters are treated as 'second class' citizens and are confronted with great hostility even when they try to comply with the law. This contributes to the escalation of tension during protests which often leads to clashes between protesters and the police.

## ***July unrest***

On the 29<sup>th</sup> of June, Acting Deputy Chief Justice Sisi Khampepe handed down a judgment ordering former President Jacob Zuma's imprisonment for contempt of court. Within ten days, on the 8<sup>th</sup> of July, the former President handed himself in at Esccourt Correctional Services. Many supporters of former President Zuma were disgruntled with the outcome of the judgment, especially those residing in Kwa-Zulu Natal.

This led to protest action calling for the release of the former President starting in Durban, Kwa-Zulu Natal. The protest rapidly spread across the province and to other parts of the country, drawing much media and political attention. The protests resulted in weeks of unrest in South Africa which were a result of both the country's current political and socio-economic conditions. The unrest developed into sabotaging industrial factories by some elements on the one hand, and looting malls for basic needs and essentials by those who were from disadvantaged communities on the other. This political conundrum took place at a time when COVID-19 had further increased unemployment, poverty and despair and the special relief of distress grants had come to an end despite the ongoing state of disaster.

Since the beginning of the pandemic, the country has seen an expansion in class division, especially in an increased gap between the richest and the poorest populations in the country. In addition, the unrest also opened room for further forms of racial discrimination, which was witnessed in Phoenix, KwaZulu Natal, in the attacking and killing of the Black population suspected of being 'looters'. Many bodies are reportedly still being recovered from sugar cane plantations and in nearby rivers. This has further inflamed racial tensions between the different communities that reside in the area. Many suburban locations were shut down by groups who racially profiled those coming in and out, making it difficult for Black populations to get access to food or medicine.

These inequalities, which are constantly the basis of much protest action in the country, continue to be one of the most popular driving forces that mobilise mass political protest. This political event went beyond the call for the release of the former President, and was rather an indication of a distressed majority living below the poverty line. In unpacking what transpired during this time, we should focus on the conditions that led to the unrest, given the lack of service delivery and dissatisfaction with the current administration. Since this was a direct result of the socio-economic conditions that are a reality for millions of people

living in South Africa, as an organisation we stand by the analysis that the theft of basic needs throughout the country during July 2021 was a direct outcry of a population living in poverty.

The political spectrum in post-Apartheid South Africa has grown to be volatile, with party politics becoming the epicentre of our political economy. Furthermore, the current culture of corruption in the country has led to a bitter taste in the mouths of those who have experienced a social contract with a government that does not respond adequately to their needs before bringing down the full might of the law. Although it is essential to maintain the rule of law for the protection of human rights, we cannot deny that July 2021 was a canvas of where the country's political state is heading if protest demands like improved service delivery and fulfilling the basic needs of all communities are not met.

It is not enough that our idea of protest action only be restricted to acceptable forms of 'resistance', but rather it must be viewed differently in the current political arena. July 2021 expanded the meaning of 'protest' in current public discourse, by revealing several ways in which groups respond to economic or political crises that threaten their livelihoods. The media described the July unrest as an 'insurgence', the government categorised it as state of emergency and industries as a security threat. These interpretations deserve more exploration in terms of how different institutions currently view protest action in South Africa, leading R2P as an organisation to call for an expansion of the vocabulary and the meaning of 'protest' in the constantly changing political landscape. Even though July 2021 was not anomaly to any state facing a leadership crisis, it is no longer enough to say that protest resides in the 'Politics of Toyi-Toyi' alone.

It is important that July 2021 is recognised as a part of South African protest history. To further advance the struggles of those seeking to improve the lives of many in the country, we must understand that the law cannot hold those responsible for societal ills accountable alone, but needs to ensure that redress of previous injustices is happening on the ground. The sentencing of political leaders is not enough if the population is not being simultaneously empowered by that state. Therefore, protest action as enshrined in section 17 of the Constitution is important to uphold, as it has the ability to keep each and every apparatus of the state accountable to the people and the people alone. It goes without saying that protest action is still as relevant in today's political landscape as ever, but must be viewed in the context of the time. As a symbol of resistance, autonomy and accountability, July 2021 was inevitably a political event that continued to advance the reasons why protest action should be protected from ill-intended political purposes.



# SECTION 3



# 3 Conclusion and recommendations

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The Right2Protest Project makes the following recommendations:

## 1. Recommendation to Municipalities

Municipalities and their officials are responsible for ensuring that those seeking to exercise their right to protest by following the requirements of the Regulations of Gatherings Act are able to do so with adequate support by local authorities. Therefore, the Right2Protest Project recommends that municipalities invest in continuous training of officials on the requirements of the Regulation of Gatherings Act to avoid arbitrary requirements by their officials which infringe on the rights of protesters.

The Right2Protest Project would like to take this opportunity to acknowledge the Tshwane Metropolitan Police Department (TMPD) for the processes they have in place in respect of gatherings, which in our experience are efficient and facilitate communities exercising their right to protest.

## 2. Recommendation to South African Police Services

We reiterate our calls that SAPS caution their members against the excessive use of force when policing protests.

## 3. Recommendation to Civil Society

We are grateful for the continued support from civil society organisations. May we all continue to work towards protecting the right to protest.



**Right2Protest Hotline: 0800 212 111**

Call this number for legal advice and support for the right to protest

Connect with us on Facebook and Twitter at [@ProtestZa](#)

Visit [www.r2p.org.za](http://www.r2p.org.za) for more resources