

# Freedom to do?

*On election day about 60 members of the Landless People's Movement (LPM) were arrested for demonstrating in an informal settlement close to a polling station. Their protests formed part of their No Vote No Land campaign. The Constitution allows freedom of expression and assembly, but are these rights absolute? Do these arrests strike at the heart of the Constitution? The **Labour Bulletin** spoke to **Simon Ndungu** about the laws governing the freedom of expression and assembly.*

**T**he new Constitution provides the legal space for people to protest and express themselves. Is it enough to have the framework? Developments in Zimbabwe, one advocate argues, clearly illustrates that the political will to respect the Constitution is critical. He says it is understood that the Zimbabwean Constitution contains similar rights to those enshrined in the SA Constitution. However, its institutions of state do nothing to ensure that government complies.

Ndungu explains that the starting point for determining the laws governing the right to the freedom of expression and assembly is the constitution. The SA Constitution, Ndungu says provides every person the right to the freedom of expression (section 16) while section 17 provides that every person has right to picket – peacefully and unarmed. These rights are however, not absolute. Section 36 of the Constitution is the general limitations clause that provides that every right may be limited as long as

that limitation is justifiable and reasonable in an open and democratic society.

Against the Constitution, Ndungu says, we now have to look at the Regulation of Gatherings Act (in 1993) which regulates all public gatherings. Ndungu says this Act purports to give effect to all individuals who wish to assemble and express themselves. The law stipulates that any gathering of 15 or more people must give seven days notice to the local authorities before the planned gathering. Ndungu believes that the notice is to inform the authorities and should not constitute an application for permission, which he believes is the way the law is being interpreted. The authorities can however, reject a notice if it is given 48 hours before the event.

In view of the actions of the LPM, one would have to consider the provisions not only of the Regulation of Gatherings Act but also the Electoral Act. Section 108 (a) of the Act bans all political gatherings and demonstrations on election day, while section 108 (b)

has a qualification stating the prohibition of demonstrations within the boundary of a voting station.

The LPM members have been charged with violating section 108 (a) of the Act and the Regulation of Gatherings Act as the organisation did not apply for permission to hold the gathering. Ndungu says that over the last two years the Freedom of Expression Institute (FXI) has been planning to challenge the constitutionality of the Regulation of Gatherings Act (which gives effect to the freedom of expression) on a number of grounds, including the provision relating to the notification of intentions to hold a gathering. As part of building its case, FXI might use the LPM case or a previous case where members of the Anti-Privatisation Forum (APF) were arrested on the day of the opening of the new Constitutional Court.

*Ndungu is from the Freedom of Expression Institute (FXI) which can be contacted on (011) 4038403.*