



POLITICAL REPRESSION AGAINST SOCIAL MOVEMENTS IN SOUTH AFRICA

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and Democratisation in Africa

by

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DEDICATION

*“All of the credit is due to Allah. Only the mistakes have been mine.” – Al Hajj Malik El-Shabazz
‘Malcolm X’ (Extract from ‘The Autobiography of Malcolm X’)*

In every success I have, it has never been through a solo effort. Everything I have and done will do always come from communal efforts. In no particular order, I dedicate this dissertation to the people I would like to thank:

Allah, for the blessings and mercy He has conferred on me on all times;

My darling mother, Sonto, who has selflessly raised me and generously loves me. Thank you for always supporting my dreams, however trivial or significant;

My forever cool Malume Jerome, who has never hesitated being with me every step of the way (Jah bless);

My amazing siblings – Sakina, Nelisiwe, Mholi and Tahera – who are my backbone; and

My nephew, Ali Ridha and nieces, Fati, Muntu and Zay-Zay – I do it all for you.

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Every single person that has kept me in their good wishes and thoughts.

This dissertation is mainly written in remembrance of:

Every activist/social movement that continues to be marginalised and who recognises the struggle discontinues with us;

Every soul that has departed as a result of political repressive – *lala ngoxolo*. May your bravery live in us as we continue with the revolutionary movement;

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Izandla ziyagezana. Kubongwa ok'ncane, kubongo ok'khulu.

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ACRONYMS AND ABBREVIATIONS

AbM	Abahlali baseMjondolo
ACHPR	African Charter on Human and Peoples' Rights
ANC	African National Congress
COJ	City of Johannesburg
COSAS	Congress of South African Students
COVID	Coronavirus Disease
COSATU	Congress of South African Trade Unions
FMF	#FeesMustFall
HRD/s	Human Rights Defender/s
ICCPR	International Covenant on Civil and Political Rights
IFP	Inkatha Freedom Party
IPID	Independent Police Investigative Directorate
KGS	Khulumani Support Group
KZN	KwaZulu Natal
MEC	Member of the Executive Council
MMC	Member of the Mayoral Committee
NDP	National Development Plan
NGO	Non-Governmental Organisation
NP	National Party
NSMS	National Security Management System
NUMSA	National Union of Metalworkers of South Africa
NW	Neighbourhood Watches
PAC	Pan African Congress
PPE	Personal Protective Equipment
SACP	South African Communist Party
SADF	South African Defence Force
SAHRC	South African Human Rights Commission
SAITF	South African Informal Traders Forum
SAP	South African Police
SCC	State Security Council
SERI	Socio-Economic Rights Institute

SOE	State of Emergency
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front
UDHR	Universal Declaration on Human Rights
UN	United Nations
WHAM	Winning the Hearts and Minds
WITS	University of the Witwatersrand

1) INTRODUCTION

1.1) Brief Background

With its unique history marred by oppression, South Africa is no stranger to being subjected to a myriad of adversities. In responding to these adversities, numerous social movements have formed in defence of democracy and protection of human rights. Currently, one of the greatest adversities that social movements face is political repression. Political repression is defined as the systematic violation of civil liberties and human rights of groups and/or individuals.¹

Political repression, in observance, seems to be a common concern in the Southern African region. Beyond South Africa, eSwatini and Zimbabwe are two countries that also seem to be facing the same predicament. In eSwatini, the monarchy and state security apparatus are the enforcers of political repression with 2021 witnessing some of the most aggressive tactics used, that targeted urban activists in some parts of the country.² Moving a bit north, in Zimbabwe, political repression has been experienced since 1988, when Mugabe's government organised violence and torture, through military operations, after the Food riots had occurred.³ Even now, these two countries, including South Africa, continue to have their social movements repressed and their activists are continuously targeted, with some being assassinated.

During the days of apartheid, political repression was a fundamental tool that upheld the racist and discriminatory system that the apartheid government utilised. This occurred through active policies of control, intimidation and segregation as well as policies of intentional neglect that left the Black majority with limited access to crumbling network of inadequate services.⁴ The depth of such repression was also made apparent through confining Black people to 'homelands' and through the torture and killings of Black political activists.⁵

In 1994, South Africa became a democracy. However, adoption of this progressive and futuristic concept did not nullify practices that have been imported from the continued legacy of apartheid. The nimety of occurrences that serve as a conduit between the current government and its predecessors display the similarities in how both have enforced political repression, despite their authorities being based on political ideologies. Still, at the height of systemic advancement in the country, social movements and individuals battle with political repression when they present a dissenting view from the state or expose inequality that is created by the state and other actors. This can be seen through a plethora of examples such as *Abahlali base Mjondolo* (AbM), #FeesMustFall, the Marikana Massacre, the assassinations of individual, community activists etc. In terms of student movements, Jane Duncan observes that the right

¹ PM Regan & EA Henderson 'Democracy, threats and political repression in developing countries: are democracies internally less violent?' (2002) 23 *Third World Quarterly* 120.

² V Laterza & C Golomski 'Customary nationalism in crisis: protest, identity and politics in eSwatini' (2023) 41 *Journal of Contemporary Studies* 121.

³ O Garcia-Ponce & B Pasquale 'How Political Repression Shapes Attitudes Toward the State: Evidence from Zimbabwe' (2015) 7.

⁴ EJ Gomez & J Harris 'Political repression, civil society and the politics of responding to AIDS in the BRICS nations' (2016) 31 *Health Policy and Planning* 61.

⁵ n 4 above.

to protest in South Africa is not just centred on student protests but also extends to the activities of social movements and those who are repressed by the state and police forces.⁶

1.2) Problem Statement

Political repression undermines democracy and accountability. A state that does not politically repress its citizens ensures that such a nation is able to willingly participate in all its democratic process. It further hampers on the advancement of human rights and democracy. Politically repressive states are characterised as having multiple instances of torture, extrajudicial killings, forced disappearances etc. This allows for the state (and other non-state actors) to act with great impunity and total disregard for the rule of law and human rights. For there to be no hindrance to democracy, the state (and other responsible actors) should ensure that opposing views and positions can be presented without any fear of reprisals or threats. This is important so the fundamental values of the Constitution such as democracy and the protection of rights are respected.

1.3) Research objective

The aim of this study is to investigate the ongoing political repression in South Africa in the democratic era from the early 2010s, whilst also creating the link that it has in downplaying democracy and violating human rights. Whilst exposing and denouncing political repression, the study also provides solutions that are pertinent and germane to changing the *status quo* and to secure justice for that have been impacted by political repression.

1.4) Research Question

The objective of this dissertation is to investigate how political repression of social movements largely contributes to the weakening of democracy and human rights in South Africa. The main question is to investigate how political repression weakens democracy and human rights.

The sub-questions are:

- i. How does political repression manifest itself?
- ii. What are the underlying motivations for political repression?
- iii. Why does the state and non-state actors have a vested interest in repression and the implications of it in a South African context?
- iv. What steps can be taken to combat and decrease continued political repression?

1.5) Literature review

During the apartheid period, one of the main ways in which the oppressive system was able to thrive was because of political repression. This repression allowed for the apartheid government to act with great impunity to commit one of the greatest crimes against humanity. With the rise of democracy in 1994 and with the ANC's (African National Congress) majority selection to govern, political repression

⁶ FGK Butteli & CL Bruyns '#FeesMustFall as social movement and emancipatory politics? Moving towards an apocalyptic theological praxis outside the limits of party politics' (2017) 73 *HTS Teologiese Studies/Theological Studies* 2.

was assumed to have been brought to an end. Today, political repression continues to exist. The ANC, as the dominant hegemony in South Africa, has objectively failed to address the rising issues of inequity, landlessness and poverty. This has left the millions of its constituents, who were once hopeful for it to be an effective government, to have become disillusioned and incensed by the non-response and inaction to these issues. Throughout the country, communities have mobilised and banded together and formed social movements that push for inclusive and meaningful forms of direct and participatory democracy.⁷ The state, however, has them branded these groups as criminal, subjected them to severe political repression and have further marginalised them.⁸

However, it must also be noted that the state is not the only party has vested interest in ensuring that certain social movements are repressed. Other non-state actors are beneficiaries to political repression as this allows for them to succeed in terminating and discontinuing the potential impact that social movements could have in relation to their (monetary) interests. This dissertation will explore how the role the ruling party as well as other actors are culpable in weakening democracy and violating human rights.

1.6)Methodology

This dissertation intends to adopt one research method: full desk research. It will incorporate a range of different literature on political repression such as journal articles and commentaries by South African and other international authors as well as literature that details the forms of political repression that particular social movements (such as *Abahlali baseMjondolo*) and individuals (such as whistle blowers) face, that can be found in media and publically-accessible reports (such as those written by human rights organisations). It will also utilise legal instruments that are relevant to political repression of individuals and activists.

1.7) Limitations of the study

One of the limitations of the study is that it will only focus on particular and selected social movements and not provide a holistic view of all social movements. It will also only focus on one form of repression, which is political repression. Another limitation to the study is that interviews that were meant to be included could not be incorporated due to obtaining of ethical clearance in time.

1.8)Structure

This dissertation is completed over six chapters. Chapter 1 will focus on providing an introduction to the topic, analyse and discuss the research problem and questions, state the objective of the study and further give a succinct understanding of political repression. Chapter 2 will give an overview of South African political repression history by exploring the anatomy of political repression and further delving into how the apartheid government enforced political repression. Chapter 3 will then analyse political repression of the current state and other actors and display the different forms of political repression that

⁷ T Madlingozi 'Post-Apartheid Social Movements and the Quest for the Elusive 'New' South Africa' (2004) 34 *Journal of Law and Society* 81.

⁸ n 7 above.

activists and social movements are subjected to at present. Chapter 4 will highlight the necessity of social movements, by exploring the power and potential that social movements have as actors for change and also provide the legal protection framework from an international, regional and domestic perspective. Chapter 5 will deal with case studies that focus on profiling social movements and individuals that have faced and continue to face political repression from both the state and non-state actors. Lastly, Chapter 6 will recommend some possible solutions that could assist in curbing and ending political repression and conclude the study.

2) AN OVERVIEW OF SOUTH AFRICAN POLITICAL REPRESSION HISTORY

2.1) Introduction

The 10th of May 1994 will always be a day eternally etched into South African history. Almost every South African and the entire world had their eyes set on the historical occurrence that happened at the Union Buildings. In a 90-minute ceremony, the country's first Black president, the famed Nelson Mandela, took his oath of office and was sworn in as the country's president. Clad in a dark blue suit, in closing his inaugural speech, Mandela emphatically proclaimed that "Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world." Received as a promise of undisturbed freedom and unbridled liberation, the promise would soon be disavowed and Mandela's words rendered nugatory and redundant.

The Rainbow Nation is what South Africa has been dubbed as since the conception of its democracy, displaying its diverse and hetero-chromatic society. However, before 1994, the country experienced one of the most insidious and repugnant systems called apartheid. The system's name finds its roots in the Afrikaans language and is defined as 'apartness'. After 1994, with the bold and resolute international condemnation of apartheid, there was renewed hope and belief that past heinous aggressions committed by the apartheid government would never reoccur or resurface. With the strong belief that the country became a homochromatic utopia, the ANC was entrusted, as the first democratically-elected government, to ensure that South Africa does not once again become a place synonymous with political repression and replete with human rights violations. With one of the world's most progressive Constitutions, one would naturally believe that South Africa would be a leader in advancing human rights not just theoretically and on paper but also in reality. Disappointingly, this is not the case, even in the dispensation of a now almost thirty-year old democracy. Instead, a recurrence of old and the creation of new human rights violations have dominated the system. Social movements that are premised on defending and protecting human rights are subjected to political repression at the hands of both the state and other actors continue in defending and protecting human rights.

To have a broad and thorough understanding of the country's current human rights turmoil, South Africa's historical accounts of political repression need to be established and explored. This chapter will provide an overview into how political repression was committed during the apartheid period.

Apartheid was constitutionalised and enacted into law in 1948. In campaigning for the 1948 national elections, the NP, under the leadership of Dr Dawid. F. Malan, embarked on embracing, promoting and implementing a racially-separating policy. In one speech that he delivered during campaigning, Malan stated that the NP believes that an apartheid policy between whites and non-white racial groups is the only foundation that the character and future of each race can be safeguarded and protected.⁹ He further

⁹ EA Tiryakian 'Apartheid and Politics in South Africa' (1960) 22 *The Journal of Politics* 686.

emphasized that apartheid would help each race be able to develop their own national character, aptitude and calling.¹⁰ Malan's speech blaring lacked intelligence and the vision to realise that such a system would have devastating and deadly consequences. It should be no surprise that a policy that is rooted in sheer bigotry and open intolerance would wound a nation and disrupt it for possible eons.

2.2) The anatomy of apartheid state-sponsored political repression

In December of 1989, the Human Rights Commission formulated a document that was titled 'Anatomy of Repression', in an attempt to detail the political repression meted out by the apartheid government. The Commission identified five forms of repression – formal, informal, target, financial and external.¹¹

2.2.1) Formal repression

In terms of formal repression, this was done in numerous ways, namely through repressive legislation, formal repression of persons, organisations, gatherings, publications and political actions.¹²

With regards to repressive legislation, a prime example would be the State of Emergency that the government would employ through the Public Safety Act of 1953. This legislation allowed for the president to declare a state of emergency, where gatherings and processions were prohibited, illegal gatherings to be forcefully dispersed, arbitrary detentions, sweeping of crimes and lastly, the suppression of publications and organisations.¹³ Additionally, unique to the South African experience, the legislation also allowed for a slippage between public protection and state protection, allowing for the state to arrest people without any warrants and to further detain them without any trial.¹⁴ Plainly put, a state of emergency bestowed unfettered powers to security forces, who brutally quashed any dissent or opposing force intentionally directed towards the government.

There was a series of state of emergencies that were implemented in 1960 and the late 1980s, with the latter implementation aimed at combatting the violent unrest that had sparked nationwide. During this time, an innumerable number of people were detained, held in undisclosed locations, or even killed whilst the police and state security apparatuses evaded accountability.¹⁵ Research has proven that there was a direct relation between increases in detention, deaths in detention, and resorts to exile with the declaration of the state of emergency.¹⁶

In an attempt to justify the state of emergency, in the NP's 1988 publication of 'NP *altyd nuut*', the then state president PW Botha penned that from the beginning, the government had to act firmly against communist-inspired agitators and that it refused to have negotiations with any terrorists.¹⁷ Botha's view

¹⁰ n 9 above.

¹¹ [South African History Online 'The many faces of Apartheid Repression'](https://www.sahistory.org.za/article/many-faces-apartheid-repression) <https://www.sahistory.org.za/article/many-faces-apartheid-repression> (accessed 17 August 2023).

¹² n 11 above.

¹³ S Morton 'States of emergency and the apartheid legal order in South African fiction' (2010) 46 *Journal of Postcolonial Writing* 492.

¹⁴ n 13 above.

¹⁵ <https://www.sahistory.org.za/article/states-emergency-south-africa-1960s-and-1980s> (accessed 17 August 2023).

¹⁶ n 15 above.

¹⁷ JA Stemmet 'In case of emergency: South African states of emergency, CA, 1985-1988 – synopsis and chronology' (2015) 40 *Journal for Contemporary History* 75.

is completely misplaced and attempts to sanitise the unspeakable crimes that were committed by forces that are associated with his state during the times of the state of emergency. Expectedly, he utilises the typical rhetoric of cracking down on communists and terrorists instead of realising the impartial truth of how severe the oppression that he authorised was.

Importantly, another piece of legislation that is notable is the Terrorism Act 83 of 1967. The act defined terrorism quite broadly and further, in Section 6(1), it allowed for an officer of or above the rank of lieutenant-colonel to arrest a person who they suspect to be a terrorist without any warrant and to further detain them for interrogation.¹⁸ Furthermore, the mentioned section allowed for the detention to last until the Commissioner of Police was 'satisfied' that the detainee had responded to all questions asked or if there was no need for the detainee anymore.¹⁹ Even more, Sections 6(4) and 6(5) allowed for arbitrary and indefinite detention of a suspected terrorist.²⁰

For all times sake, terrorism is a grave crime that should be dealt with in an appropriate manner that prioritises the safety and well-being of citizens. 'Scape-goating' such a grave crime in order to advance oppressive policies and laws nullifies this intention. It was no secret, however, that the apartheid government used terrorism laws as a way of repressing those who were against its racist and oppressive laws and policies.²¹ The High Court has previously held that ever since time immemorial, the executive has directed criminal prosecutions towards its political opponents, particularly under the apartheid government, who used the Terrorism Act to detain multiple activists and left them to languish behind bars.²²

The Terrorism Act was not the sole legislation that was utilised but others, such as Public Security Act 30 of 1977 and the Internal Security Act 74 of 1982 acted in tandem in furthering repression. The latter, in Section 29, provided wide discretion to security forces to conduct arrests of suspected terrorists without warrants and to detain them for interrogation.²³ Similar to the Terrorism Act, this law also defined terrorism broad, allowing for a wide scope of acts to constitute as terrorism. Subsection 6 of the Act further excluded the courts from exercising any jurisdiction.²⁴ Interestingly, in Sections 7 and 9, only the Minister or anyone acting on his authority is provided access to any detainee or shall be entitled to any official information that is about or from the suspect.²⁵ Cassim, with regards to Section 29, presents an interesting perspective. The author notes that since 1963, 48 people have died in detention

¹⁸ Terrorism Act 83 of 1967.

¹⁹ <https://omalley.nelsonmandela.org/index.php/site/q/031v01538/041v01828/051v01829/061v01927.htm> (accessed 18 August 2023).

²⁰ n 18 above.

²¹ JD Mujuzi 'South Africa' in K Roach (ed) *Comparative Counter-Terrorism Law* (2015) 543.

²² *Zuma v National Director of Public Prosecutions* 2009 1 All SA 54 (N) 78.

²³ Internal Security Act 74 of 1982.

²⁴ n 23 above.

²⁵ As above.

under suspicious circumstances and that there is incontrovertible evidence that shows that some detainees have been subjected to physical assault and mental torture.²⁶

The usual legal maxim is 'innocent until proven guilty'. This, however, was the complete opposite of what the apartheid system held. A person was deemed 'guilty until proven innocent'. These acts are also examples of the defiance of the apartheid system in favouring innocence over guilt. Precocious decision-makings were the essence of the system that sought to deem any or every act of resistance as terrorism. The effects of this were that people languished in prisons, where they faced savage acts of torture and some, eventually died as a result of this. There was little to no accountability for the deaths that occurred whilst flippant and superficial reasons were cited as the causes of death. Capturing the nonsensical reasons, given for deaths that occurred in detention, South African poet, Chris van Wyk wrote in his poem 'In detention':

He hung from the ninth floor
He slipped on the ninth floor while washing
He fell from a piece of soap while slipping
He hung from the ninth floor
He washed from the ninth floor while slipping
He hung from a piece of soap while washing.²⁷

Another way in which formal repression was exercised was through the banning of organisations that worked towards liberation. On 8 April 1960, the ANC and the Pan African Congress (PAC), a then newly-formed breakaway group from the ANC were banned.²⁸ On 21 March 1960, the PAC had organised a peaceful demonstration against the pass system. Devastatingly, the response from the police was violent, shooting protestors and onlookers, killing 69 people and injuring hundreds.²⁹

Prior to the Sharpeville Massacre, liberation parties, particularly the ANC, had adopted a strict and resolute stance of non-violence. When the Sharpeville Massacre occurred, Mandela shifted the ANC's stance and allowed for the incorporation of violence by sabotage and through forming an armed wing.³⁰ The ANC had realised that their non-violent approach in fighting a government that is violent by nature proved to be ineffective. People were being brutally murdered and human rights were routinely trumped. Logically, it only made sense then to utilise a strategy that can equate to or overpower the force that the apartheid government had meted out.

²⁶ MY Cassim 'Detention and Torture without Trial: Section 29 of the Internal Security Act' (1987) 10 *National Black Law Journal* 207.

²⁷ <https://physio.uwc.ac.za/pht402/2019/08/26/in-detention/> (accessed 20 August 2023).

²⁸ S Stevens 'The Turn to Sabotage by the Congress Movement in South Africa' (2019) 245 *Past & Present* 236.

²⁹ L Evans 'Sharpeville: An Apartheid Massacre and its Consequences' (2014) 66 *South African Historical Journal* 398.

³⁰ RW Hollister 'The Sharpeville Massacre, Violence, and the Struggles of the African National Congress, 1960-1990' (2023) 13 *Armstrong Undergraduate Journal of History* 64.

Whilst garnering international support and solidarity for freedom in South Africa, the ANC's leader, Oliver Tambo, wrote in a letter that every avenue of non-violent protest was met with violent repression on the side of the apartheid regime.³¹ Eventually, this led to the banning of the ANC after the Sharpeville Massacre in 1960, (...) the regime had made the country into an armed camp...The violence of the regime was now to be met by the revolutionary violence of the people.³² This speech revealed that it was the Sharpeville Massacre that acted as a precursor to the establishment of the ANC's armed wing, famously known as *Umkhonto we Sizwe* (the Spear of the Nation).

Other liberation parties also faced political repression and were subsequently banned. A fundamental piece of legislation that the apartheid government utilised was The Suppression of Communism Act of 1950. This legislation symbolised the primacy that the government had invested in extending its arsenal to combat against the threat of communism.³³ Monopolising on the broad powers offered by the legislation, the government began to prosecute and ban organisations and individuals that it held to be communist under a very wide definition.³⁴ This also allowed for the government to regulate and also ban organisations and people that opposed and protested against the deepening of segregation and discrimination that had existed at the time.³⁵

In the same year, after the May Day protests, the South African Communist Party (SACP) was formally banned because of the apartheid government equating support for racial equality with communism.³⁶ Another organisation that was also banned was the Congress of South African Students (COSAS) in mid-1985, after a state of emergency was declared.³⁷ COSAS was established in 1979 with the aim of representing the interests of Black school students after the Soweto uprisings.³⁸

2.2.2) Informal repression

In the 1970s, the apartheid government's actions had attracted international attention and condemnation. A lot of international developments occurred that were aimed at fighting against the apartheid government. A prime example is when the United Nations placed an arms embargo on South Africa.³⁹ Naturally, confident that it was under attack, the apartheid government was not pleased by the various developments that had occurred and believed that the most viable solution would be counter-insurgency. The Nationalist government was obsessed with security since 1948 and saw threats to the *Afrikanerdom*

³¹ 'Letter from Oliver Tambo 733' ANC Archives.

³² 'Letter from Oliver Tambo 733' ANC Archives.

³³ S Johns 'Invisible Resurrection: The Recreation of a Communist Party in South Africa in the 1950's' (2007) 9 *African Studies Quarterly* 8.

³⁴ n 33 above.

³⁵ As above.

³⁶ C Gauger 'Reds and Patriots: The Alliance of the African National Congress and the South African Communist Party' *Oshkosh Scholar* 42.

³⁷ <https://www.sahistory.org.za/article/congress-south-african-students-cosas> (accessed 22 August 2023).

³⁸ n 37 above.

³⁹ <https://southafrica.un.org/en/about/about-the-un#:~:text=The%20arms%20embargo%20was%20made,effective%20oil%20sanctions%20against%20apartheid.> (accessed 22 August 2023).

as threats to South Africa and as such, its policy-makers concluded that the country was the subject of a ‘total onslaught’ that the Soviet Union pioneered.⁴⁰ The apt response for this would be a total strategy.

In 70s and 80s, the concept of ‘total strategy’ was created and employed. This strategy was defined as a “comprehensive plan to utilise all the means available to the state according to an integrated pattern in order to achieve the national aims within the framework of specific policies”.⁴¹

The 1979 White Paper on Defence and Armaments Supply held that at a national level, the Cabinet is assisted by the State Security Council (SCC) and its executive agencies to fulfil duties that related to the national security of the country.⁴² The paper also went on to point out that the resolution of the conflict demands inter-dependent and co-ordinated action in all aspects – military, psychological, economic political, sociological, technological diplomatic, ideological, cultural and the likes.⁴³ This paper foreshadowed the creation of the National Security Management System (NSMS). Notably, the SCC formed part of NSMS and was the main actor it utilised.

Those who criticised the apartheid government were of the opinion that the NSMS functioned as a shadow government or a covert infrastructure for *de facto* military rule.⁴⁴ The mission it had was founded on a classical counter-insurgency strategy, which is to identify and neutralise anti-government activists and to further strengthen public support (through a method called WHAM- winning the hearts and minds) for activities related to security.⁴⁵ WHAM was an apparent propaganda effort that sought to downplay and vindicate the apartheid government for the crimes they had committed and the ones that were yet to be committed.

The oppressive hegemony was quite wary of the increased opposition to its rule and existence domestically and (in some parts) internationally. In order to defend its interests, it concluded that it had two options – firstly, to either respond with direct repression solely or secondly, combine repression with WHAM, so that the oppressed masses become fragmented and the key sections that support them.⁴⁶ Botha and his regime chose the latter.

Another form of informal repression was the conceptualisation of vigilante groups. Vigilantism is a crime that is frequently associated with parochial gangs and rampaging mobs but the conditions that accelerate it are beyond the remit of these groups and expose state exploitation and criminal neglect.⁴⁷ The apartheid regime was very calculative in how it exploited and used vigilante groups to serve its purpose of shutting- and cracking down the anti-apartheid movement. As such, vigilante right-wing

⁴⁰ J Selfe ‘Adaptations to the Security Intelligence Decision-making Structures under P W Botha's administration’ Masters Thesis, University of Cape Town, 1987 2.

⁴¹ <https://drmjournal.org/2021/07/25/apartheid-south-africastotal-strategy-a-policy-analysis/> (accessed 22 August 2023).

⁴² M Hough ‘The concept of a national security strategy: the case of the United States and South Africa’ 9.

⁴³ <https://omalley.nelsonmandela.org/index.php/site/q/03lv02167/04lv02264/05lv02303/06lv02304/07lv02305/08lv02310.htm> (accessed 23 August 2023).

⁴⁴ <http://www.country-data.com/cgi-bin/query/r-12195.html> (accessed 23 August 2023).

⁴⁵ n 44 above.

⁴⁶ R Bush ‘South Africa: Is Botha's Total Strategy a Programme of Reform?’ (1980) 19 *Review of African Political Economy* 93.

⁴⁷ J Martin ‘Vigilantism and state crime in South Africa’ (2012) 1 *State Crime Journal* 217.

violence under apartheid was common and it was primarily associated with suppressing anti-apartheid mobilisation rather than fighting against and suppressing crime.⁴⁸

In the Cape, the most common narrations of vigilante groups are found. Two vigilante groups are of importance- Manenberg Residents' Movement and the *Witdoeke*. These groups were utilised by the state to sustain the regime but were also used by the liberation movements to dismantle the apartheid state.⁴⁹ One thing was starkly clear: the apartheid government had intentionally created a system that would exclude most South Africans from being able to have equal access to legal structures of justice, leaving those excluded to use informal security structures and vigilante groups.⁵⁰

It was one Ngxobongwana who organised male resident supporters and formed the *Witdoeke*.⁵¹ They colluded and collaborated with the South African Police (SAP) and the South African Defence Force (SADF) in attacking and killing residents who were viewed to be supportive of *amaqabane* (comrades) and those who sympathised with liberation movements.⁵²

The Manenberg Residents' Movement (which later took the form of Neighbourhood Watches (NW)) operated in contrast to the United Democratic Front's (UDF) street and area committees, which aimed to fight the apartheid state through different social and political local orders in the Black township as it organised with the police and almost was never against it.⁵³ This displays the vigilante group's participation in colluding with the police to curb anti-apartheid rhetoric and action.

In addition to the support that was given to vigilante groups, the apartheid government also capitalised on creating and instigating Black-on-Black violence. The old proverbial saying of 'divide and conquer' became a crucial strategy that the apartheid government utilised. In bringing life to this ideal, the government provided covert support for conservative groupings in Black communities through 'Operation Marion' and 'Operation Katzen'.⁵⁴ The former provided paramilitary and offensive capacity to the Inkatha Freedom Party (IFP); the latter aimed to overthrow the existing homeland governments in the Ciskei and Transkei areas, allowing for a regional resistance movement that would counter the UDF/ANC's hold.⁵⁵

Another form of informal repression is the use of hit/death squads. In the 1970s up until the early 1990s, anti-apartheid activists that were in South Africa and in exile faced numerous violent and illegal acts, such as assassinations.⁵⁶ The Truth and Reconciliation Commission (TRC) was able to uncover and

⁴⁸ NR Smith 'Rejecting rights: vigilantism and violence in post-apartheid South Africa' (2015) 114 *African Affairs* 343.

⁴⁹ AC Cupido 'The development of vigilantism in South Africa' Masters Thesis, Stellenbosch University, 2021 79.

⁵⁰ n 49 above.

⁵¹ S Bangstad *Global Flows, Local Appropriations. Facets of Secularisation and Re-Islamisation of Contemporary Cape Muslims* (2007) 87.

⁵² n 51 above.

⁵³ L Fourchard 'The politics of mobilisation for security in South African townships' (2011) 110 *African Affairs* 616.

⁵⁴ 'Truth and Reconciliation Commission of South Africa Report' 2 38.

⁵⁵ n 54 above, 39.

⁵⁶ S Pillay 'Locations of violence: political rationality and death squads in apartheid South Africa' (2005) 23 *Journal of Contemporary African Studies* 417.

reveal that these acts were attributed to various agencies or death squads that the apartheid government had created in the late 1960s.⁵⁷

As a result of these hit squads, innumerable lives were lost. One such example is the *KwaMakutha* Massacre. This area was deemed to be a scene of political violence between the IFP and the UDF in the late 1980s as it is supposed that the IFP, in conjunction with the apartheid government, was responsible for the attacks that occurred there.⁵⁸ It is reported that 12 women and children were murdered during this attacked by men who had been privately trained on the Caprivi Strip, in line with Operation Marion.⁵⁹ There were concerted efforts by Pretoria's propaganda machinery that tried to make it seem as though the attack was committed by the ANC, to derail talks that involved the international community's denial to back the apartheid government.⁶⁰

2.2.3) Target repression

As a way to collectively oppose the systemic violence that apartheid had imposed on people, many people were able to mobilise and form groups that were able to challenge the ruling authority of the time. The apartheid regime viewed these groups that had organised and mobilised as a grave and significant threats that it believed would convulse the country and thus, sought to quell and get rid of them.

One such group was the UDF, who underwent intense political repression and state-sponsored reprisals. The UDF was formed in 1983, becoming an umbrella body that was made up of a loose coalition of almost 700 organisations (civil associations, student groups, trade unions, youth groups, churches, women's organisations, sports clubs and religious groups).⁶¹ Their common aspiration was to create a united and democratic South Africa that is founded upon the wishes of its people and to bring an end to economic and other kinds of exploitation.⁶² In materialising their aspiration, they were able to co-ordinate non-violent resistance campaigns (boycotts, strike support *et cetera*) locally and nationally.⁶³

By 1986, it was clear and established that the leadership of the UDF was intentionally under attack and singled out for arrests (for example: Popo Molefe, Terror Lekota and Moss Chikane were detained until they were defendants in a marathon treason trial).⁶⁴ On 22 February 1988, the regime had imposed restrictions on 18 organisations, including the UDF and 14 of its affiliates, forbidding them from organising and being involved in numerous political activities.⁶⁵

⁵⁷ n 56 above.

⁵⁸ MM Theophile 'The impact of Healing of Memories workshops: a case study of KwaZulu-Natal churches' Masters Thesis, Durban University of Technology, 2013 30.

⁵⁹ <https://omalley.nelsonmandela.org/index.php/site/q/03lv02167/04lv02264/05lv02303/06lv02304/07lv02305/08lv02310.htm> (accessed 25 August 2023).

⁶⁰ n 59 above.

⁶¹ S Zunes 'The role of non-violent action in the downfall of apartheid' (1999) 37 *The Journal of Modern African Studies* 153.

⁶² n 61 above.

⁶³ As above.

⁶⁴ <https://www.dailymaverick.co.za/article/2013-08-22-the-udf-at-30-an-organisation-that-shook-apartheids-foundation/> (accessed 25 August 2023).

⁶⁵ GF Houston 'The United Democratic Front' (2013) 52 *The Thinker* 44.

In mid-1989, as an attempt to bring an end to the hostilities that existed between the UDF and IFP (especially in KwaZulu Natal), peace talks were initiated but were deliberately interrupted by Adriaan Vlok, who would strengthen restrictions on UDF's key negotiators by placing them under house arrest.⁶⁶

It would be remiss of me if I forgot to mention one of the most gruesome and important historical events that occurred during the apartheid regime– the Soweto Uprising of 1976. About 3000 to 10 000 students, organised by the South African Students Movement's Action Committee, marched peacefully to protest against the government's directive to make Afrikaans the language and medium of instruction and learning and also being against the Bantu Education policy.⁶⁷ The apartheid government reacted with immense force and deployed heavily armed policemen to disperse the protestors. Some official reports state that 23 people were killed but other reports also presume that at least 200 people were killed (most shot in the back), where most of the victims were people younger than 23.⁶⁸

The uprising that occurred was a clear sign of the extent of mass resistance to oppression and exploitation that occurred under apartheid.⁶⁹ It was made clear that students from conceptualising the protest to confronting brutal state violence were able to reconfigure Black resistance politics in South Africa.⁷⁰ Withal, the uprising had drastically changed and impacted anti-apartheid resistance, where for the first time since the 1950s, the regime was faced by a mass movement.⁷¹ The uprising was able to expose the increasing fragility of the apartheid regime and that their system was on the verge of failure.⁷² The students were able to make important political changes that made them contribute to the liberation struggle and they were able to assemble parents, workers and university students in continuing demonstrations against the regime.⁷³ Unfortunately, they faced violent political repression which resulted in multitudinous killings of persons.

Another group that faced political repression and was targeted by the apartheid government were trade unions. Trade unions have also been central to the fight that aimed at eradicating apartheid and aimed at securing equality and better working conditions and standards of living for South African employees.⁷⁴

In order to repress trade unions, many of their members were detained without trial and once eventually released, they were further restricted or either found themselves occupied with lengthy trials, with some facing possible death sentences.⁷⁵ Others were subjected to arson attacks on their homes whilst others

⁶⁶<https://omalley.nelsonmandela.org/index.php/site/q/03lv02167/04lv02264/05lv02303/06lv02304/07lv02305/08lv02310.htm> (accessed 27 August 2023).

⁶⁷ <https://www.sahistory.org.za/article/june-16-soweto-youth-uprising> (accessed 28 August 2023).

⁶⁸ <https://southafrica-info.com/history/16-june-1976-soweto-students-uprising-as-it-happened/> (accessed 28 August 2023).

⁶⁹ A Mafeje 'Soweto and its aftermath' (1978) 11 *Review of African Political Economy* 17.

⁷⁰ P O'Halloran 'The Soweto Uprising' (2017) 25 *Journal of Contemporary African Studies* 242.

⁷¹ O'Halloran (n 70 above) 243.

⁷² As above.

⁷³ As above.

⁷⁴ M Uys 'Factors that have an impact on the future of trade unions in South Africa' 2016 13 *Journal of Contemporary Management* 1162.

⁷⁵ <https://www.sahistory.org.za/article/many-faces-apartheid-repression> (accessed 01 September 2023).

were forcibly disappeared or assassinated.⁷⁶ The Congress of South African Trade Unions (COSATU) faced restrictions under the State of Emergency (SOE) Regulations that prohibited any political activity and its officials were refused passports, faced considerable police harassment, attacks and burglaries.⁷⁷

Whilst there are a plethora of many assassinations and targeted killings of anti-apartheid activists, one notable one is that of Steve Biko. He witnessed and experienced multiple police raids during his childhood and also experienced the brutality and intimidation that the apartheid government was famed for.⁷⁸ As a leading Black Consciousness leader and thinker, Biko was met intense repression. Unfortunately, his resistance and fight against oppression eventually led to his arrest and death in 1977, whilst he was detained by security police. His death symbolised the escalation of state-sponsored violence and the victimisation of black people.⁷⁹

2.3) Conclusion

These examples, however, are merely a drop out of a plethora of gruesome and horrific acts that the apartheid government used. There are numerous other methods that the apartheid government used to exert political repression that this dissertation will not explore and discuss due to certain limitations. However, these examples also help in understanding why apartheid is categorised as a crime against humanity as per the declaration made by the United Nations (UN). Still, despite the occurrence of these heinous crimes, there are a large number of people who are apartheid denialists and have outrightly refused to assume responsibility. For example, the last president of apartheid South Africa, FW de Klerk refused to accept and understand that apartheid is a crime against humanity.⁸⁰ Despite that, the continued legacy of apartheid of political repression still continues even today.

⁷⁶ n 75 above.

⁷⁷ As above.

⁷⁸ <https://blogs.lse.ac.uk/africaatlse/2021/08/19/steve-biko-philosophy-of-black-consciousness-theology-south-africa-bio/> (accessed 5 September 2023).

⁷⁹ F Ojo-Ade 'Review: Stephen Biko: Black Consciousness, Black Struggle, Black Survival' (1981) 19 *The Journal of Modern African Studies* 546.

⁸⁰ <https://www.africanews.com/2020/02/18/apartheid-was-a-crime-against-humanity-south-africa-s-de-klerk-apologises/#:~:text=South%20Africa's%20former%20president%20F.W.and%20apologised%20to%20the%20nation.> (accessed 5 September 2023)

3) ANALYSING POLITICAL REPRESSION OF THE CURRENT STATE AND OTHER ACTORS

3.1) Introduction

It almost seemed as though it was a dream when South Africa was finally able to defeat colonialism and apartheid. After decades of continued suffering and repression, 1994 held the promise of a country presented with the opportunity to birth a new nation and the genesis of a rule that is based on the will of the people. The post-apartheid period presented a new slate to the government to invent and invigorate systems that were distant from the way the previous government functioned. Whilst this was done in certain sectors, there are certain activities that have and are conducted by the democratically-elected government that striking similar, if not the same, as the apartheid regime. In this particular instance, it is political repression.

The embracing of a new, transitional Constitution further cemented the belief of a truly free South, barren of oppression and inequality and fertile with freedom and liberation. Its preamble states:

'We, the people of South Africa recognise the injustices of our past;

honour those who suffered for justice and freedom in our land;

respect those who have worked to build and develop our country;

and believe that South Africa belongs to all who live in it, united in our diversity...

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa...'⁸¹

The Constitution, as the supreme law, envisioned a South Africa that would not only adopt a democratic order but continuously and indomitably maintained such an order for all times, where human rights are respected and not violated. The new dispensation of respect for rights and the rule of law was now a crystallised and set promise enclosed in the pages of the highest law. Discrimination, freedom and equality were new concepts to citizens who had not previously enjoyed them. The Constitutional Court has previously pronounced that the policy of apartheid systematically discriminated against Black people with regards to all aspects of social life.⁸² The court further acknowledged that the deep scars of this atrocious and appalling programme is still reflected and seen in our society.⁸³ The new South Africa was meant to heal past scars and not create new scars that are needless and avoidable. This has not been the reality as the country continues to grapple with various manifestations of political oppression.

⁸¹ The Constitution of the Republic of South Africa, 1996.

⁸² *Brink v Kitshoff NO* 1996 4 SA 197 (CC) 40.

⁸³ n 82 above.

One could also argue that political repression is intergenerational through governance, in the sense that the initial repression was committed by the apartheid government and it was further preserved by the democratic government. This can be gleaned from the *Khulumani* Support Group's (KSG) woes. KSG is a civil society organisation that campaigns for truth, healing and redress for people who have been affected by apartheid.⁸⁴ Due to government's inaction and indifference, late last year, KSG picketed outside of the Constitutional Court, lobbying for its *Khulumani Galela* Campaign. As despite qualifying for apartheid reparations from the President's fund, they have not received any payment.⁸⁵ This is an added form of the political repression. Considering that the victims of apartheid whom they represent qualify for compensation, there is an implied 'right' that the qualifiers have and prolonged, unjustifiable non-payment creates a continuum of the apartheid system.

3.2) Understanding non-state-sponsored involvement in political repression

Prior to exploring the anatomy of political repression, it is important to understand who is responsible for such repression. Whilst it is mainly the state who have enforced political repression, this does eliminate the fact that other actors such as companies, particularly multi-national corporations were complicit in the violations.

The UN Human Rights Committee has formerly ruled that the duty to ensure that a right is protected rests open the states, who must, in turn, ensure that third parties do not interfere with rights.⁸⁶ Violence continues as a result of the intersection where multi-national companies, traditional authority and political elites meet to sustain violence against activists.⁸⁷ The South African government has been unsuccessful in ensuring that the rights their citizens are entitled to are not in any matter infringed by companies. But then again, it would be rather absurd and ludicrous to believe a government that exercises political repression has the political will ensure that non-state actors do not infringe on human rights. Even more, at times, governments allow for such companies to act with impunity. Due to government's lacklustre attitude, companies have quite frequently caused or actively contributed to human rights violations as capital and money are often prioritised over human rights.⁸⁸

While it is known that companies profit greatly from human rights abuses, there is a recurring pattern of them evading accountability. This is not to say there that has not ever been a company that has been held accountable as there have been. Regardless, these companies wilfully target countries that have relatively weakly formulated and enforced laws, both domestically and internationally and such laws, tend to not apply to corporations.⁸⁹

⁸⁴ <https://khulumani.net/> (accessed 10 September 2023).

⁸⁵ <https://www.citizen.co.za/news/nearly-r2-billion-apartheid-reparations-unspent/> (accessed 10 September 2023)

⁸⁶ UN Committee on Economic, Social and Cultural Rights, General Comment 14 at para 33.

⁸⁷ The Tricontinental 'The politics of blood: political repression in South Africa' (2020) 36.

⁸⁸ <https://www.amnesty.org/en/latest/news/2020/02/south-africa-mining-gathering-must-confront-human-rights-violations/> (accessed 10 September 2023).

⁸⁹ CALS *Transnational corporations and human rights in Africa – the case for a binding legal instrument to ensure accountability on the continent* (2022) 7.

3.3) The anatomy of repression

In its post-apartheid era, in using the categorisation formulated by the Human Rights Commission mentioned to in the first chapter, the common forms of repression that are currently present (and will be discussed in this dissertation) are formal, informal and target repression.

3.3.1) Police brutality

The apartheid period was abundant with police brutality and savagery. This has continued to even the present day South Africa. It is important to also conceptualise what the definition of police brutality is. Police brutality happens whenever a member of the police uses force unlawfully uses force to the extent that the capacity to use such force is abused.⁹⁰ It is also the deliberate unlawful violent use of force that attracts criminal liability.⁹¹ Police brutality is quite rampant in South Africa and at times, it is middle to low class Black people that experience it in its most egregious state.

During the COVID era, to mitigate the increasing spread of infection, the South African government introduced stringent and strict lockdown rules. In order to ensure compliance, the military was deployed. Though the intention of the government might have been to prioritise public safety, there were certain instances where members of the police and the military deviated and exercised their duties in a callous manner. Police were even criticised for their heavy-handedness in enforcing the rules and at times, would act with deadly force whilst the Minister of Police, Bheki Cele, was accused of executing of a ‘*skop, skiet en donder*’ (‘kick, shoot and beat people up) approach that the apartheid government used to eliminate resistance and to violate the rights of those affected.⁹²

In 2021, student protests in some parts of the country erupted, due to financial exclusion of students. At the University of Witwatersrand (WITS), when the students protested, the police met them with brutality and lamentably, shot and killed Mthokozisi Ntumba, a bystander.⁹³ In the 2020/21 financial year, the Independent Police Investigative Directorate (IPID) found that 353 cases of death were caused by police action, 256 incidents of alleged torture committed by South Africa Police Services (SAPS) personnel and 4228 assaults were perpetrated by the police.⁹⁴

In many instances, police brutality is exercised on vulnerable people, who mainly apply peaceful methods to decry a social issue that bedevils them. At times, these attacks from the police are unprovoked and wanton. On 26 August 2020, Nathaniel Julies, a 16 year old boy with Down syndrome, was shot and killed by a policeman.⁹⁵ Without any provocation, he was murdered with a shotgun at

⁹⁰ D Bruce ‘Police Brutality in South Africa’ 4.

⁹¹ n 90 above.

⁹² M Langa & BB Leopeng ‘COVID-19: Violent policing of black men during lockdown regulations in South Africa’ (2020) *African Journals Online* 118.

⁹³ South African Human Rights Commission ‘Annual Performance Report (for the year ended 31 March 2021)’ 27.

⁹⁴ LL Motsepe *et al* ‘Systematic study on South African Police Service Leadership Crisis towards Supporting Section 205(3) as the Constitutional Foundational for Public Policing’ (2022) 5 *International Journal of Social Science Research and Review* 173.

⁹⁵ P Egwu ‘South African Police Are Undertrained, Uncontrolled, and Deadly’ <https://foreignpolicy.com/2021/05/31/southafrica-police-brutality-julies/> (07 September 2023).

close distance and the post-mortem report revealed Nathaniel had sustained puncture wounds to the chest and abdomen that were consistent with gun pellets.⁹⁶

Obviously, there are more instances where there has been police brutality in the past few years. Due to limitations, it is not possible to delve more into other scenarios. Still, the above scenarios are sufficient in portraying that police brutality remains a far-reaching, historical and present challenge to democracy and upholding human rights.

3.3.2) Death threats and political assassinations

Arguably, the most common form of political repression, death threats and political assassinations are used to destabilise social movements. Activists and non-governmental organisations who take on the state and companies are subjected to constant intimidation acts and tactics, with death being both a possibility and reality for some. These are reminiscent of the apartheid regime's death squads.

There have been allegations at times when a particular organisation does not align itself to what the ruling party aspires to do (example: a request support to win an election), then there is a likelihood that a retaliation is to be expected. On 6 August 2014, three shop stewards of the National Union of Metalworkers of South Africa (NUMSA) – namely, Njabulo Ndebele, Sibonelo Ntuli and Ntobeko Maphumulo- were assassinated.⁹⁷ On 7 November 2014, NUMSA was expelled from COSATU due to it reaching a resolution to not lend support to the ANC in the elections of that year.⁹⁸

For the purposes of this dissertation, whistle-blowers are regarded as proponents and actors of social movements as they are unified by one vision – protecting democracy and human rights. Babita Deokaran, a corruption whistle-blower from the Gauteng Department of Health, was assassinated outside her home in August 2021.⁹⁹ It had eventually emerged that the accountant had attempted to prevent an R332 million suspect payments at Tembisa hospital that was linked to corrupt procurement of COVID PPE (Personal Protective Equipment).¹⁰⁰

In 2022, the Socio-Economic Rights Institute (SERI) lent support to the South African Informal Traders Forum (SAITF), who had filed a complaint in the High Court with regards to the City of Johannesburg's (COJ) illegal eviction of 400 informal traders from De Villiers Street trading precinct.¹⁰¹ The court ruled that the COJ had to reverse the eviction and additionally compensate the traders for income lost.¹⁰² The MMC (Member of the Mayoral Committee) for Economic Development, Nkululeko Mbundu took to twitter and called for violence against SERI and its staff as

⁹⁶ n 95 above.

⁹⁷ The Tricontinental (n 87 above) 31.

⁹⁸ <https://www.escri-net.org/news/2022/stop-xenophobic-attacks-seri> (accessed 07 September 2023).

⁹⁹ <https://specialprojects.news24.com/silenced/index.html> (accessed 08 September 2023).

¹⁰⁰ B Farmer & P Thornycroft 'Mystery of murdered whistle-blower who uncovered hospital corruption' <https://www.telegraph.co.uk/global-health/terror-and-security/mystery-murdered-whistleblower-babita-deokaran-who-uncovered/> (accessed 07 September 2023).

¹⁰¹ n 98 above.

¹⁰² n 101 above.

well as the informal traders in the city.¹⁰³ SERI's executive director, Nomzamo Zondo, stated that pictures and phone numbers of SERI's staff were being circulated on social media and that there were threats of their offices being burnt down and their lawyers being killed or harmed.¹⁰⁴

3.4) Conclusion

These examples highlight how dangerous political repression can be. These acts of repression shrink the civic space, leading to restrictions to the exercise of freedom of expression and assembly and full public participation through engaging with the state as there is a fear if one presents an contrasting opinion or raises a 'red flag' with regards to human rights violations, they might not be safe from certain sanctions. This disturbs the very nature of democracy, which prescribes the will of the people over that of the state. Whilst this chapter attempts to provide a concise account of the current political repression that plagues the country, chapter 4 is further dedicated to exploring the topic at more length and will further provide comprehensive insight on focus groups and individuals who have faced and continue to face political repression.

¹⁰³ M Banda 'SERI under fire' <https://www.dailymaverick.co.za/article/2022-08-02-city-of-joburg-condemns-inflammatory-remarks-by-mmc-nkululeko-mbundu/> (accessed 07 September 2023).

¹⁰⁴ n 103 above.

4) THE NECESSITY OF SOCIAL MOVEMENTS AND LEGAL PROTECTION FRAMEWORK

4.1) Introduction

With the legacy left by the apartheid government, a definite change from the prior system was incumbent and inevitable. The ideal system would be one that allowed for government to be held accountable in instances where it was not performing or to ensure that there is complete fulfilment of promised human rights on the side of the state. A healthy, functioning democracy is one that allows for full participation of its constituents in every process that relates to or involves them. With the giving of and protection of human rights being one of the main aims of a working democracy, social movements are instrumental in ensuring that redress and relief are realised for those who have been deprived of their rights. However, with state-sponsored or -backed political repression involved, this is made to be incredibly arduous and burdensome.

4.2) Understanding what a social movement is and its necessity

Throughout oppressive times, necessary forces have contended with tyrannical and repressive systems that have been reckoned to be inexorable. These necessary forces have emerged as social movements. The term social movement is used to provide a description for a collective of diffusely organised people or organisations that are bonded together by a common objective that is related to human society or social change.¹⁰⁵ This is also inclusive of non-institutionalised and minimally organised collective actions that are formed due to specific grievances and aim to promote and resist social change.¹⁰⁶

Taking into account that apartheid was constitutionalised and made into law, it was greatly challenging for social movements and activists of that time to challenge prejudicial and discriminatory laws and policies. A further stalling to freedom and barrier that assisted the apartheid regime's maintenance of apartheid is the concept of parliamentary sovereignty. Through this applied concept, the legislature was provided with unfettered powers of law-making, whilst parliament could not make or repeal any laws.¹⁰⁷ This posed as a challenge as this metaphorically tied the hands of social movements from being able to oppose any legislation it deemed unfavourable to South Africans that were not benefitting from the apartheid system (Black, Indian, Coloured and other people who were not classified under these racial classifications but were also not recognised as White).

Despite the innumerable obstacles faced, during the times of apartheid, social movements were the heartbeat of the resistance. Mobilisation and unity was a crucial ingredient in the cauldron of preparing for freedom. One of the greatest social movements during the times of apartheid was the UDF. Through its reach and influence, the UDF was able to successfully band together a range of independent

¹⁰⁵ D Grinspun *et al* 'Exploring social movement concepts and actions in a knowledge uptake and sustainability context: A concept analysis' (2022) 9 *International Journal of Nursing Sciences* 412.

¹⁰⁶ n 105 above.

¹⁰⁷ <https://openbooks.uct.ac.za/uct/catalog/download/25/38/1226%3Finline%3D1> (accessed 29 September 2023).

organisations from varied classifications, along with divergent political and ideological agendas.¹⁰⁸ The common denominator for all of these organisations was that they all had the same nemesis – the apartheid government and its system of exploitation and domination.¹⁰⁹ Undoubtedly, the UDF is not the sole social movement that placed an instrumental role in advocating for abolition of the apartheid system. Eventually, the defeat of apartheid occurred as a result of the culminated efforts of multiple abolitionist social movements, who were able to display and underscore the importance of social movements existing in repressive societies.

Prior to accentuating the importance of social movements, it is imperative to understand why there is a continued existence in a democratic phase. Currently, there are many societal issues and grievances that have caused and continue to cause great distress. The ANC's state failures surmount the achievements that they have attained in giving expression to constitutional rights. The country is at present battling with a crisis of governance that has allowed for the ubiquitous spread of illegality, violence, corruption, failure to perform duties that are necessary and required by the law and Constitution, holding a specific office or performing these duties in a manner that is not in alignment with the legal requirements.¹¹⁰ This is gleaned from the many illegal evictions from homes with police and other officials reported to have stolen possessions of those evicted; the murders of activists who challenge the state of homelessness (example: AbM) and poor and inaccessible healthcare.¹¹¹

Key to the many issues that the country faces is the ANC's neo-liberal restructuring of the economy that has become an important medium that allows for ANC elites to continue clinging onto state power and to continue marginalising and disempowering any opposition that challenges this neo-liberal structure from both society and people in general.¹¹² This is regarded as predatory liberalism.¹¹³ Over the years, a noticeable pattern has formed of the ruling party utilising apparent, social vulnerabilities by exerting its power over its citizens, in order to obtain its political goals.

In complimenting the above paragraph, it is also believed that ANC, in its current state, represents a capitalist hegemony and in responding to such a system, popular struggle against capitalist exploitation is necessary to be rebuilt and even against the auxiliary expression of racial, gender and other means of oppression and exclusion that are consistently reproduced by it.¹¹⁴ These social movements have implanted new life into the political and social action that was moving towards becoming institutionalised and secured.¹¹⁵

¹⁰⁸ Madlingozi (n 7 above) 83.

¹⁰⁹ n 108 above.

¹¹⁰ R Suttner 'ANC governments are the cause of our problems – they cannot be the ones to resolve them' <https://www.dailymaverick.co.za/article/2022-09-19-anc-governments-caused-our-problems-they-cant-be-the-ones-to-fix-them/> (accessed 26 September 2023).

¹¹¹ n 110 above.

¹¹² Madlingozi (n 7 above) 80.

¹¹³ n 112 above.

¹¹⁴ S Greenberg 'The Landless People's Movement and the Failure of Post-apartheid Land Reform' (2004) 34.

¹¹⁵ n 114 above.

The failures of the ruling party in advancing democracy and protecting human rights are abundant and extensive and this dissertation, alone, would commit a grave injustice in attempting to cover it all. However, this dissertation will highlight how this failure has, over the years, created an eruption of social uprisings that are consequently met with repression.

Nowadays, when analysing current social movements, most, if not all, are premised on the basis of the politics of recognition. This theory was presented by acclaimed author Charles Taylor, who claims that our identity is partly shaped by recognition or its absences and as such, if a person or a group of people could experience real damage and distortion when society creates a picture of them that is demeaning or confining.¹¹⁶ Additionally, failing to recognise someone or misrecognising them can cause harm and can be regarded as oppression as that person is imprisoned in a mode of being that is false, distorted and reduced.¹¹⁷

In sharing a similar view, it has been expressed that claims to recognition are central to social movements for international human rights that want to ensure that universal respect for shared humanity is promoted and fulfilled.¹¹⁸ As such, most social movements are issue-based, lamenting over matters that violate the rights related to housing, land, medicine, environment, education and schooling etc. However, considering the intersectionality of issues, some movements embrace a wider mandate. Essentially, no matter the social movement, it can be concluded that they are mainly rooted from dissatisfaction with the liberal democracy's constraints coupled with the limited nature of the economic and social transition from apartheid.¹¹⁹

The current trend in South Africa is the proliferation of NGOs, whether formed at a national level or at a community grassroots level, that aim at acting as a social movement that seeks to initiate and provide a platform that accelerates communal and concerted change. These movements have realised the necessity of political action in increasing violation and non-fulfilment of human rights. This view is backed by the writings of della Porta, who has also concluded that social movement organisations assume the democratic function of control seriously through mobilisation to pressurise decision-makers and to develop counter-knowledge and open public spaces.¹²⁰ Even more, though they usually also arise out of discontentment, social movements in South Africa are created as the country does not have participatory opportunities for its citizen other than political parties.¹²¹ Although there are formal structures in existence for political participation (such as ward committees and community policy

¹¹⁶ C Taylor *Multiculturalism and the Politics of Recognition* (1992) 25.

¹¹⁷ n 116 above.

¹¹⁸ N Fraser 'Rethinking recognition: overcoming displacement and reification in cultural politics' in B Hobson (ed) *Recognition Struggles and Social Movements: Contested Identities, Agency and Power* (2003) 21.

¹¹⁹ S Jacobs 'Post- apartheid South African social movements on film' in H Wasserman (ed) *Popular Media, Democracy and Development in Africa* (2010) 137.

¹²⁰ D della Porta *Democracy in Social Movements* (2009) 264.

¹²¹ A Daniel 'Housing as a battlefield between self-organization and resistance: the case of reclaim the city' (2023) 11 *Politics and Governance* 329.

forums), these are, however, insufficient as they not work in an effective manner nor do they consider the demands made by the citizens adequately. The adverse effects of this are the growing gap between citizens and the state and further marginalisation of those citizens.¹²²

There is a typology of what social movements in South Africa are founded on and what they are opposing. The first kind of social movement are those whose activism is usually against the state due to distributional issues, particularly those related to access to basic services by poor nationals.¹²³ These movements recognise that privatisation and cost recovery policies are the main reasons for impaired delivery.¹²⁴ The second kind are the kind that go against the state, banks and private landlords via opposing evictions and efforts to secure land tenure.¹²⁵ The third kind are unions that go against government policy on the conditions of employment and businesses' labour practices. The fourth kind is those concerned with the environment's pollution and degradation.¹²⁶ Then there are also organisations that also organise for the rights of vulnerable and pregnable groups (example: sexual minorities, refugees etc) and further seek to advance their rights through determining and guiding government policy.¹²⁷ The last kind is those that campaign against multinational corporations regarding debt that was sustained and received during apartheid or advocating for reparation claims from such companies.¹²⁸

In the democratic era, there are some noteworthy social movements such the Treatment Action Campaign, AbM, The Poor People's Alliance, Defend Our Democracy, #RhodesMustFall, #FeesMustFall, Equal Education, the Landless Peoples Movement, Social Justice Coalition, and *Ndifuna Ukwazi*. These social movements have relentlessly advocated for the conceptualisation of multiple rights. Whether or not some of have been successful is a side conversation that this dissertation will not explore.

The importance of the continued existence of social movements cannot be stressed enough. Multiple political philosophers and leaders have asserted the necessity of social movements as they ensure that there is an opposition to the current political regime and to ensure that the majority-supported visionary system viewed to be model and ideal is implemented instead of one that solely benefits the state.¹²⁹ Importantly, dissent forms part of the spirit of democracy and social movements are an organised form of dissent as they are the way in which people's unified politics to express that their aspirations and priorities are.¹³⁰

¹²² Daniel (n 121 above) 330.

¹²³ Madlingozi (n 7 above) 87.

¹²⁴ n 123 above.

¹²⁵ Madlingozi (n 7 above) 88.

¹²⁶ n 125 above.

¹²⁷ As above.

¹²⁸ As above.

¹²⁹ http://gdcganderbal.edu.in/Files/a8029a93-30ad-4933-a19a-59136f648471/Link/Unit-1_Social_Movements-Meanings_Significance_and_Importance_f79fe410-3748-4989-9188-6333c24fbc34.pdf (accessed 20 September 2023).

¹³⁰ n 129 above.

Naturally, there are opposing arguments that claim that social movements are not necessary and are redundant. However, what these fail to acknowledge and realise is that rather than demobilising a movement, repression actually frequently instigates resistance and further downplays the legitimacy of a power elite.¹³¹

Indeed, social movements that were initiated in South Africa during apartheid and further sprouted outside have been critical and central to advocating for freedom. Similarly, in a democratic setting, it is social movements that have and continue to be important in sustaining and strengthening democracy. By allowing for social movements to exist, within the legal ambits set out, we allow for the strengthening of democracy to occur.

4.3) Legal protection framework

The law has always been regarded as an important tool for setting societal standards and expectations. It has also been fundamental in affording necessary entitlements for people and further prescribing sanctions for violations that occur. It would be parochial to not consider the legal violations that occur as a result of political repression. Accordingly, it is important to recognise that despite people working as part of a social movements, still, as they also exist as individuals who have rights bestowed upon them.

In a continental aspiration, the Agenda 2063 details the blueprint and scheme that the African Union Commission wishes to embark on into making Africa into an intercontinental powerhouse that will ensure that there is unity, self-determination, freedom, progress and collective prosperity that is guided by Pan-Africanism and African Renaissance.¹³² The third aspiration states that the continent strives to become a continent where there is an entrenchment of democratic values, practices, culture, universal principles of human rights, justice, rule of law and gender equality.¹³³ Additionally, the fourth aspiration further reiterates that by 2063, Africa should be a place where there is a strong and prospering culture of human rights, democracy, gender equality as well as inclusion and peace.¹³⁴ It further goes on to aspire for prosperity, security and safety for all those who dwell in the continent.¹³⁵

For now, only time will be able to narrate whether or not the Agenda set will be fulfilled. Nevertheless, in spite of that, the current reality can be a great indicator and foreteller of whether or not this will occur. When considering the multiple, flagrant and surmounting human rights violations that occur frequently on this continent, it is hard to believe that a stable democracy along with all that it entails (such as peace, gender equality, inclusion, justice, respect for the rule of law etc) will become a reality. So long as acts that destabilise democracy such as political repression are allowed to occur unchecked or are given little

¹³¹ LR Kurtz 'The paradox of repression and nonviolent movements' (2018) *Sociology & Anthropology Faculty Works* 1.

¹³² <https://au.int/en/agenda2063/overview> (accessed 20 September 2023).

¹³³ African Union Commission 'Agenda 2063: The Africa We Want' (2015) 5.

¹³⁴ n 133 above, 6.

¹³⁵ As above.

to nothing condemnation, the Agenda, unfortunately, will remain a written aspiration that will be unrealised and unfulfilled.

A series of different set of rights that are violated as a result of political repression will be discussed over the next few paragraphs. Please note that the rights listed do not portray a closed list of rights as political repression is of a cross-cutting nature in how rights are disregarded and contravened. Only a few, selected ones will be analysed whilst others will merely be mentioned. The analysis will consider international law, regional law and domestic law. This is as a result by the compulsion contained in the Section 39(1)(b) of the Constitution that states that international law must be considered when interpreting the Bill of Rights.¹³⁶ For information purposes, it must be noted that all international and regional law that will be utilised, South Africa is a state party to such law and has further ratified it.

4.31) Right to life

In order to be afforded a range of different rights, a person needs to be alive. It is inarguably one of the most fundamental, primordial and important human rights that everyone is entitled to and must enjoy. Deprivation of such a right, whether intentional or unintentional, invites serious and grave repercussions.

This right is also regarded as an inalienable and imprescriptible right that is said to inherently belong to every person.¹³⁷ Article 3 of the Universal Declaration of Human Rights (UDHR) states that everyone is given the right to life, liberty and security.¹³⁸ This right's existence is further strengthened by Article of the International Covenant on Civil and Political Rights (ICCPR), that emphasizes that everyone has the inherent right to life that shall be protected by the law and that there will be no allowance for any arbitrary deprivation of one's life.¹³⁹

At a regional level, the African Charter on Human and Peoples' Rights (ACHPR) provides, in Article 4 that human beings are inviolable and every human being is entitled to respect for their life and that any arbitrary deprivation is forbidden.¹⁴⁰

Turning to domestic law, Section 11 of the Constitution states that everyone has the right to life.¹⁴¹ South African courts have previously proclaimed that the right to life, along with the right to dignity, is one of the most important of all human rights.¹⁴² To further prove the importance of this right, the Constitution further cements that even when there is a state of emergency, the right to life remains a non-derogable right, disallowing for the violation of this right under any and all circumstances that could potentially

¹³⁶ n 81 above.

¹³⁷ L Dragne 'The right to life – a fundamental human right' (2013) 2 *Social Economic Debates* 1.

¹³⁸ Universal Declaration of Human Rights.

¹³⁹ International Covenant on Civil and Political Rights.

¹⁴⁰ African Charter on Human and Peoples' Rights.

¹⁴¹ n 81 above.

¹⁴² *Victoria & Alfred Waterfront (PTY) Ltd and Another v Police Commissioner of the Western Cape and Others* 2004 1 All SA 579 (ZAWCHC).

exist.¹⁴³ With the mention and crystallisation of this right in numerous legal instruments, it is indisputably clear that this right bears gravity and prestige both internationally and locally.

In the context of political repression, this right is greatly important as an innumerable number of members of social movements or individual activists are assassinated or murdered by either people who are sponsored by state officials or by surrogate forces. In a sitting by the General Assembly last year, it was noted that it is necessary to protect human rights defenders (HRDs) from unjustifiable actions such as violence, threats, retaliation, discrimination and other forms of pressure or action that is arbitrary that is done by the state and non-state actors due to the work that HRDs do.¹⁴⁴ Since the law can never be viewed in isolation, when the right to life is violated, there are a range of other incidental rights that are also violated such as the right to freedom and security. A person's freedom and security is compromised when they are killed. Failing to provide protection to HRDs allows for a terrible precedent to be set as HRDs are left vulnerable to state-sponsored violence or one that is sponsored by other actors. Allowing for the victimisation of activists by both the state and private actors simultaneously attacks their rights and further subverts and diminishes the power of the constitutional democracy that has been set in place as well as further disables the effect of international law obligations.¹⁴⁵ As Special Rapporteur on the situation of human rights defenders, Mary Lawlor has strongly asseverated, "There is no more direct attack on civil society space than the killing of human rights defenders."¹⁴⁶

4.3.2) Right to dignity

Every human deserves to be honoured and respected by virtue of their existence. The UDHR recognises this by founding that everyone is born free and has dignity and rights in an equal and proportionate manner.¹⁴⁷

Article 10(1) of the ICCPR adds on to this by understating that all persons that are deprived of other liberty must be treated with humanity and given respect for their inherent dignity.¹⁴⁸ In the International Criminal Tribunal for the former Yugoslavia, the tribunal provided that the general principle of respect for human dignity creates the basic underpinning and *raison d'être* (reason for existence) of international humanitarian law as well as human rights law as it is of such great importance that it permeates the whole body of international law.¹⁴⁹ To add on, the ACHPR, highlights that every person is afforded the right to respect of the dignity that is inherent in them.¹⁵⁰

The Constitution, as expected, continues to deepen the significance of human dignity by stating that everyone is bestowed upon with inherent dignity and such dignity must be afforded protection and

¹⁴³ n 142 above.

¹⁴⁴ UN General Assembly 'Report of the Special Rapporteur on the situation of human rights defenders' at para 115(c).

¹⁴⁵ B Kamolane & J Ditshego 'South Africa is failing to protect its activists' <https://www.groundup.org.za/article/south-africa-failing-protect-its-activists/> (accessed 26 September 2023).

¹⁴⁶ UN Human Rights Council 'Final warning: death threats and killings of human rights defenders' 3.

¹⁴⁷ n 138 above.

¹⁴⁸ n 139 above.

¹⁴⁹ *Prosecutor v Anto Furundzija*, ICTY, Trial Judgement (10 December 1998) IT-95-17/1-T, Trial Chamber 183.

¹⁵⁰ n 140 above.

respect in Section 10.¹⁵¹ To backtrack, the first section of the Constitution even establishes human dignity as one of the founding values of the country.¹⁵²

Former Chief Justice of the Constitutional Court has penned that the affirmation of dignity as one of the founding values of the new constitutional order was not a romantic extravagance but it was something that put the legal order in alignment with developing constitutionalism.¹⁵³

The protection of this particular right has always been stressed as important due to the history that the country has. The same sentiment was shared by the Constitutional Court when it stated that this rights occupies a special place in the country's Constitution's architectural design.¹⁵⁴ The right intends to repair indignity, renounce humiliation and degradation and to insure that there is vested full moral citizenship to those who were previously rebuffed and blocked from enjoying this right.¹⁵⁵

With the repeated prominence of this right, it is regrettable to observe how this right is trampled on by the state and other actors. The dignity of members of social movements, HRDs and activists is continuously flouted through political repression. People who voice opposition to the state or its surrogate forces are subjected to degrading treatment that violates their human dignity. This is gleaned from the deployment of police brutality, killings, arbitrary arrests and the torture that some activists are made to face. It is not only a humiliating experience but it is also causes the victim to undergo a state of trauma and mental agony.

4.3.3) Freedom of association

The UDHR has expressed that every human is given the right to peacefully assemble and the freedom of association.¹⁵⁶ Article 22(1) of the ICCPR also states that everyone is provided with the right to freedom of association with other people.¹⁵⁷ Similarly, Article 21 also enunciates the recognition of the right to peaceful assembly and adds on that there shall be no restrictions to exercising this right other than what the law prescribes and what is important and needed in a democratic society that is in the interests of the national security, public safety or order, the protection of public health or morals or lastly, the protection of rights and freedoms of others.¹⁵⁸

¹⁵¹ n 81 above.

¹⁵² As above.

¹⁵³ A Chaskalson 'Dignity as a Constitutional Value: A South African Perspective' (2011) 26 *American University International Law Review* 1382.

¹⁵⁴ *Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others* 2019 11 BCLR 1321 (CC) 45.

¹⁵⁵ n 154 above.

¹⁵⁶ n 138 above.

¹⁵⁷ n 139 above.

¹⁵⁸ As above.

Regionally, the ACHPR, in Article 10, notes that everyone is afforded the right to free association whilst Article 11 also provides that everyone is given the right to assemble freely with others as long as such is in tandem with national security, safety, health, ethics and the rights and freedoms of others.¹⁵⁹

In the Constitution, Section 17 provides that everyone is afforded the right to assemble, demonstrate, picket and present petitions in a manner that is peaceful and unarmed.¹⁶⁰ Withal, Section 18 provides that freedom of association is guaranteed to everyone. However, there is an important *proviso* to note. Even though rights are declared and enshrined in the bill of rights, certain rights are not regarded as absolute. As such, such rights can be limited in accordance with the limitation clause that is contained in Section 36 of the Constitution.¹⁶¹

This right is particularly important for social movements as a whole. Individuals should be permitted to form and join social movements that they deem to align with their interests and cause without any fear of state-sponsored reprisals or fear that private actors may also forcefully retaliate to such a decision. Even more, the most common form of taking action against the state is through protest, which, in most cases, is used as a measure of last resort as other resorts are often ignored and disregarded by the state and other actors. Social movements are notorious for utilising this resort to ensure that there is attention given to their cause and that their aim is fulfilled. Ensuring that social movements' right to assemble is protected allows for people to express their causes without fear that they will be met with force and brutality from that state that shuns them.

However, there is a disturbing, growing pattern that can be seen. There is a profusion of narratives and occurrences of activists experiencing brutal and ferocious forms of state-sponsored violence. One key example is the death of Andries Tatane. Tatane's murder occurred as a result of a protest that took place in Ficksburg, where the community protested over the non-providence of basic necessities such as decent housing, access to water and electricity and jobs.¹⁶² These residents were met with violence through water cannons and rubber bullets.¹⁶³ In an attempt to prevent an elderly person from being sprayed with water, Tatane intervened and was shot and murdered by the police with a rubber bullet.¹⁶⁴

Unfortunately, the people who mainly experience and grapple with state-sponsored violence are Black people, who already have an unpleasant and repugnant history with apartheid state-sponsored violence. There is nothing good that is derived from this. Police brutality does not allow for good relations between the police and the public as the desired outcomes and benefits of community benefits are not

¹⁵⁹ n 140 above.

¹⁶⁰ n 81 above.

¹⁶¹ As above.

¹⁶² S Hattigh 'Andries Tatane: murdered by the ruling classes' <https://ilrigsa.org.za/andries-tatane-murdered-by-the-ruling-classes/> (accessed 29 September 2023).

¹⁶³ n 58 above.

¹⁶⁴ M Lindeque 'Andries Tatane died in vain: family reflects on tragedy 10 years later' <https://ewn.co.za/2021/04/13/andries-tatane-died-in-vain-family-reflects-on-his-tragic-death-10-years-later> (accessed 29 September 2023).

accomplished.¹⁶⁵ In order to have effective policing, citizens need to support it and help maintain its legitimacy.¹⁶⁶

4.3.4) Freedom of expression

In its preamble, the UDHR highlights that one of its expectations is that humans will be able to enjoy freedom of speech and belief.¹⁶⁷ Additionally, Article 19(2) of the ICCPR also provides that everyone is given the right of freedom of expression.¹⁶⁸ The ACHPR states that every person is afforded the entitlement to express their opinion that must be within the confines of the law.¹⁶⁹

The Constitution also supplements, in Section 16(1), that everyone has the right to freedom of expression and further goes on to provide a list of the different freedoms of expression that the Constitution covers.¹⁷⁰ The Constitutional Court has previously declared that freedom of expression, when gauged with other fundamental freedoms, is of great importance in an open and democratic society especially when considering the country's history with control, censorship and enforced conformity of governmental theories.¹⁷¹

Grievances with government behaviour and in/action can only be known if it expressed and shared. If there are restrictions on this particular right, it allows for the thriving of government propaganda and further discourages individuals from speaking out when their rights are being violated. This destroys the very fabric of democracy that requires for rule to happen in accordance with the will of the people. Political and reform agitators are often censored and not allowed to express their opinions as they challenge the state's passiveness and indolence. This is particularly important as freedom of expression is salient in attaining the truth for individual fulfilment so that societal members are able to participate in social decision-making and also for the productive and beneficial function of democracy.¹⁷²

Other rights that are also affected by political repression include, but are not limited to, the right to privacy; the right to not to be tortured, treated or punished in a cruel, inhuman or degrading way and the right to freedom of thought and opinion.

4.4) Attributing responsibility

Now that the issues related to political repression have been established, it is important to attribute responsibility to responsible parties. As mentioned previously, this dissertation argues that there are two actors that are responsible, namely the state and the other non-state actors. It is quite obvious to see why the state would target social movements. At their very essence and core, social movements are not constructed to act indifferent when human rights are not respected and implemented by the state and

¹⁶⁵ S Yesufu 'The continuity of police brutality in post-apartheid South Africa' (2022) 2 *ScienceRise* 28.

¹⁶⁶ n 165 above.

¹⁶⁷ n 138 above.

¹⁶⁸ n 139 above.

¹⁶⁹ n 140 above.

¹⁷⁰ n 81 above.

¹⁷¹ *S v Mamabolo* 2001 3SA 409 (CC) 37.

¹⁷² SJ Sorabjee 'Freedom of Expression and Censorship: some aspects of the Indian experience' (1994) 45 *Northern Ireland Legal Quarterly* 327.

other actors. Whilst the state attempts to maintain the status quo, social movements do not wish to do so and in response, use the legal means available to them to ensure that there is an acceptable standard of change and development in matters that concerns citizens. One could insinuate that these movements are most likely targeted as a result of the governmental interests that they threaten and interfere with. In an evasive attempt, the response that the state deems to be fit is political repression, by attempting to silence the noise that these movements make in revealing state delinquency.

Notably, the state bears the onus of being responsible for suppression of human rights. Section 7(2) of the Constitution avers that the state is entrusted with the responsibility to protect, respect, promote and fulfil the rights that are contained in the Bill of Rights. This responsibility is further augmented by the Section 8(1) says that the Bill of Rights' application extends to all law and further binds the legislature, executive, judiciary and organs of state.¹⁷³ These sections reveal that the protection of human rights as well as their enforcement is part and parcel of state responsibility. Coupled with Article 2(1) of the ICCPR, which states that every individual state party has to respect the rights that are contained in the Covenant as they are due to everyone that is within the state's territory and subject to its jurisdiction.¹⁷⁴

To emphasize, one thing remains crystal clear – the government is responsible for curbing and ending political repression. To do so, it must monitor and find those who have violated the right to freedom of expression of dissent and even go further to hold these persons accountable for the violation of rights that they have committed.¹⁷⁵ On top of that, it must not only react to repression as it should rather promote and foster a tradition of activism and the tolerance of activism in a democratic space and provide safety for activists and HRDs.¹⁷⁶

The state also effects political oppression through state apparatuses. Esteemed author, Frantz Fanon, has previously written that 'the strength of the police force and the power of the army are proportionate to the stagnation in which the rest of the nation is sunk.'¹⁷⁷ What Fanon meant by this statement is that the police and the army exert their authority and power to bring a nation down instead of allowing for a nation to progress and move forward.¹⁷⁸ In an asymmetrical conflict, when state apparatuses that represent the status quo use force to repress those it categories as their opponents (especially those who employ non-violent means in their movements), whether it is psychological, physical, economic or done in other ways, is bound to go wrong.¹⁷⁹ These acts of repression allow for the legitimacy of the state to be questioned and the nation's confidence in these apparatuses ever working in their favour is dissolved.

One example is what occurred to the people of Makause, where it was found that there existed an unruly mob that was supported by the ANC and police that aimed to try and disempower and delegitimise the

¹⁷³ n 81 above.

¹⁷⁴ As above.

¹⁷⁵ <https://www.groundup.org.za/article/south-africa-failing-protect-its-activists/> (accessed 1 October 2023).

¹⁷⁶ n 175 above.

¹⁷⁷ F Fanon *The Wretched of the Earth* (1963) 172.

¹⁷⁸ EC Okereke 'The state security apparatus and political repression in Ngugi wa Thiong'o's *Petals of blood and devil on the cross*' (2016) 7 *International Journal of African Literary and Comparative Studies* 75.

¹⁷⁹ Kurtz (n 131 above) 2.

Makause Community Development Forum, whose work focused on working with people who lived in the informal settlement to seek better service and to be educated about their Constitutional rights.¹⁸⁰ The community alleged that the reason why they face political repression is because of the ANC wanting to dispossess the community of its land as they have earmarked it for development, with lucrative contracts being involved.¹⁸¹

Another example is the murder of AbM activist, Thuli Ndlovu, who was found to be murdered by ANC councillors as Ndlovu had spoken out against the councillors' involvement in providing housing exclusive for ANC members who were not from the area.¹⁸² In a press statement, the movement notes that throughout the years of repression that they have experience at the *eKhenana* Commune, it is alleged by them that the police and the prosecuting authority are captured by the ANC and that such capture has sabotaged and disrupted the criminal justice system.¹⁸³

Another form of political repression has been previously reported by the Right2Know movement (R2K). It has found that the state bodies have been surveillancing and gathering information on the activities of social movements and individual activists.¹⁸⁴ Even at protests, police officers have been seen photographing or videotaping protestors and even noting down slogans in their notebooks.¹⁸⁵

As such, it is also important to be cognisant of the political affairs in South Africa. For a state that is believed and proven to have been previously captured, relying on the state and its apparatuses is not ideal when one seeks to enforce their human rights and promote democracy. State capture allows for oligarchs and ruling elites to manipulate and influence the formation of policy and laws that work to their advantage and benefit.¹⁸⁶ This is why it is important for the government to make certain and guarantee that it does not aim to serve its own ambitious interests or those of a minor constituency as this continued action places the application and execution of democracy in a perilous position.

For non-state actors, Section 8(2) states that a clause of the Bill of Rights binds a natural or juristic person in the instance that it is applicable whilst also considering the nature of the right and nature of the duty that the right imposes.¹⁸⁷ As the Constitution constitutes of both horizontal and vertical application, non-state actors are also implication in the respecting human rights and ensuring that they do not violate them. The actions of non-state actors have profound implications for human rights thus

¹⁸⁰ M de Waal 'Police to people of Makause: 'March and there'll be another Marikana' <https://www.dailymaverick.co.za/article/2012-10-05-police-to-people-of-makause-march-and-there'll-be-another-marikana/> (accessed 01 October 2023).

¹⁸¹ n 180 above.

¹⁸² C Clark & N Xolo 'No justice for assassinated Abahlali activists' <https://www.groundup.org.za/article/no-justice-assassinated-abahlali-activists/> (accessed 02 October 2023).

¹⁸³ <https://abahlali.org/node/17641/> (accessed 02 October 2023).

¹⁸⁴ Right2Know 'Big Brother exposed – Stories of South Africa's intelligence structures monitoring and harassing activist movements' 6.

¹⁸⁵ n 184 above, 15.

¹⁸⁶ J Hellman & D Kaufmann 'Confronting the Challenge of State Capture in Transition Economies' <https://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm> (accessed 03 October 2023).

¹⁸⁷ n 81 above.

making it mandatory to comply with their constitutionally-set obligations.¹⁸⁸ The landmark *Grootboom* case clearly outlines this as the court affirmed that there is a negative obligation put upon the state and other entities to refrain and desist in preventing and impairing the rights people are entitled to.¹⁸⁹ This highlights that private actors can also be held bound for human rights infractions.

4.5) Conclusion

At the end, whilst it is important to point the occurrences of political repression, whether it occurs openly or privately, it is equally important to identify the actor who foists political repression as it is important to impute and ascribe responsibility. Whilst there has been a degree of justice attained in certain instances of political repression, there is still an appreciable and mammoth number of cases where justice is lacking. This needs to be urgently addressed by the government, who must materialise access to justice.

¹⁸⁸ AR Welch 'Obligations of state and non-state actors regarding the human right to water under the South African Constitution' (2005) 3 *Sustainable Development Law & Policy* 62.

¹⁸⁹ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 1 SA 46 (CC) 34.

5) CASE STUDIES: SOCIAL MOVEMENTS AND INDIVIDUALS

5.1) Introduction

Throughout history, African have always lived through song and dance. In times of joy and sadness, songs and dance have always been used to express both. Even at times when one intends to act out change, song and dance are relevant means to do so. This remains true for South Africa as songs are also used as a platform to voice out their concerns and express their opposition and defiance to oppression through energising songs and *toyi-toyi*. During apartheid and post-apartheid, struggle songs had and continue to have a role in the public life of the state, more especially in African states due to the long cultural matrix in history of politics, song and performance that has occurred in African societies.¹⁹⁰ There is one particular struggle song that sets the tone for this chapter. It is a song that has converged between different political parties, including the ruling party, and even to non-partisans organisations and individuals. The lyrics to the song are:

Yini isocialism? (What is socialism?)

Umhlaba wonke usezandleni zabantu (The whole world is in the hands of the people)

Akuna muntu ongaphatha' umhlaba eyedwa (No one alone has monopoly of the land)

Bayesaba amabhujwa nooNgxowa (The bourgeoisie and Capitalists are running)

Kuba efuna ukusetyenzelwa ngabantu (For the sole intention of exploiting the people)

This song bares a lot of symbolism. It simply addresses the mission and goal of the working class to see the people having power and ownership over the land and resources in the country and not just only a minority having monopoly over the land and resources.¹⁹¹ The context of this song is important to bear in mind as this chapter goes on to explore several different social movements and activists. It important as it highlights the promises which were made to South Africans by the ruling party. The promise of having a share in their country's resources and land is something South Africans have long believed. However, when this promise seemed to only favour a few, eventually, they became disillusioned with it. In light of the background that South Africa is known as the most unequal country, this song helps in understanding what leads to the formation of social movements that are disgruntled and aggrieved with the current decaying social and economic life that people are subjected to.

There has always a refusal for the low and undignified standard of living that poor people are made to live in. Be that as it may, it was in 2004 where there was a noticeable shift in the political landscape of

¹⁹⁰ *Afriforum v Economic Freedom Fighters and Others* 2022 6 SA 357 (GJ) 105.

¹⁹¹ T Maso 'Union songs in South Africa' <https://unionsong.com/reviews/thobile.html> (accessed 06 October 2023).

the country, which began in shack settlements in Johannesburg and later spread to other parts of the country.¹⁹² This shift and change was enacted through protesting by blocking roads and also targeting the local representatives of the ruling party, creating what was dubbed as ‘the rebellion of the poor’.¹⁹³ As resistance and refusal to be subject to undignified lives grew, the state retaliated by deploying the police to quell the dissent. It is reported that at least three unarmed people were killed by the police in 2004, setting the yardstick for more arrests and police violence against protestors to occur.¹⁹⁴ Even now, there seems to be a normalisation of these forms of political repression that occur commonly and routinely continue to surge.

5.2) Case studies

5.2.1) Abahlali baseMjondolo (AbM)

AbM is estimated to be one of the largest social movements in the current democratic dispensation. The term Abahlali baseMjondolo is the isiZulu term for ‘people who live/reside in shacks. The core focus of the movement is to organise against landlessness, impoverishment and to address consistent failure to include impoverished Black people from participating in democracy.¹⁹⁵ Hence, their slogan is ‘*Umhlaba, Izindlu neSthunzi*’ (Land, Housing and Dignity).

The movement began in the country’s east coast, Durban, in 2005 and was formed as a result of a road blockade that was organised to protest against the sale of a piece of land that was promised to shack dwellers for sale to a local industrialist.¹⁹⁶ AbM has over 10 000 paid up members as well as over 30 000 active supporters in over 40 settlements that are affiliated with the movement.¹⁹⁷ Furthermore, it has also formed a national alliance called ‘The Poor People’s Alliance’, collaborating with other social movements such as the Anti-Eviction Campaign in Cape Town, Landless People’s Movement in Johannesburg and the Rural and Farm Dwellers Network.¹⁹⁸

With the great influence and impact that the movement yields, they have been seen as a threat by both state and non-state actors. The movement has faced multiple forms of adversity such as frequent and multiple arrests, regular police assault, death threats and varying forms of intimidation from local party goons.¹⁹⁹ Despite facing multiple challenges in achieving its goal, the movement has been able to create and sustain a voice for shack dwellers in spaces of subaltern and elite publics and has even organised marches to offices of local councillors, police stations, municipal office, newspaper offices and City

¹⁹² The Tricontinental (n 87 above) 20.

¹⁹³ n 192 above.

¹⁹⁴ As above

¹⁹⁵ T Madlingozi ‘Social movement struggles for decolonization and (re)constitution from below: Abahlali baseMjondolo’s strivings against pariahdom’ in SA Butcher (ed) *et al Research Handbook on Law, Movements and Social Change* (2023) 228.

¹⁹⁶ <https://abahlali.org/a-short-history-of-abahlali-basemjondolo-the-durban-shack-dwellers-movement/> (accessed 10 October 2023).

¹⁹⁷ M Birkinshaw ‘Abahlali baseMjondolo: ‘a homemade politics’ Rights, democracy and social movements in South Africa’ (2009) 1.

¹⁹⁸ n 197 above.

¹⁹⁹ n 196 above.

Hall.²⁰⁰ Importantly, the movement has also been able to construct a democratic form of governance in the numerous settlements and has also prevented and stopped evictions from occurring.²⁰¹ As part of its accomplishments, it has also won cases involved with accessing schools and has halted the industrial development of some lands.²⁰²

For the past few years, the movement has faced numerous forms of political repression. Previously, the ANC and state officials would deal with movements of destitute and penurious people through a cocktail of patronage, co-optation, de-legitimisation and arresting the main organisers.²⁰³ What is being witnessed with AbM is that there is an attempt to dismantle and end the entire movement and autonomous community.²⁰⁴

The organised and ill-intentioned dismantling of the movement can be seen from the senseless and needless targeting that AbM activists are constantly subjected to. AbM activists have been assaulted, arrested on trumped up charges, their home have been burnt, jailed for long periods.²⁰⁵ Most commonly, activists are assassinated. It is claimed that since 2009, 24 of AbM leaders have been killed by the armed state forces and other by assassins who are tied to local politicians.²⁰⁶ Last year, AbM was subjected to a killing spree of three of its members in a span of 6 months.

It was on 8 March 2022, Ayanda Ngila, the deputy chairperson of the eKhenana Commune, was shot and killed by 4 gunmen.²⁰⁷ In March 2021, Ngila along with Lindokuhle Mnguni and Landu Tshazi were illegally arrested and detained at the Westville Prison and denied access to lawyers.²⁰⁸ The South African Human Rights Commission (SAHRC) had to intervene and it was only after this intervention that they were able to access lawyers.²⁰⁹ It was only after six months of being in detention that the trio were charged with the murder of an eKhenana commune member but due to lack of evidence, the charges were withdrawn.²¹⁰ In June 2023, the perpetrator who murdered Ngila was sentenced to 15 years in prison.²¹¹

On 5 May 2022, Nokuthula Mabaso was shot and killed in her home at the eKhenana Commune, in the presence of her children. After the murder of Ngila, Mabaso had told GroundUp news that she is aware of the consequences of being an activist and that even if she is jailed or murdered, she will know it was

²⁰⁰ As above.

²⁰¹ As above.

²⁰² As above.

²⁰³ Madlingozi (n 195 above) 228.

²⁰⁴ n 203 above.

²⁰⁵ https://peoplesforum.org/blog_post/nokuthula-mabaso/ (accessed 10 October 2023).

²⁰⁶ <https://peoplesdispatch.org/2022/10/03/abahlali-basemjondolo-demands-justice-for-its-members-lost-to-the-politics-of-blood/> (accessed 10 October 2023).

²⁰⁷ <https://www.frontlinedefenders.org/en/case/killing-land-rights-defender-ayanda-ngila-and-targeting-abahlali-basemjondolo> (accessed 10 October 2023).

²⁰⁸ n 207 above.

²⁰⁹ As above.

²¹⁰ As above.

²¹¹ <https://www.news24.com/news24/southafrica/news/abahlali-basemjondolo-activists-killer-handed-a-15-year-jail-term-20230724> (accessed 10 October 2023).

not done in vain as it was done for the struggle for land and freedom from oppression for the people of eKhenana.²¹²

On 20 August 2022, Lindokuhle Mnguni, chairperson of the AbM's Cato Manor branch, was killed in his home. Surveillance footage reveals armed men entering the commune and breaking Mnguni's window with a spade before shooting him and his girlfriend.²¹³ Mnguni had also witnessed Ngila's death. The Secretary General of the movement stated that this was a clear attack on and repression of the inhabitants of the eKhenana Commune and that there is no hope and trust in the justice system.²¹⁴ It is further alleged by some sources that the gunmen who killed Mnguni are linked to the ANC.²¹⁵

AbM activists have also experienced numerous deterrents from engaging with the media. To cite an occurrence, the movement was invited to form part of a live television debate with Durban mayor when upon arrival at the hall, activists were denied entry and were further assaulted and teargassed by the police.²¹⁶ Another incident is when the Chairperson of the movement, Sbu Zikode and another activist were on their way to a radio debate, with the MEC (Member of the Executive Council) for Housing, when their vehicle was stopped and searched by the police and were subjected to assault.²¹⁷ Despite the charges against them being dropped at a later stage, when members of the Kennedy Road informal settlement gathered at their community, with plans to march to the police station, demanding the release of the activists, when the police arrived with live ammunition, tear gas and rubber bullets with the aim of dispersing the crowd.²¹⁸ This resulted in a domestic worker being shot in the leg whilst she was fleeing from the police.²¹⁹

In September of last year, SERI wrote a letter to the executive and legislature to address the brutal attacks and repression that AbM faced and this was endorsed by 140 civil society organisations.²²⁰ The letter also addresses the lacklustre attitude regarding the lack of investigations of the assassinations of AbM members by the inter-ministerial committee on political killings that occur in KZN²²¹. This indifference to the killings of AbM activists raises suspicions about the governing party's sometimes alleged and sometimes proven involvement in the organised attacks and assassinations. If a government

²¹² <https://www.groundup.org.za/article/slain-durban-activist-knew-risks-she-was-taking/> (accessed 10 October 2023).

²¹³ Z Pikoli 'Killers of Abahlali baseMjondolo leader hunted him down in his shack after failing to find two of his colleagues' <https://www.dailymaverick.co.za/article/2022-08-23-killers-of-abahlali-basemjondolo-leader-hunted-him-down-in-his-shack-after-failing-to-find-two-of-his-colleagues/> (accessed 10 October 2023).

²¹⁴ n 213 above.

²¹⁵ <https://peoplesdispatch.org/2023/08/24/a-year-after-the-assassination-of-its-leaders-south-africas-abahlali-basemjondolo-continues-to-advance/> (accessed 10 October 2023).

²¹⁶ The Tricontinental (n 87 above) 23.

²¹⁷ <https://www.seri-sa.org/index.php/litigation/cases?view=article&id=128:mke-and-others-v-minister-of-safety-and-security&catid=19> (accessed 10 October 2023).

²¹⁸ n 217 above.

²¹⁹ As above.

²²⁰ S Bhuta 'SERI and other civil society organisations call for the protection of Abahlali baseMjondolo' <https://www.iol.co.za/news/south-africa/kwazulu-natal/seri-and-other-civil-society-organisations-call-for-the-protection-of-abahlali-basemjondolo-a36dce54-8f0f-456d-ad92-fa36de2eada6> (accessed 10 October 2023).

²²¹ n 220 above.

is not complacent in the murders of its civilians, it would not prolong and draw out investigations that are crucial to establishing justice and curbing crime.

5.2.2) The Marikana Massacre

Undoubtedly, one of the darkest moments in the democratic era has to be the Marikana Massacre. On 16 August 2012, the South African police involved itself in a labour conflict between mine workers and the stockholders of the Lonmin, who were owners of the Marikana platinum mine.²²² The police fired live ammunition on the protestors which resulted in thirty four miners being killed.²²³ This tragedy marked the most lethal force that has been used against civilians since the use of force by the apartheid government in the Sharpeville Massacre of 1960.²²⁴

The lives of these miners were seen as worthless and instead of their pleas being heard and adhered to, they were murdered in cold blood. In the hearings that were held to uncover what occur, the current president of the country, Cyril Ramaphosa, was implicated in the discovery of emails, where he was found to have condemned the protests, labelling as criminal acts and encouraged that ‘concomitant action’ should be taken against the miners.²²⁵ This was translated as calling for the killing of the miners in order to gag their protest.

There are numerous rights that this massacre violated, namely: the victims’ right to life, right to freedom and security of their persons, right to not be subjected to slavery, the right of their families to dignity and finally, the victims’ rights to attain decent work.²²⁶ To this day, the widows of the miners still seek just for the flagrant and widely broadcasted violation of these rights.

Commentators have recognised Marikana as one of the deadliest manifestations of the collaboration scheming between the state and non-state actors to repress protestors and is a prime example of the decline in the state of South African public order policing.²²⁷ In relation to state repression, Marikana is held to be the bloodiest stain on the accommodation between capital and the interests of the national bourgeoisie, which has been the ruling hegemony after apartheid.²²⁸ The state, still, continues to go unchecked in its prioritisation of capital over human life. Marikana is an apt example of how political repression does not only affect the individuals who are advocating for a particular cause but also their loved ones, who left to deal the wounds that have been caused and gaped open by political repression.

²²² N Buitendag & N Coetzer ‘History as a system of wrongs – examining South Africa’s Marikana tragedy in a temporal legal context’ (2015) 37 *Strategic Review for Southern Africa* 94 and 95.

²²³ n 222 above.

²²⁴ JF Boëtger & M Rathbone ‘The Marikana Massacre, labour and capitalism: towards a ricolourian alternative’ (2016) 81 *KOERS — Bulletin for Christian Scholarship* 2.

²²⁵ <https://www.news24.com/news24/ramaphosa-wanted-concomitant-action-20121023> (accessed 10 October 2023).

²²⁶ SP Makama & LLK Kubjana ‘Collective bargaining misjudged: the Marikana massacre’ (2021) 42 *Obiter* 43.

²²⁷ K Dyantyi & T Masiangoako ‘Marikana massacre: the devastating impact of the narrative painted by business, police and the state’ <https://www.dailymaverick.co.za/article/2020-08-26-marikana-massacre-the-devastating-impact-of-the-narrative-painted-by-business-police-and-the-state/> (accessed 12 October 2023).

²²⁸ The Tricontinental (n 87 above) 5.

5.2.3) #FeesMustFall (FMF) and continued student movements

Understandably so, the democratic era did not suddenly erase the existing inequality and inequity that had been deepened by apartheid. Student struggles at a tertiary level still pose to be a challenge, particularly in accessing affordable education. The biggest problems that students face annual are financial exclusion, increased fees and academic exclusion. Even more, students also demand for educational systemic reform that is free, decolonised and of an acceptable standard of quality. Sadly, as students attempt to highlight this unchanging situation, they are met with state-sponsored violence, where their rights are breached.

In October 2015, South Africa experienced a nationwide shutdown of its universities due to student protests. This eruption of protests became known as #FeesMustFall. FMF is regarded as a contemporary social movement that within its local reality and particularities forms part of the global struggles against capitalism and the other forms of repression that is promoted by it.²²⁹ This includes political repression, which became a fundamental avenue utilised by the state and non-state actors in order to stifle student-led movements.

Initially, the protests erupted as a result of the proposed fee increments for the 2016 academic year but later also unveiled multiple issues (such as outsourcing) that students exasperated and vexed over.²³⁰ The protests, over the two years, involved an array of violence. A student leader from WITS, Shaera Kalla was shot about ten times on her back at close range with rubber bullets as she tried to negotiate with police to pass through without the threat of violence.²³¹ At some point in October 2016, the police had arrested about 831 people as result of students' protests, charging them with violence, intimidation and malicious damage to property.²³² Universities had turned in a battleground where police would fire rubber bullets and tears in order to suppress dissent, which resulted in students getting hurt and being arrested.²³³ On the hand, it was also found that firearms such as petrol bombs were brought into campuses sneakily and were utilised to set buildings on fire.²³⁴

Since 2015 to now, student protests have occurred at multiple universities around the country. In 2021, WITS University student took to the streets and began the #Asinamali (we do not have money) campaign as they protested against the financial exclusion of students who have historical debt.²³⁵ The police

²²⁹ Buttelli (n 6 above) 2.

²³⁰ G Mavunga '#FeesMustFall Protests in South Africa: A critical realist analysis of selected newspaper articles' (2019) 7 *Journal of Student Affairs in Africa* 81.

²³¹ <https://businesstech.co.za/news/lifestyle/140933/student-killed-in-feesmustfall-protests/> (accessed 12 October 2023).

²³² <https://www.sanews.gov.za/south-africa/police-arrest-over-800-feesmustfall-protests> (accessed 12 October 2023).

²³³ M Greff *et al* 'The #FeesMustFall protests in South Africa: Exploring first-year students' experiences at a peri-urban university campus' (2021) 35 *South African Journal of Higher Education* 83.

²³⁴ n 233 above.

²³⁵ S Tshikalange 'Roads blocked as students protest against financial exclusion at Wits' <https://www.timeslive.co.za/news/south-africa/2021-03-09-roads-blocked-as-students-protest-against-financial-exclusion-at-wits/> (accessed 12 October 2023).

unleased rubber bullets at the protests, which hit and killed a non-protestor, who was identified as Mthokozisi Ntumba whilst two other students were also shot and injured.²³⁶

Even now, the government has not yet provided a sustainable and viable solution to student struggles that ensures that the beginning of every year, students do not undergo and experience the same frustration and anger. Once again, lack of a proper, non-violent and appropriate response from government continues to allow for vital human rights to be hampered and trampled upon.

Two truths can be said: the state we are in regularly represses its citizens and that secondly, social movements can at times be well-intentioned but also turn into violent ones. This statement is not be confused in saying that the violence committed by social movements is identical or equivalent to the kind meted out by the state. Instead, it beckons that there must be an understanding of the source of violence that is employed by social movements. Such is rooted in the frustration of the ineffectiveness of non-violent means and can regarded as being more symbolic than instrumental. However, to be fair, there instances where violence used are just unjustifiable acts of criminality and lawlessness.

5.2.4) Fikile Ntshangase

On 22 October 2020, environmental activist Fikile Ntshangase was murdered by three men who invaded her home and shot her six times, whilst her grandchildren were playing nearby.²³⁷ This occurred after Ntshangase her being successful in her bid to stall a mine's expansion.²³⁸ It is claimed that the beneficiary of her murder would be the Tendele coal mine.²³⁹

Her death was able to underscore that women activists are at a serious risk as threats of violence inhibits their ability and potential to move and speak as freely as they want, to occupy spaces with the guarantee of being safe and to also realise the power and aptitude of their activism.²⁴⁰ Whilst it is not easy to be an activist when there is political repression, it seems to be more dangerous when one is a woman. Activists in mining-affected communities are often threatened, physically attacked or their property is damaged as a result of other involvement in advocacy, particularly women whose instrumental and key position in social movements makes them vulnerable to harassment and attacks.²⁴¹

Police have also cracked down on protests that have been conducted by environmental activists, where they have used teargas and rubber bullets on protestors who had gathered peacefully.²⁴² Even more, police have also arrested protestors under the charges of public violence and malicious damage to

²³⁶ S Tshikalange 'Police brutality won't stop us, say students protesting over fees <https://www.timeslive.co.za/sunday-times-daily/news/2021-03-10-police-brutality-wont-stop-us-say-students-protesting-over-fees/> (accessed 12 October 2023).

²³⁷ P Bond 'Climate, violence, resource extraction and ecological debt: global implications of an assassination on South Africa's coal mining belt' (2021) *Globalizations* 1.

²³⁸ n 237 above.

²³⁹ As above.

²⁴⁰ <https://cer.org.za/news/today-we-mourn-the-senseless-death-of-fikile-ntshangase> (accessed 13 October 2023)

²⁴¹ groundWork *et al* 'We Know Our Lives are in Danger' Environment of Fear in South Africa's Mining-Affected Communities'(2019) 2.

²⁴² groundWork (n 241 above) 4.

property and then later dropping those chargers and releasing the protestors, a clear intimidation tactic to try and deter activists and community members from protesting.²⁴³

In 2018, the SAHRC developed a report that concluded that government is found to be responsible for the harm that is experienced by mining-affected communities as it has failed to ensure that it properly monitors compliance, has poor enforcement and also suffers from a sever lack of coordination.²⁴⁴

5.3) Conclusion

Social movements and activists continue to be branded as a threat to government. However, not much focus is given on the important and necessary work that they carry out. Political repression has resulted in the murders of numerous activists. So long as there is no change to this, activists and social movements will continue to remain in a vulnerable position.

²⁴³ As above.

²⁴⁴ <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1522-how-mining-damages-communities-and-the-environment> (accessed 13 October 2023).

6) SOLUTIONS AND CONCLUSION

6.1) Introduction

Political repression has the power to make the future seem gloomy and bleak, as though there are no solutions that can prevail over it. Some authors put forward that policy makers decide to utilise repression as they are environed by particular conditions that pressurise and impel them towards repression.²⁴⁵ These conditions are the type of government, socio-economic advancement, societal inequality, and the rate of economic growth and the level of economic development of society.²⁴⁶ But even so, there is nothing that could possibly serve as an adequate justification for the use of political repression that is violent and brutal.

In being forward-looking and optimistic, there are ways in which political repression can be combatted and defeated. If the persistence of political repression is local, similarly, so are the solutions to it.²⁴⁷ A country that has a government that is given limited powers and that is also responsive to the needs of its people and has developed an economy that has a healthy growth rate tend to move away from repression.²⁴⁸ This final chapter will briefly explore some of the ways in which South Africa can turn over to be a politically expressive country.

6.2) Solutions and recommendations

6.2.1) Addressing inequality and poverty

South Africa is best described as a paradoxical country where it has the one of the most progressive Constitutions that offers access to the most fundamental and necessary socio-economic rights.²⁴⁹ In contrast, it is also one of the most unequal countries, where a large number of the population lives in poverty, where inflation is incredibly high and where there is stagnant and inert economic growth.²⁵⁰

South Africa is said to have one of the highest levels of income and wealth inequality in the entire world.²⁵¹ Statistics also further reveal that as of 2023, an estimate of 18.2 million South Africans live in extreme poverty and with the poverty threshold at 1.90 US dollars daily, a 162, 859 more increase compared to 2022.²⁵²

The South African government is cognisant of this precarious and worrisome situation. In its National Development Plan (NDP), it stresses that one of its main goals is to eliminate poverty and reduce

²⁴⁵ CW Henderson 'Conditions affecting the use of political repression' (1991) 35 *The Journal of Conflict Resolution* 121.

²⁴⁶ n 245 above.

²⁴⁷ EH Ritter & S Potential 'If repression is local, so are the solutions' <https://politicalviolenceataglance.org/2022/01/20/if-repression-is-local-so-are-the-solutions/> (accessed 15 October 2023).

²⁴⁸ Henderson (n 245 above) 132.

²⁴⁹ D Francis & E Webster 'Poverty and inequality in South Africa: critical reflections' (2019) 36 *Development Southern Africa* 788.

²⁵⁰ n 249 above.

²⁵¹ J Seekings 'Poverty, inequality and policy in Southern Africa' <https://www.ispionline.it/en/publication/poverty-inequality-and-policy-in-southern-africa-137869> (accessed 15 October 2023).

²⁵² <https://www.statista.com/statistics/1263290/number-of-people-living-in-extreme-poverty-in-south-africa/#:~:text=As%20of%202023%2C%20around%2018.2,increase%20in%20the%20coming%20years.> (accessed 15 October 2023).

inequality by 2030 through drawing on the energies of the citizens, growing and developing an economy that is inclusive, by building capabilities, by enhancing the state's capacity and lastly, by encouraging leadership and partnerships within different societies.²⁵³

The country's is commonly categorised as weak and ailing. It is commendable that the country's economy, by June of this year, was able to expand by 0,4%.²⁵⁴ However, it cannot be ignored that factors that could be addressed by government to improve the economy are disregarded and not considered. By being inactive and unresponsive, the economy's already weak growth is further burdened and weakened by crippling power cuts, commodity prices that are volatile and an external environment that is challenging.²⁵⁵ It is important to consider the International Monetary Fund's recommendations on how the economy can be bettered. The country needs to prioritise on solving the energy crisis that it faces through improving Eskom's efficiency, further fostering competition and additionally expediting the use and reliance on renewable energy.²⁵⁶ It must further contain its money allocated for public spending by reducing the public wage bill and further making a transfer to state-owned enterprise.²⁵⁷ South Africa should also develop and facilitate its structural reforms by ensuring that it reduces its regulatory barriers to allow for competition to occur whilst also confronting corruption and further improving the flexibility of the labour market.²⁵⁸ The last consideration South Africa should have is to decrease its inflation rate through continuing to be dependent on data and also securing inflation expectations.²⁵⁹

The country does have the potential to effectively combat and decrease poverty and inequality. A major hindrance to doing so is the rampant and pervasive corruption that troubles the country. Multiple times, it has been found that state-allocated funds for dispelling poverty and inequality are often at times pocketed, mismanaged and squandered by those in positions of power. Rooting out corruption and further holding those who have committed such crimes accountable would help in alleviating the situation. This is necessary as a booming and thriving economy will warrant and generate many employment opportunities for the people, thus reducing poverty and inequality. People are then afforded the opportunity to better their lives and to be able to be in a better standard of living.

6.2.2) Accountability and justice

Justice remains a progressive and sought-after concept for many South Africans. In spite of experiencing some of the most atrocious and unspeakable human rights violations, no recourse or accountability is given to those who have been wronged.

²⁵³ 'National Development Plan 2030: Our future – make it work' 24.

²⁵⁴ <https://www.statssa.gov.za/?p=16379> (accessed 15 October 2023).

²⁵⁵ <https://www.imf.org/en/News/Articles/2023/06/15/cf-south-africas-economy-loses-momentum-amid-record-power-cuts> (accessed 15 October 2023).

²⁵⁶ n 255 above.

²⁵⁷ As above.

²⁵⁸ As above.

²⁵⁹ As above.

In its opening lines, the Constitution provides that as part of its values, the Constitution is regarded to be the supreme law and the rule of law is valued.²⁶⁰ Furthermore, it also denotes that the country favours a multi-party system of democratic government so that there can be an assurance of accountability, responsiveness and openness.²⁶¹ These provisions are important as they assist in the highlighting that at all times, even in instances of political repression, the rule of law should be valued and that a true democratic government ensures that there is always accountability, allowing for the citizens to have faith and trust in the remedying systems that are available.

Accountability and actualising justice are fundamental features of a democracy that is living and thriving. Without accountability, democracy can be rendered obsolete and redundant. The concept of accountability, in classical constitutional studies, displays that there is compliance and conformity with the principles of legality as well due process as this involved the defence and rationale of an actor's performance of their duties that is owed to others through the use of standards to measure such performance and the probable repercussions if such standards are not met.²⁶²

Unfortunately, the continuance of making certain that accountability is occurs weakens our democracy. Most of the time, people who enforce political repression are allowed to elude justice without any admonishment or rebuking. What is noticeable from this is that there is serious deficit in the political will of the state to ensure accountability for violation of human rights occurs. Instead, many states tend to resort to applying a police of negation, abusing ambiguous and restrictive laws to justify their excessive use of force, and punishing, criminalising and detaining victims.²⁶³ This also severely cripples and reduces the independence of the national criminal justice system.²⁶⁴

Whilst on the topic of addressing the criminal justice system, the country's current system is riddled with many problems that curtail and restrict it from functioning effectively and allowing for it to create justice. In order to have an effective and functional criminal justice system, the system needs to incorporate and adopt a bi-fold strategy of pro-activeness and reactiveness.²⁶⁵ Through proactivity, the longer term reduction of crime is promoted with the assistance of impactful and working institutions that process criminals swiftly.²⁶⁶ Furthermore, attention should be given to the transformation of the reactive components of the criminal justice system as this will allow for proactive strategies to form, and also allow for rehabilitation of offenders.²⁶⁷

But even beyond reforming the criminal justice system, there should also be a change in the attitude of authorities that are responsible for accountability. At times, it seems there is a certain hesitancy by those

²⁶⁰ n 81 above.

²⁶¹ As above.

²⁶² K Topidi 'Accountability in the globalised digital age: online content moderation and hate speech in the European Union' in P Mikuli and G Kuca (eds) *Accountability and the law: rights, authority and transparency of public power* (2022) 11.

²⁶³ <https://www.ohchr.org/en/press-releases/2023/06/robust-accountability-key-end-cycle-repression-against-protesters-and> (accessed 15 October 2023).

²⁶⁴ n 263 above.

²⁶⁵ M Shaw 'Reforming South Africa's criminal justice system' (1996) 1.

²⁶⁶ n 265 above.

²⁶⁷ As above.

authorities that exists to hold the state and non-state actors responsible for human rights violations. Unfortunately, due to the corrupt nature that is widespread and habitual, officials often accept bribes to make docket or evidence disappear or even refuse to take on the victim's case. This sets a terrible precedence that breeds and fosters the idea political repression can go unpunished and unchecked. Yet, at the same time, it is important to note that educating and training policemen and other state apparatuses to be ethical is simply not enough. Competent, honest, morally-upright and independent bodies are necessary to further surveillance and monitor corruption and exploitation.

6.2.3) Governmental and systemic change

Since 1994, there has been one-party dominance, with the ANC being the ruling party of the country. Over the last two decades, the government has gradually and steadily departed from full democracy to more of a hybrid regime, which has resulted in sub-structural shifts in rudimentary civil liberties, governmental functioning, judicial freedom, political participation and opposition suppression.²⁶⁸

Currently, it seems that there is a common dissatisfaction and displeasure with the current ANC. In 2019, the national elections were held. Results show that the ANC'S popularity had taken a knock down. Despite winning majority of the vote at 58%, the party received its lowest margin of since it assumed power in 1994.²⁶⁹ With the general election set to occur in 2024, it will be interesting to observe whether or not the ANC will win the election.

Dissatisfaction with the status quo warrants that there should be governmental and systemic change. Perhaps, next year, we might witness the emergence of new power, with the expectation that voters will abandon their loyalty with the ANC and explore other options. Whatever those options will be, it is important to support and vote for a party that believes and will act upon strengthening democracy and human rights in the country. Furthermore, such a party will also make certain that political repression is brought to a necessary end and is also welcoming of dissenting and opposing views. Democracy in full form should almost guarantee the absence of repression.²⁷⁰ The country should not able to boast about having one of the world's best Constitutions and some of the most progressive law whilst those laws do not reflect in creating desired change in the country.

6.3) Conclusion

Whilst we do have a terrible history and current account of political repression, there is no better time than now to let the words of Nelson Mandela to come to life. Violence from repressive states needs to be brought to its ultimate conclusion. South Africa is very capable is becoming a nation that does not rule with authoritarianism and a nation that does require political repression. Political repression can never be regarded as the solution to any societal issue. Rather, it expands on the issues that are faced by the citizens. We are no longer a young democracy that can dabble in also being involved in acts that defy

²⁶⁸ M Walsh & P Mnyandu 'Democracy at stake in South Africa' <https://www.fpri.org/article/2023/05/democracy-at-stake-in-south-africa/> (accessed 15 October 2023).

²⁶⁹ <https://www.britannica.com/topic/African-National-Congress/Internal-dissent> (accessed 15 October 2023).

²⁷⁰ Henderson (n 245 above) 132.

and hinder democracy. Our democracy has been long established and this democracy has no room for political repression.

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