

Submission

to the

UN Special Rapporteur on the situation of human rights defenders

on

ATTACKS ON HUMAN RIGHTS DEFENDERS IN SOUTH AFRICA

05 October 2022

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1. Introduction

- 1.1. The Centre for Applied Legal Studies (CALS) is a civil society organisation based in the School of Law at the University of the Witwatersrand. CALS is also a law clinic, registered with the Legal Practice Council. As such, CALS connects the worlds of academia and social justice and brings together legal theory and practice.
- 1.2. CALS operates across a range of programmatic areas, namely: Civil and Political Justice, Home, Land and Rural Democracy, Business and Human Rights, Environmental Justice, and Gender Justice.
- 1.3. Through its intersectional programmes, CALS has for over 40 years sought to contribute towards the achievement of a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights.
- 1.4. In aspiring towards this vision, CALS' mission includes expanding the agency of marginalised actors which involves advocating for the protection of human rights defenders and the freeing of civic space in South Africa.

2. Attacks on human rights defenders

- 2.1. CALS welcomes the invitation by the Special Rapporteur to make brief submissions on the situation of human rights defenders in South Africa. CALS works closely with grassroots organisations, social movements and individual human rights defenders and is therefore privy to the challenges faced by these defenders in advocating for their and others' rights.
- 2.2. In its 2018 report titled *the Victimisation Experiences of Activists in South Africa*, CALS reported with concern the different forms of attacks experienced by defenders in South Africa. These included killings, death

threats, forced hidings, intimidation, harassment and the use of criminal and civil litigation to silence defenders, amongst others.¹ The report also detailed the gendered impact of such victimisation.²

2.3. Unfortunately, these are still the experiences of defenders in South Africa. During our research process for a forthcoming second edition report on the victimisation experience of activists in South Africa, defenders lamented how they continue to be targeted and attacked. In some instances, these attacks would be done publicly, but in many other instances, effort is needed from partner organisations to expose perpetrators and demand accountability for these attacks.

2.4. A grassroot organisation called Abahlali baseMjondolo (Abahlali) defends the rights of people to housing and land.³ Since establishing their organisation in 2005, 24 Abahlali leaders have been assassinated. This year alone, 3 of its leaders have been killed, with the latest being Lindokuhle Mnguni who was shot and killed on 22 August 2022 in the province of KwaZulu Natal.

2.5. Environmental defenders have also been subjected to various attacks including death threats. In the KwaZulu Natal community where environmental defender Fikile Ntshangase lived and was killed, defenders are still receiving death threats, being forced into hiding and are being intimidated. These attacks have also been levelled against the attorneys representing the local social movements in their bid to resist mining. Lawyers working for ALLRISE, an environmental justice organisation representing the community, have been intimidated and threatened for their role in successfully reviewing the granting of a mining license to Tendele Coal Mining.

2.6. In a recent case involving multinational company Shell, local movements fought against the company's bid to conduct seismic survey blasting in the

¹ Centre for Applied Legal Studies 'the Victimisation Experiences of Activists in South Africa' (2018)

² Ibid 24-25

³ <https://abahlali.org/>

ecologically sensitive area of the Wild Coast in the province of the Eastern Cape. In response to communities' efforts, Minister of Mineral Resources and Energy made comments in the media stating that "we consider the objections to these developments as apartheid and colonialism of a special type, masqueraded as a great interest for environmental protection". These statements by a government official can be interpreted as intimidating and discrediting communities' efforts to protect their environment and their rights.

2.7. Such attacks by government officials on media and social media platforms have also become more frequent. The Socio-Economic Rights Institute (SERI) were forced to temporarily close their offices after being attacked on social media by followers of a public official who made inflammatory and xenophobic comments against SERI and its client's the South African Informal Traders Forum (SAITF) after successfully settling a case against the City of Johannesburg to protect the rights of informal traders.

2.8. In a separate incident, the Minister of Home Affairs made a statement in the media after civil society organisation Helen Suzman Foundation challenged the Department of Home Affairs' decision not to extend the Zimbabwean Exemption Permit (ZEP). He is quoted stating that "South Africa is now under the dictatorship of some of the NGOs with some having faceless and dubious funders. Their ultimate aim is to assist in the dislodgement of government of the day from power by all means available." These utterances not only undermine and discredit the work of civil society organisation, but it is also aimed at discouraging organisations from pursuing activism strategies, including litigation.

2.9. Whistleblowers have similarly experienced increasing attacks in South Africa. Babita Deokaran was killed in 2021 for reporting on corruption in the Gauteng health department. Atholl Williams has similarly been exiled following his exposing of corruption and the corporate capture of state-owned entities by multinational company Bain & Company. Other whistleblowers have reported to CALS how they have been fired from their workplaces and threatened into

silence after they reported fraud and corruption both in the private and public sectors.

2.10. CALS also represents community activists who have been repeatedly unlawfully arrested for peacefully protesting within their communities. Their criminal cases have dragged on since 2016, affecting their lives, livelihoods and their ability to stand for office within their local community. This weaponisation of the criminal justice system is meant to curb their activism and silence them. CALS is also currently supporting a case as amicus curiae where defenders are being sued for defamation for speaking out about the impact of mining in their communities. In another matter, CALS was representing activists who had a wide-reaching interdict granted against them to prevent them from protesting or engaging with the mine. This case, we argued, was also an example of a SLAPP suit, which the court failed to recognise.

2.11. CALS has also engaged with activists in Eastern Cape who are currently in forced hiding following receiving death threats for leading dissent against local government officials and mining companies in their community. A member of a social movement in Limpopo, whom we work closely with, has also had to be moved late last year following threats to their lives. Other movement members have experienced other forms of victimisation including being unlawfully arrested, targeted by police, intimidated and harassed.

3. Recommendations

3.1. The above instances are a few examples of the many incidences of attacks against human rights defenders. These attacks are also ongoing and the perpetrators responsible for the victimisation of activists have, in the main, not been held to account.

3.2. Some recommendations for the South African government to implement to better protect activists and hold perpetrators to account include:

- Implementing legislation that will prohibit repression. This can include specific legislation that will protect activists, and anti-SLAPP legislation

- Creating or capacitating entities that will be responsible for ensuring the eradication of attacks against defenders, for example an ombuds that deals with the victimisation of whistleblowers
- Creating mechanisms for monitoring and enforcing compliance with laws prohibiting victimisation
- Running national anti-repression campaigns to ensure widespread messaging on intolerance to activist repression
- Partnering with organisations aiding defenders facing victimisation
- Encouraging and ensuring entities such as the police and the National Prosecuting Authority are properly investigating and prosecuting murderers of activists
- Create mechanisms to ensure effective remedies for victims of repression

4. Concluding remarks

We believe that activist repression can and should be eradicated in South Africa and across the globe. The attacks on defenders need to be urgently addressed by the South African government who has the duty to protect its people regardless of their political views. The freedom of expression, association, assembly and many other rights need to be protected and promoted. We hope that the South African government will heed to the Special Rapporteur's call to address the escalating attacks on defenders in the country.