

STATE SECURITY AND CIVIL-POLITICAL RIGHTS IN SOUTH AFRICA

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1. Setting the Frame: The Apartheid Years

After narrowly securing victory in South Africa's 1948 all-white elections Prime Minister Dr Daniel Malan and his Afrikaner-dominated National Party quickly set about the task of instituting a range of laws and decrees that would deepen existing legalised racism and form the foundation for what became known world-wide as the apartheid system. The impetus for these developments came from three main sources: the need to secure the support of those sectors of white society, specifically the white working class and farmers, who were threatened by industrialisation and further capitalist development; the need to meet the new demands of such economic development through the increased exploitation of the dominant black labour force (McKinley 1997: 13-14); and crucially the need to ensure complete political and administrative control of the state in order to manage and suppress rising resistance from the oppressed black majority.¹⁾

Laws such as the Population Registration Act (providing a national roll according to racial classification) and the Group Areas Act (demarcating all land use according to race) laid the core foundation for the soon-to-follow ideologically saturated securitisation of the apartheid state and society that effectively criminalised any opposition to the apartheid state and socio-economic order. In order to provide some kind of ideological justification and 'moral' legitimisation for the move to institutionalise their racial fascism, the National Party sought to equate political and social opposition with ideologies such as communism and liberalism. As one leading National Party politician put it in 1948:

On the one hand we have nationalism, which believes in the existence, the necessary existence, of distinct people's, distinct languages, nations, and cultures, and which regards the fact of the existence of these people and these cultures as the basis of its conduct. On the other hand we have liberalism, and the basis of its political struggle is the individual with his so-called rights and liberties ... This doctrine of liberalism which stands for equal rights for all civilised human beings ... is almost the same as the ideal of communism (Bunting 1969: 196).²⁾

Not surprisingly given this discursive equation of basic human rights and liberties with an enemy ideology, 'liberalism-communism', the National Party soon passed the Suppression of Communism Act in 1950. The Act gave the apartheid state the legal basis on which to ban all organisations, protests and publications that were deemed 'communist', alongside banning, detaining and/or restricting those seeking any "political, industrial, social or economic change" (Bunting, 1969: 199). This was quickly followed by: the Criminal Laws Amendment Act of 1953 (outlawing all protest/gatherings not approved by the state); the Public Safety Act of 1953 (allowing states of emergency for up to twelve months as well as associated detentions without trial); and, the Riotous Assemblies Act of 1956 (criminalising 'intimidation' related to strikes/stayaways/pickets, the joining of a non-state approved union and incitement to public violence).

Following the banning of the Communist Party of South Africa in 1950 (under the Suppression of Communism Act) the two main liberation movements; the African National Congress (ANC) and the Pan Africanist Congress (PAC) were banned in 1961. As a result, these organisations embarked on campaigns of underground (illegal) armed struggle and began to mobilise support both inside and outside South Africa. Even though none of the subsequent acts of armed struggle — which consisted mostly of limited acts of sabotage on apartheid state infrastructure — represented a serious military or political threat to the apartheid state, it gave the apartheid state the excuse to enact further repressive legislation.

The 1960s saw three more pieces of related legislation being passed to complete the circle: the Internal Security Act of 1963 (allowing for various types of preventative detention and interrogation of political-social activists); the Civil Defence Act of 1966 (providing for

the seizure of both people and property during states of emergency or threats of emergency); and, the Terrorism Act of 1967. The Terrorism Act allowed for indefinite detention without trial of "suspected terrorists or persons in possession of information about terroristic activities" and defined a 'terrorist' offence as an act which involved "endangering law and order; likely to cause general dislocation or disturbance; embarrassing the administration of the affairs of the state; causes feeling of hostility between whites and non-whites; and, promoting the achievement of any object by intimidation" (Republic of South Africa 1967). It gave the apartheid state the power to punish any such 'terrorist' offence with a minimum of five years detention and a maximum of death (Bunting 1969: 236). Later in 1982, the omnibus Internal Security Act was passed, effectively replacing all previous 'security' legislation and providing even harsher regimes for the criminalisation and banning of individuals, organisations, publications and gatherings as well as for detention without trial. The axle on which the use of such concentrated political and socio-economic power turned was institutionalised secrecy, as evinced in the Protection of Information Bill, which was passed in the same year.

From the late 1960s until the late 1980s, this incredible arsenal of legislation was used to try and crush all political, social, economic and cultural resistance to the apartheid state and society under the guise of fighting 'communism' and 'terrorism', both of which were treated similarly in legislative and discursive terms by the apartheid state. Effectively then, for the better part of 30 years, anyone who acted, wrote and/or spoke in direct opposition to the apartheid system and its laws was considered and treated as a 'terrorist' and/or 'communist' enemy of the state. Throughout most of the 1960s and 1970s all such opposition — both individual and organisational — was forced either into exile or the internal underground. There could be no space given to any show of meaningful dissent, repression had to foreclose all ideas and practice of dissent, the spirit of resistance had to be completely crushed.

Paralleling this, however, was an increasing centralisation of power centred on a small collection of exiled liberation movement leadership and framed — in the case of the ANC — by an overarching ideology and rhetoric that did not distinguish between the liberation movement and the people. As Suttner (2006 and 2008: 119) points out, the cumulative result was the generalised adoption of a "warrior

culture, the militarist tradition" which "entailed not only heroic acts but also many cases of abuse of power", leading to the emergence of a liberation movement as a prototype of a state within a state, in which it sees itself as the only legitimate source of power.

Nonetheless, the two arenas of resistance in which the apartheid state eventually came up against the inherent contradictions and limitations of its enforced system of racial-capitalism were the labour unions and grassroots community organisations within South Africa. Foreshadowing what was to come later under a post-apartheid government run by an ANC unable to deliver on the most basic socio-economic and developmental needs of the majority of the population, these forces engaged in a generalised people's uprising throughout most of the 1980s. Despite the effective 'counter-revolutionary' militarisation of the entire society, the closing down of almost all independent media, the granting of even more draconian powers to state securocrats and successive states of emergency that saw over 30 000 people detained as well as thousands killed and tortured — most all under the rubric of fighting 'terrorism' and 'communism' — the tide had turned (Webster and Friedman 1989: 16-41).

However, the growth and variety of grassroots organisational forms that emerged during the internal resistance to apartheid-capitalism during the 1980s was accompanied by the increasing influence of the decidedly bureaucratic, centralised and hierarchical organisational form of the exiled ANC and its allies (mainly grouped together in the United Democratic Front — UDF). While those forces associated with the ANC (both internally and externally) gained a dominant organisational and symbolic position by the late 1980s, organisational cultures and practices played themselves out right up until 1994.

By that stage, the ANC and its allies were able to exert an organisational hegemony over the 'liberation forces', a 'victory' that was not without destructive consequences for organisational, political and ideological openness and diversity. Indeed, by the late 1980s, the ANC's "calls for unity increasingly referred only to those who accepted the leadership of the UDF and its exiled ANC allies ..." (Marx 1992: 171). While there certainly was a broad-based unity around getting rid of the apartheid system, the intolerance and fear of opposition and criticism that developed within the ranks of the ANC/Alliance represented a 'hidden' defeat for independent, grassroots

organisation and politics as well as a serious warning sign for the health and sustenance of basic, post-apartheid civil-political rights.

By 1990 the combined impacts of international political and financial isolation, an intensified domestic economic crisis, a low-level urban guerrilla insurgency from exiled liberation movements and most crucially, internal resistance of ordinary black South Africans forced the apartheid state to the negotiating table. An entire system dedicated to the delegitimisation and institutionalised criminalisation of the most basic struggles for human dignity, equality and justice had been brought to its knees. However, the ANC's return from exile and entrance into political negotiations with the apartheid regime marked the opening up of a new terrain in its struggle for national liberation.

From this point on, the ANC chose to use the mass struggles of workers and the poor only as a means of leveraging its position at the negotiating table. This required that the full weight of the liberation movement be given over to managing (and where necessary, suspension of) bread and butter, class-based struggles that had continued to parallel the worsening crisis of both apartheid and capitalism in South Africa. In turn, this was framed by the enforced institutionalisation of the ANC's narrow, post-apartheid nationalist politics and a complementary approach to 'nation-building' that demanded (of 'the people') political obedience to both the 'new' state and the party that now controlled it. While not directly or immediately invoking the harsh character of the apartheid state's counter-oppositional discourse and practice, the ANC's macro-political and nationalist narrative most certainly contained the seeds of the same.

The dominant position within the leadership of the ANC became one of enforced unity in the name of 'the people', wherein independent, grassroots and progressive organisations alongside their public voices were no longer needed now that the liberation movement had effectively defeated apartheid. This development was rationalised under the rubric — 'From Resistance to Reconstruction'. What followed was the systematic dismemberment, or incorporation into the organisational framework of the ANC, of most all-independent and allied community organisations in South Africa (historically known as 'civics').

Meanwhile, the world celebrated with most South Africans as a democratically elected government came to power in April 1994 and cheered wildly when newly elected President Nelson Mandela told the world that, "never, never and never again shall it be that this

beautiful land will again experience the oppression of one by another ..." (Mandela 1994). Or so it seemed.

2. The Post-Apartheid Years: History Repeating Itself?

We must understand that the new democracy cannot allow for hostile surveillance of the democratic process and the participants in this process.

Thabo Mbeki, 1994³⁾

The most immediate result of the political triumph over apartheid as evinced through the April 1994 elections was, as Salim Vally (2003: 67) has argued, a continuity of "the dominant interests that determine the strategic thrust of the South African state ... [including] ownership of the commanding heights of the economy [and] the repressive apparatus of the state ...". Crucially then, the mind-sets and practices that structured apartheid responses to dissent and conflict found a generally warm embrace amongst the ANC leadership regardless of the affirmation of basic civil-political rights in the new Constitution. Such continuities were, however, over-determined by the particular position that was adopted by the state and ruling ANC party in relation to questions of economic policy as evinced through the adoption of the neo-liberal Growth, Employment and Redistribution (GEAR) macro-policy less than two years into the new democracy. Indeed, the transitional genesis of the ANC state's approach to (democratic) power and space is to be found in its heavy-handed reactions to, and effective marginalisation of, widespread dissent over GEAR.⁴⁾

Besides the ANC leadership's declaration that GEAR was 'non-negotiable', the central political tenet of that response was provided by senior ANC and state official, Joel Netshitenzhe (1996) who argued that, "... when pressure from below is exerted it should aim at complementing the work of those who are exerting pressure against the old order from above". This was simply another way of saying that the ANC and the state it now controlled viewed any political and/or socio-economic struggle and dissent against its own practices and policies as being unacceptable and possibly illegitimate.

The implicit assumption was, and remains, clear; that the post-

1994 state and the people that put it in power are one and the same and that going outside of the organisational and institutional boundaries of 'democratic engagement' set by the ruling party and the state itself should be treated as an act of political heresy and, if necessary, a betrayal of the liberation struggle itself. Importantly then, from the beginning of South Africa's 'transition' the ANC, as the new 'master' of the state, set both the political-ideological and economic boundaries of the enjoyment and practice of civil-political rights. In this way, there has been a false binary set up between state security and human (people's) security.

Indeed, as opposition to GEAR intensified, a climate of hostility towards any radical critique of ANC — and by association state — policy took hold and the labels, 'ultra-left' and 'unpatriotic', increasingly became associated with critics; with some being expelled from the ANC and its alliance partner, the South African Communist Party (SACP).⁵⁾ Simultaneously, the practical impacts of GEAR catalysed a new wave of community resistance. The subsequent foreclosure of any real dialogue between the state and communities in relation to issues of economic import meant that engagements between the two have since taken on an increasingly conflictual character, mediated by the criminal justice system in the context of post-1994 security and related legislation.

In respect of such post-1994 legislation, the South African Parliament passed the Safety Matters Rationalisation Act of 1996 which repealed a total of 34 apartheid-era laws dealing with security legislation. Crucially though, several pieces of legislation from the apartheid-era that impact on the full enjoyment and practice of what are now constitutionally guaranteed civil-political rights, were maintained.

These include: the Riotous Assemblies Act of 1956 (which gives the President the power to take "special precautions to maintain public order" and makes "incitement to public violence" a crime);⁶⁾ the National Key Points Act of 1980 (NKPA) — which makes it a crime to punishable with up to 20 years in prison for 'disrupting' the operations of designated key points such as airports, military bases, government buildings, water storage and distribution facilities and oil refineries); the Protection of Information Act of 1982 (PIA) whose approach to the protection and dissemination of information is informed by the demands of an authoritarian and secretive apartheid state. and, the Regulation of Gatherings Act of 1993 (RGA) that determines how,

where and when individuals and groups can gather as well as defines the shape, size and location of protests.⁷⁾ While sizeable parts of these apartheid laws have not been utilised, the ANC state was quick to apply (and has continued to do so) the 'crime' of 'public violence' for virtually all social movement and community protest activity; to intensify the use of the NKPA to cover almost every government building and private facility deemed to fall under the rubric of state security; as well as to invoke the Regulation of Gatherings Act to criminalise legitimate marches, pickets and rallies.

Besides these laws however, the Cabinet unilaterally implemented the Minimum Information Security Standards of 1996 (MISS) which, in the name of ensuring "that the national interest of the Republic are protected", set down information security standards for all government departments/institutions based on four categories of classification for handling 'sensitive information' (restricted, confidential, secret and top secret). Besides going a long way to prevent the free-flow of government information, the MISS has placed a thick veil of secrecy over whatever was left of apartheid-era state information. Even though the much-celebrated Promotion of Access to Information Act of 2000 (PAIA) was subsequently passed, its immediate (and longer-term) effectiveness and impact has been seriously compromised by a huge lack of public awareness, education and human resources within the state to implement it, the poor state of public records management and an alarming absence of accountability of those entrusted with ensuring its implementation (McKinley 2003).

The state also introduced an Anti-Terrorism Bill to Parliament in 2003 whose name was later disingenuously changed to the Protection of Constitutional Democracy against Terrorist and Related Activities Act when, after much public opposition, it was passed in 2004. Much like similar pieces of legislation in the United States (US) and Canada, the definition of what constitutes 'terrorism' is so wide as to include almost any act of political dissent/protest. Like its apartheid predecessor (the Internal Security Act of 1982) terrorism includes any act designed to "intimidate, or to induce or cause feelings of insecurity within, the public".

Crucially for social movements and local community organisations whose exercise of civil-political rights most often revolves around a lack of basic needs and services, the Act makes "interference with or serious disruption of an essential service, facility or system, or the

delivery of any such service, facility-system, whether public or private" a terrorist act. The Act further grants law enforcement agencies wide powers to interrogate individuals, impose stringent bail conditions and limit basic procedural rights during investigative hearings as well as compel those charged to disclose sources (read: journalists and whistleblowers) and take away the right to refuse to answer questions. Anyone convicted under this 'anti-terrorist' law faces extremely long jail terms, ranging from 15 years to life imprisonment⁸⁾ (Republic of South Africa, 2004).

Not surprisingly then, the dominant response of the South African state to the emergence and myriad protest activities of social movements and community organisations since the late 1990s has been to portray the movements and their activists as 'criminals' and 'anarchists'. There is hardly a better example of this than the statement in 2002 of then Justice Minister, Penuell Maduna: "We can't be responsible for unleashing chaos and anarchy under the guise of people being able to enjoy their constitutional rights" (Battersby and Terreblanche 2002). This was quickly followed by a formal ANC statement which condemned "the actions of those ... for whom these democratic victories ... are mere fodder in the irresponsible pursuit of confrontation and anarchy. We know well from our own struggle that such mindless violence is the practice of at best the naïve and at worst the agent provocateur" (ANC 2002).

But it was former ANC and State President Thabo Mbeki who specifically sought to portray opposition activists and organisations as the enemies of the liberation movement and the state and gave the green light for a repressive (state and party) response: "Our movement and its policies are also under sustained attack from domestic and foreign left sectarian factions ... They do not hesitate to tell blatant untruths about everything ... We must make the point very clear that we will respond in adequate measure to those who treat us as their enemy" (Mbeki 2002). And indeed, during the early-mid 2000s the state unleashed its repressive apparatus to launch a coordinated 'law and order' crackdown backed up by a concerted campaign aimed at caricaturing the emergent and collective voices of social movements and poor communities while delegitimising the right to even utilise hard-won democratic space to engage in peaceful oppositional activities centred on basic socio-economic grievances (N'Dungu 2003).

As the early 2000s factional battles between the respective Mbeki and Zuma factions within the ANC (and its alliance partners) became ever-more intense, so too did the involvement of the state's intelligence services. Charges between the two factions flew thick and fast revolving largely around the involvement of senior ANC and government leaders in spying for the apartheid regime, corruptly benefitting from the arms deal and abusing the state security and intelligence services to dig up such dirt and spy on each other (Hefer Commission of Inquiry 2004; Mail & Guardian 2009). By 2006 things were bad enough for the then-Minister of Intelligence Ronnie Kasrils to appoint a Ministerial Review Commission on Intelligence (the Matthews Commission).⁹⁾

The Commission's mandate was to review the operations of all intelligence entities (excepting crime and defence intelligence) with an aim, "to strengthen mechanisms of control of the civilian intelligence structures in order to ensure full compliance and alignment with the Constitution, constitutional principles and the rule of law, and particularly to minimise the potential for illegal conduct and abuse of power". Its main findings confirmed that indeed, the services had been politicised and thus, "drawn into the realm of party politics, required it to monitor and investigate legal political activity and, as a result, undermined political rights that are entrenched in the Constitution".

Importantly it also confirmed that the mandate of the intelligence services was far too broad, which "can lead to ... focusing in an inappropriate manner on lawful political and social activities". This excessive mandate was largely attributable to an equally over-broad conception of national security wherein the services had come to see themselves as the main watchdog of society, almost separate and above the constitutional and democratic order. In this respect, the Commission noted that, "national security should thus not be conceived as separate from, and potentially in conflict with, human security and human rights. It encompasses the security of the country, its people, the state and the constitutional order".

Just when there seemed to be the real possibility for a serious push for the democratisation of the state's security-intelligence services, and thus also for a more positive and enabling approach to the enjoyment and practice of civil-political rights, factional politics within the ruling ANC took centre stage once again. The Zuma faction, with Zuma himself having been absolved by some individuals within the

very security-intelligence and prosecutorial agencies at the heart of the burgeoning secrecy industry (National Prosecuting Authority 2009), quickly put the Matthews Commission Report in the closet and turned the ship of state and party even further towards the past.

Over the last years, the Zuma-led ANC/state has engaged in a closing down of South African's constitutionally-enshrined right of access to information, often with the active encouragement and collusion of corporate capital (Right2Know Campaign 2013). This has constituted one side of a three-pronged matrix. While that matrix has been in operation from the start of the South Africa transition, the ascension to power of the Zuma faction since 2007/2008, has taken it to another level. The second side is the militarisation and centralisation of power within the coercive forces of the state alongside the massive and largely de-regulated growth of the private security industry.

In the case of the latter, the dominant vehicle in contemporary South Africa has become the private security industry which has doubled in size over the last five years and now has more than two-and-a-half times the number of personnel (many of whom are armed to the teeth) than the South African Police Services (De Waal 2012). Despite this, the state has largely abandoned its oversight/regulation mandate, with the result that there is no available information on the number of firearms held nor deaths/violent incidents involving the industry (Jaynes 2012). The result is a massive unregulated private 'army' spread out all over the country, largely protecting private interests (although in many cases, public infrastructure and services through outsourced state contracts).

As far as the coercive forces of the state are concerned, Zuma's *umshini wami*¹⁰⁾ — inspired militarisation of the police force has catalysed an even harsher crackdown on surging worker and community protests; protests that themselves are largely a direct response to a lack of basic services and/or the closing down of democratic space. Outright, and illegal, bans on marches, a 'shoot first, ask questions later' approach (as at Marikana¹¹⁾) and a huge upsurge in the number of people who have died either as a result of police action or being in police custody (with over 800 deaths in 2010/2011 alone) are now the order of the day (Duncan 2010; Independent Police Investigative Directorate 2010/2011). In the specific case of the Marikana massacre, there has been a particularly energetic effort by Zuma's securocrats to bottle up relevant police and intelligence information that might

actually force them to take responsibility (Kasrils 2012). Such systematic use and abuse of the state's coercive forces is all the more reason for concern when even the Minister of State Security himself openly admits that there are "no discernable threats to our constitutional order" (Cwele 2011).

The third side of the matrix is the law, both past and pending. As previously noted the Regulation of Gatherings Act of 1993 has been kept on the books and under the Zuma state, has been (mis)used more than ever before to frustrate and prevent people's legitimate right to protest, and thus to bring consistent popular pressure for transparency and accountability. Further, the NKPA of 1980 has been used by the Zuma government to increase the number of national key points by over 50 per cent in the last five years, famously adding Zuma's private rural residence in Nkandla to prevent disclosing details around expenditure of public monies, although they continue to refuse to publicly reveal the rapidly expanding list for 'national security' reasons (Right2Know Campaign 2012a).

Completely ignoring almost every warning and recommendation of the Matthews Commission Report, The Protection of Information Bill was introduced by the Minister of State Security in 2010 and is currently still making its way to the President in terms of the constitutional procedure. Since renamed the Protection of State Information Bill but popularly known as the 'Secrecy Bill', it was passed by Parliament in late April 2013 and now awaits the President's signature to become law. This, despite spirited and widely supported opposition led by the Right2Know Campaign which was initially formed to fight the Bill; a fight that has seen the Bill go through 29 versions and in the process become the most debated piece of legislation in post-apartheid South Africa.

Even though some of the most draconian aspects have been excised, the Bill remains hugely problematic for a number of reasons: the definition of 'national security' remains open-ended and thus ripe for abuse in determining what information can be 'protected', particularly due to the inclusion of undefined 'state security matters' and 'economic, scientific and technological secrets'; it will give the Minister of State Security (and to lesser degrees, other state bodies like the police service) incredibly wide powers over classification procedures and overall management of state information; it will ensure that previously classified information, including from the apartheid era, enjoys

protection; it criminalises (with extremely harsh sentences) simple possession and/or disclosure of classified information; and, there is no full public interest defence nor public domain defence, thus further exposing activists, whistle blowers and journalists to criminal prosecution (Right2Know Campaign 2012b).

Another securocrat-inspired piece of legislation just passed by the National Assembly is the General Intelligence Laws Amendment Bill (otherwise known as the 'Spy Bill'). Like the Secrecy Bill, it has faced extensive public opposition. While that opposition has engendered some positive changes to the initial Bill, the most worrisome provisions have been retained. Amongst these are: the centralisation of every intelligence structure, foreign and domestic (with the exception of the oversight body, the National Intelligence Coordinating Committee) into a 'super' State Security Agency (SSA); an overly broad intelligence mandate that includes 'political intelligence', which could result in the monitoring of journalists, unionists, activists etc; and, allowing the SSA to tap into the private communications of ordinary citizens without a warrant through the monitoring of 'foreign signals' which could include skype, gmail, facebook etc (McKinley 2012). When combined with the Secrecy Bill the clear picture that is now emerging is one of a 'superpower' state security and intelligence establishment answering largely to itself and its political masters. Clearly, this spells serious trouble for the health of South African's civil-political rights.

3. *A Luta Continua!*

It is this kind of contradictory and self-defeating approach to, and understanding of, the character and content of democratic expression and voice as evinced through core civil-political rights, that has become the hallmark of the ANC state's 'governance' relationship to community organisations, social movements, organised workers and indeed most of all popular political opposition. By closing down many of the most crucial institutional avenues of democratic participation and redress, actively utilising anti-democratic and repressive security legislation, invoking an exclusionary and accusatory discourse and using the coercive forces of the state to intimidate and harass activists and their organisations as well as physically crack-down on popular dissent, the post-apartheid South African state (and the party in control of that state, the ANC) continues to show its preference for

state control over democracy.

These tendencies are, tragically, much too close a match to that displayed by the apartheid regime; even if differentially located and experienced, what is revealed are states of fear and loathing that evince both human and systemic insecurities about power and place, about acceptance and legitimacy, about rights and responsibilities. However much the ANC and the South African state have tried — and will continue to try — to appropriate unto themselves the 'right' to define and frame the character and content of democratic space and practice, and thus also of the parameters of civil-political rights, they have not (and will not) be able to appropriate the realities of lived experience and humanity of the majority. It would seem ever more apparent that the lessons of the apartheid era have not been learnt.

Endnotes

1. Although the historical development of apartheid always had as much to do with class considerations as those of race, the racism of the National Party and racial history of South Africa provided a firm foundation on which to construct apartheid. In this light the historical development of South Africa has been labelled 'racial capitalism'. For extended discussions on this see Legassick (1974).
2. The quote comes from Dr Diederichs (subsequent National Party Minister of Finance in the late 1960s).
3. The quote is from a document authored by Thabo Mbeki in 1994 (see bibliography), which remained in the possession of a select few ANC-Alliance hands until the late 1990s. It was penned when Mbeki was ANC Deputy General Secretary and was circulated amongst the Alliance leadership prior to the ANC's 49th National Conference in December, 1994.
4. Dissent which has come largely from unions and other actors in progressive civil society such as community organisations and social movements; and, that has taken many forms and been sustained up until the present.
5. This included the expulsion of the author from the South African Communist Party (SACP) in 2000; for a more extended (and polemical) discussion see McKinley (2000).
6. It is instructive to note the language in the Riotous Assemblies Act where a person is deemed to have committed 'public violence' if "he has acted or conducted himself in such a manner, or has spoken or published such words, that it might reasonably be expected that the natural and probable consequences of his act, conduct, speech or publication would, under the circumstances, be the commission of public violence by members of the

- public generally or by persons in whose presence the conduct took place or to whom the speech or publication was addressed" (Schönnteich 2001).
7. For critical analysis and practical examples of the use of the Regulation of Gatherings Act in the first decade of the transitions, see Taylor and Delaney (2005).
 8. See Freedom of Expression Institute. 2003. "South Africa's Anti-Terrorism Bill is Misconceived". Press Statement, April; and, Freedom of Expression Institute, "Anti-Terrorism Bill will undermine Media". Press Statement, May.
 9. All subsequent quotes are taken directly from the Commission's Report (see bibliography for full reference)
 10. Zulu for "bring me my machine gun"; part of a liberation movement struggle song widely used in the 1980s
 11. Refers to the massacre by the police of over 34 striking workers at the Marikana platinum mine in Rustenburg (about 120 kilometres north-west of Johannesburg)

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