



Victimisation Experiences
of Activists in South Africa
by the Centre for Applied Legal Studies

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Executive summary

The risky circumstances in which human rights defenders often work globally is well documented. Activists face various forms of victimisation including death, violence, frivolous litigation and criminalisation of their activities which subjects them to arrest and detention. While there is a considerable body of literature on the attacks against human rights defenders in many parts of the world, there is limited research into the extent and nature of the problem in South Africa.

Given this gap in research, the Centre for Applied Legal Studies (CALS) embarked on a research project that investigated the victimisation experienced by activists in South Africa. Our specific goals for this research were to determine:

- the extent of victimisation of activists in the country;
- the nature of victimisation of activists in the country;
- the impact of victimisation that activists experience on their work and their families; and
- the support received by activists who have been victimised.

The research was conducted through open-ended semi-structured interviews with activists with the guide of a questionnaire. CALS interviewed 59 participants for this project who were drawn from five provinces – Gauteng, KwaZulu Natal, the Eastern Cape, the Western Cape and Limpopo – ranging from rural, peri-urban and urban areas. In the interest of the participants, this report does not disclose their identities. This report outlines the main findings of the research. The findings stress that the victimisation of activists is prevalent in South Africa. This victimisation comes from various sources including companies, police and community members.

The trend of victimisation manifests in various forms in South Africa. These include litigation apparently aimed at silencing activists, draining them financially and making their work impossible. The report also finds that a common tool of victimisation is the subjection of activists to the criminal justice system through arrests, detention and prosecution. This reality leaves activists stigmatised and labelled as criminals. Several activists face death threats against themselves and, in some cases, their families. The victimisation of activists is also evident through the use of threats and actual violence. Activists also suffer loss of personal property as a result of their work, with their homes and other belongings vandalised. The findings also show that the victimisation of activists has a broader impact on the families and other dependents of the activists. The report also highlights that the victimisation of activists is gendered, affecting women in different ways from men. Indeed, women defenders are disproportionately affected by victimisation. As a result women suffer an added dimension of victimisation at a personal level such as sexual violence. Furthermore, the gendered reality of victimisation often impacts young children in cases where the woman activist is forced to go into hiding or is detained.

1. Introduction

In recent years, there have been reports on the troubling experiences faced by activists across the world.¹ South Africa has not been spared. Indeed, there have been reports of activists who have been killed, assaulted or otherwise victimised as a result of their work.² There is a considerable body of literature on the attacks of activists around the world, including in Africa.³ However, there is limited research into what is happening in South Africa. As a contribution to existing literature, the Centre for Applied Legal Studies (CALS) embarked on a qualitative research project to document the experiences of activists in the country.

CALS is a civil society and public interest legal organisation based at the School of Law at the University of the Witwatersrand, Johannesburg, South Africa. CALS' vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALS practices human rights law and engages in social justice work with a specific focus on five interconnecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law.

The project set out to investigate the nature and prevalence of intimidation of community activists.

The specific aims of this research were to better our understanding of:

- the extent of victimisation of activists in the country;
- the nature of victimisation of activists in the country;
- the impact of victimisation that activists experience on their work and their families; and
- the support received by activists who have been victimised.

To this end, CALS undertook one-on-one semi-structured interviews with activists across of the country between November 2017 and April 2018. This report outlines the findings of this research with a view to demonstrate the experiences of activists that reflect a pattern of victimisation in South Africa and the effect that this victimisation has on their work.

For the purposes of this research, the term 'victimisation' is understood to encompass all forms of deliberate activity that negatively impact the work of activists in a way that can be said to have been designed as a tool to suppress their work. The report is structured around the various forms in which victimisation manifests.

2. Methodology

The research was conducted through open-ended semi-structured interviews with activists. CALS developed a questionnaire and later obtained ethical clearance from the University of the Witwatersrand for the project as required by university policy. Guided by a loosely framed set of questions, researchers visited activists mostly in their home areas to conduct the interviews which lasted about an hour.

From the outset, CALS decided that it would be in the best interests of the research participants to anonymise this report. This decision was reached given the nature of the research in that it presented a real possibility of further victimisation should the identity of the participants involved be known. Accordingly, CALS has made every effort to exclude any identifying information that may pose a risk to the safety of the participants. Information excluded to ensure anonymity includes the names of individuals (where necessary, pseudonyms have been used), their communities and other details such as identities of people with whom they work or engage in the course of their activism.

The pool of participants for this research was drawn through the network of partners that CALS works with. In some cases, participants were identified through other means such as media reports. A total of 59 participants were interviewed for this project. They were from five provinces – Gauteng, KwaZulu Natal, the Eastern Cape, the Western Cape and Limpopo – ranging from rural, peri-urban and urban areas to get as wide as possible a picture regarding the nature and prevalence of intimidation of community activists.

The majority of the participants interviewed became activists due to the problems and human rights abuses that they and their communities are facing. These are mainly mining communities that suffer the negative consequences of mining activities such as unsatisfactory relocation processes; air, water and noise pollution; cracked houses; and environmental degradation. Some of the activists interviewed are victims of wrongful relocations in the process of which they have suffered great loss such as losing their homesteads, livestock and gumtree fields. Other participants work in relation to the rights of farm workers or to enhance community safety, hence the findings in this regard document their experiences in their struggle for greater respect for the rights of farm workers and efforts to rid their communities of ills such as gangsterism and drugs.

This report aims to contribute to a growing body of knowledge about the conditions under which activists work, and therefore to support the development of appropriate responses. Research like this is inherently limited due to the sample size of participants but we hope that it nevertheless contributes to a more nuanced understanding of the prevalence and forms of victimisation that activists are subjected to in South Africa.

3. General overview of the victimisation of activists

The victimisation of activists around the world is quite well documented.⁴ Global statistics on the nature and extent of victimisation of activists paint a dark picture of the atmosphere in which most activists often work. In its 2017 report, Front Line Defenders notes that in 2017 more than 312 human rights defenders were murdered in 27 countries,⁵ of which “67% were engaged in the defence of land, environmental and indigenous peoples’ rights and nearly always in the context of mega projects, extractive industry and big business”.⁶ The report indicates that about 84% of the activists killed had received death threats prior to their death.⁷ Noting that only 12% of the cases saw the arrest of suspects, the report stresses that impunity for acts of violence against activists remains an enabler of an environment of frequent killings.⁸ About four environmental activists were killed every week in 2017 across the world.⁹

The Front Line Defenders report also cites criminalisation as a common tool of suppression of activism where activists are spuriously charged.¹⁰ Criminalisation is inevitably accompanied by phenomena such as stigmatisation and delegitimisation of human rights defenders. As eloquently explained by Protection International:

[s]tigmatisation seeks to attack the image of the movements or organisational processes involved in the defence of human rights, or their activities. It may also be organised in such a way that it questions the personal or professional integrity of the [human rights defenders] it targets. In other cases stigmatisation involves statements that seek to portray [human rights defenders], and the causes and protests they promote, as criminal, for example, or as being obstacles to development or opposing national unity. Thus, attempts are made to delegitimise the actions of persons who promote and defend human rights. Even more seriously, this approach ends up playing a vital role in the development of policies that are designed to criminalise social protest and [human rights defenders] alike.¹¹

Of further concern to the work of activists is the policing of protests which is often characterised by arrests, the use of force and violence by the police against peaceful protesters.¹² Other forms of victimisation that have been flagged are defamation, intimidation and threats.¹³

Victimisation can also manifest through the use of litigation which can at times be used to silence activists. Commonly known as strategic litigation against public participation (SLAPP) suits, these cases may be defined as “meritless cases mounted to discourage a party from pursuing or vindicating their rights, often with the intention not necessarily to win the case, but simply to waste the resources and time of the other party until they bow out”.¹⁴ The term ‘SLAPP suits’ originated in the United States of America and this litigation is frequently brought in the form of defamation claims, abuse of process, malicious prosecution, or delictual liability cases.¹⁵ The victimisation

of activists also often manifests as physical threats or intimidation that may include the use of violence and indeed killings.

The nature and impact of victimisation of activists is also gender specific, disproportionately harming women. Existing research indicates that women human rights defenders face additional human rights violations as women and as activists.¹⁶ Attacks on women activists are often linked to “the use of gender and sexual stereotypes to harm [their] reputation and delegitimise their work”.¹⁷ These attacks “often take gender specific forms, including gendered verbal abuse based on their sex, sexual abuse and rape”.¹⁸ Unsurprisingly then, research has shown that women defenders are more vulnerable to victimisation that involves the use of sexual violence or the threat of sexual violence.¹⁹ This at times occurs in the context of attacks that on their face may be seen to affect men and women equally. For instance, sexual violence can be an added form of attack on women who are detained in what are otherwise the same conditions as their male counterparts.

The victimisation of women also adversely affects their children and families given the role women play in most societies as primary caregivers. For instance, the arrest of a woman activist with young children has a greater impact on the children and dependents who are thereby deprived of care. Further, the experience of victimisation and human rights violations experienced by activists have gender specific manifestations and a gender-specific impact on women human rights defenders. For instance, pregnant women and women with young children who are detained in custody suffer more than their male counterparts detained in similar conditions.²⁰

Moreover, the lives and health of their children are also negatively impacted since they accompany their mothers or caregivers. While separation from their children spares the children from experiencing detention, this comes with other consequences. For example, a breastfeeding mother will be forced to stop breastfeeding her child if the child is not detained with her. Compared to men, women are also particularly vulnerable to sexist verbal abuse and derogatory accusations.²¹ In its report on women human rights defenders in Africa, the African Commission on Human and Peoples' Rights rightly states that women activists are more vulnerable to measures which are not even specifically targeted at women defenders. It highlights the use of emergency legal measures which authorities often use “through backward sexist behaviours to bully” women defenders in public.²²

While there is a rich body of literature at global level concerning the victimisation of activists, the same cannot be said of research that specifically focusses on South Africa. This is despite the fact that instances of victimisation are often reported in the media. In fact, South Africa has had its own share of SLAPP suits.²³ For example, the use of litigation to silence activism in the country has been evident in cases where cost orders have been sought against activists acting in the interests of their communities.²⁴

Overall, reports on the victimisation of activists globally reveal that the atmosphere in which defenders work is not always safe or ideal. It is against this backdrop that CALS undertook this research project into the situation of human rights defenders prevailing in South Africa.

4. Research findings

The findings of this research show that the experiences of the activists who participated in this research fall within our understanding of victimisation as defined in section 2. This victimisation takes various forms as described below. These forms of victimisation largely echo the findings at a global level as summarised in the previous section. In the sections that follow, the issues identified are organised thematically, but, naturally, different kinds of victimisation are related and should not be understood as occurring in silos.

It is helpful to reiterate that most of the activists who participated in this research work in mining affected communities. As such, our findings relate largely to victimisation in the context of mining related activities. All the names of participants have been changed to ensure anonymity.

4.1 Death threats and actual killings

Possibly the worst form of victimisation that an activist can suffer is death. There have been some media reports of activists killed likely due to their work. Some participants indicated that they live in fear of death because of the death threats they have received on several occasions. These threats take the form of text messages and verbal warnings from individuals who are both known and unknown to the activists. Mpho said that she was once told by a person known to her that although their community organisation may be hailed as heroic, “heroes die as well”. Mpho took this as a death threat. Themba was told that if he did not stop his actions against a mine in his area, he would “be wiped away from the face of the earth”. Similar threats were issued to Sharon when she attempted to organise a gathering of farmworkers to discuss the poor living conditions they work in. She was warned by the farm manager: “You will see what will happen to you”.

Some activists have also received warnings as a result of their pursuit of litigation that is perceived to obstruct mining companies. For instance, Edward has received threatening text messages following the launch of a major case.

Other activists have experienced threats with guns pointed at them. Sharon narrated how she was stopped by a man who pointed a gun at her face on a public road in her community. The man with the gun warned that if she continued her fight against drugs, she would be shot. Other threats to life have manifested through actions that put the life of activists at risk. One such action was the cutting of the petrol pipe in Sharon's car. One morning as she drove out of her driveway, her children alerted her to the liquid that was dripping from under her car. A closer look revealed several cuts on the petrol pipe. The cuts had apparently been done during the night.

The findings of this research have shown that the use of death threats against activists continues to be a common tactic to suppress their work.

4.2 Forced hiding

Some activists have paid the ultimate price for their work, losing their lives for their cause. These deaths have a ripple effect on other activists. One of the participants shared how a number of activists in her area have been forced into hiding, leaving their families behind. Other activists have scaled down their involvement in activist work or stopped altogether. Mpho herself had to leave her homestead and family, including her young child. She remains in hiding, visiting her home and family every now and again.

Khotso also recalled his 12 month stay in hiding prompted by the harassment and threats to his family as a result of his work. During this time, he relied on family and friends for his daily needs. He was able to make intermittent visits to his family during this time but failed to properly provide for his wife and children.

The victimisation of activists therefore extends to their families. Situations in which they are forced to leave home or spend considerable amounts of time away mean that their children and other dependents are left alone to suffer without the care of the activist concerned. Where women activists are involved, these situations mean that children are often left suffering without the presence of primary caregivers.

Forced hiding is an extreme consequence of the victimisation of activists particularly because it deprives their families of support and care. In addition, forced hiding takes activists away from their sources of income and support structure, leaving them to often depend on others for their needs, at a time when they are particularly vulnerable.

4.3 Use and threats of violence

The actual use and threats of violence have also emerged as a common tool of suppression against activists in the country. The gendered nature of the effects of violence on women is evident. The experiences of violence on women activists have a different dimension from those of men. Children are also particularly vulnerable. For instance, Mpho recounted an experience where a group of people invaded her village one night and started randomly firing gunshots for a prolonged period of time. Villagers, some with their children, had to seek refuge in the bushes and maize field nearby until the firing stopped. One of the women went into labour and gave birth in the bushes due to the panic and shock. Although no one was physically hurt, the experience left many of the villagers traumatised. The incident was reported to the police but no investigation took place and the case has since been suspended.

Activists may also be victimised by security officers working for mines. Khotso explained how, as gatekeepers, security personnel struggle to keep activists away from the mining sites and in this process at times use violence including firing gunshots at protesters. He said that in his community, these security officers have evolved from bearing a duty to simply protect the mines to being harassers of activists. He also shared an incident where he was beaten

up by security officers for organising a peaceful march against the mine. This beating landed him in hospital for a day. The march never took place as several community members who had initially planned to be involved withdrew in the face of the assault. This is not the only incident where Khotso has suffered physical violence because of his activism. Indeed, at another meeting, he was chased away with weapons by security personnel of a nearby mine. Community members who attended his village meetings were also harassed and chased away in the same manner. On another occasion, Khotso was beaten with weapons by security personnel when he attended a community meeting where he was labelled a troublemaker. The matter was reported to the police but the prosecution was unsuccessful as the mine defended the actions of the mine employers saying that Khotso was beaten up for disturbing the meeting.

Violence does not only come from security personnel. Our findings indicate that fellow community members at times also victimise activists. For example, in another mining community we visited, an elderly woman was stabbed by a fellow community member in front of the community for speaking out against a mining company in the area during a village meeting to discuss community concerns about the operations of the mine. Fortunately, she survived her injuries. Khotso was also once beaten up by community members at a public gathering after he was labelled a troublemaker for his activist work which was deemed by traditional leaders as undermining their authority. The incident left him bruised on the face and hospitalised for three days.

These experiences indicate that violence is at times used to victimise activists. In some instances, this results in them spending time away from their work and incurring medical costs.

4.4 Threats and impact on families of activists

In some instances, the victimisation directed at activists has also extended to their families. Security personnel from a mine in one of the mining communities we visited during the course of the research threatened to kill the wife of a lead community activist. They said they would kill her as a lesson to other people that their opposition to mining activities in the area put their entire families at risk.

Some of the activists have witnessed threats that have been levelled against their children as well. For instance, Sharon recounted an incident where a group of people opposed to how she was fighting home ownership issues, drugs and gangsterism in her community marched to her house while her children were home. The group burnt tyres and removed poles. This incident instilled fear in her family, leading Sharon to ensure extra security at home.

The impact of victimisation on other members of the family can be more subtle at times. Khotso shared that due to his inability to properly provide for his family during the time he was in hiding, his wife left him and took some of the children with her. He explained that a major contributing factor to the divorce was a lack of consensus on why his community work was

indispensable when it undermined the safety and wellbeing of his family. The other child who stayed behind was taken in by family and later friends until his return. Khotso detailed that his child's education was negatively impacted and that his relationship with her is still on the mend.

In some cases, family members of activists are denied an equal opportunity in the community services and job market created by the mines. For example, Dumisa shared that in his community, close family members of activists are not able to get jobs in the mines. In another incident, an activist talked about how his son was chased away from a community borehole by community members who said that he had no right to share in the benefits of the mine when his father is against the mining activities in the area.

Another example of the impact of victimisation on the families of activists is that of Martin. His wife, who was pregnant at the time, was on several occasions verbally abused by the staff at the maternity section of a clinic that was built by the mining company operating in the area. This continued on most of her visits to the clinic.

The use of threats and victimisation of family members of activists serves as an indirect way of forcing activists to quit their work. It also has the potential to undermine family support that activists have for their work. This may in turn cause rifts within families.

4.5 Civil and criminal litigation

Litigation has proven to be a major tool in silencing activists. The financial burden that comes with lawsuits is a key concern since a number of the participants are full time activists. These lawsuits present a great financial burden to activists as some of them are often indigent and unemployed with no major source of income.

Khotso is an activist and leader of a community organisation. He has been blacklisted and is unable to find work. Khotso explained how he has been the subject of an interdict at the instance of the mining company in his community. The interdict application came in the wake of protests that the community had staged against the mine demanding their right to compensation for their cracked houses and forced relocations, better management of mining waste and pollution in the area. The mine sought an interdict to keep Khotso and other activists away from the mine premises. Khotso was unable to afford a lawyer to represent him and his colleagues. He tried to borrow money from colleagues to pay a lawyer. They were only able to secure a lawyer on the last day of hearing. As a result, they lost the case and now have an interdict against them that prohibits them from entering the mining premises or getting close to it. This interdict applies to all the lead activists in the community organisation. On top of this, Khotso and his colleagues also have a debt to repay for the legal representation they received. Since the interdict was put in place, some of the leaders have left the organisation for fear of further victimisation. Khotso recounts how some of these leaders are now working in support of the mining company amid allegations that they have been bribed by the mine.

Other activists have been more fortunate in securing funding for legal costs. For instance, Mpho has had the support of local and international organisations that have helped cover legal costs. She and other activists in her community were arrested for blockading a road to keep mine vehicles and security personnel from entering their community. They were charged with public violence and inciting violence. With the aid of local and international organisations, the group received legal representation and was able to secure bail. This matter has not been concluded because the state has been quite slow in prosecuting it. The delay in prosecuting this case raises questions about the strength of the case and the motive for bringing the charges against the activist in the first place. A situation where activists are made to go through lengthy trial processes adds a layer of victimisation as this means they are labelled accused persons for as the entire period of the trial.

Dumisa, an activist in another mining community, spends a considerable amount of his time in court fighting charges brought against him by mining companies. He is fortunate to have the support of various civil society organisations that help him with legal representation. In one of his cases, the mining company sought and obtained a cost order against him. The cost order related to the granting of an interim interdict against Dumisa. These proceedings were a reaction by the mining company to the legitimate concerns that he and the community had against the mine. These concerns had led to a peaceful march against the mine. In response, the mine obtained an interim interdict and a cost order against Dumisa. Thankfully, with the aid of legal representation, the order was overturned.

The activist work that Sharon is engaged in has also triggered civil action against her. In 2008, one of her subordinates wrote an article criticising what she described as ill advice that some lawyers representing farmers were giving that endorsed the eviction of children from their homes. Sharon, who held the same view as her subordinate, did not take any action against her despite requests to do so from some of the parties concerned. As a result of her inaction, Sharon was subsequently sued for failure to discipline her colleague. Her colleague was charged with defamation while Sharon faced a claim for damages due to what was termed her failure to act against her subordinate. The matter was settled out of court after lawyers from both parties held talks.

These narrations by activists of how litigation has been used against them shows that the law is ironically one of the major mechanisms used to victimise them.

A common theme of the nature of victimisation is the involvement of police as a tool of suppression. Participants reported being arrested and charged criminally for their activism. While criminal behaviour should be dealt with when a crime is committed, the use of the criminal law in the instances reported was questionable. In this context, activists are often charged with offences such as public violence and incitement to violence. The use of trumped up criminal charges is a major tactic used to silence community activists.

We were informed that, in 2017, 70 people were arrested at the instance of a mine in one of the areas we visited during this research. Some of the participants were amongst the people arrested at the time. They reported that they went to the mine to demand that it fulfils its promises and obligations that were due to them as a community. Among their demands were better pay; reasonable, equitable and justifiable compensation to the affected members of the community who were relocated by the mine; proper consultation with the community prior to relocations and transfer of the graves of their departed loved ones; and that the mine must develop the community economically and socially. When these demands were presented to the mining company through a peaceful protest, the community members involved were arrested and charged with inciting violence. The charges were later dropped.

Edward, another activist from a mining community, detailed how unidentified police officers in his area would come to his home at night and forcefully take him with them. They would then drive him away to a secluded place and leave him there with no money. He would then have to find his way home at his own expense. Edward has also been arrested several times and released without bail. On one occasion, he was arrested and detained for three days at a police station for leading a march against mining companies in his area. Benjamin had a similar story to tell. In his case, police officers stormed into his homestead after he and other activists had participated in a march to the mining company in their area to deliver a memorandum of demands. He was released without charge or bail after spending three days in police custody.

Phumzile, a community activist in an area where a mining company relocated a community without consultations or compensation, recounted how she and her colleagues were beaten up by the police when they approached the mine for redress. The group was demanding compensation for their relocation and the trauma caused by the wrongful manner in which the graves of their beloved ones had been moved without their consent. The group had tried to engage the mining company on several occasions through letters but got no response. On the material day, the group decided to physically go to the mine and demand to be addressed. When they got to the mine, they were ordered to leave by the police who had already blocked off the entrance. When they refused, the officers arrested them. Some of the members were beaten up and suffered bruises during the arrests. They were later released on the same day without charge.

Securing the release of arrested activists often poses a financial burden on the activists concerned as they have to raise money for their release. In some cases, community members are able to pull their resources together to raise funds. However, activists at times have to borrow money for their bail. This was the case with Khotso who had to borrow a substantial amount of money from community members to secure a lawyer to help with the release of his colleagues who had been arrested at one of the mines in the community. The arrests had occurred after nine community members had driven their trucks to the mine gates anticipating that they would be hired to ferry coal according to an earlier agreement between the mine and the community. Instead, the drivers were arrested by the police and detained.

The trucks were later damaged when they were towed to the police station. The community members have been unable to secure a lawyer to get compensation for the damage.

Another example of the questionable use of the criminal law relates to the arrest of 16 members of another mining community. The members were part of an activist community organisation advocating for their rights. The first seven arrests were made when the members went to the mine to ask for work. They were arrested for blocking the entrance to the mine and preventing vehicles from moving in and out of the gate. Their grievances were the same as always: forced relocations, promised jobs and training which have not materialised in 10 years. No one from the mine came out to speak to the community members. Instead, when the police arrived, one of the bosses came out and ordered them to make arrests. Prior to the police arriving, someone on the inside of the gates took close-up photos of everyone in the peaceful protest. These photos were later given to the prosecutor to help prove his case. Although the event was neither destructive nor violent, the group was arrested and charged with public violence. Their legal representative secured their release on bail with a warning. Mine representatives came to court with an agreement that they wanted the accused to sign as a condition for the charges to be dropped. They gave a copy of the agreement to the prosecutor who handed a copy to the defence lawyer. Incidents like this raise issues around the involvement of some mining companies in the prosecution of cases against community members charged in relation to their work against the companies concerned. It is the state which has the authority to determine whether to enter into agreements with accused persons and what those agreements should entail.

The same day the group was arrested, their relatives (six women and one man) went to the mine to ask why they had been arrested. They were also arrested. This group was released the same day 'at the request of mine management'. The charges of public violence against all of them were later dropped. One of the arguments the defence successfully put forward was that there was no evidence of violence during the protest, a key element of the offence of public violence.

The actions of the police against activists have at times affected the community as a whole, including children. For example, a group of activists was arrested after they blocked a contingent of police and mining vehicles from entering the area for mining related activities. Following the incident, there was heavy police presence in the community. This affected the daily activities of the entire community, including children who were unable to go to school.

Sharon has also been subjected to the criminal justice system. Due to her work in defending vulnerable people against unlawful evictions from farms, she was arrested between 2009 and 2010. She was charged with hate speech and intimidation after she organised protest action in conjunction with other partners against racist tendencies experienced at farms, at a medical practice and at the police station in her area. During the protest, she had said that "we will hit farmers where it hurts most", referring to their

markets. The case against her did not succeed. Around the same time, Sharon was again arrested and charged in connection with her actions in returning an evicted family to the house they had been removed from. The family, together with their children, was evicted in winter from a house which they had been promised to be given ownership of. In response to the eviction, Sharon brought the family back to the house, gaining access by breaking pieces of wood nailed across the door. She was arrested and charged with trespassing, contempt of court and malicious damage to property. Thanks to the free legal representation she had, the matter ended in an acquittal. Sharon explained how she felt during the criminal process: "I felt like a criminal and it was a bad feeling".

The findings of this research show that there is a perception that the police often do not do enough to investigate matters brought to their attention by activists. A number of activists said that there is no follow up on community-laid grievances. Indeed, despite reporting their experiences to the police, none of the activists interviewed has had a positive response or outcome. The activists thus generally consider the lack of support from the police as another layer of victimisation.

Dumisa stated that in his experience, the police are at times afraid of acting on the issues he brings to their attention. He related an incident where he reported a matter to the police but was referred to the public protector's office, about 500 km away, when the issue was a criminal matter that fell under the jurisdiction of the police.

In some cases, the police have been divided on whether to act against activists or not. This is particularly the case where the officers hail from the same community as the activists or community members concerned. As a result, some officers end up on the side of activists and identified with their cause. Mpho recalled an incident in which this was the case. Community members had decided to gather and protest at a government function to launch the commencement of mining in the area following the grant of a mining right.

The community was unhappy with the award of this right because it had been granted despite their objection to mining in the area. The protests disrupted the event, prompting the minister and the mayor to order the police to arrest the protesters. Some officers arrested some of the protestors while other officers refused to arrest anyone due to their connections to the communities they serve.

The use of criminal law is one of the greatest tools at the disposal of those who seek to suppress activists in the country. This is concerning given the ramifications of going through the criminal process regardless of the outcome of any case. Indeed, as noted earlier, the criminal justice system inherently exposes those who are processed through it to stigmatisation and delegitimisation. It is also disheartening that police often fail to follow through with investigations into allegations brought by activists and community members. This failure fosters impunity and lends credence to the assertion that the police are complicit in the victimisation of activists.

4.6 Limitation of participation and freedom of movement

Public participation and freedom of movement are critical to the success of activism in the country. Without it, activists would be unable to consult their communities and mobilise them to action. In the rural areas we visited, traditional leaders have extensive influence over the extent of public participation and freedom of movement enjoyed by community members. It is therefore necessary to describe the role that these leaders play in relation to mining developments in their areas.

In rural communities, the relationship between community organisations, chiefs and the mines in their areas is a complex one. Some activists explained how they first heard that mining would come to their area from the chief during village meetings which were also attended by representatives of the company. The participants noted that it was apparent from these meetings that the chief was in favour of mining and that the community was not being consulted but rather simply informed of what was to happen. At these meetings, the chief and the representatives of the mining companies would emphasise the benefits that the mine would bring to the community such as jobs, infrastructure and services. As a result, any opposition to the mining activities is often easily construed as opposition to these community benefits in general. Further, where a community decides to challenge mining activities in its area, chiefs are likely to support the mining company. The support of the chief also entails that he or she is able to exercise his powers to dissuade community members from engaging in actions that are deemed to be at odds with the mining activities in the area.

This relationship between mines and traditional leaders poses a challenge to the work of community activists. For instance, some of the participants reported that the chiefs in their areas have banned them from full participation in community forums. Themba, an activist working in one of the mining communities, said that the chief of his community has forbidden him from attending meetings because of his activism. Themba's freedom of movement has also been restricted as he has been prohibited from visiting certain villages in his area. This development has taken a toll on him as he is now unable to fully engage in discussions with some of the villagers who are negatively affected by the mining activities in his area. Another activist, Edward, has been banned from coming to the chief's residence. This means he cannot attend meetings held at the residence even when they relate to mining matters, his area of activism.

In other cases, chiefs have allowed activists to attend public meetings but not to engage in any meaningful discussions. For instance, John is still free to attend community meetings but is barred from participating in the discussions or even asking any questions at these meetings due to threats from other community members.

Another way in which public participation is limited, is by prohibiting activists from making use of community halls and other communal places of assembly. Steve said that in the early days of his activism, he had the support of the majority of community members and was able to use the community hall for consultation meetings with them. However, when complaints against him in

relation to a protest that he had organised to the mines were taken to the chief, he was informed that he could no longer use the hall. This move has made it difficult to hold meetings with community members. Other activists are denied office space in communal buildings in their communities. The result is that they have had to work from their homes in confined spaces. This also makes it difficult to hold meetings with community members.

In peri-urban areas, the nexus described above between chiefs and the community is evident in how those in other kinds of positions of authority are able to use their power to victimise activists. For instance, some activists have also experienced pushback from community forums such as sport committees due to their activist work. One activist was asked to leave a sport committee he was a member of so that the team could get sponsorship from a mine in the area. Despite leaving the committee, the sponsorship never came through.

During our interview, Sharon also described how she is denied entry onto some farms and thus unable to hold meetings with farmworkers who are experiencing gross human rights violations. She had called for the meeting but was unable to address it. Later, when a news outlet wrote an article about the plight of the farmworkers concerned, the farm manager put up pictures of her at the farm with a notice that she should not be allowed onto the farm under any circumstances.

These incidences highlight that persons in positions of authority are also a source of victimisation in that they deprive activists of the means to reach community members and express themselves.

4.7 Discreditation attempts

The victimisation of activists has also affected their reputation in instances where they have been depicted as acting contrary to the interests of their communities. Several participants narrated how they have been alienated from their colleagues and others because their names have been tarnished. In some cases, activists are labelled by traditional leaders as 'anti-development' for their opposition to developments such as mining. This labelling obscures the real grievance of the concerned activist which relate to the adverse effects of the developments such as mining and the exclusion of communities from decision making processes.

Dumisa narrates how community members aligned to the mining company in the area have fed the chief with false information against him. Other participants said they have been labelled problematic and trouble makers who are anti-development by the leaders. These mischaracterisations alienate the activists from the community, reducing local support for their work. The activists concerned see this as an attempt to turn the communities against them as other community members disassociate themselves from them. Our interview with Dumisa was actually cut short when the owner of the premises we were using chased us away after she noticed his car in the parking lot.

Activists have also reported being unnecessarily called out at public gatherings in a manner that casts them as opponents to community development. Khotso, for instance, recalled how he was referred to as a 'disturber' at a village committee meeting. A mining activist advocating for the right of mining communities to benefit from the resources, he was accused of undermining the traditional authority and working against the mine and development in the area. This allegation related to the march that Khotso and his community organisation had held against the traditional authority demanding accountability from him on the development projects undertaken by the mine in the area. The characterisation of Khotso as anti-development strained his relationship with community members who started disassociating themselves from him and his organisation.

The suppression of activism through the discrediting of activists is particularly devastating because it serves to delegitimise the work of activists. This delegitimation taints the public image of the activist concerned and thus isolates them from other members of society who would have helped in the struggle for justice. In addition, it increases the vulnerability of activists as they are likely to be shunned by sectors of society who believe the mischaracterisation imputed on the activist.

4.8 Surveillance

A common form of victimisation shared by some participants was that their movements are monitored by people unknown to them. For instance, Sibusiso said that he was once followed around by strange cars. Dumisa narrated a similar incident. He is at times followed by men in strange cars and he believes that his phone has been tapped by the mining company in his area. He also said that a security car belonging to this company always follows him around to check on his whereabouts. Dumisa is also harassed by the police in his community from time to time.

Edward related his experience since the launching of a major mining case that his community is part of. He explained that since he signed court papers for this case, he is physically monitored by mining security personnel. In addition, an unknown car also parks at his gate, no one alights from it or communicates his or her intentions in any way. Edward believes he is a target of this surveillance because of the ongoing case.

The phenomenon of surveillance poses a hindrance to activism in the country as it serves as a constant reminder that mining companies are watching their every move. Moreover, the actions likely come within the scope of the crime of harassment.²⁵

4.9 The gendered impact of victimisation of activists

As noted in section 3, the victimisation of activists is gender specific. The experiences of women human rights defenders are different from those of men defenders. As noted in section 3 above, women experience greater victimisation as they are vulnerable to additional forms of victimisation. The role of women defenders as mothers and caregivers can be used as a means

to attack them.²⁶ Gender-based discrediting is also exemplified where women defenders are “family wreckers” and “man-haters” for campaigning for abortion laws.²⁷ Further, the impact of an incident of victimisation against a woman activist often extends beyond the activist herself because of the caregiving role that women play in society. This gendered aspect of victimisation is evident in our findings.

As described above, a good example of this gendered impact emerges from an account of how a group of unknown men attacked a village at night and started firing randomly into the air. The village is known for its activism against mining developments in their area. The commotion forced many families to run and hide in the bushes surrounding the village. One of the women went into labour and gave birth in the bushes due to the panic and shock. Another woman activist narrated how she had to leave her young child behind and relocate to a place of safety when there was a heightened risk to activists in the community. This move deprives children of motherly care and support.

One of the women participants observed that, in general, women activists in her community tend to be targeted disproportionately. She stressed that while she has been victimised on several occasions for her activist work, her male colleagues who are involved in the same work have suffered to a lesser degree. Citing an incident where community members demonstrated at her place and another where she was stopped on a public road at gun point, the activist stated that male activists have not reported such experiences.

Some activists noted that women activists appear to be more at risk of victimisation than their male counterparts. Sharon, for instance, noted that in her fight against drugs, male activists she works with have not been victimised to the same extent as she has.

These gendered manifestations of victimisation are important to highlight as they reveal the additional adverse experiences that women human rights defenders endure in their activism. They also show that the victimisation of women activists impacts negatively on their children and families, in ways that are different to their male colleagues.

4.10 Loss of personal property

The research findings indicate that some activists have paid dearly for their work in the form of loss of or damage to their personal property. For instance, Khotso had his car burnt by unknown people after he led marches against the traditional authority and the mine in his community demanding accountability for mining projects. On the same night the car was burnt, his construction equipment was also stolen. The matter was reported to the police, but nothing has come of it.

Khotso also had his house stoned during the night after he and his colleagues confronted their chief demanding a change in the way the mining company in their area was conducting its activities. Their concerns related to the failure of the mine to pay compensation to relocated families and to provide satisfactory housing in the areas the families had been moved to.

There were also concerns around the inconveniences and loss of income brought about by the relocations. For instance, some families had been moved to areas where there was no nearby source of water while others could no longer access their grazing land for the livestock.

These experiences where property is stolen or damaged are a costly setback to activists who have to repair their homes and replace stolen or broken property. The impact of this on the family concerned cannot be gainsaid. For instance, during the stoning incident of his house, the activist's wife and child were terrified and fearful.

5. Impact of victimisation on activism

Many participants indicated that their victimisation has at times made community members shy away from them. For instance, Jabu noted that after she and other activists were arrested during a march to one of the mines in the community, the level of community participation in their meetings dropped. Fewer people attended their village meetings and turned up for their marches.

This trend was confirmed by other activists as well. Viola described how a planned march to the offices of the municipality regarding the operations of the mine in her area was cancelled after community members received threatening text messages warning them not to participate in the march. There has since been a drop in the number of community members attending their weekly meetings and activities against the mine. Even where members continue to turn up in their numbers, the level of their engagement in discussions has dwindled. In one community, Sharon noted that following treatment of some of the activists in the area, people are more careful about what they say in meetings because they are afraid of repercussions.

In some cases, activists have had to part ways with their friends as they do not want to associate with them for fear of being implicated in the activist work. Other activists have been left traumatised by their experiences. For example, after years of victimisation, one of the activists interviewed retreated into isolation for a while and had to go for counselling.

However, some participants reiterated that despite the negative experiences that they have endured in the course of their work, they remain committed to the cause that is the foundation of their activism. For instance, Viola emphasised that she and most of her colleagues are determined to continue fighting for their rights and standing up to the mining company in their community. Khotso also expressed similar sentiments, noting that while he had suffered a great deal because of his activism, he was not dissuaded by incidents such as the burning of his car because he had known from the start that the activist work he had embarked on would be a struggle after he heard of the suffering of other mining activists in the country. He added that while other people initially part of the community organisation have since disassociated themselves from the activist work, he and others continue with the fight.

A similar resolution was evident in our interview with Mpho. She stressed that despite having to stay in hiding and move from one place to another away from her family, she remains committed to her work because it is in the best interests of her community that members should be consulted before mining activities commence. She vowed that as long as the mining company is present in her community, she and other activists will continue their fight until their demands are met.

Several other activists maintained that the threats and other forms of victimisation that they endure have made them stronger. Sharon insists that threats do not make her back down and that she is able to withstand them. She admitted that she has thought of giving up her work, especially for her children as she fears for their lives. A constant concern for Sharon is the thought of being killed for her work. She remains hopeful that publicity about her work and victimisation works in her interest, in that those who oppose her work may be restrained by the fact that if anything happens to her, it will be easy for the public to implicate them. Her commitment to the struggles in her community continues. "Activism is in my blood," she says. "And it is not going to change. I cannot sit and not do anything, I cannot imagine my life without it. There is such a reward from activism when what you are fighting for comes right".

Phumzile, a community activist in an area where mining has taken its toll on the environment, said that regardless of what she goes through as a result of her activism, she "would rather die than give up on this worthwhile cause". In her view, all the suffering she endures in the course of her work fortifies her conviction that she is doing the right thing.

The resilience of activists in the midst of various attacks underscores their commitment to their work propelled by the rightness and importance of their cause. However, democracy is undermined by stifling the work of these activists through the attacks levelled against them. An active citizenry should be encouraged in South Africa since we have chosen a participatory model of democracy. This model depends on public participation exercised through civil society and communities. Our courts have repeatedly affirmed that public participation is a critical aspect of our constitutional order that must be embraced and jealously guarded.²⁸ The courts have noted that in a participatory democracy, every person and community has the right to participate in the determination of matters affecting them. A case in point is that of the Constitutional Court in *Doctors for Life International v The Speaker of the National Assembly*²⁹ which emphasised the importance of public participation in South Africa in view of our history of segregation and exclusion. Similarly, in *Company Secretary of ArcelorMittal South Africa and Another v Vaal Environmental Justice Alliance*,³⁰ the Supreme Court of Appeal recognised the right of communities to be consulted and to participate in environmental matters that affect them. Here, the court ordered the appellant to release documents related to pollution levels caused by its activities and its plans to address this pollution. This recognition of the right of communities is important because public participation is a tool used to ensure that the views of affected parties are considered in the decision-making process and that there is effective compliance with relevant laws.³¹ Ultimately, public participation sits at the core of sustainable development and is the bedrock of public interest litigation.³²

Therefore, the victimisation of activists is tantamount to an attack on the right of communities to public participation and has the potential to stifle sustainable development.

6. Surviving victimisation

While victimisation has taken its toll on activists, and, in some cases, their families, the general view is that their commitment to activism remains strong. Fortunately, many activists have also been able to survive victimisation through a strong network of individual activists and organisations both locally and internationally. These support networks have provided strategic advice, legal representation and at times personal security to some of the activists. The networks have also helped activists to raise awareness about the struggles of mining communities and to escalate urgent issues to the relevant authorities. Although they are not always able to help with funds when required, these support networks are a strong pillar that activists are able to lean on for support. Many activists interviewed indicated that without this support, they would have drowned in the legal costs necessary to ensure their victory in cases brought against them.

7. Conclusion

This research project set out to investigate the victimisation experiences of activists in South Africa. Our focus was on the extent and nature of victimisation of activists; the impact of victimisation that activists experience on their work and their families; and the support they receive following such victimisation. The main research findings stress that the victimisation of activists is prevalent in South Africa. This victimisation comes from various sources including companies, police and community members. The trend of victimisation manifests in various forms in South Africa. These include litigation apparently aimed at silencing activists, draining them financially and making their work impossible. The report also finds that a common tool of victimisation is the subjection of activists to the criminal justice system through arrests, detention and prosecution. This reality leaves activists stigmatised and labelled as criminals. Some activists face death threats against themselves and, in some cases, their families. The victimisation of activists is also evident through the use of threats and actual violence. Activists also suffer loss of personal property as a result of their work, with their homes and other belongings vandalised. Surveillance is another tool that is used against activists. This involves the unlawful monitoring the movements of activists. The findings also show that the victimisation of activists has a broader impact on the families and other dependents of the activists. The report also highlights that the victimisation of activists is gendered, affecting women in different ways from men. Indeed, women defenders are disproportionately affected by victimisation. As a result women suffer an added dimension of victimisation at a personal level such as sexual violence. Furthermore, the gendered reality of victimisation often impacts young children in cases where the woman activist is forced to go into hiding or is detained.

However, despite the many challenges they face, activists in the country remain vigilant in standing up for their cause. They continue their struggle with full knowledge of the risks involved. This continued determination is partly possible due to the continued support that activists receive from their local and international counterparts. Ultimately, activists in South Africa seem to be demonstrating remarkable resilience in increasingly trying times.

Activists play a critical role in our democracy through the exercise of the right to public participation. They ensure that decision-making processes are informed by views of communities and that resulting decisions are regularly scrutinised to ensure that they continue to comply with the law as well as serve the interests of the people and their communities. Hence, it is disheartening that activists in South Africa are subjected to victimisation from various sources, including from institutions that must be at the forefront of protecting them. The protection of activists in the country will bolster the rights of communities and contribute significantly to sustainable development. Key role players in this regard include traditional leaders, business, the police and the judiciary.

Endnotes

¹ See, for instance, Front Line Defenders *Annual Report on human rights defenders at risk in 2017* (2017); Protection International *Criminalisation of human rights defenders: Categorisation of the problem and measures in response* (2015); Association for Women's Rights in Development *Our right to safety: Women human rights defenders' holistic approach to protection* (2014); International Service for Human Rights *Defending human rights defenders: A short guide* (undated); Office of the Commissioner for Human Rights *Round-table on the situation of human rights defenders in the member states of the Council of Europe* (2009); African Commission on Human and Peoples' Rights *Report of the study on the situation of women human rights defenders in Africa* (undated); Amnesty International *Between a rock and a hard place: Women human rights defenders at risk* (2007).

² See, for instance, G Nicolson 'Goodbye Bazooka: Wild Coast anti-mining activist killed' 24 March 2016.

³ See African Commission on Human and Peoples' Rights (undated).

⁴ See, for instance, Front Line Defenders (2017); International Service for Human Rights (undated); Protection International (2015); Association for Women's Rights in Development (2014).

⁵ Front Line Defenders (2017) 6.

⁶ Front Line Defenders (2017) 6.

⁷ Front Line Defenders (2017) 6.

⁸ Front Line Defenders (2017) 6.

⁹ See The Guardian 'Almost four environmental defenders a week killed in 2017' 2 February 2018, available at https://www.theguardian.com/environment/2018/feb/02/almost-four-environmental-defenders-a-week-killed-in-2017?CMP=share_btn_tw (accessed 12 February 2018).

¹⁰ Front Line Defenders (2017) 6.

¹¹ Protection International (2015) 6.

¹² Front Line Defenders (2017) 7.

¹³ Front Line Defenders (2017) 7.

¹⁴ See T Murombo and H Valentine 'SLAPP suits: An emerging obstacle to public interest environmental litigation in South Africa' (2011) 27 *South African Journal on Human Rights* 82, 84.

¹⁵ Murombo and Valentine (2011) 84.

¹⁶ See, for instance, African Commission on Human and Peoples' Rights (2007).

¹⁷ Association for Women's Rights in Development (2014) 8.

¹⁸ Association for Women's Rights in Development (2014) 8.

¹⁹ Association for Women's Rights in Development (2014) 8 and 9.

²⁰ Association for Women's Rights in Development (2014).

²¹ Amnesty International (2007) 3.

²² African Commission on Human and Peoples' Rights para 155.

²³ Murombo and Valentine (2011) 84.

²⁴ See, for instance, L Bruce 'Victory for community activist victimised by mine' 28 June 2017; L Bruce 'Community activist victimized by mine' 3 February 2017.

²⁵ Section 1 of the Protection from Harassment Act 17 of 2011 reads:

"harassment" means directly or indirectly engaging in conduct that the respondent knows or ought to know –

(a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably –

(i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be".

²⁶ Association for Women's Rights in Development *Our right to safety: Women human rights defenders' holistic approach to protection* (2014) 8.

²⁷ Association for Women's Rights in Development *Our right to safety: Women human rights defenders' holistic approach to protection* (2014) 9.

²⁸ See, for instance, *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (5) BCLR 622 (CC); *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (10) BCLR 968 (CC).

²⁹ 2006 (12) BCLR 1399 (CC).

³⁰ 2015 (1) SA 515 (SCA).

³¹ Murombo and Valentine (2011) 85.

³² Murombo and Valentine (2011) 86-87.

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