COMMUNICATIVE FREEDOM IN A DIGITAL DEMOCRACY: POLITICAL AND ECONOMIC RESISTANCE TO FREEDOM OF SPEECH AND THE RISE OF DIGITAL ACTIVISM IN SOUTH AFRICA

COMMUNICATIVE FREEDOM IN A DIGITAL DEMOCRACY: POLITICAL AND ECONOMIC RESISTANCE TO FREEDOM OF SPEECH AND THE RISE OF DIGITAL ACTIVISM IN SOUTH AFRICA

by

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"The answer to words must always be more words."
— Salman Rushdie (Twitter)

"The moment you say that any idea system is sacred, whether it's a religious belief system or a secular ideology, the moment you declare a set of ideas to be immune from criticism, satire, derision, or contempt, freedom of thought becomes impossible."
— Salman Rushdie (OpenDemocracy, 7 February 2005)

Don't you see the whole aim of [censorship] is to narrow the range of thought? In the end we shall make thoughtcrime literally impossible, because there will be no words in which to express it. Every concept that can ever be needed will be expressed by exactly one word, with its meaning rigidly defined and all its subsidiary meanings rubbed out and forgotten [...] Every year fewer and fewer words, and the range of consciousness always a little smaller [...] The whole literature of the past will have been destroyed. Chaucer, Shakespeare, Milton, Byron—they will exist only in [censored] versions, not merely changed into something different, but actually changed into something contradictory of what they use to be [...] How could you have a slogan like "freedom is slavery" when the concept of freedom has been abolished?
—(George Orwell: *1984*, 55-56).

Abstract

This dissertation explores political and economic resistance to communicative freedom in South Africa. Through a mixed methodology of Critical Discourse Analysis and Corpus Linguistics analysis, this dissertation seeks to explore how our understanding of democracy is being transformed as we move from a physical, industrialised world into a digital, networked society. South Africa is trying to keep pace with technological advances while still clinging to archaic forms of governance. This project considers whether these archaic forms of governance and older forms of communication legislation are effective in governing communicative freedom in South Africa's emerging network society. I argue that the *Protection of State Information Bill* (2010), *Protection of Personal Information Bill* (2009) and the *Promotion of Access to Information Act* (2013) are ineffective for two reasons. Firstly, the legislation's language is so open-ended that it can be abused by political and economic elites to stifle free speech and transparency. Secondly, the legislation can be used to punish whistleblowers and digital activists who are vested in sustaining a digital commons in the interest of openness and transparency in a functional democracy. In fact, digital activists say that they experience political and economic intimidation that forces them to self-censor under the threat of heavy-handed sanctions. The problem of corporate monopolisation contributes to this problem because the costs of meaningful online access and participation are prohibitively expensive. Effectively, this undermines constitutionally enshrined communicative freedoms.

I also explore historical and theoretical approaches to democracy and consider what democracy is in a developing network society. This leads to a discussion of the ways in which vague language choices within laws are used to subvert and undermine the right to communicative freedom. I then engage the work of the civil society organisation, the Right2Know Campaign (R2K), as a legitimate response to impunitive exercises of power. The dissertation offers a Corpus Linguistics analysis of the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013)* to suggest that, in the nexus between political and economic resistance to communicative freedom and digital activism, South Africa has regressed into an autocratic dystopia. The argument is that digital activism should be protected in the same way as physical protests in our material world. In an age where South Africa's socio-political and economic sectors are reimagined in the digital space, an inevitable reliance on digital activism has emerged. This study explores newer forms of governance that may be established in the power vacuum created in the new, digital space of politics and economics in our networked society.

Plagiarism Declaration

I, *Chad Brevis*, declare that *Communicative Freedom in a Digital Democracy: Political and Economic Resistance to Freedom of Speech and the Rise of Digital Activism in South Africa* is my own work, that it has not been submitted for any degree or examination at any other university and that all the sources I have used or quoted have been indicated and acknowledged by complete references as confirmed by *Turnitin*.

Signed: Signed by candidate

Date: (30 June 2021)

Content

CHAPTER ONE

Introduction

The way people see, accept and describe worldviews are reflections of how material subjects, objects and events shape our behaviour. This is true for the digital age, where foremost thinkers such as Manuel Castells have explored the use of social media by digital activists as a form of protest during times of political unrest in autocratic and democratic governments.

As a result of reading case studies into media coverage of large-scale uprisings of the twenty first century, my research developed a natural question when tracing the trend of physical governance towards digital governance: Are older forms of communications legislations effective in governing communicative freedom in South Africa in a burgeoning network society? The first response to this question, after assessing the initial media and social activist coverage of these events, was that older communicative freedom legislations are ineffective. Communicative legislation's have been criticised for being overly broad and that it punishes protests by civil society in an unjust way. Many whistleblowers, journalists and activists have been physically punished simply for doing what their work and contribution towards a participatory democracy demands: checking and balancing political and economic power in a digital era.

The dealing in information and discourses, which appears to be the source of power in a digital democracy, has become problematic for governments and corporations. The exploitation of citizens becomes difficult in the digital arena where the collapse of geographical borders and an erasure of exclusivist, censor-cultured principles of government and economics are prevalent. Older legislation used to govern communication freedoms in the physical world outside of the internet has been sharply criticised for condoning institutionalised corruption into existence due to lexical misappropriation by the political and economic elites. The same issue is being observed in the recent trend of government scrambling to piece together restrictive legislations to govern the dissemination of information and speech on the internet.

i) Background of the study

In the digital age, navigating forms of politics and governance has become challenging. The pervasive media coverage of large-scale uprisings of the twenty-first century, such as in Egypt and The Arab Spring, have birthed questions around the switch from physical governance towards digital governance. One such question considers whether older forms of communication legislation are effective in governing communicative freedom in South Africa in a burgeoning network society. Considering the aberrant news coverage of communication legislation in South African, one could make the argument that older communicative freedom legislation is ineffective.In South Africa, communicative legislations have been criticised for its lexis being overly broad and that it punishes legitimate protests in an unjust way. Many whistleblowers, journalists and activists have been threatened with corporeal punishment for checking and balancing political and economic power, which is an essential component in a participatory democracy.

Information technology, which appears to be the source of power in a digital democracy, has become increasingly problematic for governments and corporations to control. The exploitation of citizens has become increasingly difficult in the digital space where the collapse of geographical borders and erasure of exclusivist, censor-cultured principles of government and economics are prevalent. Older legislation used to govern communicative freedoms in our physical world has been sharply criticised for condoning corruption due to lexical misappropriation. Thesame trend is being observed in government scrambling to piece together restrictive legislation to govern information on the internet. Corporations have joined the scramble by government to add their own brand of exploitation to this situation by influencing the ratification of legislation to favour capitalist ideologies at the expense of freedoms. What this suggests is a tendency by government and corporations to censor, inferring disapprobation towards freedom of speech and the right to know.

This dissertation locates its intellectual discipline in Media Studies and Linguistics, but is not limited to these disciplines. English Literature, Digital Cultures, Law and Activism combine in an interdisciplinary, academic endeavour to create a review of communicative freedom in a digital democracy. The specific focus within communicative freedom is freedom of speech which is extended to the right to protests for activist organisations and citizen activists. The first two chapters outlines the basic structure of this work, with “Chapter One” being the

introductory chapter and “Chapter Two” outlining the literature review and theoretical framework. The focus on communicative freedom as freedom of speech and the right to protest is the dominant theme, which is highlighted in the chapter titles of this thesis: “Chapter Three - Freedom of Speech - A Historical and Theoretical Approach”; “Chapter Four - Citizenship and Speech in South Africa 1948-1994”; “Chapter Five - Legislative Challenges to Communicative Freedom post 1994”; “Chapter Six –Communicative Freedom: An Activists’ Perspective: Questionnaire”, “Chapter Seven -The Network Society and Economic Challenges to Communicative Freedom Post 1994” and the “Conclusion: Communicative Freedom - Towards a Digital Democracy”. Communicative freedom, as represented through freedom of speech in South Africa, is the central focus of this work. While it is acknowledged that there are interrelated communicative rights issues, such as the right to privacy, the right to education, the right to assemble and linguistic rights, an in-depth analysis of these rights goes beyond the scope of this research.

The chapters of this research have been organised in the following manner: “Chapter One” and “Chapter Two” acts as a means of contextualising the academic framework, considerations and structure of this research. “Chapter Three” begins with a brief overview of what constitutes a democracy. It discusses the historical and theoretical approaches to democracy and whether South Africa can be considered a functional democracy according to key democratic principles outlined in popular *90s* academic studies. It is important to note that “Chapter Three” refers to the historical context of freedom of speech and begins with the USA example. This is to ensure a chronologically ordered approach to assessing democracy from an established, westernised perspective but does not simply that democracy in Africa is based on constitutive ideals of founding western democracies. This will be explained a bit later in this chapter.

“Chapter Four” assesses communicative freedom during the Apartheid era and discusses whether, in post-Apartheid South Africa, we can be considered a democracy while being haunted by corrupt government officials, state capture and a parastatal government that operates in the manner of the older, Apartheid regime.

“Chapter Five” and “Chapter Six” look specifically at the language of legislation in South Africa and how problematic it is in terms of overly broad and vague language choices to frame rights. They both assess the extent that the misappropriation of semantics has on undermining citizens’ democratic rights to access information and exercise free speech. It is within “Chapter Five” that we can find the Corpus Linguistics analysis of the three

communicative freedom Bills that form the primary data for analysis. “Chapter Five” also focuses on a Critical Discourse Analysis of the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013),* “Chapter Six” discusses the professional opinions of four key coordinators of communication activism groups as outlined through their answers to the questionnaire. The term “coordinators of communication activism” will later be explained in some more depth in this introduction.
“Chapter Seven” discusses economic challenges to communicative freedom from the perspective of activists and journalists. It looks towards a digital democracy and discusses the type of social framework that governs an information based society. It looks specifically at the power vacuum created in the nexus of political resistance to communicative freedom and the digital activism that arises as a result of this political and economic resistance.
The conclusion looks more concisely at digital activism as a legitimate form of protest in a digital democracy. Within the conclusion, the research reflects on the implication of the data findings and looks towards governance in a digital democracy.

For the purpose of this dissertation, the term “communicative freedom” can be defined as the freedom to gather or receive information within the public interest without the fear of corporeal prosecution from superordinate powers, such as gatekeepers of information (Internet Service Providers, archives, internet administrators and media houses), security structures (government, police or the military) as well as powerful and influential economic entities and corporations.This freedom to gather and receive information is, furthermore, extended to speech, where the right to express personal thoughts, opinions and information within the public interest should be promoted and protected to encourage constructive debates within society about otherwise challenging or taboo issues.The term “political elite” can be defined as the governing political structure of the period that is being investigated. “Chapter Four” focuses on citizenship and speech in South Africa 1948-1994 and, thus, has a more of a focus on the Apartheid government, while “Chapter Five” focuses on post-1994 and refers more to the ANC-led government.

Although there are further interdisciplinary to communicative freedom, such as the political economy of South Africa, ownership of the media and the issue of a digital divide in the socio-economic sector, this dissertation concerns itself with a linguistic approach to the analysis of media and legislation that pose a risk of curtailing communicative freedom in

South Africa. Rigorous academic research into theinterdisciplinary connections outside of the Critical Discourse Analysis and Corpus Linguistic Analysis go beyond the gamut of this research, but is acknowledged and addressed appropriately, although not in great researched detail as freedom of speech. The crux of this dissertation lies in the Critical Discourse Analysis and Corpus Linguistics analysis of three South African communicative freedom legislations: *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013)* found in "Chapter Five" and the questionnaire found in "Chapter Six". "Chapter Seven" focuses on economic challenges to freedom of speech and utilises media reports in order to give an impression of social debates from the perspective of South African citizens. "Chapter Seven" is markedly more focused on media reports to give a voice to public debates around communicative freedom. The assessments that are made within "Chapter Seven" employ academic interjections where appropriate. Although "Chapter Seven" is less academic in terms of criticism and analysis, this strategy of close reading as a form of analysis is necessary to give fair appraisal to the debate about communicative freedom between the three main actors in South African society that this research focuses on: the political elites; economic elites and citizen activists. By doing a close reading, the dissertation allows the voices of the aforementioned three actors in society to speak within their own voices. It must be noted, at this point, that this thesis is not primarily focused on the political economy and digital divide within South Africa but does acknowledge it where appropriate.

The three central documents that are assessed are the *Protection of State Information Bill (2010)* (POSIB), *Protection of Personal Information Bill (2009)* (POPIB) and the *Promotion of Access to Information Act (2013)* (POAIA). It must be made abundantly clear at this point that POSIB *(2010)* and POPIB *(2009)* are referred to as Bills throughout this dissertation, while POAI is referred to as an Act in accordance with the timeframe of this research. In the initial phases of this research, POSIB *(2010)* and POPIB *(2009)* were only proposed Bills, while POAIA had already been ratified through Parliament by the end date of this research, 2021. This research looks at the language of these Bills and Act to show disapprobation to communicative freedom and explores the idea of South Africa as a constitutional democracy; the language of South African legislation and how free speech legislation at once promotes and inhibits access to information influenced by political and economic elites. The research further traces the study of digital cultures and suggests a reallocation of power from government to citizens in the nexus between the physical and digital space of protest.

Furthermore, it interrogates whether there is a new socio-political framework that arises from this and whether this framework is based on the political structure of western democracy or something analogous of an autocratic state.It is also important to note that when this research refers to the three communicative rights legislations, it is followed by the date of their promulgation to avoid confusion with the many amendments and reviews that the Bills have undergone.

This thesis also looks at the use of the *Promotion of Access to Information Act* as a hindrance. It must be noted that this perspective is not derived from utopian ideal that the POAIA is theoretically mandated to execute: access to information. Instead, the perspective of the POAIA as a hindrance to communicative freedom is derived from the position that its application within society, and thus effectiveness, is reduced due to the amount of denials of these applications through the South African court systems. This will later be elaborated on in "Chapter Five" where there is an analysis of the denial of POAIA applications versus the amount of applications for information that is approved.

The idea of South Africa as a constitutional democracy needs interrogation as it may be assumed that democracy in Africa is based on constitutive ideals of founding western democracies. This is not true given the political context and culture in South Africa. The discourse of democracy within this research is based on a comparative political science context. The study discusses democracy as a system of intellectual conditions that need to be metin order to be considered as functional. The intention is to explore the context of democracy for a network society and not to uncritically propound democracy in Africa as allegorical to western superpowers. This leaves us with the critical question that is interrogated throughout this work: whether South Africa can truly claim the title of 'democracy' considering the allegations of corruption and capture.

In tackling the research objectives, a few research methods are employed, ranging from a quantitative textual analysis, thematic analysis and discourse analysis of three communicative legislations in South Africa: the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013)* A mixed methodology of Critical Discourse Analysis and Corpus Linguistics explores how democracy is being transformed as we move from a physical space of communication into a networked society. Firstly, the research makes use of quantitative textual analysis to render

codes −repeated words – from the text. The frequently used words are measured numerically in order togenerate the codes that will be used in a thematic analysis of the language of the legislation. The data from the textual analysis is then interpreted using a thematic analysis where the codes are grouped together to render themes and thereby analysed according to their semantics. Lastly, the discourse analysis examines the use of repeated codes that become themes. These themes highlight worldviews and indicate how governments, corporations and citizens comprehend and functionwithin our physical world. The Discourse Analysis identifies language within its context to showcase how semantics is used to achieve social effects such as building or breaking trust, imposing ideologies, creating doubt, manufacturing fear, managing conflictand promoting or hindering communicative freedom. This will be explained in greater detail in "Chapter Five" and "Chapter Six".

Digital activism as a response from citizens to institutionalised corruption in South Africa is a timely issue that requires both policy and research attention. Before media channels had reported hacks of YouTube channels, the South African Broadcasting Corporation (SABC) internet broadcasts and, lately, Zoom meetings during the global Covid-19 outbreak, there was doubt that hacking was a problem in South Africa. The recent reliance on the internet to function in the world has abolished any doubt that hacktivists do exist in South Africa. Also, there is a reality that malicious hackers have more power to disrupt essential functioning in South Africa's digital economy than first thought.

It must be acknowledged that this research had initially been considered and developedin 2012 with the rise of digital activist collective *Anonymous* in popular culture. It was then explored and developed from the time period of 2012 to 2015 and then elaborated on as events and amendments to legislation had progressed. This is one shortcoming of this research. To address this issue, the research does include important events and amendments to past research as indicated in "Appendix C: a Timeline of Significant Communicative Freedom Events in South Africa from 2014 – 2020" (See appendix C). What must be stressed is that the aim is to show that the restriction placed on access to information by government and corporations in this time period, coupled with the misappropriation of the previously mentioned Bills, undermines communicative freedom as enshrined within the South African Constitution of 1996. The explicit intent is to show governmental and corporate inclination towards secrecy and the curtailing of communicative freedom in South Africa.

The hypothesis that South Africa is denigrating into an autocratic dystopia is assessed against the struggle between civil society and government's lack of accountability for ineffective governance in South Africa. Activism by the Right2Know Campaign has motivated the need to focus on freedom of speech for this research. Contributions to submissions to the South African Parliament on the *2016 ICT Policy* and recommendations on the movement from terrestrial to digital television are examples of issues that werepersonally investigatedand applied to this work. The central focus is the unassailability to corruption that serves to intensify the anger of South African citizens against the government as expressed in print, digital and social media. As South Africa moves into a digital era where many of our social structures such as law, education, government and politics are digitized, online communication and privacy havebecome problematic as political and economic elites capitalise on digital spying and covert censorship to control citizens. Furthermore, this research advocates the necessity of internet access to promote access to knowledge commons and encourage education and literacy. This is particularly important in a networked society where internet access is essential to promote such education.

For the purposes of transparency and ethical integrity, it must further be established that I have been working for the Right2Know Campaign within the capacity of researcher, editor and writer and thus hold a privileged perspective into the inner workings of the NGO. As of 2021, I remain an activist but no longer function as a researcher and editor. There have, however, been further publications in the form of activist guide books on digital security that I have published through the Right2Know Campaign. This will later be elaborated upon in the ethical considerations and discussion on positionality within this introduction.

ii) Methodology and Ethical Considerations

• Explanation of methodological approaches

The basis of the methodology is taken from the mixed methods framework outlined by John W. Creswell in his work titled *Research Design: Qualitative, Quantitative and Mixed Methods Approach (2013)*and is hypothesisdriven. Theresearch applied qualitative and quantitative approaches in its undertaking. The methodological approaches are aimed at answering the five key research questions this study focuses on:

1. Can South Africa be considered a functional democracy according to key democratic principles outlined in popular 90s academic studies?
2. Is the language of legislation too broad to be effective in protecting citizens' rights to access information and freedom of speech?
3. What form of governance is emerging in the power vacuum created in the space where digital activism and political resistance to communicative freedom meet?
4. Should digital activism be considered as a legitimate form of protest in a digital democracy and covered by the same communicative rights as activism in the physical space of protest?
5. Who are the gatekeepers of communicative rights and what role do they play in the power struggle over communicative freedom between citizens and the political and economic elite?

The above five questions correspond with the analytical chapters of this dissertation.A furthertool-box of methodological approaches was employed to address the above questions and research objectives. The first methodological approach analyses the*Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013).* These documents wereanalysed using a three-pronged mixed-methods analytical approach borrowed from the Linguistics discipline:

1. The first level of analysis is a quantitative textual analysis that numerically measures features of the text and generates codes for further analysis;
2. The second level of analysis is a thematic analysis of codes that renders themes and patterns of language use;
3. The third level of analysis is a broad discourse analysis that examines how the use of repeated codes become themes and are further used to create meaning in the *Corpus Linguistics* of the Bills.

While the analyses use key principles of textual, thematic and discourse analyses, it is still aiming to speak to the social contract that is created through language use. Thus, it is important to highlight that, for the purposes of our social contract theory focus, the analysis looks at the discourses in the three above mentioned Bills to show how language is used to construct social effects, ideologies and behaviour.

To further support the Corpus Linguistic analysis, the methodology includes the use of the Atlas.ti computer software. The software collates large bodies of text, analyses it and allows the researcher to quantitatively and qualitatively extract data to be used in linguistic analyses. This usually happens in a threefold approach. The first is for annotation which applies certain criteria for the gathering of texts. For the purposes of this study, words associated with the 'exercise of power' in communication legislation were collected, quantified and grouped. The second is for abstraction in order to interpret the data that has been gathered and group them into themes for an analysis. For this research, words relating to the 'exercise of power' were quantified and rendered in table form in preparation for a discourse analysis. The third is for analysis where, in the case of this study, the themes that were identified in the abstraction phase of the Corpus Linguistics analysis are grouped to form discourses which are then analysed for its linguistic value and its contribution to influencing the 'exercise of power' inherent in our communicative freedom legislations. It must be noted that the Atlas.ti software is used only as a tool to gather and sort data, while the primary method of data analysis is still Discourse Analysis and Corpus Linguistics.

The observation on the 'exercise of power' in communicative freedom legislations takes a Foucauldian approach to discourses and power. There is a concerted effort to analyse the patterns, themes and discourses within the legislation to find connections and breeches between established bodies of knowledge such as governance, law and politics. It is particularly important to analyse the communicative freedom in the Apartheid-era to provide a contextual basis for the system of thinking behind censorship and the justification for censuring of civil society. The social context that gave rise to Apartheid and post-Apartheid South Africa's disapprobation to communicative freedom is based on the inequitable exercise of power that intersectionally exists with the racial ideologies of the past. Yet, we find that this issue is still in existence in a maturing democracy that is on the precipice of a digital evolution. The importance of a reflection on our social context for 'exercises of power' by the political and economic elite in South Africa is thus to contemplate dogmas and practices that emerged as acceptable at a given point in time but becomes undesirable as society fundamentally changes their ethos and worldviews as a collective.

The second methodological approach is a close reading of the responses from questionnaires distributed to a select number (four) of experts in the field of communicative rights in South Africa. Due to the privacy requested by the participants, they will collectively be referred to as coordinators of communication activism groups. The term "coordinators of communication activism groups" refers to professional citizens comprising a mixture of academics and media editors in the role of coordinators and activists within communicative freedom NGOs.The questionnaires were used for this interview as a result of the restrictions caused by the Covid-19 pandemic (See Appendix A).To complement the observations of the questionnaires, thesameclose reading technique interrogates media reports around the call to action from the Right2Know Campaign to protest high costs of data in the #DataMustFall movement. The aim is to do a close reading of the Right2Know Campaign's efforts to protest the political and economic elite's efforts to undermine communicative freedom.

Lastly, "Chapter Seven" analyses media articles to reinforce the discussion on the network society in South Africa. The aim is to highlight the economic challenges to communicative freedom that are faced by civil society due to the high costs of data. "Chapter Seven" is especially concerned with highlighting the notion of a wilful ignorance or plausible deniability of Internet Service Providers (ISPs) to keep the costs of data high, thereby effectively monetizing the right to communicate and the knowledge commons. It must be noted that "Chapter Seven" acts as a review of media and Non-Profit Organisations (NPO) articles in order to explore the public perception and debates around ISPs and their contribution to the resistance to communicative freedom in South Africa. This will act as a means of juxtaposing the academic and social and observations of the fight for communicative freedom with the reported debates and reality of journalists, activists and civil society as a collective.

The conclusion includes a summative overview of what the dissertation has achieved and concludes with reflections of the state of digital activism within the network society and the ineffectiveness of our communicative freedom legislations.

• Methods of Data Collection and Methodological Choices

The methodology is grounded in Gillian Rose's approach to discourse analysis (see Appendix B[1]). Using Rose's definition of discourse analysis, the intentionis to focus on legislative exploitation by juxtaposing the three previously mentioned communications legislations with observations made in William Gumede's political commentary *Restless Nation (2012)* and John Matisonn's *God, Spies and Lies(2015).*Both of theseworkspropose thatSouth Africa is regressing into a cleptocratic republic.

The open-ended questionnaires that interrogated four anonymous key figures in communicative rights activism in South Africa were used to gauge responses from key figures, the Western Cape coordinators and the media freedom coordinators of communications activists groups, which will later be elaborated in some more depth. Here, a close reading of the responses of the activists were utilised to make sense of what may have shaped their responses. Further supporting data for analysing the activists' responses are taken from the Right2Know Campaign'scollection of digital op-ed articles and printed resources on communicative freedom. This comprises much of the critique against problematic legislation that limits communicative freedom in South Africa. The intent is to argue that the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013)* have the potential to curtail communicative freedom through semantic misappropriation and is thus unconstitutional. This is taken further to argue that proper semantic revisions need to be made to the language of the Bills in accordance with the constitutional right to communicative freedom in South Africa.

The data analysis of the questionnaires and digital campaigns was rooted in a close reading, making use of the questionnaire as a method of investigation to fit with the methodology of Corpus Linguistics and Discourse Analysis in the dissertation as a whole. The goal is not to use the interviewees to answer empirical questions but rather to demonstrate how ideology works. Sticking closely to Thomas's inductive model, the purpose for using the questionnaire is best described in his explanation of the primary purpose of an inductive approach (See Appendix B[3]). The intention is to allow the answers of the participants to draw their own hypotheses by closely analysing the patterns that emerge within their discourse. This allows the data to provide a fair assessment of the problems faced within R2K's campaigns.

Having had a working relationship with activists within R2K has given the work privileged access to the field of free speech activism. As previously mentioned, this working relationship has, for the most part, been limited to research and writing up publications after 2017. In terms of positionality of the researcher, this has benefitted the study by making the content and analysis richer from an experiential point. One concern is that personal opinions on activism may lead to a subjective reflection on collected data for the research project. In an article written for *The Qualitative Report* titled "Positionality: Reflecting on the Research Process", researcher Brian Bourke reflects on his experience of positionality while conducting qualitative research. This same reflection has been observed for this research (See Appendix B[4]). While it is a reality that personal experience may serve to influence perceptions of free speech activism and political and economic resistance to communicative freedom, this issue can be balanced out. Interviews and answers to the questionnaires from activists are important to express a diverse experience of activism for communicative freedom in South Africa. By reporting diverse personal experiences, the research will be able to fairly appraise the experiences of activists and allow for the research to assume a more subjective account of political and economic corruption. Bourke sums this up by explaining how researchers can strive to remain objective, but must be ever mindful of our subjectivities (3).This appears to be the case forpositionality. It is important to acknowledge who we are as individuals, members of groups and as existing in and participating within social positions (3).

An interrelated issue within positionality is the insider/outsider dichotomy between interviewer and interviewee. Bourke defines this in terms of positionality by describing how positionality is determined by where one stands in relation to 'the other' (5). In the case of this research, it may be assumed that the researcher and the participants would not be hindered by the insider/outsider dichotomy due to the working relationship that developed before the research was undertaken. This is not the reality of working in activism. Despite there being a common goal in activism, there are intersectional nuances at play within relationships between activists.

Due to activism not being the primary interest or career of many individuals, you find that interpersonal relationships tend to influence the manner in which activists interact with each other, share information and execute campaigns in protest of inequity. Thus, those activists who share a better interpersonal relationship, perhaps due to an affiliation in political views, careers such as editing or journalism or academic practitioners, will be more likely to work in

favour of each other and to the exclusion of other activists. This leads to fractioning and often conflict in the field of activism. This research looks towards this potential hindrance and has attempted to capitalise on the insider/outsider dynamicin order to gather the most diverse opinions held in protests on free speech violations. In this way, aselection of opinions has been produced and a more diverse collection of experiences was extracted from the collected data.

• Ethical Considerations

Because this research deals with human subjects, ethical clearance was sought from and approved by the Centre for Film and Media Studies Ethics Committee at the University of Cape Town.

An open-ended questionnaire was administered and used to elicit responses from the Western Cape coordinators and the media freedom coordinators of communications activist groups. The qualitative questionnaire interrogates various aspects of digital activism as exemplified through the social media campaigns and uses an inductive approach to data collection as described by David R. Thomas in "A general inductive approach for qualitative data analysis" (Appendix B[2]).

Keeping the identity of the interviewed activists confidential was a central consideration for the ethical integrity of this study. The qualitative questionnaire included a consent form that outlined the rights of participants and assured participants of their privacy, anonymity and ethical data management. The consent form outlined that the method of data gathering was a questionnaire and the participants were encouraged to raise concerns at any time about the nature of the study or the methods used. The participants were also encouraged to contact the researcher if there were issues of concern that they may have. No such issues were brought forth. The questionnaire outlined that direct quotes may be used in the researchbut that participants' names and other identifying information would be kept anonymous.

The participants had the option of answering the questionnaire in a digital format to allow them the necessary time for reflection and sufficient responses. If, for any reason, the participants felt uncomfortable with answering a particular question, they were instructed to ignore the question and proceed to answer the questions that they were comfortable with. It was clearly stated that the participants have the right to withdraw from the study at anytime. In the event that they chose to withdraw from the study, all information that they provided would be expunged from the research. The consent forms further outlined that insights gathered from the participants would be used in writing a qualitative research report, which would be read by a supervisory body and possibly be presented in future seminars or publications. A further explanation of the rights and responsibilities afforded to the interviewer and interviewee was outlined as described in the *Guide to Research Ethics* from the Faculty of Humanities of the University of Cape Town.

CHAPTER TWO

Literature Review and Theoretical Framework

The Literature Review and Theoretical Framework are so closely interconnected in terms of researched data, that it felt appropriate to incorporate these sections into a structured, multileveled subsection that forms "Chapter Two". As will be made clear in the following paragraphs, the previous explanation of the methodology and the review of the theoretical framework incorporate empirical data that can be justified as a literature review. It is for this purpose that the Summative Literature Review and Theoretical Framework have been collated and framed as a single chapter with three subsections below the Literature Review that include a philosophical and theoretical approach to freedom of speech and ending with the Theoretical Framework of the dissertation.

i) Summative Literature Review

This research draws from a number of schools of scholarship, brought together under the unifying themes of Protest, Media and the Politics of Representation. The first school of scholarship is Cultural Studies in a network society. This focuses on the reallocation of power in the nexus between the physical space of protest and the digital space of protest as discussed by Manuel Castells. While Castells proposes that a new form of governance, subverted from westernised democracy, develops within the power vacuum found at the nexus where digital protests and physical protests meet, he does not allude to what form of governance this may be. Through an analysis of the current state of the South African democracy, and a shift into a digital democracy within a network society, this research argues that political resistance to free speech has given rise to a culture of digital activism. In the space where resistance to free speech and the promotion of free speech meet, there appears to be a power vacuum where democracy does not govern. In light of this observation, the research proposes that we are left in a state of autocratic dystopia.

The second school of scholarship is politics in a digital era. Following this, the research explores communicative freedom as a basic human right in South Africa. Professor Jane Duncan's reflections in her book *The Rise of the Securocrats: The Case of South Africa (2014)* brings to light the recent furore around the South African government and the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)*

and the *Promotion of Access to Information Act (2013)*. TheBills have stalled the work of activists and journalists who need to report information that uncovers corruption as they fear prosecution for dealing in information that government classify as 'critical to national security'. One such mention of journalists being unfairly targeted can be found in the SABC 8; a group of 8 journalists who stood up to censorship by then C.O.O. of the SABC, Hlaudi Motsoeneng, in 2016 and were subsequently fired (Krige N/A).

A strong motivation for conducting this research is to highlight potential dangers that conflicting communicative freedom legislations may hold for society. The research develops Duncan's analyses by focusing on censorship in a digital democracy and applying a critique of communications policies that the political and economic elite useas a means to control civil society's communicative freedom. This is achieved through a critical, comparative analysis of legislations, case studies and existing studies by critical scholars like Manuel Castells.

The Right2Know Campaign, an organisation composed of an alliance of civil organisations that advocate for communicative freedom in South Africa and abroad, was launched in 2010 in response to South Africa's contentious *Protection of State Information Bill (2010)*. The concern with the *Protection of State Information Bill (2010)*, also known as *The Secrecy Bill (2010)*,was that unduly heavy punishment could be dealt for leaking information the State deems as sensitive, with jail times up to 25 years. *The Secrecy Bill (2010)* lacked a public interest defence that would protect whistleblowers from malicious prosecution. R2K advocated for exemption for activists, journalists and whistleblowers from prosecution if they possessed 'classified information' on the grounds that the information was within the public interest and it reveals ineptitude of the state such as corruption and state capture. *The Secrecy Bill (2010)* can be seen as one issue that speaks to a wider concern about communicative freedom in South Africa and set R2K on a three-fold advocating for communicative freedom: to advance protest rights, communications rights and participatory democracy for South Africa. As advocates for communicative freedom from the onset of the new, proposed *Protection of State Information Bill (2010)*, R2K, along with sister advocacy groups like the SOS Coalition who also fights for communicative freedom in South Africa, provide the most comprehensive examples of campaigns, protests and social commentary on freedom of communication in post-Apartheid South Africa. Their research and advocacy stems from a long list of qualified academics and activists who associate with the organisation. One such

academic is Professor Jane Duncan whose work in *The Rise of the Securocrats (2014)* is used as a seminal text in this research.

The manner in which the political elite undermines communicative freedom, and the ways in which theRight2Know Campaign addresses these social inequities, evidences a tension between civil society and South Africa's elite. Here, the political elite express a particular resistance to communicative freedom as there is a desire to limit shared information to hidecorruption. These corrupt dealings are often in collusion with economic elites such as InternetService Providers (ISPs) who not only profit financially from colluding with government, but also benefit through members of the political elite being stakeholders within the ISP industry. This is a conflict of interest, is ethically dubious and warrants further research in order to contribute to the ongoing debates around the political and economic practices involved in the governance of communicative freedoms. It is thus important for the research to assess the *2016 ICT policy* and related internet freedom documents.

The seminal texts for the Critical Discourse Analysis and the Corpus Linguistics analysis are the three contentious South African communicative rights documents, namely, the*Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013).* However, the research also makes reference to communicative freedom acts globally. This was an intentional comparison to exhibit the universality of free speech as an inalienable, innate human right as outlined by the *Universal Declaration of Human Rights (1948).* The research for this study is archival in nature andhas been sourced through two databases: from the Right2Know Campaign's repository as well as the repository from the WITS University Media Studies course: *Media Freedom and Freedom of Expression in Africa.* This research analyses the above mentioned legislations by doing a linguistic analysis and close reading of the language of the Bills to evidence a tendency towards broad and vague terms which could be exploited to undermine the promotion of access to information and free speech. The focus is to look at the South African legislation and assess the language to find the parameters that the language of the legislation establishes.

ii) Freedom of Speech: A Philosophical Approach

One of the earlier, Romantic philosophers, Khalil Gibran, who considers high art and poetry as a means to realising the divine in human nature, reflects on a parallel notion of truth for the human psyche to that of Eric Barendt's research in his book *Freedom of Speech* (2009). In his work, *The Awakened Soul (2001)*, Gibran considers truth and reflects on how: "[t]o be modest in speaking truth

is hypocrisy" (Gibran 44). Gibran suggests that the omission of information is the antithesis of a truth; therefore it cannot be a truth but only a partial truth or a lie. As far back as the Romantic period of human history, we find this very human need for discovery to be almost an instinctual level of intellectual exploration. The notion of truth, however, only gained established intellectual ground during the Enlightenment period, where philosophers like Immanuel Kant and Friedrich Nietzsche considered the notion of truth.

Immanuel Kant, in his exploration of Enlightenment, focused on the nature of human beings to explain complex ideas for mankind's moral behaviour and ethical reflections on these moral actions. Within this exploration, Kant examines how man's thought processes, and actions are determined, in part, by the instinct to seek solutions to problems outside of the self. In his study titled *An Answer to the Question: What is Enlightenment? (2009)*, Kant proposes that Enlightenment is man's cessation from self-incurred "immaturity" which he defines as the "[…] inability to use one's own understanding without the help of others" (Kant 1-2). The immaturity is self-incurred if its cause is not ignorance but the lack of resolution and courage to use it without guidance of others. Kant credits laziness and cowardice for man's willingness to remain immature for the entirety of his or her existence. It is for this reason that human beings create the perfect conditions to be governed by what Kant refers to as "guardians" (Kant 1-2).

Kant continues his reasoning by stating how guardians have "kindly taken upon themselves the work of supervision [that] will soon see to it that by far the largest part of mankind […] should consider the step towards maturity not only as difficult but also as highly dangerous […] (Kant 1-2). This has the effect of maintaining immaturity to the advantage of the new powers who are the guardians. The guardians then show those who are perpetually stuck in immaturity what dangers they face if they try to break free from immaturity. Kant acknowledges how these dangers are not as great as the guardians make them to be as man would eventually learn to avoid these dangers after a few encounters with them. It is the tactic of intimidation that is important. Once immature human beings become intimidated in the act of trying to free themselves from immaturity, they are scared off from attempting any further emancipatory actions. For this reason, Kant sees emancipation from immaturity as very difficult to accomplish for each separate individual as dependence has become their second nature. For Kant, this is represented by doctrines of church, state and even organisations. For Kant, humans are inclined to want understanding of the world without comprehending it for themselves and, instead, would prefer that others do the comprehension and defining of concepts such as 'truth' for them. Kant defines this as "immaturity" (Kant 1). At the same time, Kant identifies

that there are individuals who would gladly capitalise on the trait of human immaturity to take advantage of the masses. In the case of communicative freedom for South Africa, the likes of securocrats; parallel states and ISPs functioning for the ends of corruption assume the role of "guardians" to "supervise" truths and realities on behalf of citizens (Kant 1). As a step to gain power and maintain it, these "guardians" manufacture "truths" and realities (in the case of authoritarian and totalitarian regimes) to "consider the step towards maturity [That is, education, free thinking and personal discovery] not only as difficult but also as highly dangerous" (Kant 1). This manufactured danger is then demonstrated to the masses by showing the consequences of attempting to free one's self from immaturity. An example for the U.S.A. is the 9/11 attack which is now widely debated as having allegedly been manufactured by the US government. For the case of South Africa, the protests and reported dissent at the Marikana mines and the ensuing massacre of activists and protestors led by police and government could be viewed as just such a tactic. This ensures that fear is sowed in the minds of others who dare to challenge the guardians of truths, thus ensuring that power is safely maintained in the hands of these guardians. Kant goes on to explain that this is why immaturity is difficult to escape from. Humans are inclined to seek safety instinctually and thus would prefer immaturity. This indicates the dubious extent to which guardians of maturity, reality, truths and power would go: to manufacture insecurities where one human instinct (immaturity) is played off of another (self-preservation) in order to gain and maintain power. Kant then concludes by reflecting on the dogmas and formulas that, in a more modern context, could be identified as our laws and legislations, designed by politicians, governments, judiciaries and legal systems in order to maintain power under the guise of maintaining order and safety for society.

Although they often appear to have a jousting of the intellectual kind, Friedrich Nietzsche and Immanuel Kant agree on certain aspects on the topic of truth. In a collection of his essays which addresses some of Kant's philosophies, titled *On Truth and Untruth (2010)*, Nietzsche reflects on whether truth is a set of "metaphors, metonymies, anthropomorphisms […] which are a collection of relationships between humans that have been interpreted and reinterpreted subjectively only to be strung together as canon because it has been said to be one way for a long period of time" (Nietzsche 29-30). Nietzsche ultimately comes to the conclusion that what we know as truths are really untruths: illusions and metaphors that have become "worn-out and deprived of their sensuous force", having lost all utopian appeal and is seen for what it is within the world outside of our subjective interpretations (Nietzsche 29-30).

These reflections on truth have not been isolated to philosophy in the ages of Romanticism and Enlightenment. In a more Modernist understanding, academia had proceeded to substantiate claims on truth as more than merely cognitive reflections to concrete research and empirical data. This is made evident through research by anthropologist, sociologist and linguist, Alessandro Portelli's observation of truth in studying oral histories of societies across the world. The central formulation of Portelli's academic endeavours into truth is that what we perceive to be 'truth' becomes our reality. Thus, subjective interpretations of real-world events are as real as facts or data to the individual who believes it to be so. This corroborates with Kant and Nietzsche in that society is naturalised into believing certain truths and this then become the 'new truth' or, to use a more anthropological angle, 'reality'. Portelli states that "[s]ubjectivity is as much the business of history as the more visible 'facts'. What the informant believes is indeed a historical fact (that is, the fact that he or she believes it) just as much as what 'really' happened" (Portelli 100). Portelli makes the point that memory can become a truth despite the facts of the real world occurrence of the memory being distorted in the minds of people who recall it. This memory, despite being different from the real-world referent of the occurrence, becomes a truth for the individual who recalls it. This 'truth' is then equally as real as that truth which can be proven through empirical data because the individual believes it to be true.

The debate about truths and untruths is an important conversation to have in terms of discussing citizenship and speech within our world, as the freedom to communicate, speak and express our experiences is central to allowing society to break free from a perpetual state of immaturity and the dogmas and doctrines that bind us to our manufactured realities. The freedom to question the canons and dogmas, to question those in power, can only be realised if we are able to communicate our full truths in a manner and atmosphere conducive to transparency. We find, however, that the very dogmas and doctrines that are set in place to protect society, that is, the very laws and legislations, are often not constructed in a manner that favours society's interests, but the interests of the elites. The reason that these Acts and legislations are allowed to be passed into law is that we as society do not readily understand the lexis of our judiciary and government. Instead, we entrust the interpretation and understanding of this to the very guardians of our well-being that have no vested interest in our well-being as it undermines the goal of maintaining political and economic power. Once more, we fall into the trap of our perpetual state of immaturity. This is true on a global scale but can be exemplified in much smaller case studies and examples like the case of South Africa.

iii) Theoretical Framework of the Dissertation

The inspiration for this analysis came from the release of Jane Duncan's *The Rise of the Securocrats: The Case of South Africa (2014).* Defined by Duncan as political and economic elites located within the security cluster of South African society, securocrats comprise the police, military and the intelligence services of the country. These securocrats exercise power and influence government policy to manipulate and perverse legislation to benefit their often corrupted goals. The ruling political party in South Africa, the African National Congress (ANC), has been accused of being overrun with securocrats who effectively politicized the state and its security installations under the Jacob Zuma dispensation. Duncan emphasises that securocrats are a threat to the freedoms of a democracy by demonstrating how the annexure of state powers undermine democratic processes that had led to corruption, state capture, manufacturing of fear and covert oppression of citizens.

A central argument of Duncan's research is that the security cluster is answerable to the people and need to be kept under democratic, civil and social control. Drawing on Duncan's research in 2014, this study attempts to provide a broad overview of significant communicative freedom events that have occurred in South Africa since then (See Appendix C). These events speak to the objective of this research: to divulge a tendency of the South African government towards disapprobation to communicative freedom. This perspective agrees with Duncan thatsecrecy para-narratives and principles undermine citizens' constitutional rights to communicative freedom. This is further supported, entrenched and condoned into existence with the help of telecommunication conglomerates.

The following section lays out the theoretical frames of analysis that guide the investigation into political and economic resistance to communicative freedom in a digital democracy. Larry Diamond and Leonardo Morlino, in their study titled *Assessing the Quality of Democracy (2005)*, are helpful in that they provide a means of framing and assessing the quality of a democracy in a threefold manner: firstly, looking at the deepening of democracy as a moral good and imperative; secondly a democratic reformation to improve democratic quality to achieve legitimacy and consolidation and, thirdly, that established democracies reform to address problems of public dissatisfaction and disillusionment.

This section then proceeds with an overview of democracy within the context of comparative politics. Here, Rod Hague, Martin Harrop and John McCormick in *Comparative Government and Politics: An Introduction (2016)*suggests a few models for democracy and proposes that, although democracies may appear to meet western standards, certain mitigating factors forces

a reassessment of whether a country is truly democratic (43). In the case of South Africa, there is a dispute as to whether it can be considered a "new democracy" in accordance with western ideals as proposed by Diamond and Morlino, or whether it is, in fact, a "semi-democracy" that inculcates aspects of utilitarian rule (43).

In reference to the concern that using the term 'westernised democracy' uncritically legitimises conservative arguments that democracy is a western concept that is juxtaposed with essentialist ideas about Africa, this research interrogates this idea by exploring what the fundamental requirements for a democracy are. Taken from the perspective that the world's founding democracies, the United States of America (U.S.A.) and Great Britain, are used as yardstick to measure fundamental principles of democracy, theorists have identified guiding principles to aid in measuring newer democracies. For Diamond and Morlino, the defining ideals of "goodquality" democracies constitute good quality procedures, good quality content in terms of structural characteristics and results in terms of citizen satisfaction (3). They further argue that there are eight conceptual dimensions that outline the varying degrees of quality of a democracy. They name them as: the rule of law; participation; competition; vertical and horizontal accountability; respect for civil and political freedoms; progressive implementation of greater political equality and responsiveness (Diamond and Morlino3).

In media representations, political parties claim that South Africa is a functioning democracy. However, being that South Africa is a 'new democracy' with political and economic challenges that still suffer under remnants of the inequity of Apartheid, claiming the consolidation of democracy is not so simple. From the early 90s to 2000s, democratic consolidation was a fundamental criterion amongst social scientists and democracy practitioners. Democratic consolidation can be defined as a community that provides an acceptable framework for political competition (See Appendix B[5]). South Africa does not fall under consolidationbecause the economic and political elite often act outside of democratic principles as evidenced by the various cases brought before our constitutional court. As explored by Duncan, South Africa may claim the title of democracy by arguing that, on paper, we meet the political principles or dimensions of democracy, but we cannot truly claim to be a new democracy. The presence of corruption and state capture, undermining of the constitution and the remnants of Apartheids' inequities evidences that we are yet in a developmental phase outside of the realms of a westernised democratic principles.

South Africa also proposes to be a republic that abides systems of interrelated requirements and essential conditions of democracy. This is done in order to achieve the façade of political accountability within the democratic state. Reflecting on the quality of democracy and the system of interrelated requirements that need to be fulfilled in order for a constitution to be considered democratic, Diamond and Morlino maps four conceptual dimensions for democracy and, at the same time, defines what democracy is (See Appendix B[6]). Bringing the idea of democracies back to the electoral polls, there is a distinct belief that if elections are to be truly free,fair and meaningful, then there should be an electoral space in which there is a degree of free civil and political faith and interest that can be articulated. Another condition of democracy is that formal democratic institutions should be sovereign (Diamond and Morlino3). By this, Diamond and Morlino expounds that these institutions should not be constrained by elites or external powers like ISPs or economic elites who are not accountable to the voting electorate. Once a regime meets these basic principles then it is more a matter of how well they achieve these principles that determines the quality of democracy. This requires in-depth empirical analysis and relates to three main goals of an ideal democracy: political and civil freedom, popular sovereignty and political equality (in these rights and powers) as well as broader standards of good governance (Diamond and Morlino3).

When assessing the quality of democracy for South Africa according to Diamond and Morlino's basic principles, we find that we fall short of the basic principles for an ideal democracy. Corruption and exploitation see South Africa being denigrated into an autocratic dystopia. By its very presence, corruption and state capture in government undermines the notion of democracy and thus, rationally, one cannot argue that South Africa is a democracy as defined in democratization studies. This research proposes that a good democracy should effectively exclude hybrid regimes. More specifically, it refers to the South African context as authoritarian which, by not being capable of conducting free and fair elections, falls short of an essential requirement for a democracy. South Africa would fall under a hybrid of a low quality of democracy, encompassing aspects of defective democracies and delegative democracies (See appendix B[7]).

The South African media have suggested that the ANC rules with impunity and that this is often unashamedly displayed during voting periods in the country. Our discussions that reference William Gumede *Restless Nation* will elaborate on this. One position held on the ANC's impunitive governance by Colette Schulz-Herzenberg, senior researcher in the

Institute for Security Studies (ISS) Corruption & Governance Programme, is that politics is predictable (See appendix B[8]).This is a dangerous prospect for democracy as it has the effect of creating a political certainty that comes with electoral outcomes. The idea of, once more, being elected allows for predictable politics which in turn facilitates theerosion of responsive and accountable governance for citizens. Unquestioned loyalty to the ruling party can be seen as one of the main causes that the outcomes at the voting polls remain unchanged and unchallenged.

Arguably, we as citizens are partly to blame for the impunitive governance of the ANC. The loyalty that the ruling party enjoys is often related to the knock-on effect of the legacies of colonialism and Apartheid. The fear and psychological damage that such oppressive regimes have imprinted on the psyche of the previously oppressed has lead to a condoning into existence of the current impunitive governance of the ANC. This trend is by no means linked only to political structures that have divided the citizenry. It is also linked totribal, racial and social divisions. Electoral regions are often broken up in terms of neighbourhoods and group areas which are still highly affected by the Apartheid legacy that was entrenched in the *Group Areas Act (1950).* As a result, these regions tend to vote in much the same way.

There is a negative consequence that comes from voting as groups. Citizens are found wanting when voting with a 'group politics' mentality (Schulz-Herzenberg 2). Voters are constrained by identities that bind them to blind loyalty to a political party. These are the same voters who render themselves unavailable to vote for a broad range of parties within the political market. This, in turn, renders the powers of theopposition political parties moot, encouraging an atmosphere of complacency where political parties don't have reason to sway citizen's votes. At the same time, governments like the ANC who wield power and capitalise on the voters' "cleavage identities" have little reason to heed voters' responses to public policy in terms of "electoral prospects" (Schulz-Herzenberg 2).It is thus of crucial importance that democracy maintains a sense of political uncertainty. Currently, this is not the case for South Africa. If voting is constantly to be determined by "ascriptive' identities"; being associated with race, class and tribal barriers, then the ANC will remain the unthreatened majority within South Africa.

Schulz-Herzenberg holds the position that if the behaviour of voters is motivated by socio-cultural aspects of society, such as race, class and ethnicity, political uncertainty is rendered useless. What Schulz-Herzenberg hypothesises is that votes based on socio-cultural aspects

will generate permanent majorities within South Africa. This is if votes are submitted and maintained according to the demographic composition of the electorate, suggesting that race, class and ethnicity may be the determining factors in citizens' cleavage identities and the ANC's unchallenged majority vote (See Appendix B[9]).

Schulz-Herzenberg's assessment of the ANC's unchallenged power is not a unique one. William Gumede, in *Restless Nation (2012)*, echoes her sentiments when describing how ANC supporters are overly lenient to the movement and, in turn, have exceptional power to legitimize individuals, institutions and behaviours (Gumede 11). The struggle credentials of comrades allows for thedefaming of people or politics that they disapprove of. For Gumede, the ANC's power should ideally create an opportunity for African liberation, taking into account the history of the ANC as a liberation movement. However, it appears that Gumede is of the opinion that the liberation movements turned government have, once in power, squandered this opportunity (Gumede 11). For both Schulz-Herzenberg and Gumede, there appears to be a consensus in terms of the ANC electorate. Despite an evident impunitive governing style by the ruling ANC party, it appears that voters are satisfied with allowing corruption and ineffective governance to exist. Both Gumede and Schulz-Herzenberg reasons that this is due to unquestionable loyalty.

South African society finds itself acutely aware of their rights and responsibilities due to the relative ease of access to information that is being granted to citizens in the digital age. Even so, sensationalism has become problematic in digital media. This has the effect ofhyperbolising the failings of democracies, creating speedy news coverage which often lends itself to journalistic practices that favour sensationalism and aberrant damage. Inevitably, this leads to the portrayal of a failing democracy as far more scandalous and frequent than it would have in the pre-internet era. This is not to say that the failing of democracy was not a reality in the past. It is now made more prominent due to media coverage being much more pervasive. Although the political elite pushes the agenda that South Africa is a democracy and uses Apartheid as racial currency to maintain loyalty and sympathy for the ANC, civil society has become conscious about the suffering of the majority of citizens.

Well after the 1994 first democratic elections, only the elites have seen social and economic improvement. For Gumede, it is a matter of autocratic behaviour and unchecked power (See appendix B[10]).The result has been an increase in the gap between the rich and the poor, with

the poor and working class suffering under social ills of poverty, joblessness, poor service delivery and impunitive infringements on human rights. This affects citizens on the level of basic human dignity as theexorbitant prices of essential services such as water supplies and electricity leads some of the most vulnerable of society to go without. What is worse is that cutting of essential amenities like electricity due to unpaid municipality Bills now affects citizens who experience this inequity due to misappropriation of funds and corruption on local government level.

Gumede also reminds us that society is partly to blame for tolerating inequities by highlighting how South Africans should be less tolerant of mismanagement of social funding and service delivery (11). As leaders are condoned into certain behavioural patterns due to voters' complacency, there is an evident tendency towards autocratic leadership by government officials. Gumede posits that current cultures of protest against public officials are positive things for democracy if kept within the confines of the law (11). Protests could be perceived as a form of criticism against the South African government that works to keep the ANC's power in check. Thus, democratic institutions are held to account for their actions (or inactions) as should be expected from a well-functioning democracy. Using an example from the then ANC General Secretary, Zwelinzima Vavi, Gumede highlights how public officials should, ideally, be held to account for their actions (See appendix B[11]). It becomes a case where democracy is not just the responsibility of the public officials elected, but also the responsibility of citizens who condone into existence impunitive governance through complacency with undemocratic leadership.

The shifting of our democracy into a digital era has privileged the right to communicate as an essential part of a participatory democracy. For South Africa, though, access to communication infrastructure has been both limiting and problematic due mainly to the monopolisation and monetization of the internet. Referring to the challenges of ICTs in South Africa, Duncan makes apparent how the availability of communication is important to a democratic system (See Appendix B[12]). In a collective consciousness of outrage, citizens are increasingly taking to the internet to voice their disapproval of impunitive and corrupt governance, especially over social media. This has seen a rise of digital activism.

Much like Gumede's observation on protests, Duncan sees the rise in activism as an important medium of contestation to impunitive powers for the most vulnerable citizens of South Africa. Considering the tendency of governments to weaponise legislation in favour of the political

elite, Duncan foresees communicative legislation needing special consideration in the emerging network society (See Appendix B[13]). As with most resistance to impunitive authority, digital activism is seen as anarchic in nature by the political and economic elites. While many consider contentious blog posts and campaigns decrying political corruption to be the definition of digital activism, this underground culture is seen as particularly threatening to established impunitive political and economic powers and has been named "hacktivism".

A discussion on political and economic resistance to communicative freedom opens up a few questions which have yet to be adequately explored in the current academic sphere. One such question forces us to look critically at South African democracy by exploring the systems of interrelated requirements and essential conditions that need to be fulfilled for democracy to be considered functional. The question of whether South Africa can be considered a democracy thus needs to be answered with a no. South Africa claims this title but, in fact, can be seen as regressing into an autocratic dystopia due to corruption and, essentially, violating these systems of interrelated requirements and conditions. Hague et al.'s study describes how South Africa falls under a combination of 'New Democracies' and 'Semi-Democracy'. According to Hague et al, a 'consolidated' democracy is one that has achieved an acceptable framework for political competition. It is thus important for democracies to be consolidated as an indication that they meet and abide by certain criteria in order to remain democratic. For Hague et al., democracy is consolidated when under given political and economic conditions a particular system of institutions becomes the only "game in town" and when no-one can imagine acting outside the democratic institutions (43). Many "New Democracies" do indeed reach consolidation on very particular and crucial tests. For the case of South Africa, one such test is the peaceful transfer of power through elections despite trying to compromise and negotiate meaning with our own authoritarian history. However, we still appear to fall short of Hague et al's. definition of a consolidated democracy in the sense that we strive to maintain various cultures within our government that we excuse as a 'brand' of democracy that is uniquely African: cultures of secrecy, deception, inequity, tribalism and corruption (See appendix B[15]).

One critique about the political challenges that faces a "New Democracy" is that liberal ideas are often too weak when considering the authoritarian legacy that the democracy was based upon. Harrop and Hague explain how a shift from state security to human security is favourable: from a government of laws to one of men. They describe how democracy's

development necessitates more than competition at the voting polls. Inherent within the requirements are legal restraints on governments' power, protection of the rights of citizens, effective bureaucracy and, what they refer to as the imposition of democratic control over potentially authoritarian forces such as the military and the security service (Hague et.al 43). Effectively, they look negatively at the idea of state securitisation and militarization in the pursuit of an effective democracy.

Another question which requires scrutiny is whether the language of current South African legislations on communicative freedoms is too broad and vague to effectively delegate rights and responsibilities to citizens. The reality is that broad and vague terms within legislation leaves potential for exploitation and corruption through semantic misappropriation. The terms within legislation on communicative rights in South Africa has previously been exploited by the political and economic elite for corrupt ends, which has lead to the undermining of citizens rights in favour of the agendas of "securocrats". Duncan summarises the culture of secrecy within the South African government by assessing the controversial 'Secrecy Bill' during its 2012 re-emergence (See Appendix B[16]). It is also important to observe how the paranoia of the government has lead to the imposition of strict and arguably heavy-handed consequences for whistleblowers and activists alike. Within the above assessment, Duncan recalls veiled allusions to the efforts of the Right2Know Campaign as being "[…] agents of espionage[…]" who try to get hold of sensitive information in order to progress the agendas of foreign states and enemies that hope to use it in an effort to undermine the ANC's efforts to realise democracy (Duncan 56). The Right2Know Campaign, in turn, had been relentless in their 2012 campaign to highlight precisely why the *Protection of State Information Bill (2010)* is detrimental to communicative freedom. Coupled with a "7 point freedom test", the Right2Know Campaign had conducted an analysis highlighting where they believe that the *Protection of State Information Bill (2010)* falls short in terms of abiding free speech in South Africa (See appendix B[17]).

Looking at the implication of the *Secrecy Bill* on the South African media, *The Rise of the Securocrats (2014)* makes a valuable observation on how leak-driven journalism may be affected. South African journalism has become particularly reliant on leak-driven journalism when reporting on matters that are within the public interest. Most notably, leak-driven journalism has come to be important when reporting on matters that are particularly contentious in society, as government would prefer to keep sensitive information about issues

of corruption and mismanagement from bringing the ANC into disrepute. Weighing the positives and negatives of this type of journalism could lead one to reading into the dangers of self-censorship of journalists due to fear of peddling sensitive or 'undesirable'information. For Duncan, the dangers of leak-driven journalism is that it may become a medium through which competing members of a political party discredits another through slander. This would have the implication of wrongfully using leak-driven media as a tool of subversion and would bring the credibility of the reporting media into disrepute. The media may also be aiding state organs and political parties in malicious representation of political agendas in order to progress harmful agendas (Duncan 59-60). At the same time, if the media is overly cautious about reporting leak-driven information, they run the risk of compromising the principles of free access and dissemination of information that is within the public interest (See Appendix B[18]).

A further problem with the *Protection of State Information Bill (2010)* is that it provides very little protection for types of whistleblowers. Existing legislation that protects whistleblowers only protects those from occupational repercussions, effectively only protecting whistleblowers in the workplace (See Appendix B[19]). Complaints about the *Protection of State Information Bill (2010)* still include that civil society is unable to assert substantial protection as whistleblowers as the Bill's lexicaland semantic catalogue is too narrow. A further issue with the*Protection of State Information Bill (2010)* is that it does not cover for a defence of public interest within the courts. For Duncan, there is a risk that matters of public interest that fall short of outright criminal behaviour by political elites will be ignored (Duncan 60). In the case of securocrats, whistleblowing on the level of civil society is deemed less of a threat as matters that fall short of outright criminality may easily be stifled by the security cluster. All indications point to the political elite having demonstrated a preference towards secrecy, both in terms of legislation and practice. This is demonstrated through the inadequacies of the existing *Protected Disclosures Act (2000)* and further entrenched through the intent of ratifying the*Protection of State Information Bill (2010)*. A further example indicating a preference for secrecy can be found in Chapter Four of this thesis, where details of Department of Co-operative Governance and Traditional Affairs minister, Sicelo Shiceka personal expenditures from public funds were classified using *The Protection of Personal Information Bill* as justification(Editorial *Protection of Information Farce*).

To extend the critique and danger of fostering a culture of secrecy, a particular mention must be made of political and economic assassinations. Both Duncan and Matisonn acknowledge

that political assassinations have made its way into the South African media, with accusations being made apparent during the Jacob Zuma regime. Tellingly, these assassination attempts have been linked to conflicts that occur internally between warring factions of the ANC (See Appendix B[20]).When analysing reports on assassinations, as stated in Barry Sergeant's *Brett Kebble: The Inside Story (2006),* there appears to be a suggestion that they are driven by malicious political and criminal motives and often these political and criminal motives are intimately intertwined.

Duncan suggests that Paramilitary hit squads began emerging in particular situations where the political elite needed to exercise control over citizens extra judicially (Duncan 63). This suggests that ordinary, democratic means of order and control have been rendered as ineffective or simply too much of a labour to dissuade citizens from dissent. Reports within the media have come to indirectly suggest that links between the government and hit squads are yet unfounded. Duncan agrees that, for the South African context, no evidence of systematic collusion between the state and hit squads have been discovered. This is not to say that it does not exist. The implication of the murders of activists is that it sets precedents for individuals in the state to collude with economic elites to assassinate those who oppose their agendas. As Duncan states, if this was to occur, then we will have a situation where state criminalisation takes place (Duncan 62-63). Many newer media exposés have made accusations about collusion between political and economic elites in order to rid themselves of competition and descent, even going so far as to reference political and economic assassinations. Two such lengthy exposés can be found in journalist Jacques Pauw's *The President's Keeper (2017)* and Barry Sergeant's *Brett Kebble: The Inside Story (2006).*

A culture of secrecy and political assassinations threaten to destabilise the South African economy and institutions of state. By analysing reports abouthow organised crime poses a threat to democracy in South Africa, we see how political and economic elites collude in order to attain illicit favours and wealth (See Appendix B[21]). This analysis also serves to highlight an atmosphere conducive to secrecy and criminality. The examples of political and economic elites colluding for nefarious purposes (this including the abhorrent act of assassinations) indicate how far the government will go in order to maintain political and economic power. This, coupled with the clandestine manner in which they conduct their nefarious activities is further evidence of a tendency towards secrecy and malicious assertion of impunitive power.

Under these circumstances, a government controlled by the self-serving ideologies of corruption, political and economic mismanagement and overtly criminal activity under the guise of serving citizens can surely cast doubts on South Africa as a fully functioning democracy. It is little wonder that activists, watchdogs, civil and social organisations and journalists have looked sceptically at the various communicative freedom legislations that have been under scrutiny within the media. Despite there being provisions made for communicative freedom, the counterproductive development of legislation potentially legalising secrecy and censorship should be enough evidence to, at least, consider our current state of democracy as leaning towards autocratic governance.

In the digital era, where news reporting has been decentralised from established media houses to citizen journalism, there is a real threat towards our constitutional right to research, obtain and disseminate information and report on findings in a republic that favours political and economic secrecy. Three things become questionable as a result: the claim that South Africa is truly a functioning democracy; the validity of our communicative freedom legislations to ensure access to information that is within the public interest and the ability to use freedom of speech to express concerns and create discussions around information within the public interest. The paradox that South Africa finds itself in is the claiming of a democratic ethos while living in a profoundly autocratic manner poorly veiled as democracy.

A further interesting questionconsiders the form of governance that is emerging within the power vacuum created in the space where digital activism and political and economic disapprobation to communicative freedom meet. Manuel Castells, in his book *Networks of Outrage and Hope (2014)*, explores physical and digital activism in times of violent conflict and uprisings. Castells traces how activism has transitioned from the physical, urban space to the digital space and the symbolism of this. He begins his discussion on ‘spaces’ by proposing that the construction of a community by activists within a symbolic space, reasonably free and easy to access like the internet, creates a public space where discussions, debates and, more importantly, deliberation can take place. As a result of the deliberations and discussions within this place, ideas are bound to develop and thus the space becomes a place of politics: a political space (See Appendix B[22]).

As a result of digital activism having so much more power within a digital democracy, it has become necessary to consider whether ‘hacktivism’ should be considered a legitimate form of

protest within a digital democracy. Considering the decentralisation of power, and the fact that 'hacktivism' expresses the will of the governed, it should be legitimised and protected under the same laws that protect activists within the physical space of protest. This is due to the fact that digital activism is a reflection of the physical space reimagined into the digital space of protest; mirroring each other's intentions. Having said this, it also becomes necessary to reflect on whether digital activism should be subject to the same rights and responsibilities as activism in the physical space of protest as digital activism effectively constitutes discursive forms of protest as opposed to physical.

A final fundamental question that emerges from this research is who the gatekeepers of the South African communicative freedoms are and what role they play in the power struggle between citizens and the political and economic elite. In the case of South Africa, and for the purposes of this research, the political elite constitute securocrats within government and ISPs represent the economic elite. Both entities attempt to govern the flow of information, perhaps even in collusion, for profit. There is a blatant conflict of interest when investigating the relationship between politicians and economic entities in South Africa and there have been cases which expose how politics and economics have blurred lines within South Africa; often the two being interconnected.

This chapter has reviewed, in a summative form, the key literature that forms the theoretical and philosophical basis of the Critical Discourse Analysis and Corpus Linguistics analysis found in "Chapter Five" and "Chapter Six". The philosophical approach has outlined the rationale of the human psyche regarding the need for governance and political order. The theoretical approach that highlights Cultural Materialism reviews the shift from a material-based world which then transitions to the network society within the internet age. The space of activism is highlighted in order to show the shift from a physical space of protest to a digital space of protest which contextualises our discussions in "Chapter Seven" when looking towards activism in a digital democracy.

CHAPTER THREE

Freedom of Speech – A Historical Approach

This chapter discusses the history of communicative freedom starting with the founding democracy of the U.S.A .It assesses the First Amendment in the U.S. Constitution which states that congress may not make any laws abridging the right to free speech and press (*The Constitution of the United States* 2007). It must be acknowledged that starting with the example of the U.S. constitution is merely a means to establish a chronological timeline dating back to an older form of established, westernised democracy and is not the main focus of this dissertation. The USA holds one of the earliest and developed conceptions of free speech and journalistic freedom in their Bill of Rights and is used as an example with this in mind. The chapter progresses to an overview of the *Universal Declaration of Human Rights (1948).* The specific article scrutinised is Article 19 whichaddresses freedom of opinion and expression and disallows interference with seeking, receiving or imparting information and ideas (*Universal Declaration of Human Rights* 4). This Article coincides with the South African social and political context in the *Suppression of Communism Act* of 1950 that would set the standards for restrictions on communicative freedom in South Africa. In the discussion below, the research looks at how the *Suppression of Communism Act (1950) was* in violation of the *Universal Declaration of Human Rights (1948).*

In terms of more recent legislation, England's idea of communicative freedom is assessed through*The Human Rights Act* of 1998 where freedom of expression is more elaborated upon than in the U.S. Constitution. Section 12 focuses on freedom of expression not just for publication purposes within media, but also extends the consideration to the individual citizen's right to express their individual beliefs through publications, tribunals and criminal proceeding (*Human Rights Act* 1998).

The analysis is brought back to the South African context by scrutinising our own *Bill of Rights (1996),* focusing specifically on freedom of expression. The observations look at the differences between Western democratic legislations on freedom of speech and compare this to the South African Constitution, thereby extending the observation on freedom of expression toinclude freedom for research. What is interesting to note about the South African context is how negative rights are included to condemn speech for war, incitement of violence and hate speech whichcause harm for the diverse ethnicities, race gender and religion within South Africa (*Constitution of the Republic of South Africa Act* 1996).

This chapter introduces the idea of communicative freedom through a close reading of Section 16 of the South African Constitution and acts as a reference point for a complimentary analysis in later chapters of thedissertation. Once more, Section 16 on freedom of speech will be assessed but will include an analysis of Section 32 of the Constitution which focuses on ‘Access to information’. This will allow for a broader overview of communicative freedom as opposed to limiting the analysis to freedom of speech alone.

i) Freedom of speech: A Historical Approach

The historical approach to free speech takes a brief survey of the central idea of citizenship as speech, focusing particularly on the role of freedoms of speech and associated communicative freedoms in constitutions from the founding democracies of the U.S.A. and Britain, juxtaposed with the restrictive Apartheid censorship laws and the newer South African Constitution of 1997. The observations on various acts and legislations follow a chronological order of legislations from the oldest to the most recent.

It is important to begin with an understanding of what is meant by 'citizenship as speech' within the broader context of universal communicative rights. For the purposes of this research, 'citizenship as speech' attempts to describe how our linguistic capabilities, that is the acts of reading, writing, receiving and sending information and discourses, both establishour belonging to a society but, in turn, also comes to construct and shape the very society within which we establish our membership. More concisely, 'citizenship as speech' refers to membership to our society through the use of common discourses, worldviews and languages and the shaping of this society through the thoughts and languages that we as members share within it.

It appears that the lived reality of whistleblowers and activists for free speech is greatly abstracted from the utopia of the concept of 'citizenship as speech'. Instead of experiencing a sense of participatory governance and justice, activists who use their speech as a form of citizenship torevealinjustices are demonized and treated as liminal figures, going so far as to be ostracised by powerful political and economic figures for exposing corruption. One need only look at the current case of Edward Snowden and Julian Assange, who are exiled from their home countries for whistleblowing, to see examples of this. To frustrate the framing of whistleblowers, legislations do very little to protect whistleblowers from malicious prosecution by powerful political entities such as governments (United Library N/A).

A report by Open Democracy Advice Centre titled *Heroes Under Fire: South African Whistleblower Stories*, ODAC identified case studies into whistleblowers' stories that exemplify the imbalance of power between large political and economic entities and whistleblowers. In an attempt to understand the pressures placed on individual whistleblowers, ODAC's case studies evidence how the vulnerability of whistleblowers, despite their desire for justice being a priority. What ODAC has identified is that, despite the idealistic principles outlined within the South African Constitution, the lived reality of whistleblowers is far different from these principles. The idealistic promotion of

transparency within the South African Constitution falls short in being able to protect whistleblowers from victimization. Most notably, whistleblowers in South Africa make sensitive information known "[…] based on their strong desire for justice, but [,] because of these acts [,] can become isolated and vulnerable (*Open Democracy Advice Centre* 1). What ODAC identifies is a legislative obstacle to communicative freedom as well as a solution: change within legislation or perhaps in the judicial system itself. A particularly contentious issue with free speech legislation is the language of proposed Bills and acts which are often cited to be vague and subjective. The difficulty with free speech legislation is highlighted by Eric Barendt, who elaborates on global communicative freedom in his study*Free Speech*. Reflecting on the language of America's First Amendment, Barendt states how: "[r]arely has such an apparently simple legal text produced so many problems of interpretation" (Barendt 48). The application of rights is often determined and dependent on the interpretation of the language of the law, which, in cases affecting law for citizens, is played out in courtrooms where the interpretation of the language of law is important. Lawyers have the opportunity to interpret and reinterpret already vague clauses which, in turn, is interpreted and reinterpreted by a judge who needs to then determine through the 'standard of community' test what is acceptable for an entire community of global citizens.

The determining of a 'standard of the community' is problematic as it is left in the hands of a few judges who could not reasonably determine the standards of an entire community of subjective human beings living ethically relative lives. It is for this reason that, within thedigital age, it becomes necessary to reassess the older and vague language of the law to acknowledge the diverse interpretation of a newer world concerned with the context ofinformation, discursivity and languages.A rethinking ofthe language of law as a semiotic practice within the politics of representation in courts could be the answer to creating the necessary flexibility needed to cater for a diverse citizenry in an evolving society.

Looking into the history of communicative freedom, the founding democracy of the U.S.A. has important insights into freedom of speech as expressed in the First Amendment of the Constitution. The wording of the First Amendment resolutely states that congress may not make any laws "[...] abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (*The Constitution of the United States* 2007). The above formulation of free speech is concise in terms of the plain language interpretation of the statute and excludes governmental powers from interfering with communicative freedom. However, we find that the vast range of interpretations that have spawned over the seemingly straightforward

decree has produced many problems for the U.S. Supreme Court (Barendt 48). As Barendt has previously expressed, the Amendment is not without its troubles. Firstly, the First Amendment only applies to laws of congress. Not much has been mentioned about the First Amendment extending to police orders and executive orders for judicial review. Instead, freedom of speech and press rights is seen as personal rights which protect citizens from the state invading their privacy and right to free speech.However,very little is said about promotion of access to information. At times, legislation can be seen as limiting. Barendt explains how the "state action" doctrine limits the protection of communicative freedom rights (Barendt 49). The United States' constitutional rights are only guaranteed against invasion by government and public authorities under this doctrine; these come to include a court of law when they are requested to arbitrate in communicative right disputes or to enforce statutes and common law rights like the right to privacy (Barendt 49).

In terms of more recent legislation, England's *The Human Rights Act* of 1998 expounds on freedom of expression much more than in the U.S. Constitution. Section 12focuses on freedom of expression not just for publication purposes within the media, but also extends the consideration to the individual citizen's right to express their individual beliefs through publications, tribunals and criminal proceedings. This section of the Act sets in place rights that defend against the exploitation by courts and The Crown to interfere with, breach or suspend freedom of expression:

> "12.–(1) This section applies if a court is considering whether to grantany relief which […] might affect the exercise of the Convention right to freedom of expression [...] (4) The court must have particular regard to the importance of the Convention right to freedom of expression and […] material which the respondent claims […] to be journalistic, literary or artistic material […] to – (a) the extent to which – (i) the material has, or is about to, become available to the public; or (ii) it is, or would be, in the public interest for the material to be published; (b) any relevant privacy code.(5) In this section–"court" includes a tribunal; and"relief" includes any remedy or order (other than in criminal proceedings) (*Human Rights Act* 1998).

The presence of this legislation alone indicates a willingness from the political elite in England to protect the individual right of free expression. This counters the popular opinion that governments are inclined to create an atmosphere conducive to secrecy. It must, however, be mentioned that the comparison between a developing democracy such as South Africa and a developed democracy such as that of England is an inequity. While it may seem that England promotes a culture of transparency and genuine respect for citizens' democratic rights, their exploitation of communicative rights may

just be better hidden than South Africa's political elite who boldly exercise power with impunity. The act of exercising power with impunity seems to be a culture that has been normalised into existence and tolerated within the South African context.

For more holistic overviews of communicative freedom, we need to look a bit further than just the United States and England. Even though the United States provides a seasoned example of a westernised democracy, it is only fair to attempt an appraisal of a global set of human rights maxims. This can be found in the *Universal Declaration of Human Rights (1948)*. The specific article that deals with communicative freedom is Article 19 that addresses freedom of opinion and expression. The article highlights the disallowance of interference by government with seeking, receiving or imparting information and ideas. The UDHR (1948) outlines that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (*Universal Declaration of Human Rights* 4).While the United States concerns itself solely with the freedoms of American citizens; the UDHR (1948) takes an inclusivist approach to communicative freedom. What the UDHR (1948) achieves is to set a standard which applies to every human being at all times regardless of geographic and demographic differences. In terms of human rights, the UDHR (1948) assumes the philosophy of Immanuel Kant's 'Categorical Imperative': universal laws that apply to every human being at any given time regardless of the "accident of birth" as defined by John Stuart Mill in *Socialism (1879)* (Gilbert 220). One could equate the UDHR (1948) to the ethical concept of intrinsic rights for all human beings, attributed to us at birth simply because we are born human; and altruistic in nature as it is attributed without further condition.

By the time that the UDHR (1948) was established, the Apartheid-era South Africa had already begun legislatingracially separatist worldviews. Article 19 of the UDHR (1948) conflicts with the South African *Suppression of Communism Act* of 1950 that would set the standards for political restrictions on communicative freedom in the country: if the "Governor-General" was satisfied that a publication conveyed principles of communism, then that publication and any persons or organisation that propagates and disseminates the publication may be declared unlawful (*The Suppression of Communism Act 1950* 561).

Sections six and seven of *The Suppression of Communism Act (1950)* deals with restrictions on the creation, promotion, and dissemination of information that promote communism, andfocuses specifically on censoring published information in print media which is the dominant means of

information dissemination for the era.Within the above provision, we find key concepts that support censorship on moralistic grounds. Section six outlines how, if the governor is satisfied that any periodical or publication promotes communism, then hemay "without notice, prohibit the printing, publication or dissemination of the periodical publication or the dissemination of such other publication […]" (*The Suppression of Communism Act 1950* 561). It is specifically the appearance of phrases such as "[…] propagating the principles […] of communism […]", "[…] expressing views […]" and "[…] conveying information, the publication of which is calculated to further the achievement of any of the objects of communism […]" that is problematic (*The Suppression of Communism Act 1950* 561). Banning on the basis of merely purveying an ideology of communism suggests that the government was attempting to protect the citizenry from communism. This, in turn, suggests a moral judgement being passed on communism as undesirable, harmful and counterproductive to the progression of South Africa. Since the agenda of Apartheid was segregation and white supremacy, the inferred meaning is that white supremacy and segregation was the moral and ethical 'good' for the South African public at the time. This was the more subtle implication for the South African case of banning media promoting communism in the 1950's. Although communism referred to a system of governance, it was widely assumed, imposed and accepted that only institutions, social movements or political and cultural leaders and followers who subscribed to any ideology that opposes white supremacy and segregation, were unfairly labelled as communists. This intersectionality of a system of governance with the social identity issue of race condoned into existence the censorship of pro-black print media under the guise of promoting the abolishment of communism.

A further point of contention was the absolute power given to the governor at the time. It is worth noting that the governor could ban "[…] any periodical or other publication […] without notice to any person concerned […]" (*The Suppression of Communism Act 1950* 561). This leaves the power to determine the ethical and moral 'good' for the South African society to one individual who supported a system of supremacy and segregation that favoured a white minority.It is difficult to rationally accept that the moral and ethical 'good' of an entire society can be made by a single constituent member. It is likewise problematic to assume that an individual is capable of making this assessment sinceit is impossible for one person to have an understanding of the worldviews of every citizen of society. This point is frustrated when considering that the individual in question has both been appointed and entrusted to make this determination for the very reason that they support a government that aims to oppress on the basis of racial classification.

Returning to the post-democracy South African context, the *Bill of Rights (1996)* appears to give more privilege to freedom of expression. There is a marked difference between Western, democratic legislations on freedom of speech and South Africa's own approach. One needs only to compare*The Human Rights Act*of 1998 of England to the South African Constitution to see that the SA Constitution extends considerations to include freedom for research. What is interesting about the South African context is how negative rights are included to condemn speech for war, incitement of violence and hate speech that causes harm for the diverse ethnicities, race gender and religion within South Africa:

> (1) Everyone has the right to freedom of expression which includes– (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research.(2) The right in subsection (1) does not extend to – (a) propaganda for war; (b) incitement of imminent violence; or (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm (*Constitution of the Republic of South Africa Act* 1996).

A close reading of Section 16 of the South African Constitution serves to highlight that South Africa has one of the most progressive constitutions in comparison to other developed and developing countries. Section 16 is unique in that it promotes positive human rights separately by focusing on outlining the rights that citizens have as opposed to just outlining restrictions on citizens' moral actions. This is expressed in the claim that "Everyone has the right to freedom of expression which includes […]" (*Constitution of the Republic of South Africa Act* 1996). This phrase describes the positive right of citizen rights to express themselves by referring to things that may be expressed in the list that the constitution outlines.However,it also has the consequence of promoting expression of ideas and opinions that are not listed and may have been thought of as taboo or undesirable. In this way, South Africa's principle of freedom of speech is embedded in the legislation: that the legislation creates and promotes opportunity for citizens to actively exchange information as opposed to merely being set as a measure to protect citizens in a restrictive manner.

Focusing more specifically on negative rights within the *Constitution of the Republic of South Africa (1996),* we find restrictions to be progressive for the Republic's interest. The negative rights for the republic restrict dissemination of information on the grounds that it is harmful to the public interest. Besides abiding by the UDHR (1948) when describing how incitement of "war" and "violence" is undesirable in terms of freedom of expression, the South African Constitution goes further to address

specific, personal and particularly sensitive social issues based on ethnicity, race and gender. This provision can be seen in the restriction on "[…] (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm" (*Constitution of the Republic of South Africa Act* 1996). In the days of the Zuma administration, requests were made to amend the constitution to specifically address notions of tribalism as the Zuma administration had been accused of indulging this bias. Duncan addresses this by stating how Zuma "[…] hasbeen accused of appointing only the most trusted, tried and tested comrades […] drawn from his home province, KwaZulu-Natal, suggesting in part that he was ethnicising appointments […] which would be consistent with Zuma's tendency to mobilize Zulu identity for regressive ends." (Duncan 6). This is a legitimate issue whichexemplifies a form of corruption and therefore is worthaddressing. It develops on the notion of ethnicity which is very vaguely and broadly covered by the South African Constitution. In terms of the public discourse that South Africa is a fledgling democracy and considering requests made by civil society to amend the constitution to specifically address notions of tribalism, this point on ethnicity may justifiably require urgent attention.

ii) Freedom of speech: A Theoretical Approach

This exploration surveys key theoretical articulations of communicative freedom and free speech in the works of theorists like Raymond Williams and Manuel Castells. In the case of Raymond Williams, his observations on culture and materialism from a Marxist perspective help to develop an understanding of society from culture to the construction of our physical world.

On the other hand, the focus on Manuel Castells' explores the means of communication and activism in new digital media. To compliment and, at times, critique Castells' formulations on communicative freedom, key critics who are involved in researching Castells' seminal works are introduced in order to show where Castells' formulations are strongest and weakest. In Castells' case, communicative freedom in a digital era concerns itself with the emergence of what he terms the 'network society'. Castells' focuses on the switch from a material world to an information-centred world and the communicative freedoms available to society and removed from society during times of protests. In his earlier works, a three-part series looking into social change within a technologically driven society, titled *The Information Age: Economy, Society and Culture*, Castells argues for a social, political and cultural power change in a world concerned with an informational mode of development.

Castells' contribution in this chapter is in relation to the emergence of what he terms the "network society" (*The Power of Identity* 425). This sets the framework for looking towards the conclusion:

"Network Society" and communicative freedom in a digital democracy. Castells focuses on the switch from a material world to an information-centred world and the communicative freedoms either available to society or removed from society during times of protests. In his earlier works, a three-part series looking into social change within a technologically driven society, titled *The Information Age: Economy, Society and Culture*, Castells argues for a social, political and cultural power change in a world concerned with an informational mode of development.

• Cultural Materialism

Before delving into the theory of Castells, we should acknowledge previous social culturists, in particular, Raymond Williams who coined the term 'Cultural Materialism' in his collection of essays *Culture and Materialism (2005).* In this work, Williams concerns himself with the development of society from a material-based economy to the intellectual economy is what. A summary of Williams's argument is that culture is a product that is created in response to actions that are carried out in the economic sector of society. Put simply, one of the achievements of "Cultural Materialism" is to bring economics and culture together. To effectively demonstrate this, however, it is necessary to understand basic definitions of culture, language and ideology as described by Williams.

In his book, *Marxism and Literature (1977),* Williams defines important aspects of society such as "Culture", "Language", "Literature" and "Ideology" from a Marxist perspective (*Marxism and Literature* 13). His analysis attempts to locate these concepts within the Marxist social structure of "The Base" and "The Superstructure" model that separates the understanding of society between two worlds. The first is the physical or material world of action and labour; the second is the world of cognition and rationalisation where discourses dominate and affect society's understanding of the material world (*Marxism and Literature* 13). Williams' definition of the concept of "Culture" is important, as it is seemingly interchangeable with, and dominates, his idea of "Language", "Literature" and "Ideology" (*Marxism and Literature* 13). As described in his own words: "The concept of 'culture', when it is seen in the broad context of historical development, exerts a strong pressure against the limited terms of all the other concepts [Language, Literature and Ideology]" (*Marxism and Literature* 13). Here, Williams asserts that culture is the driving force behind social development as identified in the historical development of our languages, expressions and thoughts and behavioural patterns. In essence, culture is reflected in the oral and literary history of our world.

Social and economic historian, R. S. Neale, in a research paper titled "Cultural Materialism: a critique", makes a contentious observation on Williams' formulation of culture in relation to literature. He argues that, in Marxist terms, "The Base" of society is a "space of material production where technology interacts on the relation of production with irresistible force and is determining (to give purpose, strengthen or make resolute)" (Neale 201). To simplify, "The Base" is the space in which the physical creation of a material object is created through technology. Here, technology comes together to create the material objects that occupies our material world. This brings to mind the process of industrialisation. "The Superstructure" of a society is the "space in which the determination of the material forces of production is revealed through ideas and consciousness, rationalisation and ways in which we rationally order our world" (Neale 201). To restate Neale, "The Superstructure" is a space where our human actions are reimagined into the technological space, which then structures our material space. This is represented in human ethos, in our consciousness and worldviews as expressed in our cultures, works of literature, politics laws and ethics.

One of Neale's contentions with Williams' ideas in *Marxism and literature (1977)* is that language, as a medium of production, is "not determining and is thus not a structure within its own right" (Neale 201). The same language that interprets our organisation and structuring of the world cannot be a simple mirror-image of material production. Williams contends that language is an action in its own rights (discussed as practical consciousness) that belongs in "The Base" structure of society, including all of its productions. For Williams, because language and literature (interchangeable with culture) is produced, it must be deemed just as determining as any other arena in which commodities such as cars or material goods are produced (Neale 201). "Language" and "Culture's" presence in "The Base" structure of society seems strange. Firstly, there is an ignoring of the nuanced aspects of literature as a form of material production. While there are material constituents to literature like reading, writing, and speaking, language that is defined, exchanged, interpreted and reinterpreted through interdiscursivity and intertextuality, belongs firmly in the spheres of cognition and rationality. This imbues language and culture with a sense of "Rational Cognitivism", as Jürgen Habermas in his "Theory of Communicative Action" would put it (Snedeker N/A).

Focusing on economics, Stuart Hall advances Williams' idea of culture when he adopted a definition of culture that progresses from the traditional trend of the humanities which is to separate culture from economics and politics. In an analysis on culture and economics titled "Cultural Materialism and Institutional Economics", economist and senior lecturer of economics at the University of York, William A. Jackson, sums up Williams and Halls' take on culture by describing how culture is

pervasive in that it covers all aspects of life including typically economic and cultural aspects. Jackson finds the division between culture and everyday life to be a disillusionment which obscures cultural issues which is a hindrance to social progression.

The way forward for Jackson is to transcend boundaries of the academic disciplines and include the discussion of culture in what was previously not regarded as relating to culture (Jackson 230). This perspective is plausible if considered in light of a breakdown of boundaries between what we consider natural science and the humanities. In fact, in an article written in the *New Republic* in 1974 titled *On High Art And Popular Culture*, Raymond Williams further interrogates modern definitions of culture by highlighting the origins of the definition of culture. He explains that "the term "culture" always referred to the culture of something: originally the culture of natural products and then, by metaphorical extension, the culture of mental or spiritual faculties" (*On High Art And Popular Culture* N/A). In this definition, culture and natural sciences are inextricably linked and can be applied to society and economics if we do not isolate culture to discursivity alone. Culture is, in fact, experiential in nature. The traditional idea in the humanities, that culture needs to be treated as separate from economics, is problematic for Jackson who believes that cultural theorising maintains hegemonic notions of a binary opposition between culture and politics. What "Cultural Materialism" essentially means for economics is that everyday life, with the inclusion of economics, is cultural and reproduced by material means. This implies that culture and economics should not be separated. Raymond Williams speaks to both the political and economic aspect of communicative freedom in a digital democracy by approaching "Cultural Materialism" from a Marxist perspective and reaffirming that culture is a product of economic action. It is interesting to note how Williams' perspective on culture and politics links political disapprobation to freedom of speech with the blatant undermining of communicative rights. By starting to analyse how worldviews are constructed in society, and then deconstructed, re-imagined and implemented by western politics and ethos, it becomes possible to evidence a form of legitimism for the "controlled anarchy" of digital activists (*We are Legion* 2012 DVD).

• The Network Society

Moving towards a more modern outlook on society and culture, in Castells' first book titled *The Rise of the Network Society (2010)* he hypothesises that the dominant principle of organisation within society lies in the "network logic" (Stark 725). What this means is that society is organised around the revolution of information technologies in the age of all-pervasive "informationalism" (*The Rise of*

the Network Society 75). For a digital democracy, this means that computers, the internet and the resultant language and culture that derive from this become central tools for the organisation of our physical space or world. As a result, the very society that we live in is defined by, and comes to define, the power that is found within our information technology: the internet. Much of our activities, structures and principles on which our society is built within the physical spaces are now being encoded and reimagined into the digital system using valuable data and information to do so. Slowly, our physical world is being shaped, duplicated and recreated within the digital space of the internet and computers. Society has been experiencing transformations with the advancement of E-learning, E-governance, E-banking, digital television and telecommunications, E-commerce and myriads of other digital systems and structures which have come to replace the physical buildings and materials that previously defined those constituents of our society. It is not to say that the digital world is completely rendering the physical world obsolete, but it is becoming increasingly challenging to function within society if one is unplugged from the digital world.

Castells argues that the notion of 'informationalism' does not replace older revolutions or forms of economic power such as industrialism or capitalism, but rather makes them more accessible due to networks being able to share information almost instantaneously. He later revisits his older definition of 'informationalism' in his 2004 study *The network society: a cross-cultural perspective*, and defines it as "the technological paradigm that constitutes the material basis of early 21st century societies" (9).One particular principle that agrees with Raymond Williams' *Culture and Materialism (2005)* is that the revolution in information technology leads citizens of a network society to find new ways of organising and rationalising society, thus creating an information economy. What we can see from this evaluation is that the medium through which such revolutions occur is what comes to define and give power to these revolutions. While computers and the internet define and give power to our current era, this does not automatically assume that older power structures from industrialism and capitalism has dissipated or even dissolved. Instead, computers and the internet have come to amplify the power structures that are already set in place, relying on these structures as a base in order to generate newer power structures of its own within the 21st century. This is evidenced in Stark's observation that, in an era of communicative freedom, the exchange of power from elites to citizens is happening at a rapid rate due to the relative ease of access to information that is characteristic of our network society (725). One glaring capability of the network society is its power and the instant speed with which we can access information and the relative freedom to access this information via the internet.

In Castells' second book titled *The Power of Identity (2010)*, he claims that the economy, society and culture has changed dramatically in the information age but is still fundamentally capitalist in nature and divides society around capitalist principles. Castells further outlines how power is no longer centralized in the state, capitalist organisations or similar morally absolute structures such as the church; but rather, power is found in global networks of information that is dispersed throughout information communication technologies. The book *The Power of Identity (2010)* also looks at social movements in a five-component typology. The first looks at grassroots social movements that is characterised by revolting for the cause of globalising the economy. The second is environmental movements that oppose the globalisation of capitalism. The third is the movement that opposes patriarchy. The fourth is the opposition to nation-states and the fifth is the opposition to the capture of politics by the media. Power is thus decentralised, restructured, disseminated and reordered around institutions that society redefines from the older structures into newer structures such as activism. In essence, Castells argues that the mind is central to how we interpret older social structures and reinterpret it into newer forms of structures. Castells elaborates on this by presenting his notion of information as power in the information age: that power is found in codes of signs like information, images and data that are representational of institutions around which society organises. This constructs people's lives and inevitably constructs their physical world (*The Power of Identity* 425). Power within the information age is at once tangible and intangible in the sense that we know what it is but cannot hold on to it because of its variable nature. It is constantly determined and redefined as society determines and reconstructs cultural codes. This will be taken further in our analysis of the three contentious communication legislations in "Chapter Five". Castells believes that "[w]hoever, or whatever, wins the battle of people's minds will rule" in the network society (*The Power of Identity* 425). In this observation, Castells seems to be asserting that older, powerful structures within the physical space of society will not be able to compete with minds that mobilize around the power of flexible alternative networks.

Tim Jordan, professor of sociology at the University of Sussex and former researcher of culture, media and creative industries in the digital humanities departments at King's College, agrees with Castells with regards to social movements, in his evaluation of *The Power of Identity (2010)*. One of the positive aspects of this work by Castells is that "[it] can be read as a viewpoint generated from the particular perspective of current class divisions" (Jordan 215). This observation on class divides is an important issue and debate that needs to be explored in the South African context. Jordan acknowledges that Castells' study of power and identity not only interprets the nature of 'information capitalism', but also the social movements they are associated with and the relevant constituents of

social movements to that system (Jordan 215). For Castells, 'informational capitalism' concerns itself with the increasing importance of information in a capitalist society. This importance is highlighted through globalisation and the expanding world of computers and technology on older social institutions such as commerce, governance and even the role of domestic spaces and familial ties in society.

The third of Castells trilogy titled *End of Millennium (2010)* looks more precisely at a transformation of society into a new form of capitalism. He argues that the "Information Age" is marked by "[…] a global information superhighway, and by mobile telecommunication and computing power, thus decentralising and diffusing the power of information […] Electronic communications networks will constitute the backbone of our lives. In addition, it will be the century of genetic revolution [so that] our species will penetrate the secrets of life, and will be able to perform substantial manipulations of living matter" (*End of Millennium* 389). The core claim of this particular work reaffirms Raymond Williams' link between "Cultural Materialism" and claims that the relationship between society and information technology is leading to a revolution in power. Castells highlights a shift in power by exploring the relationship between politics, society and technical production. His exploration claims that political systems have no inherent power except through influence and that this power does not simply vanish.

Adjunct professor of sociology at the University of New England, Professor Alan Scott, who researches political and organisational sociology and social theory, has observed that the core claim of *End of Millennium (2010)* is the interplay between production, power and experience, and this is constantly changing in ways that are as profound as the industrial revolution (Scott 837). Scott reaffirms that the information age has transformed capitalist culture into a culture that is free from state regulation due to information technology. As Scott observes, the information age is qualitatively different from economic structures that preceded it "or that capitalism is not merely different in its (now global) scope but qualitatively in its freedom from state regulation and in its ability to use technology, particularly IT, to deploy and mould cultural resources" (Scott 838). This perspective strengthens the argument that power is shifting in a digital democracy and that political elites have a vested interest in corruption and the undermining of communicative freedom in order to control information which is the main source of power in the information age.

Communication Power (2009), which is the development on Castells second book in his trilogy, *The Power of Identity,* discusses the role of networks of communication in the development of political

power making. In *Communication Power (2009),* Castells makes the point that politics and communication (particularly digital and social communication) is the dominant form of "[...] structural determinants of social and political power [...] in the network society (*Communication Power* 27). Once again, information is privileged as the source of power. Castells' focus on the role of the network society in the shaping of political power corroborates the earlier observation regarding the South African context of democracy within an emerging network society. It directly addresses Castells' central arguments that "communication networks are central to the implementation of power-making of any network, such as corporate, financial, cultural-industrial, technology or political networks" (van Dijk 1) More importantly, Castells' hypothesises that communication power is so poignant because it has the capacity to shape the human mind should be privileged. For South Africa, this is demonstrated in the censoring of information by the political elite and the contestation to this impunitive exercise of power by civil society over social media. It also feeds into the later observation of institutionalised corruption in the Jacob Zuma administration.

Professor of Sociology at the University of California, Professor Laura Grindstaff, has researched and taught on media and popular culture and their role in reproducing gender, race, and class inequality. Specifically isolating media and politics in Castells' *Communication Power (2009),* Grindstaff observes how Castells privileges political communication as the prominent source of power in a network society. She further describes how media politics has more and more assumed the role of 'scandal politics' because of the networked power of our current internet age that is exercised through the creation of a politician's image instead of a politician as a representative of socio-political issues or parties (Grindstaff 699). Grindstaff highlights how political communication within the digital era is quickly becoming a personal issue, where political and economic entities are scrutinised according to their personal attributes and are no longer safely protected by an inhuman corporate identity. In the South African context, the Right2Know Campaign and the SOS Coalition have demonstrated this through their campaign against the totalitarian-style rule of the South African Broadcasting Corporation's (SABC) former COO, Hlaudi Motsoeneng. This will be discussed later in an analysis of the South African Broadcasting Corporation. There is a distinct sense that court cases against politicians, and the ensuing blowback from the politicians themselves, are not so much about their privacy or human rights being violated, but more about their sensibilities being offended and their egos being bruised, thereby leading to fierce legal battles brought before the constitutional courts.

Following the chronological progression of Castells' publications, his more recent book *Networks of Outrage and Hope (2014)* is equally of interest when discussing the role of digital activism as a

means of protest during uprisings and revolts. In this work, Castells elaborates on his focus in *Communication Power (2009)* by applying the concept of "mass self-communication" to the examples of global social movements during uprisings (*Networks of Outrage and Hope* 6). Castells argues that networks constitute newer social morphologies of society. This, he achieves, by an "Inquiry into [...] social movements of the network society" (*Networks of Outrage and Hope* 4). He further looks into how "key social structures and activities are organised around electronically processed information networks (and not just mass media); and that technology defines modern society but also culture, religion, economics and politics of the networked society" (*Networks of Outrage and Hope* 6-7).Castells observations are important as it outlines how computers and language are the material means through which we organise our world in order to rationalise or understand culture. This supports the enquiry into how online activism culture has contributed to a reallocation of power in the socio-political sphere of society.

For Castells, as with this research's conclusion on social movements, there is a central ideology of change in favour of the will of the people and for the average citizen to no longer be held to ransom by the will of political and economic elites. Castells reaffirms this point throughout *Networks of Outrage and Hope (2014)* and captures it in the question: "[…] what appears to be the possible legacy of the networked social movements still in the making? Democracy. A new form of democracy. An old aspiration, never fulfilled, of humankind [SIC]" (*Networks of Outrage and Hope* 245). It is in the interest of political and economic elites to hold on to power despite the fact that society's needs and wants are changing and, along with it, sources and forms of power. Within the Information Age, it has already been established that information has assumed the main source of power. There is little wonder, then, why emphasis is placed on the control of information and communication within society in the Information Age. As a response to this flouting of communicative freedom, social movements have become more prevalent and powerful. Castells observes that this may be due to an "an overarching theme, a pressing cry, a revolutionary dream…the call for new forms of political deliberation, representation and decision-making" (*Networks of Outrage and Hope* 245). It is evident that the current democratic structures no longer work for citizens as uprisings and protests regarding communicative freedoms and even just general human rights are far more common. Despite governments' attempts to hide the ineffectiveness of current governing structures, what citizens notice is that living conditions and basic services are not improving. In contrast, these issues are regressing, aggravating adjacent problems such as class, race and ethnic disparities within the South African context. Castells takes this into consideration when he expounds on governments' feeble attempts to hide ineffective governance.

An interesting question that is worth interrogating is derived from Castells' assertion that protests in the material world and digital protests in cyberspace have overlapped to create a "hybrid space, both technology and culture, [with its own] transformative practices", culminating into a space of 'autonomous communication'" (*Networks of Outrage and Hope* 11). Castells explains this idea when he looks at the critical matter of what he terms the "new public space" (*Networks of Outrage and Hope* 11). As previously stated, Castells defines this space as the networked space that is found between the digital and physical, urban space that is specifically characterised by autonomous communication. This communicative autonomy is the essence of social movements in the "new public space" because it is critical to the inception, growth and sustaining of these social movements. Communicative autonomy or autonomous communication contributes towards the formation of social movements, but it also comes to assist social movements in relating to society in a manner that secures it from the control of impunitive power holders such as government and corporations (*Networks of Outrage and Hope* 11). Within this autonomous space, Castells proposes that there is a power vacuum that is left where neither citizens nor political and economic elite hold autonomous power. Interrogating what form of governance, different from capitalist democracy, could develop within this new liminal space is important as it has not yet been empirically researched or discussed due to its relative and instrumental nature. Different contexts and conflicts necessitate that different forms of power and governance come to replace the established government of a particular physical and digital space during specific conflicts. Often these conflicts are interwoven with intersectional concerns of race, class, gender and cultural difference which serve to compound and complicate ways of governing citizens during a shift in political power.

CHAPTER FOUR

Citizenship and Speech in South Africa – 1948-1994

This chapter aims to survey the stifling of speech in the Apartheid era by looking specifically at the mechanisms of control and censorship over (what became) the core freedoms of speech and expression in the newer Constitution psot-1994. The focus on'Citizenship and Speech in South Africa' is an introduction, contextualisation and explanation of South Africa's position and response to communicative freedom post-World War II. After the development of the UDHR (1948) and the freedoms universally outlined within it, South Africa flouted certain maxims of the declaration in spite of threats of sanctions. The rise of freedom of speech would eventually be realised, but not until well after Apartheid was abolished in South Africa. Even in post-Apartheid South Africa, we find that how freedom of expression is expressed is still greatly influenced by the legacy, clandestine tactics and oppressive culture that Apartheid was based on.

From 1948-1994, the focus for the Apartheid regime on communicative freedom and the freedom of expression was suppression through legislation. This tactic allowed for power to be gained and maintained in order todrivethe agenda of Afrikaner Nationalism, white supremacy and racial segregation. At the same time, secrecy became an important tool utilised to ensure securitisation of the republic and to justify the repressive measures inherent in the Afrikaner Nationalist ideology. The Film and Publications Board of South Africa (FPB) played a central role in maintaining secrecy through censorship of any media that went against the Apartheid ideology of racial segregation. The power that the FPB wielded would eventually come to influence policy making, even beyond the influence of politicians, making the censoring authorities influential figures in policy making and advising the likes of then President P.W. Botha.

Post 1994, with the development of the South African Constitution, we find that communicative freedom and freedom of expression occupied a place of importance to the Republic but just in different ways. While the aim of communicative legislation during Apartheid was censoring and suppression, the new ideal of communicative legislation post-1994 is that of freedom and promotion of access to information. Transparency appears to be the new agenda in the democratic South Africa. However, it should be mentioned that the Apartheid position on communication and the new democratic position appears to have interdiscursive links: the main one being the use of secrecy to maintain power.

After the emergence of theUDHR (1948), freedom of speech was protected as one of the fundamental liberties to prevent state repression against their citizens. This is one of the reasons that so many constitutions and Acts of rights protect this freedom. Barendt describes his concept of freedom of speech by its fundamental roots in the human instinct to discover truth. Barendt asserts that, historically speaking, free speech has been justified most prominently by the argument that it is central to open discussions in the pursuit of truth. By restricting free speech, society effectively prevents the acquiring and dissemination of accurate facts and opinions that could be valuable for social progression (Barendt 7). When reflecting on truth, Barendt regards it as an autonomous and fundamental good, drawing into scrutiny the value of the ethos of free speech and communicative rights in the pursuit of a truth. Furthermore, Barendt begins to reflect on how the value of truth "[…] may be supported by utilitarian considerations concerning progress and the development of society." This observation on truth, with the special focus on the status of speech on the value of truth, assumes that truth is a coherent concept and particular truths can be discovered and justified (Barendt 7). For Barendt, the approach to freedom of speech appears to intersect with philosophical principles found within our need to preserve the liberty itself. In order for society to have access to fairly accurate facts as well as opinions, it becomes important that speech is not hindered by any restrictions. If restricted, speech then becomes something that is only a partial truth, which is no truth at all. Instead, it is a version of reality that is distorted and susceptible to manipulation. This is a dangerous concept as, linguistically speaking; reality can be distorted to serve dubious ends if people are indoctrinated into believing partial truths. As Barendt has suggested, there seems to be a legacy of the contemplation of truth and its link to free speech that speaks to the unconscious needs of humanity. Certainly, social contract theory has considered philosophy and the realisation of truths as a central tenant to contribute to a socially responsible and just society. Government, particularly in democratic structures, should, ideally consider the concept of truth and ethics as important to governance. Previous philosophers have ruminated on the notion of truth, indicating an intellectual need and an inclination towards finding a collective consciousness in answering the question: what is truth? This discussion refers to the philosophical section on truth in the literature review.

As part of the review ofcitizenship and free speech during the Apartheid era, a close reading of section 6 of *TheSuppression of Communism Act* of 1950 becomes necessary. However, before such a review is to be made, it is important to understand the context that made the Apartheid government so paranoid about communism. In *The Rise of the Securocrats (2014)*, Duncan retells the paranoia that was all-pervasive within the ranks of the Apartheid government by recalling accusations that

securocrats were given too much power under the Zuma regime and that this revealed parallels between the Zuma government and the Apartheid state. Just as the Apartheid government used the army to militarize society to suppress dissenting voices and movements, particularly the anti-capitalist, anti-Apartheid and Soviet-era Communism movements, so too did the Zuma regime attempt to govern. The attempted imposition of restrictive communicative legislation such as the *Protection of State Information Bill (2010)* (POSIB), the *Protection of Personal Information Bill (2009)* (POPIB) andthe *Promotion of Access to Information Act (2013)* (POAIA) with its troublesome semantic issues could be seen as paralleling censorship (through the Apartheid-era *Publications Acts (1974)*) during the rule of the pre-democratic government (Duncan 8-9).

Duncan describes in no uncertain terms how the Apartheid government was indeed paranoid at the growing influence of the pro-black movements of the time. Even more worrisome to the regime was the militarisation of these organisations in opposition to the Apartheid regime. This will later be demonstrated in the review of the *Publications Act of 1963* and the amended *Publications Act of 1974*. By 1950, however, it was still very apparent that communism, at least for the Apartheid government, was a system that threatened the ideology which they held dear: capitalism. The insecurity of the Apartheid government is evidenced through the securitisation and militarisation of the government and, in response, the government reacted by using security police to intimidate the ranks of dissenting liberation movements. Duncan describes this exercise of power by expounding that "[s]ecurity has often been presented as a transcendent good, not subject to economic or political manipulation. But, in reality, security has been used to maintain unequal power relations. It is the one area of life where government can intervene on a massive scale and very much to the benefit of the security establishment and the arms industry and those with ties to them" (Duncan 11-12). This is where the legislation of racial segregation, under the guise of censoring publications for moral reasons began. In defence of this ideology, as well as white supremacy and oppression of black citizens, the establishment of *The Suppression of Communism Act (1950)* became necessary for the express purpose of maintaining unequal power relations.

There appears to be a disconnect between *The Suppression of Communism Act (1950)*and the*Universal Declaration of Human Rights (1948)* in that the former violates the latter in spite of the UDHR (1948) being set in effect before the *Communism Act* of 1950. By declaring the governors' omniscient authority to prohibit any publication and dissemination of information that even remotely suggests or propagates communism, the Act suppresses communicative freedom (*Suppression of Communism Act* 561). This is the first instance of government-sanctioned censorship that we find

arising in South Africa.The absolute power of the governor is indicated in the use of: "[i]f the governor is satisfied that any periodical or publication promotes communism, [then] he may, without notice to any person concerned, by proclamation in the Gazette prohibit the printing, publication or dissemination of such periodical publication or the dissemination of such other publication […]" (*The Suppression of Communism Act 1950* 561-565). Further still, Section 7 of the SCA emphasises how the governor's power may extend to suspicion without proper evidence in: "[i]f the Minister has reason to suspect [communism] he may in writing under his hand designate any person as an authorized officer to investigate the purposes or activities of the organization or the manner in which it is controlled, or the circumstances connected with that periodical or other publication, as the case may be" (*The Suppression of Communism Act 1950* 561-565). This privilege is also extended to "authorized officer[s]" who are determined by the governor and, in accordance with the legislation; anybody may be named as an "authorized officer" (*The Suppression of Communism Act 1950* 561-565).These privileges were further exercised with impunity during the Apartheid era in order to suppress pro-black movements under the guise of protecting society from the "undesirable" communism that the Apartheid regime demonised. For communicative freedom, this violated the UDHR (1948) in the sense that it oppressed the human right of freedom of expression which stated that: "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (*Universal Declaration of Human Rights* 4).

Furthermore, the subterfuge of oppressing pro-black movements under the guise of protecting society from communism is another violation of Article 2 of the UDHR (1948), which states that: "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (*Universal Declaration of Human Rights* 2). Apartheid had, once more, transgressed on the UDHR (1948) by denying communicative freedom to black South Africans, effectively denying communicative freedom on the "[…] basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty […]" (*Universal Declaration of Human Rights* 2).South Africa's violation of the universal human rights is found specifically in the creationof a division on the basis of "race", "colour" and "political opinion" which is extended to all people regardless of "social origin", "political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty"(*Universal Declaration of Human Rights* 2).

This suggests that, despite there being a global consensus on freedom for all humans to communicate their beliefs, political or otherwise, South Africa still imposed censorship on communication and expression of opinion, purposefully flouting the maxims of the UDHR (1948) in terms of political opinion, race and culture. The imposition of the *Suppression of Communism Act (1950)* (SCA) by South Africa, and the ambiguous function of moral censorship and racial oppression, further evidences a culture, worldview and precedent of the use of secrecy and subterfuge to achieve the goal of promoting white supremacy and racism.

Furthermore, censorship under the Apartheid legislation was entrenched with the further implementation of the *Publications and Entertainments Act of 1963*. This served to progress and solidify the censoring power of the SCA which had already banned publications under the guise of protecting society from communism. Act number 26, subsection 5, on the "Prohibition of production and dissemination of certain publications and objects" stated that anythingthat the publication board broadly deems as "undesirable" cannotbe published. Below is an abbreviated version of the subsection which will give a clearer view of the extent to which printed media could be censored:

> 5. (l) No person shall–
> (a) print, publish, manufacture, make or produce any undesirable publication or object; or
> (b) distribute, display, exhibit or sell or offer or keep for sale any publication or object […]
> (2) A publication. or object shall be deemed to be undesirable if it or any part of it-
> (a) is indecent or obscene or is offensive or harmful to public morals;
> (b) is blasphemous or is offensive to the religious convictions or feelings of any section of the inhabitants of the Republic;
> (c) brings any section of the inhabitants of the Republic into ridicule or contempt;
> (d) is harmful to the relations between any sections of the inhabitants of the Republic;
> (e) is prejudicial to the safety of the State, the general welfare or the peace and good order[…] (*Publication and Entertainment Act of 1963* 280).

The main point of concern, however, was the parameters of what was deemed as "undesirable". For the*Publication and Entertainment Act of 1963*, the legal and political language of the Actwas so broad, that the interpretation of "undesirable" once more granted unlimited power to the governor in terms of determination of wrongdoing and execution of the Act. Another point of contention is that the determination of what was 'undesirable', like the SCA, was largely based on the subjective

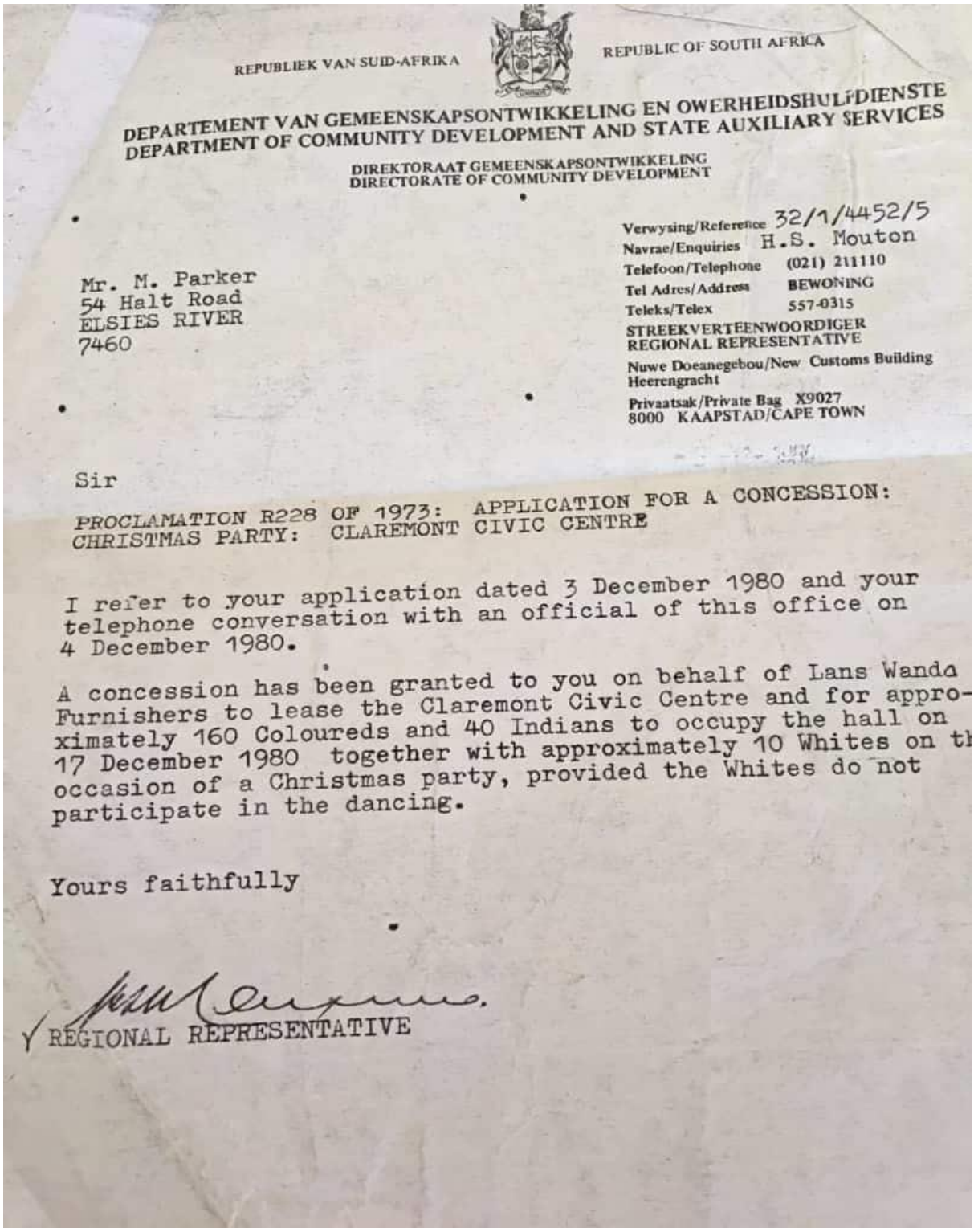
interpretation of a single authority that was to determine the moral good of publications for all citizens of South Africa as outlined in Section 5, subsection 2 (*Publication and Entertainment Act of 1963* 282).

It is palpable that the first characteristic of an undesirable publication, for subsection 2, sub-paragraph (a), is based on moral judgements passed on particular publications. This is indicated when subsection 2 refers to "undesirable" material as any published material or parts of the published material that "[…] is indecent or obscene or is offensive or harmful to public morals […]" (*Publication and Entertainment Act of 1963* 282). Censoring on moral grounds is further entrenched by "undesirable" being juxtaposed with "blasphemous" material. Blasphemous material is one that goes against "religious convictions or feelings", or "[…]any matter which is indecent or obscene or is offensive or harmful to public morals or any indecent or obscene medical, surgical or physiological details […]" and extends to "the dissolution or a declaration of nullity of a marriage or for judicial separation or for restitution of conjugal rights […]" (*Publication and Entertainment Act of 1963* 282).In the same way that communication of published media was being censored on very broad, moralistic terms, so too werethe public discussions on freedoms of belief, religion, marriage (and by implication, freedom of association) and even medical and physiological research.

The implications ofthe ban on the expression and communication of these taboo topics for the Apartheid regime would extend further than mere discursivity, to incorporate acts and legislations that physically ban the actions that the post-1994 freedom of expression allows for debate and discussion. Here, the use of subterfugein order to promote segregation under the guise of protecting the 'moral' good for the republic is made apparent. One such example would be interracial relationships, as the *Immorality Act (1927)* would come to ban marriages or conjugal activities between 'undesirable' couples, namely, interracial couples. The Apartheid agenda of oppression, segregation and white supremacy is evidenced in interracial engagements being seen as immoral and banned, but also is seen in the discussion of the theme of interracial engagements through the *Publications Act*. Segregation, oppression and white supremacy thus became experientially, intertextually and interdiscursively embedded as 'undesirable', immoral and abhorrent within the minds of South Africans.

Another example, closely linked to the *Immorality Act (1927),* can be found in the *Separate Amenities Act* of 1953 which racially segregated public premises and properties. This can be found in the illustration below which depicts a letter of response to an application to allow white colleagues

permission to attend a year-end celebration to be held in a civic hall with the majority of coloured and Indian attendants:



REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

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DEPARTMENT OF COMMUNITY DEVELOPMENT AND STATE AUXILIARY SERVICES

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Mr. M. Parker
54 Halt Road
ELSIES RIVER
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Sir

PROCLAMATION R228 OF 1973: APPLICATION FOR A CONCESSION:
CHRISTMAS PARTY: CLAREMONT CIVIC CENTRE

I refer to your application dated 3 December 1980 and your telephone conversation with an official of this office on 4 December 1980.

A concession has been granted to you on behalf of Lans Wanda Furnishers to lease the Claremont Civic Centre and for approximately 160 Coloureds and 40 Indians to occupy the hall on 17 December 1980 together with approximately 10 Whites on the occasion of a Christmas party, provided the Whites do not participate in the dancing.

Yours faithfully

REGIONAL REPRESENTATIVE

(Fig.1*State Permission for a Segregated Dance Party*).

The above segregation constructed the physical world of Apartheid South Africa that governed the thoughts words and deeds of citizens to the racial exclusion and detriment of the black majority. For the white supremacists who strongly advocated for and believed in Afrikaaner Nationalism, this justified the oppression of the black majority and legitimised British influence in South Africa. For the oppressed, black majority, it would come to beembedded in thepsyche, a slave-like mentality, resultingin the perpetuationof inferiority and the acceptance of their subservience to white supremacy as a truth and therefore an absolute, universal law. This psychological assault would become what Duncan refers to as "constructing insecurity" (Duncan 11).

As Apartheid matured, so too did the censoring powers of communication legislation. The *Publication and Entertainment Act of 1963* was later amended and extended to include stricter actions against 'undesirable' publications. All publications were to go through rigorous tests to screen for any communist or pro-black social movement 'propaganda' that could compromise the morality of the Republic of South Africa. But the paranoia and mechanisms of control did not end incensorship and publications. According to Duncan, it extended further into government and policy-making through the privileged position that the Film and Publications Board held in the National Party government. Defined by Duncan as "[the] process of stretching national security threats to include more and more 'enemies' and developing the institutions to respond to these threats", "securitisation" came to be the means through which the Apartheid government manufactured threats to the Republic in order to maintain unequal power relations (Duncan 12).

The Film and Publications Board (FPB) became instrumental in this practice. By 1974, The FPB were well-established as an instrument of censorship and mechanism of control to propagate Apartheid ideologies. There was an established hierarchy of superordinates, known as 'securocrats', who controlled most forms of radio, television or printed media within South Africa. Duncan describes the power that securocrats and the Publication Board held in the 70's and 80's under the leadership of the then President P.W. Botha which elevated the State Security Council to prominence by making it the main policy-making instrument on security. During this time, the SSC were superordinate to politicians on key decisions that directly affected how the country was governed. Duncan recalls how the SSC was "[s]taffed by high-ranking military personnel and using the 'total strategy' doctrine, they ensured that all levels of the state responded in an integrated fashion to rising opposition against apartheid and capitalism, both internally and externally" (Duncan 9).

In a show of racial dominance, Apartheid-era securocrats orchestrated a largely efficient means of censoring the voices of black South Africansand dissenting white South Africansthrough a unified effort of oppression. All organs of state acted in unison towards this end. The directorate and assessment committee's influence over censorship was likewise extended as exemplified in the *Publications Act of 1974.* Outlining the actions to be taken to assess whether a new publication was to be suitable for public consumption, a rigorous assessment process that all publications now needed to undergo, the *Publications Act (1974)* stipulated that:

> "11. (1) (a) After receipt of an application under section 10 (1) the directorate shall without delay cause to be submitted to a committee for its decision […] (2) The committee referred to in subsection (l) shall without delay – (a) examine the publication or object or copy submittedto it under that subsection; (b) and without hearing any person, decide whether thatpublication or object or edition is undesirable in itsopinion; and (c) inform the director of its decision and of the reasonstherefore (*Publication and Entertainment Act of* 1974).

Once more, the absolute power of the directorate and his committee is captured in just how easily the banning of a publication was. The fact that the assessment committee could "[…] without hearing any person, decide whether that publication […] is undesirable in its opinion […]"evidences a paranoia that pro-black and communist movements may influence the minds of oppressed South Africansto realise their true power and abolish, through their own social, political and economic volition, the ideals of Afrikaner Nationalism and the Apartheid regime (*Publication and Entertainment Act of* 1974). By 1974, pro-black movements had found that protesting racial segregation was most effective as this was done bymeans of para-militarisation and violent protests. Armies of freedom fighters were being trained and armed clandestinely to resist the Apartheid regime. Bombings, assassinations, spying and coercion were common occurrences during this violent time.Thelikes of 'secret police' under the National Party rule also became intimidating and formidable force that resistance movements contended with.

Secrecy and censorship became important tools to maintain the façade of national security for the sake of securitisation in Apartheid South Africa. Veteran journalist and activist for South Africa's free broadcasting environment during Apartheid, John Matisson, in his book *God, Spies and Lies (2015),* recalls the power of censorship by the Apartheid government and how the: "[…] government was most keen to censor facts, not opinion […] They did this by reversing the onus of proof, so that a reporter had to prove facts, inevitably having to rely on prisoners, victims or police and warders all

open to intimidation, or with a vested interest in keeping silent" (Matisson18). The power of censorship, particularly of facts, is a legacy that has surpassed the Apartheid regime and leaked into the South Africa's fledgling democracy post-1994. The very same culture of censorship that was present in the Apartheid regime was found present under the recent Zuma regime who utilised Apartheid tactics of secrecy to cover up alleged corruption as exemplified in evoking legislations such as the *National Key Points Act (1980)* or the development of the *Protection of State Information Bill (2010)* and the *Protection of Personal Information Bill(2009)* against media reporting. Duncan explains why secrecy was so important for securitisation, particularly for dubious, corrupt governments, which is especially applicable within today's information age. She outlines how secrecy is central to securitization as it becomes easier to justify acquiring weapons or engaging in intelligence and communications surveillance by citing national security as the main reason when masses of information about any threat, real or suggested, are censored (Duncan 12). Duncan touches on how this practice creates information inequities between government and citizens, favouringthe government and making for a compliant citizenry.

Considering the racial ethos and anti-communist political agenda of the Apartheid government, it is not difficult to see why communicative legislation and its focus on censorship came to play an important role in maintaining unequal power relations. This was achieved, as Duncan and Matisson recalls, through coercion and intimidation of citizens. Most notably, the Apartheid government soughtto silence their acts of intimidation in order to punitively segregate and oppress the black majority in contradiction totheir professed morality that was held as the reason for such laws. Communicative freedom could not be realised under a totalitarian regime such as Apartheid. But, fortunately, the inequities of Apartheid was not to last. The inevitable outcome of the Apartheid system's restrictive legislations were uprisings, revolts and eventual revolution that would lead to the abolishing of racial policies and freedoms for all and one of the most culturally progressive, relative and inclusive democracies. This particular vision of a democracy, however much hope it spawned for oppressed South Africans pre-democracy, was not yet solidified,leaving South Africa's political landscape in tensionafter the first democratic elections of 1994. Although South Africa has one of the most progressive Bill of Rights and inclusive democracies on paper, the full concept of freedom and democracy is not yet realised as exemplified through legislative loopholes and exploitation of these loopholes by securocrats.

CHAPTER FIVE

Legislative Challenges to Communicative Freedom Post-1994

This chapter focuses on legislative challenges to communicative freedom byexamining the formation of the constitution post-1994 and the role given to communicative freedoms in the development of critical citizenship and democracy in South Africa. It highlights examples of impunitive governance by ANC politicians through misappropriation of legislation from the onset of democracy for South Africa. The observations in this chapter demonstrate the South African government's tendency towards secrecy. Moreover, it analyses examples of the subversion of legislation and how this negatively affects society's right to access information. It takes a sociolinguistic approach to language by exploring the experience that language creates within the world. This can be defined as the grammatical choices that make meaning of our world, and the links found to this in the development of social structures of society as suggested by Williams' *Culture and Materialism (2005)*. This develops on discussions around how political resistance to freedom of speech has led to a culture of protesting in South African civil society. Particular attention is paid to the language used by government legislation in order to maintain power over civil society. A context is set for the rising of social tensions in response to dissatisfaction with economic and political exploitation and corruption. The central documents that will be analysed here includethe *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013)*.

A celebrated exampleof the inclusivity of the New South Africa can be found in the development and implementation of the South African *Bill of Rights* post-1994. In "Chapter Three", Section 16 of the South African Constitution was scrutinised, which dealt specifically with freedom of expression and its uniqueness in outlining both positive and negative rights for citizens. Within the *Bill of Rights (1996),* Section 32 of theconstitution addresses freedom of speech by addressing citizens' right to access information. This expands on the freedom of expression on Section 16 to create a robust space of engagement for citizens in terms of communicative rights. The main aim of an analysis into Section 32 is to complement the initial analyses of the *South African Bill of Rights(1996)*and Section 16 of the constitution by focusing specifically on freedom of expression, and thereby giving a broader insight into communicative rights as a whole for South Africa. This acts as a point of reference to later juxtapose an analysis of the*Protection of State Information (2010),Protection of Personal Information Bill (2009)*and the *Promotion of Access to Information Act (2013).*This, however, can

only be achieved through the exploration of the specifics of the right to access information:"(1) Everyone has the right of access to-*(a)* any information held by the state; and(*b*) any information that is held by another person and that is required for the exercise or protection of any rights"(*Constitution of the Republic of South Africa Act* 1996).

A close reading of Section 32 gives the impression that communicative freedom is well defended within the South AfricanConstitution. Already, we see that citizens have a right to access state information as indicated in subsection (a). Secondly, in subsection (b), we find that information that is held by another party that affects the dissemination and exercise of any other rights is freely available to citizens as well. This suggests that information that is essential to, and within the public interest of citizens should be made available. This corroborates Barendt who observes that the fundamental value of the human instinct is to discover truth. Within this utopian sense, the SA Constitution celebrates notions of transparency for the greater good of citizens.

However, the illusion that communicative freedom is celebrated is shattered when assessing newer legislation that seeks to limit the power of the constitution to far narrower terms. Like the philosophies on truth by Barendt and Gibran, the SA constitution upholds the idea that omission of information is the antithesis of a truth; therefore it cannot be a truth but only a partial truth or a lie. This suggests that the greater moral good is found in dissemination of a truth which can only be realised through transparency; that is, access to information without restriction if it is within the public interest. Barendt further discusses this idea by explaining the fourth principle for protecting free speech which is suspicion of government. In his discussion of the importance of protection of free speech, Barendt claims that positive theories of free speech asserts that there is something special about the consequences of free speech: that it allows for the discovery of truth which is essential for a functioning democracy and constitution (Barendt 21). Deeper than this, it is essential to an aspect of human nature that is unavoidable: self-fulfilment and autonomy.

Barendt's fourth theory of free speech argues that there are particularly strong inclinations to be suspicious of government. Barendt recalls how "[…] the history of attempts by governments and other authorities such as the Catholic Church to suppress speech […] have often outlawed speech which turns out to make accurate claims and which eventually becomes widely accepted, even by political or ecclesiastical authority itself […]" (Barendt 21). Barendt acknowledges how difficult it is to separate speech that should be appropriately regulated and that which should be tolerated. He highlights this by pointing towards the complex issue of hate speech or sexually explicit materials. Laws that proscribe extremist speech or pornography could very easily be used as a means of censoring radically subversive ideas under the guise of protecting the moral good. For governments,

it is clear why they would fear subversive ideas and the dissemination of it: it is a real threat to established hierarchies of social power in which government is the gatekeeper. In this scenario, a free speech principle is of crucial importance to counteract these impunitive tendencies (Barendt 21).

The notion that governments are fearful of communicative freedom is not only isolated to theoretical ruminations of old. Legislations and declarations that have recently been drafted (even for the network society) reflects and evidences theneglect of the fundamental rights of free speech. In 2018, heads of state of African countries underthe African Union (AU) met in Addis Ababa, Ethiopia to draft the *Declaration on Internet Governance and Development of Africa's Digital Economy*. Within the entire declaration, communicative freedom in a digital democracy is only mentioned once on the first page:

> WE, the Heads of State and Government of the African Union, meeting at the 30th Ordinary Session of the AU Assembly in Addis Ababa, Ethiopia, from 28 to 29 January 2018 [***Recall***] the commitment of Member States to promote and protect fundamental freedoms, especially the right to freedom of expression and access to information (on and offline), and human and peoples' rights enunciated in instruments of the African Union and of the United Nations *and* ***recognizing*** that these rights must be upheld online as well as offline […](*Declaration on Internet Governance and Development of Africa's Digital Economy* 1).

This scant mention is not only isolated to communicative freedom and freedom of speech, but to the right to privacy as well. Interestingly, the words highlighted in this single clause are "recall" and "recognizing" (*Declaration on Internet Governance and Development of Africa's Digital Economy* 1). Both of these words avoid accountability and simply acknowledge the presence of these rights and its importance without actively making it a central concern for the Assembly. In fact, it is difficult to imagine how an entire Assembly dedicated to internet governance and the digital economy of Africa could not make communicative freedom, freedom of expression and privacy policies the central discussions. This indicates a tendency to shy away from critical, positive rights for citizens.An example of a declaration covered in the early 2000's that has thoroughly considered communicative freedoms and free speech is the *Declaration of Principles on Freedom of Expression in Africa (2018).* Although not specifically focusing on the digital landscape and online media, the declaration, compiled in 2002 in The Gambia, re-imagines communicative freedom, freedom of speech and highlightseducational platforms as a central component to a functional and thriving democracy.This is an example where positive communicative rights for citizens are usedto advance democracy. It does not seek to impose unrealistic restrictions on fundamental human rights that

benefit political and economic elites alone. Here, we find that the central focus of the Assembly, the acknowledgments, discussions and resolutions focuson communicative freedom and free speech, appropriatelycoveringprivate and public broadcasting, print media, regulatory bodies within telecommunications industry, attacks on whistleblowers and appropriate legal actions in the case where infringements on communicative rights takeplace. Thisshows how communicative rights and free speech could bethecornerstone to participatory democracy as it should have been in the *Declaration on Internet Governance and Development of Africa's Digital Economy (2018).*

i) Communicative Freedom Legislation: A Corpus Linguistics Analysis

a.) The Protection of State Information Bill (POSIB)

By far, the most publicly discussed South African legislation on communicative freedom (and one of the main points of contention between free speech movements and government in South Africa) can be found in the *Protection of State Information Bill (2010),* also known as the *Secrecy Bill (2010).* When the tabling of the *Secrecy Bill* was first announced, suggestions of the misappropriation of the legislation became immediately rife amongst activists and the general public. The mere allusion to secrecy and the fact that political elites and government had the potential power to censor information at their discretion was problematic. The main function of the *Protection of State Information Bill (2010)* was outlined as follows:

> [T]oregulate the manner in which state information may be protected;promote transparency and accountability;establish general principles for state information to be made available or accessible or protected in a constitutional democracy;regulate the conditions for classification and the declassification; regulate the accessibility of declassified information to the public and establish a Classification Review Panel to review and oversee status review,classification and declassification procedures (*Protection of State Information Bill* 2010).

The prominent reason for the classification of information is almost always to protect the state from devious entities and malicious attacks from other states that wish to do harm. In his work titled *Freedom of Expression and Media Regulation: a Media Legislation Manual (2015),* Hendrik Bussiek outlines how there is an assumption that there is a self-evident contradiction between state security and freedom of expression. A big issue for Bussiek, much like Duncan and the Right2Know Campaign, is how loosely defined these terms are. In particular, at the nexus of freedom of

expression as expressed in media freedom and state security, it is assumed that the safeguarding of state security is automatically for the higher good (Bussiek 14).

The general consensus amongst activists and journalists at the time, namely 2012, was that the language and semantics of the POSIB (2010) was far too broad. The problem was that power could be granted to a wide audience of government sanctioned individuals due to the term being used to describe a gatekeeper as merely a 'classification authority'. This could include politicians, Members of parliament or functions of the state that has a conflict of interest in being involved with censorship. Moreover, the organs of the state in control of censorship were isolated to those that had a direct involvement with national security, limiting the power of classification or censorship to those organs only. For an inclusive democracy, there would need to be a broader range of voices involved in determining classification of information.

A few of the definitions within the *Protection of State Information Bill (2010)* are glaringly troublesome and need further interrogation. The "classification authority" is too broad a term to establish a responsible party for the purpose of classification. Furthermore, the language of legislation and the interpretation of this language leave too much room for semantic manipulation and possible corruption to be condoned and thus legislated or legalised. The term'classification authority' means the entity or person authorised to classify state information and includes—*(a)* a head of an organ of state; or*(b)* any official to whom the authority to classify state information has been delegated in writing by a head of an organ of state [...] (*Protection of State Information Bill(2010).* For this particular definition, the Minister of State Security and any head of an organ of state are given absolute authority on the classification of information they deem as undesirable.

Furthermore, any official whom the minister or head of organ deems worthy to be conferred withclassification powers may be grantedthe authority to classify information. The worry is that this power will be abused by the political elite in order to grant favours under corrupt circumstances to cover up corrupt dealings. It is to be understood that the Minister of State Security would have the mandate to classify information in consultation with other organs of state. However, to have these parties act independently and, furthermore, grantthese entities individual rights to classify information, is peculiar as the authority is then not answerable to anybody else in the act of classification. There appears to be an issue of accountability as there is no provision made for any form of public feedback or parliamentary intervention to keep this power in check. Further

interrogation is thus necessary to determine who exactly the 'head of an organ of state' may be and what rights and responsibilities they have when granted the power and mandate of classification.

Upon further interrogation of the term "head of organ or state", the following definition is found to be more concise, yet still problematic as it could mean:"[…] *a)* in the case of a department, the officer who is the incumbent of the post […]; *(b)* in the case of a municipality, the municipal manager […]; *(c)* in the case of any other institution, the chief executive officer […] or *(d)* […] the owner of the national key point [...] (*Protection of State Information Bill*2010).
The above definition outliningwho the term 'head of an organ of state' may apply to include national government, heads of departments and their officers or any persons who actwithin the roles of these individuals for subsection (a). This is extended to smaller, local municipality offices, management, local government and any persons acting within these roles for subsection (b). Already, the wide scope of individuals this may include is problematic. Furthermore, the Minister has the ability to, without any restrictions, appoint any person he or she deems fit to assume these roles and thus assume the power to classify information under the POSIB (2010). In the case of Subsection (c), we find a very broad, vague and dangerous phrase being used in the words: "any other institution" (*Protection of State Information Bill*2010). By very definition, this phrase is open not only to interpretation but also exploitation. It infers that even private entities, interests or even businesses may be appointed as an authority that may classify information. This is problematic as it includes political and economic entities in having the potential to classify information. These entities may have private agendas of their own and thus create a conflict of interest if they are appointed as an authority that is able to classify. Likewise, for Subsection (d), "the owner of the national key point" may be problematic as this may include private entities that have political and economic agendas abstracted from the interest of citizens of the republic (*Protection of State Information Bill* 2010).

The Right2Know Campaign (R2K), in their submission to parliament on the problems of POSIB (2010), had taken issue with some of the semantics within the legislation. In 2012, then National Coordinator of the Right2Know Campaign, Murray Hunter, had presented the issue of the execution of power and allocation of authority to classify at the Ad-hoc Committee of the National Council of Provinces on the Protection of State Information Bill. The submission to parliament expressed the issues that R2K has with allocating power in such a broad manner: "The State Security Agency remains the beneficiary of unjustifiably

heightened protection, not only for its work but its organisational being. This stretches the veil of secrecy beyond what is acceptable in a constitutional democracy such as ours" (Hunter*War, Security and the Liberal State*). At the root of the issue on allocation of authority, Hunter further makes the point that "[t]he Minister and State Security Agency's role as "guardians" of other state departments' valuable information remains a problem (Hunter *War, Security and the Liberal State*). What R2K was aiming for was a narrowing of the power to classify information that may only be relegated to state bodies who are directly occupied with issues of national security. What is problematic is that extending the power to classify as broadly as the 2010 version of the POSIB (2010) creates the possibility for theappointed authorities of classification to create obstacles that hinder the free flow of information between other state bodies.

To add to the vagueness of the classification of information, it is affirmed that what may be deemed as 'classified' (referring specifically to the information itself), is barely covered adequately by the Bill given the fact that'classified information'means state information that has been classified under this Bill (*Protection of State Information Bill* 2010). The above definition is as broad and vague as could be. There is no provision for what may be deemed as "state information" and the authority for determining the criteria for "state information" ultimately lies in the hands of the Minister of Security (*Protection of State Information Bill*2010). Once more, the absolute power of the Minister is made evident and leaves the legislation open to be criticized, giving room tothe adage that absolute power corrupts absolutely. Considering the tendency of government (and the reason to act within self-interest to maintain political power) to act in favour of a culture of secrecy, it is not difficult to suggest that corruption and misappropriation of the POSIB (2010) would be exercised.

Within POSIB (2010), there are certain obvious materials that qualify as sensitive information to the government. One such term is found in the definition of"hostile activity", which includes the term "violence" (*Protection of State Information Bill* 2010). For any social activist or organisation, this begins to present a problem if it is accepted as such in broad and vague terms. For one, "hostile activity" and "violence" hasbecome a common political and media reference as a characteristic of protest due to protest's nature of being disruptive towards an entity (*Protection of State Information Bill* 2010). It may not be physical violence but could be construed as an aggressive act and redefined as violence if so semantically manipulated. This then conflicts with the right to protest as outlined by the definition of hostile activity: aggression against the Republic;sabotage or terrorism aimed at

the people or strategic assets of the Republic;an activity aimed at changing the constitutional order of the Republic by the use of force or violence ora foreign or hostile intelligence operation(*Protection of State Information Bill* 2010).The above example shows how fragile the semantics of legislation is to manipulation and misappropriation, possibly in favour of political and economic elite who may deal in subterfuge as a means to advance their personal interests.

What is classified by POSIB (2010) as 'national security' also has the potential to be problematic. The criterion for what may be deemed as sensitive information is in itself very vague, as the act itself only highlights two main subsections on information. For instance, ''[…]'national security'includes the protection of the people of the Republic and the territorial integrity of the Republic againstthe following acts: "[…] (iii) espionage; (iv) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;(v) exposure of economic, scientific or technological secrets vital to the Republic […]" (*Protection of State Information Bill*2010). While the definition of 'national security' remains vague in light of dealing in information, the Bill takes into account activism on the grounds that it is within the scope of the law. If the elusive'classifier' decides that certain information is of national security in accordance with his or her personal interpretation of 'sensitive information', the problem is that an individual will be allowed, on personal interpretation, to determine the standard of 'national security' for a community of citizens.

Two definitions that require much more scrutiny are the definitions of information that are regarded as requiring protection and classification; that is 'sensitive' and 'state' information.Sensitiveinformationmeans information thatmust be protected from unlawful disclosure in order to prevent the national security of the Republic from being harmed, whereasState informationmeans information generated, acquired or received by organs of state or in the possession or control of organs of state(*Protection of State Information Bill* 2010). The term 'information' simply does not suffice as a definition to protect data as it incorporates any and every form of discursivity. This thesis argues that the implication of having such an open-ended definition is that it is open to interpretation and thus exploitation. As a result, we find a need for concise definition and perhaps specific categories of information that needs to be established with a hierarchy of importance for classification. This has not been determined by government or any other independent body. One argument against such a step could be that definition, particularly within an inclusivist, democratic republic, would be difficult to

establish. Who the gatekeepers of such definitions are, and the particular worldview and agenda of their organisation, will inevitably come into question.

However, the solution may lie in one of the oldest European traditions that exist: the standardisation of language for judicial purposes. Here, the solution of definition lies not with the judicial system itself, as the semantic interpretation of language is not within the interest of the legal system. In fact, interpretation of the law, by the law, for the law presents a conflict of interest. Instead, the law comes to be a blunted instrument that is biased when interpreting the finer nuances of language that is required to democratically govern the interests of citizens. Perhaps, it is the adoption of the plain language rule of interpretation that the law should consider in order to equitably render legislation to govern citizens. In this way, language is interpreted by a singlegrammatical rule providing a universal interpretation of words and thus providing a lexis that can apply to all people at any given time. This language may be amenable as society changes, much in the tradition of Oxford and Cambridge standardisation. Interpretation of language in any form is the realm of the linguist who consider socio-cultural aspects as well as the political and economic weight of words to effectively provide space for a representation of citizens' context of situation and context of culture. It has been the bane of the law within an evolving social, global and secular world that older laws which based itself in outdated, moralistic and inaccurate data and research has been applied to cases where said laws are no longer relative or accepted as social norms. This creates an inequity in the application of the law: the very antithesis of liberty and justice as commanded by democratic systems around the world.

The conditions that justify classification create more issues that can be left up to interpretation and thus could be an issue of great concern when read in conjunction with other legislations. The use of classification as a means to hide corruption is allowed to occur specifically because the definitions within a Bill can be manipulated according to the ends of the illusive 'classifier':

> "Classification of state information may not under any circumstances be used to—(i) conceal an unlawful act or omission, incompetence, inefficiency or administrative error; (ii) restrict access to state information in order to limit scrutiny and thereby avoid criticism; (iii) prevent embarrassment to a person, organisation, or organ of state or agency; (iv) unlawfully restrain or lessen competition; or (v) prevent, delay or obstruct the release of state information that does not require protection

> under this Act [...] *(d)* State information is classified only when there is—(i) a clear, justifiable and legitimate need to do so; and (ii) a demonstrable need to protect the state information in the interest of the national security [...] (*Protection of State Information Bill* 2010).

The above conditions set out the ideal environment under which classification should take place. However, the unconditional power awarded to fallible politicians with an agenda and history inclined towards secrecy as a means of control and exercise of power suggests that all of the above conditions for classification and declassification could be ignored. This assumption is not unfounded. Bussiek backs this up by observing how legislation is being used to harass journalists may uncover truths that work against the monetary and power interests of the political elite. These often involve the actual state of a country's defence force, or the corruption, incompetence or lack of accountability of an important minister for office (Bussiek 15). The fear is that these issues will be exposing government and political offices for its inadequacies for the benefit of the general public but to the detriment of the political elite. It appears that sections of the POSIB (2010) such as in the above extract merely act as a verisimilitude of altruism in favour of appeasing the sensibility of the citizenry. These clauses and phrases are merely set in the legislation to appease the sensibilities and fears of the voting constituency: a necessary yet all too easily ignorable grouping of words that are as easily malleable and subject to interpretation and manipulation as the rest of the legislation.

When considering a quantitative textual analysis of the Corpus Linguistics of the *Protection of State Information Bill (2010)*, we find some interesting statistics that makes itself apparent:

Word	Length	Count ▼	%	Protection_of_State_	%
information	11	330	5,08	1594	5,45
state	5	282	4,34	1370	4,69
classifed	9	152	2,34	168	0,57
act	3	131	2,02	167	0,57
classifcation	13	121	1,86	317	1,08
must	4	96	1,48	96	0,33
review	6	88	1,35	424	1,45
organ	5	83	1,28	83	0,28
may	3	80	1,23	84	0,29
national	8	79	1,22	243	0,83

(Table 1 *POSIB Quantitative Textual Analysis*).

In the above table, we have a word count of the top ten frequently used words within the*Secrecy Bill*. What is noteworthy is that "information" is the word used most frequently within the Bill. Although this may, at first, seem completely reasonable for a Bill that aims to address information of the state, the implications that come with the ambiguous application of the term is what is concerning (See table 1). This will be further discussed in the discourse analysis of this Bill. What is intriguing is that the word "information" corroborates the previous observations by both Castells and Duncan that information is power within the network society (See table 1).Indeed, the very use, repetition and saturation of the word "information" in the *Protection of State Information (2010)* may hold implications of misappropriation if not well defined by the "definition" section of the Bill itself (See table 1).

Having quantified the lexis of the *Protection of State Information (2010)* and collated the top 10 frequently used terms within the document, it was found that inevitable words with open-ended meanings were identified from the data set. These words will be referred to as 'codes' used in order to identify units of language (extracts) within the document. It is useful, at this point, to collate these codes in order to identify relevant themes within the Bill in the process of thematic analysis. The table below is based on the information gleaned from the textual analysis of table 1:

Extract	**Code**	**Themes**
Protection of State Information Bill	• Information	• Regulations
	• Organ • State • National	• Participants
	• Act	• Legal discourse
	• Review • Classified • Classification	• Duty
	• May • Must	• Conditionality

(Table 2 *POSIB Qualitative Thematic Analysis*).

The above table showsa breakdown of the *Protection of State Information (2010)*into the ten most frequently used codes within the Bill. These codes have been grouped to create the five themes of "Regulations", "Participants", "Legal Discourse", "Duty" and "Conditionality" in preparation for a thematic analysis that already appears to be leaning towards an instructive, authoritarian imposition of legislation with the frequent use of imperatives (See table 2).

The theme of "Regulations" comes to inculcate state information and data, which, according to the very title of the *Protection of State Information Bill (2010),* is the central subject of the regulation itself (See table 2). State information should, ideally, be concerned with the information that is set within the public interest. Thus, it is worrisome that information within the public interest should be "classified" as the code under the theme of "Duty" has outlined (See table 2). Effectively, classification comes to mean censorship in practice. It is to be understood that certain sensitive information regarding the state warrants classification for protection purposes, but one of the main issues with the *Secrecy Bill*is the ambiguous definition of what is deemed "sensitive" and the absolute power given to the gatekeepers of this Bill in order to apply restrictions to information. Overly vague and broad terms creates an atmosphere conducive to misappropriation of legislation.

The theme of "Participants" is interesting to observe in terms of language use and power relations (See table 2). The words "Organ" and "National" and "State" all refer to government and gives the reader a sense of authority as power of decision-making is ascribed to the government who isbestowed with the duty of a gatekeeper(See table 2). Already a conflict of interest emerges where the government is the censor of their own information. What is striking is that there is a lack of an importance placed on citizens' roles and contributionstowards this Bill. In fact, citizens are not frequently referred to in the Bill; thus creatingthe impression that power is exercised inequitably: in a top-down hierarchy. What we are left with is the impression that there is an inclination towards the imposition of power from one participant (the political elite) over another (the citizen) in an impunitive manner (the observation on the imposition of power in an imperative manner will be explained in the theme of "Conditionality").

Another aspect that contributes to the power relations between government or the "Regulators" and citizens is the theme of "Legal Discourse" (See table 2). There are two main issues with the use of legal discourses to ordain behavioural patterns of society. First is that it is a niche jargon that is understood by a select few familiar with the discourse of law and, secondly, within the South African

context, the majority of citizens have been disadvantaged by the oppressive educational system of Apartheid and suffer still under an ailing educational system under the ANC ruled government. What is problematic is that the few who do understand the language of law are able to manipulate the jargon in order to serve the ends of an elite few while the majority of citizens who rightfully should be able to participate inthe construction of their own governance are effectively excluded. This indicates an undemocratic construct of the legal framework in South Africa as it effectively creates an atmosphere that disregardsparticipatory democracy.
On the second issue of education, once more, we find that exclusion of the very citizens whom the legislation is meant to benefit is taking place through inaccessible language use and comprehension of the legislation. Again, misuse of the language of law breeds an undemocratic and unconstitutional atmosphere of governance in South Africa who claims to be a functional democracy.

The fourth theme of "Duty" presents the codes of "Review", "Classified" and "Classification" (See table 2). This is interesting in the sense that it attributes the duty of the state (the creators and gatekeepers of the POSIB) with the mandate to enforce the very legislation that censors information within the interest of the state. It is important here to consider that the historical inclination of the state has been towards secrecy in order to hide corrupt dealings and criminal activity. Once again, what is concerning is that there is a conflict of interest in the state being the gatekeepers to censor information that may or may not hide their mistakes, wrongdoings and overt assertions of power with impunity.

The last theme is an interesting one as it is a word that has less of a discursive function and more of a grammatical one. Linking this tothe second theme of "Participants" is the theme of "Conditionality" that is concerned with the frequent use of the words "Must" and "May" in the POSIB (2010) (See table 2). The previous observation on power relations comes into play here. The constant repetition of the imperative "Must"suggestscitizens' absolute complacency with the legislation even before one is to consider the actual regulations that the Bill outlines. This is problematic as language is immediately used as a tool of control in a neurolinguistic act of manipulation.
The prescriptive tone that is suggested by the frequent use of the word "May" further implies flexibility when applying the POSIB (2010). The use of the word "May" indicates less of an authoritarian imposition of the Bill which could, depending on the use of the word in context of the legislation, favour government by implying a flexibility in the application of the Bill or leaning on the imperative of "Must" to impose restrictions on citizens as is deemed fit by the gatekeepers of the Bill.

A discourse analysis of the codes and themes that dominate the *Protection of State Information Bill(2010)* reveals the proposed meaning and actual meaning of the themes within POSIB (2010) versus the actual meaning and implication of loosely defined terms within the Bill. It should be noted, at this point, that the categories within the below table, "proposed", indicates the ideal proposed meaning of the lexis of the Bill, while "possible" highlights the open-ended nature of meanings that are being proposed by the sometimes broad and sometimes vague language of legislation. It should be noted, at this point, that the categories within the below table, "proposed", indicates the ideal proposed meaning of the lexis of the Bill, while "possible" highlights the open-ended nature of meanings that are being proposed by the sometimes broad and sometimes vague language of legislation:

Level of Communication	Code	Themes	Proposed Meaning (of lexis)	Possible Meaning (of lexis)
Vocabulary:	• Information	• Regulations	• Content (information) that is to be regulated to protect the state.	• Content (information) that is to be regulated is selected information that benefits the state and not necessarily citizens.
	• Organ • State • National	• Participants	• Those who apply the legislation and enforce it on citizens.	• The omnipotent power of government in the application of censorship on citizens.
	• Act	• Legal discourse	• Formalised, linguistic framework with which to rationalise legislation.	• Exclusivist discourse in which to preclude citizens from participatory democracy.
	• Review • Classified • Classification	• Duty	• Enforcing restrictions to information that may endanger the state.	• Censoring information to hide illicit dealings.
	• May • Must	• Conditionality	• Flexible manner in which legislation is to be observed.	• Flexible manner in which legislation is to be observed.
Genre:	• Legal Framework (Language of Law)	• Legal Framework (Language of Law)	• Official and legally binding framework with which to apply and enforce the protection of the state.	• Institutionalisation, formalisation and legalisation of impunitive censorship.

(Table 3 *POSIB Qualitative Discourse Analysis*).

What the above broad discourse analysis reveals is that there is a discrepancy in the way that the language of the legislation may be interpreted and the experiential metafunction of the language that is used. As has been previously discussed, the inclination of the South African government has been to err on the side of secrecy in order to hide corrupt dealings. There has been no evidence to refute that the loosely used, vague and broad terms that make up the lexis, codes, themes and discourses within POSIB (2010) will be used to effectively censor possible criminal activity by the political elite

and the economic elite who they may collude with. In fact, media reports have investigated and proven the opposite. On the issue of access to information and legislation, adjunct professor of Media, Broadcasting, Telecommunication, Internet and Space and Satellite Law at WITS University, Justine Limpitlaw argues that, "[…] national laws can impose limitations on the right to access publicly held information, privacy laws cannot inhibit the dissemination of information in the public interest" (Limpitlaw 39). Limpitlaw foregrounds the importance of the right to communicate and access information, and the importance of this evolving consciousness for the information age. As a result of public awareness, many countries have gone to the lengths of relooking at their current constitutional rights. Many laws have been passed that havecreated provisions that support the right to access information that is classified by the state and private bodies if it falls under the public interest (Limpitlaw 39).

What is further disturbing is the observation that the POSIB (2010) has been tabled and revised on numerous occasions without due consideration of the broad and vague terms used. Despite complaints from activist groups and social actors who have made formal representations on the issue of semantics in POSIB (2010), the revisions of the Bill still contains the problematic issue of broad and vague semantics that create an écriture of legislation.

In an article titled: *What's still wrong with the Secrecy Bill?*, the Right2Know Campaign has highlighted that the *Secrecy Bill* remains a threat to the South African democracy in various ways. In the first instance, the Right2Know Campaign highlights how the public interest defence is too limited. Ideally, informationthat falls under public interest shouldbe allowed to be revealed even if it is classified. R2K identifies six main points of contention with the POSIB (2010).

The first point of contention summarises the danger of the POSIB (2010) for journalists and activists and states that the ANC's proposal for a limited public interest defence only protects citizens and activists if disclosures reveal criminal activity. This implies that any information relating to crime, such as abuse of power or actions in terms of wrongdoing that lead to criminal offence is still maintained as secret and sensitive information. Other loopholes that were identified werethe fact that the proposal is not widely applicable (will not apply to whistleblowers, journalists and activists) and they may still be prosecuted under the "[…] espionage", "receiving state information unlawfully" or "hostile activity" clauses (36-38), or if the information was classified by the State Security Agency (clause 49) (*What's still wrong with the Secrecy Bill?* 2012). Currently, the limitations that the Bill imposes create a space for the occurrence ofcorruption and exercise of impeditive power such as coercion or intimidation. This is left unaddressed. These legislative loopholes thus create opportunity through which securocrats may hold secrets and can cover up corrupt dealings.

There also appears to be restrictions on whistleblowers in the form of older legislation that allow for prosecution of individuals who make sensitive information public, despite its public interest value. Furthermore, too much power is given to the State Security Agency to determine what information is classified and deemed as sensitive.

A second concern for the Right2Know Campaign is that ordinary citizens are made the gatekeepers of secret information once it is acquired and can thus be prosecuted for possessing and sharing it. The fact that the Bill criminalises ordinary members of the public for possessing and sharing classified information, even if they are not spies or have no intent to harm national security (clauses 43 and 44) is the problem (*What's still wrong with the Secrecy Bill?* 2012). The implication is that the Bill criminalises any act of disclosure of information subsequent to the first acquisition or disclosure. When assessing other democracies, we find that both citizens and government accept that, once made public, leaked information cannot be made secret again. This is true for governments and societies that even have regressive secrecy laws and legislations.

A third aspect of contestation towards the *Protection of State Information (2010)* is that there are semantic loopholes within spying legislation. The concern for R2K is that: "The state will not have to prove that an accused intended to benefit a foreign state or hostile group, intended to harm the national security for them to be convicted of espionage or one of the related offences. It will only have to prove that the accused knew this would be a 'direct or indirect' result" (*What's still wrong with the Secrecy Bill?* 2012). The use of the word "intent" becomes problematic as it could result in the malicious prosecution of academics, journalists, activists, whistleblowers and citizens in general whose main aim may betoexpose crime and corruption.

A fourth problem that The R2K Campaign has identified with the *Protection of State Information (2010)* is that information can be classified too easily. The campaign argues that if the Bill becomes law, only the security installations and services with their related bodies will be able to classify information. The only safeguard set in place is that the Minister of State Security will be entitled to nominate other state bodies if they can show "good cause" as outlined in clause 3 (*What's still wrong with the Secrecy Bill?* 2012). R2K argues that this safeguard is simply not strong enough and the power to indiscriminately classify may become all-pervasive. R2K's Campaigns makes clear that, despite assurances that the power to classify will only be granted to senior officials, as outlined in clause 13, any loopholes would mean that even junior members of the security services will be

granted classification powers until their superiors decide otherwise (*What's still wrong with the Secrecy Bill?* 2012).

A fifth issue with the *Secrecy Bill* is that accessing classified information is very difficult, even through the legal channels. R2K discusses this by highlighting that, in a procedure similar to the *Promotion of Access to Information Act (2013),* the Act allows applications for access to classified information as outlined in clause 19. The clause dictates that declassification and disclosure of 'sensitive information' where the public interest is the exposure of a substantial contravention of the law, "[…] criminal misclassification or an "imminent and serious public safety or environmental risk" outweighs the harm that will arise from disclosure. But it is completely silent as to what should happen when none of these exceptional circumstances are met (*What's still wrong with the Secrecy Bill?* 2012). This is exacerbated by the fact that the Act appears expressly to override POAIA (2013), clause 1(4) (*What's still wrong with the Secrecy Bill?* 2012).This has the effect of empowering state entities to refuse access to classified information on the grounds that it is simply classified and not if there could be an underlying reason for its protection from disclosure.
A related issue that R2K has identified focuses onobtaining classified information and applying for declassification. According to the proposal, the classified information will need to be returned even before the declassification of information is applied for as outlined in clause 15. Furthermore, R2K identifies how chapter 7 is not sufficiently independent from the Minister of State Securityand how the public has no access to the panel. This suggests that slow and expensive court procedures are the best option when a department refuses to declassify information (*What's still wrong with the Secrecy Bill?* 2012).

Lastly, R2K has become concerned with the fact thatolder, unconstitutionally classified information will remain classified. R2K has highlighted this concern by making clear that information classified under Apartheid-era laws and policies will remain under classification under the Act pending review which has no set time limit, as outlined in clause 44. R2K highlights how "[a]cademics, journalists, and many activists will become instant criminals for having access to apartheid-era files revealing human-rights abuse. The easy solution would be to decriminalise the possession of pre-Act records (even if disclosure is criminalised, which may be problematic in itself), which would allow time for declassification applications"(*What's still wrong with the Secrecy Bill?* 2012).

The above six issues not only contravenethe principlesof the *Promotion of Access to Information Act (2013),* but effectively actas a barrier to the progression of free access to information for South

Africa. Despite the *Secrecy Bill* being set in place to protect the Republic from harm and actin the best interests of the state, there appears to be a paradox in the POSIB (2010), making access to information and the possession of classified information within the public interest much more difficult. Legislations acting in contrast to the fundamental mandate of promoting transparency and communicative freedom in the name of free and fair participatory democracy serveto undermine the very same democracy and should be viewed as anti-revolutionary or anti-democratic.

b.) Protection of Personal Information Bill (POPIB):

The legislation that protects the privacy and personal information of South Africans is known as the *Protection of Personal Information Bill (2009).* In its ideal form, the purpose of the legislation is to protect the South African citizens' private information from exploitation bypolitical and economic elites but also makes provisions for personal attacks of our information by black hat hackers and digital criminals.

What the *Protection of Personal Information Bill (2009)* achieves is to legislate the right to privacy by protectingpersonal information of citizens. According to POPIB (2009), a citizen's personal information may not be bought or sold to any other party or used in a criminal manner. Information can only be used if permission is granted by the individual or company from whom the information derives and by a secondary party that has a justifiable reason. This applies in cases where the individual has personally granted permission for their information to be used or if a law, which intersects with the POPIB (2009), requires the use of your information in order toinfluencejustice.

There are four important elements that need to be observed in the execution of POPIB (2009). The first is that of transparency. The POPIB (2009) outlines that companies and government agencies can only use your personal information if they are ensuring proper transparency within their own organization, or municipal or national office. Accountability is an essential component for accessing personal information and therefore companies and government must be accountable for the use of the information and the purpose of this use. The second is that there must be a clear purpose for the use of personal information. The purpose should be legally justifiable and there needs to be proper reasoning for the use of a citizen's personal information. The third is that of consent. In this instance, the citizen or citizens must fully understand why their personal information is being used and, upon request, the organization or government office must provide the citizens with clear communication that their information will be used for a particular purpose. Unless used for legal purposes, companies and government may not acquire and hold personal information from any citizens without their permission and every citizen has the right to request that their information be deleted if these criteria are not met. Finally, the fourth element requires proper security measures to be set in place to protect citizens' personal information. Proper safety measuresin terms of storage infrastructure must be available for the collection and storage of personal information and, in the event of a breach of security, the said company or office of government is required to dutifully inform the individual or individuals involved of the data breach. These measures are set in place to ensure that abuses of the

legislation do not occur. In the event that abuses do occur, there is a measure of complaint whereby citizens have the right to complain to a newly developed government privacy watchdog agency called the *Information Regulator*.

These clauses outline the scope and mandate of POPIB (2009) and provide positive rights for the protection of information of citizens. The Bill goes further to outline exclusions in the *Protection of Personal Information Bill (2009)* which assumes aform of negative rights for citizens. The 2013 draft of this is particularly interesting as it excludes certain public organs who may act within the public interest to make information available:

> 7. (1) This Act [SIC] does not apply to the processing of personal information solely for the purpose of journalistic, literary or artistic expression [...]
> (3)In the event that a dispute may arise in respect of whether adequate safeguards have been provided for in a code as required in terms of subsection (2) or not, regard may be had to—
> (a) the special importance of the public interest in freedom of expression;
> (b) domestic and international standards balancing the—
>
> (i) public interest in allowing for the free flow of information to the public through the media in recognition of the right of the public to be informed; and
> (ii) (ii) public interest in safeguarding the protection of personal information of data subjects;
>
> (c) the need to secure the integrity of personal information;
> (d) domestic and international standards of professional integrity for journalists […] (*Protection of Personal Information Act* 2013).

In the above extract, concessions are made for journalists and authors of artistic persuasion to use information freely but only to the extent that it does not interfere with legal proceedings or impinge upon any other rights such as freedom of expression and the right to privacy. Furthermore, information may be used if it is within the public interest. This is extended to any responsible persons relating to journalistic vocations that abide by an institutionalised code of ethics. Where such a code of ethics can be found to safeguard the protection of personal information, POPIB (2009) as a legal Billwill not apply. An important clause for our particular analysis of political elites comes in the form of Section 31. (1) which protects information of political entities:The prohibition on processing personal information concerning subjects of political persuasiondoes not apply to processing of the personal information of its members or a data subject for the purposes of (i) forming a political party or (ii) participating in recruitment of members or canvassing voters for a political party […] (*Protection of Personal Information Bill* 2009).

The above outlines restrictions on politically inclined organisations, which do not fall under section 26 whichoutlines the prohibition of processing of special personal information. In simpler terms, political elites may not use the POPIB (2009) to protect their personal information under clause (b) of section 26 which outlines that "[a] responsible party maynot process personal information concerning the criminal behaviour of a data subject to the extent that such information relates to (i) the alleged commission by a data subject of any offence; or (ii) any proceedings in respect of any offence allegedly committed by a data subject (*Protection of Personal Information Bill* 2009). This effectively restricts political entities from evoking both POSIB (2010) and POPIB (2009) to protect the sharing and publishing of corrupt dealings or criminal activities under section 27, paragraph (1) subsection (b) and (c) of POPIB (2009). To be concise, POPIB (2009) states that the general authorization concerning special personal information does not apply to processing of said informationfor the establishment, exercise or defense of a right or obligation in law; if the processing is necessary to comply with an obligation of international public lawor for the purpose of serving the public interest (*Protection of Personal Information Bill* 2009).

A case in point where the above formulation was found to be problematic is a case study into corruption that had occurred and the Right2Know Campaignwas requested to make an application to the courts using the *Promotion of Access to Information Act (2013).* The news report was published in the *Mail & Guardian* on the 3rdof May 2011.The report recounts how officials in the Department of Co-operative Governance and Traditional Affairs were displeased with the excessive spending by then minister, Sicelo Shiceka. The report recounted that one of the main grievances that was levelled against the minister was a luxury vehicle purchased for Shiceka's 'live-in partner' who had no ties to the department other than through the minister. This amounted to unjustified and excessive spending by the department. The minister's department responded in anger, stating that the car was given out because of rules that were set out in the fifth chapter of the Ministerial Handbook. By November 2010, the *Mail & Guardian* also published speculations regarding financial squandering and irregular disbursement gleaned from an internal audit report. Red flags were listed as: florists', flat-screen televisions, paintings and kitchen utensils that were bought by the department for the minister's household. Back to May of 2011, Shiceka's free-spending had again been brought into focus when the *Sunday Times* reported that Shiceka had used the department's funds to sponsor a trip to Switzerland for a personal visit to his incarcerated girlfriend. Amongst the expenses was a stay in the presidential suite of Cape Town's premium *One & Only Hotel* worth R55 000. Once again, the same justification out of chapter five of the Ministerial Handbook was used to justify these exorbitant

expenses. The *Mail & Guardian* reported how the Ministerial Handbook seemed a "[…] kind of magical carte blanche, granting senior members of the executive the right to charge just about anything to the fiscus" (Editorial*Protection of Information Farce*).

Since the Handbook appeared to be an integral part of justifying excessive spending by the department, the *Mail & Guardian* took it upon itself to further investigate and review the Handbook. This became impossible as recounted by the article: "[s]ince the book seemed to be so important, and so generous, we thought we would check it. That proved difficult. It was 'classified', said Minister of Public Service Administration Richard Baloyi, who told us to submit a Promotion of Access to Information request if we wanted to see it.[…] (Editorial*Protection of Information Farce*). Seeking further advice from legal entities around this excessive expenditure, the *Mail & Guardian* discovered that Cabinet Ministers could not ask government to foot the bill for luxury items like painted artworks, presidential hotel suites and satellite TV decoders. The mandate of the Ministerial Handbook strictly limits ministerial perks and provides a structured framework for oversight. The secrecy of the Handbook was also a point of contention, as accountability becomes impossible and the limits that are set out in the Handbook will inevitably be treated with contempt. In the above case study, it becomes apparent how the *Protection of Information Bill* could fundamentally undermine democratic principles. The *Mail & Guardian* further remarked about how the campaign for freedom of information and accountability is far broader and more urgent than the campaign against the Bill itself (Editorial*Protection of Information Farce*).

WhilePOPIB (2009) and POSIB (2010),in theory,are set out to protect the interests of citizens, as we can see from the above, the tendency (and developing norm) is to misappropriate legislation in order to carry outcorrupt dealings. Corruption in the form of misappropriation of tax payers' monies through information classification is the practical reality of the application of the POSIB (2010) and POPIB (2009) by political elites.

POPIB (2009) is explicit when it explains exemption from restrictions, particularly in juxtapositiontothe Constitution's provisionforthe freedom of expression. Ideally, this should be applied to journalists and watchdogs such as activists as well. However, we find that the unlimited power of the minister, the regulatory board and the broad and vague terms of the legislation conspire to create linguistic loopholes through which the political elite can still classify information.

POSIB (2010) outlines that the Regulator maygrant an exemptionin the circumstances of public interest if the processing of information outweighsany interference with the privacy of the data subject; orifthe processing involves a clear benefit to the data subject or a third party that outweighs

any interference with the privacy of the data subject or third party that could result from such processing (*Protection of Personal Information Bill* 2009).

It is thus important that the regulator be an impartial party or body that has no vested interest in the classification of information for corrupt ends. It is worrisome that the information regulatory body is a wing of the government,further indicating that a complainant cannot necessarily rely on the body for impartial assessment. Revealing corrupt activities is simply not in the interest of the government. The implication of this Bill is that activists wishing to use information that is deemed as undesirable or sensitive by the government will be punished. The contention lies with the broad criteria with which information may be deemed as sensitive as outlined by Chapter 10. In this instance, the problem lies with the broad term "Regulator's initiative" which may or may not be used with impunity to cover up corrupt activity (*Protection of Personal Information Bill* 2009).

The table below contains the results of the quantitative textual analysis applied to the POPIB (2009). What we notice from the onset is that there is a parallel between POSIB (2010) and POPIB (2009) in terms of intertextuality:

Word	Length	Count ▼	%	37067_26_11_Act4of2	%
information	11	690	4,13	1554	2,71
regulator	9	386	2,31	390	0,68
personal	8	364	2,18	1428	2,49
act	3	329	1,97	385	0,67
section	7	309	1,85	329	0,57
subject	7	247	1,48	271	0,47
may	3	246	1,47	246	0,43
data	4	241	1,44	261	0,46
subsection	10	216	1,29	228	0,40
processing	10	212	1,27	276	0,48

(Table 4 *POPIB Quantitative Textual Analysis*).

What we see in the above table of the top ten most frequently used words is the parallel between what is being regulated and the application of the regulation between POSIB (2010) and POPIB (2009). The codes "information" and "data" refer to what the Bill intends to regulate, while the code "may" indicates the manner in which the regulation will be enacted (See table 4). In both POSIB (2010) and

POPIB (2009), it isnoted that flexibility in the application of the Bill is present due to the semantic implication of the word "may" (See table 4). Much more attention appears to be placed on the structure of the Bill itself as evidenced by the frequent mention of codes like "section", "subsection" and "act" (See table 4). What is most noteworthy, however, would have to be the suggestion that the application of the POPIB (2009) is, like the POSIB (2010), can be negotiated and is left at the discretion of the gatekeepers of the Bill as evidenced in the theme of"Conditionality" (See table 5).

After quantifying the most frequently used words within POPIB (2009), it becomes necessary to group the words into overarching themes in order to better isolate interdiscursive data for interpretation. What is clear from the thematic analysis of the data in table four, and one of the larger concerns for these communicative freedom Bills, is the application of the Bill due to the code of "may" being used:

Extract	**Code**	**Themes**
Protection of Personal Information Bill	• Information • Personal • Data	• Regulations
	• Regulator	• Participants
	• Act • Section • Subsection	• Legal discourse
	• Processing	• Duty
	• May • Subject	• Conditionality

(Table 5 *POPIB Qualitative Thematic Analysis*).

The theme of "Regulations" is occupied by the codes "Information", Personal" and "Data" (See table 5).This is an indication that the Bill deals with the regulation of personal information and data. This is in line with the mandate of the Bill to protect the outlined personal information and data of the citizens of the Republic. What the Bill deals with is the protection of personal information and, thus,

inevitably raises a concern about the right to privacy and what sort of information may be gleaned by government and corporations. This becomes a tricky situation in a Republic that, as Duncan and Gumede has highlighted, has an affinity for surveillance. As is demonstrated through these textual, thematic and discourse analyses, the insufficient consideration and application of one right-- the right to communicate – comes to affect other rights that are closely associated to it. In the case of our communicative freedom legislations, the right to privacy is also affected and could be negatively impacted due to the misappropriation of the language of the law. This is why a semantic analysis of the language of the law is important: to ensure the realisation of rights and social justice. Without properly consideringtheapplication of rights that is universal for all citizens, what we have is a language of law that is ineffective in protecting citizens of South African.

The theme of "Participants" is occupied by the code "Regulator" (See table 5). Once more, there appears to be far more of a focus on the gatekeepers of the Bill as opposed to the actual participants that the Billaimsto protect: the citizens. What this indicates is that there is more consideration for the powers that gather and "process" data than there is for the citizens who are most affected by the possible violation of the right to privacy (See table 5). What is concerning is that, quite often, it is the organs of the state namely The Office of Communications and organisations like the State Security Agency (SSA) that are the harvestersof data and information. The surveillance and storing of citizens' information becomes worrisomewhen considering our analyses that information is the source of power within the network society. Furthermore, it is a problemthat citizens are not allowed to know what information is being gathered about themdue to the *Protection of State Information Bill (2010)* that deems this information "sensitive" and that prevents citizens'own data from being made available to them. What we are left with is a situation where the Republic has become less anthropocentric and more of a security state. The same argument can be made for telecommunication corporations where the gathering of information has been legislated through *The Regulation of Interception of Communications and Provision of Communication-Related Information Act* **(**RICA) or the banking cartels who have legislated information gathering in the form of *The Financial Intelligence Centre Act* (FICA).

The third theme of "Legal Discourse" is dominated by the codes "Act", "Section" and "Subsection" (See table 5). Once more, we find that legal discourses hold the now familiar inequity of power relations between the gatekeepers of the legislation (most often the political and economic elites) and the citizenry. With an unequal balance of power in terms of social hierarchy, citizens are already subservient to the political and economic elites. This is coupled with an inequity of class, education

and wealth between the elites and the citizens. Legislating the restriction of information, the gathering and processing of information as well as access to information while having the very creators of these legislations, the political elite, being the gatekeepers and executors of these legislations is surely a conflict of interest. The worry is that the interest of the political and economic elite will be served above the interests of the citizens whom they are charged with protecting. The interring of rights into the language of legislation is yet another level of censorship by proxy since the average citizen is not able to freely access the right knowledge about their rights and responsibilities due to it being codified into inaccessible language that only the elite can afford to understand.

The theme of "Duty" is represented by the code "Processing" (See table 5). What is interesting here is that the duty most frequently focused on is that of processing data within a culture and atmosphere where governments and corporations are known to exploit the use of surveillance in order to manipulate society and gain access to opportunities to amass power and wealth at the expense of citizens. Further linguistic implications of the code "Processing" reveals alternative yet fitting meanings ascribed to it (See table 5). Linking to the analysis in the theme of "Legal Discourse", the use of "Processing" as a code could imply the series of mechanical operations through which order is maintained, preserved or changed (See table 5). This is interesting to note in terms of the acquisition of power and wealth by the political and economic elites. Concerningly, there appears to be an inclination towards the mechanisation of information restriction through legislation, effectively using legislation as a means to institutionalise the violation and, in some cases, the cessation of communicative rights for citizens.

The final theme for POPIB (2009) is "Conditionality" which is framed by the codes "May" and "Subject" (See table 5). Here, we find the use of the word "Subject" to be most indicative of the theme of "Conditionality" in the sense that it is applied in order to stipulate the condition under which situations or actions are permitted or is possible. The issue here is that the gatekeepers of the information that is gathered from citizens effectively place prerequisites, preconditions and restrictions on information that is not rightfully theirs to begin with. What citizens are left with are constraints on their right to privacy and right to know. This is reinforced by the fact that citizens may beaware that their information is being gathered, but they are not allowed to know the scope of this information and how it is being used due to restrictive legislations such as POSIB (2010). We also find POSIB (2010) and POPIB (2009) having the most in common by the use of the word "May" (See table 5). Much like POSIB (2010), POPIB (2009) uses the code "May" to describe a less authoritarian approach to the application of the Bill. This was observed as being worthy of concern

due to the suggestion of a relative flexibility in the application of the Bill. This prescriptive tone, of course, should be assessed in terms of its application within the context of the POPIB (2009) itself. However, it must be mentioned that the frequent use of terms such as these without proper explanation is exactly what leaves the Bill open to interpretation and thus criticism. What is left is anBill with a variety of loosely defined terms that can be semantically manipulated by those who have the knowledge and understanding of the language of law. Furthermore, it effectively excludes the average citizens through the medium of education as previously discussed. For participatory democracy, this is a major stumbling block. The fact that, despite criticism from communicative freedom NGO's on the problem of semantics in these Bills, the government still pursues the tabling of these Bills without linguistic reformations is an indication that perhaps the manipulation of these legislations is becoming a desiredpractice.

Having grouped our POPIB (2009) codes into themes, it now becomes easier to have a look at the discourses within the Billthatreveal some hidden or unintended meanings that the Bill could have. Once more, it should be noted that the categories within the below table, "proposed", indicates the ideal proposed meaning of the lexis of the Bill, while "possible" highlights the open-ended nature of meanings that are being proposed by the sometimes broad and sometimes vague language of legislation:

Level of Communication	Code	Themes	Proposed Meaning (of lexis)	Possible Meaning (of lexis)
Vocabulary:	• Information • Personal • Data	• Regulations	• Protecting personal information and data and honouring the right to privacy for citizens.	• Gathering and exploiting of personal information of citizens' for nefarious or illicit dealings.
	• Regulator	• Participants	• Those who apply the legislation and enforce it in the interest of the public whose information has been gathered.	• Those who apply and enforce the legislation in a flexible manner to allow the use of information when it serves the interest of gatekeepers.
	• Act • Section • Subsection	• Legal discourse	• Formalised, linguistic framework with which to rationalise legislation.	• Exclusivist discourse in which to preclude citizens from participatory democracy.
	• Processing	• Duty	• Recording information and processing it for the purpose of protecting citizens' interests.	• Recording and processing information from which selected information can be used to advance political and economic agendas.
	• May • Subject	• Conditionality	• Application of legislation catering to diverse conditions for the requesting of information.	• Flexible application of the legislation depending on the gatekeeper's discrepancy.
Genre:	• Legal Framework (Language of Law)	• Legal Framework (Language of Law)	• Official and legally binding framework with which to apply and enforce the protection of the state.	• Institutionalisation, formalisation and legalisation of impunitive censorship through the establishment of boundaries to accessing information.

(Table 9 *POPIB Qualitative Discourse Analysis*).

The above discourse analysis of the POPIB (2009) shows us how the regulation of the gathering and use of citizens' information is essentially ineffective if the gatekeepers of the Bill, who are the regulator, are not regulated. This creates an atmosphere that is fertile for exploitation. In the case of democratic governance where transparency and participatory democracy are key principles for the successful implementation of justice, there can be no space for loosely framed semantics within

legislation that empowers the rights and responsibilities of an entire community of citizens. If, as proposed by the South African government, there is a respect for the principles of transparent governance, then it raises red flags that there are more Bills aimed at the restriction of information than there is for access to information. By looking at the overall reinterpretation of the aims and goals of the *Protection of State Information Bill (2010),* it can be seen that semanticsplays a big role in the interpretation of legislation. The result is a battle between subjectivity and objectivity,where the truth value of situations are determined by the subjective application of legislations by an elite few: gatekeepers of legislation. It is those with the most power, whether it be political and economic, that can determine what is truth and what is untruth. By this definition, any situation that involves political and economic dealings can be interpreted subjectively according to those gatekeepers of our restrictive legislations in order to serve their own ends. This leaves citizens at a clear disadvantage as, although democratic principles outline that political elites serve to realise the will of the people, it is clear that, in practice, the conduct of the political and economic elites simply does not conform to democratic principles. British academic and philosopher, Nigel C. Gibson, in his research titled "Fanonian practices in South Africa" has written extensively on the Fanonian position of the South African government. In an exposition on protest and counter-power movements in Apartheid and post-Apartheid South Africa, Gibson observed that "[…] the central issue in the 'transition' fromapartheid was not the question of the most useful economic paradigm […] but rather the managerialdetermination to discipline and control the organised mass movements" (Gibson 2). What this means is that, in the post-Apartheid era, politics is an elite space of engagement for capturing the state and means of governance instead of creating (or at least starting to create) an inclusive governance of the masses with the aid of mass movements (Gibson 2). This is particularly true in an autocratic state which normalises secrecy, surveillance, corruption and even state capture by bringing these undemocratic principles into practice through the violation of universal human rights to privacy, communication and free speech.

c.) The Promotion of Access to Information Act (POAIA):

In the battle for transparency from political elites and economic entities in South Africa, there has been no greater progress in recent years than the *Promotion of Access to Information Act (2013)*. However, even an Actthat legislates that government and large corporations must increase public access to information that is within the public interest needs to be assessed with a critical eye. There appears to be semantic issues in Chapter 2 of the *Promotion of Access to Information Act (2013)* which limits access to information of certain political figures (*Promotion to Access of Information Acts* 2013). No doubt, considering government's preference for secrecy, these semantic issues were identified and left in place with the covert intent to confuse.
The very duty of the media and activists, to act as watchdogs to governmental and organisational corruption, is undermined by the Act. Thisconflicts with the South African Constitution whichstates that "[t]he Act of Rights applies to all law, and binds the legislature, the executive, the, judiciary and all organs of state" (*Constitution of the Republic of South Africa Act 1996*). The excerpt from the Constitution is an important one, as one of the biggest fears and debates about the *Promotion of Access to Information Act* was that politicians could get away with corruption sinceclassifying information and any information that was accessed outside of the POAIA (2013) would be considered as illegally obtained. Thus, the judiciary and parliament have full control of what information journalists and activists could legally use.

For activism, it is not difficult to see why protests in the modern age have come to be a dominant practisewithin society. The potential to use these laws in order to manipulate and exploit society is a real matter for concern and discussion.In the preamble to the *Promotion of Access to Information Act*, the purpose of the Actis made clear:"[t]o give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith [...]" (*Promotion to Access of Information Acts* 2000). In very plain language, the broad phrase "any information" held by the state or individuals is problematic (*Promotion to Access of Information Acts* 2013). Already, the definition is problematic as it effectively contradicts both the POSIB (2010) and POPIB (2009). It should be mentioned that POAIA (2013) was in effect before POSIB (2010) and POPIB (2009) and thus, it is crucialto note the timing of the tabling of and amendments to POSIB (2010) and POPIB (2009). One inference is that POSIB (2010) and POPIB (2009) was an attempt by government to undermine and curtail the threat that POAIA (2013) presented to the culture of secrecy so revered as a tool of secrecy by the political and economic elites. It appears, as well, that

the preamble is acting as a self-fulfilling prophecy that, instead of remembering history, is reliving history as it would have unfolded pre-1994.

POAIA (2013) goes on to express the purpose of the Act; effectively, it stands in contradiction to how the Actwould come to be utilised by government: to foster a culture of transparency and accountability by giving effect to the right of access to information and to actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights" (*Promotion to Access of Information Acts* 2013). The POAIA (2013) would come to be revered as a promising ideal for journalists and activists in its initial stages. However, as time went on and drafts of the Actwere to be sent to the general public, activists and journalists for comment, the agenda of the government became abundantly clear: to utilise the same secrecy tactics of the Apartheid government.

When considering a quantitative textual analysis of the Corpus Linguistics of the *Promotion of Access to Information Act*, some more interesting statistics that makes itself apparent much like the case with POSIB (2010) is evident:

Word	Length	Count ▼	%	POAIA - 2000 South .	%
body	4	376	10,59	384	0,97
access	6	348	9,80	1696	4,30
record	6	304	8,56	304	0,77
public	6	298	8,39	346	0,88
request	7	269	7,57	269	0,68
information	11	246	6,93	1214	3,08
section	7	237	6,67	281	0,71
act	3	223	6,28	399	1,01
terms	5	192	5,41	192	0,49
must	4	165	4,65	165	0,42

(Table 7 *POAIA Quantitative Textual Analysis*).

In the above table, we have a word count of the top ten frequently used words within the POAIA (2013). What is noteworthy is a pattern that is already beginning to emerge between POSIB (2010) and POAIA (2013). The use of the word "information" again features prominently within this Act. What seems a bit odd is that "information" is only the sixth most frequently used word in an Act that expressly deals with the promotion of access to information (See table 7). When secrecy is the central

theme, like the case of POSIB (2010), we find that "information" is featured prominently. Yet, we find that when the promotion of access to information is the central theme of the POAIA (2013), the term "information" becomes of less importance when it works against government interest (See table 7).The intertextuality and interdiscursivity between the POSIB (2010) and the POAIA (2013) is telling in terms of Duncan's and Castells' observation about information being power within the network society. This observation is evident in a close reading of these South African communicative freedom legislations. Information is less focused on when it concerns the mobilisation of rights for citizens, but is much more fervently employed to justify restrictions to communicative freedom when it benefits the maintenance of power for the political elite.

Having quantified the lexis of the POAIA (2013) and collating the top 10 frequently used terms within the document, the codes will be collatedand used to conduct a thematic analysis. The analysis below is based on the quantitative textual analysis of the entire POAIA (2013) document presented in Table 7:

Extract	**Code**	**Themes**
Promotion of Access to Information Act	• Information • Request • Access	• Regulations
	• Public • Body	• Participants
	• Act • Terms • Section	• Legal discourse
	• Record	• Duty
	• Must	• Imperative

(Table 8 *POAIA Qualitative Thematic Analysis*).

The above breakdown of the POAIA (2013)is the ten most frequently used codes within the Act grouped in order to create the five themes of "Regulations", "Participants", "Legal Discourse",

"Duty" and, slightly different from the analysis on POSIBs (2010)"Conditionality", the theme of "Imperative". The issue that needs to be dealt with is the glaring change in the last theme of POAIA (2013) that already appears to be showing a less prescriptive application of the Act, as demonstrated in POSIB (2010)(See table 2), to an authoritarian imposition of legislation as indicated by the frequent use of the word "Must" in POAIA (2013). First, we begin with the theme of "Regulations" (See table 8).

The theme of "Regulations" includes the codes "Information", "Request" and "Access", which forms the basis of what the Act regulates: requests for access to information (See table 8).Certain information of the stateis rightly concerned with information that is set within the public interest. This includes details about the management and mismanagement of government departments and expenditure which is often classified as sensitive information. In no way does the operational costs of a specific office of government threaten the safety of the nation, thus, this information should be readily available to taxpaying citizens who fund these offices. Yet, this is a detail that is protected as "sensitive information" in the offices of the South African government. The code "Request" is also striking as it puts the onus on social actors to find information as opposed to government and gatekeepers of information to make the information easily accessible and readily available to citizens (See table 8). This undercuts the constantly repeated mantra that is focused on transparency within the South African government and, instead, evidences yet another inclination towards secrecy. Whether the secrecy is derived from the omission of information or making the information so difficult to get hold of that it remains obscure to the average citizen, the outcome is the same: an effective censorship of information within the public interest.

The theme of "Participants" is analysed in terms of language use and power relations (See table 8). The codes "Public" and "Body" are most frequently used (See table 8). We find that there are really two participants who are involved in the transaction: the "Body" which represents the gatekeepers of information and the requestor of information who is most often the "Public" in the context of the Act (See table 8).The fact that the onus is on the public to seek information as opposed to information being made readily available to citizens is stressed here. This is evidenced by the fact that the public and requestor are the primary, dominant actors mentioned in the Act. The frequently used "Body" indicates that less responsibility is placed on the gatekeepers of information to make information readily available as they can determine whether information should be made available to the public. Once more, we see an inclination towards secrecy as opposed to transparency.

Another familiar aspect that touches on the idea of power relations and the submission of citizens to the "Body" of power is the theme of "Legal Discourse" (See table 8).The theme of "Legal Discourses" has much the same characteristicsas seen in the thematic analysis of POSIB (2010). The two main issues with the use of legal discourses to ordain behavioural patterns of society is the niche jargon and the lack of understanding by the average South African citizen due to the oppressive educational system of Apartheid and the fact that South Africa still suffers under an ailing educational system in the ANC ruled government. There is a tendency towards exclusivity and secrecy that does effectively undermine transparency and promotes censorship. This in turn creates an atmosphere that disregardsparticipatory democracy.

Thetheme of "Duty" is comprised of the code "Record"(See table 8).Simply put, the duty that is executed by the gatekeepers of information is to record, archive and distribute information as is deemed necessary for the effective functioning of democracy. This is problematic in the sense that the state creates the parameters for how information could be accessed within the POAIA (2013) which is further fortified and entrenched by the principles guiding thePOSIB (2010) and POPIB (2009). The consequence is that instead of promoting access to information, POAIA (2013) creates parameters for what information may be accessed and defines the conditions citizens need to abide byin order to gain access to information. Policing information within the public interest by creating conditions to access it has the opposite effective of promoting access to information.The result is a situation where censorship is poorly veiled as promotion of access to information while being fortified by potentially censoring legislation such as POSIB (2010) and POPIB (2009). This is furthermore interesting in the sense that it attributes citizens with the duty of acquiring information that the creators and gatekeepers of the POAIA (2013) Act, political elites, have complete control over. A preliminary glance at research conducted in 2016 by Access to Information Network (ATI Network) which will be analysed below will indicate why this is problematic. A very high percentage of information requests to the courts in South Africa are denied, evidencing the failure of POAIA (2013) and an inclination towards censorship in experiential terms. This merely entrenches the idea suggested in the theme of "Duty" for POSIB (2010) that government holds the mandate to enforce the very legislation that may censor information within the interest of the state. In the case of the POAIA (2013), this is despite the legislation proposing to promote access to information.

The theme of "Imperative" was identified due to the code "Must" being dominant and recurring within the text of the POAIA (2013). The use of "May", as in the POSIB (2010) and POPIB (2009) indicates less of an authoritative imposition of regulations and positions the instruction as a suggestion (See table 2). The authoritative tone that is implied with the use of "Must" indicates the

imperative nature with which the POAIA (2013) is applied to citizens. Seeing as POAIA (2013) deals with information that is within the public interest – often information that political elites want hidden – this poses a problembecause it has the potential to hide illicit dealings and transgressions. This, once more, evidences a tendency towards secrecy from the government.

A further discourse analysis of the codes and themes that dominate the POAIA (2013)reveals the proposed meaning and actual meaning of the themes versus the actual meaning and implication of loosely defined terms within the Act. It must be made clear that, within the categories in the below table, "proposed", indicates the ideal proposed meaning of the lexis of the Bill, while "possible" highlights the open-ended nature of meanings that are being proposed by the sometimes broad and sometimes vague language of legislation:

Level of Communication	Code	Themes	Proposed Meaning (of lexis)	Possible Meaning (of lexis)
Vocabulary:	• Information • Request • Access	• Regulations	• Promoting access to information through public requests.	• Selectively setting the parameters of what information may be made available to the public.
	• Public • Body	• Participants	• Those who apply the legislation and enforce it in the public sector and those who may request information.	• The onus on citizens to seek information and the censorship of selected information at the discretion of regulators.
	• Act • Terms • Section	• Legal discourse	• Formalised, linguistic framework with which to rationalise legislation.	• Exclusivist discourse in which to preclude citizens from participatory democracy.
	• Record	• Duty	• Recording information and setting parameters on what information may be obtained and by what process.	• Censoring information to hide illicit dealings.
	• Must	• Imperative	• Application of legislation catering to diverse conditions that requests for information may be made.	• Flexible application of the legislation depending on the gatekeeper's discretion..
Genre:	• Legal Framework (Language of Law)	• Legal Framework (Language of Law)	• Official and legally binding framework with which to apply and enforce the protection of the state.	• Institutionalisation, formalisation and legalisation of impunitive censorship through the establishment of boundaries to accessing information..

(Table 9 *POAIA Qualitative Discourse Analysis*).

Similar to the POSIB (2010), the above discourse analysis of the POAIA (2013) reveals a discrepancy inthe way in whichthe language of the legislation may be interpreted and how the legislation is applied in practice.Analysis reveals that the inclination of the South African government has been tilted towards secrecy even though the legislation proposes to promote access to information. What has stood out the most is the onus that is placed on citizens to find information that

is being increasingly obscured by government and gatekeepers of information. Not only is the process of applying to acquire information a hindrance to the promotion of access to information, it undercuts transparency and participatory democracy that the South African government purports to project.

The issue of transparency has, however, been a contentiousissue for the South African government as has been exemplifiedin the media sector. It is a reality that governments have been notorious for proclaiming to respect and prioritise accountability and transparency, yet, in practice, the political elite often denies the media the opportunity to operate freely and independently. Limpitlaw corroborates this notion when she discussedhow a democratic media environment "is one which recognises that the news media is essential to a government's ability to communicate with the public" (Limpitlaw 40-41). What Limpitlaw makes clear is that the media cannot possibly hold the government accountable if the environment in which the media operates is not respected. This relates to thecitizens' right to transparency. For Limpitlaw, the right to transparency means that citizens are able to monitor what government is doing and have the right to question why it is being done in a particular way (Limpitlaw 41). A lack of informed citizens is the result of the over-restricting of media or, in some cases, the blatant obstruction to publish information about government activities. This is, in itself, a denial of the right to information and education in the form of censoring information that is within the public interest and the promotion of participatory democracy. One could argue that it is also a form of censoring the knowledge commons of the citizens of South Africa. Once the public is restricted from knowing what government is doing and how they are conducting their activities, then it inevitably becomes a difficult task for watchdogs, NGOs, activists and the public to hold government to account for its actions.

There appears to be a utopian view of POAIA (2013) as expressed in the ideals, objectives and purpose of the Act. This is facilitated by the vague and broad terms used within the Act. With the language of the Act being so open to interpretation, it leaves room for politicians, lawyers and businesses to placate naysayers and activists with a keen linguistic eye with false guarantees of communicative freedom. Much of what is projected seems to insinuate that the Act would become a solution to the woes of censorship through classification, particularly during the Jacob Zuma regime, where reports and accusations of corruption were rife. Many attempts were made during Zuma's presidency to classify information in spite of POAIA (2013). A close reading of the objectives of POAIA (2013) evidencesthat it should a) promote transparency, accountability and effective governance of all public and private bodies and educating everyoneto understand and exercise their

rights in relation to public and private bodies and b) understand the functions and operation of public bodies andeffectively scrutinise Public bodies that affects their rights (*Promotion to Access of Information Acts* 2013).

Despite this utopianoutlook on access to information, the practical application of the POAIA (2013) testifies to a very different reality. Firstly, as previously discussed by Duncan, transparency is not within the interest of power acquisition for the government. This is corroborated by Castells' assessment that informationinthe information age *is* power. For government, censorship and restricting the flow of information is within the interest of maintaining power. To legalisean Actwith the mandate of promoting 'transparency' and 'accountability' would undermine this goal. Already, the lexis of the Act rings as untrue. Likewise, if censorship is a mechanism of controllingundesirable information from being made public, then the phrase "empowering and educating everyone" is a farce (*Promotion to Access of Information Acts* 2013). Accountability should be incurred either by the creators of legislation or the powers that attempt to enforce them if these ideals cannot be maintained. An example of how the POAIA (2013) seems to be just a collection of words set up to appease free speech activists and citizens can be found in the collected statistics from courts where submissions for POAIA (2013) are submitted and either enforced or rejected.

In a research conducted in 2016 by Access to Information Network (ATI Network), there have been instances of dereliction of duties by the overseeing powers of the POAIA (2013). Some of the statistics quoted are as follows:

- 46% of requests submitted to government were refused – i.e. no information was provided.
- 58% of these refusals were deemed refusals – i.e. the requests were ignored.
- Only 34% of requests submitted to government were granted in full.
- 64% of the appeals submitted to government were deemed to have been dismissed – i.e. the appeals were ignored.
- 67% of requests submitted to private companies were refused – i.e. no information was provided.
- Only 13% of requests submitted to private companies were granted in full (*ATI Network* 2017).

The denial of requests for access to information is overwhelming. For the statistics listed above, particularly the numbers associated with the POAIA (2013) requests and appeals that are directly denied by government, there is reason to be concerned. What this indicates is a tendency and preference towards secrecy. Furthermore, it indicates a failure of both public and private bodiesto

realise South Africans' right to access information. This corroborates previous analyses and, through statistics gathered by independent and impartial bodies such as human rights activists, The National Archives of South Africa, Public Service Accountability Monitor and the South African History Archive, evidences how government does not promote the access to information. Instead, information is still throttled and used as a mechanism of control, much as it was in the Apartheid regime but in a more palatable manner through seemingly democratic legislations. Public debate has surfaced around the questionable efforts of the government to restrict information in light of the fact that the POAIA (2013) can, in some ways, benefit the image of the South African government. What government risks by maintaining secrecy as a mechanism of control is public trust in both the political elite and the powers to make positive decisions on behalf of the citizenry.

Commenting on the controversial problem of secrecy in the democratic South Africa, Duncan outlines the rise of the 'securocrats' by suggesting that 'securocrats' such as intelligence, police and military officials influence government decision-making by influencing policy in their favour. In one such example, she highlights how, in South Africa, the Ministry of Security had introduced the *Protection of State Information Bill (2010)*which is a controversial Bill delegating classification powers to the security cluster and, possibly, other state institutions. This ability to censor information in such a broad manner and by a very broad and vague appointment of political power had led to the perception that securocrats were on the rise in South Africa (Duncan 4). The main reason for this is because the Bill was championed mainly by the ministry and that citizens could be jailed if they made classified information available, including whistle blowers and journalists, even if the information that is received or disseminated was within the public interest (Duncan 4).

There has been much public outcry against *Protection of State Information Bill (2010)* for its potential to be exploited in South Africa. Despite the public outcry, the Ministry of Security remained confident in itsability to have the Billpassed. Public outcry within a democratic society, of course, forced the Ministry to revise their approach to*Protection of State Information Bill (2010).* However, the newer version of the Bill has not been any better. Duncan's 2012 observation in *The Rise of the Securocrats (2014)*remains relevant in the 2020 version of the Bill, despite being revised numerous times due to social criticism, still contains problematic clauses and remains a danger to democracy and media freedom (Duncan 5). The consistent refusal to consider public contestations is a sign showing attempts by securocrats to redesign South Africa as a security centred republic through secrecy.

In 2015, the *2016 OnlineRegulation Policy (2016)* that the South African government sought to pass proposed that Internet Service Providers or ISP (the telecommunication conglomerates) control the access to online information. With the South African government having close links to, and being stakeholders in the communications sector, it is easy to see how political agendas can influence the throttling of information for the media and, by implication, the South African public. There have also been numerous reports about government entities influencing the decision-making of the SABC. This further compoundsthe potential for the media—print, radio and television—to be censored by these policies.Further concerns such as the commodification of knowledge commons that will lead to censorship by proxy has been expressed by the Right2Know Campaign. This comes in two forms: one on a legislative level and the other on an economic level from ISP conglomerates colluding to fix prices on data and, thus, internet access. The specific example of how the Right2Know Campaign has challenged government's undemocratic impulses can be found in the responses to the Film and Publication Boards' attempts to regulate the internet's online publication.

The draft policy by the FPB to regulate online content requires that, as of 31st March 2016, no one would be allowed to distribute digital content in South Africa unless it is classified in terms of the board's guidelines, or a system accredited by the board, and aligned to its classification guidelines, and the *Film and Publications Act (2016)* and its classifications. A prescribed fee, determined by the minister, will be imposed and, after payment, the distributor can classify content on behalf of the board by using its classification guidelines and those of the *FPB Act (2016).* An even more outrageous regulation published in March 2016 had tried widening the categories of businesses that must register with the board. Online content distributors, for which a fee of up to R750 000, that is to be determined by the board, is payable (*Film and Publication Registration Policy* 20).The draft policy goes further to dictatethe executive power of the board to order an administrator or any online platformof self-generated content to take down materialdeemed bad or harmful to children. If the content is from a worldwide corporation like *YouTube*, the board can remit decisions to its classification committee for classification. The Right2Know Campaign has taken issue with this by outlining in an official response to the Portfolio Committee of Communications. The Committeeoutlines that what is at stake with the FPB's *Online Regulation Policy (2016)* are the public's liberties and, more broadly, the overall health of our democracy. This underscores the need for extensive and severe reactions to any legislation and regulation that could cede even more corporate and state control over the internet. Given South Africa's current socio-political state, with all of its political and economic disparities, it is a necessity to promote internet access to promote access to knowledge commons and encourage education and literacy. This is particularly important

in a networked society where internet access is essential to promote such education. The Right2Know Campaignhas submitted to a formal address in Parliament that South Africa needs anenabling legislation, while rejecting legislation that is overly restrictive and which frames the internet primarily as a threat (*Right2Know Submission on the Films and Publications Amendment Act [B37-2015]* 2). What has become most problematic in many of the observations on communicative legislation by R2K is the language of law. The Right2Know Campaign has argued that the language of many communicative freedom policies, particularly the FPB's *Amendment Act (2010),* is troublesome because of theAct's definitions being too broad and vague on definitionslike 'online distribution' and 'distribution', 'publications', 'child pornography' and overlapping definitions of 'film' and 'digital film'(*Film and Publications BoardAmendment Act* 2010*).*

Fundamentally, theRight2Know Campaignargues that the broad and unclear use of terms gives room for this policy to be used for censorship of the internet, both for political and economic reasons. Thus, the accusationlevelled against the Film and Publications' Online Regulation Policy as unconstitutional is justified. Clearly flouting the provisionsof the South African Constitution, the FPB, as acting gatekeeper of the safety of media consumers, seems to be exercising its power to censor by restricting the free flow of information with the imposing of licensing fees for content.The Right2Know Campaigncontends that this proposed policy is unconstitutional in terms of chapter 2 of *TheBill of Rights (1996),* which outlines the freedom of expression thus: 1) Everyone has the right to freedom of expression, which includes- (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas (*Constitution of the Republic of South Africa Act* 1996). Furthermore, the *Promotion of Access to Information Act (2013)* recognises that the freedom of speech should "actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights" (*Promotion of Access to Information Act* N/A).

Clearly reaffirming this point, the Right2Know Campaign outlined that the need for a free and 'open' internet is essential for the realisation of communicative freedom in South Africa. On the issue of the democratisation of the internet, R2K stated that it had consistently engaged government on matters of free and open internet and how it is crucial to a fuller realisation of our constitutionally enshrined right to freedom of expression (*Right2Know Submission on the Films and Publications Amendment Act [B37-2015]* 2). For the Right2Know Campaign, internet freedom is thus a central concern for communicative freedom. The proposed regulation of the internet, in the manner that the Film and Publication Board had proposed, creates more hindrances to communicative freedom as opposed to

promoting it in collaboration with the South African Constitution. The potential for media censorship is salient. When considering South Africa's past experiences with censoring sensitive information and the exploitation of vague legislation, the Amendment Act does little to remedy the tendencies of the political elite to act on their undemocratic impulses. This is particularly relevant and applicable in the case of the media in South Africa. On media censorship in a security state, Duncan discusses how "in 2010, public concerns were also raised about an ANC proposal to introduce a statutory Media Appeals Tribunal, which would have placed some of the most controversial judgements and editorial matters under political control" (Duncan 5). This is yet another example of how 'securocrats' have come to be seen as a threat to South African democracy and how quickly a democratic Republic can regress into a secret state. Duncanreflects on how, in the fight over the *Protection of State Information Bill (2010)* between government, the media and civil society, R2K has accused securocrats in the government of trying to make South Africa a "society of secrets" (Duncan 5).

Further contestations with the *ICT Policy (2016)* were brought forth in response to the proposed green paper discussion by the Right2Know Campaign in January 2015. In this response, the Right2Know Campaign highlighted two main points: that community voices continue to be neglected in the formulation of *ICT Policy (2016)* and that policy thus far seems much too focused on growing an industry as opposed to protecting South Africans' basic right to communicate. Elaborating on the latter point, the Right2Know Campaign expresses particular concern with private telecommunications providers who are capturing the *ICT Policy (2016)* in South Africa and how the proposed green paper discussion has done little to deter the trend of private interest in the governance of the South African people. The suggestion is that the government's consultation with human rights groups and civil society is merely a formality and that the response resulting from this is seen as little more than an insignificant contribution to an already set agenda. The important part, then, is uncovering what this agenda may be.

Considering the lateral decision making of the South African government as shown above, one could conclude that the South African government has blurred lines between itself and the majority supported ANC political party.This has been discussed from Gumede's perspective in this dissertation (Gumede 11). Exacerbating this matter, the ANC and their economic entities have also blurred lines between legislation and interests for monetary gain. An intricate web of interconnectedness thus links government, politics and business in an indecorous tangle of political power and profit. The splicing of political party and government has become South Africa's "new

normal" post-Apartheid. For Gibson, it is encapsulated in the concept of "hegemony" which he defines as a "[…] processes of political, economic andsocial consensus, involving the interplay of force, consent and complicity, and implying a struggle or contestation in a number of different spheresof society at the same time. Hegemony is, by definition, contested andnever absolute, shifting and pragmatic and never principled" (Gibson 76). In part, Gibson, in his Fanonian observations on the South African government highlights citizens' contribution to our political hegemony: that we are indeed "complicit" (Gibson 76). What is worse is that unabated freedom of speech threatens the secrecy of corrupt dealings. Communicative freedom generates debates and awareness around these issues and this has led to a political and economic disapprobation to freedom of speech. Legislations such as the *Protection of Personal Information Bill* and the *Promotion of Access to Information Act* in South Africa specifically highlight possible abstractions in the framework of the law that may hinder freedom of speech.

ii) Corpus Linguistics Findings (POSIB/POPIB/POAIA):

The misappropriation of POSIB (2010), POPIB (2009) and POAIA (2013) shows a distinct resistance by government and ISPs to freedom of speech, which has led to a rise in protests and fervent contestations within media debates. One of the main freedoms under attack is the freedom of expression. According to the South African Constitution, the greater moral good can be found in transparency which is essential for participatory democracy. Looking at the historical context of the governance by church and state over societies in the past, suspicion of government is a very real anxiety that plagues citizens. Governments are fearful of communicative freedom and this is evidenced in the persistent neglect of the semantics of legislation even after officially being made aware of the shortcomings of overly broad, narrow and sometimes vague terms rooted in the actual language of communicative freedom legislations. While semantics plays a critical role in the implementation of justice for communicative freedom, so, too, does the allocation of power to regulate the communicative freedom. South Africa should be equally concerned about who the gatekeepers of our communicative freedom are.

POSIB (2010) became a concern when it created the opportunity for government to censor information at their discretion. Activists saw that the language of POSIB (2010) was too broad in that it granted powers to any government sanctioned gatekeeper to which the Act referred to as a "classification authority" (*Protection of State Information Bill* 2010). The overreaching power of the Minister of State Security to grant classification powers is also

problematic if used with impunity for unconstitutional purposes. As discussed in the analysis of POSIB (2010), the vague terms used in POSIB (2010) are left to the interpretation of the Minister, suggesting a sense of absolute power. There is a very real worry that the Minister's definition, for example, of "hostile activity" by activists may purposefully be manipulated to imply violence and result in the partisan prosecution of journalists, activists, academics and whistleblowers during legitimate protesting of social injustices. This concern is not outlandish as media reports concerning unfair application communicative freedom legislations have been rife.

The issues with POSIB (2010) are varied. In the first instance, the government's role in playing the gatekeeper of information when censoring their own information shows a clear conflict of interest. Under POSIB (2010), the state has the power to classify their own information that may be within the public interest. The "participants" in POSIB (2010) mainly refer to the government, showing an unequal distribution of power between the government and citizens. A further issue with the language of POSIB (2010) is that it is saturated with jargon, making its interpretation and comprehension exclusivist in nature. The very existence of a legislation that is not understandable to the citizenry that it is meant to serve undermines the concept of participatory democracy that our government wishes to promote, indicating that the idea of a participatory democracy in South Africa is a false ideal in practice.

POPIB (2009) raised concerns when, in one case, the state censored the ministerial handbook to avoid public scrutiny of the misappropriation of state funds to fund the private lifestyle of ministers. POPIB (2009) is concerned with the regulation of personal information which inevitably raises concerns about privacy and what information the government is allowed to collect on citizens. This is a problematic issue in a state like South Africa where the state has an affinity for surveillance. What is worrying about both POSIB (2010) and POPIB (2009) is that they work in favour of exclusion of citizens from participating in their democracy. POPIB (2009) makes it so that information can be gathered about citizens, while POSIB (2010) enables government and state organs to censor "sensitive" information that they gather from POPIB (2009), RICA and other information gathering regulations and acts.

The POAIA (2013) sees government as the gatekeepers of information, allocating absolute power over what information watchdogs of power abuses may legally obtain, disseminate and discuss. While "information" should be the main concern of the POAIA (2013) document itself, what we find is that "information" is only the sixth most frequently used word in the entire POAIA (2013) as

indicated by our Corpus Linguistics analysis of the Act (See Table 7 *POAIA Quantitative Textual Analysis*). The inference is that the concept of "information" is less important when it comes to affording rights to citizens but more fervently employed to justify restricting communicative freedom. What is most problematic to note from our analysis is that the onus is always on the public to request information, placing the role of the government as gatekeepers of not only information but effective governance and fair implementation of justice in a passive role. Information should, ideally, be made readily available to citizens when it is within the public interest. Likewise, it should not be the duty of the public decry and reprimand unjust behaviour when blatant evidence is being made public. The duty of government, the Constitutional Court, state security organs and our judiciary in general should be to actively investigate instances where possible injustices are being flagged as opposed to waiting for the public, media or activists to do the job of our policing sector.

CHAPTER SIX

Communicative Freedom: An Activists' Perspective: Questionnaire

i.) Questionnaire

Part of the primary research and data collection is an open-ended questionnaire which sought the opinions of professionals in the field of human rights and law. These responses assisted in coming up with thematic patterns around the discourses of communicative freedom in the South African context. The questions explored the effectiveness of protesting political and economic impediments to communicative freedom. The data collection was employed, as described by David R. Thomas. Thomas outlines three reasons for the use of an inductive approach to data analysis which is appropriate for this study. The first is to condense varied raw data into summaries; the second is to establish links between the research objectives and findings from the raw data and, thirdly, to develop a theory from the experiences or processes that derive from the raw data (Thomas 1).

The data analysis of the survey was rooted in a close reading of the detailed responses by the experts. This close reading does not assume that because the participants are experts in their field of communicative freedom that all opinions will be accepted at face value. The aim of this close reading is to interrogate the semantic value of the responses and to critique them. The intention is to explore the patterns emerging from the open-ended survey and juxtapose them with debates around communicative freedom. The participants were allowed to draw their own hypotheses from personal and professional points of view. These were then closely analysed within the context of the existing legislation, communicative freedom and communicative freedom activism in South Africa.It must be stated clearly here that the goal is not so much to use the interviewees to answer empirical questions as to demonstrate how ideology works.

• Brief Profile of Respondents

The respondents to the surveyhad opted to remain anonymous due to the sensitive nature of their work. Theparticipants are professionals in academia, legislative and consultative roles in South Africa's digital communication spheres, as well as activism. In place of their names, and for the purpose of this research, they are identified as respondents A, B, C and D.

Respondent A is a Professor of Journalism. Previously, respondent A was the Chair of Media and Information at a renowned School of Journalism and Media Studies. Respondent A is also a long-time and prominent media activist and governs as executive director for various activist groups on freedom of expression. Respondent A has three post-graduate degrees, is an author, has researched widely on media policy and media freedom issues and has been instrumental in the formulation of many courses and circular on media studies and freedom of expression.

Respondent B was formerly an organiser of the Right2Know Campaign. For the past seven years, respondent B has specialised in challenging state secrecy, surveillance and militarisation. Respondent B has also previously worked as part of OpenSecretsZA, a research project on the connection between militarisation and corruption in apartheid South Africa.

Respondent C is a Pan-African feminist, journalist and activist who currently oversees national communications for a well-known free speech and communicative rights NPO in South Africa. Respondent C has experience in radio presenting and producing for local radio stations and has even run flagship shows on nation building. This afforded respondent C the opportunity to engage with many change-makers. Respondent C has also previously been selected as one of the Mail & Guardian's 200 young South Africans who are shaping South Africa's future.

Respondent D started as an intern at in Research, Monitoring and Evaluation, after which they obtained a Bachelor of Social Sciences from Rhodes University, in addition to a Postgraduate Diploma in International Studies. Respondent D's focus has been on Peace and Security in the Sahel region and they have worked as a member of the YALI network as an active African feminist with a strong background in Pan-African Youth Dialogue. Respondent D has experience working in national communication rights and focuses on organizing op-ed's and educational sessions and workshops for various communicative freedoms NPO's, supporting activist to create and mobilise on various advocacy campaigns; whiletracking relevant legislation and media coverage, engaging in research and designing briefingsand policy submissions.

Each respondent was asked to respond to the five questions that address the themes of the five chapters of this research.

a.) Question 1: Can South Africa be considered a democracy according to your experience and understanding? Please elaborate.

For South Africa, as a 'new democracy' with political and economic challenges and still recovering from the inequity of Apartheid, claiming the consolidation of democracy is not that simple. There are contestations as to whether South Africa can be considered a "New Democracy" in accordance with western ideals as proposed by Diamond and Morlino (2005), or whether it is, in fact, a semi-democracy that inculcates aspects of utilitarian rule (Hague et al. 43). Thus, South Africa does not fall under consolidation, and a democracy, because the economic and political elite often act outside of the democratic institutions as evidenced by the various cases brought before the constitutional court. Factors such as corruption, undermining of the constitution and the presence of the remnants of Apartheids' inequities are clear evidence that the countryis still in a developmental phase outside of the realms of westernised democratic frameworks and principles. On this question, respondent A reflects:

> Yes, South Africa can be considered a democracy. While there are significant areas of dysfunctionality, institutions still work. The court system is still fairly independent from the executive, regular elections are held that are usually deemed free and fair, the media can exercise their freedom largely without hindrance and civil and political society can organise without too much hindrance. However, experiences of democracy differ drastically in South Africa, and are heavily mediated by class, race and gender. Informal repression is a growing reality, especially in black working class areas. Protests are suppressed through a myriad rules and regulations that make it difficult to protest lawfully, assassinations of whistleblowers and activists do occur and journalists are threatened and harassed, especially women (Respondent A in discussion with the author, November 2019).

Respondent A's comment that South Africa is still a democracy despite dysfunctionality requires some scrutiny. While many institutions still work, it is important to assess the extent to which these institutions can effectively operate to deliver on their intended purposes. The argument that dysfunctional institutions still work and thus South Africa is still considered a democracy seems flawed in the sense that the basic function of the specific institution cannot be fulfilled due to the dysfunction. This effectively renders the institution ineffective as it has become something other than what it was created for. Its basic mandate has been compromised and thus does not perform the function that the citizenry, through support of taxes, has created it to be. By not delivering what the citizenry have asked for, these institutions compromise the structural integrity of what a democracy should be. This is particularly true for public service delivery and institutions such as Eskom or the department of water and sanitation, to name a few. This observation also applies to public service institutions that deal in information such as the state owned SABC.

It is furthermore interesting to note the linguistic qualification used by respondent A when referring to the court system. Words describing the judiciary as "[…] fairly independent from the executive […]", elections are described as "[…] usually deemed free and fair […]", media operates "[…] largely without hindrance […] and political and civil movements operating "[…] without too much hindrance […]" indicates a level of resistance and opens up the statements to doubt (Respondent A in discussion with the author, November 2019). This effectively undermines respondent A's initial claim that South Africa is a democracy. This reflects a certain caution that needs to be observed about democracy in South Africa and brings into question the judiciary, elections, media and civil and political movements. If these aspects of our society are compromised from being anything other than completely free and fair, then can we deem them as truly free and fair?

Taking into consideration the above observations, respondent A appears to be erring on the side of accepting the inequities experienced in South Africa as par for the course or a societal norm that has become a culture to follow. This is dangerous as it condones dysfunctionality into existence in South Africa and, to an extent, gives permission to those who are responsible for compromising democratic ideals to continue to do so in the future. A trend in SA has been to avoid contentious issues in order to avoid the conflict that comes with dealing with these issues. In a way, we condone the inequities into existence and sacrifice our own freedoms at the altar of diplomacy.

Respondent A, furthermore, correctly observes how South Africa's concept of democracy is heavily mediated by class, race and gender. Specifically, it is interesting to note the statement that "[i]nformal repression is a growing reality, especially in black working class areas. Protests are suppressed through a myriad rules and regulations that make it difficult to protest lawfully, assassinations of whistleblowers and activists do occur and journalists are threatened and harassed, especially women" (Respondent A in discussion with the author, November 2019). Given the assessment in this specific response, respondent A's claim of South Africa still being a democracy seems to be eroded and undermined once more. We need to seriously reflect as citizens and ask ourselves hard questions based on objective truths: whether class, race, gender issues as well as suppressing protests, murdering whistleblowers and activists and intimidation and discriminating against journalists based on gender are actions of a state that is democratic and free.

Respondent B's response to the first question is as follows:

> […] my fundamental view is that ours is a society where power is contested every day. Very often the powerful interests 'win', by dint of their resources, their access to institutions, and all the other things that power brings. But we should not overlook that every single day there are signs that marginalised people and causes find voice and space and try [to] eke [sic] out a bit more influence for themselves.
> Even acknowledging the many gaps and limitations to the democratic climate in South Africa, and the ongoing struggle of so many people to enjoy basic freedoms to which they should be entitled, I don't think it's useful or accurate to classify South Africa as a 'non-democracy'.
>
> But the point is that 'democracy' is not an on-or-off state – it's an ideal to which every society or community or organisation can aspire but can never fully reach.
> For example, it is trite that participatory democracy is often significantly lower in rural areas than urban areas. The principles of openness, fairness, free speech and dignity are not equally enjoyed, and usually this inequality breaks down along racial, gender, class and other lines.
> But does South Africa have the features of an autocratic state? I think it is difficult to argue this case (Respondent B in discussion with the author, November 2019).

What is interesting about respondent B's response is that it appears to be suggesting that South Africa is not a democracy by virtue of elite powers using resources to that are not freely available to all to "win" or gain power and influence within society. At the same time, those who are oppressed attempt to gain back some form of democracy by fighting against inequities to gain some influence and form of power as currency. At the same time, respondent B is unwilling to acknowledge that South Africa can be constituted as a 'non-democracy', despite the experiential metafunction of the discourses surrounding corruption, state capture, discrimination and exclusion of citizens within the proposed democracy that is South Africa. Although respondent B has not elaborated on why South Africa cannot be seen as a 'non-democracy', despite assessments based on democratic studies, it is noteworthy to observe the absolutist sentence: "I don't think it's useful or accurate to classify South Africa as a 'non-democracy'" (Respondent B in discussion with the author, November 2019). Considering respondent B's background in advocacy, one might consider this an activist discourse that is being conveyed, which is often isolated to very specific experiences and lends itself to subjective interpretations as opposed to a more global perspective that is informed by further fields of academics or politics.

Another interesting point that respondent B makes is the observation on the difficulty of suggesting that South Africa may show signs of autocracy. Much like democracy is an ideal, autocracy is also an ideal. It is not necessarily a state as suggested by the respondent but is "not an on-or-off state" as the respondent suggested about democracy (Respondent B in discussion with the author, November 2019). There is, however, evidence that we suffer under autocratic conditions, much in the same way as we in South Africa suffer from a misguided perception of democracy. It seems, once more, that South African's have become so accustomed and naturalised to accepting our corruption, assassinations and oppression along the lines of racial, gender, class lines, that we refer to living under these conditions as the South African brand of democracy.

Respondent C's response was surprisingly concise about whether South Africa can be considered a democracy as expressed in the following words:

> No, I don't believe so. We are far from that because [sic] majority of South Africans still struggle to access basic rights like the right to communicate (Respondent C in discussion with the author, November 2019).

It should be noted here that respondent C is a young academic who has experienced years of disillusionment with the world of activism and politics. The answer to the above question reflects this in a very straightforward manner. Reflecting on the interactions that respondent C and I have had on this question, it has become clear that the right to communicate is set as an example of basic rights that is not catered for. The ideal of democracy requires this right to be catered for in order for the basic criteria for democracy to be met. Respondent C's answer reflects a broader social issue that intersects with the right to communicate; that of basic service delivery. In recent years in South Africa, basic services of water, sanitation and electricity have been grossly mismanaged, under delivered and in a state of chaos where entire towns and communities have gone without. Popular opinion from citizens and media interviews with residents of these areas have begun to show trends of corruption and purposeful mismanagement as ward counsellors, Members of Parliament (MPs) and political representatives of the ruling ANC party tend to have all of their basic services delivered to their private residence, yet the very community in which they live go without. These instances of inequitable distribution of basic needs have come to drive a further divide in the issue of class and social hierarchies within communities; aggravating an already tense issue of the gap between the rich and the poor. What makes matters worse is that, despite inequities being so blatant in communities, government is silent on the issue and tend towards justifying unfair service distribution to political elites. This has angered communities to the point of revolts, uprisings and violent protests, costing the

Republic millions of Rands in damages to cater for a few political elites who benefit from corruption and preferential treatment. The very presence of the above-mentioned social ills brings the statement that South Africa is a functional democracy into disrepute. The fact that our government plays a role in justifying unfair service delivery as perks of the political elite by citing that ministerial handbook rules allow for these types of inequities evidence autocracy as opposed to democracy.

Respondent D has replied to the question of South Africa being a democracy by reflecting on how South Africa is at once a democracy but not a democracy:

> […] on principle South Africa can be considered a democracy, we have voting rights and what has been deemed the most democratic constitution. However, the praxis of this constitution and the paradox that is South Africa makes it difficult to simply agree that South Africa is a democracy. We also have the highest crime stats [sic], we are also amongst the most unequal countries in the world. South Africa has a well defined constitutional document, but most trust between the government and its people has been broken, meaning the social contract between the government and its people is broken, this can be seen with the amount of vigilantism in the country, one example being the xenophobic attacks (Respondent D in discussion with the author, November 2019).

Respondent D makes clear that, despite the many claims that South Africa is a democracy by the political and economic elite as well as some loyalist citizenry to the ruling ANC party, claiming South Africa as a democracy in actuality is difficult. This, in part, is due to South Africa being seen by the respondent as a "paradox" based on the lived reality of daily life under the current constitution. (Respondent D in discussion with the author, November 2019) Respondent D makes clear that, on paper, the South African Constitution is declared as being one of the most inclusive and diversified, yet, in practice there is a distinct antithetical experience to this. A lived experience under the South African Constitution is far abstracted from the idealistic body of principles, precedents chapters and schedules that determine who holds power; over who they hold this power and how much power they can exercise, sometimes with impunity. Respondent D further reflects on the iniquities of our democracy by referencing crime statistics, the broken trust between government and citizens, violence and vigilantism that further expresses the displeasure of citizens in response to oppressive and impunitive governance. This position fits in well with our previous descriptions in "Chapter Two", where Hague et al.in *Comparative Government and Politics: An Introduction (2016)* suggests models for democracy to proposes that, although democracies may appear to meet western standards, certain mitigating factors forces a reassessment of whether a country is

truly democratic (43). There appears to be a connection when reviewing respondent Bs answer which, much like respondent C, is firmly of the opinion that declaring South Africa as a democracy is problematic due to inequity, poor service delivery and issues such as xenophobia.

b.) Question 2: Do you think that the terms (language) of communicative rights within legislation are too broad to be effective in protecting citizens' rights to access information and freedom of speech? Please elaborate.

A further reflection on whether the terms (language) of communicative rights within legislation are too broad to be effective in protecting citizens' rights to access information and freedom of speech was the focus of "Chapter Two". This discussion revolved around whether South Africa can be considered a democracy while being haunted by accusations of corrupt government officials, state capture and a parastatal government that clandestinely operates in the manner of the older Apartheid regime post-1994. The finding here was that even in post-Apartheid, how freedom of expression is expressed within the South African context is still greatly influenced by the legacy, clandestine tactics and oppressive culture that Apartheid was based on. The particular vision of a democracy, however much hope it spawned for oppressed South Africans pre-1994, was not yet solidified and this left South Africa in a state of nervous anxiety over the days to come after the first democratic elections of 1994. Although South Africa has one of the most progressive Bill of Rights and inclusive democracy on paper, the full concept of freedom is not yet realised as exemplified through legislative loopholes and exploitation of these loopholes by securocrats.

Respondent A focused their response by reflecting on thoughts on the South African constitution:

> Well, our constitution doesn't recognise communication rights as a discrete right, but elements of this right such as freedom of expression and access to information. In relation to the constitution, I don't know if they're too broad, but perhaps they're too narrow. Freedom of expression should be understood as a negative and positive right. In other words, it should be about defending the media and the broader citizenry from attempts at censorship (so a negative freedom from censorship), while promoting access to the means of communication as part of the right (so a positive freedom that places positive obligations on the state and society to ensure that people have access to the internet, for instance, or there is universal service and access to telephony, media diversity, etc. Defending freedom of expression as a negative right without promoting it as a positive right, could lead to the right becoming an elite right that is enjoyed by the owners of the means of production, including the means of media production. You can read this more expansive definition into the right, but many people don't.

> In relation to the legislation you mention, I do think there's some overbreadth in some areas. For instance, the definition of national security in the *Secrecy Act* [sic] is too broad, and the grounds for classification are not precise enough. With respect to the Protection of Personal Information Act [SIC], I don't think there's a problem of over-breadth there. For instance, it makes it clear that the Act [SIC] applies to national security and criminal justice matters if it can be shown that existing privacy protections are inadequate, which is how it should be. On PAIA, the grounds for mandatory refusal of records are too broad, especially those relating to national security and commercial confidentiality. So it's a mixed picture (Respondent A in discussion with the author, November 2019).

What was noted about respondent A's answer is that they feel that the South African constitution appears to be too narrow as opposed to being too broad. This position is defended by the fact that the respondent believes that simply looking at communicative freedom as a negative right will only benefit those who can then restrict these rights for citizens. The example of censorship was used to indicate how certain information should effectively be restricted to protect the well-being of citizens. This invariably points towards the right to privacy of information for citizens. At the same time, respondent A believes that these communicative freedom should be extended the promotion of access to information in order to ensure a participatory democracy, open access to education, the ability to express ideas freely using communicative infrastructures such as telecommunications and the internet as well as to ensure the media is more open. It is clear that, for respondent A, communicative rights must have a positive and negative application to protect everybody in question: this being citizens as well as the political and economic elite alike.

In relation to the current communication legislations such as POSIB (2010) and POPIB (2009), there is a clear indication that the language used is too broad and not concise enough to relevantly protect citizens. The examples given by the respondent above indicates that the interest of these legislations is not the citizens but are, instead, government and economic entities. When reflecting on the POAIA (2013), respondent A reiterates that it is inadequate, but hardly a mixed picture as suggested. The word "mixed" implies that one cannot determine an answer from analysing the examples, but a clear pattern emerges. There appears to be cases where the communicative freedom legislations tend more towards secrecy for having a language that is too broad. This allows for multiple interpretations and opens up the legislation to manipulation and subversion.

Respondent B replied to the question by stating:

> I'm not sure that I understand the premise/assumptions built into this question.

> I think it would be fair to say that the 'law' often replicates power and reinforces privilege (Although the Constitution, for example, has shown itself to be capable of radical societal transformation if correctly applied).
>
> What I can say is that where democratic principles are unrealised, for example in transparency and free speech, it usually isn't the wording of legislation to blame, but politics. Using any number of examples of public interest litigation around access to information, very often when a dispute around access to information reaches a court, for example in a dispute around a PAIA request, the court agrees that the information should have been made available in the first place – the problem wasn't the law but the lack of accountability for the officials or power holders who simply didn't want to follow the law.
> In other places, Parliament or the state might produce and uphold a law that restricts freedom of expression or access to information in a way that disagrees with the Constitution, but ultimately a court might strike that law or provision down. For example, the Constitutional Court struck down a provision of the Regulation of Gatherings Act last year in Mlungwana and Others v The State and Another [2018] ZACC 45. This year, the same court struck down a provision of the Intimidation Act in Moyo and Another v Minister of Police and Others CCT174/18. (Both these cases related to freedom of expression and the related 'right' of freedom of assembly.)
> Very often, the source of weakness is not the wording of the legislation, but the lack of political and public mobilisation to enforce fairness and justice. State and corporate power do not concede anything unless they are subject to pressure – and while courts are often willing to apply that pressure, within the confines of the law, the courts are simply too far out of reach for most ordinary South Africans. Added to that, and I think this is the case you are making, the laws are often drafted in the interests of these powerful institutions – but again, we've seen (for example in the Protection of State Information Act) [SIC] that when people organise themselves to apply pressure to the formal political processes in Parliament, they can also exert more influence there (Respondent B in discussion with the author, November 2019).

One thing to note about respondent B is that their answers undermine each other. They quickly double back and either qualifies what has been said by guiding the answer away from the original question or completely undermines and contradicts the main idea within the answer. It could speak to the uncertainty that is first mentioned in answering the question itself.

When reflecting of the wording of the legislation, the respondent denies that it is to blame for unrealised democratic principles. However, we should note that the wording of the legislation is intentional: to obscure easy access to the main message within the legislation; thereby making it difficult for ordinary citizens to read, understand and decide for themselves whether their freedoms are being violate. This makes it more difficult for the legislation to be opposed and a further

opportunity for it to be exploited or misappropriated. This makes the selection of language and its purposeful implementation a political decision and thus a political move. Reflecting on the example around the POAIA (2013) and the appeals within court, the respondents' answer seems to suggest that there is no oversight within our judicial system and that the preference, even within the courts, is to ignore the plain word letter of the law in favour of manipulating and misappropriating these laws. This is justified by claiming hindsight is 50-50 and setting this as precedence for future cases. By doing this, they have naturalised our very activists (respondent) to accept this as a norm which influences the way the respondent has answered the question. This observation is a trend that has been noticed in activists. It appears that in many cases, activists have genuinely internalised that horrors like assassinations, murders, exile race, class and gender discrimination is part and parcel of South Africa's brand of democracy.

Respondent C replied yet again in a concise manner in the words:

> Not really, I believe it covers all the relevant spheres. Yes some people misinterpret or abuse freedom of expression for their own benefit but generally we are well covered (Respondent C in discussion with the author, November 2019).

Without further clarification, this answer seems straight forward but requires qualification. What we are left with is the question of how citizens can be "well covered" if people still "abuse freedom of expression". (Respondent C in discussion with the author, November 2019) Respondent C reflects the attitude of disillusionment that is exuded by most activists and South African citizens in general. The normalisation towards atrocities is evident in the ignoring of the objective truth that when criminality is present within the application of laws and legislation, then those principles of the laws and legislation is undermined and rendered moot.

Respondent D's answer has a slightly more considered response as reflected in the following statements:

> I think that the terms of communication rights are broad but workable, what I do think is a hindrance to citizens' rights to access information is that citizens don't know. There is not much education on information access tools and channels being done by the state. This kind of work is left to civil society. Citizens are continuously offered the bare minimum communicative paths to access information, emailing the departments, calling in or visiting departments. Very little is done to encourage and educate citizens about things like PAIA requests or POPIB. I do think

> the complete opposite when it comes to freedom of speech. Citizens are clear on freedom of speech and their rights the communication legislation around this area is clear. I do believe this is one of the most protected rights especially on social media platforms, where it does become stringent or rather less liberal would be on academic platforms. Where this protection of freedom of expression also becomes somewhat clouded is when it comes to hate speech. Without a hate speech Act and a nationally agreed upon definition hate speech and freedom of expression tend to lie on dangerous lines (Respondent D in discussion with the author, November 2019).

Respondent D's answer reflects a common notion amongst free speech activists in South Africa: that an uninformed citizen is a compliant citizen. This is problematic considering the limitations of South Africa's communicative freedom legislations. One interesting comment made by respondent D is that "[c]itizens are clear on freedom of speech and their rights [sic] the communication legislation around this area is clear […]" (Respondent D in discussion with the author, November 2019). However, this statement should be closely examined by looking at examples from recent reported cases that involve freedom of speech. The Penny Sparrow case of racism is one such incident. Naturalised racists do not consider themselves as wrong. In these cases, legislation, as previously suggested, is not understood by everybody and therefore ineffective to deter people from committing crimes that they do not know are crimes. Also, citizens may not have a good grasp of what freedom of speech really entails. Because of lack of information, people will say things if it feels right to them. This is exemplified over and over again on social media platforms. Often, people say things and are taken to task for it like Penny Sparrow. Here, social media and the internet allows for the opinion of an individual to be scrutinized by the ethical relativism and absolutism of an array of human sensibilities that are commonly subjective. The popular opinion thus always wins and sensibilities are made and destroyed. In the same way, social media comes to both construct new ways of thinking and destroying older ways of thinking due to the new social contract that is constructed and agreed upon by the collective consciousness of the court of public opinion. There are also cases where people are only in opposition to what others say because their sensibility was offended yet no law has been broken. Emotion also comes to play an important role in the construction of social norms and behaviours in the absence of education of the law. In the case of South African, we too have turned to our emotions to feel whether something is right or wrong as opposed to carefully considering the other that is outside of our self-interest. This is a dangerous prospect as emotions are highly subjective.

c.) Question 3: What form of governance do you think is emerging in the power vacuum created in the space where digital activism and political resistance to communicative freedom meet? Please elaborate.

"Chapter Three"on "legislative challenges to communicative freedom" addressed the question of what form of governance is emerging in the power vacuum created in the space where digital activism and political resistance to communicative freedom meet. The central documents that were analysed were the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013).*The chapter articulated that the language of law and legislation in South Africa is problematic in terms of overly broad and vague language choices to frame citizens' rights. It assessed to what degree misappropriation of semantics within the legislation undermines citizens democratic rights to access information and exercise free speech. This chapter examined the formation of the constitution post-1994, and the role given to communicative freedoms in the development of critical citizenship and democracy in South Africa. Moreover, it analysed examples of the subversion of legislation and how this negatively affects society's right to access information. Particular attention was paid to the language used by government legislation in order to maintain power over civil society.

When responding to the third question, respondent A says of the space of digital activism:

> Well, there's multistakeholder governance, which ensures that internet governance doesn't remain the preserve of the state, but there is some research suggesting that multistakeholder governance is more of a sop rather than a real advance for participatory and democratic governance. The civil society that often form the 'participatory' element in internet governance meetings can often be elite civil society, creating a semblance of a more representative process, but without shifting power relations.
> More radical forms of governance are evident in peer-to-peer networking movements, encrypted and pro-privacy communication movements, ethical hacking and movements to bring down the cost of data and extend access to communications, through, for instance, free wifi organised on a cooperative basis. The City of Barcelona, for instance, has been experimenting with alternative artificial intelligence and smart city projects that are cooperatively managed. So new models are emerging (Respondent A in discussion with the author, November 2019).

What was noted about respondent A's answer is that we have a multistakeholder governance in South Africa, but this does not work. There have been numerous examples of the political and

economic elite (specifically ANC) exercising undue powers with impunity to restrict communications. Many examples of this can be made, but a few that stand out are their role in electing SABC board, the restrictive FPB's amendments to the FPA, the new ICT policy that ignored recommendations by R2K, not funding community media initiatives and obstructing availability of advertising to name a few. Respondent A suggests spaces of radical forms of governance in the digital space that corroborates the point that multistakeholder governance, in its current state in South Africa, does not work. The particular focus on the respondents answer on radical governance in the digital space agrees with Castells that nodes of communication and governance should be kept horizontal with no face of leadership in governance. This is similar to what #OccupyWallStreet movement had: to occupy physical space (a square in the urban space) within the U.S.A. and to occupy digital space for the purposes of protest through Distributed Denial of Service (DDoS) attacks on strategic companies and simply occupying portal space. This shows how newer forms of governance are emerging that are abstracted from the previous regimes in radical ways.

Respondent B and C had, unfortunately, had no comment on this question as they were (self-professed) to be uneducated about the complexities of digital activism. Despite being given some time to respond further, they were unable to comment at the time of writing.

Respondent D responded with the following statement:

> The form of governance that is emerging is rather stringent, depends on censorship and is very dangerous for digital activists. The kind of Governance we see happening is targeting of digital activists, blocking their access to certain media platforms, profiling and in most cases censoring their phones. What has been most disturbing is a slow shift to legislative limits by the political elite and those with ownership in the communicative rights space. This is to say deliberate legislative work to prevent certain content from making it onto communicative rights mediums. There is clearly political resistance when it comes to digital activism (Respondent D in discussion with the author, November 2019).

What is interesting about this answer is the focus on resistance. Yes, there is resistance but what is unexpected is that the resistance could be rooted in the communicative rights space itself. There have been discussions of "anti-revolutionary" or "destructive" "agents" and elements within various activist organisations who purposefully seek to disrupt the agenda of communicative freedom campaigns (Respondent D in discussion with the author, November 2019). This coupled with legislative inclinations towards secrecy would give elites a power advantage in manipulating communicative rights to favour secrecy.

d.) Question 4: Should digital activism be considered as a legitimate form of protest in a digital democracy and covered by the same communicative rights as activism in the physical world? Please elaborate.

"Chapter Four" addressed the question on whether digital activism should be considered as a legitimate form of protest in a digital democracy and covered by the same communicative rights as activism in the physical world. The chapter looked specifically towards a digital democracy and discusses the type of social framework that governs a digital information based society. It looks specifically at the power vacuum created in the nexus of political resistance to communicative freedom and the digital activism that arises as a result of this political and economic resistance. The discussion revealed that Internet Service Providers have been the impeders of progress when it comes to accessing data. This was largely due to the monetization and monopolisation of the telecommunication industry which has been transformed into an economic and information oligarchy. This omnipotent, communicative rule is imposed on and through the infrastructure of digital communication and at the cost of accessing digital information. The consensus reached in this chapter was that the ANC and economic entities had blurred lines regarding legislation and interests for monetary gain. An intricate web of interconnectedness thus links government, politics and business in an indecorous tangle of political power and profit. Communicative freedom and unabated freedom of speech came to be an escalating threat to secrecy and corruption. The close links between business and government had sparked concerns that the secrecy laws serve only the interests of corporations who exploit the working class in society for selfish gain. Legislation such as the *Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013)* in South Africa highlight possible abstractions in the framework of the law that hinder communicative freedom as opposed to promoting it.

On the legitimacy of digital activism as a form of protest, respondent A expounds:

> Yes, digital activism should be considered a legitimate form of protest and I think is increasingly. This is because there is growing recognition that rights enjoyed online should be the same as those enjoyed offline, and therefore rights should not be reduced or lessened merely because the activism takes place online (Respondent A in discussion with the author, November 2019).

Respondent A takes a positive view of digital activism by highlighting the importance of its legitimization. It is interesting to note that the respondent thinks that digital activism is "increasingly" being considered as a legitimate form of protest. This suggests that, according to the respondent, the legitimization of digital activism as a form of protest as not a major concern. Without further clarification, it is difficult to ascertain whether the respondent meant this as comment on the legitimization of digital activism as a form of protest as a movement or whether it is a comment on the time period in which digital activism has become more prominent.
For respondent A, it appears that activism and the rights that go with it should not be isolated to the space in which the activism takes place. This is an interesting notion when considered in the light of power relations in society. There tends to be a greater reaction to digital forms of protest because there is an uncertainty about power relations in society. Political and economic elites are not as proficient in the digital space as hacktivists and therefore hacktivists threaten the hierarchy of power in the physical space as much of the physical aspects of our society are ensconced into the digital space. This corroborates with Manuel Castells hypothesis: that information is power on a network society.

Respondent B agrees with Respondent A's view on digital activists rights:

> Yes. It would be false to draw a distinction between physical and digital spaces, since more and more of public and societal life take place over digital spaces. When it comes to protest and civic organisation, digital spaces have actually proved to create opportunities for more effective forms of protest and organising.
> You may know that the UN special rapporteur on freedom of assembly recently released a report highlighting the importance for freedom of assembly to be protected in online spaces as well as physical spaces (Respondent B in discussion with the author, November 2019).

Respondent B makes an important observation that digital spaces have created much more opportunities for bettering protests and organisation of protests. This has also has a negative effect on digital activism as the response to this new form of protest has been met with resistance. Burgeoning digital activism is also what has caused the elites to react out of fear as the digital space is yet not fully known to them and thus not easy to control. The loss of control is problematic for political and economic elites as this would mean conceding power to others with the risk of losing this power.

Respondent C takes a similar stance to the two previous respondents:

> It should. For example we are currently fighting for online privacy and security by lobbying parliament and treasury to operationalise the Office of the Information Regulator and enforce the POPI Act [SIC]. We are living in a digital age and as we advocate for bridging the digital divide it is important to also be well informed about the threats to our digital privacy. So in essence we are calling on the government to provide accessible BUT safe internet. No spying on the users (Respondent C in discussion with the author, November 2019).

For respondent C, it is clear that the divide between the physical space of protest and the digital space of protest needs to be bridged as we readily move into a digital era. This is achieved through allowing greater access to information by the government as this is what is currently being advocated for. What is further interesting is that respondent C places emphasis on privacy and security by stating that there should be no spying on users of the internet by government. Looking at legislation, however, our laws require mandatory weak spots to be built into our security systems for oversight purposes. The very infrastructure of our new digital space is legislated to be designed with inherent flaws that allow for backdoor access and thus spying. When the very infrastructures are built with intent for government oversight, then the integrity of our privacy is compromised.

Respondent D further agrees with the other respondents by stating:

> Digital Activism should be considered a legitimate form of activism. The digital space has become a space of information sharing, exchange and learning and thus has become a space for activism. Much has been achieved with social media campaigns, recalling entire ministers' starts most times on twitter, most petitions now are based online. Digital activism is so powerful it has the ability to unite continents around a single issue we have seen this with the recent climate change protest. This space is a progressive space and should be seen not only as legitimate but as a force. Digital activism then should be covered by the same communicative rights as activism in the physical world, notwithstanding how nuanced the digital space is. A guided approach would need to be applied, to protect digital activists' privacy, safety but never to limit the space by need to legitimize 'who' belongs in the space or the content of the activism (Respondent D in discussion with the author, November 2019).

Respondent D claims the digital space as a space for activists because of the attributes that make the digital space: sharing, exchanging and learning. Another standout aspect of the respondents' answer revolves around social media and its effects on policy making and affecting the political sphere. The respondents answer looks at the digital space as a force within its own rights. But this also leaves us with the question about how it has become this force. Is it, as the respondent suggests, that the power

lies within the internet's inherent nature: for sharing and exchanging ideas? This question is interesting as it relates to the discussion that was created by Manuel Castells on the digital space as a discursive space: it is a powerful space because it is pure information that is able to be shared rapidly; and information is power.

e.) Question 5: Who do you think are the gatekeepers of communicative rights and what role do they play in the power struggle over communicative freedom between citizens and the political and economic elite? Please elaborate.

Lastly, "Chapter Five" sought the answer to who the gatekeepers of communicative rights are and what role they play in the power struggle over communicative freedom between citizens and the political and economic elite. It looked more concisely at digital activism as a legitimate form of protest in a digital democracy and how current legislation is both ineffectively and unjustly employed to punish digital activists who utilises information as a means of protest inequities. It further interrogated what form of governance may emerge for South Africa and the international world in an era where many faculties of our older structures of politics in the urban space are being reimagined in the digital, global space. The most important aspect of this chapter was to analyse democracy as a form of governance and to discuss if any of the characteristics that are determined critical for an established democracy is present within the South African context of democracy. It also analysed whether a westernised democracy may be suited to South Africa's new era of digital democracy or whether a hybrid system of governance may be a viable option within the network society space. The analysis in "Chapter Five" found that only when activist groups of counterpower can collate, each with specific agendas affecting inequities in varying factions of society, then can the destabilisation of the inequitable power structures of the elite take place in the hopes of changing society as a whole. The chapter argues for an integration of the ethos and values of counterpower movements with established power structures already embedded within society, government, the economy and culture as a whole in an attempt to overcome the elite political and economic structures of power. This level of change is not just limited to the institutions themselves but should, ideally, take place in the minds, lives and values of the individuals themselves.

Respondent A reflects on the role of gatekeepers of communicative rights by answering:

> Well, there are the obvious ones like governments (particularly the more powerful ones, like the US, which birthed the internet and which still controls much of the backbone), multilateral institutions

> such as ICANN, the communication companies which harvest our data for commercial and even political purposes and third party companies that benefit from the companies that store, process and sell our data. NGO's can be gatekeepers too as they can define the terms of the debate about communication rights and what is realistic and unrealistic to demand (so they can have a dampening or even conservative influence), academics who also define and even limit the terms of the debate, and funders, who push the work in a particular direction that may focus on reformist rather than anti-systemic directions (Respondent A in discussion with the author, November 2019).

Respondent A highlights how there are clear and powerful gatekeepers in the form of governments, multilateral institutions communications companies and NGO's. Within the formulation of this answer, however, it seems that there is little consideration as to which of these entities has more influence than the others to effect change. Quite often, a government can be very powerful with controlling the use of the communicative infrastructure. However, we find that lesser powerful entities, especially telecommunications conglomerates that own the very infrastructure of the networks we use, could exercise greater power through denying access to services if they will. This is problematic to even powerful entities such as governments as society is reliant on the internet to function in a network society. Hospitals, banks, businesses and educational systems alike are dependent on the internet to function. A denial of digital service could go so far as to contribute to the collapse of an economy if organised towards this end. Another interesting comment that is made by the respondent is that of funders. Funders appear to be the real powers behind the scenes, who determine exactly how the government exact change (or do not exact change). Political elite are influenced by money, no doubt, in the same way as it is a fundamental for corporate telecommunications oligarchies.

Respondent B focuses on the influence of corporations on the internet:

> The biggest concern is centralised ownership of the internet, especially by transnational corporations such as Google, Facebook, and Amazon. This invests a huge amount of power in a single, unaccountable entity to decide who gets a space to speak and who doesn't. In many cases, private actors like this may have more control than states. However, in many more autocratic states, particularly in the global South, these same companies can often provide a place of safety for people to organise against local power holders. So the role is complex (Respondent B in discussion with the author, November 2019).

Respondent B's answer speaks of influences that are directly part of the infrastructure of the internet and who also shape the structure of the internet. What the answer suggests is that these corporations are charged with an inordinate amount of power to decide how the internet should be governed. This is problematic as this power is vested behind a corporation that is otherwise seen as impersonal, inhuman and unaccountable to their actions. The observations by the respondent connect with what Duncan has said about states in previous chapters of this research: that states are a superpower indeed, but the true power lies where the money can be found. It is distressing to note that these corporations are generators of mass wealth. Thus their power lies not only in the fact that they own the means of production in the sense that they own the infrastructure of the internet, but they also possess the wealth that is generated from it; making these corporations self-sufficient entities of information, wealth and power. However, the respondent's answer does not only reflect a gloomy side to these corporations as described by the contributions that are made in autocratic states. They can also provide a sense of counterpower in favour of activists and civil society movements.

Respondent C focuses on telecommunications conglomerates:

> Currently the biggest issue is access to the internet due to profiteering by mobile operators and lack of political will among policy-makersand the regulator. While politicians continue to speak on our behalf, they forget to invite us to the table in order for us to explore together ways of addressing the massive inequalities in internet provision in South Africa. We need to democratize telecommunications in this country. It is important for South Africans to understand that access to information can be used to gain knowledge to help community members to assert their socio-economic rights. And information is mostly available via the internet (Respondent C in discussion with the author, November 2019).

For respondent C, ISPs and political elite are identified as the gatekeeper's. On politicians, the respondent elaborates on how politicians purposefully exclude activists in the conversation inequalities in internet provisions. For the respondent, democratizing telecommunication is essential, but one is forced to question whether this is possible when we cannot even democratize the daily lives of our citizenry. The respondent appears to focus on how the Internet is a tool for education and has the implication of emancipating communities from inequities and allows them to realize a fair and free life.

Respondent D moves towards race and economic entities to frame the answer to the question on the gatekeepers of the internet:

> I think the gatekeepers of the communicative space, are white monopoly capital, the state, and even many who own in the media space. Some are even fully involved in the sector of advocating for communicative rights to ensure certain gatekeeping mechanisms remain. These people gatekeeping the space of communicative rights are key to unlocking this society from inequality, or perhaps to say them ceasing their gatekeeping ways is key to unlocking this society from inequality. take for instance in the sector of communicative rights the data costs in South Africa, they have been officially declared against the international benchmark as far too high, so to say that poor consumers are being overcharged the gatekeepers in this saga have shown themselves to be the state for never taking the time to evaluate data price hikes. The service providers particularly the ones that have existed for a very long time for continuously hogging the space and limiting entry of smaller networks to create competition and thus lower prices. The same ministers we see sitting in finance seats, communication seats and even in seats of companies that should be regulating data costs have shares in these big networks that overcharge the poor. keeping the status quo of overcharging the poor has meant that the poor remain poor with limited internet access, therefore limiting the voices within the digital activism space, the poor have no access to participatory democracy tools such as internet based reporting of limited water and electricity usage by communities, the poor also basically no contact with the political and economic elite. Infact currently South Africa has no power struggle between the citizens and the political and economic elite over communicative rights. The political and economic elites still have their hands tightly on power. What we are battling for and perhaps gaining speed is opening up the space and revealing the amount of privatization in the space, however with limited voices of the poor in this fights very little can be done to address this (Respondent D in discussion with the author, November 2019).

Respondent D's response indicates intersectionality with the social issue of race and the economic elite. Furthermore, the respondent takes issue with media houses acting as monopolies over the industry. More specifically, the respondent suggests that there are infiltrators in the communicative freedom NGO sector who seek to subvert the primary goal of creating free and fair, open access to the internet. For the respondent, the way to communicative freedom is cessation from the established gatekeepers that we have. The examples of entities attempting to control the internet with impunity are the state by allowing data in south Africa to be far too high and the ISPs and economic elite who encourage this by setting the price too high.

Regarding ISPs the respondent sees difficulty in being against competition and attempting to eliminate competition by misappropriating spectrum space and preventing smaller companies from creating competition to lower prices. This corroborates with our previous assessment on spectrum space in "Chapter Five". Furthermore, the respondent notes how ISPs are responsible for restricting

the knowledge commons for the poorer of society. ISPs block the poor from participating in democracy by setting data prices far too high to be affordable. This becomes an important tool to ensure the majority of citizens are kept from participating in democracy so that power can be maintained both politically and economically.

ii) Questionnaire Findings:

1) Can South Africa be considered a democracy according to your experience and understanding?

The answers to this question were varied. Some participants believed that democracy cannot be considered as a yes or no/ on or off type of social contract. It is complex in the sense that it requires constant and consistent observation and adjustment to be effective. One participant did not believe that SA can be considered a democracy on the grounds that the foundation of democracy, citizens' access to basic rights are still not fully realised.The majority of participants agreed that South Africa can still be considered a democracy. It was acknowledged that there are many dysfunctional areas within the state but many of our legal, governmental and security institutions still work. Elections are still mostly free, fair and not as hindered by corruption in comparison to other states in Africa. The problem with these assumptions, however, is that it is easy to becomecomplacentwith thedysfunction in the country to the point where we condone a pseudo-democracy into existence by comparing African states and our dysfunctional democracies amongst themselves. One thing that was commonlyagreed upon was that the principles of openness, fairness and dignity are not enjoyed equally due to intersectional issues of class, race and gender. This has led to the trust between government and citizens to be broken and, by implication, the social contract of democracy.

Senior research associate on the International Crime in Africa Programme at the Institute for Security Studies, Max du Plessis, describes the South African democracy in an article titled: "The Legitimacy of Judicial Review in South Africa's New Constitutional Dispensation: Insights from the Canadian Experience". du Plessis borrows meaning from the concept of "constitutional supremacy" when assessing how the language of legislation is executed within the South African democracy post 1994. Constitutional supremacy can be defined as "[t]he power of […] the Constitutional Court, to declare invalid and strike down legislation which is not in conformity with the requirements of the constitution" (du Plessis 229). du Plessis

highlights how various attempts have been made to provide a set of guidelines for judges to determine values in a structured way. South African courts have attempted to develop such guidelines under a 'purposive approach' to interpretation of the constitution. In the "purposive approach", judges are to discover and develop the values underpinning the constitution by searching for the purpose of the right (du Plessis 245). Notably, we find an allusion to how courts and judges come to be gatekeepers of the classification and dissemination of information as indicated in our above findings of the POSIB (2010), POPIB (2009) and POAIA (2013). Returning to the language of legislation and the power of judges to determine a just outcome for the execution of communicative rights, du Plessis highlights how "[…] it is the language of the text, and the fact that the constitution remains a legal document, which provides a safeguard against judicial over-reaching." (du Plessis 245) The power given to the courts to determine the interpretation of legislation has serious consequences for thegovernment and individuals who could become litigants themselves. The crux of the matter is that "[…] democracy is being subverted Democracy […] entails that political power should be disposed of by the people. When unelected judges take over the democratic role, a legitimacy problem emerges" (du Plessis 229). The battle for legitimacy of power to determine and execute rights on behalf of the citizenry of South Africa is currently in an unclear space. The interpretation of the letter of the law divulges how, sooner or later, government, The Constitutional Court and citizen activists will need to face off to determine the parameters of our freedoms and rights and, by implication, whether South Africa conforms to Western ideals of a democracy.

2) Do you think that the terms (language) of communicative rights within legislation are too broad to be effective in protecting citizens' rights to access information and freedom of speech?

Again, the answers to this question were varied. One respondent argued that the language of legislation was too narrow, while another argued that language is not to blame, but the politics behind the language. Another respondent argued that the language of communicative legislations cover all of the relevant spheres that it should cover and that the problem is with the misappropriation of the law to serve the elites' personal benefits. The final respondent, to an extent, agreed with Respondent C in that our legislations are still workable but that the real hindrances are that citizens' lack adequate education and simply do not know about their rights. The argument that citizens' are simply uneducated about their rights holds some merit in the sense that civil society is made responsible for their own rights as opposed to

government. The reality is that, as with any law, there is both a right and responsibility that is involved. Respondent A described this as negative and positive rights. While legislations should protect society from censorship, it should also actively promote access to communication channels and thus the right to speak, know and communicate. One issue that was unanimouslyagreed upon, though, was the overreach of legislation in that definitions could lead to the exploitation of legislation that are often drafted in favour of powerful institutions. This calls into question the role of power holders who refuse accountability and to follow said laws. While many political and economic entities refuse to concede to accusations of unethical and impunitive exercises of power without pressure, the public also has a role to play in enforcing justice. Without public pressure and mobilization, impunitive governance is allowed to exist.

The observations by Max du Plessis in our first question on the legitimacy of the South African democracy, in some ways, touched on the language of legislation and how the power struggle between actors within the South African Republic comes to determine the particular South African interpretation and expression of democracy. Once more, the courts and the interpretation of the language of legislation by judges influence the South African citizens' ability to access and disseminate information. The lack of accountability by government and courts, and a concise depiction on how the onus is placed on citizensto challengeunjust, broad and vague terms of legislation such as POSIB (2010), POPIB (2009) and POAIA (2013) in order to enjoy communicative freedoms is highlighted here. A clearer example can be found in journalist Jon Qwelane's case against the South African Human Rights Commission (SAHRC) heard on the 19th of August 2019.

In 2008, Qwelane was published in a newspaper with an article titled "Call me names – but gay is not okay" where he made statements against gay and lesbian communities, such as that they were responsible for the rapid degeneration of societal values. It is believed that Qwelane quoted former Zimbabwean president Robert Mugabe, who compared the gay and lesbian community to animals.
The hearing was set to determine whether Section 10 (1) of the *Equality Act (2000)* infringes on the constitutional right of freedom of expression and whether such infringement can be justifiable. This follows the decision of the Supreme Court of Appeal declaring the section unconstitutional. The outcome of the case was published in legal documents as follows:

> ‘(a.) Section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) is declared to be inconsistent with the provisions of s 16 of the Constitution and is therefore unconstitutional and invalid.
>
> (b.) The complaint by the South African Human Rights Commission against Mr Qwelane in terms of s 10 of PEPUDA is dismissed (*Qwelane v SAHRC & others*2).

The central argument is that Section 10 was vague which highlighted the very nature of the court: that it is dependent on the Constitution to make just interpretations of the law on a case-to-case basis or as issues arise. The guiding principle for the court in this instance should always be the rule of law and thus overruling an archaic and inept clause was necessary in order to effectively meet out justice. There are many such cases where older legislations come to contravene newer ideals within a developing society. For Section 10 of the *Equality Act* (2000), however, it failed to stand up against the rigorous test of the Constitutional Court simply because it was in contravention of the right to freedom of expression. This example depicts how subjective the interpretation of the letter of the law can be. If used in an impunitive manner, reckless interpretations of legislation come to erode the fabric of democracy.

3) What form of governance do you think is emerging in the power vacuum created in the space where digital activism and political resistance to communicative freedom meet?

What is striking about this question is that half of the respondents declined to answer the question. This could lead to some very interesting speculations, but speculations about the respondents’ motives are beyond the scope of this research. The first respondent described multistakeholder governance that includes civil society. The other respondent described the current governance as strict, dependent on censorship and dangerous to digital activists. With a multistakeholder government, we find that civil representation is not always held in high regard. Despite being an important stakeholder in governance, there is a fear that the role of civil societies will only be considered tokenised and not taken seriously. The representation of civil society is made bybeing a stakeholder and participating; however, there will still be a clear discrepancy in power relations between stakeholders. The depiction of this power struggle between civil society and political elites can be exemplified in case of Moyo v. Minister of Police; Sonti v. Minister of Police.

On the18th October 2012, a community leader in Germiston, South Africa approached the Ekurhuleni Metropolitan Police Department to request permission to lawfully protest in terms of the Regulation of *Gatherings Act (1993).* Upon denial of permission, Lieutenant Colonel Nkwashu and the station commander Lieutenant Colonel Shiburi reported that Mr.Moyo allegedly made statements and conducted himself in a manner described by the complainantsas threatening and violent.As a result of the above conduct, Mr Moyo was arrested and charged with contravening section 1(1)(b) of the *Intimidation Act* 72 of 1982 (*Moyo v. Minister of Police; Sonti v. Minister of Police* 2). In summary, The Constitutional Court ruled that the *Intimidation Act (1982)* set an unconstitutional restriction to the right to freedom of expression because it came to criminalized speech that did not constitute an "incitement of imminent violence" (*Moyo v. Minister of Police; Sonti v. Minister of Police* 2). The Constitutional Court relied on the textual interpretation of the provisions and the right to freedom of expression in the Constitution. The Court declared the provisions invalid and ordered that the declaration of invalidity apply to all pending cases brought under the legislation.The language of law and its interpretations create the sense of subjective interpretations and not a cohesive law applicable within the court systems. The inconsistencies that arise further illuminates Diamond and Morlino's point made in the theoretical overview in "Chapter Two". In the case of South Africa, there is still a dispute as to whether it can be considered a "new democracy" in accordance with western ideals as proposed by Diamond and Morlino, or whether it is, in fact, a "semi-democracy" that inculcates aspects of utilitarian rule (43).

A clear exercise of impunitive power is demonstrated in this example. The political and economic elites wield an unfair advantage, in terms of power, that the civil society may not be able to overcome. Multistakeholder governance also runs the risk of deepening intersectional social issues such as class disparity in that allocating power to a select group of civil society will inextricably create new social elites, effectively alienating the representatives of civil society from civil society itself. One very pertinent issue raised by one of the respondentswith regards to thecurrent system of governance was how shockinglyslowchange in legislation is being implemented. Despite being made aware of the negative impact that resistance to a free and fair communicative rights space will have for the South African democracy, we find that the influence and ownership within communicative rights spaces still favours the political and economic elite.

4) Should digital activism be considered as a legitimate form of protest in a digital democracy and covered by the same communicative rights as activism in the physical world?

Unanimously, all four of the respondents responded in the affirmative. The consensus is that there is a growing recognition that the digital space reflects our physical space and should be governed in much the same manner. More and more of our societal life is being translatedinto the digital space.Hence,digital activism should be subjected to the same rights and responsibilities as physical activism. Furthermore, digital activism has developed on physical activism in that it has created newer opportunities for organizing and protesting. This is in keeping with the evolution of civil society and the natural progression of human interaction and technology. In bridging the digital divide, it is important to be educated and activism accomplishes just that for civil society.Thecurrent legislations whichgovern the dealings with information in the physical world arestillinsufficient to effectively govern the global shift into the network society. Much more must be done in ways of catering for digital activists and an ever changing physical world that is becoming more digitized. This is most pertinent in a digital democracy where participatory democracy relies on information as currency to enjoy communicative rights and the right to education. *The Cybercrimes and Cybersecurity Act* of 2017 acknowledges this shortcoming in South African legislation. Currently, the Act recognises that "[t]he laws on the Statute Book do not comprehensively and uniformly criminaliseconduct which is internationally regarded as cybercrimes" (*Cybercrimes and Cybersecurity Act* 2017). In order to compensate for this shortcoming, the Act further acknowledges that:

> Although the Protection from Harassment Act, 2011 (Act No. 17 of 2011), comprehensively deals with harassment in the real and virtual world, many countries have recognised the seriousness of cyber harassment and have enacted specific laws which criminalise such harassment. Cyber harassment is currently not recognised as a specific category of conduct in terms of the South African law and should be criminalised (*Cybercrimes and Cybersecurity Act* 2017).

In keeping with international standards of regulating the cyberspace, South Africa has adopted the approach of adapting older laws that governed ways of communicating in the physical space to govern citizens' participation in the network society.The threats to our digital democracy and privacy thus require civil society to be well informed to encourage sharing, exchanging and learning. A few respondents inferred that digital activism is powerful precisely for the fact that it unites beyond geographical boundaries that have previously

separated human beings from each other. We are finding more and more commonalities in our pursuits for justice and freedom as human beings and what makes this more poignant is that civil society now realises that our struggles are not all separate and different, but rather that we experience a collective consciousness of needs and wants when it comes to our rights, freedoms and governance.

5) Who do you think are the gatekeepers of communicative rights and what role do they play in the power struggle over communicative freedom between citizens and the political and economic elite?

Once again, we find varying answers to this question. The most commonly recognised gatekeepers include governments, elites who own and control social media platforms, mobile operators and white monopoly capital. Institutions such as multilateral communications companies often define the parameters of the communicative freedom debates in South Africa precisely because they are so powerful and have personal agendas. While, predominantly, the political and economic elite hold power over civil society, this does not excludecitizens from influencing the communicative freedom debate. The popularity of social media and the pressure generated by the influence of the "court of public opinion" plays a strong role in defining the parameters of the communicative freedom debate for citizens as well. This invariably calls into question the role of centralised ownership of internet platforms in the form of Facebook, Google and Youtube who plays an unaccountable yet powerful role in the gatekeeping of information. Specifically, for the South African context, there is an intimate intertwining of private and public ownership of ISPs.

In a research article prepared for the World Development Report 2017 titled "Rent Creation and Rent Containment: The Political Economy of Telecommunications in Mexico, South Africa", Izak Atiyas et al. describe the rise of mobile telephony in South Africa. The role of political elites in the ownership and management of ISPs is made evident when discussing how between 1994 and 1999, MTN had a complex ownership structure that involved joint venture arrangements associated with the apartheid era and some with BEE initiatives (Atiyas et al. 24-25). Cyril Ramaphosa, as head of MTN at the time, was a key character in South Africa's political economy: formertrade unionist, ANC activist and constitutional negotiator; and as of 2014 one of the fivewealthiest black South Africans, and the country's now President (Atiyas et al. 24-25). As discussed in the questionnaire, ISPs and media platform owners quite often advocate for communicative rights as a subterfuge to maintain gatekeeping

mechanisms of control that are already in place (such as the high costs of data). This is done in connection with political elites who profiteer from this mechanism of control as well. Those political elites who should be regulating the costs of data have a vested interest in maintaining high data costs as they are shareholders in the private ISP companies that overcharge the poor to communicate. Thus, social disparities are entrenched and deepened. The poor remain poor and unable to realise their communicative rights or participate in their very own democracy due to the lack of access to information and communication channels while the political and economic elites maintain a firm grip on power.

While, in theory, the POSIB (2010), POPIB (2009) and POAIA (2013) have been lauded as massive steps in the progression of communicative freedom for post-Apartheid South Africa, in practice, we find a different story emerging. The misappropriation of these Bills and the impunitive exercises of power suggest governments' resistance to freedom of speech and access to information within the public interest. There is less of a focus on the moral good of transparency and the fostering of trust between citizens and the government. Truth is an important aspect of any participatory democracy. Not only does government show a tendency towards secrecy but, by proxy, also evidences a fear of communicative freedom. As described throughout this chapter, governments' fear is most saliently identified in the neglecting of the semantics of legislation despite being made aware of the shortcomings of overly broad and vague terms in the various Bills. While these terms do affect the legislative aspect of the rule of law and social behavior, it also has a considerably weighted effect on the economic sector of the South African public; often seen in telecommunication corporations capitalizing on the semantic loopholes of communicative freedom legislation for economic gain.

CHAPTER SEVEN

The Network Society and Economic Challenges to Communicative Freedom Post 1994

This chapter analyses the role of telecommunications conglomerates in the struggle for communicative freedom in South Africa. The analysis within this chapter uses a methodology of close reading of media reports to discuss social discourses and debates around the cost of communication in South Africa and the consequences of having some of the highest call and data charges in the world.As outlined within the introduction of this dissertation, this chapter is markedly more focused on media reports and reflections from professionals in the media and communications sector. This was done in an effort to allow the voice of activism and journalism to represent a public discourse on communicative freedom without framing from academic, political and economic perspectives. The intention is to allow the voice of public discourses and opinions to speak on its own terms and not to be overly affected by the construction of a voice about communicative freedoms on behalf of citizens, activists and NGOs. This is done in an effort to give fair appraisal to the voices of politics, economics and activism respectively. It must be noted that this chapter will not be without any academic frameworks or critiques. As appropriate for academic research on communicative freedom in a digital democracy, this chapter will include peer reviewed research that critically assesses the claims herein. While the previous chapter outlined the social contract between citizens, government and the language of legislation, it becomes important to note how society understands their right to communicate and how economic entities respond to the political exploitation of communicative freedom legislation for economic gains.

The print media has been the dominant form of reporting for centuries, however, the emerging internet society has realised a world where communication is quickly moving into the realms of digital media. While the progress of digital media enables quick access to information, education and the breaking down of geographical borders, it comes with its own challenges. The interring of media into the digital space has produced pros and cons, of which one issue in South Africa is the economic challenge.

When reflecting on the challenges facing information in a network society, we find that in a conference held in 2017 in Brussels, Director of the Centre for Media Pluralism and Media Freedom, Pier Luigi Parcu, outlined three key technological challenges to information in the digital age.

The first is the lack of gatekeepers and traditional, local media. Parcu considers this as a catalyst for the excessive homogeneity of media sources and professional viewpoints. This, in turn, is detrimental

to the quality of information and stifles diversity. The situation is further exacerbated by a considerable lack of editorial control and accountability in the distribution model of information typical of major internet players. South Africa experiences a related issue with the ineffectual efforts of our current regulator, ICASA (Independent Communication Authority of South Africa) where weak efforts to promote communicative freedoms have lead to the creation of an atmosphere conducive to economic exploitation of citizens by Internet Service Providers(ISPs) for profit.
In their research on the ineffectual authority of ICASA, media scholars Dumisani Moyo& Allen Munoriyarwa from the University of Johannesburg describes how "[i]n an address to Parliament in 2012, former minister of Telecommunications and Postal Services, Dina Pule, argued that ICASA was too weak to operateefficiently and to be held accountable for its mandate" (Moyo and Munoriyarwa 6). Further, their observationsshows how a "[...] High Court judgment noted that ICASA should get its act together, be more assertive and work better" (Moyo and Munoriyarwa 6). The clear impression from judicial powers appears to be that ICASA falls short of executing its mandate as a regulator in a manner that safeguards the public interest. Effectively, this renders ICASA impotent in the face of a society that is growing to accommodate the interests of the citizens in the information age.
Parcu's observation on increased homogeneity warrants a mention of the dangers of media ownership. There is a point of view from media scholars and practitioners that greater diversity in media ownership does not lead to greater diversity in news content. In a researched article for the media journal, *Journalism Now,* director of the South African Reserve Bank Centre for Economics Journalism at Rhodes University, Reg Rumney, reflects on how "[m]ore competition does not necessarily translate into diversity, but may even mean more homogeneity as almost all compete for the wealthier sector of the market" (Rumney 69). In this formulation, media owners privilege profit that is garnered through advertising revenue above news reporting for the public interest. Here, profit is placed before a dedication to citizens' rights to communicative freedom and a right to be educated. Instead of promoting the creation of an atmosphere conducive to communicative freedom, a form of capitalist censorship is imposed when owners are allowed to frame, construct and dictate what news we as readers consume and how we consume it.

The second technological challenge to information in the digital ageis the polarization of opinions created within the relationship between sociological and technological dynamics. What Parcu identifies is the challenge of further damaging democratic dialogues and closing up the middle-ground required for reaching a consensus through debate. This circumstance could change how political consensus is reached and maintained, even in a democratic setting. The South African

context experiences this issue in the form of a digital divide that is created and facilitated by a data divide. In this formulation, we look towards the call and data tariffs of oligopolistic ISPs like Vodacom and MTN. Effectively, it is the citizens who suffer as "[…] a vast majority of the population is excludedas a result of unaffordable mobile data"(Moyo and Munoriyarwa 4). For South Africa's citizenry, this is problematic for participation in a digital democracy that demands access to the internet as a means to realise the rights and social justices that are afforded to us by the country's Constitution. The issue about the digital divide for South Africa is that the divide affects' citizens' ability to participate meaningfully in debates within our participatory democracy before we even consider the potential for polarisation.

The third challenge is the "information disorder" which has encouraged the pervasiveness of hate speech. Even in democracies, this has come to produce a theme of political propaganda. The result is the targeting of fragile minority groups in relation to cultures, races, genders, sexes and migrants. South Africa has seen its share of information disorder in form of fake news. One observation that Moyo and Munoriyarwa makes is how "MNOs [Mobile Network Operators] were accused […] of attempting to stifle media debates ondata prices in order to sustain a 'false' narrative that data is actually cheaper in SouthAfrica compared to other parts of the world" (6). The lack of interest in executing gatekeeping mandates by government and ICASA has seen the South African citizenry suffer under exorbitant call and data costs for the better part of two centuries, since collusion was first suspected between MTN and Vodacom in 1994. This example will later be discussed in more detail within this chapter. While these are all issues that concern South Africa, what is prevalent in 2020 is the issue with telecommunication conglomerates and the high costs of accessing information in the digital era.

In recent debates around access to information, the cost of accessing knowledge online has been a point of intense concern. A common consensus shared by South Africans and expressed through internet debates indicatesthat ISPs have been accused of impeding the progress of access to data. This is largely due to the monetization and monopolisation of the telecommunication industrythat is increasingly being transformed into an economic and information oligarchy. The issue has been discussed by media scholars and has been keenly watched by communicative freedom activists who observe that the power of these mega-corporation's "[…] compromises the regulator's [ICASAs] capacity to stand up to oligopolies like MTN and Vodacom, whooften use their huge financial muscle to challenge its authority in bruising legal battles" (Moyo and Munoriyarwa 6). Within the urban, political space of contention where society, ISPs and government meet on issues of

communication, it appears that the citizens, much poorer in terms of power to affect their communicative rights, are exploited for profit by ISPs. ICASA as the regulatory body condones this practice into existence through the normalization of high call and data costs. This is partly facilitated by the process of allowing repeated cases of monitory exploitation of citizens through entertaining high call and data costs.The saturation of news reports on ICASAs reluctance to take mega ISPs to task for exploiting citizens plays a role in the naturalization of the idea that high costs is the status quo for South Africa.

In a study on subcultures in advertising titled *Subculture: The Meaning of Style (1991),* British Sociologist Dick Hebdige defines the concept of naturalization by stating that it is "[...] ideology [that] saturates everyday discourse in the formof common sense, it cannot be bracketed off from everydaylife as a self-contained set of 'political opinions' or 'biased views [...]" (Hebdige 12).An example of this naturalizationcomes from an article written in 2016 titled *Vodacom, MTN at war with consumers,* thethen CEO of Cell C, Jose De Santos wrote about colluding and profiteering by telecommunications firms, MTN and Vodacom who: "[…] have now successfully lobbied government to investigate potentially regulating over-the-top (OTT) services like WhatsApp" (De Santos *Vodacom, MTN at war with consumers*). The selection of language in these media reports lends itself towards framing ISPs as omnipotent, oligopolistic entities who are superordinate to the powers of government. We see this in du De Santos' article when describing MTN and Vodacom's efforts as "successful" and the very lenient word of "lobbied" as opposed to the more appropriate word "demanded" or "pressured" (De Santos *Vodacom, MTN at war with consumers*). Hebdige, in his study, appears toreinforce De Santos' impression of ISPs by referring to the media's framing as experiences of the world through language selection and construction, organised in a particular way, interpreted for us as consumers and made to cohere or stick through repetition of that particular discourse or ideology (85). This appears to be our reality in SA, as Moyo et. al. observes: "[…] the absence of robust public engagement on telecommunications policy […] is illustrative of a general societalresignation to the 'received truth' that this is a sector better left to market experts, whowill […] deliver competitive prices." (6).The motive is maintaining a monopoly over communicative infrastructure and services.

A few campaigns in the country have brought attention to data costs. In particular, the #DataMustFall and #SocialMediaBlackout agitations raised issues of high data costs in South Africa. It appeared that, for these campaigns at least, social media had come to the rescue of citizens' communicative freedoms as opposed to the traditional watchdogs such as the media. One argument from Rumney on

the power of Western-styled media versus the rise of counterpower to traditional Western media, social media, is that "[i]n the West, the power exercised through theprinting press and airwaves seems diluted by citizens'ability to make themselves heard through blogs, Twitter, Facebook, and podcasting (Rumney 68). This idea runs parallel with Duncan's idea of the importance of leak-driven journalism as discussed in the Literature Review of "Chapter Two" and appears to be the emerging case in South Africa when looking at the #DataMustFall and #SocialMediaBlackout campaigns. Simply put, it was citizens who generated news content without the influence and bias of the advertising revenue that burdens media corporations. This, ultimately, gave citizen journalism more credence in the developing networked society and digital space of activism than traditional media houses and large media conglomerates. What we find, however, is that South Africa has not caught up to Western proficiency when it comes to managing the digital space of communication and activism. Rumney reflects on how "[…] greater web connectivity has yet to democratise this access tovoice[s] fully in South Africa, for the middle class social media does play a role in the public conversation" (Rumney 68).Rumney highlights how social media acts as a powerful tool for news reporting, realising communicative freedom and freedom of speech in South Africa in ways that media conglomerates cannot due to owner bias and preoccupation with revenue generation in the form of favouring advertisers or blocking off of the knowledge commons in the form of paid subscriptions to access daily news.

The #DataMustFall and #SocialMediaBlackout campaigns showed that there are high levels of dissatisfaction among the users of these two major mobile operators in South Africa. This has not gone unnoticed by activist groups. In the #DataMustFall movement, it is true that thecivil society organisations, theRight2KnowCampaign (R2K) have confronted ISPs, government and ICASA over affordable access to data. The frequent demanding for lower data prices hasseen collaboration between various communicative freedom institutions in an effort to raise further awareness in the media. One would assume that this would elicit a defensive response from ISPs. It was thus striking to find the then CEO of Cell C, Jose Dos Santos, mention in the media his research into the cost of communication in South Africa: "[a]ccording to research conducted by mobile phone package tracker, Tariffic, South Africa has the 2nd highest data contract prices compared to other Brics-member countries" (Dos Santos *Vodacom, MTN at war with consumers*). The concern has spread so widely that even smartphone manufacturers have added to the voice of ordinary citizens; although, smartphone manufacturers like Samsung is part of the monetisation and monopoly problem because they also benefit from the economic exploitation of ordinary users and consumers. High data cost has also been investigated by Craig Fleischer, the director of integrated mobility at Samsung Electronics

South Africa who highlighted how one-third of South Africans has access to smartphone technology, yet, according to the *Internet Access in South Africa 2017* report, it appears that only one quarter of smartphone users make use of mobile data on their devices (Dos Santos *Vodacom, MTN at war with consumers*). Fleischer's observation falls short as, in 2020, statistics showed that "[…] vast majorities of citizens in Africa access the internet through mobile phones implies the need for affordable access as part of advancingbroader citizenship rights" (Moyo and Munoriyarwa 2). Thus, high data costs goes further than merely censorship and restricting the knowledge commons. What the observations by Fleischer and Moyo and Munoriyarwa implies is that the high costs of data imposed by ISPs directly violates citizens' rights to be involved in their own participatory democracy in a network society.

Technology strategist and CEO of software development company, MyEcommerce, Nathan Jeffery, in an article titled: *Vodacom, MTN want to break the internet,* reports what the regulation of internet services means for South Africa in terms of business implications: "If Vodacom and MTN have their way and companies such as Facebook and Google are somehow forced to add complex and unnecessary red tape to the sign up and account-creation process, all that will happen is they will pull out of the country" (Jeffery *Vodacom, MTN want to break the internet*). By insisting on the imposition of regulation of OTT services such as Facebook and WhatsApp, telecommunications conglomerates also limit communication and free speech by limiting access to infrastructure needed for expression of opinions and creationof debates around important issues. Once more, limits are set for citizens to participate in and to question a digital democracy within a network society. The cutting of data costs could contribute to a positive future for communicative of South Africa because the deployment of digital technology coupled with affordable internet will offer better opportunity for advancing growth in South Africa. Having sufficient accessto the internet will potentially create the opportunity to discover alternative streams of revenue for the teeming youth population, thus helping to solve the problem of a high rate of unemployment. Put differently, access to resources which could assist in employment and job creation is a possibility when data costs are kept to a minimum.

The implication of lower data costs is thus not just political but equally economical for South Africa. The impact of lower data costs would also be largely felt in other areas such as education and economy. Communicative freedom is a basic human right and should be affordable; however, it is still a privatised commodity. Access to data as a basic human right has been argued for by communicative activists groups in a resounding collective voice, especially during the onset of the Covid-19 pandemic. As mentioned by Moyo and Munoriyarwa: "Global civil society organisations

such as the Internet Governance Forum (IGF), for instance, have argued for the recognition of internet access as an essential human right" (Moyo and Munoriyarwa 1-2). Within the South African context, we find that the Right2Know Campaign has also "[...] been demanding that access to telecommunication services be considereda human right and an 'essential service'" (Moyo and Munoriyarwa 3). There is a fundamental flaw in the communicative freedom infrastructure in South Africa. There is a focus on monetization of the internet as opposed to sharing this space with citizens and realising that the networked spaceis a shared space where anthropocentric needs of communication and education are also occupying a place in the digital society along with economics. Legislation has progressed in terms of the judiciary to promote access to information, but infrastructure which is controlled by the economic elite has not yet caught up with the ideals of legislation and does not seem as though it will. The loss of revenue at the expense of communicative freedom seems an idea which ISPs are willing to indulge. This indicates a tendency from the economic elite to err on the side of profit and not the right to communicate in South Africa.

Globally, high data costs are a form of economic censorship and telecommunications conglomerates are guilty of this practice. Also, commodification of communication and knowledge commons is, in itself, a censorship problem. While the affordability of internet access is of major concern for South Africa, there also appear to be collusion through price-fixing between Vodacom and MTN. Even though this has been fervently discussed in the media, no legal retribution has come from this. Rudolph Muller, in a *Mybroadband* article titled *Secret Vodacom, MTN pricing Agreement Warning* has reported how, early in 1994, Telkom had been the dominant telecommunications company in South Africa. During this time, MTN and Vodacom were the newly licensed participants in the world of mobile operation in South Africa and were prepared to launch their commercial cellphone services to the public later in that year. Since the two operators were the only local mobile operators in the country, there was a perception that pricing wars would begin in earnest between the two companies. Many media houses had run stories about these possible wars and, upon further inspection, the rumours were proven to be true. Muller reports that a 1996 *Financial Mail* report indicated that "Vodacom and MTN executives met in London in 1994 to discuss agreements on pricing […] The result of the meeting became known as the "London Agreement": a memorandum where cellular tariffs for South Africa were set […] Vodacom and MTN had reported that the agreement […] was 'legal and not anti-competitive'" (Muller*Secret Vodacom, MTN pricing Agreement Warning*). The word of the executives was not enough to appease the concerns of the Competition Board and the then chairman, Pierre Brooks, was not convinced by the proclamations of innocence by the telecommunications companies and branded the alleged pricing pact as "prima

facie evidence of collusion" (Muller*Secret Vodacom, MTN pricing Agreement Warning*). Although the aforementioned ISPs had argued that the laws surrounding the connections between communications conglomerates was largely vague and did not explicitly prohibit 'interconnectedness' between mobile operators, there was still concern and potential for major price-fixing and illicit dealings in order to limit access to data through commodification and monopolisation of the internet. These issues of collusion are not merely media interjections published to increase readership. It remains a major concern that planned deals between large telecommunication conglomerates may result in monopolisation of the information commons, where price fixing and related tactics inhibit communicative freedom and endanger the right to dissemination of information as outlined within the South African Constitution. Indeed, from the previous media reports that we have discussed, the tendency towards price fixing and inhibiting of communicative freedom is what the conglomerates aimed for.

i) The Right2Know Campaign

Media censorship through the commodification of the knowledge commons has been identified as a major problem before knowledge of collusion and price fixing became common in the media. For the Right2Know Campaign(R2K), this has led to a specific campaign decrying high costs of data in South Africa. The *#DataMustFall* Campaign has gathered much interest in recent media debates for its interrogation of data costs in South Africa being one of the highest in the world. This has a direct bearing on communicative freedom as it means that censorship of information is executed through making the cost of data so high that people are unable to afford access to knowledge commons as discussed above. For a long time, R2K has been decrying the high costs of data and citing alarming statistics to bolster the call to reduce costs of communication. The staggering costs of calls and data had led to "[…]activistsfrom Right2Know and #DataMustFall argu[ing]that South Africa's data prices have, inthe past two years [2019-2020], increased 6 times as compared to other countries in theBRICSand in the southern Africa region"(Moyo and Munoriyarwa 5). With the threat that ISP conglomerates could possibly collude with political elites to legislate their illicit activities, it became a priority within the free speech activism community to address the downfalls of such legislations. The lack of transparency and justification for the high cost of data from ISPs and telecommunication conglomerates has been raised as a point of concern by the Right2Know Campaign. In an official statement released to the public, R2K observed that Parliament had greatly failed to stop the profiteering of the major ISPs namely MTN, Vodacom, Telkom, and Cell C. R2K noted on16thof June 2016, Youth Day, that the youth were still burdened by the steep prices of communication in

South Africa. The organisation reiterated that this was a major disrespect and undermining of the constitutional values to the young people's rights to access information and freedom of expression (Mutsaurwa *Data Must Fall: Right2Know June 16 Statement*). The statement went further to highlight the role of ISPs in keeping data costs high, that the mobile operators have ignored the deadline issued by Parliament for the reduction of data prices.

Within the campaign's call to action, the Right2Know Campaignhad acknowledged the intersectionality of political and economic interests in keeping the costs of data high. This further corroborates with the articles from *News24* and *TechCentral* that was discussed above. Mutsaurwa expresses how politicians are seen as "populists" who are "captured" by the interests of corporations to the detriment of the struggles of the poor and oppressed. In response to this impunitive power of politicians, a clarion call for citizens to organise and claim the right to communicate was important for R2K, along with a request that the Independent Communications Authority of South Africa (ICASA) force MTN, Vodacom, Telkom and Cell C to cut their prices with immediate effect. (Mutsaurwa *Data Must Fall: Right2Know June 16 Statement*). The call to action for the Right2Know Campaignis rooted in the inequity that is experienced by citizens and, in particular, the youth of South Africa. The importance of communicative freedom for the youth is education and cultural development. The commodification of the knowledge commons by telecommunications conglomerates and the complicit behaviour of the political elite in this regard stifle this right and can be seen to be contravening citizens' constitutional right to communicative freedom in the process.

The commodification of the knowledge commons is also not confined to telecommunications conglomerates. It is worth mentioning, once more, how media ownership plays a role in promoting and maintaining ideologies, specifically by not reporting in a voice that decries unfair profiteering by ISPs. Rumney reflects how "[…] the link between ownership and theideology of the news seems to be more complex thanis commonly assumed, and deprecates the power of news consumers" (Rumney 68). In the act of making news inaccessible through "paid-for" sites and possibly rejecting the publication of certain damning reports about telecommunications conglomerates, the media is also implicated in denying citizens' communicative freedom for profit.

ii) The SABC and MultiChoice

To further evidence how communication conglomerates are creating an atmosphere conducive to secrecy, journalist Chris Dodds, in an article titled *Diabolical and secret' SABC deal exposed*, reports on the questionable dealings of the South African Broadcasting Corporation (SABC). He notes how there appears to be collusion in the merger between public and private broadcasting corporations, effectively constituting a conflict of interest. Multichoice and the SABC were caught in a controversial five-year, R55-million deal that gave notable control over the broadcaster's news division to the pay-TV operator – a private company with no public broadcasting directive. Many watchdogs including those mainly concerned with media oversight, namely: The Caxton media group, the Save Our SABC: Support Public Broadcasting Coalition, and the Media Monitoring Project proposed that the agreement comprises a merger of sorts. The merger had come to be known as the "Commercial and Master Channel Distribution Agreement" between MultiChoice and the SABC, and was effectively signed in July 2013. The dubiousness comes in as the agreement had been "[…] kept from public view under a confidentiality provision, although elements of it have become public knowledge and sparked deep misgiving, including in the SABC board and the governing ANC" (Dodds *Diabolical and secret' SABC deal exposed*). Watchdogs and journalists alike have labelled the deal "diabolical", citing how it superficially facilitated the SABCs 24-hour news and separate entertainment channels two months after it was signed. One very strong issue cited with the agreement is found in clause 4.2.1 which says the SABC grants to MultiChoice the "exclusive right" to "receive, distribute and market" the two channels (Dodds *Diabolical and secret' SABC deal exposed*). Under this clause, the SABC is prohibited from distribution, or authorisation of, anyone else to broadcast singular programmes or entertainment channels, while it was restricted to broadcastingonly the news channel on its digital platform when it is launched.

The implication of this is that all the content produced by the SABCs 24-hour news channel – with the exception of events of national significance such as state funerals – will be exclusively controlled by MultiChoice. Those who have contested the "Commercial and Master Channel Distribution Agreement" have argued that it has deprived the SABC of the ability to compete with MultiChoice for audience share, because without encryption it will not be able to buy high-quality content from overseas vendors(Dodds *Diabolical and secret' SABC deal exposed*).At the same time, MultiChoice securing the SABCs archive content has delivered to MultiChoice a monopoly on broadcasting that will exclude competitors, including the SABC, from trying to set up new channels or license individual programmes using the archived media material. MultiChoice has blatantly

denied trying to impose any influence on SABC news by stating they "[…] have several news channels on DStv (CNN, Sky News, eNews etc) and performance requirements are standard for all. The inclusion of such requirements in no way constitutes influence over those news channels' operations" (Dodds *Diabolical and secret SABC deal exposed*).

Then COO of the SABC, Hlaudi Motsoeneng, had been sharply criticised for playing a role in this deal between MultiChoice and the SABC. In a report on the sustainability of the news industry, Professor Harry Dugmore from Rhodes University's School of Journalism and Media Studies wrote about how:

> Motsoeneng signed off on a number ofquestionable deals, including the saleof the SABC archives to Multichoice, acompetitor brand. This is likely to havea deep and long term impact on theSABC's finances. This deal seems tohave inspired the SABC's about-turn on its set-top box policy, which it haddeveloped to protect itself from rivalssuch as Multichoice. The national broadcaster suddenly reversed its position from opposing non-encrypted boxes to supporting the idea (Dugmore 82).

Reports such as Dugmore's evidence the collusion between public and private broadcasters and ultimately resulted in a media landscape with questionable ethical business conduct within South Africa. The "diabolical deal" described by Dobbs and other journalists at the time came to cripple the SABCs financial status and, along with it, the SABCs ability to report freely and fairly on matters of importance for the public. After many more battles and questionable orders being carried out by Motsoeneng, it became abundantly clear that the SABC was captured and needed drastic intervention to save the broadcasters reputation. Between 2013 and 2017, the SABC had effectively alienated themselves from the community of citizens that they serve and wound up becoming insolvent due to corruption. As Dugmore explains, the SABC "[…] required a massive bailout from NationalTreasury, potentially running toR1-Action. This financial collapsehad happened over the course of a number of years, culminatingin a parliamentary inquiry, theappointment of an interim Board, and several court cases which finally led tothe ousting of the man behind it all: Hlaudi Motsoeneng" (Dugmore 82). The selling of the SABCs archives and the exclusive rights to air channels were a few of the decisions taken by corrupt management who effectively captured and looted the broadcaster for economic gain. Motsoeneng's involvement, particularly with the sales of rights to Multichoice, had led to bankruptcy and a mistrust of the South African Broadcasting Corporation whose purpose and mandate to the people was to provide the news about South Africa and the world for free to all South African citizens.

Reflecting back on Dodds' article, we find that it reveals multiple indiscretions and conflicts of interests between the public and private broadcasters, SABC and MultiChoice, respectively. First, there is the issue of a private broadcaster having full mandate over the public broadcaster. To this extent, the fundamental principle of the private broadcaster could be adopted by the public broadcaster, changing the SABCs fundamental role as impartial information and entertainment purveyors to broadcasters with monetary gains in mind. We can expect that broadcasts will no longer be based in the interests of the public but rather what generates revenue for MultiChoice. The secondary concern is the suggested merging of the two corporations. With no differentiation between private and public interests, and the broadcasting power being relegated to the private broadcaster, it is fair appraisal to assume that the information that is purveyed will not be impartial. Most commonly, opinion, preference and favour will be given to the highest bidder for broadcast and, furthermore, the political, economical and ethical worldview of the private broadcaster will be favoured and privileged. The third issue is the secrecy with which this deal was conducted; it was officially signed as a confidentiality agreement between the corporations. This secrecy suggests that there is a potential for the deal to be threatened due to legal, social or ethical barriers: either the conduct of the central players or the legal or ethical implication for the public that the deal has. Particularly troubling is that the public broadcaster would condone this secrecy with the knowledge that the broadcaster is a public entity answerable to the public demographic. There is a sense that the private broadcaster, MultiChoice, was attempting to cover up this dubious deal through censorship, which in itself poses a problem in terms of free speech and access to information. Fourth, there is the issue of blatant lies being told by the SABC to government. The relationship between the SABC and MultiChoice seems to have facilitated the secrecy and consideration of the agreement as expressed in the referral to the "Commercial and Master Channel Distribution Agreement" above (Dodds *Diabolical and secret SABC deal exposed*).

Clearly there is a conflict of interest as shown by the untruth that was expressed to then Communications Minister Yunus Carrim. The SOS Coalition expresses why not only the lie but also the deal itself between the SABC and Multichoice was detrimental: "'[T]hese are public resources that have been taken into the commercial sector – and there is no access for the public, it's a distortion of what the Broadcasting Act envisages'" (Dodds *Diabolical and secret SABC deal exposed*). Clearly, the deal conflicts with the greater public good in terms of accessing impartial information, particularly for the majority of impoverished citizens of South Africa. Lastly, there is the

issue of the extent of control that the private broadcaster would have on the public broadcaster and the revenue generation that is involved in the deal. It appears that the SABC had sold out their viewership and interests of the viewership, in the name of profits to MultiChoice who would have commanding power over the broadcasting activity of the SABC.

To confirm and reiterate the malevolence of this distribution agreement between private and public broadcasters, an article titled *How MultiChoice lied about its deal with the SABC* written by journalist Jan Vermeulen on *My Broadband*illuminates this. Vermeulen reports that Multichoice believed that the SABC had dictated its own policy on encryption and that the SABC had every right to speak in favour of encryption if it so desired. Nolo Letele, the then Non-executive Director of Multichoice, confirmed that encryption provisions were not condition precedent and that Multichoice had no intentions of sabotaging any agreements if the SABC decided to follow the opposite of following its own encryption policy. However, the minutes of a meeting held in 2013 reveals that Letele held the opposite position on the matter of encryption policies. Then group CEO of MultiChoice, Imtiaz Patel, said that they insisted that the SABC accede to keeping its channels unencrypted. Responding to Dina Pule's budget vote speech by Dina Pule, Patel then stated that "MultiChoice believed broadcasters would be allowed to choose whether to adopt the technology" (Vermeulen*How MultiChoice lied about its deal with the SABC*). Pule's speech outlined the ministry'sdecision to have an optional set-top box control system. It was here where Letele suggested that certain provisions in the agreement regarding encryption be made condition precedent. The specific minutes of the meeting read as follows:

> **Mr N Letele**: Which is why I'm suggesting we make it a condition precedent.
> **Mr I Patel**: But I think you may be missing each other because by condition precedent, you are suggesting that if conditional access is in there, the agreement falls flat.
> **Mr N Letele**: Correct (Vermeulen *How MultiChoice lied about its deal with the SABC*).

The conversation continues where Patel emphasises that conditional access is a deal-breaker, and that Multichoice needed the SABCs commitment on non-encryption. The minutes of that meeting clearly indicate a conflict in what Multichoice has been stating to the media and what their internal communications were about the encryption policies.

Yet another example of anembarrassment that Multichoice has subjected itself to is its claim that paying news channels is standard practice, referring to the R141 million per year paymentto the

Gupta-owned ANN7. MultiChoice's negotiations with both ANN7 and the SABC coinciding is interesting. Multichoice decided that the initial deal in December 2012 with ANN7 was worth R20 million per year. ANN7 launched on August 2013, and an amended agreement was initiated which increased its rate to R50 million per year was effected in October 2013. What is interesting is that the minutes of the meeting between Multichoice and the SABC to discuss the news channel issue and theconditional access terms werebackdated to June of 2013. Patel incriminated Multichoice according to the minutes by stating: "We would not normally pay for a news channel. Ok. We don't […] There's a unique relationship with Etv […] But, besides that we don't pay for any other news channel, anyway, ok. So we wouldn't normally pay you for a news channel' (Vermeulen *How MultiChoice lied about its deal with the SABC*). The problem is that MultiChoice had stated one thing and actually had held the oppositeposition as cited in the above minutes two years prior. What MultiChoice had claimed in interviews to the media was that the SABC could dictate its own policy on encryption, which stands in contrast to the agreement that was signed. Clear provisions are set out within the agreement. There was also a claim by MultiChoice that the SABC "was free to speak in favour of encryption […] and that the encryption provisions were not condition precedent, and they could not refuse to sign the agreement if the SABC went the other route" (Vermeulen *How MultiChoice lied about its deal with the SABC*). The above minutes, however, come to prove that the public story that has been spun by MultiChoice was a subterfuge to cover the true agreement between the SABC and MultiChoice. The untruths that are surrounding the distribution agreement are enough to inspire suspicions and misgivings by the public.

iii) The Media, ICASA and R2K Versus ISPs

The Right2Know Campaignhas put forward strong arguments for why data costs must decreasein light of the many public outcries to make communication more accessible. Our constitutional right to communicative freedom, a right to engage in a participatory democracy in a digital society and access to data as a means of realising free speech as a fundamental human right in a networked society are chief among the reinterpretation of communication freedoms for digital activists in R2K.The distrust that both government and ISPs have sowed among the voting constituency has inspired anxiety over any legislation that attempts to affect free speech and access to information, either positively or negatively. The trend is a tendency towards secrecy in a digital age where promotion and access to information has become critical for justice. In response to government's lack of action to colluding ISPs, R2K released their annual Youth Day statement in 2017 focusing on high costs of data and demanding that the government take action and simultaneously outlining reasons

why data costs must fall. The statement begins by accusing Parliament of failing in their efforts to stop the profiteering of the major communications conglomerates. R2K noted how South Africa's young people continued to suffer from high cost of communication – a major issue when it comes to their right to access information and freedom of expression. In collaboration, R2K, Africa Unite, Progressive Youth Movement (PYM), International Peace Youth Group (IPYG), Mawubuye, Soundz of the South (SOS), T.C.O.E, United Front – Grabouw, Left Students Forum, Ilrig, SALIPSWU and the AIDC hosted a mass meeting in Khayelitsha, Cape Town, to discuss various issues that affect young people including access to telecommunications. Within this meeting, the voices were unanimous: "We reiterate the call that data costs must fall! Airtime costs must fall! We call on telecommunications companies to stop ripping off the people of South Africa and bring down the cost of communications, and we call on ICASA (the regulator) to take action to force these corporates to start listening to the voices of young South Africans by bringing down costs." (Matsaurwa*Data Must Fall: Right2Know June 16 Statement*) According to R2K, mobile operators have ignored the deadline issued by Parliament's portfolio committee on Telecommunications &Postal Services for data prices to fall by November 2016. According to the State of Information and Communications Technology report there has been no significant change in data prices. South Africa's cost of communication remains unacceptably high as the telecom cartel continue to hold the South African economy and democracy hostage.

R2K generally argues that the politicians sitting in Parliament are populists, captured by corporate interests, and continue to fail to advance the struggles of the oppressed. In the spirit of June 16th, R2K set up a clarion call to citizens of South Africa, stating that it is up to the people to organise, rise-up and claim the right to communicate. R2K further called on ICASA to force MTN, Vodacom, Telkom and Cell C to slash their prices with immediate effect (Matsaurwa *Data Must Fall: Right2Know June 16 Statement*). The demand was an attempt to goad ICASA to become more responsive to the needs of citizens, and youth in particular. There was also a special urge to the youth to look towards community based telecommunications networks as a way of empowering themselves (Matsaurwa *Data Must Fall: Right2Know June 16 Statement*). The significant part of R2K's calls for change is that they not only highlight the problems that face citizens with regards to high data costs, they also propose informed solutions from experts in the field who comprise the list of active members and activists of the collective. One such solution to the problem of high data costs was the proposal that communities develop independent communication structures such as the "Zenzeleni Networks, a model for community-owned telecommunications, where any community can provide themselves with voice and data communications at a fraction of they are currently paying" (Matsaurwa *Data*

Must Fall: Right2Know June 16 Statement). This solution not only addresses the issue of high data costs but also the class issues by promoting job creation and providing communities with the opportunity to uplift themselves, while improving vital communicative infrastructure of the country.

R2Kwent further to take their points of solution before the Parliamentary committee on telecommunications on Wednesday 21 September 2017 when they announced a submission on #DataMustFall. The submission highlighted how between 2016 and 2017, South African social media users have rallied under the slogan #DataMustFall. Various studies were cited to bolster the argument, but one that stood out suggested that poorer South Africans living in rural areas spent more than a fifth (22%) of their monthly income on communication related expenditures. The Right2Know Campaign expressed outrages that, in a country where so many struggle to afford basic food and utility costs, that the telecoms companies are given carte blanche to fleece citizens. R2K proposed that bringing down termination rates had seen a slight improvement in prices, but it was a minimum effort inreducing airtime and data costs and making the right to communicate available to all. In an effort to make communication affordable, R2K proposed a few points for ICASA to pay special attention to. Firstly, ICASA needs to be more aggressive by standing independently and enforcing their mandate to reprimand and hold to account big telecommunications companies. Then, ICASA should focus on making available digital spectrum to be utilised exclusively for by the public and for the public interest. This is to include free public wifi that is "[…] not to be auctioned off to the highest bidder" (Mtabane et al.*R2K to Parliament: Data and airtime costs must fall!*). Thirdly, R2k stated that South Africa is in need of higher community participation in governance and in the decision making of telecoms infrastructure. The main focus is on other options to privatised telecoms that can empower smaller communities to build their own telecommunications networks. Towards this end, R2K encouraged ordinary South Africans to continue to fight for their right to communicate. The Right2Know Campaigntook the position that communication conglomerates have been givenundue power to violate consumers' rights to communicate, avoid taxes and to profit while claiming the high costs of communication is fair to get a "[…] return on investment' (Mtabane et al.*R2K to Parliament: Data and airtime costs must fall!*).

The evidence against communications conglomerates colluding to keep the costs of communication high for profits' sake is mounting. This can be seen in the regulatory environment that South Africa's ISPs finds itself in:

> Despite efforts by the government and ICASA to create a diverse and competitive sector, the South African mobile telephony industry has

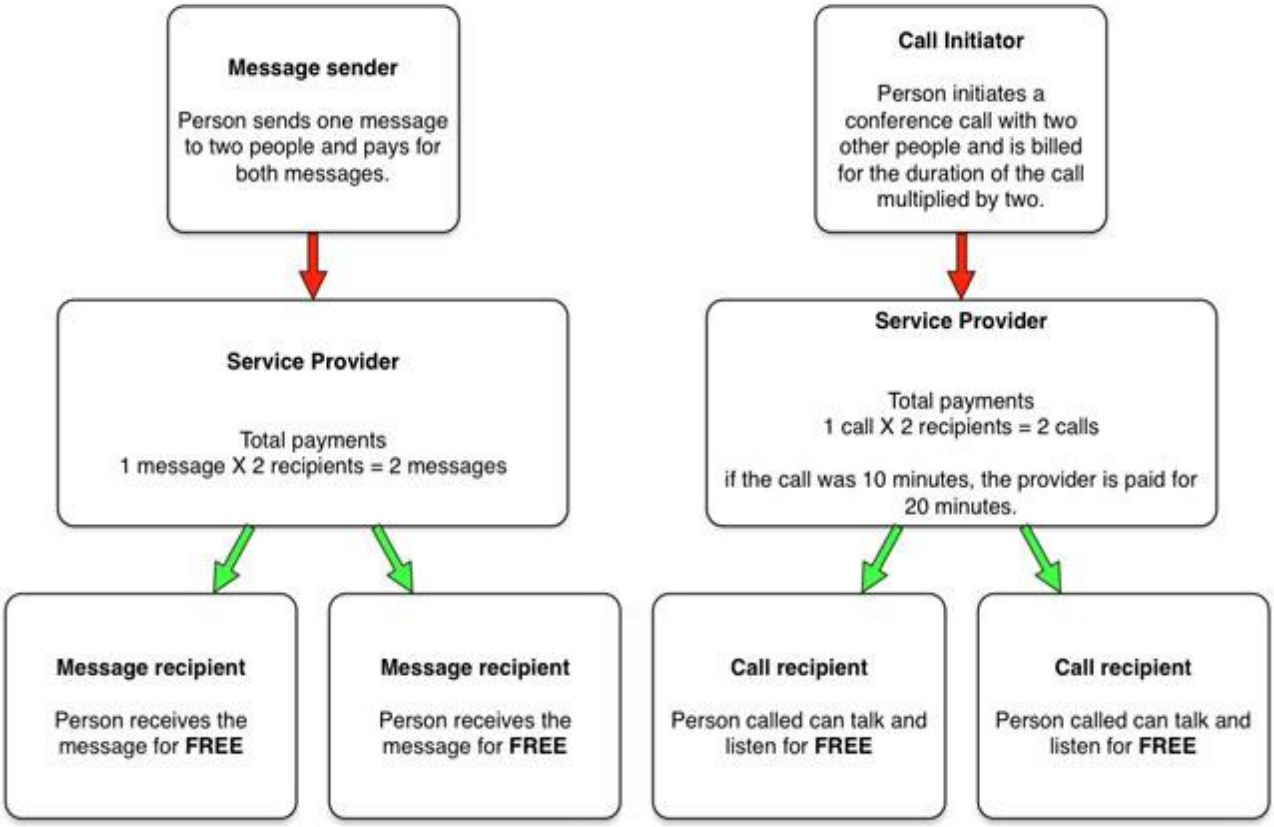
> been dominated by two majorplayers – MTN and Vodacom – which have been repeatedly accused not only of overpricing, but also of collusive behaviour […]This illustrates that, contrary to myths peddled by free market proponents, left to self-regulate,MNOs [Mobile Network Operators] are not likely to develop a level playing field that brings benefits to citizens inthe form of affordable data pricing (Moyo and Munoriyarwa 2).

Telecommunications monopolies, by contributing to a restriction of access to knowledge commons through collusion on keeping the price of data high, are guilty of violating the fundamental communicative freedoms that are outlined in the South African constitution. Violations such as this should not be ignored; if need be, the monopolies should be made to answer for their secrecy and subterfuges before the Constitutional Court. Even though MTN and Vodacom are private corporations with the right to provide services for profit, there has to be a responsibility to the customers, citizens and society who support them. National or international corporations, particularly telecommunications companies who deal in the most powerful currency of the digital age, information, must acknowledge and act in accordance with business practices suited to theparticular contextthey are embedded in. They must show a consideration of socio-political and socio-economic landscape of the context they are dealing in.

Acting systems of telecommunication conglomerates and their denial of understanding how bandwidth and pricing for data operates shows a lack of honesty, transparency and care for consumers' rights to communicate as well. Nathan Jeffery in *Vodacom, MTN want to break the internet* attempts to break down the extent of the duopoly's cover ups on data operations, pricing and costs in a more concise and comprehensive way for citizens to understand. The article begins with the debunking of a few myths. Jeffrey accuses service providers of making blanket statements that shows that they may not understand how hosting a business over the internet may work. What compounds the issue for Jeffery is that it appears that the CEO's of these companies claim that they do not understand Acting systems, making it a bleak look on how Acting systems work at their own companies. For Jeffery, the frustration is that Vodacom and MTN are also commercial Internet service providers that operate data centres which is home to what they themselves refer to as OTTs. Because hosting and bandwidth utilisation are a source of revenue for network operators, the ISPs know that operating of cloud services (an OTT service) pays for hosting and bandwidth usage.

One myth that Jeffery debunks is that OTT services are free. He points to the fact that this is simply an untruth and users, who are also paying clients, access the internet by buying data bundles or paying monthly subscriptions for network access to ISPs. Once access to the networks have been

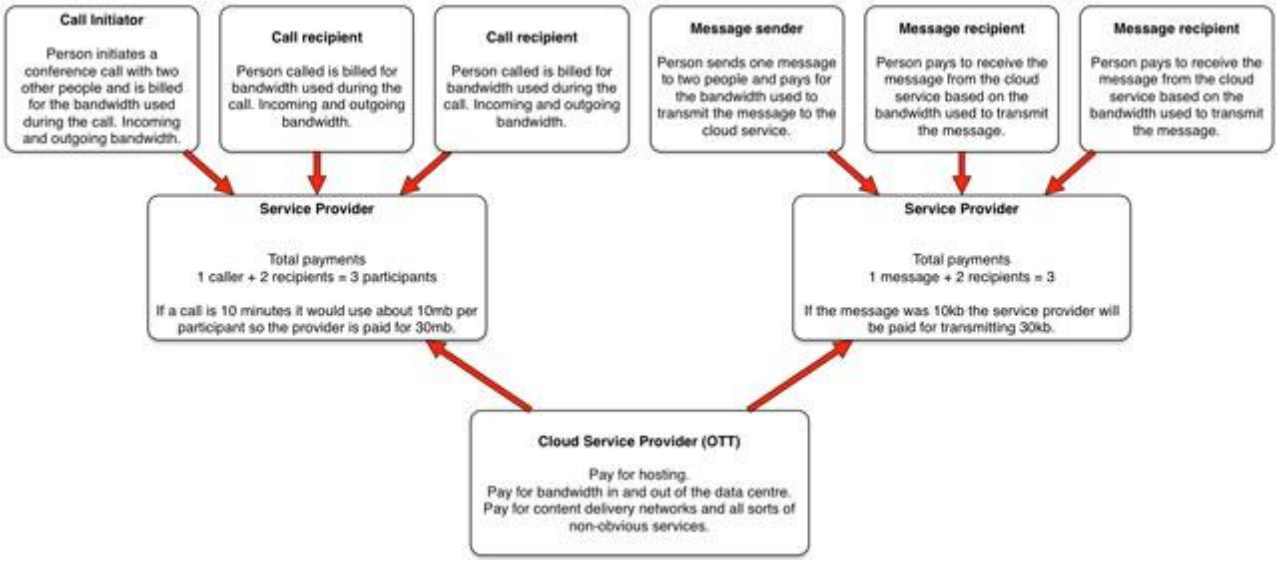
granted, users can then access hosted websites and services by using their already paid for bandwidth(Jeffery*Vodacom, MTN want to break the internet*). Below, Jeffery outlines a few differences between the traditional and modern (Internet) engagement and Acting models. In the traditional or older model, the initiator pays:



(Fig. 2 *InternetActing Models*).

The above model describes how, in the traditional Acting set up, the person who initiates a phone call or sends a SMS is the only person who encounters costs for the communication. An example can be made from the "please call me" service. With a "please call me", a user or customer without airtime is allowed to send a free message to another user or customer (who will return the call). The reason this works is because the person who initiates the call (the customer with airtime) pays for it. The above model illustrates how the person sending the "please call me", does not need airtime because they participate in the conversation for free. Listening and speaking for this communication costs nothing. They could both listen and speak without incurring any cost.

However, in the internet-based voice and messages model (the modern model), things are slightly different as both parties in the communication process are made to pay for the communication:



(Fig. 3 *Internet-Based Voice and Messages Model*).

In the network society, networks that are being operated on by telecommunications conglomerates, either cellular or fixed subscription lines, provide data mediums or units that can be used to communicate with. These devices have the capability of being connected to the internet (also known as the interconnected network) and pay for the use of data traffic in both directions (sending and receiving). Jeffery argues that any effective OTT operator would use compression andencoding to reduce bandwidth costs (Jeffery*Vodacom, MTN want to break the internet*). Jeffery takes into account that encoding and compressionhas made communication over the internet more efficient and reduces data costs for communicating. This should be considered a benefit toeveryone because it reduces network loads. The logic behind this is that an increased amount of bandwidth can be charged for if more people engage in increasing numbers of conversations, even if there is only one person who sends messages.

Noting the outcry of citizens and fervent debate within the media, ICASA has since taken measures to reduce the cost of data. This was a necessary step for ICASA to take as debates among consumers as well as calls for protests by communicative rights organisations began to pick up. In response, ICASA had decided to revise "[…] end-user and subscriber-service charter regulations, which, among other things, aim to reduce internet data costs for consumers." (Staff writer*Icasa takes measures to reduce cost of data*). ICASA had called for network operators to provide customers with adequate notifications when voice, SMS and data bundles get depleted. This was a part of various intervention methods, implemented by ICASA to ensure communications prices were kept reasonable and to an "acceptable levels to the ultimate benefit of consumers […]" (Staff writer *Icasa takes measures to reduce cost of data*). This call was made in response to calls by civil society to

investigate data expiry rules, high out-of-bundle rates and rules and also out-of-bundle voice and SMS rules (Staff writer *Icasa takes measures to reduce cost of data*). One concern raised was the unannounced charges being charged to consumers on contract, pre-paid and hybrid plans. Instead of having services disconnected when running out of call, SMS and data bundles, consumers are being charged out-of-bundle rates (for example, charging them from airtime for data). The request asked, instead, for consumers to be allowed to have the freedom to choose to purchase additional services or bundles upon depletion. This was an important step by ICASA to reduce the "[…] shock when customers received Bills for out-of-bundle voice and SMS charges […]", that often left consumers feeling cheated and mishandled by telecommunication companies (Staff writer *Icasa takes measures to reduce cost of data*).

Unfortunately, ICASA's efforts were too little, too late and criticism that ICASA could do more to force ISPs to make data affordable for consumers became rife. ICASA, however, was not solely to blame for their infirmity to enforce their oversight powers. We find that government, too, facilitated the inadequacies of ICASA: "ICASA receives a considerable part of its funding from National Treasury. However, this has proved problematic, as government often fails to meet its financialobligation to the organisation. The funding is said to be always too little too late, causing the regulator to even struggle to pay rentals" (Moyo and Munoriyarwa 7). Despite ICASA wanting to take action, other major players such as the political elite were also culpable in ICASA's failure. The media noted the insufficient action that was taken by ICASA and found it to be wanting. Consistently, articles were published in succession of each other decrying ICASA's weak attempts at patching up an already well deteriorated situation of data costs with meagre and remedial recommendations. In an article titled *ICASA must force networks to take data prices seriously – Liquid Telecom,* Jan Vermeulen once more highlights how independent ISP Liquid Telecom's CEO, Kyle Whitehill, called for more aggressive action from ICASA. Whitehill has made it clear that he finds the issue around data costs in South Africa similar to that of the price of oil. While many South African's see the fluctuation in prices, consumers do not really experience these changes where it matters most: their data and airtime balance. Whitehill sees the wholesale price of bandwidth in South Africa to be highly competitive but that it had not filtered through into the retail side of business. Whitehill made the statement that it is a "[…] regulatory issue. The regulator has to take it seriously and force the industry to take it seriously" (Vermeulen *ICASA must force networks to take data prices seriously – Liquid Telecom*). Both Whitehill and ISPA hold the view that ICASA had been wasting time in dealing with greedy ISPs and that the regulatory body needed to begin sooner with its investigations into high data costs. When comparing local prices to other African countries,

ICASA's investigation and initial report on tariff notifications it received from mobile operators found that South Africa's cheapest data bundle, the 500mb data bundle, was approximately three times cheaper than Swaziland's but ten times higher than in Morocco (Vermeulen *ICASA must force networks to take data prices seriously – Liquid Telecom*). South Africa's cheapest 2GB bundles performed better, though it found several instances where bundles were up to 80% cheaper outside the country (Vermeulen *ICASA must force networks to take data prices seriously – Liquid Telecom*).

It is prudent to assess why ICASA has been as ineffective as they have been in standing against the exploitative costs of communication in South Africa. One debate revolves around the how ICASA prefers to remain outside of the communications market in an effort to allow ISPs autonomy to grow their business models within a capitalist framework. Each company can thus profit through determining their own tariffs and is justified as "[…] the regulator[s'] prefer[ence], in line with international best practice, to regulate wholesale prices of dataand give autonomy to MNOs to determine retail prices" (Moyo and Munoriyarwa 7). However, it is the citizenry who suffers under the decrepitude of ICASA. An alternative reading by Moyo and Munoriyarwa is that ICASA employees are playing to the ISPs in order to ensure jobs after their contracts expire. They surmise that "ICASA members expect to work in the mobile network sector once their contracts end (and) this represents significant capture of this organisation. Because they still eye lucrative positions in wealthy [ISPs], most of the employees at ICASA will not 'upset the apple cart'" (Moyo and Munoriyarwa 7). As much as ICASA is a regulatory body that holds ISPs to a standard that serves the interests of the South African civil society, we find that the political economy of South Africa is still a stumbling block to fully realizing communicative rights and social justice. The lack of job stability, the threat of poverty and the illicit dealings of political and economic elites that plague South Africa is felt in even communicative freedom. Because of the socio-political and economic factors that affect the status of South Africa as a democracy, the country's realization of communicative freedom is stifled. This, once more, brings South Africa's proclaimed status as a democracy into question.

ICASA shortcomings and the role of ISPs in controlling communication has not been the only contributor to stifling communicative freedom in South Africa. In close relation to the impotency of ICASA, another guilty party is governments' role in forcing the hand of the ISPs to censor the internet, which adds yet another nuance to limiting free speech and communication. Vermeulen, in an article titled *South Africa's new Internet censorship law – FPB will force ISPs to block online content,* goes on to highlight how the Film and Publication Board also plays a role in stifling

communicative freedom. Reflecting on the structure of the Online Regulation Policy of the FPB, *Ellipsis Regulatory Solutions*, a legal advisory service to the telecommunications and broadcasting industry has noted how the"[...] redraft of the original policy document, while problematic in some respects, is a significant improvement over the previous version" (Vermeulen *South Africa's new Internet censorship law – FPB will force ISPs to block online content*). Considering the role of the FPB's approach to user-generated content (UGC), Ellipsis noted how most UGC is unclassified with an exhaustive amount of content from foreign jurisdictions. This has resulted in the FPB attempting to regulate "[…] specific instances of UGC" according to their personal discretion (Vermeulen *South Africa's new Internet censorship law – FPB will force ISPs to block online content*).

The above account of ISPS's interfering in the right to access information and resistance to communicative freedom in South Africa implicates far more than just private corporations. We find that even our public broadcaster and organs of state are involved in collusion to control information dissemination to society. Although their motives may be different (ISPs for profit and politicians for political currency and control), the ultimate prize is still a singular one: power in the information age. The blocking off of the digital space amounts to censorship and should thus be regarded with a sense of restorative justice for citizens. In a study on culture jamming and the limitations of free speech in South Africa, current media scholar, Professor Adam Haupt from the Centre for Film and Media Studies at the University of Cape Town lends credence to censorship being detrimental to democracy because it "[…] poses a threat to the commons. Likewise, a scenario where private interests dominate the public sphere at the expense of the public interest also poses a threat to democracy […] Democracy, therefore, has two nemeses: state censorship and corporate monopolisation" (Haupt 152).What our investigation reveals is that the ANC and economic entities have blurred lines regarding legislation and interests for monetary gain. An intricate web of interconnectedness thus links government, politics and business in an indecorous tangle of censorship, political power and profit. Communicative freedom and unabated freedom of speech is an escalating threat to secrecy and corruption. The generation of debates and awareness around these issues and this has led to a political and economic disapprobation to freedom of speech. The close links between business and government has sparked concerns that the secrecy laws previously discussed serve only the interests of corporations who exploit the working class in society for selfish gain. Legislation such as the *Protection of Personal Information Bill* and the *Promotion of Access to Information Act* in South Africa highlight possible abstractions in the framework of the law that hinder communicative freedom as opposed to promoting it.

There are currently many economic challenges to communicative freedom in 2021. From the above research, reasons given range from a lack of gatekeepers; absence of editorial control; polarization of opinions and fake news and propaganda which fuels hate speech. South Africa's most pressing concern is the high cost of data and how the telecommunications conglomerates are turning into economic and information oligarchs. Power and economic interests for telecommunications conglomerates are vested in limiting communication and free speech by limiting access to communicative infrastructure. The political challenges found in legislation plays into the interests of telecommunications conglomerates. The limiting of communication means less social debates and contestations to the monopolisation and exploitation within the economic sector. The power and wealth of older systems of business conduct can thus be maintained for economic gain while the proxy effect on society is the exclusion of citizens from essential information, education and participating in a digital democracy. This reality highlights the fundamental flaw in South Africa's communicative freedom infrastructure. While legislation has attempted to keep up with the right to access information (at least on paper), our economic sector has failed to do so. This shows a tendency towards economic profiteering over a human centred rule of business. Fundamentally, legislative challenges and economic challenges to communicative freedom contribute as much to the restricting communications as legislative challenges do. The one sector enables the other and neither is willing to voice concerns on behalf of the citizens of South Africa for fear of losing power and wealth. It thus becomes important to assess the social contracts that governments have with citizens and how, if at all possible, governments can attempt to regain the trust of citizens after having broken the social contract of democracy, particularly for South Africa, so impunitively. This brings us to a necessary review of the direct response to the political and economic challenges to communicative freedom: digital activism in the internet age.

iv) Understanding Digital Activism: A Review of Castells' Digital Perspective

This section focuses on Manuel Castells' *Networks of Outrage and Hope (2014)* specifically because the book was written as a reflection on both the network society and the then emerging digital activism of the time. Castells was involved in uprisings and revolts while reflecting on mass communication for digital activists and nodes of communication that facilitated campaigns, especially during the #OccupyWallStreet movement in the USA. It was within this urban, political space of protest that Castells first made the observation about the nexus where the physical space of activism and digital space of activism converge.

Digital activism has become an ambivalent notion. On the one hand, activism is necessary for a participatory democracy. On the other hand, activism has also been stigmatised as anarchic due to the inherently disruptive and 'violent' nature of protests. Violence does not only mean that activism creates situations where physical or psychological harm may be incurred, it also comes to inculcate violence in the form of verbal protests, fervent debate, argumentation, conflict, contestation and general conflict in moral, ethical, psychological, political and economical worldviews. As with many situations involving conflict, there are certain innate reasons linking to the very nature of humanity that contributes to this. There appears to be evidence that there is a primordial need for justice innate in human beings. In order to understand the necessity of activism, one first needs to understand the psychology and cognitive rationalisation that propels activists and activism and the resultant conflict associated with protests and revolutions.

One of the central sources that provide an insight into the psychology of revolts and protests is Castells' *Networks of Outrage and Hope (2014).* Castells begins to document the progression of digital activism and the disapprobation to online communicative freedom between securocrats and civil society. Why Castells is such an authoritative figure in drawing hypotheses about this is because his observations are based on personal experiences while being involved in revolts in the emerging internet age. This lived reality creates a unique perspective of digital activism from an insider's point of view, while still maintaining the empirical and data-based objectivity of academia.

In *Networks of Outrage and Hope (2014),* Castells' focuses on the idea of "networked social movements" and goes on to explain the objectives of documenting his journey into digital activism. The core of Castells' study is to look at power in a digital age and to show how information is used to perpetuate, exercise and maintain this power from both social movements representing society and the government representing the interests of political and economic elites. Inherent in this power struggle is an observation of the space of struggle which intersects at the material space of protest and the digital space of protest. As it stands, government still dominates the space of protest and thus the scales of power are largely tipped in favour of the political and economic elite. Castells notes how power is exercised through physical threats of "coercion" towards dissenting members of society and maintaining control through a sense of fear of retaliation by more powerful elements such as police or the military (*Networks of Outrage and Hope* 4-5). It is this violence that instils a sense of complicity in society and by so doing, government creates a cognitive mechanism of control within dissenting social actors that suppresses the desire to destabilise the established regime's hierarchy of power.

Powerful democracies usually set the standards for this type of coercion as recalled by Professors of Sociology at the University of Toronto. Analysing Castells' digital perspective of social activism in an academic article titled "Demonstrating in the internet age: a test of Castells' theory", Professors Anna Slavina and Robert Brym reiterates how "[t]he plain fact is that transnational social movement campaigns continue to cluster in rich, democratic countries" (4). The response of governments of powerful democracies towards digital activism sets precedents for global governmental reactions towards digital activism and acts as an example of how governmental powers behave towards dissent within a digital democracy. Castells does, however, acknowledge that there is a desire by social actors to assert a collective consciousness of 'values and interests' that stems from the innate desire for justice for society. Castells notes how the violence of coercion by government can only restrict social activism to a limited extent. This is due to the acknowledgment of humanity's preference to instil certain values and norms within the public interest in spite of any threat to physical violence. Both coercion and intimidation are thus based on the state's ability to exercise violence and are vital components for instilling the political and economic elite's will over society.

Castells argues, however, that the construction of meaning in people's minds is a far more influential and reliant source of power. The way people think determines how the institutions of society will end up. This extends to both norms and values that come to construct the society we live in. The nations whose power is built on violence, fear and control tend to not last very long. Castells comments that "[t]orturing bodies is less effective than shaping minds. If majority of people think in ways that are contradictory to the values and norms institutionalized in the laws and regulations enforced by the state, the system will change (*Networks of Outrage and Hope* 5). It is for this reason that Castells' study into the network society concerns itself with the idea of meaning making. Essentially, Castells makes the claim that the power struggle between citizens and the political and economic elite is battle of the construction of meaning in the minds of the citizens (*Networks of Outrage and Hope* 5). This means that our values and ethical reflections construct the physical world that we occupy. It appears, then, that the appeasement of ethical values and sensibilities greatly outweigh the physical threat to dissent. Justice, in the interest of protecting public values and norms, becomes the main goal for society in spite of governments' interests which privileges the interests of the elites. To Castells, overcoming of physical violence lies in the change of mindsets within society. This begins by changing minds through the abundance of information and discourses provided by the internet within the network society.

On the issue of changing the mindset of society, Castells notes how human beings reflect their understanding of the world by constructing the material society to reflect the innate values inherent in the human nature. Humans create meaning through interaction with the environment, by networking our neural networks with the networks of nature and, to a greater extent in a digital age, with social networks. This networking is only made possible by the act of communication. For society, the main basis for the creation of social meaning is through "[…] socialized communication" (*Networks of Outrage and Hope* 5-6). From Castells' perspective, socialized communication in a digital era exists in society beyond face-to-face communication. The constant development of communication technology in the network society allows communication media to pervade "[…] all domains of social life in a network that is at the same time global and local, generic and customized in an ever-changing pattern (*Networks of Outrage and Hope* 5-6). Castells highlights howthe human cognition interacts with each other, through neural networks or exchange of ideas. This process is facilitated by our ability to communicate. Communication thus forms an integral part of both our growth and survival as human beings. One danger of this collective consciousness ideology is that is the spreading of unsubstantiated, subjective opinions between communities of likeminded thinkers. The term "fake news" has become popular within media, particularly during the Trump regime leading up 2021. Slavina and Brym observe the danger of the fake news trend by expounding how "[w]hen usersshare misinformation in an online network of like-minded individuals, they reinforceopinions that can sway political behaviour" (4). This implies that power within the information age between government and digital activists is not always necessarily in the favour of government. It also implies that there is a danger of popular, dominant ideologies that may be rooted in misconceptions within large social groups creating scenarios of unjust retribution in times of uprisings and protests.

While some values may rely on a personal establishment of worldviews through individual experiences, much of our social comprehension and construction relies on meaning produced through interaction. A general consensus is reached between members of a society on what is acceptable and unacceptable behaviour and established as truth within a collective consciousness. Our ability to communicate constantly develops as we find newer ways of interacting with each other. So does our understanding of the world. This has been historically true but is also exigent for the digital era. The internet has facilitated the society's understanding to expand to a globalised collective consciousness. Castells argues that this understanding is at once deeply intimate and public as it relies on the individual interpretation of values and norms, subjectively determined by the individual citizen. However, it is also the collective social community that determines social norms

within the collective consciousness of society. Geographical borders have been erased as a hindrance to identifying common and uncommon ethos, values and principles in our global society.

A key point for Castells is to understand that communication in a digital era takes place through the individual but is not limited to the individual's understanding. In fact, the very nature of the geographically borderless and relatively quick mode of communication is the source of communication power. It is derived from the rationale of the individual but is not limited by individual rationale. The potential is that digital communication can reach vast numbers of individuals to express ideas and discuss issues and is not limited to only small communities where, eventually, such ideas either remain the domain of a small group or die for lack of fervent discussion. The fundamental change that Castells notes in communication is what he explains as "[…] mass self-communication" (*Networks of Outrage and Hope* 6-7). Castells defines this as the use of the internet and wireless networks as a space for digital communication. This is most popularly exemplified in the rise and reliance of social media platforms in the digital era. The reason it is mass communication is because it processes many communications with a potential to reach multiple receivers and connect to multiple networks around the world in our digital society. The reason it is self-communication is that the production of the messages is independently decided by the sender who also determines the receiver on their own volition. The retrieval of such messages from the networks of communication is also voluntary (*Networks of Outrage and Hope* 6-7).

Mass self-communication is based on horizontal networks of communication that works both ways for sender and receiver, and is difficult to control by governments or economic elites. Professor and Director of the Communication and Media Research Institute at the University of Westminster, Christian Fuchs, in an article titled: "Some reflections on Manuel Castells' book 'Networks of outrage and hope: Social movements in the Internet age", discusses the positives of social media as mass self-communication for digital activism by describing how "[t]he techno-optimistic position sees mainly positive impacts of social media on politics and infers that social media strengthen democracy and the public sphere" (777). At the same time as acknowledging the benefit of social media as mass-self communication on democracy, Fuchs also highlights the costs to activist by describing how, in contrast to the "techno-optimistic position", digital activists in "[…] revolutions and rebellions risk their lives and risk becoming victims of violence conducted by the police or the people their protest is directed at" (Fuchs 777). These observations highlight the positives and negatives of digital communication as a multimodal platform of struggle between government and citizens. Social media allows users access to a global language of references and information whose

components can be constantly changed by the communicative actor according to specific projects of communication. For Castells, mass self-communication "[…] provides the technological platform for the construction of the autonomy of the social actor, be it individual or collective, vis-à-vis the institutions of society" (*Networks of Outrage and Hope* 6-7). It is for this reason that governments hold disapprobation towards the internet, and also why corporations have an ambiguous relationship with it. It is far easier for corporations to extract profits while limiting its potential for freedom; for instance, by controlling file sharing or open source networks (*Networks of Outrage and Hope* 6-7). What makes mass self-communication so unique is that it is able to transcend the control of the governmentality of traditional forms of communication where the elite are able to determine the access and flow of information. In this case, the space where power relations within society are able to shift from the elite to the citizenry is formed.

There are two other critical parts of the modern internet that deserve to be discussed in light of the need to create and promote a space for privacy protection advancement of freedom of speech, access to information and communicative rights. They are the deep web and the dark web. These sections of the internet are approximately 500 times larger than the surface web and constitute the majority of the information that is available in the digital space of communication. It is also only accessible through an anonymising web browser that redirects Internet Protocol (IP) addresses to bounce around servers globally in an attempt to hide the location and identity of users. This has had both positive and negative consequences. On the positive side, information − including details on corrupt and depraved behaviour by the citizens, political and economic elite – can be made available for the greater interest of the public. This is the digital space for journalists, activists and social watchdogs to conduct research and compile evidence that illuminates illicit behaviour.

Users of the deep and dark web are most notably broken up into three categories: white hat hackers, grey hat hackers and black hat hackers. White hat hackers are usually users who utilise the information available in the deep and dark web for whistleblowing, journalism and activism. Grey hat hackers are hackers on the fringe of legality, who often walk a delicate line between crime and social upliftment. Activities for grey hats range from making 'paid for' content free to all users to anonymously publicising sensitive information that falls within the public interest — usually, it is copyright laws on music, books and movies that suffer the most. Grey hats have been known to sell information to corporations in an espionage-type effort to garner wealth. Black hats are defined as hackers that hack for malicious purposes. This could be anything from hard crimes such as assassinations, terrorism or selling of weaponry to human trafficking and child sexual abuse. On the

negative side, there have been instances of depravity from morally questionable criminals who conduct business and transmit information that is in opposition to the greater good and public interest. We find that, within these grey areas of the internet, there are both moral and immoral factions, much like society within the physical, material society in which we live.

For communicative rights, the deep and dark web may be a negative space for political and economic elites. However, for citizens within the society, it presents a richer space for the development of social values and ideologies that are both relevant and within the interest of an ever developing citizenry. This suggests that the digital space of communication has the potential to create an atmosphere conducive to a global community that is ethical and that develops organically, based on the relative needs and wants of society. For Castells, this is what makes the internet so dangerous for political elites. Regardless of the potential for citizens to destabilise the dynamic of power relations in the digital space, we still find that the very infrastructure upon which the internet is built is still owned and controlled by elites. In the network society, power is held by those who have the ability to programme the infrastructure. Programmers of the digital faculties of society such as government, police, military and security establishments, technology, media, science and education have the ability to programme these essential networks that society relies on to function. Castells takes this further by describing how "[…] *switchers* [sic] who operate the connections between different networks (media moguls introduced into the political class, financial elites bankrolling the political elites, political elites bailing out financial institutions, media corporations intertwined with financial corporations, academic institutions financed by big business, etc.)" also hold positions of power in the network society (*Networks of Outrage and Hope* 8-9). In spite of the traditional mechanisms of control and social hierarchies of power still finding a presence in the more open digital space of communication, we find that there is still space for a reallocation of power through the notion of 'reprogramming'. For Castells, reprogramming takes place when power "counterpower", which he describes as the purposeful endeavour to re-imagine established power relationships, is mobilised by reorganising networks around different values outside of those of the traditional power. This disrupts dominant switches "[…] while switching networks of resistance and social change" (*Networks of Outrage and Hope* 9).

Castells'position highlights how actors of social change, such as journalists, whistleblowers and activists, are able to take control by using mechanisms of power-making that are allegorical to the networks of power in the network society. Through engaging mass media'sability to create media messages, and through growing independent networks of horizontal communication, participants of

the network society are able to invent newer programmes for their lives with the tools that Castells refers to as "[…] the materials of their suffering, fears, dreams and hopes" (*Networks of Outrage and Hope* 9). Measures of counterpower such as campaigns and protests come about through the sharing of citizens' lived experiences. Social actors tend to change and manipulate the traditional structures and practices of communication by asserting their power on the medium and creating the message relevant to their agenda. Castells highlights this by describing how social actors "[…] overcome the powerlessness of their solitary despair by networking their desire. They fight the powers that be by identifying the networks that are" (*Networks of Outrage and Hope* 9). For Castells, the notion of reprogramming can be likened to the idea of reinterpretation within a semiotic communicative process where meaning is reinvented. In a communication process, processes are set in place in order to understand messages: there is an observation of communication, the comprehension of the message, an interpretation of the message and then the reinterpretation and feedback conveyed to the next participant within the communicative process. In the same way, Castells argues that activists are, through mass self-communication, able to recreate and reinterpret the discourses of the elite powers. They destabilise the power of the elites by changing the message and occupying and saturating the spaces of communication with a subversive or counter discourse.

These exercises of counterpower can, however, only be established in a space that is not dominated by the elite. Social movements can only exercise counterpower if they construct themselves through the use of autonomous communication, as it is free from the bonds of control of traditional institutional powers such as the government and economic elites. Associate professor of Anthropology at Northeastern University in Boston, Jeffrey Juris, argues that digital activists have strengthened the development of counterpower by "develop[ing] highly advanced forms of computer-mediated alternative and tactical media [that] facilitated the emergence of globally coordinated transnational counterpublics while providing creative mechanisms for flexibly intervening within dominant communication circuit" (Juris 204). For Juris, particularly in the digital age, autonomous communication is difficult to achieveas governments and media institutions control mass media. This has meant that autonomous communication for social actors primarily is constructed and functions over wireless platforms and internet networks. These online social networks provide the much needed space for covert communication and, often, subterfuge that aids social actors in the assertion of counterpower measures and offer "the possibility for largely unfettered deliberation and coordination of action" (*Networks of Outrage and Hope* 9-10). While important, social networks constitute one component of the communication process where activism groups identify with the greater society. Social actors who networkon the internet also need to

establisha space of activism in the physical space of protest by creating free groups in the urban space. Castells reasons that public spaces, that is, spaces that are constitutionally designated spaces of deliberation are occupied by powerful elites and their networks of power. It is therefore important for social movements to create a space in the physical world that is not isolated to the digital space but is, in fact, a physical space outside of the digital world in order to make their presence known and felt in the places where social life is enacted. This is the reason for social movements occupying urban spaces and symbolic buildings (*Networks of Outrage and Hope* 9-10).

However, the digital modes of communication are simply not enough to firmly establish change within society. While the digital space is an excellent way to destabilise established social hierarchies of power and change the narrative of social systems of power, there needs to also be a physical representation of this that is performed in the physical or material space. It is at this point, where two roads meet, that Castells makes an astute observation on the nexus between the physical and digital space of protest. This physical space cannot be established within the space occupied by the elites. So an alternative physical, urban space which accommodates the public in representation of the public interest is needed. This space is necessary for 'deliberation', as Castells puts it, within a democratic space of counterpower and activism.

Elaborating on the importance of these nexuses of public spaces with digital spaces, Castells describes how the very history and setting of activism affects the psychology of activists attempting to effect counterpower. Castells proposes three important reasons for the creation of physical spaces of activism. The first is that they are derived from a community and, in turn, create a community of likeminded individuals who are intent on destabilising power structures with the outcome of change. The establishment of a community of like minds is essential as a support system in the face of dissent against powerful political and economic elites. It also creates a distinction between activists and elites in the sense that it gives activists a sense of identity and to distinguish who they are fighting against. Effectively, the urban space of activism is a liminal space where activists are othered and in so doing, create for themselves a distinct opponent against who they will aim their activism. The second is that they create a symbolic space of power that represent the contestation and will to effect change by reclaiming what is seen as lost: namely the physical space and values that are associated with it. By claiming and occupying an urban space while in protest and in spite of the will of established hierarchies of power, activists claim a sense of power through the assertion of their own will. Third, we find that the occupation of urban space creates a space that is autonomous and free of the rule and regime of the contested elite powers that surround it. In this sense, the movement and activism assume a political ethos that stands in contrast to the rule of the elites who are being protested against.

Castells thus suggests that the formation of a combination of physical and digital spaces of protest is key to the success of counterpower. Speaking on the importance of multimodal communication, Castells further suggests it is the most effective manner through which change within power structures can be effected in a digital democracy. Because of the nature of the digital space of communication and protest, and the nature of society within a digital democracy, horizontal communication that encapsulates the principle of equality is the most valuable and desired method of governance for counterpower movements. Multimodal digital networks of horizontal communication have been reported to be the "fastest, most autonomous, interactive, reprogramming and self-expanding means of communication in history" (*Networks of Outrage and Hope* 15). The characteristics inherent in the communication processes between activists within social movements come to determine the organizational characteristics of the social movement. The more interactive and open-sourced the communication is, the less structured the organization in terms of traditional hierarchies of leadership and power. This also means that actors within the movement will be far more willing to participate within their own governance and exercises of counterpower. This is why social movements of the network society, and who are firmly located in the digital age and space, are representatives of a newer evolution of social activism.

One problem of networked social movements is that the new space of protest may lean on older ways of asserting power to establish its relevance. By so doing, such counterpower and movement may inadvertently alienate the very citizens that they claim to represent and fight for. Such practice may weaken the social movement and could lead to the destabilisation and eventual dissolution of the movement. In many cases, the failure of protests and revolts is as a result of this course of action. Violence associated with securitization and militarization of counterpower movements have often been seen as examples of patterned behaviour that has led to citizens and activists losing confidence and trust in social movements. In a few cases in Africa, guerrilla armies have sprouted within the violence of protests and revolts that essentially acted against the best interests of citizens. The actual from of governance within the space where digital and physical protest meet is thus critical to achieving the change that is sought by counterpower movements.

Although there may be many situations that lead to the failure of social movements, Castells identifies an almost universal law that may assist with the success of counterpower movements. The achievement of the objective of change appears to be rooted in the ability of social movements to move in harmony and cohesion with other social movements that seek positive change within the greater public interest. For counterpower to succeed in its domination over networks of power

embedded in the fabric of society, certain reprogramming needs to take place. This is particularly true for "[…] the polity, the economy, the culture or whatever dimension they aim to change by introducing in the institutions' programs, as well as in their own lives, other instructions, including, in some utopian versions, the rule of not ruling anything" (*Networks of Outrage and Hope* 16). Castells argues for a connection between different networks of social change, for example, between pro-democracy networks and human rights networks, economic freedom networks, women's rights networks, environmental conservation networks, peace networks, freedom networks and so on (*Networks of Outrage and Hope* 16). Castells further argues for an integration of the ethos and values of counterpower movements with established power structures already embedded within society; government, the economy and culture as a whole in an attempt to overcome the elite political and economic structures of power. This level of change is not just limited to the institutions themselves but should, ideally, take place in the minds, lives and values of the individuals themselves. As institutions are not living beings, the change of ethos regarding power is effected only on the level of the individual moral actor and thus the change for betterment of society begins with the individual. Once the individual has established the change within their minds, it then becomes possible to come together as groups of like-minded citizens to protest inequity. Only then can groups of counterpower collate, each with specific agendas affecting inequities in varying factions of society, to destabilise the inequitable power structures of the elite in the hopes of changing society as a whole.

CONCLUSION:

Communicative Freedom - Towards a Digital Democracy

This dissertation discussed the veiled reality of political and economic resistance to communicative freedom in South Africa. The analysis argued that older communicative freedom legislations in South Africa are ineffective because the legislation's language is so open-ended that it may have condoned misappropriation by political and economic elites and that current legislations are unjust because it proposes physical arrest against dissent by digital activists for whistleblowing using information and discourses as their primary tool of activism.

The dissertation has further proposed that thinking about South Africa as a constitutional democracy requires interrogation as it may be assumed that democracy in Africa is based solely on constitutive ideals of founding western democracies. Considering this study's Corpus Linguistics analysis of the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013,* as well as cases of corruption and state capture, a space is created suggesting that, in the nexus between political and economic resistance to communicative freedom and digital activism, South Africa has regressed into an autocratic dystopia. What should be made clear is that South Africa does not meet the system of intellectual conditions to call itself a democracy according to democratic studies. The idea of democracy as a system of intellectual condition that needs to be met in order to be considered as functional, as discussed by Diamond and Morlino, highlighted the critical question of whether South Africa could truly claim the title of 'democracy' considering the allegations of corruption, state capture and failure to deliver basic services within the socio-political spheres.

Reflecting on the chapters of this research, there are a number of goals that was set out to be achieved. As explained in the introduction, "Chapter One" and "Chapter Two" has acted as a means of contextualising the academic framework and structure of this research. This provided much of the contextualisation and motivation for conducting this research into communicative freedom in a digital democracy.

“Chapter One” has focused on information technology that has become increasingly problematic for governments and corporations. Older legislation that was used to govern communicative freedoms in our physical world has been sharply criticised for condoning corruption due to lexical misappropriation. What this has suggested is a tendency by government and corporations to censor, inferring disapprobation towards freedom of speech and the right to know. The chapter had further traced the study of digital cultures and suggested a reallocation of power from government to citizens in the nexus between the physical and digital space of protest. Furthermore, it interrogated whether there is a new socio-political framework that arises from this and whether this framework was based on the political structure of western democracy or something analogous of an autocratic state.

The methodological approaches adopted for this research were aimed at answering the five key research questions this study focused on as reflected in “Chapter One”. One shortcoming that was acknowledged was that this research was developed from the time period of 2012 to 2015 and then elaborated on as events and amendments to legislation had progressed. It must be stressed that the aim was to establish the boundaries of this dissertations research and to show that the restriction placed on access to information by government and corporations in this period of time, coupled with the misappropriation of the previously mentioned acts, undermined communicative freedom as enshrined in the South African Constitution.

“Chapter Two” explained how the summative literature review and theoretical framework were so closely interconnected in terms of researched data, that it felt appropriate to incorporate the sections into a structured, multileveled subsection that forms “Chapter Two”. The chapter provided an explanation of how the methodology and the review of the theoretical framework incorporated empirical data that was justified as a literature review. The summative literature review of “Chapter Two” further concentrated on two schools of scholarship. The first school of scholarship was cultural studies that focused on the reallocation of power in the nexus between the physical space of protest and the digital space of protest. Manuel Castells had proposed that a new form of governance, subverted from westernised democracy, had developed within the power vacuum found at the nexus where digital protests and physical protests met. Castells had not identified what social contract this may be. “Chapter Two” hypothesised that in the space where resistance to free speech and the promotion of free speech met, there was a power vacuum bereft of an established form of

social contract of governance. Within this power vacuum, South Africa had found itself in a state of autocratic dystopia.

The second school of scholarship explored in "Chapter Two" was politics in a digital era. In this review of politics, the chapter explored communicative freedom as a basic human right in South Africa. The chapter referenced the furore around the South African government and the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013).* It had further reviewed how these legislations hindered the work of activists and journalists who, ironically, reported information that uncovered corruption, yet live in fear of prosecution for dealing in information that our government classified as 'critical to national security'. The section developed on Duncan's theme in *The Rise of the Securocrats (2014)* by focusing on censorship in a digital democracy.

The idea of South Africa regressing into an autocratic dystopia loosely veiled as democracy has been further supported by the recent events, which is referred to in Appendix C, that outlined significant communicative freedom events in South Africa from 2014 – 2020 (See Appendix C). There is a clear indication that, from the time of the Zuma regime, there had been progression in methods of violating constitutional rights in order to maintain secrecy and corruption under the Ramaphosa cabinet. The constant battles that were fought in green papers, white papers and picket demonstrations by communicative freedom activists against consistent misappropriation and abuse of proposed and established legislations indicated that, in many instances, government ignored the voices of dissenting social actors and grassroots level activist groups who demanded change to inequitable secrecy. One such example is the announcement of the resurfacing of the *Protection of State Information Bill (2010)* even after it was found to be constitutionally problematic. Another indication of impunitive governance was the evoking of the Apartheid-era *National Key Points Act (1980).* Ironically, the ANC attempted to use the same measures of information censorship of the Apartheid regime in order to censor information within the public interest. These events pointed towards a deep-rooted culture of secrecy within the government. South Africa thus found itself on the verge of losing its status as a democracy.

"Chapter Three" provided an overview of what constitutes a democracy. It discussed the historical and theoretical approaches to democracy and whether South Africa could be

considered a functional democracy according to key democratic principles outlined in popular 90s academic studies. This chapter also concisely focused on the networked society and digital activism as a legitimate form of protest that should be protected in the same manner as protests in our physical, political spaces. What the chapter had most saliently honed in on was Castells' proposal that autonomous spaces and the power vacuum created there had left a space where neither citizens nor political and economic elite held autonomous power. The chapter suggested that an interrogation of what form of governance should develop within this new liminal space is important. The chapter explained that the form of governance or social contract within the power vacuum had not yet been empirically researched or discussed due to its relative and instrumental nature. Different contexts and conflicts necessitated that different forms of power and governance came to replace the established government of a particular physical and digital space during specific conflicts or eras in world history. Often, these conflicts were interwoven with intersectional concerns of race, class, gender and cultural difference which served to compound and complicate ways of governing citizens during a shift in political power. "Chapter Four" expanded on the intersectionality and compounding social concerns post-1994.

"Chapter Four" took a specific look at citizenship as speech before the onset of democracy in South Africa in 1994. The aim of this chapter was to create a historical context in which the dissertation could discuss communicative freedom in South Africa. "Chapter Four" discussed whether South Africa could be considered a democracy while still being haunted by corrupt government officials, state capture and a parastatal government reminiscent of the older, Apartheid regime. The chapter outlined how the inevitable outcomes of the Apartheid system's restrictive legislations were uprisings, revolts and eventual revolution that would lead to the abolishing of racial policies and freedoms for all and one of the most culturally progressive, relative and inclusive democracies. It further hypothesised that the particular idealised vision of a democracy in South Africa, however hopeful it seemed for oppressed South Africans pre-1994, was not yet solidified, leaving South Africa's political landscape in tension after the first democratic elections of 1994. In terms of fully realising democracy for South Africa after Apartheid, this political scepticism of government had never really been alleviated due to ongoing corruption, state capture and failure of service delivery to the poorest South African communities. Much like "Chapter Three", this chapter highlighted how these tensions have intersectionally connected with social inequities post-1994, such as the lack of free speech in South Africa prior to democracy. Although South Africa has one of the

most progressive Bill of Rights and inclusive democracies on paper, the full concept of freedom has not yet been realised as exemplified through legislative loopholes, and exploitation of these loopholes, by securocrats.

"Chapter Five" looked specifically at the language of legislation in South Africa and how problematic it was in terms of overly broad and vague language choices to frame rights. It has assessed to what extent misappropriation of semantics could undermine citizens' democratic rights to access information and exercise free speech. This was achieved through a critical, comparative analysis of legislations as well as a Corpus Linguistics analysis of the *Protection of State Information Bill (2010), Protection of Personal Information Bill (2009)* and the *Promotion of Access to Information Act (2013).* The findings in "Chapter Five" were then supported by the interviews conducted with the coordinators of communicative freedom NGOs in "Chapter Six". "Chapter Six", and its interviews, acted as a means of further expounding the results of the Corpus Linguistics and Discourse Analysis of "Chapter Five". The misappropriation of POSIB (2010), POPIB (2009) and POAIA (2013) and the impunitive exercises of power had evidenced government's resistance to freedom of speech and access to information that was within the public interest in South Africa. By proxy, government also showed a fear of communicative freedom that was identified in ignoring equivocating terms in the various Bills despite being made aware of them. While these terms did affect the legislative aspect of the rule of law and social behaviour, it also had a negative effect on the economic sector of South Africa as seen in the role of telecommunications corporations in the struggle for communicative freedom. One solution to these difficulties may lie in the standardisation of language for judicial purposes. The adoption of a plain language statute of interpretation would have ensured that a singular grammatical interpretive framework be applied to the judicial lexis that could apply to all people at any given time. The current South African judiciary's interpretive framework suffers within an evolving social, global and secular world. The archaic interpretations of laws, basing itself in outdated, moralistic and inaccurate lexical factum had been applied to cases where these archaic interpretations were no longer effective. This inequity in the application of the law is the antithesis of liberty and justice as commanded by democratic systems around the world.

"Chapter Seven" reviewed economic challenges to free speech. It looked towards a digital democracy and discussed the type of social framework that governs an information-based society. The explicit objective was to show governmental and corporate inclination towards

secrecy and the curtailing of communicative freedom in South Africa. Through highlighting telecommunication conglomerates monopolisation of the digital space and governments unwillingness to effectively deal with this monopolisation, political and economic entities were both guilty of impeding citizens' participation in our digital democracy. This violated the public interest as well as basic constitutional rights to communicate, access information for education and to participate within our own democracy. The hypothesis that South Africa is denigrating into an autocratic dystopia was, once more, assessed against the struggle between civil society and government's lack of accountability towards ineffective governance in South Africa. Another central focus of this chapter was the lack of accountability for corruption that deepened the anger of South African citizens towards the government. This dissertation argued that in the space where resistance to free speech and the promotion of free speech clashed, there was a power vacuum where democracy did not function. In light of this observation, the idea that South Africa was left in a state of autocratic dystopia was entrenched, despite having one of the most progressive Bills of Rights.

Different contexts and conflicts require that different forms of power and governance replace the established government of a particular physical and digital space. In the network society, citizens have come to understand their right to communicate. In the case of ISPs, corporations prey on citizens by taking their cue from the political exploitation of communicative freedom legislation for economic gains. Another pressing concern is how the telecommunications conglomerates are turning into information oligarchs. As discussed in the economic challenges chapter, power and economic interests for telecommunications conglomerates were vested in limiting communication and free speech by limiting access to communicative infrastructure. Fundamentally, legislative challenges and economic challenges to communicative freedom contributed as much to the restricting of communicative freedom as legislative challenges did. The two are intimately intertwined in the South African context.

i) Concluding Remarks

In a digital democracy, information is power. More than ever, textual analyses of languages have become essential as words are the medium through which we communicate information and, thus, the very source of power in an information society. The linguistic landscape of the internet has become an essential space for struggles and exchanges of power, where elite political and economic powers and counterpowers of social movements and activism take

place. Within this space of discursivity, we find that digital activists express their struggle and mobilise in the name of their causes.

The internet has been a space where our physical world has been enshrined into the digital space through the conduit of language: that is, forms of information, media, discourses and expressions of opinions which affect the material world that we occupy. Work is no longer seen as merely manual labour exercised through the form of human resources to affect the physical world. Labour, in the digital age, has increasingly moved from the analogue exertions of the human body to the conveyance of messages and information across cyberspace. With the ever-increasing development of artificial intelligence and robotics to replace the physical labour of humans, the use of discourses to provide instruction and execute the will of people has come to replace the tediousness of physical labour. In the vacuum that the absence of physical work has left us, humans have increasingly come to occupy ourselves with developing higher cognitive functions of reasoning and thought. Along with this comes the development of ideals, wills, needs and wants of our global community that are discussed in exchanges of communication from an array of differing worldviews and cultures. This makes language the essential currency of power within our digital world. The governance of our physical space has thus changed from times where our needs and wants were much different than they are today. Yet, we find that laws and legislation of archaic times are still implemented in order to govern a world that no longer requires this particular brand of governance. When considering the cases of corruption, state capture and the unwillingness of our political and economic elites to relinquish the use of impunitive exercises of power, South Africa should not be considered a democracy in a rational world.

Appendix A: Informed Consent Form and Questionnaire (Primary Data)

INFORMED CONSENT FORM

Name of participant:

Organisation:

Position in organisation:

Thank you for agreeing to participate in this study. This form details the purpose of this study, a description of the involvement required and your rights as a participant.

The purpose of this study is:

- To gain insight into forms of digital activism that has come from the political and economic resistance to free speech through the undermining of South African's constitutional rights.

The benefits of the research will be:

- To better understand the social media initiatives of free speech activists in protesting government and corporate resistance to free speech;
- To identify significant components within current, restrictive legislations on communicative freedom that benefits the political and economic elite and undermines the communicative freedoms of the South African citizenry.

The methods that will be used to meet this purpose include:

- A structured questionnaire

You are encouraged to ask questions or raise concerns at any time about the nature of the study or the methods I am using. Please contact me at anytime at the e-mail address listed at the end of this document.

You may answer the questionnaire in a digital format (email) to ensure adequate consideration of the answers that you wish to give and to allow you the necessary time for reflection in case you wish to amend any answers. The email questionnaire is also set in place so that you can answer the structured question at a pace and time that suits you. If, for any reason, you feel uncomfortable with answering a particular question, you may omit the answer.

You also have the right to withdraw from the study at anytime. In the event you choose to withdraw, all information will be omitted from the final paper.

Insights gathered from you will be used in writing a qualitative research report, which will be read by my professor and possibly be presented in future seminars or publications. Although direct quotes from you may be used in the paper, your name and other identifying information will be kept anonymous.

By signing this consent form I certify that I _____ agree to the terms of this agreement.

_____ _____

(Signature) (Date)

Informed Consent: Researcher, Research and the Risks involved

The Researcher

My name is Chad Brevis, and I am a Ph.D. student at the University of Cape Town. I am conducting a qualitative research study on the role of digital activism in political and economic resistance to free speech in South Africa.

The Research

The purpose of this study is to critically explore the idea of South Africa as a constitutional democracy; the language of South African legislation and how free speech legislation at once promotes and inhibits access to information. My analysis will be based on a comparative political science context that discusses democracy as a system of intellectual requirements and essential conditions that need to be fulfilled in order to be considered as functional in a network society.

The Process

Your participation in the study will involve a questionnaire with an estimated length of 15 minutes. The questionnaire may be mailed to me directly within one week of it being received by the participant.

Risk

This study poses little to no risk to its participants due to the anonymity of the interviews and questionnaires. I will do my best to ensure that confidentiality is maintained by not citing your actual name within the study unless otherwise indicated. You may choose to leave the study at any time, and may also request that any data collected from you not be used in the study.

By signing below you agree that you have read and understood the above information, and would be interested in participating in this study.

Name_____
Date_____

Questionnaire

Purpose of the Study

I aim to show that the misappropriation of the Promotion of Access to Information Act and the Protection of Personal Information Bill undermines communicative freedom as enshrined within the South African Constitution, effectively showing that South Africa cannot be considered as a westernised democracy but rather regressing into an autocratic dystopia. Below, you can find the questions. Please feel free to use as much space as necessary to answer your questions:

The 5 research questions that will guide this study is:

1) Can South Africa be considered a democracy according to your experience and understanding? Please elaborate.

2**) Do you think that the terms (language) of communicative rights within legislation are too broad to be effective in protecting citizens rights to access information and freedom of speech? Please elaborate.**

3) What form of governance do you think is emerging in the power vacuum created in the space where digital activism and political resistance to communicative freedom meet? Please elaborate.

4) Should digital activism be considered as a legitimate form of protest in a digital democracy and covered by the same communicative rights as activism in the physical world? Elaborate. Please elaborate.

5) Who do you think are the gatekeepers of communicative rights and what role do they play in the power struggle over communicative freedom between citizens and the political and economic elite? Please elaborate.

The data collected in this study will be used to draw conclusions to help social science academics to better understand the impact of complex legislative language on the South African citizenry. I suggest that, through the semantic misappropriation of broad and vague terms used in the *Protection of State Information Bill,* also known as the *Secrecy Bill, Protection of Personal Information Bill* and the *Promotion of Access to Information Act*, political elites subvert the constitution for financial and political gain. In so doing, securocrats undermine the Constitutions' authority in delegating communicative rights and responsibilities to citizens. I propose that South Africa is no longer a constitutional democracy and is regressing into an autocratic dystopia.

Subject's Understanding

- I agree to participate in this study that I understand will be submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy at The University of Cape Town.
- I understand that my participation is voluntary.
- I understand that all data collected will be limited to this use or other research-related usage as authorized by The University of Cape Town.
- I understand that I will not be identified by name in the final product.
- I am aware that all records will be kept confidential in the secure possession of the researcher.
- I acknowledge that the contact information of the researcher has been made available to me along with a duplicate copy of this consent form.
- I understand that I may withdraw from the study at any time with no adverse repercussions.

Subject's Full Name: _____

Subject's Signature: _____ Date signed: _____

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Appendix B: Notes

1) "Discourse analysis can [...] be used to explore how [texts] construct specific views of the social world, in which case [texts] is viewed as the topic of research, and the discourse analyst is interested in how [language] construct accounts of the social world. This type of discourse analysis therefore pays careful attention to an [texts] itself (as well as other sorts of evidence). Since discourses are seen as socially produced rather than created by individuals, this type of discourse analysis is especially concerned with the social modality of the [textual] site. In particular, discourse analysis explores how those specific views or accounts are constructed as real or truthful or natural through particular regimes of truth" (Rose 140).

2) Thomas provides three reasons for the use of an inductive approach to data analysis, which he outlines as: "[...] (1) to condense extensive and varied raw text data into a brief, summary format; (2) to establish clear links between the research objectives and the summary findings derived from the raw data and (3) to develop of model or theory about the underlying structure of experiences or processes which are evident in the raw data" (Thomas 1).

3) "The primary purpose of the inductive approach is to allow research findings to emerge from the frequent, dominant or significant themes inherent in raw data, without the restraints imposed by structured methodologies. Key themes are often obscured, reframed or left invisible because of the preconceptions in the data collection and data analysis procedures imposed by deductive data analysis such as those used in experimental and hypothesis testing research" (Thomas 2).

4) "The concept of self as research instrument reflects the likelihood that the researcher's own subjectivity will come to bear on the research project and any subsequent reporting of findings. Interpretation consists of two related concepts: the ways in which the researcher accounts for the experiences of the subjects and of her or himself, and the ways in which study participants make meaning of their experiences. Related to subjectivity is the expression of voice that results in the reporting of research findings. Through this voice, the researcher leaves her or his own signature on the project, resulting from using the self as the research instrument and her or his subjectivity" (Bourke 2).

5) Taken a bit further, Hague et al. makes clear that "[d]emocracy is consolidated when under given political and economic conditions a particular system of institutions becomes the only

game in town and when no-one can imagine acting outside the democratic institutions" (Hague et al. 43).

6) "At a minimum, democracy requires: 1) universal adult suffrage; 2) recurring, free, competitive, and fair elections; 3) more than one serious political party; and 4) alternative sources of information (Larry Diamond and Leonard Morlino 2-3).

7) Diamond and Morlinoexplains:[…] *defective democracies* […] are 'exclusive' in offering only limited guarantees for political rights, or 'dominated' in allowing powerful groups to condition and limit the autonomy of elected leaders, or 'illiberal' in the inadequacy of their protections for civil rights and the rule of law. We can also expect the quality of democracy to be quite deficient in *delegative democracies,* which have electoral competitiveness and relative civil and political freedom, but whose officials, once elected, are only minimally responsive to citizen preferences, constrained by other agencies of government, and respectful of the rule of law (Diamond and Morlino 3).

8) "The electoral imbalances in the party system and the static and predictable nature of voting outcomes have raised concerns that elections fail to act as an accountability mechanism. This has raised deeper concerns for the quality of democracy. An extended period in power can gender complacency, arrogance and even corruption in a dominant party. When parties cease to 'fear the ballot box' they are likely to become unresponsive and ideologically entrenched. A dominant party, such as the ANC, is able to take the citizenry's vote for granted because it is not seriously threatened at the polls. If there is no threat to prospects for re-election the value of elections as a means to discipline elite behaviour is eroded" (Schulz-Herzenberg 2).

9) Schulz-Herzenberg describes this when stating that: "The electoral dominance of the ANC has also led scholars to suggest that ANC voters, in particular, are an unquestionably loyal and enthusiastic group. As such, the ANC government's economic and political performance, however fair or poor, is likely to have little impact on these voters. The implication of an impervious majority of voters is dire for government accountability. If ANC supporters continually disregard or pay little heed to government performance, accountability is diminished (Schulz-Herzenberg 2).

10) This ‘struggle legitimacy’ gives them [the ANC] a much stronger political, economic and moral mandate than that of governments in most other developing countries […] But, if such power goes unchecked, it also means that they can get away with service delivery failure, autocratic behaviour and wrongdoing in the name of advancing the liberation or independence project (Gumede 11).

11)) Gumede recalls: “COSATU General Secretary ZwelinzimaVavi summed it up when he said: ‘The election of a progressive leadership [does not] mean the end of the struggle and that we must now step back and hand over everything to these progressive, trusted leaders as though they are messiahs and will deliver everything on a silver platter, while we are in our beds sleeping’” (Gumede 14).

12) “[…] many users cannot afford to access the network to the extent that they need. Universality will be realised only once people can access the network whenever they want to. Communication must be ubiquitous: that is, users should be able to access information anytime, anywhere, anyhow, depending on the choice of the user. Currently, users are restricted in their choice of how to access information they need, either at home or on the move. Communication must also be dialogic: that is, users should have the ability both to receive and impart information. They should not simply reproduce old methods of communication where a few talk and the majority listen. Everyone should have the right to privacy and anonymous communications, which include the right to encrypt their communications” (Duncan 215).

13) “The growing ubiquity of the internet requires an examination of the state of internet freedom. More governments are securitizing and militarising the internet [and we need to] explore […] whether electronic communications have entered the public domain as security concerns in South Africa too, and to what extent ICT policy is being structured around security concerns” (Duncan 216).

14) “If the electronic communications system aims to be a democratic one, it should be designed to give effect to [being ubiquitous and dialogical]. However, such a communications system is profoundly threatening to securocrats, as it ensures that communications power is democratised and placed in the hands of the citizenry” (Duncan 215).

15) Harrop and Hague expound: […] even when elections have succeeded in the delicate task of replacing a governing elite, most new democracies remain distinctive; the question is not whether they will consolidate but what exactly they are consolidating into. The difficulties facing new democracies can be grouped into two clusters: the political problems associated with an illiberal inheritance and the economic problems caused by the combination of limited development and extreme inequality (43).

16) The Ministry of State Security has argued that the *Secrecy Bill* is needed to counter what it refers to as rising cases of espionage and the peddling of state information […] The Bill defines espionage as providing classified information, which the person knows or ought reasonably to have known would directly or indirectly benefit a foreign state, and information peddling as providing information that is false and fabricated to a national intelligence structure, knowing that it is false or has been fabricated. The prescribed sentences are stiff: between three and five years for espionage offenses involving the leaking of confidential information, between 10 and 15 years for secret information, and between 15 and 25 years for information classified top secret, while information peddling can attract a sentence of up to five years (Duncan 56).

17) In their *Submission to the Ad-hoc Committee of the National Council of Provinces on the Protection of State Information Bill*, R2K explains how:

> · The Act burdens all of society with what should be a state problem, namely the keeping of state secrets. Ordinary people should not be criminalised for possessing and disclosing classified information—to do so will edge South Africa towards a "society of secrets", where free information exchanges and debate are inhibited by a culture of fear.
>
> · The alternative means of protecting the public and a key demand of civil society, a public interest defense, remains absent from the Act.
>
> · The Act's supposed remedies for public access, such as whistleblower protection and access to information/declassification procedures, remain seriously defective.
>
> · The State Security Agency remains the beneficiary of unjustifiably heightened protection, not only for its work but its organisational being. This stretches the veil of secrecy beyond what is acceptable in a Constitutional democracy such as ours.

· The Minister and State Security Agency's role as "guardians" of other state departments' valuable information remains a problem.

· The Classification Review Panel is not independent enough and not accessible to ordinary people.

· Bad drafting in a number of instances has left the Act in its current form wide open to abuse (Hunter 2).

18) Duncan describes why leak-driven media is still popular with journalists, even in the uncertain times of sensitive communicative freedom within the media: "Leaks can be attractive as they can create the impression of exclusive access, but they can also encourage scandal-driven journalism rather than journalism that encourages intelligent debates on policy issues. A related danger is that news agendas are likely to be driven even more by corruption scandals; while these stories are important, they tend to individualise the problem and have not been effective in addressing systematic corruption" (Duncan 59-60).

19) "[…] the existing protections afforded by existing whistleblower legislation, in the form of the *Protected Disclosures Act (2000),* are too narrowly conceived to make a significant difference, as they extend protection from occupational detriment for a very limited period only. The Act protects only those who make disclosures in the workplace; community whistleblowers are not protected" (Duncan 60).

20) "[…] One of the key reasons why political assassinations appear to be on the increase is because of the relative impunity that the perpetrators enjoy: according to policing researcher David Bruce, only one in ten political killings have led to conviction […]" (Duncan 62-63).

21) "There is a real and present danger in the country of wealthy criminals being able to buy themselves out of convictions, effectively putting themselves above the criminal justice system. This could lead to the creation of a two-tiered criminal justice system, where those with money can evade justice, while those without it who are charged with a crime are imprisoned on the flimsiest of grounds. In fact, by the late 2000's, it had become apparent that organised crime had begun to extend its tentacles into the upper most echelons of government. Former police commissioner Jackie Selebi's corruption trial, which began in earnest in 2010, revealed how he had been bribed by convicted drug dealer Glen Agliotti in return for political favours, including selective investigations and prosecutions. Agliotti was also accused of the murder (or the 'assisted suicide') of mining magnate Brett Kebble – he had put Kebble together with Selebi in an attempt to buy political favours […] The Kebble/Selebi incident

pointed to the broader dangers of crony capitalism for South Africa's national stability. Kebble had asset stripped several listed companies he ran for many years, but had managed to buy himself positive publicity and prevent exposés of his activities. In spite of his shady business practices, Kebble became a friend and financier of a number of top politicians, and also began to back the faction in the ANC that wanted to put Zuma into power, including the ANC Youth League. At a broader level, the fact that senior ANC leaders proved to be open to influence by a corrupt businessman is bound to have a corrupting effect on the direction of the country's politics. Yet, corruption barely receives a mention in State Security documents as an intelligence priority, especially high level corruption where business figures buy influence from politicians in return for political favours. This phenomenon, which Patrick Bond has dubbed 'Kebbleism', and which he has argued has intensified rather than subsided under Zuma, remains one of the most serious threats to national security, yet one of the most unrecognised" (Duncan 65-66).

22) Castells describes this space as "[…] a space of sovereign assemblies to meet and to recover their rights of representation which have been captured in political institutions predominantly tailored for the convenience of the dominant interests and values" (*Networks of Outrage and Hope* 11). Within his formulation, Castells describes the space of social movements within our new network society as a "hybrid space" that is between the internet social networks and the occupied, urban space that we find ourselves in (*Networks of Outrage and Hope* 11). This forms a central node that has the property of connecting the digital space of protest and the urban space that connect with each other in "[…] relentless interaction, constituting, technologically and culturally, instant communities of transformative practice (*Networks of Outrage and Hope* 11). Here, a decentralised form of power seems to be dominant; one where activists seems to dominate. This is evidenced within the shift of power from centralised and institutionalised governance of parliament back to the exploited citizenry. But in order for this to work, there would need to be a drastic change in the current methods of social government. Castells suggest:

> […] for the networks of counterpower to prevail over the networks of power embedded in the organization of society, they will have to reprogramme the polity, the economy, the culture of whatever dimension they aim to change by introducing in the institutions' programs, as well as their own lives, other instructions, including, in some utopian versions, the rule of not ruling anything. Furthermore, they will have to switch on the connection between different networks of social change, e.g. between pro-democracy

networks and economic justice networks, women's rights networks, environmental conservation networks, peace networks, freedom networks, and so on (*Networks of Outrage and Hope* 17).

Appendix C: a Timeline of Significant Communicative Freedom Events in South Africa from 2014 – 2020

2014:

- Duncan's *The Rise of the Securocrats* is released in June of 2014. The work was published been published by Jacanda Media. Duncan's intellectual interest in media and politics stretched back to as far as 1998 as indicated by her work *Media and Democracy in South Africa*.

2015:

- **January 2015 –** Xenophobic attacks are triggered by the shooting of a youth by a Somali shop owner. Xenophobic attacks have plagued South Africa since 2008 and activist groups protest the outbreaks, citing the recurrence of these attacks as an indication of gross dereliction of duty by the National Intelligence Co-ordinating Committee (NICOC) and the State Security Agency (SSA).
- **February 2015 –** The *National Key Points Act (1980),* that classified information about and involving national key points, was a derivative Act branching from the 2010's *Secrecy Bill*. It was seen by activist groups as government trying to institutionalise the practice of secrecy. Activists were concerned that Bill supports securocratic law. The then police minister, Nathi Mthethwa, announced that the Bill would come before Parliament for review. The Bill was further criticised for threatening the right to know and silencing important debates around the appropriateness of security policies in general.
- **March 2015 –** The #RhodesMustFall movement is started.
- **March 2015 –** The Film and Publication Board (FPB) is accused of trying to censor the internet in South Africa by policing everything published on the internet (including blogs, personal websites and Facebook pages) in the *Draft Internet Regulation Policy.*
- **May 2015 –** Then Minister of State Security, David Mahlobo, announces the return of the *Secrecy Bill* to the presidency for approval and recommits government to the provisions within it that were previously labelled by activists groups as anti-democratic.
- **September 2015 –** There is an inclination that cellphone companies are exploiting customers through unethical profiteering on calls, sms's and data. Protests are organised in front of MTN in Kwazulu-Natal.
- **October 2015 –** The #FeesMustFall movement is started.

- **October 2015-**Activists stage protests outside of the ANC's regional offices in Cape Town and hands over petitions to the ANC and Business Leadership South Africa calling on an investigation into corruption allegations against MTN and now President, Cyril Ramaphosa. Activists were in possession of evidence that indicated that MTN moved Actions of Rands out of South Africa to avoid taxes while Ramaphosa was chair of the MTN Board.
- **November 2015 –**The Right2Know Campaign submits their preliminary position on the draft Cybercrimes and Cybersecurity Act highlighting all of the Acts' violations against communicative rights and the right to privacy.
    - (**August 2017 –** A newer version of the 2015 Act is drafted)
    - (**October 2018 –** A substantially revised Cybercrimes Act is tabled in Parliament with the Offending rights violations removed)

2016:

- **March 2016 –** The United Nations Human Rights Committee condemns South Africa's surveillance, the extent of the governments' invasion into private citizen's information and the law that regulates surveillance: The Regulation of Interception of Communications and Communicated-Related Information Act (RICA).
- **June 2016 –** Communicative Freedom activist groups picket outside of the Independent Communications Authority of South Africa (ICASA) regarding the decision by the public broadcaster, the South African Broadcasting Corporation (SABC) to ban visuals of the destruction of property during protests across the news and current affairs bulletin. Activists complain that the ban amounts to censorship.
- **July 2016 –** ICASA condemns the then COO of the SABC, HlaudiMotsoeneng's enforcing of the SABCsban on coverage of protests as a violation of the Broadcasting Act.
- **August 2016 –** The already intense fear of internet censorship is escalated as the controversial Films and Publication Amendment Act is tabled. Activists condemn the Act as unconstitutional.
- **September 2016 –** During the National Assembly, the State Security Agency (SSA) uses signal jamming technology to block all communications in and out of Parliament. The Supreme High Court reprimands the SSA for unlawfully censoring information within the public interest.

2017:

- **February 2017 –** Jacob Zuma deploys the South African National Defence Force (SANDF) in a show of militarization in and around Parliament as part of the annual State of the Nation Address. Communicative freedom activists demand to know what legitimate security threats exist to warrant the deployment of the military but are given the answer that it was done to maintain law and order. This was unacceptable and was protested against.
- **May 2017 –** The #DataMustFall movement gains ground with a protest outside of the MTN offices in Umhlanga in aid of reducing exorbitant costs of data.
- **May 2017 –** South Africa faces a review of surveillance policies at the United Nations Human Rights Council (UNHRC). The main concerns were complaints that were levelled against the government overreaching surveillance policies, state spying and a lack of protection for the right to privacy.
- **May 2017 –** Major cellphone networks, MTN, Vodacom, Telkom and Cell C are given 30 days to provide surveillance statistics to communicative freedom activists groups as outlined by a Promotion of Access to Information Act application to the High Court. This was due to growing evidence and fear that the South African government was abusing their surveillance powers outside of the law. Weak safeguards and a lack of transparency had enabled surveillance abuses before as evidenced by illegal spying perpetrated by former Crimes Intelligence official, Paul Scheepers, who used fraudulent s205 warrants to spy on lawyers, police and financial service regulators.

2018:

- **April 2018 –** The state-owned signal distribution company, Sentech, is reprimanded for planning to switch of fifteen community radio stations for not being able to afford to pat Sentech to carry their broadcast. Communicative rights activists condemn Sentech's actions as an affront to citizens' access to media and their right to know.
- **November 2018 –** Communicative rights activists welcome the National Assembly's approval of a vastly redrafted version of the Cybercrimes Act that scraps the sections that gives the State Security minister far-reaching control over the internet.

2019:

- **August 2018 –** Communicative rights activists welcome the policy on high demand spectrum and the policy direction on the licensing of a wireless Open-Access Network (WOAN) to help entrepreneurs and Small to Medium and Micro Enterprises (SMMEs) to enter the sector.

2020:

- **April 2020** – An issue regarding the "fake news" provisions of the COVID-19 Lockdown Regulations is raised with the Presidency; the Minister of Cooperative Governance and Traditional Affairs and the Minister of Justice and the Minister of Communications. The community of communicative rights activists raised the concern that current provisions unduly and unjustifiably limit freedom of expression and lack the necessary clarity for citizens to fully understand its implementation.

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