

THE RELATIONSHIP BETWEEN ART AND HUMAN RIGHTS IN POST-APARTHEID
SOUTH AFRICA

A Thesis
presented to
the Faculty of Law and Political Science
at Notre Dame University-Louaize

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts in Political Science - Human Rights

by
ELISSA GHOUSSOUB

MAY 2022

©COPYRIGHT

By

Elissa Ghoussoub

2022

All Rights Reserved

Notre Dame University – Louaize

Faculty of Law and Political Science

Department of Government and International Relations

We hereby approve the thesis of

Elissa Ghoussoub

Candidate for the degree of Master of Political Science- Human Rights

Dr. Maria Njaim

Supervisor

A handwritten signature in black ink, appearing to read 'Maria', is centered within a light gray rectangular box.

Dr. Dany Ghsoub

Committee Member

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, is centered within a gray rectangular box.

Table of Contents

Abstract.....	IX
Introduction	1
Brief Description of Dissertation.....	1
Relevance and Impact of Dissertation	2
Aims and Objectives of the Research	3
Methodology of the Research	4
Limitations of the research	6
Chapter Structure of research	7
Literature Review and Theory.....	8
Bodies of Literature	8
The Relationship between Art and Human Rights in General	8
The Artistic Aspect of the Relationship.....	8
The Legal Aspect of the Relationship.....	9
The Relationship between Art and Human Rights in Africa.....	10
The Effects of Art on the Political Reality	11
The Effects of Art on all Human Rights in General.....	12
The Relationship between Art and Human Rights in South Africa during Apartheid (1948-1994)	13
The Struggle of South African Black Women Writers.....	13
Oppression of anti-Apartheid Playwrights.....	15
The Relationship between Art and Human Rights in Post-apartheid South Africa (1994-present) ...	16
The Impact of Art Work on the Human Rights Narrative	16
The Role of Black Women Playwrights in Promoting Women’s Rights	16
The Role of Art in Reconciliation, Commemoration, and Transitional Justice	17
Promoting Civil and Political Rights through Music.....	19
The Role of Art in the Journey towards Sexual and Gender Justice	19
The Influence of Human Rights Concepts on Art.....	20
The Intellectual Property Rights of Artists.....	20
The Right to Artistic Freedom of Expression and the Right to Funding.....	21
The Intersectionality between Public Art and Human Rights.....	23
Theory	25
The Critical Race Theory	25

Application of the theory on the Relationship between Art and Human Rights	25
Applying the Critical Race Theory within the Dissertation	26
The Feminist Theory.....	26
Application of the Theory on the Relationship between art and Human Rights.....	27
Challenges to Applying the Feminist Theory within this Dissertation	28
Theories Reflecting the Intersectionality between Gender and Race	28
Black Feminist Literary Criticism	29
African Feminist Theory	29
Chapter I: The Positive Role of Art towards Human Rights	31
Shedding Light on the Black Women’s Rights Violations through Literature.....	31
Post-apartheid Novels by South African Black Women Writers: Addressing Sexist-Racist Oppression during the Apartheid Struggle.....	31
The Significance of the Writers’ Identity as Black Women from the Human Rights Perspective...	32
The Literary Strategies Employed to Promote Black Women’s Rights	33
Narrating the Overlapping Gender and Racial Oppression Faced by Black Women	33
Creating New Identities for Black Women through Creative Re-visioning.....	33
Sharing a New Perception of the Nation	34
Imagining a Better Social World.....	34
Case Study: The Novel “ <i>David’s Story</i> ” by Zoe Wicomb (2000).....	35
The Setting and Background of the Story	36
Shifting the Focus from David’s Character towards Women Characters	36
Perceiving a New Nation through Sally’s Character	37
Revealing the Dual Racist-Sexist Oppression Faced by Black Women through Dulcie’s Character	38
Imagining a Better Social World through Dulcie’s Character	39
Re-visioning the Identity of Black Women through the Narrator’s Character	39
Zoë Wicomb: a South African black Woman Writer	40
Employing Visual Arts as a means of engaging with Transitional Justice in South Africa from Apartheid to Democracy	40
Questioning the legitimacy of the Truth and Reconciliation Commission (TRC).....	42
The Multimedia Piece “Truth Games” by Sue Williamson (1998)	43
Commemorating Human Rights Violations Committed during Apartheid	44
Addressing torture: “The Blue Dress” by Judith Mason (1995).....	44
Addressing forced removals: “The District Six Public Sculpture Exhibit” (1997)	46
Chapter two: The Negative Role of Art towards Human Rights	47

Post-Apartheid South African Soap Operas: Gender Stereotypical Portrayals of Black Women	
Enforcing Gender Discrimination Practices	47
Analyzing the Black Women’s Representations through an African Feminist Lens	49
The Negative Influence of Portraying Black Female Characters without Agency.....	49
The Danger of Disregarding the Intersecting Racial and Gender Identities of Black Women	51
Applying the African Feminist Theory to Muvhango and Skeem Saam.....	52
Reason for Choosing these two Soap Operas	52
Examining the Agency of the Black Female Characters in Muvhango and Skeem Saam	52
The Failure of Muvhango and Skeem Saam in Acknowledging the Intersectionality of Gender and Race.....	54
Analyzing the Black Women’s Representations through the Human Rights Perspective	55
Applying the Human Rights Perspective to Muvhango and Skeem Saam.....	56
Obscene Visual Art Infringing Children’s Rights.....	56
South African Legal Instruments Prohibiting the Involvement and Exposure of Children in Pornography.....	58
The Exhibition “ <i>Viscera</i> ” by Mark Hipper (1998).....	59
Racist Hate Art Violating the Rights to Equality and Human Dignity.....	60
South African Legal Instruments Prohibiting Racist Hate Speech and Consequently Racist Hate Art.....	61
The Artwork “ <i>F**k White People</i> ” by Dean Hutton (2016)	62
Chapter III: The Role of Human Rights towards Art.....	65
Copyright in post-apartheid South Africa: A Powerful Asset.....	66
South African Copyright law: National and International Influences	68
Some of the International Legal Instruments Adopted by post-apartheid South Africa.....	69
Berne Convention for the Protection of Literary and Artistic Works (1866).....	69
Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)	70
On the National Level: The Copyright Act No 98 of 1978.....	71
Case Study of the Song “The Lion Sleeps Tonight”	72
Origin of the Song	72
Trajectory of the Song.....	72
The Assignment of Copyright.....	73
Revealing the Injustice	74
The Litigation	74
The Legal Basis for the Plaintiffs’ Claims.....	75
The Settlement.....	76

The Significance of the Case	77
Freedom of Artistic Expression in post-apartheid South Africa: A Fundamental for Artistic Creativity.	78
The Legal Framework for the Protection of Freedom of Artistic Expression in post-apartheid South Africa	80
The Bill of Rights within the South African Constitution of 1996 (Section 16)	80
Some of the International Legal Instruments Protecting Freedom of Artistic Expression	80
The International Covenant on Civil and Political Rights of 1966(Article 19)	80
The International Covenant on Economic, Social and Cultural Rights of 1966 (Article 15.3).....	81
Some of the Regional Legal Instruments Protecting Freedom of Artistic Expression	81
The African Charter on Human and Peoples’ Rights of 1981(Article 9.2).....	81
Case Study: The Painting “The Spear” by Brett Murray.....	82
Facts of the Case	82
The Lawsuit	82
Holding of the Court.....	83
Reasoning of the Court	83
The Significance of the Case	85
Conclusion.....	86
Main Findings.....	86
Findings Related to the Positive Role of Art towards Human Rights.....	86
Findings Related to the Negative Role of Art towards Human Rights	88
Findings Related to the Role of Human Rights towards Art	89
Recommendations to Foster the Relationship between Art and Human Rights.....	90
Educating Children	90
Providing an Appropriate Legal Framework	90
Widening the Knowledge of the Judiciary	92
Spreading Awareness to Artists	92
Spreading Awareness to the Audience	93
Organizing Competitions for Artists.....	93
Creating Networks between Artists and Human Rights Activists	93
Conducting further Research	94
Bibliography	95
Appendices.....	102
Interview with Ivan Debs: A Young Ambitious Artist and Activist	102

Interview with Melkar El Khoury Awwad: A Human Rights Activist and Aesthete..... 107

Abstract

The dissertation studies the relationship between art and human rights in post-apartheid South Africa. The conducted research reveals the role that art plays towards the human rights in the new South African nation emerging from the oppressive regime of apartheid. In some cases, post-apartheid South African art plays a positive role towards the human rights mission. These cases include highlighting the sexist-racist oppression that black women experienced during apartheid and engaging in the transitional justice of South Africa from apartheid to democracy. In other cases, post-apartheid South African artists play a negative role towards human rights by adopting gender-stereotypical portrayals of black women that reinforce discriminatory practices, by engaging in obscene art that infringes children's rights, or by engaging in racist hate art. Furthermore, the dissertation showed how certain human rights pertaining to the status of artists such as copyright and freedom of artistic expression influence artistic creations in post-apartheid South Africa. By illustrating how both art and human rights affect each other in post-apartheid South Africa, the existence of a relationship between them becomes indisputable.

Introduction

Brief Description of Dissertation

Although artistic practice and human rights are usually perceived as two distinct and independent fields, they overlap in various aspects. In fact, on one hand, art has played an essential role in promoting human rights throughout history. On the other hand, human rights concepts have been developing continuously to provide artists with an opportune legal protection. One of the regions that have witnessed a clear confluence between artistic creations and human rights is South Africa.

Despite a painful history of “feudalism, slavery, colonialism, neocolonialism” and apartheid, artistic creativity has always been at the heart of South Africa as a means of expressing defiance against oppression (Mlama, 2017) . During the apartheid era (1948-1994), the motif of most of the South African artistic works revolved around racial segregation and political messages pertaining to the Black Consciousness Movement (BCM).

Nevertheless, during the post-apartheid era, artistic work widened to include new human rights concerns such as women rights, torture, forced removals, the right to vote, and others. In this regard, it must be noted that not all artistic works have promoted human rights but some have impeded the mission of human rights (Mlama, 2017).

In a similar way, while post-apartheid South Africa has adopted legal instruments to protect artistic creativity, there remains several legal loopholes and restrictive regulations. To tackle all these problematics, this dissertation will examine the symbiosis between art and human rights in the post-apartheid South Africa.

Relevance and Impact of Dissertation

According to Human Rights Watch's latest report, South Africa still witnesses grave human rights violations on a daily basis including xenophobic attacks on foreign nationals, gender-based violence, child abuse, and discrimination against people with disabilities (South Africa Events of 2020, 2020). While human rights activists endeavor to present a complete action plan which would skirmish these violations, important recommendations such as fostering the relationship between art and human rights remain marginalized.

Both art and human rights are interested in the questions of dignity, humanity, and identity. Cherishing the commonalities between these two fields can propel reciprocal benefits (Exploring the Connections Between Arts and Human Rights, 2017).

In contemporary Africa, art has ostensibly contributed to the human rights agenda by articulating the reality and calling for change (Adeola, Nyarko, Okeowo, & Viljoen, 2019). By transcending barriers, post-apartheid South African art can communicate human rights messages, make political efficacious statements, and commemorate past human rights violations.

However, to be able to continue their noble mission, artists must be granted not only their basic human rights but also the rights pertaining to their status as artists. In other words, just as art plays an essential role towards human rights, human rights can also facilitate artists' works by providing legal protection to the freedom of artistic expression, copyright, the right to access to funding, and other important rights (Exploring the Connections Between Arts and Human Rights, 2017).

In this regard, the current South African legal instruments still include restrictive regulations and legal loopholes that threaten artistic creativity. It must be noted that art is not always "progressive" in its relation to human rights, and it can be even abused to violate human rights such as in the

cases of hate art or propaganda (Exploring the Connections Between Arts and Human Rights, 2017). Unfortunately, these are common cases in post-apartheid South African art.

There is no doubt that there is great potential behind the intersectionality of art and human rights. Hopefully, this dissertation will bring attention to this important correlation and would open the door for further research. Moreover, the research will offer suggestions for fostering the existing convergence between art and human rights in post-apartheid South Africa.

Aims and Objectives of the Research

As mentioned earlier, in post-apartheid South Africa, art has served as a pertinent tool in voicing human rights concerns and advocating for human dignity and freedom. In the opposite direction, South African human rights activists have sought to provide artists with a wide margin of freedom and rights (Adeola, Nyarko, Okeowo, & Viljoen, 2019).

Despite the potency of the shared spaces between artistic works and human rights concepts, scant attention has been paid towards investing in these spaces and harvesting the mutual benefits for both fields. This dissertation aims to concretize the relation between art and human rights as well as to provide a fertile area for future research. The objective is not to describe or list the aspects in which both disciplines might affect each other, but it is to analytically address the various problematics which arise from the junction of these disciplines.

Moreover, the case of post-apartheid South Africa has been selected to prove that despite a history full of segregation, inequality and violence, South African artists have placed human rights concerns at the nexus of their work, and human rights activists have advocated for artists' rights. This dissertation will provide a modest set of recommendations to promote the positive role played by art towards human rights, to warn against the negative role played by art, and to enhance the legal protection available for artists.

Through this thesis, the following research question will be addressed:

How are human rights and art in post-apartheid South Africa related?

To address this problematic, the following questions will be discussed:

What role does art play towards human rights?

What role do human rights play towards art?

How can the relationship between these two fields be reinforced to better serve the human rights mission?

Methodology of the Research

Given the fact that all the data is non-numerical, the research will be conducted through a qualitative analysis. The research method selected for this dissertation is content analysis. The primary sources employed in this dissertation include relevant legal instruments adopted by South Africa as well as interviews with experts on the topic. With respect to the legal instruments, they include international treaties that South Africa has adopted as well as national South African laws.

As for the interviews, the first interview will be conducted with Melkar El-Khoury, a Lebanese human rights activist with a profound interest in the world of art. The second interview will be with Yvan Debs, a Lebanese artist and illustrator currently residing in Abidjan Côte d'Ivoire and employing his artistic talents for the purpose of human rights. These interviews will grant the dissertation two insightful perceptions concerning the links between human rights and art from a legal as well as an artistic point of view.

The secondary sources consist of academic articles, books, and reports conducted by civil society organizations.

In addition to these theoretical sources, practical case study examples will be demonstrated to reflect the reality of the relationship between art and human rights in post-apartheid South Africa. The case studies will encompass a variety of post-apartheid South African artistic works and the sequels of these creations whether positive or negative on the human rights situation. With respect to the role of art in unveiling women rights violations, the novel “*David’s Story*” by Zoe Wicomb (2000) will be analyzed. As for the role of art in engaging with transitional justice in South Africa from apartheid to democracy, examples of visual arts will be employed. The Multimedia Piece “*Truth Games*” by Sue Williamson (1998) will be demonstrated to depict how art questions the legitimacy of the Truth and Reconciliation Committee (TRC). Likewise, “*The Blue Dress*” by Judith Mason (1995) and “*The District Six Public Sculpture Exhibit*” (1997) will be discussed to illustrate the role of art in commemorating past human rights violations. In what pertains to the negative role of art, the soap operas “*Muvhango*” by Duma Ka Ndlovu and Duma Ndlovu (1997) and “*Skeem Saam*” by Winnie Serite (2011) will be studied to reflect the ability of art in enforcing gender discrimination practices through supporting stereotypes. The exhibition “*Viscera*” by Mark Hipper (1998) will be used as an example of obscene art, and the art work “*F**k White People*” by Dean Hutton will be used as an example of racist hate art. Furthermore, cases pertaining to the rights of artists such as cases of freedom of artistic expression and cases of copyright will be illustrated. With regards to copyright, the legal suit between the family of Solomon Linda and Walt Disney Enterprises Inc regarding the copyright of the melody “*Mbube*” which became known as “*The Lion Sleeps Tonight*” will be taken as a case study. As for the freedom of artistic expression, the painting “*The Spear*” by Brett Murray (2010) will serve as a case study. An inductive reasoning will be employed as the examination of specific cases will draw the basic lines to the relationship between art and human rights in post-apartheid South Africa.

Limitations of the research

Despite the fact that this dissertation seeks to provide a comprehensive and thorough study of the relationship between art and human rights in post-apartheid South Africa, the research will be limited to specific areas for the sake of brevity notwithstanding the importance of the untackled issues.

In what concerns the role played by art towards human rights, the positive role and negative role will be demonstrated while the cases in which art plays a neutral role by engaging in entertainment and turning a blind eye to human rights will not be discussed. With respect to the positive role of art, the study will focus solely on the role of unveiling human rights violations and engaging in the transitional justice from apartheid to democracy. Other important roles such as communicating political messages through protest art will not be examined (Jolaosho, 2019).

Moreover, it must be noted that this study illustrates how art can address human rights violations and not the sequels of these violations. Therefore, the power of art in reducing the suffering of refugees or imprisoned individuals will not be discussed (Exploring the Connections between Art and Human Rights, 2017).

As for the negative role played by art, stereotype portrayals, obscene art, and hate art will be addressed, whereas the case of propaganda will be disregarded. In addition, it must be noted that certain types of art such as theatre, musical compositions, political cartoons, and cinema movies will not be mentioned.

In what concerns, the contribution of human rights towards art, the dissertation will tackle the freedom of artistic expression and copyright. Other rights of equal significance such as the right to funding or the right to public space will not be addressed. Furthermore, few selected cases will be employed to illustrate these two rights noting that there exists several other relevant cases.

Finally, the contribution of human rights will be studied from the theoretical perspective of the legal instruments adopted. In other words, institutional mechanisms and civil society organizations' projects will not be demonstrated.

Chapter Structure of research

After having introduced the topic of the dissertation in the first chapter, the second chapter will encompass the literature review as well as the theory employed in the conducted research. After setting the frame for the study, the findings will be illustrated in two parts.

The first part will examine what post-transitional South African art can offer to human rights. In this part, the potency of art in advocating for human rights as well as its ability to provoke violations will be studied.

The second part will examine the relationship between art and human rights from the opposite direction by illustrating the role that human rights concepts (independent variable) play in the context of artistic works (dependent variable). In this part, international as well as national legal instruments adopted by post-apartheid South Africa will be analyzed to project how human rights can contribute to art.

Finally, the study will be concluded by suggesting recommendations to foster the relationship between these two overlapping fields in post-apartheid South Africa.

Literature Review and Theory

Bodies of Literature

There exists paucity of literature which examines some of the facets of the relationship between art and human rights even if in an inconspicuous and implicit manner.

The Relationship between Art and Human Rights in General

The Artistic Aspect of the Relationship

In what concerns the relationship between art and human rights in general and outside the African region, some researchers have studied the role that art plays in the human rights narrative. In “White Power Music and the Mobilization of Racist Social Movements”, Ugo Corte and Bob Edwards demonstrate the negative role that art can play in the field of human rights (Corte & Edwards, 2008). In fact, Corte and Edwards argue that white power music is used to mobilize racist political and social movements as it can recruit new youth, cultivate a racist collective identity, and generate financial resources. The article gives a clear example on how art can be misused to provoke human rights violations such as discrimination in the current case.

On the other hand, in 2016, Mark de Valk highlighted the positive role through which art can contribute to human rights. In “Screening the Tortured Body, The Cinema as Scaffold”, Mark de Valk joins together several essays tackling various cinematic texts (de Valk, 2016). These texts are inspired by Michel Foucault’s observations on state subjugation and control. The collected work analyzes the employment of texts, cinematographic imagery, directorial perspectives and other cinematic devices for the purpose of engaging with human rights topics especially torture.

In the mentioned works, the researchers have discussed how art can affect human rights without examining the role that human rights concepts play towards art in return.

The Legal Aspect of the Relationship

The role of legal disciplines and human rights concepts in the United States towards art work was examined by Ralph Lerner and Judith Bresler in “Art Law, The Guide for Collectors, Investors, Dealers and Artists” (Lerner & Bresler, 1989). Lerner and Bresler, allocate a section of the book to study art law from the perspective of artists’ rights. In this section, the role that human rights can play towards art is clear. The section explains the rights that apply to the artist’s person such as freedom of speech and copyright. It also covers the rights that attach to the artistic creation such as the moral rights of artists and the resale rights.

Similarly, in “The Rights of Authors, Artists and Other Creative People”, Kenneth P. Norwick and Jerry Simon Chasen highlight two provisions in the Constitution of the United States related to the protection of art through copyright and freedom of speech (Norwick & Chasen, 1992). This work also explains how certain laws and regulations in the United States can also restrict the rights of creative people. In this regard, Norwick and Chasen tackle the cases in which creative people could be accused of libel, privacy or other claims. They also explain how obscenity law can restrict the artistic freedom of expression. Other topics such as contracts involving creative people and business and tax matters are also discussed.

Unlike those researchers who have adopted a broad approach addressing several legal principles, in his book “Art and Copyright” Simon Stokes narrowed his focus to copyright protection (Stokes, 2012). This book delves into the copyright protection granted to artistic works under the UK law and answers questions related to the scope and nature of this protection. It targets several issues such as the connection between design law and art, copyright amid the digital developments, and the protection of new media works, video and film. After reading this work, one understands how copyright protection is one of the several legal concepts that can promote the mission of art.

While these researchers have examined the legal disciplines pertaining to artistic works in certain jurisdictions, in his recent book “Cultural Rights in International Law and Discourse: Contemporary Challenges and Interdisciplinary Perspectives”, Stephenson Chow observes cultural rights under the lens of the international human rights law (Chow, 2018). In this book, Chow studies cultural rights in the work of the United Nations human rights treaty bodies. Special attention is given to article 15 of the International Covenant on Economic, Social and Cultural Rights. The limitations on cultural rights are also illustrated. While emphasis has been placed on the ways in which human rights and legal disciplines can affect artistic creations, the reciprocal role of art was disregarded.

Thus, while there is prolific literature addressing the confluence of art and human rights from one direction only, either by focusing on the role of art towards human rights or vice versa, scholarship on the relationship between art and human rights from both directions remains at its infancy.

This study aims at conflating these two vantage points to provide a more comprehensive and complete understanding of the existing relationship between art and human rights.

[The Relationship between Art and Human Rights in Africa](#)

Considering a history of brutal oppressive regimes and grave human rights violations on one hand and a people passionately engaged in artistic creativity and expression on the other hand, the African content offers an apposite framework for studying the intersectionality between art and human rights.

The Effects of Art on the Political Reality

Taking Africa as their area of study, some scholars have centered their research around the relationship between art and politics. In her article “Emergence: The Indelible Face of Artistic Creativity in the Struggle for Self-determination in Africa”, Penina Mlama studies emergence and artistic creativity under feudal systems and in response to oppressive political systems such as slavery, colonialism, and the brutal systems adopted after independence (Mlama, 2017). Mlama argues that emergence in artistic creativity has served in fighting for the people’s rights, dignity and self-determination and in encouraging people to rise against oppression. Besides the positive role of art, Mlama mentions the negative role as well as the neutral role. In what pertains to the negative role of art, Mlama talks about the “art of acquiescence” through which artists reinforce the status quo by supporting the ruling class. This form of art has depicted the oppressive regimes with rosy pictures prolonging their stay in power. As for the neutral law, Mlama points out to the artistic works that disregard political and human rights messages and engage in other irrelevant topics. She argues that this type of art is also harmful as it ignores the existing undesirable regimes and does not contribute to improving the social reality.

Unlike Mlama, in her article “Rethinking the Role of the Arts in Politics: Lessons from the Negritude Movement”, Gemma Bird only studies the positive role of art in contributing to the political reality (Bird, 2019). Bird argues that cultural movements and artistic creativity constitute safe places for expressing political ideas. She employs the example of the Négritude movement to argue that policy makers should acknowledge the potential of artistic expression in effecting political change. Furthermore, Bird explains how art can give a voice to the silenced groups, fight for human rights concepts such as equality and freedom, and provide a space for reimagining the political scenarios.

Both researchers have limited their study to the role played by art in what concerns political and civil rights only.

The Effects of Art on all Human Rights in General

Other scholars have considered the potency of arts in human rights in general and not solely in political and civil rights. To illustrate, in the book “African Cinema and Human Rights”, Mette Hjort and Eva Jørholt elaborate how moving images can contribute to a more just and fair society (Jørholt & Hjort, 2019). By analyzing specific cases of individual films, they argue that film has the potential to document human rights violations and thus support the victims’ claims and the truth and reconciliation goals, to guarantee a wider scope for human rights and to promote social and economic rights.

Another book that has also explored the role of art towards human rights in the African region is “The Art of Human Rights: Commingling Art, Human Rights, and the Law in Africa” (Adeola, Nyarko, Okeowo, & Viljoen, 2019). However, unlike Hjort and Jørholt who have centered their research on cinema, the authors in this book have expanded their research to include several forms of art including soap operas, music, literature, visual arts, theatre, sculpture and photographic silhouette. This work highlights the positive role of art in raising the voices of oppressed groups. However, the book also sheds light on the negative impact that certain art work can have on human rights by generating dangerous propaganda and stereotypes that breach human rights. Furthermore, the research tackles several human rights topics some of which are women’s rights, transitional justice and rights of asylum-seekers.

While all this scholarly literature presents abundant examples of how art has shaped the human rights mission in Africa, the acknowledgment of the legal disciplines and human rights concepts that influence art work is less evident. More research must be conducted around the status of

artists' rights in Africa through examining the relevant legal principles and the extent of their application.

Through demonstrating some of the African legal instruments that influence the art work by regulating human rights principles, we hope to open the door for further research in this area.

The Relationship between Art and Human Rights in South Africa during Apartheid (1948-1994)

In addition to the historical struggles such as colonization that almost all the African countries endured, South Africa had to carry the burden of a draining system of discrimination which is known as “apartheid”. The poison of this unjust regime had even contaminated the world of art. Artists whose work opposed or even criticized the apartheid system were exiled from the country (Boswell, 2010). Nonetheless, despite this dark period, artists have endeavored to emit rays of hope for a better tomorrow. Some researchers have depicted this battle between the apartheid system and the artists illustrating indirectly few aspects of the relationship between art and human rights in South Africa.

The Struggle of South African Black Women Writers

There has been a remarkable scholarly discussion on the fight of black South African women to develop as writers during apartheid. In the article “Women Writing for their Rights”, Gertrude Fester explains how the apartheid system had impeded the journey of black South African Women in constructing an identity for themselves as writers (Fester, 2000). Fester argues that women must write their own stories to accentuate the marginalization that they experience because of their race and gender.

On a similar note, in her article “WEAVEing Identities”, Barbara Boswell argues that black South African women must strip off the social, gender, and racial identity that the apartheid system has tarnished them with by “reimagining and reinventing the self” (Boswell, 2003). Boswell draws on

the black women's writing collective "Women's Education and Artistic Voice and Expressions" (WEAVE) which aims at transforming dominant literary standards to help black South African women raise their voices. In addition to the obvious gender discrimination, Boswell explores how the shifting constructions of blackness have affected the status of black South African women as writers.

Although Boswell agrees with Fester on the need for black South African women to write their own stories and reconstruct their identities, Boswell perceives the effects of apartheid differently. Unlike Fester who believes that apartheid has only impeded the development of black South African women as writers, Boswell acknowledges that for some writers apartheid's outcome was different. In her dissertation "Black South African Women Writers: Narrating the Self, Narrating the Nation", Boswell examines how apartheid has pushed some women to engage in creative re-visioning and write counter-narratives to apartheid's discriminatory practices (Boswell, 2010). The dissertation studies four novels two of which were written during the apartheid system. Boswell explains how these novels "undermine unitary masculinist forms of nationalisms, be these apartheid or emerging African nationalisms" (Boswell, 2010).

The work of these researchers reveals a clear connection between literature which is a form of art and human rights during apartheid in South Africa. From one angle, the discrimination against black South African women writers during apartheid shows the effects of human rights violations on the artistic literary work. From another angle, the literary work of these women as an act of personal agency and a form of activism against apartheid demonstrates the potential of art on human rights concepts.

Oppression of anti-Apartheid Playwrights

While these scholars have studied literature, others have selected theatre to show the struggle of artists during apartheid. In their article “Identity, Politics and Restriction in Athol Fugard’s Art: Writing and Liberalism in Apartheid South Africa”, Khaya M. Gqibitole and Shamsuddeen Bello examine how the apartheid state suppressed the playwrights who opposed the apartheid regime (Bello & Gqibitole, 2018). They discuss how censorship and repressive state laws forced playwrights into self-censorship. This discussion highlights the impact of human rights concepts and legal regulations on the work of artists. Khaya and Bello also show the potency of theatre in resisting human rights violations. In fact, they argue that by employing a multidimensional style, the playwright Athol Fugard transcended the restrictions imposed on artists and contributed to the fight against apartheid through his theatre.

After analyzing these scholar contributions, it becomes appallingly obvious that that there is burgeoning literature on the operation of artists during apartheid. The mentioned researchers have studied how apartheid with its human rights abuses have impacted the work of artists. They have also examined the human rights messages within those artists’ creations. However, they have centered their attention on art that has showcased only few human rights violations concerning women’s rights and racial discrimination ignoring several other breaches. Furthermore, while a plethora of examples abound on art work during apartheid, few have discussed artistic creations and the status of artists after apartheid.

In order to cover these loopholes, this dissertation will cover the relationship between art and human rights in the post-apartheid period. Art work tackling issues other than gender and race will be displayed. Moreover, the intersectionality between the artistic creations and the human rights principles will be presented in a more direct and obvious way.

The Relationship between Art and Human Rights in Post-apartheid South Africa (1994-present)

It is beyond doubt that the apartheid period has witnessed a plethora of artistic creations that has left a mark in the human rights narrative. It is also unquestionably true that the apartheid system which has demoted the status of human rights has considerably impacted the development of artists. Nonetheless, this correlation between art and human rights has not dissipated with the dismantling of the apartheid regime. In fact, inspecting this correlation in post-apartheid South Africa is of no less importance even if the literature surrounding the apartheid period is richer.

The Impact of Art Work on the Human Rights Narrative

The Role of Black Women Playwrights in Promoting Women's Rights

One of the scholars who has taken the post-apartheid period as a point of reference is Lizbeth Goodman in her article "Women, Politics and Performance in South African Culture and Theatre Today" (Goodman, 1999). Goodman claims that after race had been the political priority on the playwrights' agenda during apartheid, gender issues have dominated black South African plays since 1994 when democracy was established. She highlights the important role played by theatre in the "self-empowerment among marginalized individuals, black and "colored" people in South Africa, including many women" (Goodman, 1999). Furthermore, Goodman focuses on the contribution of black women in political theatres. She explains how they are using theatre to educate the black and colored communities on concepts such as democracy and political participation. According to Goodman, it is vital to shed the light on the plays that are written, directed and performed by women as these plays accurately represent the women's demands and raise their voices.

Likewise, in her article “Male Violence against Women and Hybrid Identities in Post-apartheid South African Black Theatre”, Olga Barrios shows how black women playwrights are addressing human rights concerns through theatre (Barrios, 2012). Barrios mentions how theatre during the apartheid period was employed as a form of activism against racial discrimination. As for the post-apartheid South Africa, Barrios asserts that black women playwrights have used the stage to present new gender perspectives. In fact, Barrios examines two plays that tackle the issue of male abuse and violence against black women. However, unlike Goodman, Barrios has delved deeper into the issue of discrimination against hybrid identities namely the “coloreds”. To illustrate, Barrios explores how post-apartheid playwrights have depicted the continuous struggle of colored people. During apartheid, colored people were not accepted completely by the whites and in the present time they do not fit within the black community. Barrios shows how the playwrights have advocated for an independent identity and space for the coloreds. According to Barrios,

“Theatre is the most suitable vehicle chosen by post-apartheid playwrights to expose the sequels left by apartheid on the South African population” (Barrios, 2012).

[The Role of Art in Reconciliation, Commemoration, and Transitional Justice](#)

Some researchers have selected artistic creations other than theatre to explore the role of art in reflecting upon the human rights violations that occurred during apartheid. Moreover, while the mentioned works revolved primarily around the experiences of women, other scholars have widened their research to encompass a wider scope of human rights violations. In this regard, in “Visualizing Apartheid: Contemporary Art and Collective Memory during South Africa’s Transition to Democracy”, Erin Mosely studies how contemporary South African art has played a role in the process of transitional justice (Mosely, 2007). Mosely examines contemporary art work that has challenged the legitimacy of the Truth and Reconciliation Commission (TRC) exposing the political factors that lead the commission to produce incompatible truths. In addition, the article

sheds the light on contemporary artists that have commemorated human rights violations during apartheid such as torture and forced removals. Mosely points out that this artistic engagement was encouraged by the improvement of South Africa's cultural institutions namely the galleries and museums.

Within the same frame and according to Allyss Angela Haecker, music has also played a significant role in the reconciliation process within post-apartheid South Africa. In her dissertation "Post-Apartheid South African Choral Music: an Analysis of Integrated Musical Styles with Specific Examples by Contemporary South African Composers" some of the post-apartheid South African music has shifted from protest music to reconciliatory music (Haecker, 2012). Haecker investigates how South African composers have integrated Western European and traditional African music features in their musical compositions with the aim of approaching multi-racial ensembles together. The research shows how post-apartheid South African choral music has been employed to reconcile cultural differences and to build a united nation. Like the previously mentioned scholars, Haecker draws attention to the positive role played by contemporary artists towards human rights in the post-apartheid South Africa.

Nevertheless, unlike the other researchers, Haecker points out to the fact that some contemporary art work did not affect the human rights narrative. In fact, she explains that the musical integration does not have to be politically motivated and could be for paying homage to African tradition or for simple entertainment.

Along the same line of thought, in their recent book "Public History and Culture in South Africa", Ali Khangela Hlongwane and Sifiso Mxolisi Ndlovu investigate the emergence of new museums and memorial projects which aim at memorialization, reconciliation and nation-building. The book

identifies the role of the liberation heritage sites in forming a collective memory about the South African people's struggles for democracy (Hlongwane & Ndlovu, 2019).

These researchers have explored artistic creations which constitute according to Daniel Herwitz "an artefact of transition, [which] stressed redress, acknowledgment, social flexibility, and building a culture of human rights" (Herwitz, 2012).

[Promoting Civil and Political Rights through Music](#)

The post-apartheid art work demonstrated by these authors has served as flashbacks of the human rights violations during the apartheid system. Other studies depict the centrality of music in promoting civil and political rights in post-apartheid South Africa.

In this regard, in his article "Singing Politics: Freedom Songs and Collective Protest in Post-Apartheid South Africa", Omolayo Jolaosho centers his ethnographic research on the political effects of freedom songs (Jolaosho, 2019). Jolaosho investigates how the formative elements of

"antiphony, repetition and rhythm constitute a musical practice that organizes protest gatherings, allow for democratic leadership, and fosters collective participation" (Jolaosho, 2019).

[The Role of Art in the Journey towards Sexual and Gender Justice](#)

Some contemporary artists decided to turn the page on the past and focus on current socio-political topics within South Africa. Tamara Shefer sheds the light on the contribution of these artists in her article "Activist Performance and Performative Activism towards Intersectional Gender and Sexual Justice in Contemporary South Africa" (Shefer, 2019). Shefer explains the terms "performative activism" and "activist performance". Performative activism refers to the activist initiatives which employ performance in their engagement. Activist performance, which is more relevant in our current study, is a term used to classify performances aiming at activism, advocacy and consciousness-raising. The example of activist performance illustrated by Shefer aims at

challenging oppressive normativities and rigid hegemonies relating to “gender, sexuality and intersecting and other identities”. This study shows how art can be employed to defend the rights of individuals who are subject to violence because they chose to engage in non-conforming gender and sexual practices. In other words, Shefer displays the crucial role of contemporary art in the “decolonial, feminist and queer sexual and gender rights and justice project” (Shefer, 2019).

In the mentioned literature, the authors examined the relationship between art and human rights in post-apartheid South Africa by adopting a single-axis framework. To elaborate, the impact of the artwork on human rights was covered however the reciprocal effects of human rights concepts on art was neglected.

The Influence of Human Rights Concepts on Art

In the following studies, the researchers examined the human rights concepts that influence the work of artists even if through an implicit approach.

The Intellectual Property Rights of Artists

In his thesis titled “Intellectual Property, Entrepreneurship and the Music Industry: a New Ray of Hope for Enhancing African International Trade Capacity? A South African Study”, Jele Joel Baloyi explores how the international intellectual property (IP) regime and specifically the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement can encourage “musical entrepreneurship” and thus enhance the international trade capacity of the less developed countries such as South Africa (Baloyi, 2005). Baloyi argues that despite the drawbacks of the system, the intellectual property protection and rights guaranteed by this international regime can promote the music industry and hence benefit South Africa. This line of thought can also lead one to think about the benefits of those involved in the music trade such as composers, song-writers and performers. Therefore, Baloyi’s research can be used to acquaint the readers with a general picture

of how legal instruments such as the TRIPS agreement can influence the development of artists in South Africa.

Still within the frame of intellectual property, in her dissertation titled “Copyright and Digital Music Collections in South Africa”, Fiona Margaret Polak observes the copyright laws that apply to the transferring of sound recording from analogue to digital formats in post-apartheid South Africa (Polack, 2009). In addition to the South African Copyright Act No 98 of 1978, Polack analyzes other digital copyright laws such as those of the United States, the United Kingdom and Australia. International conventions and treaties pertaining to copyright are also studied to detect their effects on the South African case and to draw lessons for South Africa. Unlike Baloyi who has tackled the intellectual property as a broad system of protection, Polak has narrowed the scope of her research to copyright protection concerning digital music.

Both Baloyi and Polak have focused their attention on the intellectual property rights to which artists are entitled. However, they have not pointed out in a direct manner that these human rights concern the status of artists directly. Furthermore, intellectual property is only one among several other human rights principles that impact the art work in post-apartheid South Africa and in general.

[The Right to Artistic Freedom of Expression and the Right to Funding](#)

Freedom of expression and the right to funding are also human rights concepts that significantly shape artistic creation.

These rights were examined by Sandra Klopper in her article “Art and Culture in Contemporary South Africa: The Present Future” (Klopper, 2013). With regards to freedom of expression, Klopper highlights Section 16 of the Bill of Rights within the South African Constitution which states that everyone has the right to freedom of expression including “freedom of artistic

creativity”. In addition, Klopper emphasizes the fact that South Africa is a signatory of “The United Nations Educational, Scientific and Cultural Organization” (UNESCO) which encourages artistic freedom as a fundamental element for a successful democracy. Klopper employs the case of Brett Murray’s “the Spear” as an example. “The Spear” is painting that shows an image of Jacob Gedleyihlekisa Zuma with his genital in full display. By highlighting the protests and opposition against this painting, Klopper illustrates how the artistic freedom of expression could be curtailed in post-apartheid South Africa. Another similar case examined by Klopper is the case of photographic images of naked black lesbians through which Zanele Muholi attempts to normalize same-sex relations. The Minister of Arts and Culture Lulu Xingwana objected this art work stating that it is “offensive and goes against nation-building” (Klopper, 2013). In addition to the restrictions of artistic freedom, Klopper sheds light on the obstacle of underfunding faced by post-apartheid South African artists. She argues that even in the post-apartheid era, there remains a lack of public investments and state support towards the art world. To support her argument, Klopper claims that South Africa’s National Gallery (SANG) is not supported by the state and that South Africa’s National Arts Council (NAC) is not performing its role in embracing contemporary South African art. The state’s neglect has remarkably impeded the artistic innovation and creativity in post-apartheid South Africa.

Unlike Klopper, in her dissertation “The Media, Protest Art & Nation Building in Post-Apartheid South Africa: The Spear, a case study”, Mologadi Makwela restricts her study to freedom of expression (Makwela, 2015). Makwela briefly discusses the importance of protest art in South Africa during and after apartheid. Moreover, like Klopper, Makwela uses “The Spear” to illustrate the importance of granting artists freedom of expression and the restrictions that this human rights concept encounters. Makwela observes how the media reported this case highlighting its role in

post-apartheid South Africa. Furthermore, the author shows how the case raises a problematic related to freedom of expression which is enshrined within the South African Constitution. By demonstrating the case of “The Spear”, Makwela gives a clear example on how the artistic freedom of expression might collide with the rights to dignity and privacy of the individual.

The discussed research has examined how some of the human rights principles and their application in post-apartheid South Africa have shaped the contemporary artistic contributions. However, they have not examined how these artistic creations can bolster or hinder the commitment to human rights. In other words, these researchers have studied the relationship between art and human rights in post-apartheid South Africa from only one perspective.

[The Intersectionality between Public Art and Human Rights](#)

On the contrary, in “Public Art’s “Right to the City”: Determining Various Role Players’ Perceptions, Experiences and Preferences for Public Art in Public Spaces in the City of Cape Town”, Clyde Ross Walters tries to examine the reciprocal effects between art and human rights even if in an indirect and complete way (Walters, 2017). In this work, Walters identifies public art in Central Business District (CBD) in the city of Cape Town (CoCT). The author shares the experiences, perceptions and suggestions of various role players in what concerns public art in the CBD of CoCT. It is revealed that the general public and public artists agree that public art must be provided with a greater public space given its significant role. The dimensions of this role are addressed in this dissertation. According to Walters, due to its engaging nature, public art encourages public participation through which people can make their voices heard. Furthermore, public art acts as a mirror to the society reflecting the social and political injustice. In this regard, several public artists have addressed human rights issues such as “sexuality, violence and

discrimination” (Walters, 2017). Public art also aims at bringing the people together to form a united rather than a fragmented society.

In addition to explaining the role of public art towards human rights, Walters also examines “laws, policies, regulations and overall processes that influence the “commissioning, funding, managing and maintaining public art in the CBD of CoCT” (Walters, 2017). This examination shows how legal principles including human rights notions can influence the development of public art in post-apartheid South Africa specifically in the Central Business District in Cape Town.

Walters has studied the effects of public art on human rights and the reciprocal effects of human rights on public art. However, public art constitutes only one form of artistic creation in post-apartheid South Africa. Moreover, Walters has narrowed the scope of his study to the Central Business District in Cape Town keeping the experiences of other relevant South African regions in the dim light. Furthermore, while the right to public funding and public space are important rights, artists possess other significant rights such as the freedom of expression and copyright.

Within this body of literature, several research gaps appear whether in the absence of reciprocity of the effects between art and human rights, the limited forms of art examined or the few human rights selected.

By studying the relationship between art and human rights from both directions and providing a wide range of artistic creations and human rights principles, the dissertation aims at addressing all existing gaps within the mentioned literature.

Theory

Scholars have employed several analytical lenses in observing facets of the relationship between art and human rights. Within the context of post-apartheid South Africa, the following theories have prevailed.

The Critical Race Theory

The origins of this theory date back to the mid 1950's which witnessed the emergence of the civil rights movement and to the 1960s race-related legislation in the United States. By the mid 1970's and as the hope for equality was beginning to fade, social scientists and civil rights activists established the critical race theory. The employment of this theory aims to criticize racial oppression and to spread awareness about racial justice (Babbie, 2017). The basic element of this theory is race. In other words, researchers who apply this academic discipline focus on the racial identity of the studied subjects and perceive the society through the experiences of the racially oppressed (Babbie, 2017).

Application of the theory on the Relationship between Art and Human Rights

Although this theory was developed within the framework of the African American struggles in the United States, it could be applied to illustrate the similar racial discrimination faced by black South Africans. In the context of South Africa, one cannot write about this region without examining the racial taxonomies that have long shaped its history. As mentioned earlier, during apartheid, racial discrimination haunted the life of all individuals including artists who have fought through their art against it. Along this line of thought, in their article "Conceptualizing Post-Transitional South African Literature in English", Ronit Frenkel and Craig MacKenzie examine several theories that explain post-transitional literature one of which is the critical race theory (Frenkel & MacKenzie, 2010). In this context, the critical race theory is used to study the extent to which racial concerns have dominated the post-transitional literature. Another researcher who

has highlighted the role of art in addressing racial injustice is Olga Barrios in her article “Male Violence against Women and Hybrid Identities in Post-Apartheid South African Black Theatre” (Barrios, 2012) . In this study, Barrios shows the importance of theatre in revealing the discrimination against the “coloreds”. In addition, Barrios explains how certain plays support the “coloreds” in their demand for equality and acceptance as an independent identity. This is a clear example of how the relationship between art and human rights can be viewed from the perspective of the critical race theory.

Applying the Critical Race Theory within the Dissertation

One of the positive roles of art towards human rights is the role of art in commemorating human rights violations. Among the grave human rights breaches that artists have highlighted is the racial discrimination that existed between white and black people in South Africa and during apartheid. As we showcase examples of visual art creations that have addressed this racial injustice, we apply the critical race theory by shedding light on the experiences of victims of racial segregation.

The critical race theory will also be employed to study racist hate art, one of the forms of art which negatively impacts human rights. Since racist hate art provokes racial discrimination and intolerance, the critical race theory is a suitable analytical instrument for studying this form of art.

The Feminist Theory

As for the feminist theory, it revolves around perceiving society through the experiences of women and studying “the deprived status of women in society” (Frenkel & MacKenzie, 2010). Therefore, the main element in this theory is “women” around which all feminist theorists center their studies. It must be noted that the feminist lens is not only concerned with examining the oppression of women in society, but also with the need of women to share their experiences and perceptions of society. In 1983, Nancy Hartsock introduced “the Feminist standpoint theory” which refers to the fact that women have more knowledge about their social position than men (Babbie, 2017).

Application of the Theory on the Relationship between art and Human Rights

There are two direct aspects in which the feminist theory relates to the relationship between art and human rights. From an artistic perspective, several feminist artists have directed their work to challenge the rooted patterns of male domination. Within the framework of post-apartheid South Africa, in “Post-Apartheid Performance Art as a Site of Gender Resistance, Virginia Mackenny, examines how two South African women artists have employed performance art as “a site of gender resistance” (Mackenny, 2001). From a feminist vantage point, this example shows how female artists are capable of promoting human rights concepts such as gender equality through their art.

From a human rights perspective, the theory can be utilized to highlight the sexual oppression of female artists. This feminist lens was first adopted by Linda Nochlin who has observed women’s struggle in proving themselves as artists. She has employed the feminist theory in her essays such as “Why Have There been no Great Women Artists”? “Women, Art, and Power and Other Essays” is a collection of her work from 1971 to 1988 (Nochlin, 1989). Nochlin paved the way for all future feminist scholarship to examine feminist art history.

Returning to South Africa, Kathy A. Perkins implemented this theory in her book “Black South African Women: An Anthology of Plays” (Perkins, 2006). In this work, Perkins examines the oppression of women playwrights and performers during apartheid. According to the feminist standpoint theory, women must have been granted the opportunities to write and perform theatrical plays as they can deliver a clearer and more accurate picture of their status than male playwrights and performers can. Perkins also shows how after the dismantling of the apartheid regime women playwrights were gradually given a space to express their struggles and concerns. Within the same

feminist paradigm, these examples illustrate how human rights concepts such as gender equality can shape artistic creations.

Challenges to Applying the Feminist Theory within this Dissertation

Within the context of South Africa and after the dismantling of the apartheid regime, several artists placed gender issues as priorities on their agendas. Post-apartheid art work has witnessed a remarkable shift toward feminist concerns. In fact, several novels, theatre plays, and soap operas have addressed experiences of South African black women. However, gender is not the only identity that have burdened South African black women. The racial identity must also be regarded in studying the work of those artists. Hence, by adopting a feminist approach without acknowledging the intersection of gender with race, we would fail in highlighting the experiences of South African black women as depicted in post-apartheid art. In order to deliver an accurate analysis, theories based on both elements of race and gender must be employed.

Theories Reflecting the Intersectionality between Gender and Race

The intersectionality between race and gender was first detected by Kimberle Crenshaw when U.S. courts dismissed cases brought by African American Women failing to admit the possibility of discrimination occurring on the levels of both race and gender (Crenshaw, 1989). Crenshaw contends that without admitting the intersection of gender and race, black women's concerns would only be visible when compared to those of black men or white women.

Two theories that adopt this intersectionality are the black feminist literary criticism and the African feminist theory.

Black Feminist Literary Criticism

According to Smith who is one of the Black Feminist Literary Critics:

“a Black feminist literary critic displays a primary commitment to exploring how both sexual and racial politics and Black and female identity are inextricable elements in Black women’s writings [while also working] from the assumption that Black women writers constitute an identifiable literary tradition” (Smith, *Toward a Black Feminist Literary Criticism*, 2001).

Another black feminist literary critic is Bell Hooks who argues that “black women were dually victimized by sexist-racist oppression” (Hooks, 2015). According to Hooks, the struggle against racial oppression and the fight against gender discrimination are intertwined.

In this dissertation, the black feminist literary criticism will be utilized to examine the contribution of post-apartheid black women artists in revealing the gendered and racialized oppression experienced by black women. In this regard, examples of novels will be displayed. After having been excluded from the discussions of national identity, black women writers have expressed their own perception of “the nation” in their works.

African Feminist Theory

Anticolonial and feminist discourse shape African feminism as colonialism and patriarchy have greatly impacted African women’s experiences. Patriarchy is a socio-political and economic system that justifies male dominance over females and violence against them (Mapokgole, 2019).

One of the core elements of the African feminist theory is agency. Studying how South African black women have subverted the patriarchal and colonial patterns is one of the African feminists’ main concerns. Another key element is the examination of female networks which help women face oppression together (Collins, 2000). This element is especially relevant in the context of South Africa where black women have united and supported each other to overthrow the apartheid regime. The third element is the intersectionality between gender and race which shapes black

women's experience. In particular, South African feminists have highlighted the "triple yoke of oppression, with their race, class and gender, and the way it shapes the experiences of black women in South Africa" (Nolde, 1991). This multiple belonging have impeded the path of black women towards attaining their human rights. One of the main questions asked by African feminists regards the portrayal of African women in visual and literary texts (Mapokgole, 2019).

In this dissertation, we will answer this question by taking South African soap operas as case studies. African feminist theory will be used as a tool to examine black women's representations in these soap operas in what concerns agency and the intersectionality between gender and race. By highlighting the gender stereotypical portrayals of women in these shows, we give a clear example of how art can impede the human rights mission by reinforcing gender discrimination practices.

Chapter I: The Positive Role of Art towards Human Rights

When asked about the contribution of artistic work towards the human rights mission, Ivan Debs, a talented Lebanese illustrator, pointed out the role of art in raising awareness and giving a voice to the voiceless (Debs, 2021). In fact, art has proven to be a pertinent tool in promoting the human rights mission. Human rights messages that are delivered through artistic expression have a greater impact because of the potency of art in conveying feelings and experiences. In the context of post-apartheid South Africa, a recurrent motif that has prevailed the artistic creations is revealing the dual victimization of black women through gendered and racialized oppression. Another important human rights concept that was on the agenda of post-apartheid South African artists is the transitional justice from apartheid to democracy.

Shedding Light on the Black Women's Rights Violations through Literature

According to the illustrator Debs, women are “pillars in the foundation of society” and builders of future generations (Debs, 2021). By consistently showcasing women in his illustrations, Debs aims to empower women and highlight their equal role in developing the nation. As mentioned earlier, in the context of South Africa, gender is not the only identity that has burdened women. The racial element as well has constituted a basis of discrimination against South African women. By employing a black feminist literary criticism, in this section, we deeply delve into some artistic creations in literature which illustrate how sexist and racist oppression haunted the lives of black women during apartheid.

Post-apartheid Novels by South African Black Women Writers: Addressing Sexist-Racist Oppression during the Apartheid Struggle

Literature is one of the most important artistic forms employed to express human rights concerns as writers can directly and easily elucidate their point of views through words. Through writing, artists are able not only to narrate human rights violations, but also have the potential to create new

scenarios in which human rights are cherished. In South Africa, after the fall of apartheid in the early 1990s, a new period of literary production began during which new topics were addressed such as the sexist-racist oppression faced by black women. The post-apartheid writers reflected on the dark past and broke the silence of black women who were violently marginalized and stripped from their human rights and dignities only because of their gender and racial identity (Davis, 2013). In fact, the transition to democracy not only witnessed literary work addressing black women's rights, but also opened up the space for black women to write themselves about their experiences and to share their perspectives (Boswell, 2010).

The Significance of the Writers' Identity as Black Women from the Human Rights Perspective

Before analyzing the contribution of post-apartheid novels to black women's rights, the importance of the gender and racial identity of the writers must be accentuated. After decades of human rights violations and injustices during apartheid, black women writers decided to share their unique experiences and insights. As mentioned earlier, a black feminist perspective is not only concerned with addressing sexist-racist oppression but also with the ability of black women to express their perspectives regarding this oppression (Smith, 2001). After being suppressed for years by colonialism and later apartheid, black women narrate their experiences proving that they have the potential of thinking and creating art (Davies, 1994). By writing, black women "disrupt the notion of women as passive spectators to the liberation movement" (Boswell, 2010, p. 175). During apartheid black women were deprived from their right to write and express their point of views. After the dismantling of this oppressive regime, black women still faced obstacles in writing as the shadow of apartheid remained (Boswell, 2003). Therefore, by daring to write, black women prove to be active agents as they transcend several social rooted boundaries. The act of writing which reflects personal agency encourages black women to depose the gender and racial identity that the apartheid system has burdened them with and to become who they aspire to be. In their

fiction, black women writers engaged in creative re-visioning which is a significant aspect of agency. Creative re-visioning is

“a subject’s ability to re-envision or reimagine what is possible for her to achieve within her lifetime, given the constraints operating upon her, and the expectations the society in which she is located has of her” (Boswell, 2010, p.207).

After apartheid had tarnished black women with identities of mere laborers and biological reproducers of children, black women authors reimagine themselves and construct a new identity for themselves as writers, thinkers, and creators of art (Davies, 1994). This creative re-visioning empowers black women to fight for their human rights and inspires them to pursue their dreams.

The Literary Strategies Employed to Promote Black Women’s Rights

Narrating the Overlapping Gender and Racial Oppression Faced by Black Women

A recurring topic addressed in post-apartheid novels is the sexist-racist oppression against black women that was ruthlessly exercised during apartheid and whose sequels still haunt black women in post-apartheid South Africa. Post-apartheid writers have highlighted these human rights violations throughout their literary production (Davis, 2013). They have chosen their characters to be black women, and they have depicted the suffering of these characters due to intersecting systems of oppression namely by “white supremacist ideology and Black patriarchies” (Boswell, 2010, p.208). Through their depiction of black women’s struggles, post-apartheid novelists aim at concretizing the violence experienced by these historically marginalized individuals and calling for guaranteeing them equal rights.

Creating New Identities for Black Women through Creative Re-visioning

As mentioned earlier, creative re-visioning enables one to imagine a scenario in which he/she reacts in a more courageous way to the social constraints imposed upon him/her. Emerging authors have applied this technique to the black women characters that they have written about. Instead of

depicting black women as weak subordinates to the oppressive apartheid system, the writers develop imaginary plots in which women are showcased as conscious and knowledgeable subjects (Boswell, 2010). By creating a new identity for black women characters as undeterred fighters against all forms of social injustices, post-apartheid authors open horizons of hope for every South African black woman who hesitates to demand access to all her human rights.

Sharing a New Perception of the Nation

“Culture contributes to the construction of nations, and the novel as a cultural product is implicated in the creation of ideologies that maintain nations. In these ways, writing as a form of cultural production is implicated in constructing the nation” (Boswell, 2010, p.8).

Until the end of apartheid, male authors have long excluded women from their discussions of the nation advancing androcentric perceptions (Layoun, 2001). In their post-apartheid novels, South African black women have addressed this gender blindness by reimagining the nation. They reject the traditional masculinist and racist constructs of the nation. By sharing their perspectives and insights, black women create a new nation. This nation is based on equality and justice for all and is free from all forms of discrimination. It is a nation where black women can finally develop a sense of belonging. They insert black women characters into national discourse to highlight the role they play in the nation’s construction (Boswell, 2010). This new nation created in the fiction of post-apartheid writers can encourage black women to collaborate to transform it into a reality.

Imagining a Better Social World

Throughout history, oppressive and unjust systems have been deconstructed. This proves the ability of human beings to lead transgressive actions which could dismantle existing oppressive regimes. Similarly, through engaging in transgressive literary production, authors are capable of reshaping the social world (Head, 1990). In fact, post-apartheid writers have imagined different social worlds in their fiction. These social worlds are based on human rights and justice leaving no place for discrimination and marginalization. In these imaginary worlds, black women enjoy

all their human rights without any discrimination based on gender and race. By reading these works of fiction, readers are given the chance to consider a different world and what such a world can offer them. Throughout the interview conducted with Ivan Debs, the latter refers to this technique and explains how he uses it in his illustrations. In some illustrations, he focuses on the solution rather than on the problem to give people positive energy and hope for a better future. For instance, the marginalized and oppressed social groups may be showcased in positions of power and success. Similarly, some South African writers depict black women as active agents in the society by attributing to them roles and occupations just as men. To elaborate, instead of being restricted to housework and motherhood, in post-apartheid novels, women go to work and participate in the political activities of the nation. By imagining a different scenario, the writers propose an alternative treatment for black women and encourage them to challenge the traditional discriminatory beliefs and to prove their agency.

Case Study: The Novel "*David's Story*" by Zoe Wicomb (2000)

The novel "*David's Story*" written by Zoe Wicomb, a black South African woman writer, is the first South African novel to lift the shroud of silence around the human rights violations that black women suffered in the liberation movement specifically during their military training in the African National Congress's¹ military wing (Boswell, 2010). Among the many human rights abuses that are addressed within the novel are torture, rape, sexual assaults, and infringement of the freedom of expression. In the following, we discover how Zoe Wicomb adopts a black feminist approach to reveal these human rights violations and to encourage black women to put an end to

¹ Founded in 1912 and previously known as "the South African Native National Congress", the ANC aimed towards fighting apartheid since the 1940's.

such violations. Nevertheless, it must be noted, that only the relevant events and characters that serve the topic of the dissertation will be tackled.

The Setting and Background of the Story

David Dirkse was a high-ranking colored commander in the African National Congress and an anti-apartheid activist. In 1991, David sees his name on a hit list and decides urgently to record his story (Baiada, 2008). As a colored descendant of a mixed ancestry, David feels the urge to unearth his ancestor's history. Witnessing the transitional phase of South Africa between the dismantling of apartheid in 1990 and the first democratic elections in 1994, David plans to write his story to record not only his history but the history of the liberation struggle as well. Reflecting upon the atrocities suffered by black women that he had witnessed as a guerilla in the liberation movement and struggling with his identity in the new emerging South Africa, David feels incapable of writing his story. He therefore employs a woman amanuensis to record his story (Boswell, 2010).

Shifting the Focus from David's Character towards Women Characters

In the preface of David's Story, the narrator contends "this is and is not David's story" (Wicomb, 2000). In fact, by interpolating the stories of women characters into David's story, the narrator destabilizes the main Character raising the question of whether it is indeed his story that is being narrated. By deviating away from David's instructions and advancing her own feminist approach in the story, the narrator reflects personal agency which inspires black women readers to break the chains that have restricted their role in society. Moreover, the narrator gives voices to women characters who narrate the story from their own perspectives giving the readers access to their interior worlds. For the sake of brevity, three women characters will be analyzed to show the characteristics of Wicomb's black feminist approach. These characters are: the wife of David: Sally, a comrade in

the African National Congress (ANC) with whom David falls in love: Dulcie Oliphant, and the narrator.

Perceiving a New Nation through Sally's Character

Sally was a member of the ANC and “The Spear of the Nation” or “uMkhonto we Sizwe” (MK)² hoping to play a role in fight against apartheid and racial discrimination. However, after her marriage to David, the latter kills her ambition by ending her work in the Movement and limiting her activities to motherhood and housework. Moreover, David refuses to hear Sally’s political opinions about the nation restricting her freedom of expression. David pushes Sally out of the Movement at a time where the Movement is about to achieve a great victory of ending apartheid and initiating the project of nation building (Baiada, 2008). Therefore, Sally’s dismissal from her membership in the ANC strips her of the chance of playing an active role in the future nation to which she has dedicated herself. According to David, women do not share an equal citizenship to men (Baiada, 2008). David’s attitude and treatment to his wife reflects the wider androcentric and patriarchal nationalist discourse that existed during apartheid and that persists today. As a part of her military training in the ANC’s armed wing, Sally must learn how to swim but is terrified from the water. Her comrade tells her that she must be raped to learn faster. In the novel, Wicomb narrates this incident using the following expression:

“she knew that her time had come, as she had known it would come sooner or later, this unspoken part of a girl’s training” (Wicomb, 2000, p. 123).

By using this expression, Wicomb indicates that in order to complete the training every woman guerrilla had to obediently and silently submit her body for sexual violence. By narrating this incident, Wicomb aims at showing how women bodies were abused for the cause of nation building

² The guerrilla military wing of the ANC was known as the MK or the “Umkhonto we Sizwe” (Spear of the Nation). It was established in 1961.

while at the same denying them the nationality to which they are entitled. As Baiada avers, “Sally’s body bears the physical evidence of the psychic wounds of the nation”, yet Sally is deprived from her sense of belonging to the nation (Baiada, 2008). In the setting of the novel, South Africa is on the verge of a new democratic nation building free from racial discrimination.

Wicomb highlights the need of including all the historically marginalized categories including women and especially black women in the nation building process. In her fiction, Wicomb reconfigures the new nation as a nation in which women are treated equally. According to Wicomb, in order to achieve this nation, a reconciliation process is needed to give justice to all the women victims and to avoid the re-occurrence of such human rights abuses. Wicomb, therefore employs her literary talent to break the silence around the human rights violations that black women combatants experienced in the ANC training. Wicomb also puts the blame on women such as the character Sally who has remained silent and who has succumbed to this racist and sexist oppression. By revealing the danger of silence and submission, Wicomb invites all the black women readers to report all human rights abuses and to assert their role in the nation building.

Revealing the Dual Racist-Sexist Oppression Faced by Black Women through Dulcie’s Character

Another character in relation to which David’s disturbing attitude towards women is clear is Dulcie Oliphant. Dulcie was a black woman high-ranking comrade in the ANC. Dulcie endures repeated acts of torture and sexual assaults by masked men who break into her home at night (Baiada, 2008). The identity of these torturers is not known, but there is doubt around their membership to the ANC. There are also suggestions that David may have participated in these acts. Even if David didn’t commit these acts, he is responsible for accepting and not opposing these human rights violations which were committed against one of his comrades (Boswell, 2010). In fact, David’s silence reflects the general existing silence about these grave human rights violations endured by

the women guerrillas in the Movement. Through her literary intervention, Wicomb aims to break the silence around these violations. Moreover, Wicomb positions Dulcie's character between overlapping systems of oppression which are the white supremacist ideology and the black patriarchy. This positioning aims to show how the gendered and raced identity of black women makes them targets for frequent and excessive violence. Hence, Dulcie is an indictment for the tortuous pain suffered by black female bodies. Nevertheless, Wicomb displays Dulcie's strength and resistance by showing her insistence to continue her fight against racial oppression. As a matter of fact, she becomes a leader in the Movement. Dulcie's character inspires every black women to get back on her feet and transform her pain into strength.

Imagining a Better Social World through Dulcie's Character

Despite the horrors and scars of her body, Dulcie believes her body can renew itself and she can regain her beauty. Dulcie imagines a love story with David who would transform her scars into beauty. She dreams of going to a village where sculptors would refigure her body in a pain-free and beautiful manner (Wicomb, 2000). Dulcie's tortured body symbolizes the painful history of South Africa that has been marred by the racial and gender oppressive practices. Hence, the new beautiful body that Dulcie imagines symbolizes the new South Africa that Wicomb imagines. In the new social world that Wicomb imagines, justice is attained for all the black women victims and there is no longer tolerance for racist and sexist oppression. Through her literary production, Wicomb draws an imaginary social world in which human rights are preserved and invites all the readers to fight for a better tomorrow.

Re-visioning the Identity of Black Women through the Narrator's Character

David interferes excessively with the narrator's work undermining her ideas and contributions. He believes that her gender prevents her from understanding the dynamics of politics and the nation. Albeit David's repetitive attempts to deprive the narrator from her freedom of expression, the

narrator succeeds in directing David's story according to her black feminist concerns. Furthermore, after discovering the pain and torture that black female bodies have endured, she decides to "claim her body as her own" and to prove herself as equal to others. To achieve her goal, she participates in the crowded ANC rally. She gets bruised and broken but asserts her presence in a public protest. The rally is directed against racial discrimination but disregards the existing gender oppression (Baiada, 2008). The bruises of the narrator's body reflect the fate of black women if they do not strive to highlight the sexist aspect of the existing oppression. By carving a new identity for herself the narrator's character inspires black women to constantly engage in reconsidering what they can achieve if they employ their agency to push against the oppressive structures of society.

Zoë Wicomb: a South African black Woman Writer

As a black woman writer, Wicomb's aspirations to leave a mark in the literary world were crushed by the apartheid oppressive regime. Nevertheless, Wicomb transcended all the racial and gender boundaries and insisted on giving a voice to the voiceless black women. By challenging the masculinist approach that has limited the activities of black women to motherhood and housework, Wicomb reflects great personal agency and influences all black women to raise against oppression and to carve their own path.

Employing Visual Arts as a means of engaging with Transitional Justice in South Africa from Apartheid to Democracy

After the dismantling of the brutal apartheid regime during which wanton human rights violations occurred, the South African people hoped for a new democratic nation based on a culture of human rights. In order to succeed in this nation-building, the mechanisms of transitional justice which are memorialization, commemoration of human rights abuses, and reconciliation were needed. In fact, memory preservation and remembrance liberate people from the past and ensure freedom for the future nation (Adeola, Nyarko, Okeowo, & Viljoen, 2019). In this regard, when asked about his

artistic tribute to the former South African President Nelson Mandela, Ivan Debs avers that “there is a long history that we can learn from so we don’t repeat mistakes” (Debs, 2021).

In post-apartheid South Africa, some of the transitional justice measures such as “truth commissions, reparations, memorials and reconstruction of institutions” were adopted. Nevertheless, these attempts were hindered by time limitations, shortage of resources, and most importantly political interference (Adeola, Nyarko, Okeowo, & Viljoen, *The Art of Human Rights, Commingling Art, Human Rights and the Law in Africa*, 2019, p. 85). To complement these mechanisms and face their limitations, visual arts were employed by several contemporary South African artists. These artists have served a civic function by empowering the oppressed groups, questioning the normalization of apartheid’s human rights atrocities, and fighting against the social and cultural amnesia perpetrated by the state (Becker, 1994).

Moreover, through their artistic creations, post-apartheid artists have helped the people believe and strive for a nation based on democracy, rule of law, and respect for human rights. These artists were able to play proactive roles because of their autonomy and independence from political agendas which allows them to express their visions in a safe place (Coombes, 2003). Among the several “transitional” artworks in South Africa, visual arts have played a special role in the democratization of memory and in the national reconciliation (Mosely, 2007). By creating visual artistic pieces, artists act as visual storytellers taking people on a journey to the past where they can observe closely with their visual sense the injustices and discriminatory practices of the apartheid regime. In this context, Melkar El Khoury³ mentioned visual arts as one of the most effective forms of art in expressing human rights concerns (El Khoury, 2021). The effectiveness

³ Melkar el-Khoury is the Director of the Central Research House. He is an expert in the fields of democracy, human rights education and political Management. Mr. El Khoury is also captivated by the world of art and practices himself several forms of art.

of visual arts is due to the intense feelings that the visual sense can invoke in individuals. According to the researcher Njabulo Ndebele, “what matters is what is seen; thinking is secondary to seeing” (Ndebele, 1986, p. 147). Therefore, visual art is capable of delivering human rights messages that can shape people’s perceptions and belief systems.

In the following section, we demonstrate how post-apartheid South African artists have contributed to the process of transitional justice by questioning the legitimacy of one of its mechanisms namely the Truth and Reconciliation Commission (TRC) and by commemorating the human rights violations that occurred during apartheid. These human rights violations were caused by the racial discrimination that constituted the venom of the apartheid regime. In order to study the role of the visual arts in preserving the memory of this racial injustice, the critical race theory will be employed.

Questioning the legitimacy of the Truth and Reconciliation Commission (TRC)

Enacted into law by the Promotion of National Unity and Reconciliation Act, No 34 of 1995, the mandate of the TRC was “to assemble as complete a picture as possible of the nature, causes, and extent of gross violations of human rights committed between 1 March 1960 and 5 December 1993” (Mosely, 2007, p. 103). In other words, the TRC was the official institutional mechanism designed to produce a collective memory about the structural violence and abuse of power which was exercised during the apartheid regime and to bring victims and perpetrators together in the aim of national reconciliation. Unfortunately, the TRC process was obstructed by political pressures and national agendas and the TRC failed in drawing a complete and true picture of South Africa’s past. By focusing solely on the gross human rights violations, the TRC disregarded the daily discriminatory practices and the patterns of structural violence directed against the Black South Africans. Therefore, if the TRC process were to be examined under the lens of the critical

race theory, the reductive and selective nature of the justice it sought can be deduced. In failing to address the numerous humiliations that the black South African suffered from during the apartheid era, the TRC has excluded several victims of racial injustice from the reconciliation project (Mosely, 2007). Furthermore, the TRC didn't allow the victims to express their inability to forget and forgive eliminating the possibilities of non-reconciled outcomes (Moon, 2006).

Therefore, and as mentioned earlier, post-apartheid visual art complemented the mission of the TRC which revolved around giving justice to the victims of the apartheid regime and promoting national reconciliation. In order to play their role effectively, some artists critically evaluated the operation of the TRC as well as its outcomes. Other artists reimagined the TRC process expanding its scope to include the several discriminatory practices that haunted the black South Africans every day (Adeola, Nyarko, Okeowo, & Viljoen, 2019). Still others decided to base their artwork on the TRC hearings and obtained access to archival documents and photographic images from the TRC and the media (Bester, 2004). One of the most notable artworks in this regard is the multimedia piece "Truth Games" by Sue Williamson.

The Multimedia Piece "Truth Games" by Sue Williamson (1998)

The series "Truth Games" by Sue Williamson was displayed in several exhibits within and outside South Africa. It consists of

"fragmented and dissected text from the TRC hearings arranged on sliding panels with photographic images that viewers can manipulate themselves" (Mosely, 2007, p. 111).

Through this multimedia piece, Williamson challenges the legitimacy of the TRC by offering the observers an avenue to share the truth according to their own beliefs and experiences. As the observers engage in this artistic process, they provide the missing pieces of the puzzle and reveal the facts concealed by the TRC. Furthermore, by using the term "game" to describe the truth-

telling process Williamson hints to the incompatible truths produced by the TRC. As mentioned earlier, the process of the TRC was distorted with the political national agenda which forced reconciliation and forgetfulness. By giving voice to contradictory testimonies and perceptions, Williamson rejects this confining framework and insists on the democratization of public memory.

Commemorating Human Rights Violations Committed during Apartheid

In addition to questioning the legitimacy of the Truth and Reconciliation Commission (TRC), post-apartheid South African visual artists have been active agents in commemorating the human rights violations committed during the draining system of discrimination namely apartheid. By portraying the stories of the oppressed victims, visual art gives voice to the voiceless.

Addressing torture: "The Blue Dress" by Judith Mason (1995)

The Constitution Hill⁴ possesses a rich art collection which has granted it aesthetic features. One of the most notable artistic pieces is "The Blue Dress" also known as "The Man Who Sang and the Woman Who Remained Silent" by Judith Mason. In this piece, Mason uses mixed media and oil on canvas to tell the story of two South African activists in the Liberation Movement who were executed by apartheid security police. The stories of these victims constitute one of several cases of racial discrimination that occurred on a daily basis during the apartheid era. These activists were Harald Sefola and Phila Ndwandwe. Their respective killers narrated their deaths at the TRC amnesty hearings. In a field outside Witbank, security forces electrocuted Harold Sefola. Sefola's last request was to sing *Nkosi Sikelel' iAfrika*, which is now the national anthem of South Africa (The Constitutional Court Art Collection, n.d.). As for Phila Ndwandwe, when she arrived to the holding facility, she was forced by the apartheid security police to strip naked. Hoping that she

⁴ Constitution Hill is the new site for the South African Constitutional Court located in Johannesburg. It officially started operating during March 2004.

would give some information, the police prevented Ndwandwe from wearing any clothes during her detention period. However, she managed to make herself an undergarment from a discarded blue plastic grocery sack. Her acts reflect her insistence on restoring her dignity after the human degradation and torture that the apartheid police inflicted upon her. When the TRC exhumed her body, remains of the blue plastic bag were found wrapped around her pelvis (Mosely, 2007).

Mason was deeply moved by Ndwandwe's story and was infuriated by the heartless and unremorseful way in which her killers narrated the story at the TRC amnesty hearings. Mason felt the need to commemorate this woman's suffering and resistance with a more sincere and humanitarian approach. Therefore, Mason sewed the discarded remnants of the blue plastic sacks into a dress which can be observed next to the painting (Mosely, 2007). By that, Mason has "showed beauty in the suffering and showed light in the darkness" (Debs, 2021). She also accompanied the piece with a poem that she wrote herself:

"Sister, a plastic bag may not be the whole armour of God, but you were wrestling with flesh and blood, and against powers, against the rulers of darkness, against spiritual wickedness in sordid places. Your weapons were your silence and a piece of rubbish. Finding that bag and wearing it until you were disinterred is such a frugal, common-sensical, house-wifely thing to do, an ordinary act... At some level you shamed your capturers, and they did not compound their abuse of you by stripping you a second time. Yet they killed you. We only know your story because a sniggering man remembered how brave you were. Memorials to your courage are everywhere; they blow about in the streets and drift on the tide and cling to thorn bushes. This dress is made from some of them. Hamba kahle. Umkhonto" (Judith Mason – The Man Who Sang and the Woman Who Kept Silent, 1998, n.d.).

This piece serves as an example of how the artistic commemoration of past atrocities is necessary to turn the page of violence and oppression. Moreover, by transforming the remnants of the blue

bags into a beautiful blue dress, Mason shows how the need to societal transformation towards a democracy based on a human rights culture.

Addressing forced removals: "The District Six Public Sculpture Exhibit" (1997)

During the transition from apartheid to democracy, exhibition venues served as instrumental "memory sites" for remembering the inhumane and oppressive practices of the apartheid regime. In fact, the distinctive spatial characteristics of galleries and museums grant the audience the chance to mourn and contemplate the dark past by "engaging in a three-dimensional experience" (Bester, 2004, p. 32). As mentioned earlier, the TRC process failed in addressing certain crimes such the displacement and forced removals against the Black South Africans. To counter the state's denial and to prevent cultural amnesia, artistic projects were applied to shed light on the structural violations which were disregarded in the TRC process. Taking place in 1997 in Cape Town, "District Six Public Sculpture Exhibit" was one of these projects. Ninety-six artists participated in this project whose aim was to

"commemorate both the community and the landscape of District Six- an originally diverse and vibrant neighborhood that was cleared of its residents and razed to the ground after being declared a "whites only" area in 1996" (Mosely, 2007, p. 115).

The exhibit calls public attention on how apartheid's discriminatory spatial policies were destructive to individuals, families, and societies. Studying this artistic project through the critical race theory, it could be deduced that the participants were conscientious to reveal how the element of race shaped apartheid's governing policies. This project serves as an example of the power of visual art in unveiling the past struggles of the suppressed and marginalized individuals and in giving them the chance to improve their future.

Chapter two: The Negative Role of Art towards Human Rights

There is no doubt that art has played an important role in supporting the human rights mission. However, in Africa just like in any other society, some art has impeded this noble mission. In fact, throughout history, there have been several forms of art that have played a negative role towards human rights. One of those forms is known as “the art of acquiescence” (Mlama, 2017). By engaging in this form of art, artists supported the authoritative regime and helped maintain the status quo (Jørholt & Hjort, 2019). Moreover, in “Tanzania, Kenya, Zambia, and Uganda” art has been exploited to glorify the ruling party despite its authoritarian practices (Mlama, 2017). By giving legitimacy to these oppressive regimes, artists have rationalized human rights breaches and discouraged people from raising against the injustice.

In post-apartheid South Africa, there exist several examples of artistic creations that have played a negative role towards human rights. Some artwork has provoked human rights violations and some has constituted in itself breaches to the human rights concepts. In this section, we demonstrate how some post-apartheid South African artists got involved in this negative role by perpetrating and reinforcing gender stereotypes, by engaging in obscene art that violates children’s rights, and by engaging in racist hate art.

Post-Apartheid South African Soap Operas: Gender Stereotypical Portrayals of Black Women Enforcing Gender Discrimination Practices

By employing verbal, visual, and auditory elements, visual media in general and soap operas, in particular, create a world that greatly influences the viewer even if the latter knows that what he/she sees is not real (Ives, 2007). With the daily exposure to soap operas, many viewers adopt the pervasive messages as part of their beliefs and identify with the characters and their attitudes.

Hence, given its visual power, the television can act as “an agent of socialization” disseminating beliefs and portraying harmful behaviors and attitudes as acceptable.

Among the social concepts that could be shaped by TV shows are gender ideologies. Gender ideologies are the beliefs and attitudes according to which individuals attribute certain roles or responsibilities to either men or women. These perceptions also affect individuals’ actions and social expectations (Coombe & Davis, 2013). Hence, gender equality is one of the human rights concepts which is influenced by art. According to Melkar El Khoury (2021), art can have an impact on gender equality because it can evoke feelings in individuals, and individuals interact through their emotions more than through their reason. To elaborate, if a man watches a scene in which a female character is depicted as inferior to another male character, the man might experience feelings of masculinity and superiority and believe that women are unequal to men.

As one of the artistic platforms, soap operas constitute one of the sources on which individuals indirectly rely to shape their values concerning gender equality (Coombe & Davis, 2013). In a research conducted by Rebecca Collins, television shows were studied through content analysis, and it was deduced that these shows portray men and women according to the traditional gendered roles. It was also proven that the exposure to such TV shows is correlated with more sexist attitudes in males. Factors contributing to this correlation include “under-representation of women, the body image of women, and sex-role stereotyping” (Collins R. , 2011). This is the case for post-apartheid South African soap operas which have adopted stereotypical images of women and have consequently reinforced gender stereotypes. Nevertheless, in South Africa, black women have been especially affected by these gender stereotypes (Booyesen & Nkomo, 2010).

In the following section, we investigate the negative depictions of black women in post-apartheid soap operas by using content analysis methodology and by employing the African feminist theory

and the human rights perspective as analytical tools. Two South Africa Broadcasting Corporation (SABC) television shows have been selected as case studies: *Skeem Saam* on SABC 1 and *Muvhango* SABC 2. By illustrating how the adoption of gender stereotypes in soap operas can lead to gender discriminatory practices, we give an example of how art could be exploited to perpetrate human rights violations.

Analyzing the Black Women's Representations through an African Feminist Lens

As mentioned earlier, in post-apartheid South Africa, the adoption of gender stereotypes in soap operas have mostly affected the South African black women. South African black women already struggle with racial and sexist discrimination on a daily basis (Booyesen & Nkomo, 2010). According to the African feminist theory, black women experience such discrimination and oppression because of their class, race and gender (Nolde, 1991). Since this theory acknowledges the overlapping racial and gender oppression, it can serve as an instrument for studying the unjust representation of black women in post-apartheid soap operas. As a matter of fact, one of the main questions asked by African feminists regards the portrayal of African women in visual and literary texts (Mapokgole, 2019). To study this portrayal, African feminists ask questions concerning the agency of the black women characters and the acknowledgement of their intersecting racial and gender identities. Following this line of thought, these questions will be answered in the context of the selected post-apartheid soap operas.

The Negative Influence of Portraying Black Female Characters without Agency

In examining the representation of black women in South African soap operas, one of the core elements upon which the African feminist theory relies is the agency of the represented black female characters. According to Jessie Zondiwe Kapasula, agency is “the ability for an individual woman or women to bring about transformation to the repressive conditions that control their lives” (Kabwila Kapasula, 2010). Therefore, one of the questions that concerns the African

feminist theory is whether black women are depicted as passive subjects surrendering to the existing discrimination or whether they are represented as agents of change challenging the rooted sexism and racism.

Unfortunately, in some post-apartheid South African soap operas, black women are only concerned with the needs and desires of other male characters. They do not have desires, actions, or goals of their own and only exist in relation to the men characters. In other words, the black women serve as “intermediaries” between male characters (Selisker, 2015). This under-representation of women renders them as characters that have no agency (Mapokgole, 2019). These repetitive and negative depictions of black women can generate harmful social practices. In addition to reinforcing the existing discriminatory practices, these depictions deprive black women from their agency as they identify with the female characters. To elaborate, when black women watch the shows, they will see themselves in the black female characters and connect with their stories. When they see that their existence only serves the development of the male characters, they will lose their agency and the hope in achieving gender equality.

Furthermore, several soap operas restrict the roles and responsibilities of the black female characters to housework and motherhood (Mapokgole, 2019). While male characters lead successful careers, black women characters are occupied with domestic matters such as marriage and parenting. By adopting this sex-role stereotyping, soap operas showcase black women as characters with no agency surrendering to the sexist traditional discourse.

According to Nancy Signorielli and Susan Kahlenberg, the portrayal of women as characters with no agency through the under-representation and sex-role stereotyping reaffirms gender stereotypes and therefore reinforces the existing gender discrimination (Kahlenberg & Signorielli, 2001).

The Danger of Disregarding the Intersecting Racial and Gender Identities of Black Women

As previously stated, the African feminist theory is an appropriate tool for studying the representation of black women in soap operas since it adopts the intersectionality of gender and race as one of its elements. Acknowledging the overlapping racial and gender identities of black women is necessary to reflect an accurate image of the black women's experiences in South Africa. In fact, these multiple belongings have exposed black women to sexist-racist oppression and to various human rights violations (Hooks, 2015).

In order for black women to have a chance in fighting gender discrimination, the intersectionality between gender and race must be recognized to reflect the dual oppression. Black women must be represented as both "black" and "females" to reflect their unique experiences with sexism in their societies. Unfortunately, certain post-apartheid South African soap operas do not address this dual oppression and fail to recognize race as a basis for discrimination. They promote the idea that "race issues are no longer a problem in South Africa, and that the rainbow nation has been achieved" (Ives, 2009). In fact, several soap operas include black female characters but fail to reflect their intersecting racial and gender identities (Mapokgole, 2019). As a result, these television programs underestimate the struggle of black women and maintain the existing discriminatory practices. The repetitive portrayal of black women as satisfied individuals rationalizes the gender discrimination that they encounter (Shefer, 2019).

Hence, by disregarding the intersectionality of gender and race, soap operas negatively impact the viewers' perceptions of black women's experiences and fail to dismantle the existing gender stereotypes.

Applying the African Feminist Theory to Muvhango and Skeem Saam

Reason for Choosing these two Soap Operas

According to a research conducted by Jamie McKane, the broadcasting network with the largest audience in South Africa is SABC (McKane, 2018). Moreover, SABC is a public broadcaster governed by the South African Broadcasting Act No.4 of 1999. According to article 2(a) of the Broadcasting Act, all broadcasters must adopt a broadcasting policy that contributes to gender equality. Given its large audience and legal obligations concerning gender equality, the SABC serves as a suitable example for the case study. Hence, two of its most-watched shows, “Muvhango” and “Skeem Saam”, will be examined. The soap opera Muvhango, created by Duma Ndlovu (1997), had over five and a half million viewers. Likewise, “Skeem Saam”, created by Winnie Sarite (2011), had over eight million viewers (McKane, 2018). In order to examine these two soap operas, the content analysis applied by Reshoketswe Mapokgole on five consecutive episodes from each show will be used (Mapokgole, 2019).

Examining the Agency of the Black Female Characters in Muvhango and Skeem Saam

Playing since 1997, Muvhango is one of the oldest SABC soap operas. The show centered around the Vhakwevhos, a royal family, and their rivals who challenge their rule. In season fifteen, the royal throne is still the main topic, but it is between the Mojalefas and the Vhakwevhos, two families. In his research, Reshoketswe Mapokgole analyzes the episodes 192 to 196 which aired from 4 October 2018 to 10 October 2018. The female characters featured in these episodes were “Molieli, Mishumo, Rendani, Livhuwani, Imani, Thobile” (Mapokgole, 2019).

In all the studied episodes, the black female characters are depicted as passive subjects with no goals or achievements. They do not have stories of their own and their only aspirations are to satisfy the other male characters. For example, throughout the five episodes, Molieli, Livhuwani and Mishumo’s concerns are limited to fixing their marriages and their conversations revolve

around their husbands (Mapokgole, 2019). Therefore, Molieli, Livhuwani and Mishumo are intermediaries and passive characters with no agency. These negative depictions of the characters demolishes the agency of the South African black women viewers who interact with the show and identify with the characters (Coombe & Davis, 2013).

Furthermore, Imani is the only black female character whose story is centered around her work (Mapokgole, 2019). All the other black women are depicted as mothers or wives and not as job holders. Limiting the responsibilities of the female characters to familial concerns reinforces the existing stereotypical gender roles.

In what concerns the soap opera “Skeem Saam”, it is an educational television program sponsored by the South African department of education. The plot revolves around young South Africans and the challenges they encounter within and outside the school setting. In the research conducted by Reshoketswe Mapokgole, the episodes 64 to 68 which aired between 4 October 2018 and 10 October 2018 are analyzed. “Rachel, Mantuli, Meiki, Botshelo, Mokgadi, Mapitsi, Pretty and Katlego’s grandmother” were the black female characters included in the studied episodes (Mapokgole, 2019).

Similar to the case of Muvhango, in Skeem Saam, the black female characters do not exist as independent individuals but as mothers or romantic partners. Instead of depicting young women as competent students, the plot focuses solely on their identity as the lovers of other male characters. For instance, Rachel’s only concern is to get back with her boyfriend (Mapokgole, 2019) . The absence of agency in black female characters reaffirms the existing gender stereotypes and deprives black women viewers from challenging these stereotypes (Ives, 2009).

Similarly, instead of representing older women as active agents in the society, their roles are restricted to motherhood. For example, in all the scenes of the examined episodes, Mantuli and Mokgadi's actions and thoughts are related to their children. Only in two brief moments, Rachel and Mapitsi' work is mentioned. Moreover, there is no discussion concerning work-related matters but only an indication that one works as an events coordinator and the other as a blogger (Mapokgole, 2019). These continuous images of women in traditional roles propagates the idea that outside the household, women are unable to contribute to society.

Thus, the content analysis applied by Reshoketswe Mapokgole shows the danger of representing black female characters with no agency. Noting that Muvhango and Skeem Saam are two of the most watched shows in South Africa, the dangerous social consequences of adopting gender stereotypes in soap operas become clear.

The Failure of Muvhango and Skeem Saam in Acknowledging the Intersectionality of Gender and Race

In the soap operas Muvhango and Skeem Saam, several black female characters are featured in the studied episodes. Although visuals are employed to highlight the unique identity of black women, these representations are limited to the physical appearance and do not reflect the racial identities of the black female characters (Mapokgole, 2019). In fact, gender and race are portrayed as insignificant factors in the lives of the black female characters. Hence, the shows fail to highlight the sexist and racist discrimination that continue to shape the experiences of black women in post-apartheid South Africa. The black female characters in Muvhango and Skeem Saam do not reflect the struggles of the South African black women (Vourlias, 2018). As these shows play every day and reach a large portion of the South African society, the representations of black women gradually shape their beliefs and perceptions. To elaborate, the viewers fail to understand the

unique nature of the gender discrimination in South Africa which is driven by both gender and race. Therefore, by turning a blind eye to the origins of gender discrimination in post-apartheid South Africa, Muvhango and Skeem Saam squander the chance of challenging the discriminatory practices against black women.

Analyzing the Black Women's Representations through the Human Rights Perspective

Given the fact that gender equality is an important human rights principle, the dangers of adopting gender stereotypes in the media have been addressed by several women's rights treaties. According to article 12(1) (b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also known as African Women's Protocol: "States Parties shall take all appropriate measures to eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination". Along the same line of thought, article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges state parties to eliminate the cultural practices that favor gender stereotypes. Although the article does not explicitly mention media, the Committee on the Elimination of Discrimination Against Women has clarified over the years and through its concluding observations the states' obligations to refrain from employing stereotypical attitudes that discriminate against women in the media. To elaborate, in their 48th session regarding South Africa in 2011, the CEDAW Committee stated the following:

"The Committee is concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society. It notes that such discriminatory attitudes and stereotypes constitute serious obstacles to women's enjoyment of their human rights and the fulfilment of the rights enshrined in the Convention (...) The Committee is also concerned about the continuing stereotypical portrayal of women in the media, which encourages discrimination and undermines the equality of women and men" (CEDAW Committee, 2011).

According to both the African Women's Protocol and CEDAW, the use of gender stereotypical projections of women in the media undermines the equality between men and women. Consequently, the employment of gender stereotypes in post-apartheid South African soap operas constitute a clear violation of South Africa's obligation to these legal instruments.

[Applying the Human Rights Perspective to Muvhango and Skeem Saam](#)

In Muvhango and Skeem Saam, the black female characters are repetitively represented in the traditional roles of wives, lovers, and mothers. They are portrayed as inferior to and dependent on other male characters. The persistence of these stereotypical images in Muvhango and Skeem Saam constitute a violation of South Africa's obligations to eradicate gender stereotypes according to the African Women's Protocol and to CEDAW.

Furthermore the South Africa Broadcasting Corporation through which Muvhango and Skeem Saam were transmitted, is governed by the South African Broadcasting Act no 4 of 1999. As previously stated, the South African Broadcasting act obliges broadcasters to adopt a broadcasting policy that promotes gender equality.

Thus, by employing gender stereotypes, Muvhango and Skeem Saam have perpetuated gender inequality and failed in respecting their moral and legal responsibilities.

[Obscene Visual Art Infringing Children's Rights](#)

The concept of obscenity usually comes across in discussions concerning the freedom of speech and its limitations (Tirohl, 2015). However, in this dissertation and for the purpose of the study, it will be approached as a concept in which art engages and negatively impacts human rights and children's rights in particular.

The social reality of post-apartheid South Africa makes it a suitable area for studying the correlation between pornographic visual art and the sexual abuse of children (Le Roux, 2010).

According to the 2019/2020 Annual Crime Statistics presented by the South African Police Service (SAPS), at least 24,000 children were victims of sexual abuse and one in five children are sexually assaulted (Gwala & Gcwabe, 2021).

One of the factors contributing to these worrying numbers is the exposure of children to pornography and specifically to child pornography (Le Roux, 2010). When children are exposed to child pornography they gradually lose the inhibitions that deters them from engaging in deviant sexual practices. According to Chetty and Basson, it was proven that children under the age of 14 years who are exposed to child pornography are more likely to be involved in inappropriate sexual behavior (Chetty & Basson, 2006).

Visual art is one of the means through which children are exposed to prurient and indecent sexual content. As previously stated in chapter 1, visual art is very effective in communicating human rights messages. This is because adults and children are influenced by what they observe (Malamuth & Impett, 2001). Children are more vulnerable to the obscene content of visual art because they are unable to distinguish between what is “real or unreal, factual or fictional, realistic or unrealistic” (Le Roux, 2010). Hence, by displaying indecent sexual images, visual artists can negatively affect the sexual development of the children. Moreover, the children’s right to social and moral well-being as well as their right to physical and mental health could be infringed. As for the children participating in the pornographic art, their right to human dignity is violated as well.

In addition to the social responsibility of South African visual artists to protect the children from the harmful effects of pornography, the latter have a legal responsibility because post-apartheid South Africa has adopted several legal instruments in this regard.

South African Legal Instruments Prohibiting the Involvement and Exposure of Children in Pornography

According to section 28 (1) of the Bill of Rights in South Africa's Constitution, children are entitled to several rights including the child's right to "physical or mental health, or spiritual, moral or social development". In other words, children must be protected from any situation that might harm their health and moral-well being. According to Benedek and Brown exposure to pornography is one of these situations as it can lead children to experience "sleep disturbances, nightmares, regressive behavior amongst other things (Benedek & Brown, 1999). Hence, by exposing children to pornography, artists violate children's rights which are protected by the South African Constitution. To defend their work, some artists might refer to section 16 of the South African Bill of Rights within the Constitution which protects the freedom of expression and the freedom of artistic creativity. Nevertheless, according to section 28 (2) of the Bill of Rights, in any situation involving a child, the child's best interests must be the priority.

Furthermore, in 1995, South Africa ratified the United Nations Convention on the Rights of the Child (Ratification Status for South Africa, n.d.). Article 34 of the Convention on the Rights of the Child obliges the state parties to protect children from all forms of sexual exploitation and abuse including "the exploitive use of children in pornographic performances and materials". In addition, in 2003, South Africa ratified the Second Optional Protocol of the Convention (2000) which prohibits the sale of children, child Prostitution and child Pornography (Ratification Status for South Africa, n.d.). Therefore, the participation of children in pornographic visual artwork constitutes a violation to South Africa's obligations under the Convention on the Rights of the Child as well and the Second Protocol to this Convention. In this regard, it must be noted that art can violate children's rights not only by exposing them to pornography but also by involving them in pornographic art.

Another relevant legal instrument is the Sexual Offences and Related Matters Amendment Act No. 32 of 2007. Article 19 of this act prohibits the exposure or display of or causing exposure or display of child pornography or pornography to a child. Thus, if visual artists display pornographic art work and expose children to such work they would be contravening the law.

To prove that visual art can be involved in child pornography and can thus violate children's rights, one must refer to the Act No. 65, 1996 Films and Publications Act. One of the aims of this act is to impose age restrictions on certain films and publications to protect children and according to article 1 of this act, the term "publication" can refer to "any drawing picture, illustration or painting".

The Exhibition "Viscera" by Mark Hipper (1998)

In 1998 and during the Standard Bank National Arts Festival in Grahamstown, the artist Mark Hipper held an exhibition named "Viscera". The exhibition consisted of paintings of child nudes including a drawing of a girl touching her vagina and a boy with an erect penis (Mark Hipper Obituary A Heartfelt Goodbye: Mark Hipper, 2010). According to article 2 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, "child pornography means... or any representation of the sexual parts of a child for primarily sexual purposes". Moreover, according to article 1 (1) of the Sexual Offences and Related Matters Act, child pornography includes images of persons under the age of 18 "displaying the genital organs of such persons in a state of arousal or stimulation". Therefore, the drawings of the girl and the boy might be classified as child pornography.

The Grahamstown Child and Welfare Society brought criminal charges against Mark Hipper describing his work as indecent and pornographic, and the National Council of Child Welfare

lodged an official complaint with the Film and Publications Board⁵ (Hess, 1998). After visiting the exhibition, the Board placed an age restriction prohibiting children under the age of 12 from viewing it. A warning was placed at the entrance of the display indicating that “the exhibition contains nudity and may cause offence”. The Board didn’t consider the exhibition pornographic and classified it as “bona fide artwork⁶”. In his defense, Mark Hipper denied that the exhibition was pornographic and stated “it was about children discovering their sexuality and coming to terms with it” (Freedom of Expression Institute, 1998).

Therefore, although the exhibition “Viscera” by Mark Hipper was not considered pornographic, it points out to the possibility of the involvement of visual artists in child pornography and to the negative impacts of this engagement on children’s rights.

[Racist Hate Art Violating the Rights to Equality and Human Dignity](#)

As previously stated, section 16(1) of the South African Bill of Rights guarantees the right to freedom of expression including artistic creativity. Nevertheless, according to subsection 2, this right does not include “advocacy of hatred that is based on race”. In other words, racial hate speech is prohibited under the Constitution of the Republic of South Africa.

⁵ [The Film and Publication Board was established by](#) the Films and Publications Act No. 65 of 1996. The Board regulates films, games and certain publications to protect consumers especially children. One of its roles is to classify the content of films and publications to protect children from exposure to inappropriate materials and to prevent sexual exploitation in media content.

⁶ “Bona Fide” is a Latin expression meaning “in good faith”. In this context, it is used to show the art work was created with good intention.

Racial hate speech can be defined as:

“the intentional publishing, propagating, advocating or communicating to one or more persons in a manner that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm; or promote or propagate hatred, based on race” (National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance).

Given its history of racial oppression through successive colonial and apartheid governments, post-apartheid South Africa is unfortunately well acquainted with the concept of racism and has witnessed several cases of racial hate speech (National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance). By inciting racial discrimination, hatred, and violence, racist hate speech violates the human rights to equality and human dignity guaranteed by sections 9 and 10 of the Bill of Rights respectively (Barendt, 2005).

It must be noted that the term “speech” refers to several forms of expression including artistic expression. In fact, art can equate to hate speech when it intends to incite hatred and to provoke racist attitudes and violence (Barendt, 2005). Therefore, in this section, the terms “racist hate speech” and “racist hate art” will be used interchangeably. The critical race theory is employed to demonstrate how art can discriminate against other people based on the element of race.

[South African Legal Instruments Prohibiting Racist Hate Speech and Consequently Racist Hate Art](#)
In addition to section 16(2) of the Bill of Rights, South Africa has adopted several legal instruments to prevent and prohibit racist hate speech or art. On 3 October 1994, South Africa signed the International Convention on the Elimination of all Forms of Racial Discrimination (Ratification Status for South Africa, n.d.). According to article 4 of this convention, the State Parties must eliminate all forms of incitement to racial discrimination, racial hatred, or violence. Furthermore, article 7 of the convention obliges states to adopt measures in several fields to combat the

dissemination of racist attitudes and to propagate human rights principles such as equality and human dignity. One of the fields that article 7 mentions is culture to which artistic creations belong. This proves the potential of art to provoke human rights violations such as racial discrimination and hatred.

On the national level, in 2000, the parliament of South Africa passed the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA). Section 7 of this act prohibits unfair discrimination based on race and section 10 prohibits hate speech. Moreover, section 12 of the act prohibits the dissemination of information which unfairly discriminates against any person. Hence, according to the PEPUDA act, artwork which incites racial hatred and discrimination must be prohibited.

However, according to section 10, the context of the expression should “reasonably be construed to demonstrate a clear intention to be hurtful; be harmful or to incite harm; promote or propagate hatred”. Moreover, according to section 12 of the act, “bona fide engagement in artistic creativity” does not equate to hate speech. Therefore, if it interpreted from the context of art work that it was done in good faith and without the intention to incite racial hatred, it should not be considered racist hate speech.

*The Artwork “F**k White People” by Dean Hutton (2016)*

The work is a multi-media installation which consists of wallpaper covering a board, a chair and golden boots. The Words “Fuck”, “White” and “People” are written repeatedly in capital letters on the wallpaper of the board. It was created by Dean Hutton, a student studying for a Master’s Degree in Fine Art at the University of Cape Town. The installation was loaned to Iziko- South African National Gallery to be part of the exhibition titled “the Art of Disruptions” (de Vos, 2017).

Many white South Africans felt offended by the work and the Cape Independence Party⁷ filed a complaint against the South African National Gallery in the Equality Court⁸ in the Magistrates' Courts for the district of Cape Town. The complainant alleged that the work "F**k White People" violates sections 7, 10, and 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act as it unfairly discriminates against white people and constitutes hate speech.

Nevertheless, the court dismissed the complaint basing its decision on several arguments. First, the work must be viewed in its context in the exhibition. The exhibition "the Art of Disruptions" examines the role of protest art in dealing with various topics that plague the South African society. as part of this exhibition, the work is meant to be provocative to create dialogue about racism in the country.

Second, Hutton wasn't inciting hatred against the white South Africans based on their race but was criticizing the racial superiority that is rooted in the white people's mindset and their racist attitudes. Hutton was doing the opposite of "propounding" racial superiority as mentioned in section 7 of the act. He was calling on Whites to suppress their sense of racial superiority (Cape Party- Kaapse Party vs Iziko-South African National Gallery, 2017). Observed under the lens of the critical race theory, the work doesn't consist of an unfair discrimination against white people based on the element of race.

Third, even if the work was considered as unfair discrimination and it is not, it would be exempted from prohibition by the provision in section 12 related to "bona fide engagement in artistic creativity" (Cape Party- Kaapse Party vs Iziko-South African National Gallery, 2017).

⁷ It is also known as "the Kaapse Party" and was founded in 2007. It seeks greater economic and political independence for the Cape.

⁸ Equality courts are specialized courts designated to hear matters relating to "unfair discrimination, hate speech and harassment".

Hence, this case shows how art could be challenged as constituting hate speech and violating human right concepts such as equality and human dignity.

Chapter III: The Role of Human Rights towards Art

The relationship between art and human rights must be explored in both directions to illustrate how these two fields might overlap. After having examined how art can impact human rights, the significance of human rights concepts on the journey of art will be discussed.

The extent to which human rights concepts are respected in a society can greatly affect the state of art in that society. Human rights can encourage artists to engage in creative works through recognition and protection (Exploring the Connections Between Arts and Human Rights, 2017). Moreover, according to El Khoury, ensuring that the relevant legal instruments are “pro artistic and cultural” is necessary to promote art, especially in the less developed countries (El Khoury, 2021).

In this regard, post-apartheid South Africa has taken important steps towards providing legal protection for artists. According to section 30 of the Bill of Rights in South Africa’s Constitution, every individual has the right to a culture that encompasses the right to practice and enjoy art.

Moreover, South Africa has adopted international legislation that supports the development of culture and art. In 2015, South Africa ratified the International Covenant on Economic, Social and Cultural Rights (Ratification Status for South Africa, n.d.). Article 15(1) of the Covenant recognizes the right of every individual to participate in cultural life. By ratifying this convention, South Africa commits itself to provide every individual with his/her cultural rights which include engaging in artistic activities.

Furthermore, on 12 December 1994, South Africa became a member to the United Nations Educational, Scientific and Cultural Organization (UNESCO) (South Africa, 2021). As a member of this organization, South Africa is committed to promote and protect cultural expressions through

“supporting art and artists on the national, regional, and international level” (Art and Arts Education, 2021). Along this vein, in December 2006, South Africa ratified the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (South Africa (120 texts), n.d.). One of the obligations of the State parties to this convention is to adopt national and international human rights legislation to support artistic freedom and to protect the social and economic rights of artists (The Convention on the Protection and Promotion of the Diversity of Cultural Expressions, n.d.).

To support artists, post-apartheid South Africa must endeavor to guarantee them their human rights especially those pertaining to their status as artists. These rights include freedom of expression, copyright, right to funding, right to access to public space, and others. For the sake of brevity, two of these rights, copyright and freedom of expression, will be studied in the context of post-apartheid South Africa.

[Copyright in post-apartheid South Africa: A Powerful Asset](#)

Intellectual property rights are property rights entitled to persons over the creation of their intellectual activity (Sikoyo, 2006). Some of the legal rights falling under the umbrella of intellectual property are patents, trademarks, industrial designs, and copyrights (Basma, 2018). In this study, copyright will be discussed as it reflects the cultural aspect of intellectual property (Tirohl, 2015). “Copyright is a term used to describe an area of law which protects the expression of ideas and not the ideas themselves” (Basma, 2018). One of the forms of expression that might be protected by copyright is an artistic expression. In fact, while listing the works eligible for copyright protection, section 2 of the South African Copyright Act No 98 of 1978 mentions “literary works, musical works, artistic works, cinematographic films”. This implies that artists in post-apartheid South Africa benefit from copyright protection.

Copyright protection covers the financial and moral interests of artists over their creative works (Norwick & Chasen, 1992). In what concerns the financial interests, economic rights enable artists to use the work in the form of their choice and to benefit from the remuneration of this use. These rights include “the right to reproduce⁹ the work, to issue copies of it, to communicate the work to the public through direct or indirect performance, to adapt¹⁰ the work, and to authorize or deny any of these acts” (Tirohl, 2015). In case the artists authorize one of these acts, they receive an amount of money known as “royalties” in exchange for the use of their work. Granting artists these economic rights improves the living conditions of artists and increases their productivity in producing quality artistic projects (Secretariat, 2019). This is especially important in the context of post-apartheid South Africa where approximately 55.5% of the population is living in poverty (Group, 2020). Moreover, by giving artists control over the assets resulting from their work, copyright helps artists to gain confidence and to realize autonomy (Radin, 1993). These developments in the personality and inner will are very important for South African artists who have been historically exposed to oppressive and discriminatory practices.

As for the non-financial interests, most legal systems including post-apartheid South Africa recognize a set of legal rights termed “moral rights” (Tirohl, 2015). These rights are directly linked to the artists as persons and allow them to preserve the personal link between themselves and their works. They include the right to be recognized as the author of the work (the right to authorship) and the right to reject any modifications to the work which might affect its integrity.

⁹ Section 1 of the Copyright Act No 98 of 1978 defines reproduction in relation to the nature of the copyrighted work.

¹⁰ Section 1 of the Copyright Act No 98 of 1978 defines adaptation in relation to the nature of the copyrighted work.

Although copyright is in principle vested in the artist of the work, the financial element of protection can be transferred as movable property. In this regard, the distinction between assignment and licensing must be noted. On one hand, through assignment, the artist fully deprives him/herself of one or more of his/her rights under copyright. On the other hand, through licensing, the artist retains ownership of the rights and only permits the licensee to “exercise the said right without fear of being sued of infringement thereof” (Baloyi, 2005).

In what concerns the duration of the copyright, section 3 of the Copyright Act No 98 of 1978 specifies the duration according to the nature of the copyrighted work.

South African Copyright law: National and International Influences

Art law addresses all the legal problematics involved in the “creation, purchase, sale, or transfer of a work of art”. Copyright law occupies a significant role in this legal avenue (Lerner & Bresler, 1989). Adopting appropriate copyright provisions is necessary to protect artists’ rights over their creations and to encourage them to invest further in their talents. According to the International Musical Council, the improvement of copyright laws during the period from 2012 to 2017 was accompanied by an increase in global royalty collections by 23% (Secretariat, 2019).

In the context of post-apartheid South Africa, since the transition to democracy in 1994, South Africa has committed itself to enforce advanced copyright legislation (Sikoyo, 2006).

Since copyright law occupies volumes of thought beyond the scope of this dissertation, in the following section, few of many relevant international and national instruments will be demonstrated.

Some of the International Legal Instruments Adopted by post-apartheid South Africa

Aiming to provide copyright owners including artists with an international protection and to promote cultural exchanges between countries, several international legal instruments were adopted.

Berne Convention for the Protection of Literary and Artistic Works (1866)

The Berne Convention was concluded on September 9, 1886 in Berne, Switzerland. It is administered by the World Intellectual Property Organization (WIPO)¹¹ (Stokes, 2012).

The Convention emerged as a “response to the lack of uniformity and comprehensiveness of the various bilateral treaties that had been entered into by certain countries, marking it the oldest international treaty in the international copyright law” (Baloyi, 2005, p. 40). More than one hundred years old, the Berne Convention provides authors including artists a high level of international protection and gives them the most comprehensive set of rights possible (Lerner & Bresler, 1989). In fact, in article 2, the Convention expressly mentions artistic works when listing the works eligible for protection in member states of the Berne Copyright Union (Stokes, 2012). The Convention includes a series of provisions which determine minimum standards of copyright protection to be granted. It also contains special provisions¹² for developing countries that wish to benefit from them (Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886), n.d.).

Three fundamental principles form the basis of the Berne Conventions. First, the principle of national treatment states that works originating in one of the Contracting States¹³ must be granted

¹¹ WIPO is a specialized agency of the United Nations that administers international intellectual property treaties.

¹² Appendix 2 of the Convention contains special provisions concerning developing countries. The aim of these provisions is to grant developing countries under certain conditions more latitude in what concerns the rights of translation and of reproduction than is normally permitted by the Convention proper.

¹³ These include the cases in which the author of the work is a national to that State or the cases in which the work was first published in that State.

in each of the other Contracting States the protection that the latter would provide to the works of its own nationals (Dean & Karijker, 1987). The second principle is the lack of formality according to which protection should be automatically granted to works including artistic works without being subject to formality conditions. As for the third principle, it is the principle of independence of protection which states that protection is independent of the presence of protection in the country of the work's origin (Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886), n.d.).

These three principles reflect the Convention's aim to provide the highest possible level of international copyright protection for authors including artists. Moreover, except where reservations are expressly allowed, the Contracting States are obliged to provide the rights that the Convention grants (Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971), 1978). Hence by signing the Berne Convention in 1928, South Africa has committed itself to provide artists with the advanced copyright protection that the Convention has laid down.

[Agreement on Trade-Related Aspects of Intellectual Property Rights \(1994\)](#)

As some of the Contracting States were not complying with their obligations under the Berne Convention, a new international instrument was needed to recommit them (Polack, 2009). Thus, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was signed on 15 April 1994 in Marrakesh, Morocco. The TRIPS Agreement is a multilateral agreement between all the States belonging to the World Trade Organization¹⁴ (WTO) including South Africa. According to article 9.1 of the TRIPS Agreement, the members must commit to their obligations under the Paris Act of 1971 of the Berne Convention. The member States must

¹⁴ The WTO was established on 1 January 1995. It is the international organization that aims to organize and improve trade between nations.

specifically comply with the articles 1 till 21 of the 1971 Berne Convention except for article 6 concerning moral rights. They must also comply with the Appendix concerning the special provisions for developing countries (Overview: The TRIPS Agreement, 2022).

Besides requiring compliance with the Berne Convention, the TRIPS agreement has been referred to as “the most comprehensive multilateral agreement on intellectual property” (Baloyi, 2005, p. 20). The TRIPS agreement lays down “minimum standards” for the protection of intellectual property rights including copyright. In fact, the agreement addresses copyright in Part II, Section 1 titled “Copyright and Related Rights¹⁵” (Organization, 1994).

Like the Berne Convention, the TRIPS Agreement is another legal instrument adopted by South Africa to provide an international level of copyright protection for its artists.

On the National Level: The Copyright Act No 98 of 1978

Before discussing this legal instrument, it must be noted that there are other national laws that address certain cases of copyright and related rights, however; it is this act that embodies the copyright law of South Africa (Copyright, Intellectual Property & Related Rights and Protection Policies in terms of the Copyright Act of 1978, n.d.). The Copyright Act has been amended by several subsequent acts to make sure it complies with the minimum standards of the TRIPS agreement (Polak, 2009).

As mentioned before, the Act mentions “literary works, musical works, artistic works, cinematographic films” when listing works eligible to copyright in Section 2. Therefore, artists in post-apartheid South Africa enjoy copyright protection over their artistic creations and can prohibit

¹⁵ Related rights, also referred to as neighboring rights, protect the legal interests of persons, other than the authors of works, who are involved in making copyrighted works available to the public.

others from making copies or modifications to their creations. This allows artists to benefit financially from their work, to develop a sense of autonomy by controlling the use of their work, and to have an incentive for future creation.

Finally, it must be noted that although the Copyright Act provides artists with a high level of copyright protection, copyright is not an absolute right. In fact, the Act mentions exceptions in which the use of the work does not amount to copyright infringement such as when the work is used “for the purposes of research or private study, for the purposes of criticism, for the purpose of reporting current events, or for the purposes of judicial proceedings”¹⁶.

Case Study of the Song “The Lion Sleeps Tonight”

Origin of the Song

Solomon Linda was a black Zulu¹⁷ migrant worker and entertainer (Dean, 2006). In 1939, he created a melody which was performed through a song called “Mbube”, Zulu for lion. “Mbube” was sang in a recording African studio by the band called “the Evening Birds” to which Linda belonged. It was then released in the form of 78 rpm (rotation per minutes) records. The lyrics of the song included “Lion Ha! You’re a Lion” in Zulu and was inspired by the Zulu boys’ childhood during which they chased lions that were following their fathers’ cattle (Malan, 2000).

Trajectory of the Song

As the creator of the song “Mbube”, Solomon Linda is the artist who owns the copyright of the song. However, the latter assigned the copyright to the Gallo Record Company for only 10 shillings¹⁸. In the beginning of the 1950s, Gallo Records released the recording of Mbube which arrived to America and grabbed the attention of the American folksinger Pete Seeger. The latter

¹⁶ The Exceptions to copyright are explained in Sections 12 till 19 of the Copyright Act No 98 of 1978.

¹⁷ Zulu is the largest ethnic group in South Africa.

¹⁸ The Shilling was a British Coin equivalent to one twentieth of a pound. As South Africa was under the British colonization, this currency was used.

liked the music and transcribed it from the record making his own song called “Wimoweh”. The folksinger had mistakenly heard the Zulu lyrics “Uyimbube”, Zulu for “he is the lion”, as “Wimoweh”. The song Wimoweh achieved great success in America during the 1950s (Dean, 2006).

In the 1960s, another version known as “The Lion Sleeps Tonight” was created by the song writers “George Weiss, Hugo Peretti and Luigi Creatore”. This version became a major hit and achieved a great popularity. In the mid-1990s, “The Lion Sleeps Tonight” was incorporated as an essential element into the Disney musical “The Lion King”(Röschenthaler & Diawara, 2016).

Unfortunately, in the midst of all this glory, the creator of the song and the original copyright owner, remained a stranger to this success. While the song made profits equivalent to millions of dollars, Linda died as a poor unknown artist leaving his family in abject poverty(Dean, 2006).

The Assignment of Copyright

In 1952, Linda had assigned his copyright in Mbube for only 10 shillings to the Gallo Record Company. Gallo registered the copyright of “Mbube” in the United States. When Pete Seeger created Wimoweh, the copyright of that song was given to the American publishing company, Folkways. Although Wimoweh was based on the melody of Mbube, it was considered an original work and enjoyed a separate copyright. In 1962, Linda died leaving his wife Regina and four children. In 1982, the copyright of Mbube was to be renewed for a second term in the United States. According to the United States copyright law, “the right to renew the copyright in a work into its second term vested in the author or his heirs”. Folkways renewed their copyright through an assignment by Linda’s legal heir, Regina for one dollar. In 1990, Regina died. Two years later, Folkways exacted another assignment of the copyright to Mbube from the daughters for another dollar. (Dean, 2006).

In what concerns the copyright of the version “The lions Sleeps Tonight”, a legal battle was fought between Folkways and Abilene Music in which the songwriters vested the copyright. Abilene Music won the litigation and became the copyright owner of the Lion Sleeps Tonight. Abilene Music then licensed Walt Disney Enterprises for the using the song in The Lion King movie and granted it an indemnity as well (Awakening the Lion in the Jungle, 2019).

Revealing the Injustice

Towards the end of the 1990s, South African journalist, Rian Malan, exposed the injustice that Linda and his family suffered due to the illegal and unfair exploitation of his copyright to the song “Mbube” (Dean, 2006). Malan wrote an article for the Rolling Stones magazine explaining how the Western giant companies took advantage of Linda depriving him and his family from the financial and moral benefits of Mbube. He pointed out that while Western Companies were making millions of dollars, one of Linda’s daughters died of AIDS as she couldn’t afford the treatment. The article caused outrage throughout South Africa and pushed Linda’s daughters to take the required legal steps to reclaim their rights (Malan, 2000).

The Litigation

The daughters aimed at regaining their economic rights by receiving the past and future financial profits of the song especially the version of The Lion Sleeps Tonight. They aimed for establishing that the copyright of “The Lion Sleeps Tonight” falls within the scope of the copyright pertaining to the underlying work “Mbube”. They also endeavored to recover their father’s moral right by gaining acknowledgment of his authorship. The renowned South African law firm, Spoor & Fisher, was responsible for representing the plaintiffs, Linda’s daughters.

In 2004, Linda’s estate was reopened and Stephanus Griesel was appointed as the Executor in whose name the litigation begun. The plaintiffs’ claim was based on a British Statute known as the 1911 Imperial Copyright Act. This Statute was applied throughout the British Empire to which

South Africa belonged. Since the rights to Mbube could only be claimed in countries which previously belonged to the British Empire, the litigation was brought before the South African court. Furthermore, as the South African court's jurisdiction is limited to defendants whose place of business or other assets are located in South Africa, the legal action could not be brought directly against Abilene Music. Hence, the law firm decided to sue Walt Disney Enterprises Inc. as it was a licensee of the song. The firm planned on attaching 200 registered trademarks belonging to Disney in South Africa and holding these trademarks "hostage to provide security for the enforcement of payment of a debt". The High Court of South Africa granted the application to attach the trademarks and the copyright in the movie "The Lion King". The law firm brought an action against Walt Disney Enterprises and other licensees or sub-licensees of Abilene, accusing the defendants of infringing the Executor's copyright in Mbube by "reproducing and publicly performing a substantial part of it in the guise of *The Lion Sleeps Tonight* without his authority". Walt Disney Enterprises brought an urgent application before the court to disregard the attachment claiming that the Executor had no case against it. The court rejected the application and endorsed the Executor's cause of action (Dean, 2006).

The Legal Basis for the Plaintiffs' Claims

The law firm Spoor and Fisher representing Linda's daughters relied the legal action on a legal provision in the British Statute known as the 1911 Imperial Copyright Act. According to Section 5(2) of this act: "where an author assigned his copyright during his lifetime, 25 years after his death the copyright reverted to the Executor of his estate, as an asset in that estate, notwithstanding any other assignments of copyright which might have taken place in the meantime". This is also known as "the reversionary interest provision" or the "Dickens" provision. The 1911 Imperial Act was incorporated to the South African Copyright law in the Act of 1916.

Although the 1916 act had been then repealed, the reversionary interest provision remained in force until 1965 (Röschenthaler & Diawara, 2016).

Returning to the case, Linda created the song in 1939 and assigned it to Gallo Record Company in 1952. Both events occurred between 1916 and 1965 during the time when the clause applied. Furthermore, Linda died in 1962 also when the clause still applied. Therefore, since 1987 which is 25 years from the death of Linda, the copyright had reverted to the Executor. This indicates that the copyright was not vested in neither Regina nor her daughters since the Executor had not transferred it to them. Since neither Regina nor the daughters owned the copyright of Mbube, the assignments that they made to Folkways had no force (Dean, 2006).

Since both Wimoweh and The Lion Sleeps Tonight used the melody of Mbube, the copyright of both songs falls within the copyright of the original work Mbube. Therefore, the copyright of Abilene Music over The Lion Sleeps Tonight is not legal and consequently neither is the license given to Walt Disney Enterprises (Awakening the Lion in the Jungle, 2019).

The Settlement

The trial date was set on February 21, 2006. Shortly before this date, a settlement was reached between the litigation's parties including the original defendant behind the legal action, Abilene Music, which had granted Disney an indemnity upon licensing the use of The Lion Sleeps Tonight.

The settlement applies internationally and includes the following points:

“The Linda heirs will receive payment for past uses of The Lion Sleeps Tonight and an entitlement to future royalties from its worldwide use.

The Lion Sleeps Tonight is acknowledged as derived from Mbube.

Solomon Linda is acknowledged as a co-composer of The Lion Sleeps Tonight and will be designated as such in the future.

A trust will be formed to administer the heirs’ copyright in Mbube and to receive on their behalf the payments due out of the use of The Lion Sleeps Tonight” (Dean, 2006).

The Significance of the Case

The story of the lion song shows the power of copyright protection not only on the artist’s career but also on his living conditions. In an opposite scenario in which Solomon Linda would have protected his copyright, his career would have taken a different path and he would have achieved fame and success. Moreover, he would have saved himself and his family from the abject poverty in which they were living and most importantly he might have saved the life of one of his daughters who died with AIDS. Undoubtedly, Linda was not aware of the powerful asset he was giving away. This shows the importance of spreading awareness among artists about their copyrights including their economic and moral rights.

In what concerns the legal implications of the case, it has set a precedent for other cases by demonstrating that the reversionary interest under the 1911 Imperial Copyright Act is applicable if the required conditions are met. This allows the heirs of artists to claim their rights in the copyrighted works and to receive remuneration resulting from the exploitation of these works.

In what concerns the Republic of South Africa, acknowledging the work to be of South African origin and having one of its citizens win over giant Western entertainment enterprises is a victory

for South Africa in the global copyright industries. This victory can strengthen the position of South African artists in future legal battles concerning copyright.

Last but not least, according to Rian Malan, the case shows how copyright law has challenged the racial injustice and retrieved the right of a black artist living in a white-ruled South Africa (Malan, 2000).

[Freedom of Artistic Expression in post-apartheid South Africa: A Fundamental for Artistic Creativity](#)

When asked about the most important human right pertaining to the status of artists, El Khoury referred to the right to freedom of expression (El Khoury, 2021) . According to article 10 (1) of the European Convention on Human Rights, freedom of expression is “the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

Artistic expression is one of the pillars of this freedom (Cuny, 2020, p. 1). According to the United Nations Special Rapporteur in the field of cultural rights, Farida Shaheed, “artistic expression is not a luxury, it is a necessity – a defining element of our humanity and a fundamental human right enabling everyone to develop and express their humanity” (Shaheed, 2013). In fact, for artists to be able to perform the positive role towards human rights, their freedom of expression must be protected.

Protecting this freedom in post-apartheid South Africa is of special significance. Not only does this protection enable artists to invest their creativity in revealing on-going human rights abuses, but it also serves as an indicator to the nation’s successful transition to democracy after a history of consecutive oppressive and discriminatory regimes. One of these regimes was the apartheid

system that suppressed the artistic expression of anti-apartheid artists, black artists, and black women artists (Bello & Gqibitole, 2018) (Fester, 2000).

After the dismantling of apartheid in 1994, South Africa has taken several steps to provide a safe place for artists to express themselves without constraints and to communicate their messages. For instance, a remarkable shift was noticed in South Africa's cultural institutions that have enabled artists to express themselves more freely (Mosely, 2007). Nevertheless, contemporary South African artists still face political pressure and interference that restrict their freedom of expression (Klopper, 2013). In this context, Debs shares his experience and recalls several points at which his artistic freedom was violated by unfair censorship of his work and by death threats to him and to his family (Debs, 2021).

While these restrictions are illegal and arbitrary, there are other limitations provided for by the law. Some restrictions aim to balance between freedom of expression against other valuable rights such as the right to reputation, right to privacy, and right to human dignity. Other restrictions are placed when the expression threatens national security and public order. Among these limitations are the cases of defamation¹⁹, hate speech, and obscenity (Barendt, 2005).

Therefore, unless the artistic expression violates others' human rights or endangers the national security or public order, it must be granted to artists as a prerequisite for their artistic creativity. One way of guaranteeing this essential human right is through legislation.

¹⁹ The communication of a false statement that harms a third party's reputation.

The Legal Framework for the Protection of Freedom of Artistic Expression in post-apartheid South Africa

Ensuring that the legal system is “pro-freedom of expression” increases artists’ creativity because it gives them reassurance that their work won’t be subject to unfair censorship (El Khoury, 2021). In the following section, we demonstrate some of the legal instruments that post-apartheid South Africa has adopted to protect artistic freedom of expression on the national, regional, and international level.

The Bill of Rights within the South African Constitution of 1996 (Section 16)

The Constitution of South Africa protects freedom of expression and refers explicitly to the freedom of artistic expression. In fact, Section 16 (1) states that every individual must enjoy the right to freedom of expression which includes “freedom of artistic creativity”. This section not only protects the expressive act but also the act of artistic creativity itself (*Zuma, African National Congress and Sambudla vs. Goodman Gallery, City Press and Murray*, 2012). Nevertheless, the Constitution established necessary limitations to this fundamental right. Section 16 (2) points out that freedom of expression does not protect “propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm”.

Some of the International Legal Instruments Protecting Freedom of Artistic Expression

The International Covenant on Civil and Political Rights of 1966(Article 19)

On 10 December 1998, South Africa ratified the International Covenant on Civil and political rights. Article 19(2) of the Covenant stipulates that everyone must enjoy the right to freedom of expression and that this right includes the expression that takes place “in the form of art”. In other words, the Covenant calls for the respect of artistic freedom of expression. As a State party to the Covenant, post-apartheid South Africa carries the obligation of ensuring the respect of artistic freedom of expression.

Nonetheless, it must be noted that paragraph 3 of article 19 has placed certain restrictions on this freedom. These limitations must be provided for by the law and must be necessary to protect the rights or reputations of others or “for the protection of national security or of public order, or of public health or morals”.

[The International Covenant on Economic, Social and Cultural Rights of 1966 \(Article 15.3\)](#)

According to article 15 (3) of the Covenant on Economic, Social and Cultural Rights, the State parties one of which is post-apartheid South Africa must protect the freedom indispensable for “artistic creativity”. In its interpretation of this article, the Committee on Economic, Social and Cultural Rights (CESCR) explains that this freedom includes “the freedom of opinion, freedom of expression in any language, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms” (Committee on Economic, 2009). Hence, by ratifying the Covenant, post-apartheid South Africa commits itself to guarantee all individuals including artists freedom of expression.

[Some of the Regional Legal Instruments Protecting Freedom of Artistic Expression](#)

[The African Charter on Human and Peoples’ Rights of 1981\(Article 9.2\)](#)

South Africa ratified the African charter on July 9, 1996. (Ratification Table: African Charter on Human and Peoples' Rights, n.d.). According to article 9(2): “Every individual shall have the right to express and disseminate his opinions within the law”. Hence, this charter which post-apartheid South Africa has adopted provides individuals including artists with legal protection to their freedom of expression. In this regard, it must be noted that in 2019, the African Commission on Human and Peoples’ Rights adopted the Declaration of Principles of Freedom of Expression and Access to Information in Africa. This declaration expands the scope of article 9 by affirming and elaborating the principles related to the right to access information and the right to freedom of

expression (Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019, 2022).

Case Study: The Painting “The Spear” by Brett Murray

Facts of the Case

In May 2012, an exhibition for the South African artist Brett Murray titled “Hail to the Thief II” was displayed at the Linda Goodman Gallery in Johannesburg. One of the paintings titled “The Spear” showed the image of the Former President of South Africa, Jacob Gedleyihlekisa Zuma, with his genitals exposed (Makwela, 2015). “The image and genitals are used in service of a pun, a double entendre on the word “spear” (*Zuma, African National Congress and Sambudla vs. Goodman Gallery, City Press and Murray*, 2012). The painting was modelled as Victor Ivanov²⁰’s famous poster of Lenin²¹ titled “Lenin Lived, Lenin Is Alive, Lenin Will live” except for the exposure of the president’s genitals (Klopper, 2013). It was also displayed on the City Press Website (Makwela, 2015). Through this painting, Murray wanted to highlight the corruption and failings of the Former President Jacob Zuma. He used sexual connotations to communicate a message about political power, patriarchy and greed (Stone, 2012).

The Lawsuit

Former President Zuma and the African National Congress ²²(ANC) filed an urgent application to the South Gauteng High Court for final relief permanently banning Goodman Gallery and Brett Murray from “displaying, exhibiting, publishing, or distributing the artwork” under any circumstances whatsoever. The applicants claim that the display of *The Spear* violates the

²⁰ Victor Semenovich Ivanov was a Soviet poster artist.

²¹ Vladimir Ilyich Ulyanov better known as Vladimir Lenin was the first head of the Soviet State (1917-1924). He founded the Russian Communist Party and lead the Bolshevik Revolution.

²² Jacob Zuma was the President of the ruling political party, the ANC.

President's as well as the ANC's rights to dignity and privacy (*Zuma, African National Congress and Sambudla vs. Goodman Gallery, City Press and Murray*, 2012).

Holding of the Court

The Court dismissed the application and charged the applicants with the costs.

Reasoning of the Court

The Court based its decision on Section 16 of the Constitution and on domestic and foreign case law. The expertise of artists and academics was also taken into consideration.

Firstly, analyzing the context in which *The Spear* appeared in the gallery and on the website, the Court classified the work "protected expression as both artistic and political expression". Section 16(1)(c) of the Constitution protects artwork. *The Spear* is also a form of political speech which falls within the constitutional guarantee of freedom of expression. Furthermore, the court refused to grant the applicants their order as it constitutes a censorship ban which would restrict Goodman Gallery's right under section 16(1) to display *The Spear* as well as the public's right to view the work.

Secondly and in what concerns the dignity claims of the ANC which is a political party, the right to dignity is recognized only for natural persons and not for juristic entities such as political parties. As for the President Zuma, he must prove that he suffered a personal injury and that a reasonable person in the same circumstances would have felt insulted. In the current case, he must prove that a reasonable person in the position of the President of the Republic would have felt insulted. In this regard, the Court highlights the principle that public figures and politicians are required to tolerate higher levels of scrutiny and criticism. The court also pointed out that this principle applies to the private aspects of the President's life in the cases in which the public interest is affected. The Court dismissed the dignity claims of the applicants as they failed to prove the required points.

Thirdly and in what concerns the privacy claims, the applicants failed to prove that *The Spear* has revealed private facts that have been received by a wrongful act of intrusion.

Fourthly, even if *The Spear* did infringe the President's dignity, examined in its proper context, the artwork is protected as fair and legitimate comment and its display is not unlawful. In testing the unlawfulness of *The Spear*, the court must not and did not base its decision on the general public or the popular sentiment. The Court examined how the small literate and discerning audience that was present in the private gallery understood *The Spear*. Substantial evidence showed that the audience understood the symbolic and satirical nature of the artwork and viewed it as part of the exhibition which aimed to tackle several political issues. Furthermore, the Court established that *The Spear* is honest comment which is a protected form of speech under the law of defamation. The comment is related to the exercise of the most powerful public power in the country and is based on well-known facts (*Zuma, African National Congress and Sambudla vs. Goodman Gallery, City Press and Murray*, 2012). These facts which have entered the public domain are related to sex scandals as well as charges about corruption and rape (Makwela, 2015).

Fifthly, in what concerns the final relief, it would absolutely restrict the freedom of expression of the Goodman Gallery and the artist Murray as it would permanently ban them from showing the image of *The Spear*. To obtain such an interdict, the applicants must prove that there is clear right that justifies their order, that the requested limitation will repair the harm suffered by the President, and that there is no less restrictive alternative that achieves the same purpose. As the applicants' case fails to meet these requirements, their request for final relief was rejected.

The Significance of the Case

According to the artist Brett Murray, *The Spear* is a work of protest art and political satire. After leading the struggle against apartheid, the ANC heroes one of which is the Former President Zuma appeared to be corrupt and hungry for power (Stone, 2012). Through his artwork, Brett Murray who was a former supporter of the ANC aims to express his disappointment in Zuma's and the ANC's political performance. Therefore, the artwork of this South African artist "aims to challenge the status quo, ignite dialogue, and shift consciousness" (Makwela, 2015).

However, for *The Spear* and other artwork to be able to make a change in the human rights world, artistic freedom of expression must be protected. In the discussed legal case, the Former President Zuma and the ANC aimed to curtail the freedom of expression of Brett Murray because he was exposing the truth about their corruption. The persuasive attempt of the ruling party to silence the artist Brett Murray shows the power of artistic freedom of expression in revealing political abuse of power that generates human rights violations.

The story of *The Spear* shows that artistic freedom of expression is a prerequisite for artistic creativity that aims to contribute to the human rights mission in a young democracy such as post-apartheid South Africa.

Conclusion

After embarking on a journey toward post-apartheid South Africa, it becomes clear that the fields of art and human rights are intrinsically correlated. After a dark past of colonization and apartheid, in order to become a flourishing democracy, the new emerging South African nation has to deal with the unhealed scars of the past and address current human rights violations. Artists can either encourage or obstruct this adventure and one of the influencing factors is the extent to which these artists' human rights are protected.

At the end of this journey, the main findings concerning the correlation between art and human rights in post-apartheid South Africa will be recalled, and a modest set of recommendations to strengthen and invest in this correlation will be offered.

Main Findings

In order to prove the correlation between art and human rights in post-apartheid South Africa, the dissertation explained how both disciplines overlap and affect each other. In fact, the study illustrated how art can be employed to either promote or hinder the human rights journey in South Africa. The relationship between art and human rights was also approached from the opposite direction revealing how human rights concepts in their turn can shape the artistic creativity in post-apartheid South Africa.

Findings Related to the Positive Role of Art towards Human Rights

One of the recurrent motifs that have prevailed post-apartheid artistic works and specifically literature is highlighting the sexist-racist oppression that haunted the lives of black women during apartheid. By employing a black feminist literary criticism, the study revealed how post-apartheid South African novels have illustrated this dual oppression, and how black women have written about their experiences to prove their personal agency and their potential to engage in artistic

creativity. The research showed how writers are capable of employing literary strategies not only to narrate human rights violations, but also to create and help readers imagine new scenarios in which human rights are cherished. Furthermore, the significance of the identity of black women as writers was deduced. By writing, South African black women have shaken off the racialized and gendered identities attributed to them as mere laborers or mothers and have reimagined a new identity for themselves as writers and art creators. This encourages black women readers to pursue their dreams.

Another dominant human rights issue on the agenda of post-apartheid South African artists has been the transition from apartheid to a democracy based on a culture of human rights. The conducted study showed that transitional justice has been addressed by several South African visual artists. The effectiveness of visual art in this regard is attributed to its ability to allow the audience to experience the dark past through their visual senses along with the intense feelings that such visual experience can invoke. Post-apartheid South African artists have contributed to the process of transitional justice by questioning the legitimacy of one of its mechanisms namely the Truth and Reconciliation Commission (TRC) and by commemorating the human rights violations that occurred during apartheid. The questionable nature of the justice sought by the TRC as well as the commemorated human rights violations were caused by the racial discrimination that was widely and systematically exercised during apartheid. The role of the visual arts in preserving the memory of this racial injustice was explored and proven under the lens of the critical race theory.

Findings Related to the Negative Role of Art towards Human Rights

The gender-stereotypical portrayals of black women in post-apartheid South African soap operas was one of the studied examples that proved the negative role of art towards human rights. The research explored how the consistent and pervasive exposure to such negative representations through the visual power of soap operas normalizes and reinforces existing gender discriminatory practices. Using the African feminist theory, the study revealed that by portraying black female characters without agency and by disregarding the intersectionality between their racial and gender identities, post-apartheid South African soap operas rationalize and reaffirm gender inequality. Furthermore, by employing a human rights perspective, it was concluded that the employment of gender stereotypes in post-apartheid South African soap operas constitutes a clear violation of South Africa's obligation to eradicate gender stereotypes according to the African Women's Protocol and the Convention on the Elimination of All Forms of Discrimination Against Women.

Another discussed case that proves the negative influence that artistic creativity can have on human rights is the case of obscene visual art that infringes children's rights. The findings showed that exposing children to inappropriate sexual images such as child pornography would violate the children's right to social and moral well-being as well as their right to physical and mental health. As for the children participating in the pornographic art, their right to human dignity would be violated as well. Furthermore, the conducted research indicates several national and international legal instruments adopted by post-apartheid South Africa to prohibit the involvement and exposure of children in pornography. This proves that South African artists have a social as well as a legal responsibility to protect children from the harmful effects of pornography.

The ability of art to play a negative role toward human rights was also established through the examination of racist hate art. By adopting the critical race theory, the study demonstrated how

racist hate art in post-apartheid South Africa violates the human rights to equality and human dignity by inciting racial discrimination, advocating for racial hatred, and propagating violence. To further elucidate the threat that racist hate art imposes on human rights, national and international legal instruments adopted by post-apartheid South Africa to prohibit racist hate art have been highlighted.

Findings Related to the Role of Human Rights towards Art

As mentioned earlier, the study was not limited to the effects of art on human rights only but addressed the influence of human rights principles on artistic creations as well leaving no doubts about the existence of a relationship between these two worlds. In fact, it was proven that the extent to which human rights concepts are respected can greatly affect the state of art, especially in countries such as South Africa where artists have been historically oppressed and exploited. The study examined how post-apartheid South Africa has taken important steps to provide legal protection for artists by guaranteeing them the rights pertaining to their status. The examination tackled two of these human rights namely copyright and freedom of artistic expression.

In what concerns copyright, the research revealed the importance of this human rights principle in protecting the artists' financial and moral interests in the artwork they dedicate themselves to create. The research also showed the relevance of copyright protection in the setting of South Africa given the economic and social conditions of the artists. Moreover, relevant international and national legal instruments were analyzed to show how post-apartheid South Africa has improved its copyright legislation to protect artists and encourage them to invest further in their artistic talents.

As for the freedom of artistic expression, its necessity as a prerequisite for artistic creativity and its significance in the context of post-apartheid South Africa has been established. International,

regional, and national legal instruments were also examined to elucidate the importance of this human rights principle and to point out some of its legal restrictions. In addition to these restrictions that balance the freedom of artistic expression against other human rights, the study also tackled the case in which this artistic freedom could be illegally curtailed to silence artists who communicate human rights messages.

Recommendations to Foster the Relationship between Art and Human Rights

To support the human rights mission in post-apartheid South Africa, it is necessary to strengthen the positive aspects of the relationship between art and human rights and to harvest the mutual benefits of this relationship. Moreover, the negative aspects of this relationship must be abolished. In the following, we demonstrate a few recommendations that would help achieve this goal.

Educating Children

According to the artist Ivan Debs, it is very important to educate children about human rights and about the power of art in spreading human rights messages because children can “observe, learn, and change themselves more” (Debs, 2021). This can be achieved by integrating courses about art and human rights within the South African schools’ academic curriculum. Through these courses, art teachers should encourage children to draw, sing, act, or write about human rights matters. Teachers must also guide children to avoid engaging in racist art, obscene art, art that reflects gender stereotypes, and other forms of art that violate human rights.

Providing an Appropriate Legal Framework

Equal legal protection and equal rights must be guaranteed for all South African artists regardless of their gender, race, or any other discriminatory basis. The South African parliament must update the existing laws that already tackle artists’ rights to keep up with the technological developments and other emerging issues. Furthermore, the parliament must draft a law specialized for protecting all the rights related to the status of artists. In addition to copyright and freedom of artistic

expression that have been discussed in the dissertation, other rights that must be guaranteed are: the right to funding, the right to public space, the right to social benefits, the right to employment, the right to membership to trade unions or professional organizations, right to freedom of movement. This law would ensure a “sustainable, free and diverse environment” for artists in post-apartheid South Africa to create and disseminate their art (Cuny, 2020). The South African parliament can consider the UNESCO 1980 Recommendations Concerning the Status of the Artist for guidance. These legislative efforts would protect and encourage artists to communicate human rights messages relevant to the context of post-apartheid South Africa.

Nevertheless, similar efforts are required to prohibit artists from engaging in art that violates or provokes human rights violations. For example, a legal provision must be added to the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) act to distinguish clearly between the cases of racist hate art and the cases of bona fide art.

In what concerns international legislation, the State of South Africa must respect its obligations under the international treaties that it has already ratified such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). For instance, South Africa must report periodically to the monitoring committees of the conventions that it has ratified such as the CEDAW committee. Moreover, South Africa must sign and ratify future treaties that encourage the positive role played by art and those that fight its negative role.

It must be noted that although it is the South African parliament that passes laws, civil society organizations can play a major role in advocating for such legal victories through leading media campaigns, organizing protests, and negotiating with parliament representatives.

Widening the Knowledge of the Judiciary

Seminars must be organized to train South African judges and lawyers on how to conduct fair trials concerning the relationship between art and human rights. This can be achieved by analyzing the relevant legal instruments as well as by examining national and international case law. Some of the suggested topics that could be covered in the seminars are: copyright and digital concerns, the balance between freedom of artistic expression and other human rights, protest art, art inciting racial hatred, reinforcing sexist attitudes through art, infringing children's rights through pornographic art, art and propaganda, and many others. The trainers of these workshops must be artists, human rights activists, and experts in the field of art or human rights.

Spreading Awareness to Artists

According to Melkar El Khoury, “the greater the culture and awareness of the artist the greater the probability that his/her art-work would clearly intersect in specific ways with human rights concerns” (El Khoury, 2021). To illustrate, by teaching artists about human rights concepts and the power of their talents in shaping these concepts, they will be motivated to employ their art for the cause of human rights. More black women writers would write about their experiences, more musicians would compose protest songs, and more visual artists would play a role in the transitional justice of South Africa.

Artists in post-apartheid South Africa must not only be enlightened about the positive role of art towards human rights, but must also be warned about the harmful effects of engaging in the negative role. To elaborate, artists must become familiar with the notions of hate art, obscene art, and art that reinforces harmful social attitudes.

Furthermore, artists must be informed about the rights pertaining to their status and the importance of fighting for their rights. For instance, they must know that they have the right to express themselves freely and to receive remuneration and acknowledgment for the artwork they create.

This awareness can be achieved through media campaigns and especially social media campaigns that attract young artists. Moreover, the South African State must cooperate with civil society organizations operating in South Africa to organize awareness workshops that offer artists technical and legal assistance.

Spreading Awareness to the Audience

Spreading similar awareness to the audience in post-apartheid South Africa helps them grasp the human rights messages delivered by artists, immunizes them from the negative influences of certain artwork, and enables them to detect and report violations committed against artists' rights.

Organizing Competitions for Artists

Artists must be offered opportunities to create art related to human rights concepts (El Khoury, 2021). One of the opportunities could be through organizing an annual competition in which artists create artwork under the theme of human rights. An annual prize can be offered to encourage artists to participate. This competition must be organized by the South African government and civil society to grant it credibility. Moreover, the competition must ensure the participation of the historically marginalized categories within post-apartheid South Africa such as black artists, artists of hybrid identities, and black women artists.

Creating Networks between Artists and Human Rights Activists

Events such as conferences, seminars, and webinars must be organized to allow artists and human rights activists in post-apartheid South Africa to connect and communicate with each other. These events must include debates and two-way dialogues so that professionals from both fields get to

benefit from each other's experiences. Moreover, the events must be covered by the media to encourage similar future initiatives.

Conducting further Research

As mentioned in the beginning of the dissertation, the relationship between art and human rights in post-apartheid South Africa is still a new topic. More research is required to cherish the commonalities between these two fields and to avoid conflicting intersections.

Bibliography

- Mapokgole, R. (2019). Soap Operas and Human Rights in Africa: African Feminist and Human Rights Perspective on the Representation of Black Women in the Media. In R. Adeola, M. G. Nyarko, A. Okeowo, & F. Viljoen, *The Art of Human Rights: Commingling Art, Human Rights and the Law in Africa* (pp. 69-83). Switzerland: Springer Nature Switzerland AG.
- (1998, July 14). Retrieved from Freedom of Expression Institute: <https://ifex.org/viscera-artist-charged-art-exhibition-for-all/>
- Adeola, R., Nyarko, M. G., Okeowo, A., & Viljoen, F. (2019). *The Art of Human Rights, Commingling Art, Human Rights and the Law in Africa*. Switzerland: Springer.
- Africa, G. o. (1996). *Constitution of South Africa*.
- Africa, P. o. (1996). *Films and Publications Act No 65 of 1996*. Government Gazette of South Africa.
- Africa, P. o. (2000). *Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000*. Government Gazette of South Africa.
- Africa, P. o. (n.d.). *Criminal Law (Sexual Offences and Related Matters)* . 2007: Government Gazette of South Africa.
- Africa, T. P. (1999). *Broadcasting Act No 4 of 1999*. Cape Town: The Government Gazette of South Africa.
- Babbie, E. (2017). *The Practice of Social Research*. Boston: Cengage Learning.
- Baiada, C. (2008). On Women, Bodies, and Nation: Feminist Critique and Revision in Zoë Wicomb's David's Story. *African Studies* , 33-47.
- Baloyi, J. J. (2005). *Intellectual Prpoerty, Entrepreneurship and the Music Industry: A New Ray of Hope for Enhancing African International Trade Capacity? A South African Case Study*. Cape Town: University of the Western Cape.
- Barendt, E. (2005). *Freedom of Speech*. Oxford: Oxford University Press.
- Barrios, O. (2012). Male Violence against Women and Hybrid Identities in Post-apartheid South African Black Theatre. *International Journal of Arts*, 39-48.
- Basma, D. (2018). Intellectual Property. Holy Spirt University of Kaslik
- Becker, C. (1994). *The Subversive Imagination: The Artist, Society and Social Responsibility*. New York: Routledge.
- Bello, S., & Gqibitole, K. (2018). Identity, Politics and Restriction in Athol Fugard's Art: Writing and Liberalism in Apartheid South Africa. *Literator*, 1-9.
- Benedek, E., & Brown, C. (1999). No Excuses: Televised Pornography Harms Children. *Harvard Review Psychiatry*, 236-240.
- (1886). *Berne Convention for the Protection of Literary and Artistic Works*.

- Bester, R. (2004). Spaces to Say. In E. Bedford, *A Decade of Democracy: South African Art 1994-2004*. Cape Town: Double Storey Books.
- Bird, G. (2019). Rethinking the role of the arts in politics: lessons from the Négritude movement. *International Journal of Cultural Policy*, 458-470.
- Booyesen, L., & Nkomo, S. (2010). Gender Stereotypes and Requisite Management Characteristics: The Case of South Africa. *Gender in Management*, 285-300.
- Boswell, B. (2003). WEAVEing Identities. *Feminist Studies*, 581-591.
- Boswell, B. (2010). *Black South African Women Writers: Narrating the Self, Narrating the Nation*. Retrieved from ProQuest: <https://www.proquest.com/dissertations-theses/black-south-african-women-writers-narrating-self/docview/762373905/se-2>
- Britannica, T. E. (2020, May 14). *eMalahleni*. Retrieved from Britannica: <https://www.britannica.com/event/eMalahleni>
- Cape Party- Kaapse Party vs Iziko-South African National Gallery, EC02/2017 (The Equality Court in the Magistrates' Courts for the District of Cape Town July 4, 2017).
- Chetty, I., & Basson, A. (2006). *Report on Internet Usage and the Exposure of Pornography to Learners in South African Schools*. Retrieved from South African Government: https://www.gov.za/sites/default/files/gcis_document/201409/report-internet-usage-and-exposure-pornography0.pdf
- Chow, S. (2018). *Cultural Rights in International Law and Discourse: Contemporary Challenges and Interdisciplinary Perspectives*. Leiden: Brill.
- Collins, P. H. (2000). *Black Feminist Thought: knowledge, consciousness and the politics of empowerment*. Routledge: New York.
- Collins, R. (2011). Content Analysis of Gender Roles in the Media: Where Are We Now and Where Should We Go? *Sex Roles*, 290-298.
- Committee on Economic, S. a. (2009). *General Comment No 21*.
- Committee, C. (2009). *United Nations Convention on the Elimination of All forms of All Forms of Discrimination Against Women "Concluding Observation of the Committee on the Elimination of Discrimination Against Women. Germany" 43rd Session*.
- Committee, C. (2011). *United Nations Convention on the Elimination of All Forms of Discrimination against Women "Concluding Observation of the Committee on the Elimination of Discrimination Against Women. South Africa" 48th Session*.
- (1979). *Convention on the Elimination of All Forms of Discrimination against Women*.
- (1989). *Convention on the Rights of the Child*.

- Coombe, J., & Davis, S. (2013). Gender Differences in the Influence of Television on Gender Ideology? TV Hours and Attitudes toward Employed Mothers 1988-2008. *International Review of Modern Sociology*, 205-223.
- Coombes, A. (2003). *History After Apartheid: Visual Culture and Public Memory in a Democratic South Africa*. Durham: Duke University Press.
- Corte, U., & Edwards, B. (2008). White Power Music and the Mobilization of Racist Social Movements. *Music and Arts in Action*, 4-20.
- Crenshaw, K. (1989). Demarginalising the Intersection of Race and Sex. A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *Univ Chicago Legal Forum*, 139–167.
- Cuny, L. (2020). *Freedom and Creativity: Defending Art, Defending Diversity*. Paris: United Nations Educational Scientific and Cultural Organization.
- Davies, C. B. (1994). *Black Women, Writing and Identity: Migrations of the Subject*. London: Routledge.
- Davis, E. (2013). New Directions in Post-Apartheid South African Fiction and Scholarship. *Literature Compass*, 797-804.
- de Valk, M. (2016). *Screening The Tortured Body The Cinema as Scaffold*. United Kingdom: Palgrave Macmillan.
- de Vos, P. (2017, July 5). 'Fuck White People': Court Correct not to Find Artwork to be Hate Speech. Retrieved from Daily Maverick: <https://www.dailymaverick.co.za/opinionista/2017-07-05-fuck-white-people-court-correct-not-to-find-artwork-to-be-hate-speech/>
- Dean, O. (2006, April). *Copyright in the Courts: The Return of the Lion*. Retrieved from WIPO: https://www.wipo.int/wipo_magazine/en/2006/02/article_0006.html
- Debs, I. (2021, July 14). A Young Ambitious Artist and Activist. (E. Ghossoub, Interviewer)
- Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019*. (2022). Retrieved from African Commission on Human and Peoples' Rights: <https://www.achpr.org/legalinstruments/detail?id=69>
- El Khoury, M. (2021, December 22). A Human Rights Activist and Aesthete. (E. Ghossoub, Interviewer)
- Europe, C. o. (1950). *European Convention on Human Rights*.
- (2017). *Exploring the Connections between Art and Human Rights*. Luxembourg: Publications Office of the European Union.
- Fester, G. (2000). Women Writing for their Rights. *Agenda*, 42-47.
- Frenkel, R., & MacKenzie, C. (2010). The Practice of Social Research. *English Studies in Africa*, 1-10.
- Goodman, L. (1999). Women, Politics and Performance in South African Theatre Today. *Contemporary Theatre Review, an International Journal*, 1-88.

- Group, W. B. (2020). *Poverty and Equity Brief , Sub-Saharan Africa: South Africa* . World Bank: Poverty Data .
- Gwala, N., & Gcwabe, L. (2021, December 9). *Rape, Childhood Sexual Abuse Continues to Plague SA*. Retrieved from Health-E News: <https://health-e.org.za/2021/12/09/rape-childhood-sexual-abuse-continues-to-plague-sa/>
- Haecker, A. A. (2012). *Post-Apartheid South African Choral Music: an Analysis of Integrated Musical Styles with Specific Examples by Contemporary South African Composers*. Retrieved from ProQuest: <https://www.proquest.com/dissertations-theses/post-apartheid-south-african-choral-music/docview/1292955662/se-2?accountid=28281>
- Head, B. (1990). *A Woman Alone: Autobiographical Writings*. Oxford: Heinemann.
- Herwitz, D. (2012). Monument, Ruin and Redress in South African Heritage. In D. Herwitz, *Heritage, Culture, and Politics in the Postcolony* (pp. 80-134). Columbia University Press.
- Hess, S. (1998, July 17). *Police Drop Child Porn Investigation*. Retrieved from Mail and Guardian: <https://mg.co.za/article/1998-07-17-police-drop-child-porn-investigation/>
- Hlongwane, A. K., & Ndlovu, S. M. (2019). *Public History and Culture in South Africa: Memorialisation and Liberation Heritage Sites in Johannesburg and the Township Space*. Springer International Publishing AG.
- Hooks, B. (2015). *Ain't I a Woman: Black Women and Feminism* . New York: Routledge .
- (1965). *International Convention on the Elimination of All Forms of Racial Discrimination*.
- (1966). *International Covenant on Civil and Political Rights*.
- (1966). *International Covenant on Economic, Social and Cultural Rights*.
- Ives, S. (2007). Mediating the Neoliberal Nation: Television in Post-Apartheid South Africa. *ACME*, 153-172.
- Ives, S. (2009). *GeoJournal*, 245-255.
- Ives, S. (2009). Visual Methodologies through a Feminist Lens: South African Soap Operas and the Post-apartheid Nation. *GeoJournal*, 245-255.
- Jolaosho, O. (2019). Singing Politics: Freedom Songs and . *African Studies Review*, vol 62, no 2, 6-29.
- Jørholt, E., & Hjort, M. (2019). *African Cinema and Human Rights*. Indiana: Indiana University Press.
- Judith Mason – The Man Who Sang and the Woman Who Kept Silent, 1998*. (n.d.). Retrieved from Constitutional Court Art Collection: <https://ccac.concourtrust.org.za/works/judith-mason-the-man-who-sang-and-the-woman-who-kept-silent-1998>
- Kabwila Kapasula, J. Z. (2010). *Transitional Feminist Agency in African and Afro-diasporic Fiction and Film*. Retrieved from ProQuest: <https://www.proquest.com/docview/753939617/previewPDF/4EF20666B8FD4BF1PQ/1?accountid=28281>

- Kahlenberg, S., & Signorielli, N. (2001). Televisions' World of Work in the Nineties. *Journal of Broadcasting and Electronic Media*, 4-22.
- Klopper, S. (2013). Art and Culture in Contemporary South Africa: The Present Future. *Thesis Eleven*, 127-140.
- Layoun, M. (2001). *Wedded to the Land? Gender, Boundaries, and Nationalism in Crisis*. Durham: Duke University Press.
- Le Roux, E. (2010). Pornography: Human Right or Human Rights Violation? *Theological Studies*, 1-8.
- Lerner, R., & Bresler, J. (1989). *Art Law The Guide for Collectors, Investors, Dealers, and Artists*. New York : Practicing Law Institute.
- Mackenny, V. (2001). Post-Apartheid Performance Art as a Site of Gender Resistance. *Agenda: Empowering Women for Gender Equity*, 15-24.
- Makwela, M. (2015, May). *The media, protest at and nation building in post-apartheid South Africa : The spear : a case study*. Retrieved from OpenUCT: <http://hdl.handle.net/11427/13760>
- Malamuth, N., & Impett, E. (2001). Research on Sex in the Media: What Do We Know about Effects of Children. In D. Singer, & J. Singer, *Handbook of Children and the Media* (pp. 26-91). Thousand Oaks: Sage Publications.
- Malan, R. (2000, May 14). *In the Jungle: Inside the Long, Hidden Genealogy of "The Lion Sleeps Tonight"*. Retrieved from Rolling Stone: <https://www.rollingstone.com/feature/in-the-jungle-inside-the-long-hidden-genealogy-of-the-lion-sleeps-tonight-108274/>
- Mark Hipper Obituary A Heartfelt Goodbye: Mark Hipper*. (2010, August 17). Retrieved from Rhodes University: <https://www.ru.ac.za/german/latestnews/archive/markhipperobituary.html>
- McKane, J. (2018, March 9). *The Most-watched TV Shows in South Africa*. Retrieved from My BroadBand: <https://mybroadband.co.za/news/broadcasting/251461-the-most-watched-tv-shows-in-south-africa-5.html>
- Mlama, P. (2017). Emergence: The Indelible Face of Artistic Creativity in the Struggle for Self-Determination in Africa. *African Development, Vol. 42, No.4*, 17-36.
- Moon, C. (2006). Narrating Political Reconciliation: Truth and Reconciliation in South Africa . *Social and Legal Studies*, 257-275.
- Mosely, E. (2007). "Visualizing" Apartheid: Contemporary Art and Collective Memory During South Africa's Transition to Democracy. *Antípoda : Revista De Antropología y Arqueología*, 97-119.
- National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance*. (n.d.). Retrieved from South African Government: <https://www.gov.za/documents/national-action-plan-combat-racism-racial-discrimination-xenophobia-and-related-0>
- Ndebele, N. (1986). The Rediscovery of the Ordinary: Some New Writings in South Africa. *Journal of Southern African Studies*, 143-157.

- Nochlin, L. (1989). *Women, Art, and Power and Other Essays*. Taylor & Francis Group.
- Nolde, J. (1991). South African Women under Apartheid: Employment Rights with Particular Focus on Domestic Service and Forms of Resistance to Promote Change. *Third World Legal Studies*, 203.
- Norwick, K., & Chasen, J. (1992). *The Rights of Authors, Artists and Other Creative People*. Carbondale: SOUTHERN ILLINOIS UNIVERSITY PRESS.
- (2000). *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.
- Organization, M. o. (1994). *Agreement on Trade-Related Aspects of Intellectual Property Rights*.
- Overview: *The TRIPS Agreement*. (2022). Retrieved from World Trade Organization: https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#:~:text=The%20TRIPS%20Agreement%20is%20a,own%20legal%20system%20and%20practice.
- Perkins, K. (2006). *Black South African Women: an Anthology of Plays*. Taylor & Francis Group.
- Polack, F. M. (2009, December). Retrieved from Research Space A Digital Library for UKZN Scholarly Research: <http://hdl.handle.net/10413/1253>
- (2005). *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.
- Radin, J. M. (1993). *Reinterpreting Property*. Chicago: University of Chicago Press.
- Ratification Status for South Africa*. (n.d.). Retrieved from United Nations Human Rights Treaty Bodies: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN
- Raz, J. (1991). Free Expression and Personal Identification. *Oxford Journal of Legal Studies*, 303-324.
- Röschenhaler, U., & Diawara, M. (2016). *Copyright Africa : How Intellectual Property, Media and Markets Transform Immaterial Cultural Goods*. Sean Kingston Publishing.
- Secretariat, U. T. (2019). *Culture and Working Conditions for Artists: Implementing the 1980 Recommendation concerning the Status of the Artist*. Paris: United Nations Educational, Scientific and Cultural Organization.
- Selisker, S. (2015). The Bechdel Test and the Social Form of Character Networks. *New Literary History*, 505-523.
- Shaheed, F. (2013, March 14). *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed: The Right to Freedom of Artistic Expression and Creativity*. Retrieved from United Nations Office of the High Commissioner for Human Rights: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/34
- Shefer, T. (2019). Activist performance and Performative Activism towards Intersectional Gender and Sexual Justice in Contemporary South Africa. *International Sociology*, 418-434.
- Smith, B. (2001). Toward a Black Feminist Literary Criticism. In V. Leitch, *The Norton Anthology of Theory and Criticism*. London: W. W. Norton and Company.

- South Africa (120 texts)*. (n.d.). Retrieved from WIPO IP Portal:
<https://wipo.int/en/members/profile/ZA>
- (2020). *South Africa Events of 2020*. New York City: Human Rights Watch.
- Stokes, S. (2012). *Art and Copyright*. United Kingdom: Hart Publishing.
- Stone, J. (2012, May 25). *Artist Brett Murray Explains Why He Painted "The Spear"*. Retrieved from 2 Oceans Vibes News: <https://www.2oceansvibe.com/2012/05/25/artist-brett-murray-explains-why-he-painted-the-spear/>
- The Constitutional Court Art Collection*. (n.d.). Retrieved from Constitution Hill:
<https://www.constitutionhill.org.za/pages/constitutional-court-art-collection>
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. (n.d.). Retrieved from UNESCO:
<https://en.unesco.org/creativity/convention#:~:text=The%202005%20Convention%20aims%20to,systems%20of%20governance%20for%20culture.>
- The State President, t. S. (1978). *Copyright Act No 98 of 1978*. Cape Town: Government Gazette of South Africa.
- Tirohl, B. (2015). *Law for Artists: Copyright, The Obscene and All The Things in Between*. London: Routledge.
- United Nations Educational, S. a. (2005). *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.
- Unity, T. A. (1981). *African Charter on Human and Peoples' Rights*.
- Vourlias, C. (2018, July 21). *For Black Women in South African Film Biz, Equality Still a Struggle*. Retrieved from Variety: <https://variety.com/2018/film/news/black-women-in-south-african-film-biz-equality-a-struggle-1202880315/>
- Walters, C. R. (2017, March). *Public Art's "Right to the City": Determining Various Role Players' Perceptions, Experiences and Preferences for Public Art in Public Spaces in the City of Cape Town*. Retrieved from Stellenbosch University Library and Information Services:
<https://scholar.sun.ac.za/discover>
- Wicomb, Z. (2000). *David's Story*. New York: The Feminist Press.
- Zuma, African National Congress and Sambudla vs. Goodman Gallery, City Press and Murray, 342 PH.3 (GSJ. 2012).

Appendices

Interview with Ivan Debs: A Young Ambitious Artist and Activist

Ivan Debs is a 28-years old Lebanese artist residing in Abidjan Côte d'Ivoire. He is a young and ambitious illustrator employing his artistic talents to convey socio-political messages including human rights related topics.

- 1) As an artist who has long been integrating political messages in his illustrations, in your belief, how can artistic work contribute to the human rights mission?

Artistic work can contribute to the human rights mission by spreading awareness and consciousness and by giving an image and a voice to people who cannot express themselves and their own visions.

I think art sometimes can illustrate or show clearly and simply a vision that could be understood by adults and children most importantly children.

I think step-by-step putting these visions into images can make it more simple for them to relate to ideas and to some causes that they would like to achieve and improve in the future. So, I guess art is a great way to bring people together to unite them under one main message, and this is what I'm trying to do.

- 2) Do you believe that each artist must have the responsibility to tackle human rights issues or do you consider that freedom of expression justifies turning a blind eye to current related topics?

Nothing justifies turning a blind eye on any topic happening around us. Nothing justifies that except fear and denial. This has nothing to do with freedom of expression. Freedom of expression, you can express whatever you want.

It depends on the feeling you cannot force anyone to draw about what is happening, to talk about what's happening if they don't feel involved or if they don't have the strength or the will or the time to do so.

In what concerns me, not all of my work is political. Half of my work is about poetry and beauty so I try to keep a balance, but I will not be at ease with myself if I don't talk about what is making people suffer. I feel I have a duty, and I'm trying to do it. So, I will encourage young artists to use their art and their talent to spread unity and consciousness while they do whatever they feel like doing along this duty.

So the artists shouldn't be forced but turning a blind eye is denial and fear. This is not an excuse.

- 3) During the Lebanese Protests of 2019, you were on the ground expressing your views through street art and graffiti. Reflecting back on this experience, please share with us your opinion regarding the importance of protest art.

In a previous interview, you have mentioned that art gives the revolution a “face of culture and beauty”. Please, elaborate on this idea as well.

Art can achieve unity during protests. It can bring people together and unify their message. This will move the protest in one direction and will help people focus on the main purpose and not get lost. That was what I tried to do.

In the same protest, there are different kinds of people: angry people, intellectuals, farmers, business men. Protest can be violent and misrepresent people as stupid. So why are we doing this aggressive protest?

People watching the protests through the TV and social media must know that in this population, there is a high level of culture, intellectualism and art that is not to be taken for granted. So, in the middle of this protest that should be full of anger and frustration, the world is watching us, and we should give the image of a conscious, aware and smart people. People watching must know that the protest has goals and that the protestors are not manipulated and are aware of what they are doing. They must also know that this small country in the world can have as much quality in art as the biggest country in Europe or America.

This will give a feeling of confidence and self-pride for people to show that we are capable of showing beauty in the suffering and showing light in the darkness.

- 4) In many of your illustrations including those related to the revolution, women are consistently showcased. What do you want to express through this feminist dominance?

First, because women are much more beautiful visually than men, so this has nothing to do with feminism. It is also because I like the contrast between beauty and power. Power, revolution, protest and manifestation look more beautiful and visually powerful with women showing it. In the classical art scene, I am inspired a lot by the renaissance period which shows the beauty of the body of the women with her grace. Contrasting women’s beauty with weapons and destruction in an illustration, would have an impact directly on the mind of the people looking at it.

Now, to take it on a feminist note, I am feminist in the sense that I showcase women to show that women are equally part of this population, equally part of the development of this country and of the change of this country. I consider the woman who raised me, a pillar of the foundation of who I am and who my brother is. I believe that women are pillars in the foundation of the society; they build the generation, and they make it conscious.

Women are oppressed in this country, and it cannot hurt them to have some empowerment, freedom, and chances to participate in this cultural movement and change. I think it just went instinctively.

- 5) Moving from Lebanon to Africa, as an artist residing in Abidjan Côte d'Ivoire, what do you think makes contemporary African art special in the context of human rights?

African art is either traditional and tribal art or contemporary art.

In the traditional and tribal art, the focus is on the piece of art and not on the artist. Many people do the same piece of art. It is more about the culture than the artist's personality. This is what I like about Africa. That it is humble and selfless.

Contemporary art came with the influence of Europe and America and broke all the rules of the traditional art. It allowed the African youth to express themselves freely and completely without boundaries. It gave a touch of exoticism to this old story of art we have in Europe. So, this is why I think it leaves a mark and takes place there because it has more life. It is fresh and trendy.

In what concerns art and human rights, I think it helps rebuild the image of Africans who have been oppressed for long years, decades, and centuries. I think this step of taking African contemporary art to Europe and America and selling it there gives it a value equal to that of European and American art and gives pride and self-confidence to African artists. It supports the idea of emancipation that we are free through art. It also help youth to grow into more freedom focused mindsets. This is what I like about it.

- 6) In one of your art works, you have illustrated the Former President of South Africa Nelson Mandela who has played a major role in the transition from apartheid to democracy. What message do you want to convey through this work?

This work is a tribute to Nelson Mandela. When you are a child, you take people around you as examples. I was interested by Nelson Mandela and other individuals who marked history such as Martin Luther King, Gandhi, Malcolm X, and Marcus Garvey. I was interested in who those people were and how they were able to make a change. I was also interested in their mindsets and their ability to influence generations.

I went through all the history of Nelson Mandela and learned from him how to think about problems, how to talk about problems, and how to teach people to find solutions for these problems. He is an example of an oppressed individual who became an activist then got imprisoned and then became a president.

By becoming President, instead of spreading hate and conflict again, he chose to spread forgiveness and unity. The conflict between race and social classes could have gone forever, but Nelson Mandela was wise.

So, by drawing Nelson Mandela, what I tried to do is to give young people other options of role models. Instead of being taken by celebrities and fakeness, there is a long history that we can learn from so we don't repeat mistakes. This man along with the men I mentioned before serve as good examples for young people to educate themselves and to have a mindset directed more towards righteousness and seriousness.

Regarding Africa, he is a leading figure in the human rights world. By showing his faith, his story, his path, and his fight for human rights, we can inspire some people to believe in human rights and work for it. This will show them that they are not alone and that step-by-step it can be done. With many Nelson Mandelas we can achieve a lot. That was my purpose, and it is all linked.

- 7) What rights pertaining to the status of artist are still infringed in Africa? If you have experienced a violation related to your art work, please share with us.

They have all the rights technically, but the art scene is still not respected enough. The prophet is never honored in his own country. So, African governments and African business leading figures prefer to give more credits to Europeans, Americans or other foreigners than to African artists.

I usually don't like the art field because it is more about relations than talent and work. Artists have exhibitions with no problems or restrictions. So I see many amazing artists with amazing visions and techniques that are not showcased enough and others who are showcased a lot without deserving it. That's what hurts me the most.

In Africa, there is a lot of censorship from politicians and the government. In the third world, there is censorship more than anywhere else. So, in Africa, in Abidjan as in Lebanon, I felt the same personally. There are some subjects that you risk your life by talking about them. In Africa, I was forbidden to talk about some political subjects because we knew I would be at a very high risk. The political authority doesn't allow artists to wake up the youth because it is not in their interest.

In Lebanon, I had more problems than in Africa because I have more legitimacy and credibility working here as a Lebanese young man. I had a lot of problems with some art work. I received death threats online and offline, on the field, and live during the protests in Lebanon. Some posts were removed from social media and censored. It comes from everywhere, and you cannot know. It can come from the government or from the people you are fighting. It can even come from the platform you are using that plays a trick pretending to fight against them while they are actually on their side. So, it is a political strategy, and it is very complicated.

I experienced it many times, so I try to be smart and make my message seen by the most without having aggressive feedback on it. I'm trying to find ways to send messages that cannot be censored. It is interesting, and it is part of the game. When you are censored, it means you have an impact somehow, so I loved it. It shows that you are doing something that the leading corruption doesn't like. It may help some children to open their eyes and grow up to be better than you and me.

In Africa, I was threatened also, but I was less active there. I didn't want to put my family at risk. I tried to take examples of artists that could spread this message without being threatened. This is done by spreading love and unity without pointing your finger towards anyone. It is very interesting. Instead of showing the problem which sometimes I do, I pretend that we overcame the problem, and that we already won. I am using this strategy in my thinking and working process. It will help me spread good energy to people without being censored.

8) What is your advice to young artists aiming to make a change in the human rights world?

My first advice is not to wait for this change to come in their lifetime. When you go into this fight, forget about yourself. It is a selfless fight. It is not about your life. Your life is not the end of humanity, and we are fighting for humanity. You are not fighting for the twenty or the fifty coming years. It can take thousands of years. It is not your problem as long as you are doing your work and sending the right message. It may take a million years. It will take a million years, and it will happen. Just believe in it and put your heart to it. When it comes from the heart, it will reach the right hearts.

The second advice is not to take things too seriously and get touched by everything. Although I read, look and stay informed about the negativity happening around the world, I am maybe the happiest person. So, if you are not already at ease with yourself, do not go in this struggle because it can eat your mind. You must differentiate between your work, your message and the beauty of life. You should not focus on the negativity and fall into sadness. You must think that life is beautiful and that you want to make it more beautiful. Enjoy the simple moments. Send the right messages. When there is something wrong, say that something is wrong. Then, just go laugh with your friends after.

9) What are your recommendations or suggestions to foster the relationship between art and human rights?

Education. The only aspiration I have in humanity is that every child born right now is a hope for change and for a new world. It all depends on how we educate and guide children and how we show them the meaning of life. So, education is the base because our generation and that of our parents already lost. Everyone of us thinks that he knows the truth and is convinced about it. We can change a little, but we are already too deep in life. The youth can observe, learn, and change themselves more. You cannot change your country if you don't change your family. You cannot change your family if you don't change yourself.

We should teach children how to become righteous men and women. We must teach them about human rights, about love, and about respect for the other. They must also be taught how to share their emotions. Sharing their emotions with other people allows others to relate and a link will be created between them. When children are educated at an early stage everything changes and they grow up with more unity. Children are like seeds that must be watered with good water to grow into good plants.

Children must know that they can use art to spread messages about what they believe in and to share their visions. They must be aware about the power of their talents that could be used to do good to others. We are in a spiritual war, and art is a weapon against darkness.

Interview with Melkar El Khoury Awwad: A Human Rights Activist and Aesthete

Melkar el-Khoury is the Director of the Central Research House. He has been working in human rights and humanitarian development consulting for more than 10 years, mostly in policies and strategies development, evaluation, content development and training. He is an expert in the fields of democracy, human rights education and political Management.

Besides his passion for human rights, Mr. El Khoury is captivated by the world of art and practices himself several forms of art. He is a pianist, an Argentine tango dancer, a poet, and a political satirist.

1) As an artist who practices several forms of art, which form of art do you find most effective for expressing human rights concerns?

The disciplines that include verbal and visual art such as drawing, poetry, writing, or theatre.

2) What are the most important rights pertaining to the status of artists?

I would say freedom of expression because individuals engage in arts to express certain ideas. Therefore, the right to freedom of expression must be protected and preserved. Especially in the context of human rights, if the artist wants to highlight certain human rights violations or suffering, he/she must be able to express things as they are.

3) What is the importance of modifying the relevant legal instruments in the less developed countries?

Music is the easiest way to express because no one will oppose the use of a musical note or instrument. Problematics arise in expressing opinions through other forms of art such as theatre or drawing. Artists who are really artists can always find a way to deliver their messages even if there is censorship. This might require a lot of energy, effort, and time from the artist. It may put him/her at risk to express their views. While in the regions where the legal systems and the society allow people to express their opinions, it would be easier to interact with human rights issues and to shed the light on these issues. Definitely, when the legal systems and the general framework is pro-freedom of expression and pro-artistic work and cultural work, it would be easier for artists to work. Artists might even be more creative because they wouldn't have to worry about their safety or about being subject to censorship. However, as I said, even if the regime is oppressive, one can still find a subtle way to express him/her self if he/she is a true artist. The beauty in art is that you don't have to name things directly as they are. Let us consider that I want to criticize the President of the Republic or the president of a political party or a sect leader and that I am a painter. To show that this leader tyrannizes the people under his rule, I can draw an ogre with small rabbits which are afraid from him. The people who are following the news in the society will understand the symbols in the painting. Still, in the places where I can name the person I would name him/her. As

for the places where there are barriers, I will have to be more creative to avoid being censored or getting arrested.

4) As an ILO certified Participatory Gender Auditor, how do you view the potency of art in promoting gender equality? What is the importance of supporting women artists in this regard?

Art can have an impact on gender equality because humans interact through their emotions more than through their reason. A simple example is that you love the taste of kinder not because your brain analyzes whether the ingredients are healthy or not but because it gives you a good feeling. Another example is that you might love a song even if the singer is ugly or even if the song is for a certain political party that you do not support. This is because you love the melody or the lyrics. The same applies to art because it is easy to connect and to relate with artistic work. Art can be a tool to shed the light on gender equality. Female artists must be supported in their societies or environments. There are a lot of cultural funds or initiatives that are allocated to female painters or artists in the aim of achieving gender equality.

5) You are the son of the Lebanese poet and philosopher Maurice Awwad who insisted on adopting the Lebanese language in all of his literary works as part of his belonging to the Lebanese-Phoenician Nationalist Movement. How can we link his advocacy for an independent Lebanese culture and identity to the human rights perspective?

I wouldn't use the term "independent". I would use the term "per se" which means existing by itself. If by independent you mean existing as an entity independent from other languages, then I agree. If we want to perceive this step taken by Maurice Awad from a human rights perspective, we can talk about the right to self-determination and the right to freedom of expression. We can also talk about the social and cultural rights which are mentioned in article 22 of the Universal Declaration of Human Rights. These rights are the right of individuals to express their identity and the right to self-determination in what concerns the society, the language, the heritage and the culture especially if these rights are exercised in a peaceful manner without the use of violence or intimidation. On the contrary, you are promoting a cause through poetry, writing, theatre, songs, and translations. Therefore, it is part of human rights to be able to express your opinions not only in politics against the ruler or the authority or with a state against another or with a cause against a cause. Expressing opinions about art, language, theatre, and ethics all fall within the right to freedom of expression.

6) Through his literary work, Maurice Awwad covered numerous human rights concepts such as freedom of expression, the right to the truth, and gender equality. He also shed the light on several human rights violations, social injustice, and oppression. Can you please explain to us more how human rights were on his artistic agenda?

He did not name the ideas he discussed “human rights” as in the technical or legal approach which is adopted worldwide, but he was depicting the society in which he lives. He was talking about the human being, his pain, his values which are universal. The pain is everywhere. For example, hunger is the same in America, China, and Saudi Arabia. The feelings and the suffering are the same. Because he focused on the human being around which all his work was centered, he was capable of covering all the human aspects in his writings. He discussed universal human rights principles such as refusing injustice, the right to social equality, refusing occupation by another state, refusing human rights violations, refusing discretion, and refusing chaos even if he did not refer explicitly to the Universal Declaration of human rights. He also rejected the traditions which are no longer useful. He rebelled against the church institutions and practices and not against the faith or values. This is also part of refusing the existing injustice. He also tried to break the vicious circle of the traditions and misconceptions in the society. In one of the episodes of “الشاطر يحكي” with the presenter Ziad Njeim, he discussed the topic of the woman’s virginity which was still a taboo in 1997. He also mentioned this topic in his writings to show the necessity of treating the human being as a human without judging him/her. He wanted to show that the dignity is the most important human possession and that everything else is details. He also discussed in his writings the social and economic gaps between people. People are different in several aspects; however, the important thing is the human dignity, the freedom, and the ability to access all the rights. He also talked about the occupation of Lebanon and pointed out to four occupations: the Palestinian occupation, the Syrian occupation, the Israeli occupation, and the Iranian occupation. At the time he was criticized, but he was right and foresaw future problems. He was discussing values that are common for all sects. Even when he wrote the political anthems for the Kataeb Political Party in the 1980’s, people belonging to opposing political parties loved the anthems and sang them. The difference between the anthems written by Maurice Awad and the other political anthems especially those of the leftist parties and the parties of what was known as the “Western region” is that Maurice Awad discussed general principles such as freedom and the sacrifice for freedom which apply to all political parties, regions, and sects whereas the other political anthems glorified a certain leader or political cause. Therefore, he was able to discuss all the human rights concepts that you have mentioned by adopting a humanitarian approach. In what concerns the artistic expression, we can talk about how he approached the topics of romance, women, motherhood, and nuns. Whether in poetry or prose, he observed the society around him to write about the characters. His approach was unconventional. He rejected the society’s traditional misconceptions which are no longer compatible with the current time and proposed alternatives. For example, he refused insulting women who are not virgins claiming that women are valuable because they are humans regardless of other irrelevant details. In the book titled “التصوينة”, he narrates the story of a nun who lives in the monastery and falls in love with a man outside the monastery. The criticism was not about the fact that the nun fell in love. It was about the way in which Maurice Awad depicted the relationship between the nuns in the monastery because he talked about the nuns as normal people. He talked about the generous nun, the stingy nun, the envious nun, the glutton nun, and

the nun who does all the work. He projected the dynamics of everyday on the nuns that live in the monastery. It was not an imaginative story because these dynamics exist everywhere. Thus, freedom of expression was very important for Maurice Awad to be able to express his thoughts. In the period during which Maurice Awad's thoughts matured and during which he was writing abundantly, Lebanon was under occupation from 1975 and onwards. Nonetheless, he found a way to express his thoughts even if he was at risk. Even in his views regarding the media and its role, he projected what he was observing around him.

7) What are your recommendations for fostering the relationship between art and human rights?

I think that true artists do not need you to tell them about human rights because they express themselves, what they see around them, and their feelings. True artists express how they interact with the people around them, how they view people's interaction with each other, and they discuss humanitarian issues. The greater the culture and awareness of the artist the greater the probability that his/her art work would intersect in specific ways with human rights concerns. For example, a painter can paint about individuals being executed by the occupation military without pointing out explicitly to the right of freedom, the right to independence, and the right to sovereignty. However, if he/she has the awareness, the general knowledge, and the culture, he/she might be able to improve his/her way of expression to show the human rights concepts more clearly and this can broaden the horizons in his/her approach. Awareness work shops and knowledge building are required. Let us consider that there is a call for grants for artists to express their views on the right of the child to education. If I am an artist and I want to apply for this grant, I should do my homework. I should do a research about the right of the child to education, the obstacles to this right in Lebanon, and the international instruments governing this right. It is not necessary to attain a very developed level of legal knowledge such as experts in the topic, but I must at least be familiar with the international instrument that protects children's rights. I might be able to create an artistic work from the collection of all these ideas. Thus, we must work on the level of awareness and on opportunities related to human rights concepts so that the artistic work would intersect with these concepts.