

**Shop *gevaar*: A socio-legal critique of the governance of foreign national spaza
shopkeepers in South Africa**

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Opinions expressed and conclusions arrived at, are those of the author and are not
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Declaration

I declare that this thesis is my own unaided work, both in concept and execution, and that apart from the normal guidance from my supervisor, I have received no assistance. It is being submitted in fulfillment of the requirements for the degree of Doctor of Philosophy, at the University of the Witwatersrand. Neither the substance nor any part of the thesis has been submitted in the past, or is being submitted for a degree at this University or at any other university. The information used in the thesis has not been obtained by while employed by, or working under the aegis of, any person or organisation other than the University.

Signed:

Vanya Gastrow

24 July 2017

Dedication

For Camaren and David

Abstract

Just over ten years ago on night of the 28th of August 2006, angry mobs took to the streets of Masiphumelele township outside Fish Hoek, near Cape Town, and attacked and looted foreign national spaza shops in the neighbourhood. The attacks shocked the city, and prompted the provincial government to initiate an intervention to address the underlying causes of the violence. The outcome comprised an agreement between foreign national and South African spaza shopkeepers that permitted foreign nationals to return on condition that they did not open any new shops in the township. These mediation efforts comprised the beginning of many governance interventions in Cape Town and across the country that were aimed at curtailing foreign national spaza shops in South Africa.

This thesis examines formal and informal attempts to govern foreign national spaza shops in South Africa, and seeks to understand what they reveal about the nature of politics in South Africa, as a postcolonial and developing country. In doing so it locates itself in the theoretical framework of law and society, as it examines legal phenomena from a social science perspective. Its findings are based on case study methodology involving qualitative interviews with key participants and stakeholders, as well as document collection, participant observation, and media reports.

The research finds that many governance actors' anxieties towards foreign national spaza shops relate less to shopkeepers' particular activities and more to South African traders' abilities to incite local socio-economic discontent against these shops, and thereby threaten political establishments. However, governance interventions rarely unfolded as intended due to resistance by competing interest groups who sought to advance their private economic concerns rather than public and political rights. This invokes features of Hannah Arendt, Michel Foucault and Giorgio Agamben's theories of the 'social' or 'biopolitics', which argue that the entry of economic concerns into the political sphere is characteristic of the modern age.

The thesis therefore reflects on Arendt, Foucault and Agamben's theories in assessing what governance efforts reveal about the nature of South Africa's political sphere. It finds that the social realm in South Africa differs from their accounts in two

significant respects. First, the social sphere is conflicted between various economic goals – with parties seeking to foster basic life and sustenance, as well as to advance the emancipation of citizens from the colonial legacies of apartheid through economic mobility and opportunity. This makes finding a path to advance overall economic advancement in the country more difficult and contentious.

Second, the social sphere in South Africa is not a centralised bureaucratic monolith. It is a splintered and multifaceted system of power where no single political entity enjoys full authority. This results in a complex configuration and sharing of power between formal state institutions and informal grassroots organisations – what the thesis terms the ‘fractured social’. These dynamics, which commonly feature in postcolonial and developing countries, shape the nature of the country’s constitutional democracy, the application of laws, as well as the political sphere’s ability to fully address the economic legacies of colonialism and apartheid.

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List of Abbreviations

ACMS:	African Centre for Migration & Society
ANC:	African National Congress
CLS:	Critical Legal Studies
DTI:	Department of Trade and Industry
IMC:	Inter-Ministerial Committee on Migration
LCS:	Legal Consciousness Studies
NGO:	Non-Governmental Organisation
Nibus:	National Informal Business Upliftment Strategy
OYSU:	Ogaden Youth and Student Union
SANCO:	South African National Civic Organisation
SAPS:	South African Police Service
SARS:	South African Revenue Service
SRA:	Somali Retailers Association
SASA:	Somali Association of South Africa
SORAA:	Somali Refugee Aid Agency
UCT:	University of Cape Town
UDF:	United Democratic Front
UNHCR:	United Nations High Commission for Refugees
Zanokhanyo:	Zanokhanyo Retailers Association

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1. Introduction

... the intention of the Nuremberg Laws was 'to establish a level on which a bearable relationship between the German and the Jewish people [became] possible'¹

1.1 The *Cape Times* morning edition

I was in the midst of my early morning procrastination session of sipping coffee and scanning my email inbox, when my supervisor approached my office cubicle and placed the morning edition of the *Cape Times* on my desk. In an agitated voice she muttered 'Can you believe this? Today, don't worry about work. You're going to write a response'. At the time I was an awkward second year candidate attorney based at the law firm Cliffe Dekker Hofmeyr's competition department, and had never engaged in public discourse or engagement in my life. 'Me?' I thought surprised, that is until I read the article, which lit my curiosity and hurriedly began writing.

Dated 17 August 2009, and titled 'Somalis refuse to sign 'one-sided deal' for spaza owners',² the article set out a new venture at aimed addressing antagonisms towards Somali spaza shopkeepers in the neighbourhood. 'Spaza' shops are small informal grocery shops that operate from residential properties in most of South Africa's peripheral black 'townships'. These shops sell basic food and household items ranging from bread, milk, sugar, canned foods, soft drinks, cooking oil, soap and cigarettes. Shops can be found trading from empty shipping containers on people's front yards, converted garages, or front rooms of houses (see photographs at the end of the chapter).³ Since the mid-1990s foreign nationals seeking refuge from persecution and civil war, or simply escaping poverty have increasingly arrived in South Africa, and entered into the spaza market,⁴ with shops becoming a noticeable presence in the country's townships in the early 2000s. In Cape Town, most foreign national spaza shopkeepers are Somali nationals, but other nationalities such as

¹ Hannah Arendt citing the opinion of the Reichsvertretung of the Jews in Germany (a national association of all Jewish communities and organisations in Germany founded in 1933) regarding the Nuremberg Laws of the 1930s that deprived Jews of political rights in Germany, in Hannah Arendt *Eichmann in Jerusalem* (1963) Penguin Books, New York at 127.

² Quinton Mtyala, *Cape Times*, Monday 17 August 2009.

³ Personal observations in field sites and informal discussions with Somali traders.

⁴ Interview, Khayelitsha police officer, Khayelitsha, 25 October 2012. Interview, Somali Retailers Association representative, Bellville, 10 January 2011.

Ethiopians, Bangladeshis, Burundians, Chinese and Pakistanis are also present in the market. Foreign national spaza shopkeepers are drawn to the spaza market for a number of reasons, including the many untapped business opportunities, the relatively low start-up costs of spaza shops, and the informal nature of business in townships, where permit and paper requirements are low and often not enforced.⁵ Most of them work and live in their shop premises, sleeping in a small room behind their shops or in shops themselves. This arrangement saves foreign national spaza shopkeepers from having to pay extra rent, but is also a necessary precaution needed to prevent possible theft or looting of their businesses, which would likely occur were they to leave their premises vacant.

I scrolled through newspaper article curious about what had outraged my supervisor. It did not take me long understand her bafflement. The article described that Somali spaza traders in Gugulethu had been pressured into signing a trading agreement with competing South African shopkeepers. This startled me, since any agreement between business competitors in my line of work raised an immediate red flag. I had spent much of my time at the department reading, ordering and paginating dozens of thick files of clients' email correspondence, commercial contracts, and business records all in an effort to locate any evidence that could suggest they had engaged in unlawful efforts to reduce competition. This work was all the more necessary given the rigor with which the country's Competition Commission pursued its investigations.

The specific terms of the proposed agreement in Gugulethu were especially bewildering. In particular the agreement prohibited Somali traders from opening new shops in Gugulethu, obliged them to fix their prices to those offered by their South African competitors, stipulated that 70 percent of spaza shops in Gugulethu be owned by South Africans, and required Somali traders to move their shops 100 metres away from South African shops. According to competition law in South Africa not even a 'concerted practice', let alone a written agreement between business competitors was permitted if it had the effect of preventing or lessening competition in a market.⁶ The provisions of the Competition Act were even stricter when it came

⁵ Interview, Somali Retailers Association representative, Bellville, 10 January 2011.

⁶ Section 4(1) of the Competition Act 89 of 1998 provides:

'4. Restrictive horizontal practices prohibited

(1) An *agreement* between, or *concerted practice* by, *firms*, or a decision by an association of *firms*, is prohibited if it is between parties in a *horizontal relationship* and if-

(a) it has the effect of substantially preventing or lessening competition in a market, unless a party to the

to practices involving market division or price fixing.⁷ The agreement also appeared to breach other laws. For example according to the Refugees Act of 1998, asylum seekers and refugees also enjoyed the right to work and operate businesses in the country.⁸ Added to that was the fact that the terms of the agreement discriminated against a group of business owners on the basis of their nationality and ethnicity. The proposed arrangement therefore seemed bizarre, not only in terms of its clear breach of competition law, but also for its implications for constitutional democracy. Who would endorse such an outlandish venture? Oddly a very wide range of parties. This included the police, a local community organization called the Anti-Eviction Campaign, and the United Nations High Commission for Refugees (UNHCR).

A few days later a subsequent newspaper article appeared in the *Cape Times* and confirmed that the agreement between South African and Somali traders had been signed. I spent the next two days writing an opinion piece that criticised the Gugulethu agreement largely from a competition law perspective. However, I dwelt on the issue for several years thereafter, puzzled at how such a range of governance actors – including those tasked with defending the law and refugee rights - could come to view discriminatory and unlawful economic arrangements as acceptable. I later discovered that the Gugulethu agreement was not the only informal arrangement in existence restricting foreign national spaza traders. Similar informal agreements limiting foreign national spaza shop numbers had been entered into in a number of other townships in Cape Town including Masiphumelele in 2006, and the Strand and Khayelitsha in 2008, as well as in towns and cities further afield such as Paarl, Saldanha Bay, Bisho, and Port Elisabeth.⁹

agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or

(b) it involves any of the following *restrictive horizontal practices*:

- (i) directly or indirectly fixing a purchase or selling price or any other trading condition;
- ii) dividing markets by allocating customers, suppliers, territories, or specific types of *goods or services*; or
- (iii) collusive tendering’.

⁷ Ibid, section 4(1)(b).

⁸ Section 27 (f) of the Refugees Act 130 of 1998 grants refugees the right to seek employment in the country. The Supreme Court of Appeal has upheld asylum seekers’ right to work, linking it to the constitutional right to dignity (*Minister of Home Affairs and Others v Watchenuka and Others*, 2004 (1) All SA 21 (SCA) 28 November 2003).

⁹ Conversations with Somali traders, as well as media articles (see Mandlenkosi Mxengi ‘Bhisho acts on xenophobic threats’ *Fever.Online* 26 July 2012, available at <http://www.fever-blue.co.za/articles/articledetails.aspx?id=29153>, date accessed 25 March 2013. Pozisa Majavu ‘Somalis accuse councilor of assault, bribery’ *Eastern Cape Today* July 20, 2012, <http://getectoday.co.za/uncategorized/somalis-accuse-councillor-of-assault-bribery/>, date accessed 25 March 2013. Luyolo Mkentane ‘Somalis to register with Spaza Body’ *The Herald* 25 March 2011 at 1).

State institutions and representatives did little to directly query or act against these governance outcomes. For example, when contacted by the *Cape Times* about the agreement signed in Gugulethu in 2009, the Competition Commission's spokesperson stated that not all agreements restricting competition violated competition laws. The spokesperson added that the Commission could initiate its own investigation if there was 'reason to believe the law is being breached'.¹⁰ No such investigation subsequently followed.¹¹ Even the UNHCR, which is tasked with protecting refugee rights celebrated the Gugulethu agreement as a 'blue print' for other communities.¹² It seemed as though concerns over the rule of law and political principles of the anti-apartheid struggle spelled out in the constitution such as human dignity, equality and non-racialism took a second footing to the economic demands of South African spaza shopkeepers.

Informal agreements restricting foreign national spaza shop operations were not the only type of governance interventions prevalent in the country at the time or subsequently. Political leaders, state officials, and community structures had engaged in many other attempts at regulating these businesses. Other governance efforts included fining operations against foreign national spaza shops, informal curfews regulating operating hours, new policy documents and proposed legislation and calls by political leaders (such as the Premier of the North West province) to confiscate spaza shops belonging to foreign nationals.¹³ All these interventions – whether in the form of informal agreements or restrictive new legislative Bills – elevated the economic concerns of South African traders over broader political and constitutional rights principles. For example, a 2012 ANC policy document suggests preventing foreign nationals from operating spaza shops in the country. It states that:

In many townships and rural areas some asylum seekers have been involved in informal Trading... This informal trading is mainly in the form of hiring Spaza shops and houses from South African [sic]. Non-South Africans should

¹⁰ Quinton Mtyala 'Somalis refuse to sign "one sided" deal for spaza owners' *Cape Times* Monday 17 August 2009.

¹¹ Telephone inquiry, Competition Commission representative, 18 March 2011.

¹² Quinton Mtyala 'Somali and Local strike deal on peace' *Cape Times* 20 August 2009.

¹³ Boitumelo Tshehle 'North West Premier Supra Mahumapelo to bar foreign owned spaza shops' *Sowetan* 18 March 2016, available at <http://www.sowetanlive.co.za/news/2016/03/18/north-west-premier-supra-mahumapelo-to-bar-foreign-owned-spaza-shops>, date accessed 3 March 2017.

not be allowed to buy or run Spaza shops or larger businesses without having to comply with certain legislated prescripts. By-laws need to be strengthened in this regard.¹⁴

However, the discussion document does not consider the constitutional implications of introducing specific legislative prescripts that apply only to 'non-South Africans'. It also does not reflect on how thousands of non-South Africans should alternatively seek out a living in the absence of being able to operate spaza shops. Similarly the Minister of Small Business Development, Lindiwe Zulu's response to widespread xenophobic riots in early 2015 revealed a preoccupation with the economic interests of South African shopkeepers. In particular she stated that foreign business owners who were being targeted by looters could not expect to live peacefully in the country unless they shared their trade practices with their South African competitors.¹⁵ This suggested that despite formal laws granting many foreign national traders asylum and refugee status in the country, as well as the constitutional right to freedom and security of the person, in practice these protections were not guaranteed, but rather hinged on traders not posing an economic threat to South Africans. Other actions such as fining operations that discriminated against foreign nationals, and proposals to confiscate their spaza shops and transfer them to South Africans also illustrate that the economic interests of South African traders frequently took primacy over the constitutional and political rights values of dignity, equality, plurality, freedom and the rule of law.

Such responses raise the question of why state and other governance bodies did not act decisively against legal transgressions and constitutional infringements affecting foreign nationals. Instead these measures showed that governance actors ranging from police, NGOs, the Competition Commission and the UNHCR frequently chose the route of elevating the economic interests of South African spaza traders above the rule of law and the country's constitutional dispensation. South Africa's constitution is not any simple piece of posited legislation. It encapsulates much of the spirit and aspirations of the anti-apartheid struggle. Although it may not go as far

¹⁴ ANC policy discussion document titled 'Peace and Stability' March 2012 at 6, available at <http://www.anc.org.za/docs/discus/2012/peacev.pdf>, date accessed 3 March 2017.

¹⁵ Khulekani Magubane 'Reveal trade secrets, minister tells foreigners' *Business Day* 28 January 2015, available at www.pressreader.com/south-africa/business-day/20150128/281496454689189, date accessed 3 March 2017. Min. Lindiwe Zulu to foreigners: "Share your ideas with local business owners" *Radio 702* 28 January 2015, available at <http://www.702.co.za/articles/1505/zulu-foreign-business-owners-must-share>, date accessed 3 March 2017.

in terms of political inclusivity and socio-economic rights as the Freedom Charter, which served as a uniting document for diverse anti-apartheid political bodies,¹⁶ its provisions including relating to 'Human dignity, the achievement of equality and the advancement of human rights and freedoms'¹⁷ comprise basic preconditions to political freedom in the country.

My concern with the ways in which parties overlooked this document was that it entailed turning away from a number of core values that characterised the country's struggle for political emancipation and democracy. The governance of foreign national spaza shopkeepers symbolises a political era in the country where limitations on the state and constitutional freedoms do not carry as much weight as previously envisaged.

This fundamental change in contemporary South African politics and society revealed through governance events was something that I struggled to grasp. This thesis is largely an attempt to understand the dynamics that took place in Gugulethu in August 2009, as well as prior and subsequent formal, informal and hybrid efforts to govern foreign national spaza shop traders in South Africa. Through its investigation, the thesis aims to better understand the nature of politics in a postcolonial and developing world context – namely post-apartheid South Africa.

1.2 A governance approach to law and society

The thesis defines 'governance' as the ways in which individuals or bodies exercising a degree of authority attempt to steer social or public order. The governance of foreign national spaza shopkeepers thus entails diverse actors contesting, generating and enforcing laws and social rules that oversee the ability of foreign nationals in South Africa to trade. Understanding this process involves exploring how law and society interact and influence each other. For example, various parties and

¹⁶ For example the Freedom Charter adopted on 26 June 1955 states that 'All people shall be entitled to take part in the administration of the country' and 'there shall be equal status in the bodies of state, in the courts and in the schools for all *national groups* and races' (italics added). It also advances socio-economic rights such as 'The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole' and 'Restrictions of land ownership on a racial basis shall be ended, and all the land redivided amongst those who work it, to banish famine and land hunger'. Available at http://www.historicalpapers.wits.ac.za/inventories/inv_pdf/AD1137/AD1137-Ea6-1-001-jpeg.pdf, date accessed 3 March 2017.

¹⁷ Section 1(a) of the Constitution of the Republic of South Africa, 1996.

stakeholders respond to diverse societal and political pressures such as poverty and mobilisations by South African traders, by entering the governance arena and shaping laws and social rules. The thesis thus falls within the theoretical framework of law and society, which examines legal phenomena from a social science perspective.¹⁸ The law and society movement is interdisciplinary and encompasses many diverse schools of thought including legal anthropology, sociology of law, socio-legal studies, the school of legal pluralism, sociological jurisprudence, and critical legal theory to name a few. The framework of law and society is of heightened importance in a world where the 'rules of the game' often differ markedly from the law in books.

A governance perspective is particularly valuable to the law and society movement. It enables one to combine empirical studies of law with critique, as governance entails political contestation and power play that is revelatory of broader social and political conditions. Furthermore, examining governance is vital to understanding law and society in a world that is experiencing rapid transformation, and where the continued existence of laws and political systems as they stand is not guaranteed. Given that societies are continually changing and evolving it is valuable to understand the processes involved in the development and application of laws, rules and regulations (which governance incorporates), and not only what rules and laws happen to state at a given time.

The thesis' examination of the governance of foreign national spaza shopkeepers relies on a case study methodology, which involves gathering a rich collection of data (ranging from interviews, document collection to participant observation) from multiple perspectives that cannot be easily ascertained through quantitative surveys and statistics. I conducted most of the field research component of the case study between September 2010 and October 2012 in various townships in the Western Cape. Information about nation-wide policy developments was subsequently researched through relying on media articles, press releases, legislation, and policy documents.

¹⁸ Reza Banakar 'Law Through Sociology's Looking Glass: Conflict and Competition in Sociological Studies of Law' in Ann Denis, Devorah Kalekin-Fishman (eds) *The new ISA handbook in contemporary international sociology: Conflict, competition and cooperation* (2009) Sage Publications Ltd, London at 67. Lawrence M. Friedman 'The Law and Society Movement' (February 1986) 38:3 *Stanford Law Review* 763-780. Susan S. Silbey 'Law and Society Movement' in Herbert M. Kritzer (ed) *Legal Systems of the World: A Political, Cultural and Social encyclopedia* (vol II: E-L) ABC Clío, California, 860-863.

1.3 Investigating the political implications of the governance of foreign national spaza shopkeepers

Much has been written about xenophobia towards foreign nationals in South Africa and beyond and what it reveals about local, regional and global politics.¹⁹ Some studies focus on local level dynamics. For example, Misago highlights the role of local political leaders in orchestrating xenophobic attacks against foreigners in South Africa in 2008.²⁰ He argues that 'that violence against foreigners was organised and led by local groups and individuals attempting to claim or consolidate the power and authority needed to further their political and economic interests'.²¹ Similarly Reddy views xenophobic violence in South Africa as an outcome of the ruling party's fragile legitimacy and unclear ideology, which enables local narratives of belonging and authenticity to gain currency in poor and marginalised black neighbourhoods.²² Others examine xenophobia on a macro and global scale.²³ Gerschiere and Nyamnjoh believe that that increasing preoccupations with autochthony (a Greek term for a person derived from the soil) in both Europe and Africa is an outcome capitalism's tendency to free up labour, while simultaneously setting up boundaries to close in and exclude.²⁴

However, the abovementioned studies tend to focus on attitudes towards foreigners or outsiders in general, rather than foreign national *traders* in particular. Recognising

¹⁹ Loren Landau, 'Transplants and Transients: Idioms of Belonging and Dislocation in Inner-City Johannesburg' (September 2006) 49:2 *African Studies Review* 125–145. Jonny Steinberg 'Security and disappointment: Policing, freedom and xenophobia in South Africa' (2012) 52 *British Journal of Criminology* (2012) 345–360. Jonathan Crush 'The Perfect Storm: the realities of xenophobia in contemporary South Africa' (2000) *SAMP Migration Policy Series* no. 50, Idasa, Cape Town; Mazibuko K. Jara and Sally Peberdy, 'Progressive humanitarian and social mobilisation in a neo-apartheid Cape Town: A Report on Civil Society and the May 2008 Xenophobic Violence' (2009) The Atlantic Philanthropies, available at http://www.atlanticphilanthropies.org/app/uploads/2015/09/1_Synthesis_consolidated_c.pdf, date accessed 3 March 2017. Michael Neocosmos, *From 'Foreign Natives' to 'Native Foreigners': Explaining Xenophobia in Post Apartheid South Africa: Citizenship and Nationalism, Identity and Politics'* (2006) Codesria, Dakar, Senegal.

²⁰ Jean Pierre Misago 'Disorder in a changing society: authority and the micro-politics of violence' in Loren B. Landau (ed) *Exorcising the Demons Within* (April 2012) United Nations University Press, Tokyo, New York, Paris at 89.

²¹ Ibid.

²² Thiven Reddy 'The 'Cabbage and the Goat': Xenophobic Violence in South Africa' (2012) 44 *African Historical Review* 3–28.

²³ Jean Comaroff & John L. Comaroff 'Naturing the Nation: Aliens, Apocalypse, and the Postcolonial State' (2001) 7:2 *Social Identities* 233–265. Francis B. Nyamnjoh (ed) *Insiders and outsiders: Citizenship and xenophobia in contemporary Southern Africa* (2006) Zed Books, London and New York. Peter Geschiere and Francis B. Nyamnjoh 'Capitalism and autochthony: The seesaw of mobility and belonging' (Spring 2000) 12:2 *Public Culture* 423–452. Sabelo J. Ndlovu-Gatsheni 'Do 'Africans' exist? Genealogies and paradoxes of African identities and the discourses of nativism and xenophobia' (2010) 8 *African Identities* 281– 295.

²⁴ Peter Geschiere and Francis B. Nyamnjoh 'Capitalism and autochthony: The seesaw of mobility and belonging' (Spring 2000) 12:2 *Public Culture* 423–452.

the particular economic, social and political conditions of foreign national traders is important given that their economic activities are frequently the subject of political contestations and governance interventions in South Africa and around the globe.²⁵ For example, much 'xenophobic' violence in South Africa is directed at foreign national businesses, especially those engaged in trade in goods. While a number of studies have focused on foreign national traders in South Africa,²⁶ these studies have tended to hone in on their economic activities or explored crime affecting their businesses, rather than examine mobilisations against their shops and governance interventions aimed at curtailing their activities. For example, Charman *et al* explore the business practices of foreign national spaza shopkeepers in Delft South, Cape Town and investigate the reasons for why many of these shops appear to have outcompeted South African spaza businesses.²⁷ Gumbo studies the business practices of migrant spaza shop entrepreneurs in Soweto, Johannesburg to find out how they innovate and make their businesses more competitive.²⁸ Charman *et al* also investigate crime affecting foreign national businesses and the extent to which South African spaza businesses are similarly affected.²⁹ While these studies can assist in setting out the broader context in which the governance of foreign national spaza shops plays out, they do not comprehensively account for governance interventions targeting these businesses.

To effectively understand the political implications of the governance of foreign national spaza shopkeepers in South Africa, the thesis draws on work examining the

²⁵ For example, in 1921 the government of the Union of South Africa established an Inquiry to look into the laws governing 'Asiatic' traders and businesses. Idi Amin justified deporting Indians from the country on the basis of their business activities (see 'Indo-African history: Watch Idi Amin defend the decision to kick Indians out of Uganda' *Scroll*. In 27 October 2015, available at <https://video.scroll.in/1138/indo-african-history-watch-idi-amin-defend-the-decision-to-kick-indians-out-of-uganda>, date accessed 3 March 2017). The recent 2013 Ghana Investment Promotion Centre Act prohibits foreign nationals from operating certain forms of small business.

²⁶ Abdu Sh Mohamed Hikam 'An exploratory study of the Somali immigrant's involvement in the informal economy of Nelson Mandela Bay' (2011) MA thesis, Nelson Mandela Metropolitan University. Jonathan Crush, Caroline Skinner and Abel Chikanda 'Informal Migrant Entrepreneurship and Inclusive Growth in South Africa, Zimbabwe and Mozambique' (2015) 68 *SAMP migration policy series*, Cape Town. A. Charman, L. Petersen, L. Piper 'From local survivalism to foreign entrepreneurship: The transformation of the spaza market in Delft, Cape Town' (2012) *Transformation* 78. Rory Liedeman 'Understanding the Internal Dynamics and Organisation of Spaza Shop Operators: A case study of how social networks enable entrepreneurialism among Somali but not South African traders in Delft South, Cape Town' (2013) Master's thesis, University of the Western Cape. Knowledge Link Services 'An audit of spaza shops in Khayelitsha, Cape Town' (2009) Unpublished report commissioned by the City of Cape Town. Trynos Gumbo 'Resilience and innovation: Migrant spaza shop entrepreneurs in Soweto, Johannesburg' in Jonathan Crush, Abel Chikanda, Caroline Skinner *Mean Streets: Migration, xenophobia and informality in South Africa* (2015) South African Migration Programme (SAMP), the African Centre for Cities (ACC) and the International Development Research Centre (IDRC), Cape Town, at 100.

²⁷ Charman *et al* (note 26).

²⁸ Gumbo (note 26).

²⁹ Andrew Charman and Laurence Piper 'Xenophobia, criminality and violent entrepreneurship: Violence against Somali shopkeepers in Delft South, Cape Town' (2012) 43:3 *South African Review of Sociology* at 81.

political location of outsider groups that engage in small business activities. In particular it explores Weber's concept of 'the pariah', Bonacich's analysis of 'middleman minority' groups, Fanon's discussion of the 'pitfalls of national consciousness' and Mamdani's account of 'subject races', all of which highlight the precarious position of 'outsider' small traders, and how they become targets of xenophobia. The thesis finds that while many features of their accounts help to explain antagonisms towards and fears of foreign national spaza shopkeepers in South Africa, all four theorists underestimate the role of social instability and popular aspirations for economic mobility in the problematisation of shops. This social and economic anxiety that underlies the shop *gevaar* or 'threat' in South Africa, extends across the entire South African political sphere.

To understand how these economic concerns underpin and shape the South African political sphere, it is necessary to not only examine animosity towards foreign national spaza shopkeepers, but also explore how the South African political sphere responds to this perceived threat through governance. Xenophobic sentiment plays an important role in the governance of foreign national spaza shops, but governance also encompasses other considerations such as economic circumstances, crime, informal political power, and threats of public violence. These factors are weighed and sifted by governance actors when determining governance strategies and interventions. By focussing on how diverse political groupings congregate and respond to the presence of foreign national spaza shops in South Africa's townships through engaging in governance, the thesis attempts to shed light on critical dynamics underlying South Africa's political sphere. It is this goal – i.e. understanding the workings of the South African political sphere and how it grapples with challenges such as migration, widespread poverty, economic inequality and the legacies of apartheid - that underscores the thesis.

The governance of foreign national spaza shopkeepers demonstrates that the South African political sphere houses varied formal, informal and hybrid locations of power and authority. These varied bodies frequently possess conflicting interests and goals, which result in many governance interventions rarely materializing as initially envisioned. Yet despite the multitude of actors involved in governance and their competing goals, there was a common value and understanding shared by most – namely the perception of economic advancement was a central political goal, with

political rights concerns such as opposition to discrimination, as well as adherence to the rule of law often falling secondary to economic interest.

Such a political state of affairs is not unique to South Africa. Many scholars have noted how the xenophobic violence that rocked South Africa in 2008 was fed by a politics that cared less for legal and constitutional principles than it did for accessing economic resources.³⁰ Neither is entry of economic concerns into the political sphere particularly exceptional to South Africa. Fanon describes how struggles against colonialism descend into nationalist and chauvinist attempts at accessing and maintaining economic wealth in the aftermath of liberation.³¹ Chatterjee highlights how liberation struggles in many postcolonial states failed to achieve their republican goals and eventually established developmental states aimed at uplifting people's economic conditions.³²

Arendt argues that the entry of economic matters into the political sphere is a general phenomenon of the modern age. She and other theorists such as Foucault and Agamben argue that the ancient Greek distinction between the public sphere of politics and the private realm of the household has become blurred in modern times. The former sphere was traditionally a realm of political speech and action, while the latter domain encompassed all economic matters related to the maintenance of life and the survival of the species. Arendt states that:

The distinction between a private and a public sphere of life corresponds to the household and the political realms, which have existed as distinct, separate entities at least since the rise of the ancient city-state; but the emergence of the social realm, which is neither private nor public, strictly speaking, is a relatively new phenomenon whose origin coincided with the

³⁰ Steinberg (note 19). Loren Landau 'Loving the alien? Citizenship, law, and the future in South Africa's demonic society' (April 2010) 109:435 *African Affairs* 213-230. Jonny Steinberg 'South Africa's xenophobic eruption' (November 2008) *ISS Paper* 169 at 1. Heribert Adam and Kogila Moodley *Imagined Liberation: Xenophobia, Citizenship, and Identity in South Africa, Germany, and Canada* (2nd ed) (March 2014) African Sun Media, South Africa.

³¹ Frantz Fanon *The Wretched of the Earth* (1963) Grove Press, New York.

³² Partha Chatterjee *The Politics of the Governed: Reflections on Popular Politics* (2004) Columbia University Press, New York at 37.

emergence of the modern age and which found its political form in the nation-state.³³

For Arendt this phenomenon (which she calls the rise of the 'social') results in the gradual decline of authentic political engagement – which she believes was originally characterised by plurality, distinction and advancing political freedom - and the rise of mass bureaucracies aimed at managing and regulating people's lives. Ironically Arendt argues that this process tends to be even more exaggerated and extreme in the aftermath of revolutionary struggles for political freedom, which in her view have almost all given rise to repressive one-party dictatorships. While the thesis is primarily concerned with the decline of political rights and freedoms set out in the constitution, Arendt's republican-inspired account of the nature and demise of the political sphere is still relevant to the South African context given that both the South African constitution and Arendt's political sphere are rooted in notions of plurality, equality and freedom. Furthermore the apparent reduction of political sphere in the Arendtian sense in post-apartheid South Africa negatively impacts on the realization of constitutional rights and freedoms in the country.

The thesis leverages off Arendt, Foucault and Agamben's observations to assess how economic concerns manifest in the governance of foreign national shopkeepers and compete with – and come to dominate over – political rights and freedoms. Although South African theorists frequently stress that economic concerns play an important role in political contestations over foreign nationals in the country,³⁴ they have not explored how political and governance actors navigate economic and political rights and freedoms in great detail. It is this contestation between the economic and the political domain that guides the thesis in examining the political implications of the governance of foreign national spaza businesses.

The thesis finds that economic concerns reflected in the governance of foreign national spaza shopkeepers do not only relate to meeting people's basic physical needs or engaging in consumption as described by Arendt, Foucault and Agamben, but are also linked to economic mobility and opportunity. These latter aspirations

³³ Hannah Arendt *The Human Condition* (2nd ed) (1958) The University of Chicago Press, Chicago at 28.

³⁴ Steinberg (note 19). Loren Landau 'Loving the alien? Citizenship, law, and the future in South Africa's demonic society' (April 2010) 109:435 *African Affairs* 213-230. Jonny Steinberg 'South Africa's xenophobic eruption' (November 2008) *ISS Paper* 169 at 1.

sometimes come into direct conflict with the former economic goals and generate confusion over how foreign national spaza shops should be governed.

The economic conflicts involved in the governance of foreign national spaza shopkeepers are further aggravated by the fractured nature of the South African political sphere. This is especially the case in the country's townships, which house a range of informal grassroots organisations and groups that engage in political mobilisations and protests, as well as local rule making, adjudication and enforcement. These bodies challenge the state's authority and often inhibit it from applying the law as it stands. Township political realms therefore come to reflect two distinct, yet also overlapping, 'social' spheres - the state on the one hand, and informal township interest groups on the other – each exhibiting distinct ways of navigating economic and political concerns. While the state's ability to generate economic policies is limited by formal laws and the country's constitutional framework, local grassroots groups enjoy the ability to take direct action to address economic demands without needing to refer to legal precepts. However, their powers are curtailed by competing local level interest groups, and a lack of financial and administrative capacity to develop and enforce far-reaching change.

While both the state and informal grassroots organisations enjoy distinct powers and capabilities, neither entity enjoys full authority in South Africa's low-income township neighbourhoods. This forces them to collaborate and engage in continual power play. While the state resorts to patronage streams and identity politics to influence grassroots leaders and township communities, grassroots organisations galvanise the state through threatening to incite violence amongst the country's largely poor and marginalised township residents. The result is that state government in post-apartheid South Africa seeks stability in response to threatened violence of an 'uprising of the poor' via suspending its functions, and deferring to local civic and political structures in governance arrangements. This not only undermines the country's constitutional dispensation but also weakens the ability of the state to service its economic goals of poverty alleviation and job creation. Instead the state becomes distracted by the narrow and conflicting economic demands of competing interest groups to the detriment of the broader public.

The existence of constitutional government alongside and integrated with powerful grassroots governance may in some ways seem like an ideal form of emancipatory democratic rule. Yet when both state and informal governance structures become primarily motivated by economic goals, the outcome can be profoundly divisive and oppressive. While a balance of powers may seem to hold competing forces and authorities at bay, those who lack power or utility in the balancing act confront the worst of state power as well as popular rage, and a blurred and pliable version of the law. The thesis argues that the governance of foreign national spaza shopkeepers – in particular parties' attempts to steer social order to create a 'bearable relationship'³⁵ between different national groups – is symptomatic of a post apartheid politics contending with a fractured social realm.

The ways in which the South African political sphere grapples with balancing economic and political freedoms in the face of challenges such as migration, lingering economic stagnation and social instability do not only reveal themes that are pertinent to other postcolonial and developing states. It is also of relevance to many political systems in the West that are encountering declining levels of economic mobility, resistance to multiculturalism and diversity, and increasing distrust in ruling political establishments.

1.4 Chapter outline

The following chapter (chapter two) discusses the thesis' methodology. It offers a definition of the term 'governance' and sets out the thesis' theoretical framework of 'law and society'. It describes the thesis' case study methodology, including its use of archived material collected over a number of years, and how this material was re-read for the purposes of the thesis. Lastly it considers my positionality in relation to my research participants and its impact on data collection processes, as well as the ethics of conducting research on contexts of social conflict and involving vulnerable research subjects.

Chapter three, titled 'Unpacking the shop *gevaar*: justifications for curbing foreign national shops' explores the motivations for governance interventions. This includes the reasoning given by key governance actors for their grievances towards foreign

³⁵ Arendt (note 1).

spaza shopkeepers, and why they perceived shops as a threat. In analyzing the shop 'threat' in South Africa, the thesis refers to Weber's concept of the 'pariah',³⁶ Bonacich's analysis of the 'middleman minority',³⁷ Fanon's description of popular attacks against foreign national businesses in post-colonial settings,³⁸ and Mamdani's account of 'subject races'.³⁹

The thesis then moves on to explore how governance interventions have unfolded in practice. Chapter four reveals that governance interventions rarely materialised as intended. This was due to competing economic interests, and the absence of legal enforcement mechanisms, and alleged bribery. It argues that political and constitutional rights concerns as motivating principles were almost absent in these processes. Instead the chapter finds that the governance of foreign spaza shopkeepers in South Africa exhibits a political sphere largely concerned with varied economic interests. It thus considers Arendt, Foucault and Agamben's theories of the social, which highlight the rise of economic concerns over political freedoms in modern western states. The chapter concludes by examining the strengths and weaknesses of their analyses understanding the rise of the 'social' in a post-colonial and developing country such as South Africa.

Chapter five of the thesis investigates what the governance of foreign national spaza shopkeepers reveals about the nature of politics in post-apartheid South Africa. As mentioned, governance developments reveal that economic matters play a central role in the South African political sphere – and often come into conflict with the emancipatory political aspirations of the anti-apartheid struggle. However, unlike the bureaucratic and centralised social realms described by Arendt, Foucault and Agamben, the governance of foreign national spaza shopkeepers reflects a fractured social realm. This does not involve republican forms of political participation, but rather a haze of contesting and competing interest groups, whose sole motivation are the economic interests of their members. The fractured social thus acquires authoritarian and repressive features that bend the rule of law and fail to provide a space for authentic political deliberation and reflection.

³⁶ Max Weber *Economy and Society: An outline of interpretive sociology* (1922) vol 1, English edition edited Guenther Roth and Claus Wittich in 1978, University of California Press, Berkeley, Los Angeles and London.

³⁷ Edna Bonacich 'A Theory of Middleman Minorities' (October 1973) 38:5 *American Sociological Review* 583-594

³⁸ Fanon (note 31).

³⁹ Mahmood Mamdani 'Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism' (October 2001) 43:4 *Comparative Studies in Society and History* 651-664.

The conclusion draws together the key arguments made in the thesis. It discusses how fears over the outbreak public violence play a significant role generating anxiety towards foreign nationals spaza shops (i.e. the shop *gevaar*). This anxiety drives a variety of governance actors to seek ways to limit and curtail shop activities. These activities often entail the elevation of economic interests over political rights values, which mirrors theories of the 'social' or 'biopolitics' proposed by Hannah Arendt, Michel Foucault and Giorgio Agamben. Yet, unlike the social realm described by these theorists, the social sphere in South Africa is not monopolised by a bureaucratic nation state but an amalgamation of formal and informal and localised political bodies, which often have contested goals and motivations. It concludes by finding that this 'fractured social realm' does not advance, but rather undermines principles of plurality and threatens the country's democratic and constitutional values and institutions.



Somali spaza shop, Laingville, Saldanha Bay, 2012. Photo: Kai von Kotze



Somali traders in living quarters behind shop, Ceres, 2012. Photo Kai von Kotze



Burundian container shop on landlord's front yard, Kraaifontein 2011. Photo: Vanya Gastrow



Small spaza shop or 'tuck shop', Acacia Park, Philippi, 2011. Photo: Toto Gxabela



Somali spaza shop in informal settlement, Thabo Mbeki, Philippi, 2011. Photo: Toto Gxabela



Somali spaza shop, Velddrif, Saldanha Bay municipality, 2011. Photo Vanya Gastrow

2. Methodology

2.1 Introduction

In September 2010 I began work as a Visiting Researcher the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand. The project required me to research the ability of foreign national shopkeepers in the Western Cape to access formal and informal justice when they were victims of crime. This entailed interviewing a number of parties ranging from foreign national shopkeepers, police, prosecutors, to residents about how local communities and state institutions responded to crimes affecting foreign national shops. Although the project brief referred broadly to 'shopkeepers', media articles and policy reports indicated that only certain foreign national shops were heavily affected by crime – namely spaza shops in townships. Police officials and prosecutors later confirmed this situation. I therefore focussed my research on the spaza market as opposed to all foreign national shops in general.

During the course of my discussions with foreign national spaza shopkeepers in Cape Town and further afield it emerged that threats and attacks against them were frequently met – not with police investigations and prosecutions or informal adjudications and punishments – but rather with negotiations between shopkeepers that gave rise to informal trade agreements. Thus I expanded the scope of access to justice to include governance interventions aimed at regulating foreign national spaza shops. This theme subsequently became the focus of my PhD studies.

The thesis comprises a case study on the governance of foreign national spaza shopkeepers in South Africa. By interrogating governance phenomena it seeks to better understand the nature of politics in a postcolonial and developing world context – namely post-apartheid South Africa. This entails several methodological discussions. First, this task requires clarifying what is meant by the term 'governance', which is an ambiguous term that means different things to different people. Second, because the research topic is interdisciplinary in nature and encompasses academic fields ranging from political studies, philosophy, migration and law, it enjoys no self-evident theoretical framework. As a result it is necessary to put forward and justify a theoretical framework for the thesis.

Third, exploring the governance of foreign national spaza shopkeepers furthermore entails collecting data about governance events and interventions. In this respect the thesis confronts an important methodological constraint, namely that it is largely based on archived field research that I conducted over a period of two years between September 2010 and October 2012 for the ACMS on access to justice. As a result most of the data was collected with a different purpose in mind – in particular to examine crime affecting foreign national spaza shopkeepers in the Western Cape and their ability to access formal and informal justice mechanisms. The chapter thus sets out how archived material was re-read to explore the thesis topic. Fourth and lastly, other factors impacting on data collection include the researcher's positionality as a white, middleclass woman, as well as ethical considerations relating to conducting research involving vulnerable subjects and heated and politically contentious issues, are set out below.

2.2 The definition of 'governance'

The term 'governance' has different meanings depending on the context in which the term is deployed.⁴⁰ Its root 'govern' originates from the Greek word '*kuberman*' meaning 'to steer'.⁴¹ Scholars writing from different disciplinary perspectives have given the term a myriad of different interpretations depending on the context in which it is being used. For example, there exist discussions on corporate governance, good governance, network governance, participatory governance, new governance, and global governance. The thesis defines 'governance' as the ways in which individuals or bodies exercising a degree of authority attempt to steer social or public order. This definition does not envision governance as a singular hierarchy, but a heterarchy of competing formal and informal, and public and private governing bodies that can overlap with and contest each other. Furthermore, the definition understands governance to be a steering *activity* and not a *structure*. Governance is not a static snapshot of rules and systems that shape our lives, but a continual process. Rosenau states that '[t]o analyze governance by freezing it in time is to ensure failure

⁴⁰ Peer Zumbansen 'The Conundrum of order: The concept of governance from an interdisciplinary perspective' (2010) 6:8 *Comparative Research in Law & Political Economy Research Paper* No. 37/2010. Claus Offe 'Governance: An Empty Signifier?' (2009) 16:4 *Constellations* 550-562. Stijn Smismans 'Civil society and European governance: from concepts to research agenda' in Stijn Smismans *Civil Society and Legitimate European Governance* (2006) Edward Elgar Publishing Limited, UK at 8.

⁴¹ *Oxford English Dictionary* (2014) Oxford University Press, available at <http://www.oxforddictionaries.com/definition/english/govern>, date accessed 29 April 2014.

in comprehending its nature and vagaries'.⁴² Furthermore, the physical and societal structures in which we are embedded do not just exist independently, but are a product of conscious and subconscious human endeavours. Framing governance as an activity highlights how social orders are created, influenced or maintained by the choices, preferences, and decisions of individuals or collectivities and their engagement with diverse contextual factors, even when orders may at times seem unchanging and banal.

While it is important to define what governance entails it is also necessary to set out how it is located in relation to two further factors, namely *structures* and *forces*. As mentioned already, the thesis considers governance to be an activity of steering social order, rather than a structure. However structures are still very relevant to governance, as structures such as formal and informal rule systems are employed by governance to shape social orders. Structures can also vest governance actors with authority, and influence governance actions.

Governance also occurs in the context of various external *forces*. Forces are contextual factors that weigh on governance decisions, and can include violence, discourses, and social conditions such as poverty and degradation. Sometimes structures overlap with forces – e.g. rule systems are a structure that can also possess a strong or weak force. Forces are relevant to governance, as governance actors rarely make decisions without reference to the contexts and conditions that surround them. Forces do not amount to governance, but are rather like the winds, or currents that influence steering. Governance actors consider and weigh these factors against each other. Locating governance in relation structures and forces is important for its critical examination, as structures and forces often reflect power configurations in a given society. Governance displays how these power configurations are weighed, balanced and synthesised by those exercising a degree of authority, thereby shedding light on the values, concerns and principles that ultimately come to characterise a political sphere.

⁴² James Rosenau 'Governance in the 21st century' (1995) 1:1 *Global Governance* 13-34 at 17.

2.3 The theoretical framework of law and society

As previously mentioned the thesis defines 'governance' as the ways in which individuals or bodies exercising a degree of authority attempt to steer social or public order. Governance therefore involves processes of decision-making by those in positions of authority whose outcomes have legal or normative implications. Exploring these processes sheds light on how the spheres of law and society interrelate. The thesis therefore falls within the theoretical framework of 'law and society', which examines legal phenomena from a social science perspective. It encompasses diverse interdisciplinary fields including legal anthropology, the sociology of law, the school of legal pluralism, critical legal theory, and legal consciousness studies.

However to a degree the law and society movement does not offer a comprehensive theoretical framework for the thesis. This is because the thesis does not only seek to describe governance but also critically assesses the political implications of governance. The law and society movement often falls short of this goal. Many law and society works reflect a disjuncture between empirical descriptions of law in practice on the one hand, and theoretical critique on the other. For example, studies with an empirical focus on legal practices (characteristic of the school of legal pluralism) tend to remain just that – descriptions without deeper assessment of their implications. In contrast, critical studies of law (common amongst critical legal theorists) are usually preoccupied with critiquing legal ideologies without engaging in any in depth empirical exploration of how law manifests in the practical world. Where they do refer to empirical events these critical reflections usually rely on news articles or other written documents rather than direct interviews and discussions with actors involved.

This disconnect between empiricism and critique in the law and society movement results in many accounts of law and society being left incomplete and unrealised. A more complete analysis involves a combination of critical reflection and empirical observations of law. This thesis thus attempts to *critically* analyse *empirical* accounts of legal and regulatory phenomena and how they interrelate with society.

The general absence of 'critical empiricism' within the law and society movement has been acknowledged by a number of law and society scholars.⁴³ Between 1982 and 1995 the 'Amherst group' of scholars attended regular seminars in Amherst, Massachusetts with the intention of developing a critical approach to law and society.⁴⁴ They believed that much of law and society research had become preoccupied with what they termed 'gap studies', i.e. the empirical difference between the 'law on the books' and the 'law in action', and required more critical analysis. However disagreement and animosity soon emerged amongst group's members, which, combined with the distractions of various work priorities led to the dissolution of the group.⁴⁵ In spite of this some scholars associated with the seminar such as Susan Silbey continue to explore the idea of critical empiricism through 'legal consciousness studies' (LCS) which today is a dominant field in law and society studies.⁴⁶

LCS attempts to combine empirical studies of law with critique by exploring the concept of legal consciousness, i.e. the way in which ordinary people think about and experience law on a day-to-day basis.⁴⁷ This involves empirically investigating the ways in which people routinely use law, as well as analysing what this reveals about prevailing hegemonies and forms of domination existing within legal frameworks.⁴⁸ However, this approach tends to focus inwards, rather than outwards. What I mean by this is that by primarily critiquing the role of law and legal doctrines *in* everyday society, LCS overlooks the social, economic and political forces propel the development of laws and rules in the first place. They thus lack an outward orientation relating to what the development and application of laws and social rules reflect about the world and its politics. While it is true that every society is shaped by its laws, laws are also products of the societies in which they are located and thus reflective of them. While ideologies prevalent in everyday legal practices and routines can reinforce social hierarchies and domination, it is equally important

⁴³ David M. Trubek and John Esser "'Critical empiricism" in American legal studies: Paradox, program or Pandora's box?' (1989) 4 *Law and Social Inquiry* 3-52 at 4 and 13.

⁴⁴ John Brigham 'The Constitution of Interests: Institutionalism, CLS, and New Approaches to Sociolegal Studies' (1998) 10: 2 *Article 10 Yale Journal of Law & the Humanities* 421-461.

⁴⁵ Ibid. Christine B. Harrington and Barbara Yngvesson 'Interpretive Sociolegal Research' (Winter, 1990) 15:1 *Law & Social Inquiry*, 135-148. John P. Esser and David M. Trubek 'From "Scientism without Determinism" to "Interpretation without Politics": A Reply to Sarat, Harrington and Yngvesson' (Winter, 1990) 15:1 *Law & Social Inquiry* 171-180.

⁴⁶ Susan S. Silbey 'After legal consciousness' (2005) 1 *Annual Review of Law and Social Science* 323-368 at 326

⁴⁷ Mauricio García-Villegas 'Symbolic Power Without Violence? Critical Comments on Legal Consciousness Studies' (December 2003) 16:4 *International Journal for the Semiotics of Law* 363-393 at 365.

⁴⁸ Silbey (note 46) at 333.

to understand how everyday legal and normative practices are devised and strengthened in the first place and the political forces weighing in on these processes. This approach can provide insight into core political values and dynamics in society.

The framework of governance is appropriate for the task of combining empiricism with criticism. As mentioned, governance links legal and normative orders to broader socio-political factors. This is because governance involves political manoeuvring and contestation, and entails persons, institutions or groups in positions of authority choosing between diverse courses of action. In the process they weigh wider social and political factors such as power, violence, and popular sentiment in the development and application of laws, rules, policies, and regulations. The choice of path, and the dynamics surrounding such decisions are revelatory of the nature of politics in a given community. From a governance perspective, the linkages between law and society and their political implications therefore become vivid and more magnified.

Furthermore, governance does not only operate through the development and application of laws or social rules. Governance can occur via non-legal means such as direct force and violence or arbitrary decisions. These non-legal or extra-legal means of governance are relevant to critical law and society studies, as they have implications for the place of legal systems in generating social order.

Lastly, studying socio-legal phenomena from a governance perspective is not only useful for combining empiricism and critique. It is also helpful for understanding how legal and political systems operate in a rapidly changing world confronting new or growing pressures such as globalisation, migration, expanding gaps between the rich and poor, and environmental changes. Unlike legalistic terms such as 'law' or 'regulation', 'governance' discloses how laws, rules and policies emerge over a period of time in response to altering contexts. In contrast, laws and regulations are largely static outcomes of governance processes. The thesis does not aim to simply posit and interpret the varied laws and rules 'governing' Somali spaza traders. Instead it also examines the development and implementation of laws, rules, customs and policies in response to new and changing societal pressures. Thus a governance framework enables the thesis to critically analyse the evolution,

coproduction and development of laws, rights and justice during periods of social and political flux, as is the situation in contemporary South Africa, and many other nations and regions globally.

2.4 Research methodology

The methodology of the thesis is that of a case study – the subject being the formal and informal governance of foreign national spaza shopkeepers in South Africa. It is an ‘instrumental’ case study as opposed to an ‘intrinsic’ case study, as the case study acts as foundation for a further analysis on the nature of politics in a developing and postcolonial state, namely contemporary South Africa.⁴⁹

A key feature of a case study is that it attempts to understand complex phenomena that cannot be easily answered through singular means of data collection. Instead it relies on a range of evidence to put together a picture. This can include interviews, surveys, participant observation and document collection.⁵⁰ While case studies encompass similar methods to histories (such as the collection of documents and artefacts), case studies involve the added features of ‘direct observation of the events being studied and interviews of the persons involved in the events’.⁵¹ Researching the political implications of governance of foreign national spaza shopkeepers - which comprises complex and multi-layered phenomena - necessitates collecting a rich description of such phenomena from multiple perspectives that cannot be easily ascertained through singular methods such as quantitative surveys and statistics.⁵²

The thesis therefore relies on a variety of data collected over a period of time. Data sources include interviews, participant observation, newspaper articles, press releases, academic and policy papers, legislation, and documents such as agreements, fines and leaflets. Participant observation was particularly important, as many decisions pertaining to the governance of foreign national spaza shopkeepers

⁴⁹ Anne Suryani ‘Comparing Case Study and Ethnography as Qualitative Research Approaches’ (June 2008) 5:1 *Ilmu Komunikasi*, <http://jurnal.uajy.ac.id/jik/files/2012/05/7.-Anne-Suryani-117-128.pdf> 117-127 at 118.

⁵⁰ Jean Hartley ‘Case study research’ in Catherine Cassell and Gillian Symon (eds) *Essential Guide to Qualitative Methods in Organizational Research* (2004) SAGE at 323. Robert K. Yin *Case Study Research: Design and Methods* (vol 5) (2009) Sage Publications, Inc at 38.

⁵¹ Yin (note 50) at 58.

⁵² Robert C. Bogdan and Sari Knopp Biklen *Qualitative Research for Education: An Introduction to Theory and Methods* (5th edition) (2007) Pearson Education, Inc USA at 2.

were reached at community meetings held at local police stations or community halls. By being present at some of these meetings I could directly observe the arguments and roles of different parties in attendance. These details were not always mentioned or recalled by interviewees. Such direct data is important for learning how governance functions, as well as the interactions between local and national level political actors (senior government officials often attended these meetings). I also observed court appearances of foreign national spaza shopkeepers who had been fined to view first hand how the implementation of governance rules and policies (such as policing fining, and the municipal administration of by-laws) worked.

Document collection also contributed towards assembling a fuller picture of the governance of foreign national spaza traders. Some documents comprise hard evidence of events, such as police issued fines, municipal trading permits, intimidation letters, and copies of trade agreements. Furthermore, documents such as newspaper articles and press releases contribute further information on governance developments and the views and perspectives of varied governance actors.

Relying on a collage of triangulated accounts enables the thesis to construct a more accurate narrative of governance events and processes. For example, many interviewees could not recall certain data, such as names of key actors involved in governance, the dates of certain meetings and the specificities of governance agreements or rules. These gaps were reinforced and supplemented by other forms of data including media accounts, and written documents. Likewise, documents and newspaper articles, while often setting the dates and outcomes of meetings, and the names of parties involved, did not provide deep insight and analysis into governance processes, which were better obtained from in depth interviews with individuals engaged in or affected by governance practices.

However the thesis' case study on the governance of foreign national spaza shopkeepers encounters a key constraint, namely that it is made up of mainly archived data. This archived material is made up of interviews, original documents (such as copies of fines and informal trade agreements), news articles, policy documents, and notes of meetings that I collected during the course of the field research I conducted for the ACMS beginning in September 2010 until October 2012.

After the conclusion of the project, I continued to keep in touch with foreign national spaza shopkeepers who kept me informed about current events affecting their community. At the same time I conducted numerous interviews relating to informal migrant entrepreneurship as a consultant on projects run by the Southern African Migration Project (SAMP) at Queens University in Canada. These experiences contributed to my further familiarity and knowledge of the governance of foreign national spaza shops. To better understand the data collection process and the different phases of it I set out below the research methodology as initially designed and carried out for the ACMS between September 2010 and October 2012, as well as the additional experiences and research that contribute to my knowledge of the thesis topic.

2.4.2 Initial research – Visiting Researcher for the ACMS (2010 to 2012)

In September 2010 I began work on a project for the ACMS, which involved investigating the ability of foreign shopkeepers to access formal and informal justice mechanisms when they were victims of crime. At the time there had been a spate of murders affecting foreign national spaza shopkeepers in Cape Town, many of which involved arson attacks and resulted in traders being burned to death in their shops.⁵³ To explore what was occurring as well as the degree to which cases were being addressed by formal and informal justice systems I investigated the experiences of foreign national spaza shopkeepers in several townships in Cape Town and the Western Cape Province using qualitative, semi-structured interviews with diverse parties ranging from foreign national spaza traders, police officers, prosecutors, NGOs, and South African residents in affected areas.

The research focussed on the spaza market, as media and policy reports highlighted that foreign national spaza shops were particularly affected by violent crime.⁵⁴ Later interviews with police in field sites confirmed that spaza shops were most prone to

⁵³ Sandiso Phaliso 'Somali dies in Cape Town petrol bomb blaze' *West Cape News* 9 September 2010, available at <http://westcapenews.com/?p=2143>, date accessed 3 March 2017. Hlengiwe Mnguni 'Cape Somalis fear rise in attacks' *News24*, 10 September 2010, available at http://www.hiiraan.com/comments2-news-2010-sept-cape_somalis_fear_rise_in_attacks.aspx, date accessed 3 March 2017.

⁵⁴ Karen Breytenbach 'Somalis are 'suffering brunt of xenophobia' *IOL News* 7 August 2006, available at <http://www.iol.co.za/news/south-africa/somalis-are-suffering-brunt-of-xenophobia-1.288384#.T8-2He3Q9UQ>, date accessed 06 June 2012. Staff Reporter 'Toll hits 30 after more Somalis murdered' 4 September 2006, available at <http://www.iol.co.za/news/south-africa/toll-hits-30-after-more-somalis-murdered-1.292234#.T89hQu3Q9UQ>, date accessed 6 June 2012. Ludger Schadomsky 'Anti-foreigner violence remains endemic in South Africa' *DW Akademie* 7 June 2010, available at <http://www.dw.com/en/anti-foreigner-violence-remains-endemic-in-south-africa/a-5566671>, date accessed 3 March 2017.

violent attacks including hit and run shootings, arson attacks, looting and robbery. The research focussed exclusively on *Somali* spaza shopkeepers, as Somalis made up the vast majority of spaza shopkeepers in Cape Town. For example, police interviewed Philippi East stated that according to their audit of local spaza shops, Somali nationals operated 69,5% (57 out of 82) of foreign national spaza shops in the station's jurisdiction.⁵⁵ Similarly a survey of spaza shops in Delft South in Cape Town found that Somalis made up 88,9% of foreign national spaza shops (80 out 90 shops).⁵⁶ Police in Khayelitsha and Kraaifontein also estimated that most foreign national spaza shopkeepers in their station's jurisdiction were Somali.⁵⁷

I began the research with a personal motive in mind. As mentioned in the previous chapter, in August 2009, while working in a competition law department of a law firm, I became aware of an informal trade agreement regulating the spaza market in Gugulethu. The agreement barred foreign national spaza shopkeepers from opening new shops in the neighbourhood, forced them to fix their prices to those offered by South African shops, and obliged them to ensure their shops were a distance of no less than 100 metres from South African businesses. I was curious about this arrangement, as it posed critical questions about the notions of law and rights in relation to foreign nationals. When I enquired with traders about informal rules governing their shops, it became apparent that the Gugulethu agreement was not an anomaly, and that similar arrangements existed in most townships in the city. I therefore widened the scope of my ACMS research on access to justice to include how state and non-state actors addressed crime through governance interventions. As a result my interviews did not only cover criminal investigations and prosecutions. As part of my task of investigating informal justice mechanisms I included questions about conflict mediation interventions as well as laws and informal rules governing foreign national spaza shops in the field sites.

The research initially focused on three field sites in Cape Town namely Philippi, Khayelitsha and Kraaifontein. Because the initial research concentrated on access to justice for victims of crime, field sites were chosen according to the degree of crime experienced by Somali spaza shopkeepers in the areas. All three field sites

⁵⁵ Interview, Philippi East police sector managers, Philippi East, 8 November 2011.

⁵⁶ Charman *et al* (note 26) at 58.

⁵⁷ Interview, Khayelitsha police station sector manager, Khayelitsha, 25 October 2012. Interview, Khayelitsha police station detective, Khayelitsha, 27 October 2011. Interview, Harare police station crime intelligence official, Harare, Khayelitsha, 24 May 2012. Interview, Kraaifontein police station colonel, Kraaifontein, 8 November 2011.

were located in black township neighbourhoods, where spaza shops were predominantly located. In the absence of public police statistics on crime affecting foreign nationals, I selected the field sites on the basis of advice provided to me by the Somali Association of South Africa (SASA), a Somali community organisation operating in Cape Town, Johannesburg and Port Elizabeth.

SASA representatives identified Kraaifontein (containing the townships of Bloekombos and Wallacedene) and Philippi as 'hotspots' where crime affecting Somali spaza shopkeepers was rife. In contrast they described that the township of Khayelitsha as relatively peaceful and quiet. Kraaifontein and Philippi were thus chosen as field sites because of their perceived high levels of crime, while Khayelitsha was chosen as a comparison site to identify possible factors that contributed to greater safety. However, during the course of the research it became apparent that Somali spaza shopkeepers in Khayelitsha also experienced high levels of violent crime, especially robbery and looting. Furthermore I could not locate any township in Cape Town where Somali spaza traders generally felt safe. Yet, what did distinguish Khayelitsha from Kraaifontein and Philippi was a lower rate of attacks and murders orchestrated by South African traders against their foreign national competitors. Khayelitsha was thus retained as a comparison field site because of this differing feature.

All three field sites lay out on the peripheries of Cape Town approximately 25 to 35 kilometres from the city centre. They were made up of both formal housing areas as well as informal shack settlements. However foreign national spaza shops tended to be located more in formalised areas. In certain informal settlements in Philippi there were no foreign national spaza shops to be found at all,⁵⁸ whereas in Khayelitsha some foreign nationals spaza shops were situated on main roads or in close proximity to main roads in informal settlements such as Endlovini in Harare.⁵⁹ According to the 2011 census the populations of all three field sites were mainly 'black African' and Xhosa speaking.⁶⁰ Levels of poverty and unemployment were high, with 50.8% of the population of Khayelitsha and 59% of residents living in

⁵⁸ Interview, Philippi East sector managers, Philippi East, 8 November 2011

⁵⁹ Patrolling with Harare crime prevention police officers on 24 May 2012.

⁶⁰ Adrian Frith compilation of census 2011 data available at <https://census2011.adrianfrith.com/place/199>. The site developer used population statistics obtained from the Census 2011 Community Profile Databases, and calculated geographical areas from the Census 2011 GIS DVD.

Philippi being unemployed,⁶¹ Similarly Bloekombos and Wallacedene in Kraaifontein exhibited unemployment rates of 66.8% and 52% respectively.⁶²

Khayelitsha (meaning 'new home') was established in the 1980s by Dr. Piet Koornhof, the Minister of Cooperation and Development in the apartheid government to house 'illegal' residents living in the city's squatter camps or established townships.⁶³ It was the largest of the three field sites, housing a population of 391,749 residents, of whom 96.77% were black and 90.54% spoke Xhosa as a first language.⁶⁴ According to the police, foreign nationals operated 50% of spaza shops in Site B and Site C, and 60% of shops in Harare.⁶⁵ Between 80% and 90% of foreign national spaza shopkeepers were Somali nationals.⁶⁶

Philippi was established as a farming region by German immigrants in the late 1800s, and today still houses a large horticultural area, which provides much of the city's fresh produce.⁶⁷ Parts of Philippi were first established as township settlements in the mid-1970s, with large developments continuing throughout the 1990s.⁶⁸ By 2011 it had a population of 200,603.⁶⁹ The area now houses a number of township neighbourhoods including Philippi East, Browns Farm, Samora Machel, and Weltevreden Valley.⁷⁰ Research was conducted in Philippi East (Lower Crossroads, Better Life, Pola Park, Thabo Mbeki and Acacia Park) and Browns Farm. As was the case in Khayelitsha, the vast majority of residents in Philippi were black and Xhosa.

⁶¹ City of Cape Town Information and Knowledge Management Department 'A Population Profile of Khayelitsha,' April 2005, at 14, available at http://www.capetown.gov.za/en/stats/CityReports/Documents/Population%20Profiles/A_Population_Profile_of_Khayelitsha_1052006142120_359.pdf, date accessed 2 June 2012. 2001 census data for the City of Cape Town, available at <http://www.capetown.gov.za/en/stats/2001census/Pages/Profiles.aspx>, date accessed 10 June 2012.

⁶² Ibid.

⁶³ 'South African history Online 'Khayelitsha township' available at <http://www.sahistory.org.za/place/khayelitsha-township>, date accessed 3 March 2016.

⁶⁴ Frith (note 60) at <https://census2011.adrianfrith.com/place/199038>.

⁶⁵ Telephone interview, Khayelitsha police station crime intelligence officers, 17 April 2012. Interview, Harare station commander, Harare, Khayelitsha, 7 December 2011.

⁶⁶ Interview, Khayelitsha police station sector manager, Khayelitsha, 25 October 2012. Interview, Khayelitsha police station detective, Khayelitsha, 27 October 2011. Interview, Harare police station crime intelligence official, Harare, Khayelitsha, 24 May 2012.

⁶⁷ Dr Jane Battersby-Lennard and Gareth Haysom 'Philippi horticultural area: A city asset or potential development node?' (April 2012) Report commissioned by Rooftops Canada Foundation Inc., Foundation Abri International in partnership with the African Food Security Urban Network, available at <http://www.afsun.org/wp-content/uploads/2013/09/Philippi-Battersby-LennardandHaysom.pdf>, date accessed 3 March 2017.

⁶⁸ Valerie Anderson, Sepideh Azari and Anya van Wyk 'Philippi Community Profile' (2009) The South African Education and Environment Project (SEAP) report, available at <http://www.saep.org/media/docs/125810846813.pdf>, date accessed 3 March 2017.

⁶⁹ Frith (note 60) at <https://census2011.adrianfrith.com/place/199033>

⁷⁰ Anderson et al (note 68) at 12.

For example, 2011 Census indicates that 96,82% of the population of Philippi East identified themselves as 'black' and 82.60% spoke Xhosa as a first language.⁷¹ According to a database at Philippi East Police Station, there were 147 spaza shops in their jurisdiction in 2011.⁷² Of these, South Africans operated 90 shops (52,3% of shops), while foreign nationals operated 82 shops (47,7%). Somali nationals operated 57 shops, (and hence the majority of foreign national spaza shops) in the station's jurisdiction. Traders from a range of different countries operated the remaining 24 shops including traders from Ethiopia (seven shops), Burundi (nine shops), Bangladesh (three shops), Malawi (one shop), Togo (one shop) and Nigeria (one shop).

Kraaifontein was a suburb on the outskirts of Cape Town and housed Bloekombos and Wallacedene townships, both of which fell within the jurisdiction of Kraaifontein police station. The area was surrounded by commercial farms and was also close to the agricultural towns of Paarl and Stellenbosch. According to the 2011 census Bloekombos and Wallacedene had a combined population of 39,622.⁷³ As was the case with Khayelitsha and Philippi, most residents identified themselves as black African (89.53% in Bloekombos and 75.40% in Wallacedene) and Xhosa speaking (73,79% in Bloekombos and 62.56% in Wallacedene) in the 2011 census.⁷⁴ However, unlike Khayelitsha and Philippi, both Bloekombos and Wallacedene also housed substantial 'coloured' populations (8.57% in Bloekombos and 22.87% of the population of Wallacedene).⁷⁵ A Somali community representative from Kraaifontein reported that the community had conducted a survey of Somali shops for the Kraaifontein police station, and had counted 108 Somali shops in total in Wallacedene and Bloekombos.⁷⁶ However, because they had only counted Somali shops they did not know how South African or other (non-Somali) foreign national spaza shops there were in the area. Police estimated that foreigners operated approximately 99% of spaza shops in Kraaifontein, while Somali community leaders

⁷¹ Frith (note 60) at <https://census2011.adrianfrith.com/place/199033007>

⁷² Interview, Philippi East sector managers, Philippi, Philippi East, 8 November 2011.

⁷³ Frith (note 60) at <https://census2011.adrianfrith.com/place/199018>

⁷⁴ Frith (note 60) at <https://census2011.adrianfrith.com/place/199018019>; and at <https://census2011.adrianfrith.com/place/199018016>

⁷⁵ Frith (note 60) <https://census2011.adrianfrith.com/place/199018019>; and at <https://census2011.adrianfrith.com/place/199018016>

⁷⁶ Interview, Kraaifontein Somali trader, Kraaifontein, 5 June 2012.

from Kraaifontein believed that foreign nationals only operated 50% of spaza shops.⁷⁷ The real percentage probably lay somewhere in between.

Apart from the three field sites of Khayelitsha, Philippi and Kraaifontein, interviews were also conducted with Somali spaza shopkeepers based in the townships of Masiphumelele and Gugulethu. This was because these neighbourhoods had witnessed significant governance interventions in response to mobilisations by South African spaza shopkeepers. Masiphumelele was the site of the earliest xenophobic riots against foreign national spaza shops in the city in 2006, which were followed by the first attempt to informally regulate foreign national businesses. Gugulethu experienced elaborate trade negotiations in 2009 in response to threatening letters being sent to Somali spaza shops in the area. I also interviewed Somali shopkeepers in the coloured neighbourhood of Elsies Rivier where many shopkeepers complained about aggressive fining and unlawful arrests by police.

In order to get an idea of provincial level trends (as the research focussed on the Western Cape) I conducted interviews with seventeen Somali spaza shopkeepers based in six different small towns across the Western Cape Province, namely Vredenburg, Velddrif, Tulbagh, Ceres, Prince Albert Hamlet and Caledon. These towns were selected based on their geographical location as well as their distinct economies.

Interviews with Somali spaza shopkeepers and South African township residents were carried out with the help of paid research assistants from the respective field sites. This was because I was unfamiliar with both the Somali community, as well as Cape Town's townships. I did not know my way around the Somali neighbourhood in Bellville nor any townships in Cape Town, let alone the social dynamics at play. Research assistants therefore helped to acquaint me to their neighbourhoods and explain my research to interviewees. They also assisted with interpretation where needed.

⁷⁷ Interview, Kraaifontein police station colonel, Kraaifontein, 8 November 2011. Interview, Kraaifontein Somali community representative, Bellville, 14 December 2010.

Most of the interviews that I conducted with Somali spaza shopkeepers were carried out in Bellville rather than in their shops. While some traders were comfortable speaking to me in their shops (especially in small towns where almost all interviews were conducted in interviewees' shops), the majority in Cape Town preferred that I interview them in Bellville instead. Somali spaza shopkeepers working in small towns, or coloured neighbourhoods in the city where levels of crime and social conflict were not as severe were happy to speak in their shops. However others in more crime-ridden urban townships were visibly uncomfortable and did not wish to draw any attention to themselves by conversing with me in their shop premises. At the time they told me that it was because they did not want their customers to overhear the interviews. However, I also suspect that as a white middle class researcher, I drew attention to the interview, as I clearly not a 'local'. As a result of their discomfort, traders suggested other venues to be interviewed. For example, a Gugulethu shopkeeper requested that I interview him in my car, which was parked on a pavement some distance from his shop. Another trader invited me to interview him in the home of his landlord, but was hesitant answering my questions, as his landlord was within earshot of our conversation watching television. These experiences led me to offer to alternatively meet traders in Bellville. At first a local Imam granted me permission to carry out interviews in the office of his mosque. When the office was in use I carried out interviews at a local coffee shop called 'Blue Café' which had an outside area that was quite quiet. I later conducted interviews at the offices of different Somali community organisations such as the Ogaden Youth and Student Union (OYSU), the Somali Refugee Aid Agency (SORAA) and the Somali Association of South Africa (SASA).

When I interviewed Somali spaza shopkeepers I used the snowball technique by asking interviewees whether they knew of any further people I could speak to. I also relied on my research assistant's network of friends and acquaintances to identify new respondents. In contrast interviews with South African township residents were conducted by approaching residents sitting on street corners or in their yards, who seemed to have time on their hands to converse. I sought out a more random sample of South African respondents, as I wished to obtain a variety of perspectives on foreign national spaza shopkeepers and governance systems, rather than just the views of a particular social network. I did not conduct focus groups with South African residents because foreign national spaza shops were a contentious issue for some residents and I did not wish to cause any local acrimony. A similar approach was

recently also taken by the Competition Commission, which decided not to hold public hearings for its inquiry into foreign national retail businesses out of fear that it could spark unrest.⁷⁸ I also believed that residents would provide more accurate accounts of how they felt if they were interviewed individually. Most interviews were carried out on weekends in order to access both employed and unemployed South Africans.

I asked all interviewees whether I could voice-record their interviews, and a substantial number indicated that they did not wish to be recorded. These included police officers, prosecutors, some residents, and some foreign national spaza shopkeepers. In these instances I took notes during the interviews instead. I transcribed all my written interview notes (including those for those interviews that were voice-recorded). However, due to time and resource constraints I did not transcribe all voice-recordings of my interviews, and only did so for some interviews that I felt were particularly important. Interviewees were also asked whether they preferred being interviewed in their home language rather than in English. In instances where they elected to be interviewed in their home language, I would rely on my research assistants (who were fluent in both languages) to interpret for me. I would then rely on my notes and recordings of these translations rather than the original home-language account when conducting my analysis, as I lacked the financial resources to pay someone to translate and transcribe these recordings. As a result some of my data may miss the nuances and greater accuracy that translated transcriptions would likely have provided.

Interviews with foreign national spaza shopkeepers were summarised and ordered into an excel spread sheet that set out key themes covered by the interviews, i.e. the number and types of crimes experienced by traders, the response of the formal justice sector to these crimes, informal rules regulating their shops, the nature of community structures and their response to crimes, as well as 'personal information', which comprised interviewees' contact details, the location of their shops, the date they established their businesses, how they came about opening shops, and where relevant the date that they closed down their businesses (many of them had closed down or sold their shops in the aftermath of attacks). By ordering interviews in this way I could more easily understand and compare the different types of crimes affecting foreign national spaza shopkeepers in each field site, as well as varied

⁷⁸ Telephone conversation with representative from the Competition Commission, 19 January 2017.

formal and informal responses to crimes, forms of business regulation, and a general time frame of shops' presence in neighbourhoods.

Because of high levels of violent crime, very few foreign national spaza shopkeepers in Cape Town's townships were women. As a result, with the exception of two female spaza shopkeepers in Masiphumelele, all foreign national spaza shopkeepers interviewed were men. The fact that almost all spaza shopkeepers interviewed were male, means that the study does not shed light on how the small minority of female spaza shopkeepers may have encountered crime and governance in Cape Town's townships.

I avoided interviewing South African spaza shopkeepers altogether in order to prevent the risk of reviving any latent antagonisms towards foreign national spaza shopkeepers. A number of South African retailers in my field sites had regularly mobilised against foreign national spaza shopkeepers and police believed that some had allegedly orchestrated murderous attacks against them. Instead of conducting interviews with South African spaza traders, I relied mainly on observing South African spaza shopkeepers at four conflict mediation meetings in Khayelitsha in 2012.⁷⁹ At these meetings, South African spaza shopkeepers discussed their business struggles, their views about foreign national spaza shopkeepers, and how they felt market should be governed. The few South African shopkeepers who I did interview were either interviewed because I encountered them by accident while conducting interviews with residents, or were introduced to me by my research assistants who were acquainted to them.

The research project with the ACMS came to an end in October 2012 by which time I had conducted a total of 189 interviews with Somali shopkeepers, South African residents, police officers, prosecutors, local councillors, landlords and South African shopkeepers (see table below). It culminated in a report titled 'Elusive Justice: Somali traders' access to formal and informal justice mechanisms in the Western Cape'.⁸⁰ This research forms primary basis of the empirical fieldwork component of the thesis. Its contribution to the thesis lies not only in the material gathered

⁷⁹ Meetings were held on 7 March 2012, 20 March 2012, 29 March 2012 and 18 April 2012.

⁸⁰ (2012) African Centre for Migration & Society report, available at <http://www.migration.org.za/uploads/docs/report-38.pdf>, date accessed 3 March 2017.

regarding governance interventions, but also in its in depth findings regarding crime affecting foreign national spaza shopkeepers and the workings of informal and formal justice systems. This is because violent crime, xenophobic violence and weak formal justice mechanisms are key contextual factors influencing governance strategies.

Interviews								
Area	Somali traders	SA residents	SA traders	Police	Land-lords	Legal Aid	Prosecutors	Other stakeholders
Khayelitsha	15	14	0	11	1	1	0	3
Kraaifontein	10	10	3	5	2	2	1	2
Philippi	15	35	5	4	4	1	4	3
Small towns	17	0	0	0	0	0	0	0
Other areas	9	6	1	0	0	0	0	5
Total	66	65	9	20	7	4	5	13

2.4.2 Additional research (2010 to 2016)

Despite drawing predominantly on the above archived qualitative field research, the thesis encompasses further interviews and field experiences. During the course of the initial research for ACMS I became aware that much contention about foreign national spaza shopkeepers related to their *economic* activities. On the one hand many residents appreciated foreign national spaza shops' low prices and efficient services, while others viewed shops as restricting economic opportunities for South Africans. South African spaza traders also organised mobilisations against foreign national spaza shopkeepers as a means of ridding themselves of economic competition. This led me to carry out several further qualitative interviews with Somali spaza shopkeepers regarding their trade practices, as well as a focus group on the issue with ten traders from Khayelitsha. These observations and interviews culminated in a second report published in 2013 and titled 'Somalinomics: A case study on the economic dimensions of Somali informal trade in the Western Cape'.⁸¹ This research contributed to the thesis, by enabling me to better understand the local economic context in which governance interventions were taking place.

⁸¹ Vanya Gastrow with Roni Amit (2013) African Centre for Migration & Society report, available at <http://www.migration.org.za/uploads/docs/report-42.pdf>, date accessed 3 March 2017.

Additional interviews	
Area	Somali traders
Khayelitsha	2
Franschhoek	1
Philippi East	1
Masiphumelele	1
Ravensmead and Grassy Park	1
Total	6

I also came across valuable information by becoming engaged with the Somali community in Cape Town. During the course of my research I frequently received information from Somali spaza shopkeepers and activists about matters affecting the community ranging from crime, law enforcement raids, and threats by South African shopkeepers. On the one hand this came about as a result of having acquainted and befriended a number of Somali shopkeepers and community activists. Because most of my interviews with Somali spaza shopkeepers were conducted in Bellville, I got to know the neighbourhood and many of its residents and frequenters very well. This included community activists, and ordinary shopkeepers who I had met through interviews. On the other hand, my knowledge of the challenges affecting the Somali community, my contacts in the NGO field, and my legal background also led a number of Somali community members to contact me to report legal or regulatory problems that their businesses had encountered and seek advice.

This contact broadened my exposure to issues and events affecting the community. For example, in late 2011 police throughout Cape Town carried out fining operations against Somali spaza shops. I first became aware of the issue when conversing with a Somali community activist in Bellville. He mentioned that he had spoken to the UCT Refugee Rights Unit who advised that the legislation cited on the fines did not exist. I checked the fines myself and agreed with the Unit's finding. Thereafter a number of traders approached me for advice about their fines, all of whom I referred to an attorney at the Legal Resources Centre who was working on the matter. Likewise my attendance at meetings between Somali and South African

shopkeepers in Khayelitsha was at the invitation of Somali community leaders who wished me to observe what took place. The thesis draws on these experiences in its discussion of governance of foreign shopkeepers.

Lastly in 2014 and 2016 I conducted interviews with key organisations and institutions for two projects being carried out by the South African Migration Programme (SAMP) on foreign migrant entrepreneurs and their contribution to local economies. In particular I interviewed migrant community leaders, NGOs assisting refugees and asylum seekers, the Western Cape provincial department of economic development and tourism, and local government departments (including the City of Cape Town's law enforcement department, environmental health department, economic development department, and planning and building development management department). These interviews also contributed to my knowledge of migrant informal businesses and their regulation in the city. Unlike my research for the ACMS, the project also involved me interviewing foreign national community representatives from a range of different countries, including Congolese, Burundian, and Oromo (Ethiopian) community representatives. These interviews helped me better understand the City's regulatory framework in relation to informal economies, as well as other migrant communities that were active in the spaza market.

Interviews with key organisations	
NGOs	7
Local government officials	7
Provincial government officials	2
Migrant community organisations	6
Other stakeholders	4

2.4.3 Adapting the initial research data to the thesis topic

My research with the ACMS focussed predominantly on the ability of Somali spaza shopkeepers in the Western Cape to access justice when they were victims of crime. In contrast the current thesis explores the governance of these shops on local as well as national levels and their political implications. At first glance this seems like a very

different topic. However as mentioned, during the course of my field research for ACMS I widened the notion of 'justice' to include governance interventions that arose in response to attacks on and threats against Somali spaza shopkeepers. Thus my interviews with shopkeepers, South African residents, landlords, police and prosecutors also explored conflict interventions and formal laws and informal rules governing the market.

Yet the archived data has two important shortcomings. First, although the data covered the topic of governance, I was not conscious at the time that I would use the material specifically towards a PhD examining the *political implications* of governance. Had I conducted all the interviews with that awareness in mind I would have enquired more into interviewees' views regarding laws, rights and justice, and how they navigated the intersection between political freedom and economic needs and aspirations. Fortunately many of my interviews did cover these topics, however the data would have been richer had I been more alert to the relevance of that line of questioning for my PhD.

A second shortcoming of the archived research is that it was based on fieldwork that I conducted in the Western Cape, whereas the thesis topic relates to governance in *South Africa*. Due to cost constraints I did not carry out local level field sites research beyond the Western Cape province. As a PhD candidate living off grants and scholarships I did not have the financial resources to travel to different parts of the country to conduct additional qualitative research. To find out more about local level governance elsewhere in South Africa, I conducted desktop searches of media articles, court cases and academic reports. Although cross-country research would have been valuable, it was not essential to making findings regarding local level governance in South Africa. Abundant media reports show that governance efforts in other localities in the country have frequently mirrored local trends in Cape Town. For example, mobilisations by South African traders against foreign national spaza traders have occurred regularly in different townships across the country including in the Western Cape,⁸² Gauteng,⁸³ the Eastern Cape,⁸⁴ and the Free State⁸⁵ provinces.

⁸² Quinton Mtyala 'Landlords of Somalis invited to resolve wrangle over trading' *Cape Times* 24 July 2009 at 5. Kowthar Solomons 'Truth declared in spaza shop war' *Cape Argus* 3 August 2009 at 3.

⁸³ Jean Pierre Miasago and Matthew Wilhelm-Solomon 'Foreign traders are fair game' opinion piece in *the Mail & Guardian*, May 20 2011, available at <http://mg.co.za/article/2011-05-20-foreign-traders-are-fair-game>, date accessed 1 April 2015. Mpiletso Motumi 'Business owners set shops on fire' *IOL News*, February 27 2015 available at <http://www.iol.co.za/news/crime-courts/business-owners-set-shops-on-fire->

Furthermore these calls have led to the establishment of informal agreements aimed at limiting foreign national spaza shops in numerous locations in the Western Cape⁸⁶ and the Eastern Cape.⁸⁷ Similarly fining operations against foreign spaza traders have occurred in the Western Cape, Limpopo and the North West provinces.⁸⁸ Examining the governance of Somali traders at a local level in Cape Town can thus provide insight into wider governance efforts across the country.

Furthermore, the thesis builds on the archived research data by examining formal national level governance developments. This involved researching national laws, policies, and draft legislation. I also collected media reports and press releases to find out more about national level governance plans and policies and the political dynamics surrounding them. However, I did not carry out qualitative interviews with national political leaders involved in crafting new governance interventions due to logistical issues and a lack of response from relevant departments. For example the DTI advised that they no longer dealt with matters relating to small businesses as their mandate had been handed over to the Department of Small Business Development. However, the Department of Small Business Development was based in Gauteng, and had no office in Cape Town. In addition, I encountered difficulties setting up interviews with provincial offices of national departments, as I received no response from the Department of Homes Affairs' Western Cape office, the South African Revenue Service (SARS) and the Western Cape Provincial Commissioner of Police.

1.1824497#.VRvG2VyQdUQ, date accessed 1 April 215. Mpiletso Motumi 'Business owners set shops on fire' *IOL News*, February 27 2015 available at <http://www.iol.co.za/news/crime-courts/business-owners-set-shops-on-fire-1.1824497#.VRvG2VyQdUQ>, date accessed 1 April 215.

⁸⁴ Luyolo Mkentane 'Somalis to register with spaza body' *The Herald* (25 March 2011) at 24.

⁸⁵ The editor 'Botshabelo engulfed by Xenophobic flames' *The weekly Free State* (6 July 2012), available at <http://theweekly.co.za/?p=8143>, date accessed 1 April 2015.

⁸⁶ Ester Lewis 'We'll close down illegal spazas' *Cape Argus* 8 February 2011 at 4. Vuyo Mabandla 'Bid to 'extinguish' attacks on Somalis' *Cape Argus* 26 July 2009, available at <http://abahlali.org/node/5542/>, date accessed 3 March 2017.

⁸⁷ Luyolo Mkentane 'Somalis to register with spaza body' *The Herald*, 25 March 2011 at 24. Mandlenkosi Mxengi 'Bhisho acts on xenophobic threats' *Fever.Online*, 26 July 2012, available at <http://www.fever-blue.co.za/articles/articledetails.aspx?id=29153>, date accessed 25 March 2013.

⁸⁸ Interviews with foreign national spaza shopkeepers in Cape Town. Mandla Khoza 'Operation Hardstick: Cops out in force' *News24*, 23 April 2012, available at <http://www.news24.com/SouthAfrica/News/Operation-Hardstick-Limpopo-cops-out-in-force-20120423>, date accessed 3 March 2017. 'Police target foreign traders in Limpopo' *Irin News*, 17 August 2012, available at <http://www.irinnews.org/report/96130/south-africa-police-target-foreign-traders-limpopo>, date accessed 3 March 2017. Valerie Cilliers 'Court rules on spaza shops' *Northern News*, 24 August 2012, available at http://www.noordnuus.co.za/details/24-08-2012/court_rules_on_spaza_shops/14634, date accessed 12 December 2013.

Despite the difficulties of working with archived data from different research projects there are benefits to the way in which the research unfolded. This is because the thesis can make use of a variety of data collected over a span of several years and related to a number of different research enquiries (such as crime affecting foreign national spaza shopkeepers, their access to formal and informal justice mechanisms, the governance of their businesses and economic considerations). This possesses great value, as the governance of foreign national spaza shopkeepers cannot be viewed in isolation, but is embedded in social contexts of crime, informal governance structures and economic competition. By covering these broad issues, the thesis is better able to explore and understand multiple perspectives and considerations that shape and influence governance.

Furthermore because governance is an activity of steering social order, not just the outcome of such a process – as is the case with laws and rules - it requires studying how rules are generated, contested and enforced. These events do not necessarily occur on a daily basis, but can emerge sporadically, can be once off, and evolve gradually over time. My long-term engagement with the Somali community as a researcher enabled me to observe how governance developed and adapted over many years. This was all the more important given that Somali nationals in Cape Town were often transient and did not reside in the city for long periods of time. Many of those involved in early governance interventions later resettled in third countries such as America, England, Australia and East Africa. Most of those active in Cape Town today would only have select knowledge of more recent trends and events. Having been in the field for an extended period of time thus enabled me to assemble an historical outline of events.

2.6 Positionality

No researcher can claim to be a completely objective and passive gatherer of information and data. Instead, as England puts it, fieldwork is ‘a dialogical process in which the research situation is structured by both the researcher and the person being researched’.⁸⁹ Researchers enter the field with unique biographies and sets of assumptions, while research participants react to the research in distinct ways

⁸⁹ Kim V. L. England ‘Getting Personal: Reflexivity, Positionality, and Feminist Research’ (1994) 46:1 *The Professional Geographer* 80-9 at 84.

depending on how they perceive the researcher.⁹⁰ This state of affairs requires researchers to reflect on their position relation to their research settings and how this impacts on their work and findings.⁹¹

In particular my position in relation to my research participants shaped my research by influencing my ability to access key communities and institutions, impacting on the potential validity of my findings, and affecting my ability to probe and interpret my data. In terms of access, I found that being a middle class white female generally made reaching diverse research environments easier. Generally I encountered few barriers to accessing three key research groups namely, Somali spaza shopkeepers, South African residents, and police officers. This was aided by the fact that I followed certain channels in accessing them. For example, I began my research with the Somali community by first setting up a meeting with the Somali Association of South Africa (SASA) and requesting their help and advice for interviewing Somali spaza shopkeepers. I then conducted interviews accompanied by a Somali research assistant, whom I had met through SASA, and who helped to facilitate interviews. My assistant's own positionality as a community insider who also happened to possess a relaxed, outgoing and very sociable disposition further enabled me to establish a foothold in the Somali community. Similarly when I conducted interviews with residents in townships I arranged for South African research assistants who were familiar with the respective neighbourhoods to accompany me, and help approach potential interviewees and explain the purpose of the research to them. I used a different approach when it came to accessing police officers. Police at the Philippi East police station advised that I needed formal written consent from the Provincial Commissioner of Police in order to interview any officers at the station. I therefore contacted the provincial office of the South African Police Service (SAPS), which required me to submit a formal application to their national legal department. Once permission was granted several months later I encountered almost no hurdles in interviewing police. The SAPS's provincial office contacted the station commanders of the relevant police stations where I wished to carry out research and instructed them to assist me. Thus all the station commanders whom I interacted with were very open and helpful. Apart from allowing me to interview them, they guided me around their stations, and introduced me to their intelligence officers, sector managers and investigators whom I further interviewed.

⁹⁰ C. Chavez 'Conceptualizing from the Inside: Advantages, Complications, and Demands on Insider Positionality' (2008) 13:3 *The Qualitative Report* 474-494 at 474.

⁹¹ England (note 89) at 85.

When it came to interacting with the Somali community, I found that my general social privilege contributed towards gaining access. For example, being South African – as opposed to a foreign national - was advantageous when it came to working with the Somali community. This may seem surprising as Somalis themselves were foreign nationals and would probably have a lot in common with a similarly located researcher. However, many foreign national researchers that conducted research on migration in Cape Town tended to be sojourners in the city who would leave after a few weeks, months, or a couple years. This limited their ability to form long-term relationships and play a continual role influencing migration policies and discourses in Cape Town and nationally. Because I was from South Africa, Somali participants also possibly thought that there was a greater likelihood that I had a wider social and professional network to draw on than someone who was not from the country, and thus thought I was a useful person to meet and work with. Being South African thus contributed to Somali activists investing their time and efforts in my research than if I had been a visiting scholar from overseas. At the same time South African interviewees such as residents, police, prosecutors, councillors would frequently air fearful or angry sentiments about foreign nationals, something they would likely be less inclined to do were they being interviewed by a foreign national. Other aspects of my privileged positionality also enabled me to gain access to the Somali community. Being middleclass and educated also contributed to many Somali interviewees perceiving me as a useful future contact to have should they need any general advice or help. For example, a number of Somali interviewees made efforts to keep in contact with me subsequent to their interviews by sending me festive season greetings via text message or phoning me sporadically to ask me how I was doing.

At the same time, being an outsider to the community also had advantages. In particular being religiously secular and coming from a different cultural background had the significant benefit that many of restrictive cultural and religious norms that applied to most Somali women in the community did not apply to me. For example, when discussing my research with a Somali community activist in his office, he advised that a Somali woman would normally never sit alone in a room with a man, but assured me that I need not worry about that custom. Likewise, I was frequently invited to Somali restaurants and cafes in Bellville and Mitchells Plain (where I conducted a number of interviews), which Somali women almost never frequented.

Furthermore, despite being an 'outsider' to the Somali community, in many ways I had a lot in common with them. This came from an unexpected source, namely that Somali community leaders in Cape Town were mostly my age take or give a year or two. In other words we were all children of the early 1980s. As a result age seniority did not impact on my relationships with them. In fact because we were all of the same generation, we easily came to see each other as friends and colleagues, all navigating similar issues such as relationships, marriage, young children and figuring out our careers.

Class disparities between my research participants and myself were also not as wide as they seemed. Despite the fact that most Somali were poor and lacked formal education, at the same time they came across as very 'middle class'. Somalis admired education, with many of them aspiring to undertake tertiary level education, some even doing so while operating spaza shops at the same time. This was facilitated by the fact that there was not a large disconnect between educated or professional 'elite' Somalis and poorer Somalis living precariously just below the breadline in Bellville. Somalis from diverse backgrounds were still connected to each other through their clan affiliations, as well as because the Somali community in Bellville was small and tightly knit. As a result it was not unfamiliar to see spaza shopkeepers, court translators, university lecturers, activists, professionals and students meeting and socialising together at local restaurants and cafes. Somalis that I encountered were also well read and interested in South African, African and global politics and history. They also tended to be relatively confident, socially aspirational, and engaged in small trade and business rather than labour work. Thus although Somalis mostly belonged to a different economic and educational bracket to me, this difference did not come across sharply, and was ameliorated by their social cohesiveness, their middle class values and aspirations, and their familiarity with engaging with educated and professional classes.

The only barrier I encountered when it came to accessing Somali respondents was that many of them did not wish to be interviewed in their spaza shops. There were several reasons for this, including that they were weary that their customers could overhear the interview, and our interviews were frequently interrupted by customer requests. However, I felt as though most Somalis were self-conscious about me

being there in the first place given that, as a white person, I was clearly not from neighbourhood and thus drew attention to them and their shops. Although I addressed this concern by interviewing many Somali respondents in Bellville, the fact that most interviews were not conducted in shopkeepers' spaza shops inhibited my ability to directly observe the conditions under which many Somali spaza shopkeepers lived and worked. This difficulty would probably have been lessened had I been a African foreign national or black South African.

Although my social background and racial identity inhibited me from carrying out interviews with Somalis in townships, it was not a stumbling block when it came to interviewing South African township residents. This was partly because research assistants from the relevant field sites accompanied me during the course of my fieldwork. In this way I was able to overcome the serious drawbacks and dangers of being unfamiliar with the neighbourhoods and not knowing my way around. Once I began my fieldwork I found that being a white middleclass researcher in a poor black neighbourhood was generally not a point of contention for local residents. Instead many residents viewed me as an interesting anomaly, with whom they were happy to engage. The spacial legacies of apartheid are stark in Cape Town, resulting in white South Africans barely ever setting foot in black townships. Many township interviewees were therefore not only hospitable, but even delighted to have me at their homes, urging me to come back and visit them whenever I wished, and remarking how pleasant it was seeing a white person in their neighbourhood. Given the general lack of meaningful contact between poor black South Africans and middle class white South Africans in the city, many township residents seemed eager to share their views and describe their communities to me. Unlike with Somali interviewees, it did not appear that South Africans necessarily viewed me as a useful contact to have. This was possibly because my research topic related to foreign national shopkeepers. Instead it seemed to me that they simply enjoyed the opportunity to engage across colour and class lines.

Being female enhanced my ability to access Somali and South African research participants. I had a sense that it played a role in disarming interviewees, as I rarely felt that interviewees were particularly nervous or intimidated by me, or saw me as a threat. Sometimes I was surprised by the ease at which interviewees would share controversial or personal views with me, despite being well informed that I was

undertaking research for a report. This is not to say that being female was not an inconvenience at times. I felt very visible in the Somali neighbourhood in Bellville as a woman who clearly did not adhere to the cultural norms of the community. However, these discomforts did not significantly affect my ability to access the relevant participants and conduct research.

Gender issues affected me more when it came to dispersing my research findings - i.e. accessing audiences rather than research subjects. Here I found that in largely white middle class academic and NGO circles, I did not enjoy the same relative privilege that I possessed amongst my research participants in Belville and the township field sites. In this different context my gender therefore became a more patent disadvantage. For example, in one instance when I raised a number of concerns with a director of an NGO regarding foreign national traders, she advised that although my concerns were important, I was irrelevant and needed to get someone more senior to take up the matters (all her suggestions happened to be senior white men). Furthermore when I contacted an NGO to host a discussion panel on foreign national spaza shopkeepers, an employee at the NGO apologetically advised that I had received no response from their director because he thought I was too 'young' (which the employee disagreed with). Although my personality, age, and lack of seniority likely also played a role in these incidents, I had a sense that in this sphere I lacked a degree of authority based on my gender. Lastly, the way I was frequently addressed – particularly by male academics - at public forums were subtly often laced with paternalism and sexism. Fortunately, while this affected the ability of my research to have impact, it did not substantially affect my ability to gather data.

My general outsider status in relation the Somali community, South African residents and police officials was more of a barrier when it came to ensuring the *validity* of the research data that I collected. Somalis in general were hesitant to discuss intra-community conflicts with me. While they often alluded to animosity between different community organisations and clan networks, they avoided discussing these issues in detail. I had a sense that they felt that revealing these issues with me could potentially heighten and aggravate conflicts by getting me involved in them, and also that they wished provide me with a positive impression of their community. This limited my ability to inquire into South African and police allegations that some violent attacks against Somali spaza shops were instigated by competing Somali

businesses – not South Africans. A further risk of being a white, middleclass, Anglophone carrying out research in the Somali community was that I could be mistaken for a UNHCR worker or an affiliated aid agency. Many Somali asylum seekers and refugees were desperate to apply to the UNHCR for resettlement to a third country such as the US. Resettlement programmes tended to target the most vulnerable in the Somali community, such as victims of violent crime and xenophobia. There was thus a risk that interviewees would embellish their interviews with me, in the hope of reaching a different audience. I attempted to diminish this risk by having my research assistant explain to potential interviewees in no uncertain terms that I was a researcher with no link to the UNHCR. In addition, information sheets and consent forms were provided to interviewees that set out that the purpose of the interviews and that they were being conducted for the ACMS. This seemed to have paid off, as none of my research subjects raised any questions relating to the UNHCR or its resettlement programmes during the course of their interviews.

Although I was South African, the fact that I was white and conducting research for the ACMS meant that it is possible some South African residents may not have been comfortable fully airing their opinions about Somali spaza shops with me. Because I belonged to a minority group myself they may have perceived me to be sympathetic towards foreign national groups, and thus thought that I would judge them for airing negative views about foreign nationals. This validity issue was potentiality reinforced by my general social privilege relative to township residents, as it could have led some to defer their responses towards what they thought my views were. It is difficult to fully test the degree to which this may have occurred, and thus the authenticity of the accounts and views and interviewees provided to me. However in order to enable more honest answers I framed my questions in an open and ideologically neutral way, avoided showing any judgement on my behalf, or giving any indication of my personal opinions.

Although the police that I interviewed were very open and hospitable I could also not fully guarantee the validity of the information they provided either. Police interviewees clearly attempted to give as best an impression of their work and their activities as possible. Also because I interviewed them about their investigations and responses towards crimes affecting foreign nationals, they likely assumed I was partial to foreign nationals, and thus erred towards not airing contentious opinions

about them. I also came to feel that the vigorous hospitality that the SAPS showed me was not just a gesture of goodwill, but also a public relations exercise to put across a message that they had done their utmost to prevent and investigate crimes affecting foreign national spaza shopkeepers. Because I was not an insider to the goings-on of any of the police stations in the field sites and I could not verify whether their versions of events were correct. The best I could do was balance their experiences against those of Somali spaza shopkeepers and weave the two accounts together. Thus while negotiating access to most communities and institutions was relatively trouble-free, ensuring the validity of diverse interviewees' accounts was a more complicated task. While my privileged social location and outsider status position often aided the former endeavour, they played a more obstructive role in the latter undertaking.

Lastly my data was also filtered by my own biography and belief system. South African residents' and police officials' suppositions about my views regarding foreign nationals were not without cause. Because of my background as a white middle class attorney and migration researcher it is correct to say that I carried with me a number of biased perspectives. Before setting foot in the field, I was sympathetic towards foreign nationals, believed that police were not doing enough to address crime, thought that most township residents were xenophobic, and romanticised informal justice mechanisms as venues of restorative justice. Although many of these beliefs changed during the course of my fieldwork, these normative assumptions influenced my lines of questioning and the themes that I explored, especially at the early stages of the research. Others, such as a sympathy for the plight of refugees and asylum seekers continue to shape my views. Furthermore, being white and from a middleclass background also meant that I had no direct personal experience in racial oppression, extreme poverty and cultures of violence. This meant that when writing up my findings I had little social familiarity and shared meaning to draw on to make sense of some of the phenomena that I observed, such as mob killings and xenophobic riots. The depth of many of my insights and their accuracy would thus probably have been enhanced had I come from relevant communities myself. Instead my conclusions had to be drawn largely from careful examinations of my interview notes, consulting academic literature, and thinking carefully about the different phenomena that I had observed. At the same time, coming from a different background to my research subjects also played a constructed role by enabling me

to raise critical questions about events and systems of rule and justice that many participants immersed in them took for granted.

My position in relation to my research subjects therefore cannot be said to have not tainted my research findings. My identity and background impacted on my ability to access key communities and institutions, the validity of people's responses, and on my life experience and belief system. All these factors played a role in shaping and influencing the data that I collected and relied on for my thesis. An awareness of this process enables one to take certain measures to counter these impacts, while at the same time keep in mind the inherent limitations and subjectivity of all qualitative research and that the ideal of a singular objective truth remains just that.

2.7 Ethical considerations

Conducting research on the governance of foreign national spaza shopkeepers raises a number of ethical concerns. The most pressing ethical concern for me was the potential for my field research to incite latent antagonism towards foreign national spaza traders in my field sites. I was warned early on by a community mediator in Kraaifontein about this possibility. When I asked him how conditions were in the neighbourhood a few months after a spate of murders of Somali shopkeepers had taken place, he laughed and commented that 'things are quiet, that is until people like you come along wanting to do research'.⁹² My fieldwork assistant in Philippi who worked at a local NGO in the area also shared the mediator's concern. This was the most important ethical advice I received during the course of my fieldwork. It warned me that researchers are actors in a field irrespective of how scientific or neutral they attempt to be, and that the simple task of asking questions can lead to a person's life being taken.

Unfortunately their fears were shortly thereafter illustrated to me in practice. In early 2011, a researcher contacted me requesting my assistance towards a research project on crime affecting Somali shopkeepers in the Eastern Cape. I gave her the details of my Somali research assistant and advised her to ask him whether he could put her in contact with a Somali community leader in the Eastern Cape. A few weeks later I found out that a Somali national who was assisting her with her research in the

⁹² Telephone interview, Kraaifontein community mediator, 14 March 2011.

Eastern Cape had been murdered. Another Somali national had allegedly stabbed him under the mistaken impression that the researcher worked for the UNHCR, and that her Somali assistant was preventing the accused's clan from making contact with her.

I never heard from the researcher again so I have only a sparse and second hand account of the events that occurred. However, the experience affirmed what I had been warned in Kraaifontein, namely that researchers like myself can inadvertently cause fatal harm. With the awareness that I was inadvertently a causal link in a chain of events that led to someone's murder, I took a cautious approach when it came to my own research. In particular I avoided interviewing South African spaza shopkeepers, who were frequently the instigators of attacks on foreign national township businesses. The murder in the Eastern Cape also illustrated the importance of informed consent to ensure that all participants understand the nature and purpose of the research. Thus prior to conducting interviews, I informed interviewees via my Somali interpreter as well as in writing of the intention of the study, and the terms on which the interview was being conducted. These terms set out:

- The organisation for whom the research was being conducted (i.e. the ACMS);
- That participation was voluntary;
- That interviewees were free to not answer any questions they were not comfortable answering or to stop the interview at any time;
- That interviews would be kept anonymous and that the names of interviewees would not be included in any public documents;
- That the name of the interviewees' firms or institutions might be known in public documents.
- That the interviews were confidential, and that only my project co-ordinator and myself would have access to the notes and recordings.
- That I might take notes of the interview and/or tape record the interview.

Key to ensuring the safety of respondents was ensuring their anonymity. Publications therefore referred only to residents' neighbourhoods, the date of the interview, and

the area in which the interview took place. References to interviews with Somalis would only make mention to the townships where their shops were located, the date of the interview, and the suburb where the interview took place (e.g. Bellville). In this way it would be very difficult for anyone to specifically identify the individual interviewees, as hundreds if not thousands of residents lived in the respective neighbourhoods, which also housed between upward of fifty to over a hundred spaza shops.⁹³

Where interviewees described having been victimised by crime, were suffering psychological trauma, or required social assistance, I felt that it was not sufficient to offer basic referral advice on where they could seek assistance. This was because many foreign national interviewees mentioned in interviews that they had been unable to receive help from various organisations that they had approached including NGOs, hospitals and the UNHCR. This had caused them great disappointment, inconvenience and sometimes secondary trauma, as they felt ignored and overlooked. It was especially problematic because most foreign national spaza shopkeepers preferred to visit organisations' offices in person rather than make enquiries telephonically – possibly due to language barriers. As a result they would often commute long distances from Bellville or outlying townships to the city centre to seek assistance, which could take up an entire day. To make matters worse it was common for organisations that were unwilling or unable to help them, would then refer them once more to a different organisation, which also would be unable or unwilling to assist them. This would use up even more of traders' time and resources, often with little or no success.

To avoid the above risks I did not simply provide interviewees with the names and contact details of organisations that I thought could help them. Instead I offered to contact relevant organisations myself and make enquiries on interviewees' behalfs. Usually telephonic correspondence with organisations was enough to assist interviewees (or at least find out whether organisations had the capacity to help them). Sometimes when an issue affected a number of foreign spaza shopkeepers I would attend consultations with interviewees, as I felt that my knowledge of the field

⁹³ For example, Philippi East police station stated that there were 82 foreign national spaza shops in their jurisdiction, almost all of which had experience violent crime. Spaza shops in Khayelitsha likely number in the hundreds (see Mandla Mahashe 'Partnership rears hope' *News24*, 29 September 2015, available at <http://www.news24.com/SouthAfrica/Local/City-Vision/Partnership-rears-hope-20151028>, date accessed 3 March 2017).

would be useful. In this way I was able to better ensure that interviewees needing assistance were actually helped, rather than sent on a potential wild goose chase that could cause more harm than good.

Many Somali spaza shopkeepers spoke of traumatic events that they had experienced during the course of their interviews including being shot, beaten or observing their friends and relatives being killed. Conducting research on such traumatised and vulnerable subjects raises the question of whether I had an obligation to actively address and fix their conditions. Because the topic of my research was on 'access to justice' there was also an expectation – no matter how hard I tried to play it down – amongst interviewees and community leaders that my research would be of some benefit to their community. Yet, there was little I could immediately do to help traders, as I could not conduct police investigations or prosecutions myself. Furthermore, being a researcher, rather than an activist meant that I could not guarantee that my research and its recommendations were going to be taken up by relevant actors such as police and civil society. I therefore could not be certain that my work would make any direct positive impact on any of my research subjects, or the Somali community in general.

I tried to address the potential one-sidedness of these interactions, by making myself available to assist research participants in whatever reasonable and non-financial ways that I could. Interviewees frequently contacted me for advice and favours, particularly relating to university matters. This advice included requests about what different academic disciplines entailed, and requesting feedback on Masters theses. In one instance a trader asked me to find out how the University of Cape Town discarded its old computers. I also referred traders to a personal injury lawyer (for instances of police brutality), and the Legal Resources Centre (when it came to regulatory issues). I attended court cases to assist prosecutors to argue sentencing (in a murder and robbery case) and also advised prosecutors about invalid police fines. I realised that as a result of widespread prejudice that Somali community members encountered when dealing with South African institutions, I became seen as an intermediary for them. For example, I found that if I made enquiries with universities, NGOs or hospitals – I would obtain a quicker and more willing response than they would. By making these small efforts I felt that I was giving something back to the people who volunteered their time and emotional energy to assist me.

What I avoided however was acting as or being perceived as an activist or advocate for the Somali community. One of the first points I that I would press in my introductions was that I was a researcher, not an activist. My problem with engaging in direct advocacy and activism arose from two concerns. First, I felt that as a researcher I had to maintain a degree of neutrality, so that diverse research participants would not feel as though I vigorously represented a particular side. Second was that in any case it was better for Somali community representatives to represent themselves and their causes, rather than myself appropriating their struggles and speaking on their behalf. Instead I tried to play a facilitative role by connecting people I had met during the course of my research with organisations and individuals who could provide direct assistance. I was less active in assisting South African interviewees because my interviews focussed mostly on their perceptions of foreign spaza traders, rather than their own problems. Also because my interviews in townships were dispersed and randomised, I did not experience the same community immersion as I did with the Somali community.

Apart from availing myself to research participants, I also hoped that the research itself would influence state policies and assist activists. I published three policy reports subsequent to my research that related to crime affecting foreign national spaza shopkeepers, the regulation of their businesses, as well as the economic dimensions of their business activities. My reports were furnished to the SAPS, Somali community leaders, and NGOs such as the Legal Resources Centre. The research was also used to make submissions to the Department of Trade and Industry and to the Competition Commission.

I also tried to be of support to Somali and NGO activists. On completion of my research I held a workshop with various Somali community leaders about my findings and recommendations, as well as a separate workshop for civil society. In the aftermath of my workshop with Somali community activists, they set up a committee made up of representatives from different Somali community organisations to work with police, monitor criminal cases and support victims. In sum I would have been deeply uncomfortable conducting research with victims of violent crime and xenophobia knowing that the research was simply for academic or philosophical

purposes, with no intention to try and influence policies and strategies to improve their condition.

This is not to say that one should not at all reflect on the deeper political and philosophical implications of traumatic phenomena. One scorching hot afternoon, while driving with my South African research assistant in Philippi, he interrupted me in mid-conversation and asked 'why do you care so much about what happens to Somalis'? Strangely I could not provide a clear answer. Of course Somali spaza traders in the neighbourhood had suffered a great deal of violence and prejudice in Philippi, but so had almost all residents there. I ended up simply telling him in a confused and muffled way that I believed that Somali spaza shopkeepers' experiences in the neighbourhood signified something important about the country – what it was I did not know.

The discomfort of not understanding the deeper reasons for why I had been drawn to the research topic lingered with me. When the research project for the ACMS ended in October 2012, I therefore felt that the data that I had collected needed deeper reflection. By carrying out a PhD on this material I hoped to understand why I had found certain phenomena particularly disturbing by examining the underlying political themes and dynamics that were manifesting in governance efforts. As a result I re-examined the research material from a theoretical rather than a policy perspective. Disengaging from the imperative to act and do something was important as it enabled me to engage in a more honest analysis. While it is important to use one's research in the sphere of action to assist victims of trauma, it is also important to reflect on traumatic incidents to understand their greater meaning and implications for society. Otherwise the more fundamental lessons and warning signs of such phenomena could remain overlooked.

2.8 Conclusion

The thesis encounters a number of methodological challenges. These range from assessing what the term 'governance' actually means, to finding a theoretical framework suited to the interdisciplinary topic. The thesis' case study methodology is also largely based on archived data. Furthermore my positionality as a white middle class woman conducting research amongst less privileged research subjects

requires interrogation, as does the ethics of carrying out research involving traumatised and marginalised individuals.

This chapter addresses these multiple challenges. It defines the term ‘governance’ as the ways in which individuals or bodies exercising a degree of authority attempt to steer social order, and explains why the law and society movement, which similarly explores legal and regulatory phenomena from a social science perspective, provides a suitable theoretical framework for the thesis. The chapter then highlights how archived research included a substantial amount of data on governance, and how these events mirror dynamics across the country. Thereafter the chapter explores how my positionality as a white middle class female researcher, was simultaneously facilitative and obstructive to data collection processes. Lastly the chapter contemplates the ethics of conducting a research involving marginalised groups in context of conflict and violence. It acknowledges that the active role of researchers in fieldwork settings can spark conflicts and even give rise to human fatalities. This points to the importance of erring on the side of caution, even if this means working with an incomplete data set. Researching people’s trauma is nevertheless important, as it can contribute toward shaping policy environments, assisting activists working in the field, and better understanding and awareness of the deeper social and political shifts underlying to their condition. These are important contributions towards addressing the plight of foreign national spaza shopkeepers in South Africa, as well as reflecting on the country’s current political and social direction as a whole.

3. Unpacking the shop *gevaar*: justifications for curbing foreign national spaza shops

3.1 Introduction:

Attempts to govern foreign national spaza shopkeepers in South Africa generally aim to curtail their business activities rather than find ways to harness their economic potential. This is primarily because many governance actors ranging from competing South African spaza shopkeepers, state officials and political leaders view shops more as a threat or *gevaar* than an asset or opportunity. To understand why shops are viewed with consternation this chapter discusses the history of governance interventions in the country and the reasons given by governance actors for their approaches. It argues that many of the stated justifications for interventions (including that foreign national spaza shops cause economic harm, engage in illegal activities, and are vulnerable to crime) do not add up and present only a partial and at times misleading picture of the challenges posed and faced by foreign national spaza businesses.

The chapter then consults various theoretical explanations for why host populations often view foreign national traders with fear and anxiety. These theories highlight the clannish behaviour of foreign traders (Weber and Bonacich), as well as post-colonial political conditions which anchor rights in notions of indigeneity (Fanon and Mamdani). The chapter argues that in addition to the abovementioned factors, a key force contributing to anxieties over foreign national spaza shops is the boiling socio-economic discontent of many township residents. This anger is easily inflamed by South African spaza shopkeepers and is appeased to a degree by policies that prioritise the place of citizens in the spaza market.

3.2 Starting at the beginning: Hooda's news

Hadis chose to close his shop early at around 8pm on Monday night, instead of the usual time of 10pm. The deadline for foreign national spaza shops to shut down and leave Masiphumelele township had passed two days prior, and he was concerned about rumours of potential violence. This was particularly the case given that South African shopkeepers had threatened at a recent community meeting to 'send their

dogs' against those shopkeepers whose businesses remained open.⁹⁴ While some traders had complied with the demand fearing attack, he had decided to follow the advice of the local police and remain open. They had assured him that he was entitled to trade by law, and that they would patrol the area and guard against any threats. Hadis usually felt safe and at ease in the neighbourhood, and regularly walked its dark, beaten down streets at night to visit friends, one of whom owned a television set where he could watch football until late into the evening. But the mood in the township had changed over the past two weeks since South African spaza shopkeepers had sent out letters informing their foreign national counterparts to leave. Several heated meetings had followed where South African spaza shopkeepers demanded that police, community leaders, and South African landlords assist in the eviction of foreign national spaza shopkeepers from the neighbourhood. It had also not become uncommon for customers or strangers in the street to warn him that his time in Masiphumelele was almost up.

Hadis had purchased his shop 'Mandela Cash Store' two months earlier in June 2006 from a Somali trader who was leaving Masiphumelele to live in the Eastern Cape Province. He had received a fifty percent shareholding in the shop for a price of R35,000. R20,000 of this amount came from his personal savings earned by working for relatives in spaza shops in Uppington and Samora Machel in Cape Town. The remaining R15,000 had been loaned to him from friends and family. The shop's corrugated iron structure was connected to his South African landlord's home, and stocked household items ranging from fruit, vegetables, bread, sugar, rice, meat, shampoo, and cosmetics. Hadis acquired goods for his shop from several wholesalers in the industrial area of Epping, targeting special promotions and the lowest prices on offer by wholesalers in the area. These price savings were passed on to customers, aided by low mark ups on goods, 'If you get R6,00 for 1kg sugar, that's just for example, then you need to sell for R7,00 or R8,00, while some other people sell it for like R10,00'.⁹⁵ However as much as these practices benefitted consumers in Masiphumelele, they drew the ire of competing South African spaza traders who viewed foreign nationals' low prices as pushing their shops out of the market.

⁹⁴ Interview with Mohamed Aden Osman 'Hadis', Bellville, 30 April 2015.

⁹⁵ Ibid.

Hadis had not yet drawn any income from the shop, as the business struggled to meet its monthly rental payment of R2,500, and any remaining profits had been reinvested back into the business in order to build up its supply of stock and broaden the shop's product range. He and his business partner – a fellow Somali - managed to make ends meet by living on the shop premises along with their shop assistant, surviving off some of the food items that they stocked. Most dinners comprised sliced brown bread with butter, but on some occasions they prepared canned curry and bread, or chicken fried with onion and potatoes and boiled with rice. Conveniently, a talkative Somali woman named Hooda⁹⁶ operated a small spaza shop or 'tuck shop' called 'Buya Buya' across the road, where she lived with her Ethiopian husband and three children. When short of change or stock Hadis would cross the street and ask for her assistance.

The sun had long set by 8pm on the winter's night of the 28th of August 2006. Hadis closed his burglar gate and served a few more customers through its iron bars. He checked his watch, and wondered whether to keep the shop open for half an hour longer. He had recently failed to negotiate a lower rental amount with his landlord, and was worried that he was not going to be able to pay his rent at the end of the month. His thoughts were interrupted when he noticed Hooda running hastily across the street towards him. This time her visit had nothing to do with their routine shop errands. She reached his gate panicked and frightened. Looting had started in Masiphumelele she told him, and hurriedly told him the names of shops in the area that she had heard had been attacked. She ran back across the dark street and secured herself quickly inside her shop. Hadis slammed his burglar gate shut, locked his front door, and phoned the police. The police on the other end of the line sounded rushed and distracted. They informed him that they were overwhelmed by looting and attacks on shops in the area, but would come through to the shop as soon as they could.

As Hadis sat in fear in his shop digesting Hooda's news, he heard the voices and chants of a mob made up of over a hundred people coming closer to his premises. He gradually discerned the phrase 'Hamba Baraka', meaning 'go away Somalis'⁹⁷

⁹⁶ Not her real name.

⁹⁷ The first Somali spaza shop to open in Masiphumelele was called 'Baraka Cash Store', which then became a colloquial term for Somalis in the neighbourhood. See Craig Timberg 'Not So Welcome in South Africa' Washington Post 1 October 2006, available at <http://www.washingtonpost.com/wp->

being called out by the crowd. A stone slammed against the thin corrugated iron wall of his shop and then another, until stones, bricks, pangas and axes began raining down on his shop. A group of people shook the shop door and burglar guard, trying to break in. At the same time, the shop's window shattered and arms and hands cascaded through, grasping for any items within reach. Hadis and his colleagues armed themselves with empty glass bottles and a panga (a type of machete) that they kept in the shop. One of his colleagues reached to the window where he hit people's hands with a glass bottle, one injured looter exclaiming 'Voetsek!' (get lost!) as he pulled his arms back. Some looters climbed onto the shop's corrugated iron roof in an attempt to break in from above. Hadis and his colleagues responded by hitting the shop's walls with glass bottles and their panga to indicate they had makeshift weapons and were prepared to fight back.

Fifteen minutes into the chaos, Hadis heard the sound of police vehicles stopping outside his shop, accompanied by shouts and the firing of rubber bullets. The mob quickly dispersed, evaporating into the surrounding darkness. Ten policemen approached the shop, 'Are you safe?' one of them asked, and informed the stunned traders that a number of shops had been looted that evening. Hadis and his colleagues tried to load some of their stock into the police vehicle, but the police hesitated 'look we have a report that some of your brothers are stabbed and you know we have life threatening things, so we cannot save the property'.⁹⁸ Seeing no choice but to abandon his shop without any protection, Hadis climbed into the police vehicle, turning his back permanently on his life's savings and possessions, and the South African dream as he understood it.

The riots in Masiphumelele were not the only attacks on foreign national spaza shopkeepers at the time. Somali community organisations reported that dozens of Somali spaza shopkeepers had been killed in various towns and cities in the Western Cape between July and September 2006.⁹⁹ They claimed that these murders were orchestrated by competing South African businesses as a means of eradicating competition. Police originally attributed the murders to business robberies, but later

dyn/content/article/2006/09/30/AR2006093000982.html, date accessed 6 June 2012.

⁹⁸ Interview with Osman (note 94).

⁹⁹ Staff Reporter 'Toll hits 30 after more Somalis murdered' *IOL News*, 4 September 2006, available at <http://www.iol.co.za/news/south-africa/toll-hits-30-after-more-somalis-murdered-1.292234#.T89hQu3Q9UQ>, date accessed 6 June 2012. Karen Breytenbach 'Somalis are 'suffering brunt of xenophobia' *IOL News*, August 7 2006, available at <http://www.iol.co.za/news/south-africa/somalis-are-suffering-brunt-of-xenophobia-1.288384#.T8-2He3Q9UQ>, date accessed 6 June 2012.

conceded that competing South African spaza shopkeepers may have planned some of the attacks.¹⁰⁰ Somali spaza shops in Knysna had also been looted earlier in the year, resulting in over a hundred Somali shopkeepers being evacuated from the area.¹⁰¹

Apart from leaving a permanent impression on the lives of an estimated 71 foreign national residents forced to evacuate their shops and homes that night,¹⁰² the Masiphumelele riots of August 2006 comprise an enduring marker in a different way. Against the backdrop of the chaos emerged possibly the earliest attempt to regulate foreign national spaza shops in post-apartheid South Africa. In other words, the aftermath of the attacks mark the beginning of a politics of governing foreign national spaza traders in the country - a politics that would spread across the city of Cape Town, the Western Cape Province, and eventually become a key national-level governance dilemma. After the high profile violence and fury in Masiphumelele, questions of how to address the perceived threat posed by foreign national spaza shops became of heightened importance. As a result, parties ranging from police, local councilors, South African and foreign national shopkeepers, NGOs, to local and national government members increasingly became engaged in various efforts to control the 'influx' of foreign shopkeepers and regulate their trade.

3.3 The Masiphumelele intervention

At the beginning of September 2006, after the dust had settled in Masiphumelele and foreign national spaza shops stood empty and vandalised, the office of the Western Cape Provincial Premier, Ebrahim Rasool launched an intervention to address the

¹⁰⁰ Mohammed Allie 'Somalis under siege in South Africa' *BBC News*, 20 October 2006, available at <http://news.bbc.co.uk/2/hi/africa/6066240.stm>, date accessed 3 March 2017.

¹⁰¹ 'Nowhere to go for Knysna's Somalis' *Garden Route Reporter*, 7 July 2006, available at http://www.queensu.ca/samp/migrationnews/article.php?Mig_News_ID=3453&Mig_News_Issue=19&Mig_News_Cat=8. Helen Bamford 'Somalis flee Knysna after "racist" clashes', *IOL News*, February 11 2006, available at <http://www.iol.co.za/news/south-africa/somalis-flee-knysna-after-racist-clashes-1.266144#.VVMjFyQdUQ>, date accessed 13 May 2015. 'Knysna's displaced Somali businessmen return,' *Eastern Cape Herald*, 24 April 2006, available at http://www.queensu.ca/samp/migrationnews/article.php?Mig_News_ID=3187&Mig_News_Issue=16&Mig_News_Cat=8, date accessed 13 May 2015. 'Nowhere to go for Knysna's Somalis' *Garden Route Reporter*, 2006-07-07, available at http://www.queensu.ca/samp/migrationnews/article.php?Mig_News_ID=3453&Mig_News_Issue=19&Mig_News_Cat=8, date accessed 13 May 2015.

¹⁰² 'Fleeing war, Somalis are targets of violence in adopted home' *Irin News*, 10 October 2006, available at <http://www.irinnews.org/report/61298/south-africa-fleeing-war-somalis-are-targets-of-violence-in-adopted-home>, date accessed 3 March 2017.

conflict.¹⁰³ The Office's Directorate for Social Dialogue and Human Rights appointed an NGO named Africa Unite to organise mediations between South African and Somali spaza traders in Masiphumelele, and requested Islamic Relief Worldwide to assist with emergency relief.¹⁰⁴ An official report documenting the process largely attributed the strife to the actions of foreign nationals, in particular their 'influx' into the neighbourhood, and the competition they posed to South African spaza shopkeepers, which it perceived as 'unfair'.¹⁰⁵ This was accentuated by the fact that Masiphumelele was a low income neighbourhood where competition over resources was tight. The report states that similar conflicts were emerging elsewhere, as 'other communities in the Western Cape are up in arms over a perceived take-over by Somali refugees and a noticeable threat to their economic survival'.¹⁰⁶ It criticizes South African landlords that rent properties to foreign nationals, as indifferent towards the social and economic aspirations of South Africans.¹⁰⁷

in October 2006 Africa Unite held several workshops with community leaders, as well as foreign national and South African spaza shopkeepers in Masiphumelele. These mediations culminated in an 'agreement on future business arrangements in Masiphumemelele'.¹⁰⁸ Whilst the report does not specify the exact content of the agreement, foreign national spaza shopkeepers and media reports described that it provided that existing foreign national traders could re-enter Masiphumemele on condition that no new foreign national spaza shops opened in the township.¹⁰⁹ The number of foreign national spaza shops permitted to operate was set at 15.¹¹⁰

The report concludes that: 'the commitment to non-partisanship does not imply that interventions [sic] strategies should be neutral with respect to violence, the rule of law and constitutional rights'.¹¹¹ Yet, acting neutral with respect to violence, the rule of law and constitutional rights is precisely what the governance outcome entailed. A news article quotes a representative of Islamic Relief Worldwide as describing the

¹⁰³ 'Masiphumelele Conflict Intervention: August 2006 – March 2007' (undated) Documenting and evaluation report by the Provincial Government of the Western Cap at 26.

¹⁰⁴ Ibid at 27 and 29.

¹⁰⁵ Ibid at 25 and 41.

¹⁰⁶ Ibid at 48.

¹⁰⁷ Ibid at 47.

¹⁰⁸ Ibid at 42.

¹⁰⁹ Ciska Verster 'Four Somali shops held up in past week' *False Bay People's Post* (undated), available at <http://www.compcom.co.za/wp-content/uploads/2016/09/Vanya-Gastrow-Submission.pdf>, date accessed 4 March 2017.

¹¹⁰ Ibid. See also note 103 at 43.

¹¹¹ Note 103 at 50.

outcome as 'flagrantly unconstitutional'¹¹² He explains that 'Unfortunately the Somalis, who wanted to move back to Masiphumelele, had no bargaining power. The failure of government to protect them from attacks basically had them agreeing to whatever was tabled... I cannot say it was a fair negotiation, but at least there is a semblance of peace'.¹¹³ Neither did the course of justice play out in respect to the violence committed by many South African shopkeepers and residents that night, with none meeting any formal punishment or censure for their acts.

3.4 Governance interventions in Cape Town and further afield

The governance intervention that was introduced in Masiphumelele in late 2006 did not end there. Less than two years later, in May 2008, South Africa was struck by nation-wide xenophobic riots that left 62 people dead and tens of thousands displaced. South African spaza traders in the Strand, about 50 kilometres outside of Cape Town, capitalised on the spirit of lawlessness to rid their neighbourhoods of foreign national competition by sending out letters to foreign national spaza shopkeepers in the area demanding that they close their businesses.¹¹⁴ The fear ignited by the notices led to all foreign national residents – not only spaza shopkeepers – evacuating the area, with opportunistic residents looting businesses while their owners fled.¹¹⁵ A similar occurrence took place in Khayelitsha, which was also a site of widespread xenophobic public violence in 2008. A legal aid attorney who had been instructed to represent individuals accused of participating in the 2008 attacks, explained that many of her clients 'were shopkeepers who felt they losing their businesses because foreigners were selling products at cheaper rates'.¹¹⁶ She stated that of the approximately fifty 'xenophobia' matters that she handled, approximately two thirds related to business competition.¹¹⁷

The violence in Masiphumelele, the Strand and Khayelitsha demonstrated that disgruntled South African traders possessed the ability to trigger broader social chaos and lawlessness. In other words South African traders' demands were not carefully dealt with, they could incite broader conflict and displacement. This urgency

¹¹² Verster (note 109).

¹¹³ Ibid.

¹¹⁴ Interview, Mediator from the Institute for Justice and Reconciliation who led 2008 conflict intervention in the Strand, Cape Town, 15 April 2016

¹¹⁵ Ibid.

¹¹⁶ Interview, legal aid attorney, Athlone, 24 October 2011.

¹¹⁷ Ibid.

was heightened by police suspicions that certain South African spaza shopkeepers were behind a number of murders of foreign national spaza shopkeepers who had fallen victim to deadly shootings and arson attacks on their shops.¹¹⁸ These events likely influenced later governance to mobilisations by South African spaza shopkeepers. In August 2008, a South African retailers association called 'Zanokhanyo Retailers Association' (Zanokhanyo) distributed letters to foreign spaza shop owners in Khayelitsha. The letters were dated 22 August 2008 and instructed foreign shop owners to close down their businesses from 25 August 2008 until 14 September 2008, during which period the future of their shops would be discussed.¹¹⁹ In contrast to previous state responses where police only intervened after looting and violence had already broken out, police in Khayelitsha took preventative measures and immediately arrested Zanokhanyo members who were responsible for the letter.

Yet, as in Masiphumelele and the Strand, the police actions in Khayelitsha did not culminate in strict punishments for known culprits. Instead the members of Zanokhanyo were granted a suspended sentence on condition that they withdrew their demands. To ease tensions, the South African Police Service (SAPS) set up a mediation process between Zanokhanyo, representatives of the Somali community, and the South African National Civic Organisation (SANCO), and appointed a reverend affiliated to the police station to mediate.¹²⁰ The process culminated in a similar outcome to that of Masiphumelele – namely an agreement dated 27 November 2008, which prohibited the opening of any new Somali spaza shops in Khayelitsha without the approval of the Zanokhanyo Retailers Association and the Somali Retailers Association.¹²¹

These terms were mirrored in the Gugulethu agreement, which was established after threats emerged in the township the following year. Similarly, in 2011 in the field site of Kraaifontein, SANCO called a meeting between Somali and South African spaza shopkeepers at Kraaifontein police station, where Somalis agreed to refrain from

¹¹⁸ Interviews with police in Philippi and Kraaifontein.

¹¹⁹ Original letter (on file with author).

¹²⁰ Interview, Khayelitsha community activist, Cape Town, 12 March 2011. Interview, Representative of the Somali Retailers Association, Bellville, 14 November 2010.

¹²¹ Copy of agreement signed by Zanokhanyo Retailers Association and the Somali Retailers Association dated 27 November 2008 (on file with author).

opening new spaza shops in the neighbourhood.¹²² In Philippi that same year, South African traders sent out letters to South African landlords who rented out their premises to foreign national spaza shopkeepers informing them to stop operating their shops by 30 June 2011.¹²³ On 6 July they proceeded to forcibly close down twelve shops, before police arrived on the scene and halted their actions.¹²⁴ Thereafter police held meetings at Philippi East police station, where South African spaza shopkeepers agreed not to resort to violence on the one hand, and Somali spaza shopkeepers agreed not to open new shops in the neighbourhood on the other hand. South African traders, a Somali community leader and the police would monitor the agreement.¹²⁵ To assist this process, the police conducted an audit of foreign national spaza shops in the jurisdiction.¹²⁶

Such 'agreements' soon became the norm in Cape Town's townships. Informal restrictions of foreign national spaza shops were established in Masiphumelele in 2006, Khayelitsha and the Strand in 2008, Gugulethu in 2009, Bloekombos and Wallacedene in Kraaifontein, and Philippi in 2011. Collectively these areas amounted to the majority of the city's black townships. Over the next few years, mobilisations by South African spaza shopkeepers saw police and NGOs quickly set up mediations between South African and foreign national spaza shopkeepers lest repetitions of 2006 and 2008 occur. Meetings were mediated by diverse parties ranging from NGOs, community leaders, and the United Nations High Commission for Refugees (UNHCR). Other parties such as SANCO, ward councillors, local government officials (from the department of economic development, municipal law enforcement services, and disaster risk management centre), and provincial and national government representatives were often also in attendance. These interventions usually resulted in South African retailers accepting that existing foreign national spaza shops could remain in operation on condition that foreign nationals (most commonly Somalis)¹²⁷ would not open new businesses. Additional prohibitions sometimes accompanied the general ban on new foreign national spaza shops. For example, the Gugulethu trade agreement provided that apart from not opening new shops, Somali spaza

¹²² Interviews with Somali traders and police in Kraaifontein.

¹²³ Copy of letter to landlords, dated 6 May 2011 and signed by T.F. Tobigunya (on file with author).

¹²⁴ Conversations with Somali community representatives who were at the scene. Interview with Philippi East police officer, Philippi East, 31 October 2012. Copy of letter to Philippi East station Commander from South African traders requesting their assistance in closing down foreign national spaza shops dated 6 July 2011 and signed by T.F. Tobigunya (on file with author).

¹²⁵ Interview with Philippi East police officer, Philippi East, 31 October 2012.

¹²⁶ Ibid.

¹²⁷ Somalis operated the majority of foreign national spaza shops in Cape Town.

shopkeepers had to fix their prices to match those offered by South African shopkeepers, move their shops at least 100m away from South African spaza shops, and ensure that their shops did not make up more than thirty percent of the total number of spaza shops in the area.¹²⁸

Comparable trade agreements have been negotiated further afield. Foreign national spaza traders in the Saldanha Bay area along the West Coast described similar rules governing the spaza market in their neighbourhoods.¹²⁹ Media reports also indicated that agreements barring new foreign national shops had been entered into in Mbekweni in Paarl in 2009,¹³⁰ as well as in the Eastern Cape towns of Port Elizabeth in 2011 and Bisho in July 2012.¹³¹ When conflict arose in Bisho in August 2012 regarding the implementation of a trade agreement that prohibited new foreign national spaza shops from opening, the provincial MEC for local government, Mlibo Qoboshiyane, set up a meeting to resolve the tensions, and reached the conclusion that 'the community-imposed limit on foreign shops was justified and would be enforced'.¹³²

By the end of 2012 local level informal mobilisations against foreign national spaza shops in Cape Town had subsided. Instead political attention shifted to national state level. For example, in June 2012, the ANC in the Western Cape called for state intervention to restrict the ability of foreign nationals to operate spaza shops in townships. The following year the Department of Trade and Industry (DTI) published a draft Licensing of Businesses Bill aimed at regulating informal businesses in the country, and formulated a draft National Informal Business Upliftment Strategy (Nibus). In 2014 the State President established a national Department of Small Business Development headed by Minister Lindiwe Zulu to strengthen small business sectors including the spaza market. During that period Somali community activists informed me that little was occurring in Cape Town's townships in terms of mobilisations by South African traders, with only robberies and occasional looting a persistent concern.

¹²⁸ Copy of agreement (unsigned) obtained from the Anti-Eviction Campaign (on file with author).

¹²⁹ Interview, Group of Somali traders, Vredenberg, 20 February 2012.

¹³⁰ Ester Lewis, 'We'll close down illegal spazas' *Cape Argus*, 8 February 2011, at 4.

¹³¹ Luyolo Mkentane, 'Somalis to register with spaza body' *The Herald*, 25 March 2011 at 24.

¹³² 'No place for xenophobia' (editor's opinion) *Daily Dispatch*, 22 August 2012, page 9.

Like local efforts, national level interventions also focussed on curbing foreign national spaza shops. For example, in its discussion on foreign national businesses in South Africa, Nibus considers the model of Ghana where foreign nationals are barred from owning small businesses.¹³³ Similarly new draft migration policies propose prohibiting asylum seekers from operating businesses in the country, and only permitting certain asylum seekers to carry out work for an 'employer'.¹³⁴ In March 2016 the Premier of the North West province, Supra Mahumapelo called for the confiscation of all foreign national spaza businesses in the province to be confiscated and handed over to South Africans.¹³⁵

The governance of foreign national spaza shopkeepers on local, provincial and national levels thus illustrates that many parties view foreign national spaza shops as a threat to South African citizens' interests, and according believe that foreign nationals' abilities to trade should be curtailed, whether via legal, extra-legal, illegal means. Before investigating the political processes and contestations involved in governance interventions, it is necessary to examine what motivates all these attempts to limit foreign national spaza shops in the first place. This involves exploring various parties' justifications for curbing foreign national spaza shops contained, as well as considering academic accounts of fears and antagonisms towards foreign national small businesses.

3.5 Justifications given for curbing foreign national businesses

When it comes to foreign national spaza shops in South Africa, there were four general reasons usually given by governance actors ranging from police, local government officials, political leaders, and NGOs to justify the need to curb them. First, many South African spaza shopkeepers and state policy makers complained that foreign national spaza shops were detrimental to local economies and obstructed job creation. Many South African spaza shopkeepers stated that they had not been able to compete with foreign national businesses and had to close shop as a result.¹³⁶ Many policy makers felt that there was no space for aspirant shopkeepers

¹³³ Department of Trade and Industry 'National Informal Business Upliftment Strategy' (Nibus), February 2014, at 22.

¹³⁴ Section 15 of draft *Refugees Amendment Bill* of August 2015.

¹³⁵ Tshehle (note **Error! Bookmark not defined.**).

¹³⁶ This was the widespread sentiment expressed by South African spaza shopkeepers at meetings in Khayelitsha (see note 79).

in the market, given the number of foreign national businesses in the market.¹³⁷ This concern was heightened by the belief that foreign national businesses enjoyed a number of competitive edges over their South African counterparts, such as possessing wider business 'networks'.¹³⁸ Other economic complaints were that foreign national spaza shopkeepers sent remittances to their home countries instead of spending their income in South Africa, and did not contribute to the state's fiscal by paying taxes.

A second concern frequently mentioned by governance actors was that foreign national spaza shops engaged in illegal activities. Apart from tax avoidance, governance actors also claimed that shops breached by-laws and licensing laws, and that traders sold counterfeit and illegally imported goods. A third justification often given for restricting foreign national spaza shops was that they were heavily prone to business robberies. This resulted in the South African Police Service (SAPS) demanding stricter regulation of their businesses. Lastly, many local level governance actors feared that not curbing foreign national spaza shops would cause South African spaza shopkeepers to incite xenophobic attacks against foreign national spaza shops, or orchestrate other forms of violence against traders. However on closer inspection these factors – competition, illegality, business robbery, and threats of violence - did not sufficiently justify the sweeping interventions demanded and their potentially damaging impacts. Thus the stated reasons for interventions only presented a partial picture of the factors driving governance intervention.

When it comes to concerns about foreign national spaza shops' impact on local economies, some worries were legitimate. Many South African spaza shops have not been able to compete with foreign national spaza businesses, and have had to close shop as a result. For example, the Gugulethu agreement sets out South African shopkeepers' grievances against their Somali counterparts, who they claim had been detrimental to their livelihoods. It states:

¹³⁷ Gwede Mantashe, Secretary General of the African National Congress, Media Briefing, 20 March 2016, available at <https://www.youtube.com/watch?v=mCNnWrAjlcM>, date accessed 4 March 2017, at minute 45.

¹³⁸ Rob Davies, Minister of Trade and Industry, addressing small businesses at Orange Farm, Gauteng, 9 April 2013, available at <https://www.youtube.com/watch?v=BGTvJWITSFg>, date accessed 4 March 2017.

‘Somali traders sell their goods far cheaper than the local traders. They [South African spaza retailers] also claim that Somalis would pitch their shops closer to the shops of the locals and as their wares are sold cheaper, buyers turn to buy from the Somali shopkeepers rather than from the locals. In this manner, local shopkeepers are forced to close their shops because they are unable to compete with the Somalis.’¹³⁹

Governance actors and residents also perceived foreign national spaza shops’ competitiveness as restricting opportunities for South Africans to enter the spaza market. A number of residents were concerned that the market was saturated with foreign national spaza businesses, and South Africans would thus not be able to enter. Furthermore, it was common for foreign national spaza shopkeepers to send substantial portions of their incomes back to their home countries to support their relatives, rather than spending the entirety of their incomes in South Africa (whether this is something they should be criticised for is another question). It is possible that many, if not most foreign national spaza shopkeepers did not pay income tax¹⁴⁰ – although it is likely that a number of traders’ incomes fell below the income tax threshold of R75,000 per year, meaning that they were not required to pay any income tax.¹⁴¹

However governance actors rarely weighed these potential negative economic impacts against the economic advantages that foreign national spaza shops offered. While foreign national spaza shop competition may well have contributed to the demise of many South African spaza shops, it also created economic opportunities for a number of South African spaza traders. In particular, the presence of foreign national spaza shopkeepers opened up the prospect for South African spaza shopkeepers to rent out their shops and become landlords instead. Practically all foreign national spaza traders in the field sites were tenants and did not own the properties from which they traded. By leasing out their properties to foreign nationals,

¹³⁹ Gugulethu agreement (note 128).

¹⁴⁰ I cannot be certain either way, as I did not carry out research on foreign nationals’ degree of tax compliance.

¹⁴¹ I did not carry out research into spaza shop earnings, but anecdotal encounters suggested that many traders earned meagre incomes. A Somali shop owner in Khayelitsha reported that he earned approximately R4,000 per month, half of which he sent to his relatives in Somalia every month. His yearly income thus fell far below the tax threshold of R75,000. During a focus group with ten Somali spaza shopkeepers from Khayelitsha, my questioning was met with laughter from the participants, who thought that my use of the term ‘business’ to describe their shops was amusing. My interpreter explained ‘Now he can see you get suspicious because we laugh. But why he said that is because what you thought and how they are is far different. I mean the way that the question of you doing ‘business’ and the person that is looking for his daily food is far from each other, that’s what he’s saying.’

a number of former South African spaza shopkeepers – as well as other township residents - were better off through having created passive income streams for themselves. For example a landlord in Philippi stated that he used to operate his spaza shop himself, but found that his relatives who assisted him stole items from the business with the result that he rarely made a profit. He therefore decided to sell the business to foreign nationals for R70,000, and when interviewed in 2011 earned a monthly rent of R4,000 from the shop.¹⁴² For some becoming a landlord was a necessity, for example the wife of a landlord in Philippi East stated that her husband was a pensioner who was bedridden, so could no longer operate his shop himself.

Foreign national spaza shops contributed to local economies in other ways. South African consumers reported that foreign national spaza shop prices tended to be lower and their services better than South African spaza shops. For example, customers noted that foreign national spaza shops offered credit, possessed correct change, had shorter queues, sold goods in flexible quantities (e.g. a single tea bag or egg as opposed to a whole box), offered ‘hampers’ (bulk collections of goods sold at a discount), provided wider product ranges, and tended not to run out of stock. These offerings were especially important given that spaza shop customers often struggled to afford basic food and household items. Other stakeholders benefitting from foreign national spaza shops included wholesalers, suppliers and manufacturers (both large and small scale) and South African employees. For example, the manager of Philippi Cash and Carry reported that the wholesaler employed 103 South Africans and two foreign nationals (himself (an Israeli national) and a Somali translator).¹⁴³ In his view the growth of foreign shops had expanded his customer base and resulted in higher sales, enabling him to hire more South African workers.¹⁴⁴

Yet these economic advantages – which governance interventions could undermine - were rarely mentioned or explicitly considered by governance actors. For example the Inter-Ministerial Committee on Migration (IMC) indicated to the Ad-Hoc Joint Committee on probing violence against foreign nationals that ‘foreign nationals were dominating trade in certain sectors such as consumable goods in informal settlements which has had a negative impact on unemployed and low skilled South

¹⁴² Interview, Philippi East, 22 November 2011.

¹⁴³ Interview, Philippi East, 12 July 2012.

¹⁴⁴ Ibid.

Africans'.¹⁴⁵ However their analysis does not mention any of the economic advantages and contributions of foreign national spaza shops.

It is largely understandable for South African spaza shopkeepers to feel threatened by the growth and spread of foreign national spaza shops in South Africa's townships, and for them to mobilise against their new competitors. Competition often gives rise to conflict and even violence. The taxi industry in South Africa is one example. Frustration can be aggravated when new competitors are recent arrivals to a country. What is not as clear is why this concern so easily outweighed the interests of a number of other stakeholders, and why many governance actors went so far as to breach the law in order to address the relatively isolated concerns of South African spaza shopkeepers. This was particularly confusing since curbing foreign national spaza businesses is potentially detrimental to broader local economies and low-income consumers. Governance policies may have benefitted some South African spaza shopkeepers by reducing competition, but they also posed an economic threat to many other parties. Given that the local economic context was complex and contained multiple participants, it is not clear why governance actors were so driven to enforce the will of South African spaza shopkeepers. This suggests that other concerns played a role in their responses.

Another reason given by governance actors for curtailing foreign national spaza shops related to their alleged involvement in illegal activities. Police officials, local authorities and political leaders frequently accused foreign national spaza shopkeepers of not paying taxes, being illegal immigrants, not complying with by-laws and health and safety legislation, not possessing business licenses, acquiring unlawful firearms, illegally importing goods, selling counterfeit and illicit goods, and engaging in 'unfair' trading practices in general. For example, the report of the Ad Hoc Joint Committee on Probing Violence against Foreign Nationals states that foreign nationals dominate trade in part because their business models discourage competition through 'forming monopolies, evading taxes, avoiding customs and selling illegal and expired goods'.¹⁴⁶ It recommends better policing of container shops

¹⁴⁵ Report by the Ad Hoc Joint Committee on probing violence against foreign nationals, 19 November 2015, at 20.

¹⁴⁶ Ibid at 20.

and counterfeit goods, improving the monitoring of business permits and by-laws, and ensuring there were not 'too many licenses in one area'.¹⁴⁷

Several senior political leaders repeated this message. At a meeting with small businesses in Orange Farm, Gauteng on 2 April 2013, the Minister of Trade and Industry, Rob Davies, accused foreign national spaza shops of engaging in unlawful practices. He stated that a number of foreign national businesses sold 'Goods that are imported, probably illegally. Bad productivity, are not made in South Africa, that are not proudly South African'.¹⁴⁸ The Minister of Small Business Development, Lindiwe Zulu echoed this sentiment when she called for the tighter regulation of foreign national small businesses – claiming that many did not trade in accordance with the law.¹⁴⁹ Even President Jacob Zuma argued that foreign national businesses' failure to comply with South African laws was responsible for violent attacks against them in Gauteng in January and February 2015. At a breakfast briefing he explained that:

Nobody was saying 'we don't want you in these shops'. Only when this incident [i.e. the shooting of a 14 year old alleged robber by a Somali shopkeeper with an unregistered firearm] happens, then it triggered that problem. ... We need to help the foreigners. One - so that they must understand that they couldn't provoke. Two - they themselves should have things within the law.¹⁵⁰

However these claims about foreign national spaza shops' lack of legal compliance are mainly inaccurate or exaggerated. Furthermore, governance actors' lack of concern for similar behaviours amongst South African spaza shopkeepers suggest there are likely other motives behind calls to increase the regulation of foreign national shops.

¹⁴⁷ Report (not 145) at 38 to 39.

¹⁴⁸ Davies (note 138).

¹⁴⁹ Nompumelelo Magwaza 'Minister calls for spaza shop dialogue' *Sowetan*, 16 April 2015, available at <http://www.sowetanlive.co.za/news/2015/04/16/minister-calls-for-spaza-shop-dialogue?mode=true>, date accessed 4 March 2017. Lindiwe Zulu interview with SABC 'Laws regulating foreign owned spazas must be fast tracked: Zulu' *SABC News* 27 January 2015, available at <http://www.sabc.co.za/news/a/bfdc37004715bf689b21bf686e648436/Laws-regulating-foreign-owned-spazas-must-be-fast-tracked:-Zulu-20152701>, date accessed 4 March 2017.

¹⁵⁰ Jacob Zuma at The New Age (TNA) breakfast 13 February 2015, available at <https://www.youtube.com/watch?v=OTRWprjhnWY>

Foreign national spaza shops were by no means all law abiding. For example, many foreign national spaza shops in the field sites did possess unregistered firearms.¹⁵¹ This was mostly in response to widespread violent crime affecting them, as well as their inability to carry registered firearms, as they were not South African citizens or permanent residents.¹⁵² Furthermore, a number of foreign national spaza shops in the field sites sold illicit cigarettes. These were not counterfeit goods, but were mainly released on the market by legitimate South African tobacco manufacturers without disclosure to the revenue service (tobacco products were heavily taxed in South Africa).¹⁵³

Most other allegations of illegal practices were largely misplaced or ignorant of the legal framework governing spaza shops. While informal street traders, small businesses and hawkers often engaged in counterfeit sales of goods, spaza shops tended to sell food and household products such as sugar, bread, oil, flour and maize meal which was manufactured in South Africa, and purchased from local wholesalers.¹⁵⁴ Many if not most foreign national spaza shopkeepers resided legally in South Africa as asylum seekers or refugees, and were thus entitled to work in the country. For instance, in Cape Town by far the majority of foreign national spaza shopkeepers are Somali nationals who, according to the UNHCR had a refugee recognition rate averaging 83.6% between 2001 and 2013.¹⁵⁵

Another common allegation against foreign national spaza shops included that they engaged in 'unfair' business practices. Yet, foreign national spaza shopkeepers in the field sites utilised commonplace business practices such as price competition, partnerships and catering to customer needs, which were far from 'unfair' or monopolistic. Foreign national spaza shops in townships also tend to comply with by-laws. Many if not most zoning schemes in the country governing townships permitted the opening of businesses on residential properties (including the erection of

¹⁵¹ Police in the field sites claimed that many foreign national spaza shopkeepers possessed unregistered firearms. Some foreign national spaza shopkeepers also claimed to possess firearms on their premises to use in self-defence.

¹⁵² Section 9 of the Firearms Control Act 60 of 2000.

¹⁵³ Tammy Petersen 'Most illicit cigarettes now made in SA – Soty' *News24*, 10 November 2015, available at <http://www.news24.com/SouthAfrica/News/most-illicit-cigarettes-now-made-in-sa-soty-20151110>, date accessed 4 March 2017.

¹⁵⁴ Observations in the field sites and informal conversations with foreign national spaza shopkeepers.

¹⁵⁵ UNHCR Statistical Online Population Database, available at http://popstats.unhcr.org/#_ga=1.3026608.1642008189.1414090050, date accessed on 12 December 2014)

shipping containers on private property) so long as the dominant use of the property remained residential and the shop did not cause a disturbance to neighbours or interfere with the amenity of the neighbourhood.¹⁵⁶ Spaza shops were also frequently not required to possess business licenses or permits. In Cape Town informal trading permits were only needed for businesses operating from demarcated trading bays in public spaces such as markets, train stations and pavements.¹⁵⁷ Furthermore, business licences were only required for businesses that sold prepared meals, prepared food on site (such a hot dog stands, delis and restaurants), or engaged in health and entertainment services (such as massage parlours).¹⁵⁸ According to the city's Environmental Health department, which issued business licenses, spaza shops did not need business licenses because they sold pre-packed foods.¹⁵⁹

The Minister of Small Business Development, Lindiwe Zulu, claimed that looting and public violence against foreign national spaza shops distracted the public from the valid concerns of South African business owners that foreigners did not trade according to the law.¹⁶⁰ However, in an interview she struggled to explain what particular laws they breached, stating 'That's why I'm saying we need to fast track that, because the regulations are falling short in terms of ensuring that there's proper re-zoning, there's proper infrastructure'.¹⁶¹

The SAPS was well aware of foreign national spaza shops' general compliance with by-laws. Its input to the Department of Trade and Industry on Nibus, SAPS states:

¹⁵⁶ Different laws govern township zoning. The Black Communities Development Act 4 of 1984 (BCDA) regulates land use in older townships, while the Less Formal Township Establishment Act 113 of 1991 (LFTEA) regulates township land use in many newer townships. The BCDA zoning scheme permits residential properties to be used for business purposes. In the Western Cape province LFTEA areas have been zoned as 'informal residential' under the provincial legislature's Land Use Planning Ordinance Act 15 of 1995 (LUPO), which also provides that residential premises can be used for business purposes (see section 6 of LUPO scheme regulations) These Acts applied in Cape Town before 1 March 2013. However in Cape Town they were replaced by the City of Cape Town Zoning Regulations, which came into effect on 1 March 2013. These regulations were subsequently replaced by the City of Cape Town Municipal Planning By-Law, 2015. Both the zoning regulations and later zoning by-law permit the establishment of businesses on most township properties in the city.

¹⁵⁷ Section 8, City of Cape Town: Informal Trading By-Law, Provincial Gazette No. 6677, 20 November 2009, available at <http://openbylaws.org.za/za/by-law/cape-town/2009/informal-trading/>, date accessed 26 January 2015.

¹⁵⁸ City of Cape Town Environmental Health Department webpage titled 'licensing and certification', available at <https://www.capetown.gov.za/en/CityHealth/EnviroHealth/FoodQualityandSafety/Pages/LicencingandCertification.aspx>, date accessed 20 January 2015.

¹⁵⁹ Interview, City of Cape Town environmental health officials, Bellville, 2 June 2014.

¹⁶⁰ Magubane (note 15).

¹⁶¹ Lindwe Zulu interview with SABC 'Laws regulating foreign owned spazas must be fast tracked: Zulu' SABC News 27 January 2015, available at <http://www.sabc.co.za/news/a/bfdc37004715bf689b21bf686e648436/Laws-regulating-foreign-owned-spazas-must-be-fast-tracked:-Zulu-20152701>, date accessed 4 March 2017.

Some of these informal businesses [i.e. businesses which are not regulated in terms of the Business Act or White Paper] are operated on private premises and thus cannot be charged in terms of contravention of the by-law on Street Trading, as it does not apply to private premises and this makes it difficult to implement and ensure strict compliance by SAPS.¹⁶² (Parenthesis in the original)

Many local SAPS officials and law enforcement authorities interviewed in Cape Town emphasised that spaza shops did not require business permits as zoning schemes permitted them to open businesses in townships. The station commander of Khayelitsha police station explained in 2011 that Khayelitsha was a 'free trade area' and that shops therefore did not require re-zoning in order to operate. The following year at a meeting between Somali and South African spaza shopkeepers in Khayelitsha a representative from the City of Cape Town's municipal law enforcement department informed traders and police present at the meeting that:

Khayelitsha is not regulated and no trading plan has been submitted for the area. In the absence of a trading area, the area is deemed a free trading area. Because it's a free trade area we cannot tell people not to trade.¹⁶³

He went on to emphasise that the state had little power to interfere with economic activities taking place on township residents' private properties:

All former disadvantaged areas, i.e. black areas, are exempted from the Land Use Planning Ordinance. Therefore no re-zoning is needed for business. So any business can run from a property, RDP or container, and people do not need to apply for re-zoning.... I want to stress: we should start pointing fingers at ourselves. They are not setting up shop on city land, but in your yards.¹⁶⁴

¹⁶² Nibus (note 133) at 69.

¹⁶³ Speech at meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, Khayelitsha, 20 March 2012.

¹⁶⁴ Ibid.

Furthermore, to the extent that foreign national spaza shopkeepers engaged in unlawful behaviour (for example not paying tax, not possessing business licenses or breaching by-laws), it did not appear as though South African spaza shopkeepers behaved any differently. In fact, anecdotal examples suggested that South African spaza shops complied even less with some laws than their foreign counterparts. For example, at a meeting between South African and Somali spaza shopkeepers in Khayelitsha in 2012, the chairman of the meeting complained that 'There is a by-law. You need permits issued by local government. Unfortunately local people are not tending to permits, only Somalis'.¹⁶⁵ Although the chairperson of the meeting was in some ways incorrect - there was in fact no by-law in Cape Town requiring spaza shops to possess permits, and Somali traders had in actuality been incorrectly issued and charged fees for informal trading permits that they did not need¹⁶⁶ - the chairperson's remark nevertheless demonstrated that foreign nationals in the area had made greater efforts to comply with the law (or what they thought was the law) than their South African counterparts. On a similar note, a study of 64 Somali and 65 South African spaza shopkeepers in Motherwell township in Port Elizabeth found that South African spaza shops were less likely to be registered for income tax than foreign national shops.¹⁶⁷ In particular 74% of Somali shopkeepers surveyed were registered for income tax, while only 17% of South African spaza shopkeepers were registered.¹⁶⁸

South African spaza shops in the field sites and beyond engaged in widespread cartel behaviour including threatening their competition, ordering foreign competitors to close down their businesses, and in some cases allegedly murdering their competitors. This contributed to the emergence of anti-competitive informal trade agreements between South African and foreign national traders in Cape Town's townships and other towns and cities. In their case study of spaza shopkeepers in Delft South, Cape Town, Charman *et al* argue that price-fixing and collusive

¹⁶⁵ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, Khayelitsha, 20 March 2012

¹⁶⁶ Somalis claimed that Nombasa Kolo at the Fezeka Municipal office in Gugulethu had issued them with issued informal trading permits for a monthly fee of R150. One Somali community representative claimed that he had assisted over 100 traders in applying for permits at the municipal office.

¹⁶⁷ Abdu Sh Mohamed Hikam 'An exploratory study on the Somali immigrants' involvement in the informal economy of Nelson Mandela Bay' 2011 masters dissertation, Nelson Mandela Metropolitan University.

¹⁶⁸ Ibid at 75.

behaviour was the norm amongst South African spaza traders.¹⁶⁹ Yet governance actors were not particularly concerned about these unfair business practices. This is reflected in the Competition Commission's failure to investigate the 2009 price fixing agreement in Gugulethu.¹⁷⁰ In contrast the Commission launched a market inquiry into the economic activities of foreign national retailers in 2016.

The state has even gone out of its way to prevent foreign nationals from complying with the law by attempting to obstruct them from acquiring business licenses. For example, in 2012 foreign national spaza shopkeepers in the Limpopo province complained that they could not access business permits from their local municipality, as the staff at the municipal office had repeatedly told them that foreign nationals did not qualify.¹⁷¹ When the matter went to court, the Limpopo Department of Economic Development, Environment and Tourism maintained that it was willing to grant permits, but a whole range of other state officials and departments argued that granting permits to asylum seekers and refugees was unlawful and unconstitutional. These included the Minister of Police, the Minister of Home Affairs, the National Police Commissioner, and the Standing Committee for Refugee Affairs.¹⁷² The Supreme Court of Appeal ruled in favour of the foreign national traders and declared that they were entitled to apply for business or trading licenses.

Some state authorities went so far as to flout the law themselves in their efforts to regulate foreign nationals spaza shopkeepers. This was evident in Cape Town where between November 2011 and February 2013 police fined foreign national spaza shopkeepers in terms of non-existent legislation titled the 'Local Authorities Act 19 of 1974'. In some cases traders were arrested and detained for several hours until the early hours of the morning or the following evening. Fines ranged between R1,000 to R2,000. This was despite the fact that spaza shops in Cape Town did not require business licenses or trading permits.¹⁷³ Senior police leaders' endorsement of local informal regulatory arrangements that discriminated against foreign national spaza shopkeepers, flouted competition laws, and were contractually unenforceable also indicated that they were not heavily concerned with the content of and correct

¹⁶⁹ Charman *et al* (note 26) at 51.

¹⁷⁰ Mtyala (note 10).

¹⁷¹ *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* (48/2014) ZASCA 143 (26 September 2014) at para 13.

¹⁷² *Ibid.*

¹⁷³ See notes 156 to 159.

application of laws.¹⁷⁴

Thus calls for foreign national spaza shopkeepers to comply with the law did not seem fully genuine. Assertions of illegality were often unfounded or inflated, and were accompanied by positive measures to prevent compliance. At the same time, authorities own flouting of the law, and their general indifference towards South African spaza shops' legal noncompliance suggest that demands for greater legal enforcement of foreign nationals' spaza shops were not primarily concerned with illegal behaviour *per se*.

The SAPS also called for the curbing of foreign national spaza shops because of the high rate of robbery affecting their businesses. While foreign national spaza shopkeepers in the field sites fell victim to a number of different forms of crime including xenophobic looting, and threats and attacks by competing South African shopkeepers, business robbery was the most common form of crime affecting their shops. Police argued that the expansion of foreign national spaza shops had contributed to exponential upsurges in business robbery in the country. The SAPS's published crime statistics showed that over the past decade the number of business robberies in the Western Cape province increased from 110 cases in 2005/2006 to 2,218 cases in 2014/2015.¹⁷⁵ Nationally business robberies increased from 4,384 cases to 19,170 over the same period.¹⁷⁶ These robberies disproportionately targetted foreign national spaza shops. For example, in February 2012, Western Cape Police Commissioner Arno Lamoer stated in the SAPS Western Cape Annual Report that:

The proliferation of 'Spaza' shops linked to the influx of foreign nationals, particularly in townships throughout the Province, has resulted in an upsurge in business robberies and attacks on owners of the 'Spaza' shops.¹⁷⁷

¹⁷⁴ For example, at meetings in Khayelitsha, the agreement was supported by the minister of police, the provincial commissioner of police, and the special advisor to the minister of police.

¹⁷⁵ SAPS 2015 crime statistics, available at http://www.saps.gov.za/resource_centre/publications/statistics/crimestats/2015/crime_stats.php, date accessed 4 March 2017.

¹⁷⁶ Ibid.

¹⁷⁷ Prologue by Lieutenant General AH Lamoer in 'South African Police Service / Western Cape' Annual Report 2012/2013 at 2.

National police reports also emphasised that foreign national spaza shops were frequently targets of business robberies. The SAPS's analysis of national crime statistics for 2012/2013 stated that the majority of business robberies in the country (apart from Kwa-Zulu Natal and Gauteng) 'involve informal businesses such as spaza/tuck shops and/or taverns. In some areas the majority of such businesses belong to foreign small traders...'¹⁷⁸

Foreign spaza shops were vulnerable to robberies for a number of reasons. Firstly, police in the field sites reported that shops were cash businesses and contained consumer goods such as cigarettes and airtime, which were easy to convey and resell. In contrast, other township businesses such as hair salons, mechanics and fruit and vegetable stalls did not contain the same degree of cash and conveyable consumer goods. An Angolan shoe repairman in Philippi East exclaimed 'what are they going to take from me? I only have old shoes'.¹⁷⁹

A further feature that contributed to foreign national spaza shops' vulnerability to crime was their general social alienation, resulting in traders not enjoying the same degree of community protection as South African spaza shops. Many community structures in the township field sites were actively involved in investigating crime and punishing offenders, and had to a great extent usurped the role of the police and formal justice system. Their efforts were usually coordinated by street committees, which were small residents' groups that existed on most streets. The majority of street committees fell under the South African National Civic Organisation (SANCO), a national umbrella organisation that represented township civic groups on street, area, ward, township, province and national levels.

Degrees and types of activity varied from place to place. Some residents in the field sites described that their street committees cooperated with the formal justice system by investigating local crimes and handing suspects over to the police. In other areas, residents and local leaders almost exclusively dealt with crime with the state playing almost no role. For example, in the shack settlement of Thabo Mbeki in Philippi East

¹⁷⁸ SAPS: An analysis of the national crime statistics: Addendum to the annual report a 2013/2014 at p11, available at http://www.saps.gov.za/about/stratframework/annual_report/2013_2014/crime_statreport_2014_part1.pdf, date access 19 April 2016.

¹⁷⁹ Interview, Philippi East, 10 February 2012.

residents regularly attended local meetings where neighbourhood issues were discussed. A special committee of about 13 members was responsible for marshaling street patrols and receiving criminal cases. Suspected criminals were always granted a hearing where they were given an opportunity to defend themselves, and if found guilty were subjected punishments including beatings, banishment, and in severe cases, death. In Pola Park, Philippi East, residents stated that street committees were dysfunctional and existed only in name. As a result suspected criminals were frequently subjected to mob beatings, without matters being taken up by any organized community platforms. Punishments were often brutal and tortuous. For example, in Harare, Khayelitsha residents reported that victims of vigilante 'justice' were often beaten to death with 'half bricks' or fell subject to necklacing (forcing a tire filled with petrol or paraffin around a person's neck and setting it alight). A policeman in Kraaifontein reported that punishments in his jurisdiction included dripping melted plastic on alleged criminals, or forcing them to sit in the sun for extended periods of time.

Yet, when it came to crime affecting foreign national spaza shopkeepers in the field sites, the response of South African residents and street committees was muted. This was not necessarily due to overt and hostile xenophobia against them, but more an outcome of systemic social and political marginalisation. Foreign national spaza shopkeepers fell below most township social or political radars. For example, many residents appreciated the services offered by foreign national spaza shops, but had paid little thought to crime and other challenges affecting these businesses. The vast majority of foreign national spaza shopkeepers in Cape Town were Somalis whose families lived outside of townships in white Afrikaans or coloured neighbourhoods. These shopkeepers – being Muslim, Somali speaking, and from East Africa - meant that they generally did not share the same language, or cultural and religious background as residents. As a result they did not attend the same places of worship, and were inhibited from socializing at South African venues due to dietary laws. Foreign spaza shopkeepers also frequently relocated in response to crime, and were tenants rather than homeowners. Residents therefore saw them as temporary sojourners, rather than long-term inhabitants with a stake in the community. Foreign national spaza shopkeepers furthermore rarely participated in street committee activities. Of the 71 Somali traders interviewed on access to justice only three regularly attended local street committee meetings. Most stayed away due to concerns over their safety, feelings that they would not be welcome, or because of

long working hours. Overall the relationship between residents and shopkeepers was that of shopkeeper and customer, rather than friend or neighbour.

As a result many residents in the field sites felt removed from the lives of foreign shopkeepers, and did not think that problems affecting foreign national spaza shopkeepers were an urgent concern of theirs. A Khayelitsha resident described that:

We don't help them because they don't help us. We are not really concerned about their problems because they are very separate from us. If someone were to kill them, we would never even know.¹⁸⁰

Foreign national spaza shopkeepers who approached local street committees leaders in the aftermath of crime were usually offered little assistance beyond the extension of condolences. A South African resident in Philippi East explained that street committees could not be held completely responsible for their inaction, as committees mobilised in response to local outrage. This did not occur when crimes targeted foreigners making it difficult for them to act.¹⁸¹ A group of youth in Philippi East described robbing foreign national shops repeatedly because neither the police nor community leaders intervened.¹⁸² The lack of community response therefore left many foreign spaza shops on a back footing when it came to their safety.

The SAPS responded to robberies affecting foreign national spaza shops by calling for heightened regulation of these businesses. Police alleged that lack of regulatory compliance by foreign national spaza shops in townships contributed to increasing business robbery rates against them.¹⁸³ For example, the SAPS's 2012 Crime Overview states that police efforts towards tackling business robberies had been hampered by 'compliance issues' relating to 'Registration with Trade and Industry,

¹⁸⁰ Interview, Khayelitsha South African resident, Endlovini, Khayelitsha, 6 February 2011.

¹⁸¹ Interview, South African resident, Lower Crossroads, Philippi East, 25 January 2012.

¹⁸² Interview, group of South African youth, Philippi East, 12 December 2011.

¹⁸³ Sapa 'Foreigners streaming into Western Cape' *News24*, 8 February 2012, available at <http://www.news24.com/SouthAfrica/News/Foreigners-streaming-into-Western-Cape-20120208>, date accessed 3 June 2015. Sue Segar 'Extra laws needed to tackle foreigner influx' *Cape Argus*, 9 February 2012, available at <http://www.iol.co.za/capeargus/extra-laws-needed-to-tackle-foreigner-influx-1.1230663#.VW7TTlyQdUQ>, date accessed 3 June 2015. Wyndham Hartley, 'Illegal foreign business owners a soft target for criminals' *BDay Live*, 9 February 2012, available at <http://www.bdlive.co.za/articles/2012/02/09/illegal-foreign-business-owners-a-soft-target-for-criminals;jsessionid=2068B6759A426AF8F3EE8AC73C0B6B0C.present2.bdfm?service=print>, date accessed 3 June 2015.

SARS, Municipal By Law Enforcement'.¹⁸⁴ This sentiment was shared across a number of provinces. The Western Cape Provincial Commissioner of Police Arno Lamoer complained that the increase in foreign national spaza shops was contributing to business robberies and that local authorities were not doing enough to ensure that shops were permitted and complied with by-laws.¹⁸⁵

In addition to calling for heightened regulation of foreign national spaza shops, the SAPS engaged in a number of regulatory operations targeting foreign national spaza shops. For example, in July 2012 the Limpopo Commissioner of police instructed police to crack down on informal businesses that were trading without licenses. The operation was termed 'Operation Hardstick' and saw hundreds of foreign nationals fined for not possessing business permits, and their products confiscated, in what traders' claim involved the selective enforcement of the law.¹⁸⁶ That same month in Maropong in the North West, police fined and confiscated the goods of 100 foreign national spaza traders.¹⁸⁷ A SAPS Lieutenant in the province justified the raids as follows:

If a R100 is stolen from a spaza shop it becomes part of house breaking statistics in the province. Illegal taverns also contribute to high crime statistics and alcohol related crime, it is for this reason that several operations throughout the province have seen many foreign nationals who operate business illegally arrested'.¹⁸⁸

Similarly, between November 2011 and February 2013 police regularly raided foreign national spaza shops across Cape Town and fined shops for trading without a license.¹⁸⁹ As mentioned, this was despite the fact that spaza shops did not require

¹⁸⁴ SAPS' 2012 Crime Overview at 62.

¹⁸⁵ Segar (note 183) and Hartley (note 183).

¹⁸⁶ 'South Africa police target foreign traders in Limpopo' *Irin News* 17 August 2012, available at <http://www.irinnews.org/report/96130/south-africa-police-target-foreign-traders-limpopo>, date accessed 4 March 2017. Carmel Rickard 'Court victory for asylum seekers' *GroundUp*, 6 October 2014, available at http://www.groundup.org.za/article/court-victory-asylum-seekers_2324/, date accessed 4 March 2017.

¹⁸⁷ Valerie Cilliers 'Court rules on spaza shops' *Northern News*, 24 August 2012, available at http://www.noordnuus.co.za/details/24-08-2012/court_rules_on_spaza_shops/14634. Date accesses 12 December 2013.

¹⁸⁸ *Ibid.*

¹⁸⁹ Interviews with foreign national spaza shopkeepers from Khayelitsha, Gugulethu, Observatory, Elsies Rivier and Philippi.

business permits or licenses to operate.¹⁹⁰ Police officers at the Woodstock police station defended their arrest and detention of two Somali grocery shopkeepers working in Observatory, stating that senior officials were concerned that the high rate of business robbery in the province would make the government look bad.¹⁹¹

However, despite the SAPS's stated intentions, the goal of heightened regulation could not have been only to protect shops from robberies. This is because compliance with laws (real or fictional ones) does not make businesses easier to monitor. For example, registering with SARS, possessing a business license, or adhering to environmental health regulations would not have prevented businesses from being robbed or make shops easier to patrol. This suggests that the SAPS's goal was not primarily to protect shops, but rather to reduce the number of shops by closing down noncompliant businesses. This would result in fewer shops for police to monitor as well as fewer outlets for criminals to rob.

Yet, combatting crime normally does not involve targeting victims. Instead police would usually be expected to investigate and crack down on perpetrators. The SAPS placed little emphasis on prioritising, investigating and prosecuting business robberies affecting foreign national spaza shopkeepers, and perpetrators enjoyed relative impunity for their actions. When exploring police and prosecutors' responses to crimes affecting foreign national spaza shopkeepers in Kraaifontein, Khayelitsha and Philippi East in 2010 and 2011, foreign victims of business robberies reported very little progress in their cases if any. Victims described that police had opened cases, and occasionally made arrests, but suspects were released and no further action had followed. Of approximately 38 foreign national spaza traders who reported having been robbed (some repeatedly), none of them experienced any successful prosecutions. Police respondents highlighted a number of barriers to conducting effective investigations including language barriers and frequent relocation of shopkeepers, but did not mention any deliberate strategies to overcome these problems. Such a strategy could have involved improving intelligence gathering, hiring more effective translators, or keeping in better contact with foreign national victims.

¹⁹⁰ See notes 156 to 159.

¹⁹¹ Inquiry with Woodstock police official at Woodstock police station in February 2013.

Police seemed far more preoccupied with clamping down on foreign national spaza shops that fell victim to business robberies, than deliberately crafting interventions to bring offenders to book. These lacklustre efforts at investigating and prosecuting business robberies suggested that police concerns over business robbery rates affecting foreign national spaza shops could not be the only factor driving their calls for greater regulation.

A fourth commonly stated reason for limiting foreign national spaza shops was the risk that their continued expansion could see them fall victim to further xenophobic public unrest or murders orchestrated by South African spaza shopkeepers. South African shopkeepers frequently threatened to unleash violence and anarchy should their demands relating to foreign national spaza shops not be met. This was evident in the text of many informal trade agreements. The introduction to the 2009 Gugulethu agreement describes that South African spaza traders distributed leaflets in Gugulethu calling for Somali traders to leave the area 'or else they will face unpleasant consequences'.¹⁹² Meetings were subsequently called to 'warn the Gugulethu public against any action that could incite one section of the population against another'.¹⁹³ When Somali traders attempted to withdraw from the negotiation process, the agreement states that the:

'UNHCR requested to ask for another meeting, to enable it to have a discussion with the Somalis and to explain to them the need to co-operate with the local traders in order to avert any ugly situation from happening.'¹⁹⁴

Similarly a 2012 communiqué signed by a Zanolkhanyo Retailers Association and the Somali Retailers Association in Khayelitsha sets out that informal trade agreements were entered into in a number of townships (namely Khayelitsha, Lower Cross Roads, Nyanga, Gugulethu, Du Noon and Delft) in order to 'bring peace, mutual co-existence and cohesion following the unfortunate and tragic event of 2008'. The communiqué then warns that failure to enforce the agreement 'will breed anarchy in our community'.

¹⁹² Gugulethu agreement (note 128).

¹⁹³ Ibid.

¹⁹⁴ Ibid.

South African traders and their representatives also threatened violence at meetings. At a meeting in March 2012 in Khayelitsha, a mediator arguing on behalf of South African shopkeepers, emphasised that:

We need to work this out before it gets ugly. I just heard that there are problems in Plettenberg Bay and that there is xenophobia happening there. We do not want that in Khayelitsha and our townships.¹⁹⁵

Governance actors often highlighted these risks of violence as reasons for why informal agreements barring new foreign spaza shops were necessary. For example the SAPS' inputs to Nibus state that:

In order to reduce xenophobia associated with foreign national traders, there is a need for the strategy to influence the type of businesses that foreign nationals should run and the demarcated areas where these businesses should be active.¹⁹⁶

However, as was the case with business robberies, police tended to emphasise tighter regulatory controls over foreign national spaza businesses, more than demonstrating strong responses and clear strategies toward various threats towards and lootings of their shops. Foreign national spaza shopkeepers in the field sites reported that when police arrived on the scenes of mob lootings, they were only prepared to evacuate shopkeepers, and not protect their property. This often meant that businesses were destroyed and shopkeepers' investments were lost. When police did arrest looters, they were quickly released, and no further action was taken. One foreign national spaza trader described how police assisted him in retrieving several goods by accompanying him to various looters' homes. However they did not institute any criminal action against those found in possession of his stolen items.¹⁹⁷ In some cases of looting, police simply stood by and did nothing when called upon to intervene, or even worse participated in looting themselves.

¹⁹⁵ Meeting between South African and Somali spaza shopkeepers at Lingeletu police station, Khayelitsha, 20 March 2012.

¹⁹⁶ Nibus (note 133).

¹⁹⁷ Interview, Khayelitsha Somali spaza trader, Mitchells Plain, 8 January 2011.

Police also did little in response to threats and other attacks by competing South African shopkeepers ranging from intimidation to orchestrated assassinations. South African retailers associations often sent threatening leaflets to Somali shopkeepers or their landlords informing them to close down their businesses.¹⁹⁸ In some cases such as in Masiphumelele in 2006 and Philippi East in 2011, they proceeded to forcibly close down foreign national spaza shops once the deadline arrived. Yet only in Khayelitsha in 2008 were South African traders prosecuted for such activities, albeit receiving merely a suspended sentence.

Foreign national spaza shopkeepers were not only at risk of having their shops looted. Many in the field sites in Cape Town fell victim to orchestrated murders. This was particularly the case in Kraaifontein and Philippi. While some of these murders occurred during the course of apparent business robberies, others involved traders being shot and killed without having been robbed, suggesting alternative motives for their killings. Furthermore in 2010, a number of traders in Philippi were killed or injured in arson attacks on their shops, which involved assailants throwing lit bottles of paraffin into foreign national spaza shops while their occupants were asleep inside.

Of the four police stations covered by the research (namely Phillip East, Kraaifontein Khayelitsha ('Site B'), and Harare police stations) only Kraaifontein police station made deliberate efforts to prioritise the orchestrated murders of foreign national spaza shopkeepers. This came in response to a number of killings of foreign national spaza shopkeepers in the area in 2010. A police investigator at the station was tasked with investigating all criminal cases relating to spaza shops and collected crime intelligence from community members. His investigation culminated in the arrest of four South African traders and seven unemployed youth, who were connected to 33 criminal cases involving attacks on foreign national spaza shops in the station's jurisdiction.¹⁹⁹ The suspects were denied bail and detained for several months, but the case fell apart when a key state witness (one of the youths) refused to testify in court, and errors were found in the police's ballistics evidence.²⁰⁰ The police detective handling the matter stated that although the station's investigation had not culminated in prosecutions, the arrests had been effective in preventing

¹⁹⁸ This occurred in Khayelitsha in 2008, Gugulethu in 2009, Kraaifontein in 2010, and Philippi East in 2011.

¹⁹⁹ Interview, Kraaifontein police detective, Kraaifontein, 13 January 2011.

²⁰⁰ Ibid.

further attacks. He stated that:

Somalis are no longer as afraid of South African shopkeepers because police are harsher than before and the police approach is different... If something starts like that we want it to stop. We will go right to the people we arrested before and detain them again. They got such a fright after this.²⁰¹

Somali shopkeepers confirmed that orchestrated attacks on Somali spaza shops had ceased since the police interventions.²⁰² In fact an informal trade agreement was entered into in Kraaifontein a year after orchestrated murders had ceased. The police detective explained that the agreement was the outcome of political pressure by SANCO and South African traders, who realised after the arrests in 2010 that they could not utilise violence to rid themselves of competition.²⁰³

Khayelitsha experienced far fewer incidents of orchestrated crime against Somali traders than Philippi and Kraaifontein. Of the fifteen Somali respondents interviewed, none described incidents that reflected features of orchestrated attacks, such as assassination style killings or their shops set alight. Although police suspected that some business robberies could be connected to disputes over competition, they stated that they did not have any clear evidence to prove it.²⁰⁴ Members of the Somali Retailers Association similarly stated that orchestrated crimes were not common in Khayelitsha, apart from a spate of three murders that took place shortly after a contentious meeting with South African traders in October 2010.²⁰⁵ A Somali spaza shopkeeper from Khayelitsha remarked:

Khayelitsha is the only area where at least we have a friendship with the black people. At least it's somewhere I can go any time... In Khayelitsha I can drive any time I want, even if it's midnight because I know the people.²⁰⁶

²⁰¹ Interview, Kraaifontein police station detective, Kraaifontein, 1 December 2011.

²⁰² Interview, Kraaifontein Somali representative, Bellville, 12 December 2011. Interview, Kraaifontein Somali community representative, Kraaifontein, 5 June 2012.

²⁰³ Interview, Kraaifontein police station detective, Kraaifontein, 1 December 2011.

²⁰⁴ Interviews, Khayelitsha police station sector managers and police colonel, Khayelitsha, 25 October 2011.

Interview, Harare police station detective, Harare, Khayelitsha, 7 December 2011.

²⁰⁵ Somali Retailers Association representatives, Mitchells Plain, 1 November 2010.

²⁰⁶ Khayelitsha Somali community activist, Mitchells Plain, 6 July 2012.

Somali spaza traders believed that they were less susceptible to orchestrated attacks in Khayelitsha, as they enjoyed a greater degree of community support than in Philippi and Kraaifontein. This was because of the long-standing presence of Somali shopkeepers in Khayelitsha (entering as early as early as the mid-1990s before local traders came to see them as a threat), as well as Somali community outreach efforts in the aftermath of the 2008 xenophobic riots which enabled them to form close relationships with community members and SANCO leadership in the township. A Somali community leader stated that these efforts ended in 2009 as a result of extortion by South African community leaders, whose increasing demands for donations from the Somali community became 'kind of protection fee at the end of the day'.²⁰⁷

Informal trade agreements prohibiting new foreign national spaza shops did work to a degree in preventing orchestrated attacks on foreign national spaza shopkeepers, as they temporarily appeased South African spaza shopkeepers. Yet, one would think that attempting to prevent crimes such as intimidation, looting and murder in this way – i.e. through unlawful and discriminatory mechanisms - would be a *last case* scenario for governance actors, to be turned to after all other efforts failed. This was not the case. As the above shows Somali spaza shopkeepers reported that police did not invest significant efforts into investigating and prosecuting looters. Neither did police confront South Africans for threatening foreign national businesses and attempting to close down their shops. The example of Kraaifontein police station's prioritized investigation, as well as the 2008 community outreach programme in Khayelitsha furthermore also show that informal trade agreements were not the only option available when it came to addressing and preventing orchestrated attacks on foreign national spaza shopkeepers. This suggests that further factors contributed towards the desires amongst governance actors to establish trade agreements governing respective townships, other than concerns for the safety of foreign national spaza shopkeepers.

The various reasons given by governance actors for calling for increased regulation of foreign national spaza shops therefore do not add up and present a complete picture. Curbing foreign national businesses to protect South African spaza

²⁰⁷ Telephone interview, Somali Retailers Association representative, 23 July 2012.

shopkeepers from competition poses significant risk to local economies. Foreign national spaza shops were also not a hotbed of illegal activity as claimed by authorities - or at least not more so than South African spaza shops. While robberies affecting foreign national spaza shops were a concern for governance actors, methods to address such crime such as reducing shop numbers through strict enforcement of real and fictional laws seem suspect, as they were not accompanied by coherent attempts to target criminals themselves. Lastly, the prevention of looting, intimidation and murders of foreign national spaza shopkeepers were often not accompanied by police actions aimed at rooting out instigators and perpetrators of such attacks, suggesting the existence of other factors playing a role in the establishment of these regulatory arrangements.

3.6 Understanding the foreign national shop threat: the people as *gevaar*

Further investigation is therefore required to comprehensively grasp the shop *gevaar* in South Africa. This task entails considering how other theorists have interpreted similar phenomena in other eras and regions. This is because the current shop *gevaar* in South Africa is not unique in time and place. South Africa has witnessed previous eras of accentuated fears over 'foreign traders'. In 1921 the government of the Union of South Africa established an 'Asiatic Enquiry' in response to complaints about the 'inroad of Asiatics'²⁰⁸ (primarily individuals of Indian decent) in business and trading sectors in South Africa. The enquiry's report lists a number of grievances against Asiatic traders, many of which echo the recent types of complaints leveled at foreign national spaza shopkeepers. These include that Asiatics:²⁰⁹

- Send their money out of the country instead of spending it where they earn it.
- Are a source of danger to the public health owing to their unclean habits.
- Carry on businesses, which should be carried on by Europeans, and close avenues of employment, which should be open to Europeans.
- Produce nothing in the Transvaal, and do not consume the produce of the country, but import their requirements from India.
- Form " rings " to keep out European competitors.

²⁰⁸ Report of the Asiatic Commission Inquiry, 1921 at para 1.

²⁰⁹ Ibid at para 108.

- Their religion, language, colour, mode of thought, ideals, manners and customs are entirely different to those of Europeans; they cannot be assimilated and their presence is a menace to European supremacy.
- Their standard of trading and methods of business are different to those of Europeans in the following respects:
 - The owner of the business and his shop assistants all usually reside on the premises.
 - They pay lower wages to their assistants than Europeans.
 - They evade the laws regulating hours of trading.
 - They habitually give short weight and adulterate foodstuffs.
 - They thus succeed in underselling European traders.

Almost three decades later Indian shopkeepers fell victim to widespread violence during the 1949 'Durban riots',²¹⁰ where mostly Zulu assailants attacked Indian homes and businesses in Durban, KwaZulu-Natal.

Fears towards foreign national or minority group traders are also not distinctive to South Africa. Weber, writing in the early 20th century in Germany, sets out the predicament of 'pariah peoples' such as 'impecunious wandering peddlers',²¹¹ which he states are found throughout the world.²¹² For him 'pariah people' denotes:

... a distinctive hereditary social group lacking autonomous political organization and characterized by internal prohibitions against commensality and intermarriage originally founded upon magical, tabooistic, and ritual injunctions. Two additional traits of a pariah people are political and social disprivilege and a far-reaching distinctiveness in economic functioning.²¹³

²¹⁰ Fatima Meer 'Indian South Africans – The struggle to be South African' *O'Malley Archive*, 2000, available at <https://www.nelsonmandela.org/omalley/index.php/site/q/03lv02424/04lv03275/05lv03336/06lv03344/07lv03346.htm>, date accessed 4 March 2017. Surendra Bhana and Bridglal Pachai 'A Documentary History of South African Indians' (undated) available at *South African History Online*, <http://www.sahistory.org.za/archive/70-durban-riots-1949>, date accessed 4 March 2017.

²¹¹ Weber (note 36) at 477

²¹² Ibid at 933.

²¹³ Ibid at 493.

He also describes pariahs living in a 'diaspora' where their situation is 'legally precarious'.²¹⁴ In Weber's view pariah status is not necessarily imposed on pariah groups, but can arise from voluntary segregation stemming from religious or moral beliefs.²¹⁵ He states that despite being subject to entrenched subordination, pariah people perceive themselves as possessing a special 'honour', which is tied to a belief in a better future beyond their present conditions.²¹⁶ This is evidenced in Hindu pariah castes' beliefs in a reincarnation or the Jewish faith in messianic salvation.²¹⁷ Weber concludes that pariah groups are generally scorned by society, and their presence is usually only tolerated by virtue of their economic indispensability.²¹⁸

Weber's reference to diasporic and largely cloistered communities living in legal uncertainty mirrors the conditions experienced by foreign national spaza shopkeepers in contemporary South Africa, who as asylum seekers and refugees generally only enjoy temporary and uncertain residency in the country, and lack formal political representation. In Cape Town foreign national spaza shopkeepers tended to congregate in ethnic enclaves in neighbourhoods such as Bellville and Mitchells Plain rather than live amongst South African communities. While Weber describes these groups being at best 'tolerated' and at worst 'despised' by resident communities, he does not explain why this is the case.

Writing in the 1970s, Bonacich analyses the condition of 'middleman minorities' with greater focus on why they are commonly viewed as a threat.²¹⁹ She argues that an essential condition of these groups is that they are 'sojourners' rather than permanent settlers.²²⁰ They either intend to return to a homeland, or have a special attachment to an ancestral homeland. They need not be foreign nationals, but they are usually migrants, or descended from migrants. She describes that middleman minorities are 'middlemen' in the sense that they concentrate themselves in trade and commerce occupations. Bonacich believes their orientation towards their homeland inhibits them from assimilating into surrounding communities. Instead middleman minority groups segregate themselves from host communities by sending their children to separate schools and residing in distinct neighbourhoods.

²¹⁴ Weber (note 36) at 934.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Bonacich (note 37).

²²⁰ Ibid at 584.

In Bonacich's view, conflict between the middleman minorities and the host societies stem from two factors, namely 'economic matters' and 'solidarity'. She describes that their economic activity tends to draw conflict from their clientele, competing businesses, and labourers. She illustrates this through the Durban riots of 1949, which she believes arose out of a situation where Indian landowners were extracting exorbitant rent from African tenants, and demanding increased prices for basic food items such as flour and sugar from African shop customers. Bonacich also believes that the solidarity found amongst middleman minority groups aggravates host societies who view them as 'clannish, alien, and unassimilable'.²²¹ As a result host societies perceive them as disloyal to host nations and economically parasitic. She argues that the extremity of host responses to middleman minorities arises from host society's difficulties in dislodging middleman groups, due to groups' economic and organisational power. She states that:

The difficulty of breaking entrenched middleman monopolies, the difficulty of controlling the growth and extension of their economic power, pushes host countries to ever more extreme reactions. One finds increasingly harsh measures, piled on one another, until, when all else fails, "final solutions" are enacted.²²²

While economic competition between South African and foreign national spaza shopkeepers has already been discussed as a factor contributing to the shop *gevaar*, Weber and Bonacich introduce a new element contributing to conflict, which is middleman minorities' tendency not to assimilate into host societies. Similarly in South Africa, foreign national spaza shopkeepers' general lack of familiarity with host communities contributes to antagonisms towards them. Apart from heightening to their vulnerability to crime, foreign national spaza shopkeepers' social and political isolation played a part in generating negative perceptions towards them. For example, many residents complained that foreign traders did not contribute anything to the community. This claim is illustrated by the Gugulethu agreement, which states that 'Somalis always keep to themselves and are insensitive to what is going on in

²²¹ Bonacich (note 37) at 591.

²²² Ibid at 592.

the community. They do not contribute to community work in terms of sanitation, sports and other social issues concerning the community'.²²³

A number of grievances amongst residents towards foreign national spaza also stemmed from a lack of contact and familiarity with foreign nationals spaza shopkeepers. For example, many residents complained that foreign national spaza shopkeepers were unhygienic because brushed their teeth with a 'stick', would serve customers dressed in a blanket, and washed themselves with just a bucket or cup. Traders explained that these were traditional Somali customs, namely using a particular type of stick called a 'Miswak' to clean their teeth, wearing a sarong at home, and washing one's hands and feet with a bucket of water before daily prayers. In more severe cases residents believed that foreign national spaza shopkeepers' perceived success was due to witchcraft or sorcery, or feared that shopkeepers were plotting against the community because they would congregate in groups at night. Thus the social alienation of foreign national spaza shopkeepers in the field sites contributed to South African residents' fears of and intolerance towards them, much like Weber's description of 'pariah people', and Bonacich's analysis of 'middleman minority' groups. The shortcoming of Bonacich's account is that she sees hostility towards middleman minorities as mainly a result of foreign national spaza shopkeepers' behaviours (i.e. their economic pursuits and solidarity). In doing so she overlooks how surrounding socio-political contexts can also lead populations to turn on these groups. While middlemen minorities may exhibit similar lifestyle patterns, settled communities do not all respond to middleman minorities in the same way. For example, not all host societies view middleman minority groups as 'disloyal' or economically extractive, and attitudes towards them may vary from appreciation, acceptance, and indifference to acute hostility. This points to broader socio-political dynamics at play when it comes to host populations' general attitudes and responses to them. Thus focussing on the actions of foreign traders can only provide a partial picture of why diverse governance actors view foreign national spaza shops as a threat.

Fanon and Mamdani explore wider socio-political factors in greater detail in their analyses of xenophobia towards immigrant traders in post-colonial Africa. Both theorists view animosity towards foreign national traders across the continent as not

²²³ Gugulethu agreement (note 128).

necessarily being a result of traders' actions (such as failing to assimilate or heightening economic competition), but rather as an outcome of post-colonial identity politics. Fanon describes nationalist violence against foreign traders as one of the 'pitfalls of national consciousness', which emerges in the aftermath of political liberation, where claims for democracy transform into claims for 'nationhood'.²²⁴ This outcome is largely driven by the nation's new middleclass who seek to step into the shoes of the middleclass of the former colonizing country by demanding nationalization in the form of transferring 'into native hands of those unfair advantages which are a legacy of the colonial period'.²²⁵ This nationalism begins to take on racist features and spreads across the broader population. Soon the 'mass of the people' turns against Africans of other nations who they compete with in towns, just as the national bourgeoisie turn on Europeans.²²⁶ Fanon states that:

The working class of the towns, the masses of unemployed, the small artisans and craftsmen for their part line up behind this nationalist attitude; but in all justice let it be said, they only follow in the steps of their bourgeoisie. If the national bourgeoisie goes into competition with the Europeans, the artisans and craftsmen start a fight against non-national Africans. In the Ivory Coast, the anti-Dahoman and anti-Voltaic troubles are in fact racial riots. The Dahoman and Voltaic peoples, who control the greater part of the petty trade, are, once independence is declared, the object of hostile manifestations on the part of the people of the Ivory Coast.²²⁷

Like Fanon, Mamdani believes that antagonism towards 'subject races' is a legacy of the racist policies under colonialism. He describes that during colonialism, the law divided populations into natives and non-natives. Natives were then divided into ethnicities ruled by custom, while non-natives were divided into races (such as Europeans, Asians, Arabs and Hamites) ruled by civil and legal rights. Subject races (although colonized) fell under the latter system. For him subject races were:

... either nonindigenous immigrants, like the Indians of East, Central and Southern Africa, or they were constructed as nonindigenous by the colonial

²²⁴ Fanon (note 31) at 148.

²²⁵ Ibid at 152.

²²⁶ Ibid at 148.

²²⁷ Ibid 156.

powers, such as, for example, the Tutsi of Rwanda and Burundi. In contrast, subject ethnicities were indigenous. Finally, subject races usually performed a middleman function, in either the state or the market, and their position was marked by petty privilege economically and preferential treatment legally.²²⁸

Mamdani argues that after colonialism indigeneity become the basis for rights, justice and entitlement. As a result post-colonial nations became fixated with defining who was indigenous and who was not. For Mamdani violence against and expulsions of subject races in the aftermath of colonialism were a result of efforts by those considered 'indigenous' to grasp their entitlements. He states that at a later stage 'natives' turn on each other in their quest to increasingly define who is indigenous. As a result even those living in their ancestral land can come to be defined as non-indigenous.

Fanon and Mamdani thus view animosity towards foreign national traders as more the result of surrounding societal factors than the actions of traders themselves. In particular they see it as an outcome of post-colonial political conditions where notions of rights and ownership are rooted in indigeneity. This results in the popular targeting of not only European colonists and settlers, but all groups considered foreign or immigrant – including immigrant and foreign national traders.

Similarly in South Africa, notions of rights linked to indigeneity contribute to hostilities towards foreign national spaza shopkeepers. This is because, as in other post-colonial countries, many South Africans view the post-apartheid project as that of liberating indigenous black South Africans from poverty and economic inequality, which is largely a legacy of colonial and apartheid regimes. For example in his recent state of the nation address, President Jacob Zuma announced that:

Political freedom alone is incomplete without economic emancipation... What do we mean by radical socio-economic transformation? We mean fundamental change in the structure, systems, institutions and patterns of

²²⁸ Mamdani (note 39) at 657.

ownership, management and control of the economy in favour of all South Africans, especially the poor, the majority of whom are African and female.²²⁹

Later that evening at an ANC rally he explained:

We need to change the economy of this country radically. We the blacks who are a majority, but we're they have [sic] very little to do with the economy. And that is the task of the ANC.²³⁰

Furthermore the Department of Small Business Development's general strategic orientation emphasises the logic that the economic emancipation of black South Africans should be prioritised. In her department budget speech, the Minister of Small Business Development, Lindiwe Zulu explained that:

Twenty years since our freedom, the participation of black people in the country's economy still leaves much to be desired. Radical economic transformation is about turning this ugly picture on its head'. She added that 'South Africa, should, in its ownership, management and skills, reflect the active and meaningful participation of Africans in particular, and black people, in general.'²³¹

In line with this thinking, many South African spaza shopkeepers saw foreign national spaza shopkeepers an obstruction to their attempts at liberating themselves from poverty. For example, at a meeting in Khayelitsha in 2012, a South African trader remarked that 'Titus [the municipal law enforcement department's representative] is trying to oppress the black people in this province as much as he can... It is not true that we have xenophobia, we just want to benefit from the fruits of our revolution'.²³² Another South African trader compared the growth of Somali spaza shops to settler

²²⁹ Jacob Zuma, State of the Nation Address, 9 February 2016, available at https://www.scribd.com/document/338902830/Full-Speech-Zuma-s-2017-state-of-the-nation-address#from_embed, date accessed 4 March 2017.

²³⁰ Jacob Zuma, speech to ANC members, Grand Parade, Cape Town, 9 February.

²³¹ Lindiwe Zulu, 2015 Small business development department budget speech, 20 May 2015, available at <http://www.ujuh.co.za/lindiwe-zulu-2015-small-business-dept-budget-speech/>, date accessed 4 March 2017.

²³² Meeting between South African and Somali spaza shopkeepers at Lingeletu West police station, Khayelitsha, 20 March.

colonialism: 'They [Somalis] come here rich, they find us poor and take advantage of us. It's the same as when Jan van Riebeeck came here – it's exploitation'.²³³ For these traders the entry of foreign nationals interfered with their rights and entitlements as members of a formerly oppressed indigenous racial group.

While notions of rights linked to indigeneity or racial identity can heighten hostilities towards foreign national spaza shopkeepers, it does not fully explain why governance actors responded with such radical and urgent action such as bypassing normal legislative routes and breaching the law. This is especially the case given that acute hostilities towards foreign national spaza shops were felt mainly by South African spaza shopkeepers - not by the general populace as a whole (as assumed by Bonacich, Fanon, and Mamdani) - and most residents (including those adverse towards foreign national traders) took no active an interest in the issue.

In the field sites, South African spaza retailers' sentiments received mixed support from surrounding communities. South African residents interviewed generally showed appreciation for the low prices and efficient services that foreign spaza shops offered. Many described multiple benefits of foreign national spaza shops including offering lower priced goods, efficient service, and having longer opening hours than South African shops. Some went so far as to offer open praise and admiration for foreign national spaza shopkeepers. A Kraaifontein resident described that 'foreign spaza shopkeepers have nothing but respect for residents. They keep their premises very clean, take out dirt bins and clean the street. They give a lot of credit because they know what struggling is about'.²³⁴ A resident in Philippi East also commended shopkeepers stating that 'Somali traders will still sell if I'm 10 cents short, but not Xhosas. This is why I like Somali shops. When they came they didn't take anyone's shop. They never actively closed down anyone's shop'.²³⁵ Another nearby resident stated that 'If it were up to me I'd make bigger facilities for foreigners to thrive because as business people they create avenues for growth and the community benefit a lot'.²³⁶

Even some self-professed criminals who claimed to have targeted foreign national

²³³ Meeting between South African and Somali spaza shopkeepers at Lingeletu West police station, 7 March

²³⁴ Interview, South African resident, Bloekombos, Kraaifontein 10 August 2012

²³⁵ Interview, South African resident, Lower Crossroads, Philippi East, 20 January 2012.

²³⁶ Interview, South African resident, Lower Crossroads, Philippi East, 20 January 2012.

spaza shops made positive remarks about these businesses. A group of youth in Philippi East who stated that all they saw when they looked at foreign national spaza shops were 'dollar signs and the potential for quick cash'²³⁷ stated that if there were no other factors they would chase away foreign national traders because they competed with South Africans. However, on the whole they felt that the shops were of use to the community because of their low prices, convenience, and efficient services (for example, they could buy a scoop of sugar for R2,00, and shops opened early in the morning and closed late at night).²³⁸ Another youth in Philippi East explained that foreign national spaza shops offered many benefits including good customer service, low prices, and would still sell goods even when one could not afford the full price. However at the same time he stated that every time he saw a Somali spaza shop he only thought of breaking in.²³⁹

This is not to say that residents in the field sites were free of any antagonism towards foreign businesses. A significant number of residents harboured various degrees of resentment. The most common complaints amongst residents related to the perceived lack of personal hygiene amongst foreign shopkeepers and low food quality – especially bread, which many residents remarked had an odd smell. But a further frequent concern amongst South African residents was the perceived restriction of business opportunities for South Africans. Many residents viewed foreign national spaza shops as restricting avenues for South African economic mobility. A resident in Better Life, Philippi East explained that 'I have no problem with Somalis, but they should not have twenty shops in Better Life alone because it cancels the chances of local South Africans'.²⁴⁰ In Lower Crossroads, Philippi East, a resident described that 'Locals cannot have self-initiated businesses because foreigners took over the market'.²⁴¹ Similarly a Khayelitsha resident stated that her community liked foreign spaza shops because of their operating hours and affordable prices, but also felt threatened because 'they take away opportunities'.²⁴² Some township residents therefore saw foreign spaza shops as problematic not necessarily because they caused direct economic harm, but rather because they restricted potential avenues for the economic mobility of South Africans. A few residents were extremely hostile towards foreign national spaza shopkeepers. For example, a

²³⁷ Interview, group of South African youth, Philippi East, 12 December 2011.

²³⁸ Ibid.

²³⁹ Interview, South African youth, Philippi East, 12 December 2011.

²⁴⁰ Interview, South African resident, Better Life, Philippi East, 21 Jan 2012.

²⁴¹ Interview, South African resident, Lower Crossroads, Philippi East, 25 Jan 2012.

²⁴² Interview, South African resident, Site C, Khayelitsha, 5 February 2011

Gugulethu resident compared them to snakes,²⁴³ and a Philippi East resident accused foreign national spaza shopkeepers of cursing the neighbourhood with misfortune.²⁴⁴

However, these concerns – even when negative - were usually peripheral, and were not treated by residents as urgent priorities. The vast majority of residents reported that foreign national spaza shops had never been discussed at their local neighbourhood meetings. Whether they liked or disliked shops (or somewhere in between), all residents concurred that the main protagonists mobilising against foreign national spaza shopkeepers were South African shopkeepers who were concerned about competition.

Thus unlike Bonacich, Mamdani and Fanon who view antagonisms towards foreign national small businesses as held more or less evenly amongst members of host societies, individuals' hostilities towards foreign national spaza shopkeepers in the field sites differed largely between depending on their personal economic and political interests at stake. To understand desires to curb foreign national spaza shops it is necessary to look at broader socio-political contexts and the interests of different actors involved.

It is not surprising that many assume that desires to curb or remove shops are evenly felt amongst members of host societies. This is because large segments of general populations often do turn on foreign national, immigrant or minority group shops. Residents in the field sites frequently attacked foreign national spaza shops during the course of strikes, xenophobic riots, and service delivery protests. Incidents of South African spaza shopkeepers inciting public unrest occurred in Masiphumelele in 2006 and in the Strand in May 2008. On other occasions, local political leaders encouraged residents to attack shops. For example in February 2015, Ses'kona People's Rights Movement leaders defended their members' looting of foreign national businesses in Philippi East, by claiming that a Somali national had driven into a Ses'kona protester in Bellville.²⁴⁵ However, a Khayelitsha community activist,

²⁴³ Interview, South African resident, Gugulethu, 9 February 2011.

²⁴⁴ Interview, South African resident, Lower Crossroads, 20 January 2012.

²⁴⁵ Raeesa Pather 'Xenophobic attacks in Philippi "It's like they can't even think we are human like them' *The Daily Vox*, available at <http://www.thedailyvox.co.za/xenophobic-attacks-in-philippi-its-like-they-cant-even-think-we-are-human-like-them/>, date accessed 4 March 2017. Daneel Knoetze 'Philippi East foreigners say

as well as an NGO worker described that lootings carried out by Ses'kona members were usually pre-planned, as members had been reminded to bring bags along with them to protests: 'People were told that go and have your bags there, we're going to loot'.²⁴⁶ Not all lootings were orchestrated. Sometimes residents turned on foreign national spaza businesses spontaneously during protests without needing any organized incitement.²⁴⁷

While such attacks demonstrate widespread xenophobic disregard towards foreign national traders, they are not necessarily a marker of acute popular antagonism. Though mob attacks on foreign national spaza shops entailed racist and xenophobic selection of targets, their direct motivations related more to general frustration with life circumstances than to hardened discontent towards foreigners *per se*. Poverty compounded with widespread social and political disillusionment creates thriving conditions for lawlessness in many townships. Residents stated that these factors more than acute dislike of foreigners motivated attacks on their shops. A Khayelitsha resident explained that:

In an informal settlement you find people who are very frustrated because of the conditions we live in, no space, no electricity, no water. Most people living in an informal settlement have an anger issue. They're always frustrated. And then you find lots of people are sitting there doing nothing. So now you come there and say let's go to that shop. Or just one person starts to throw stones. It just takes one person, most of the time they do not plan.²⁴⁸

A Philippi resident similarly described that township residents were easy to incite:

... when there is something untoward happening in a typical township it catches the attention of the community, like paraffin being poured on a flame. The rest of the community will not be aware of what is happening and they

xenophobic hatred fuelled attacks' *GroundUp*, 26 February 2015, available at http://www.groundup.org.za/article/philippi-east-foreigners-say-xenophobic-hatred-fuelled-attacks_2719/, date accessed 4 March 2017.

²⁴⁶ Interview, Khayelitsha community activist, Rondebosch, 28 April 2015. Interview, NGO worker, Cape Town city centre, 23 March 2016.

²⁴⁷ Interview, Philippi South African resident, Cape Town city centre, 22 November 2010. Interview, Khayelitsha journalist, Rondebosch, 28 April 2015.

²⁴⁸ Interview, Khayelitsha community activist, Rondebosch, 28 April 2015.

will not necessarily be interested in getting to know what is happening. They will want to bring a tire to burn as well.²⁴⁹

A Khayelitsha resident blamed community leaders for encouraging residents to turn on foreign businesses in contexts of 'social crisis' such service delivery protests. He said that leaders 'chased away foreigners' in order to show residents that they were effective, but that 'ordinary people don't care'.²⁵⁰ This mirrors Misago's emphasis on the central role of local political leaders in the generation of xenophobic riots.²⁵¹

Many stated that looting was also a matter of opportunism: 'If I don't take that sump someone else will. Even landlords loot because at the end of the day we cannot stop these looters, so let's take something for ourselves as well'.²⁵² Likewise, a Philippi resident described that: '... those youth who were being involved are youth who see an opportunity for grabbing what there is to grab from a Somali shop'.²⁵³ A Khayelitsha resident who had confronted a police officer after he had participated in looting stated that the police officer defended his actions by claiming that all he had taken was 'just soap'.²⁵⁴

Foreign national spaza shopkeepers make particularly easy targets for opportunists and those wishing to express their built up anger over their social conditions. As already mentioned, shopkeepers generally fall outside of township social and political life and were not considered part of the 'community'. Residents in the field sites described that relationships between shopkeepers and their customers were mostly remote and commercial in nature. This contributed to community responses to crime affecting foreign spaza businesses being muted. Weak police and justice system interventions further compounded shopkeepers' vulnerability. Shops were therefore largely defenceless, making them easy targets to turn on.

But there is more to these outbursts of violence. Expressing discontent and

²⁴⁹ Interview, Philippi South African resident, Cape Town city centre, 22 November 2010.

²⁵⁰ Interview, Khayelitsha resident, Khayelitsha, 20 January 2011.

²⁵¹ Misago (note 20).

²⁵² Interview, Khayelitsha community activist, Rondebosch, 28 April 2015.

²⁵³ Interview, Philippi South African resident, Cape Town city centre, 22 November 2010.

²⁵⁴ Interview, Khayelitsha resident, Khayelitsha, 20 January 2011.

frustration through looting and public violence against foreign national spaza shops is not only a means of venting anger, accessing free goods or ridding neighbourhoods of foreigners (for those so-inclined). It also serves to communicate socio-economic dissatisfaction to political leaders – especially those occupying influential state positions. Approximately a quarter of the population of South Africa is unemployed (and just over a third of the population when using the expanded rate),²⁵⁵ and over 20 percent of South Africans live below the food poverty line.²⁵⁶ South Africa also has one of the highest Gini-coefficients in the world making it one of the economically unequal countries globally.²⁵⁷ As Zuma declared in his state of the nation address ‘Twenty two years into our freedom and democracy, the majority of black people are still economically disempowered. They are dissatisfied with the economic gains from liberation’.²⁵⁸

Foreign national spaza shops have symbolic power in township neighbourhoods. They reflect a form of economic mobility that continues to elude a number of South Africans. This is evident in residents’ concerns over foreign shops’ apparent seizure of business ‘chances’ and ‘opportunities’. By attacking symbols of economic mobility, residents hope to draw attention their stagnant social circumstances, and the fact that newly arrived non-citizens seem to be better off than them. A Khayelitsha resident described that ‘People are angry with the government and by committing xenophobia they think that maybe government will pay attention and meet their needs.’²⁵⁹ Many foreign national spaza shopkeepers agreed, and commonly described the motivations for attacks on their businesses as ‘attention’ from the government. The popular violence against foreign national spaza shops is thus also a call to political leaders and state institutions to address and accelerate the economic plight of South African township inhabitants. This is especially the case given that political promises to advance the economic liberation of black South Africans have largely remained unmet. This violence and discontent amongst the people, so easily triggered by local political and business leaders, threatens the state

²⁵⁵ Statistics South Africa ‘Employment, unemployment, skills and economic growth’ PDF presentation at 30, available at <http://www.statssa.gov.za/presentation/Stats%20SA%20presentation%20on%20skills%20and%20unemployment%2016%20September.pdf>, date accessed 4 March 2017.

²⁵⁶ The World Bank ‘South Africa Economic Update’ 2015 at 2, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/08/14/090224b08307421f/1_0/Rendered/PDF/South0Africa0e0hanging0demographics.pdf, date access 4 March 2017.

²⁵⁷ Ibid.

²⁵⁸ Zuma (note 229).

²⁵⁹ Interview, Khayelitsha resident, Site C, Khayelitsha, 5 February 2011.

and senior politicians, and feeds their urge to curb the activities of foreign national spaza shops.

South African spaza traders leverage this political fear by threatening to incite local residents against foreign national businesses. While foreign national spaza shops may be the targets of such anarchy, the message being sent by local residents who participate in attacks is primarily to the state and the political party leaders. In particular it is less an attempt to seize businesses from foreign nationals, and more an expression of popular discontent and disillusionment in the state's ability to deliver economic change. This is the real *gevaar* – the rage of the people against the country's political establishment. In response to the popular targeting of foreign national spaza shops, political and state actors scramble to find ways of showing their commitment to the economic cause of township residents – by clamping down on these same shops. By acting against foreign national spaza shops, political leaders and state officials achieve three feats. First they appease frustrated residents by indicating that they are putting the 'people' first. This is summed up by the Minister of Small Business Development's statement that 'Foreigners need to understand that they are here as a courtesy and our priority is to the people of this country first and foremost.'²⁶⁰

Secondly such action also appeases South African retailers and decreases their likelihood of inciting further popular rage and threatening the political status quo. Third, targeting foreign spaza shops tacitly attributes township economic woes to migration and the economic activities of foreign nationals. The Inter-Ministerial Committee on Migration (IMC) linked the xenophobic violence in Gauteng and KwaZulu-Natal in 2015 to economic constriction caused by foreign national businesses, stating that:

... the primary cause of the violence against foreign nationals is the increased competition arising from the socio-economic circumstances in South Africa. This was illustrated by statistics showing a growth in the number of unskilled immigrants entering the country since 2008. This is in the context of slowing economic growth and a decline in unskilled job creation. This has been

²⁶⁰ Lindiwe Zulu in Magubane (note 15).

heightened by a decade of poor implementation of immigration and border controls.²⁶¹

Accordingly the IMC recommended interventions such as reviewing the country's migration policy, prioritising economic growth and job creation in townships and rural areas, and auditing and licensing informal business.²⁶² It also launched 'Operation Fiela' (meaning 'sweep clean' in Sesotho), which, while supposedly aimed at 'eliminating criminality and general lawlessness from our communities' ²⁶³ disproportionately targeted foreign nationals and saw thousands of foreigners arrested and deported.²⁶⁴ The Minister in the Presidency, Jeff Radebe explained: 'Through Operation Fiela we are claiming our communities so that our people can live in peace'.²⁶⁵

Instead of declaring its fear of the people, political leaders and state actors emphasise a fear of shops, and with that an array of misinformed or partial reasons to constrict them – including competition with South African traders, their alleged lack of legal compliance, and crime affecting their shops. While the actions of foreign national traders (as emphasised by Bonacich), as well as postcolonial expectations linked to race and indigeneity (as stressed by Fanon and Mamdani) play a role in generating hostilities towards foreign national spaza shops, the shop *gevaar* in South Africa is also an outcome of weak formal state institutions faced with rising popular discontent. As a result informal political groupings use their ability to incite local discontent against foreign national spaza shops (as well as other targets such as clinics, schools, and busses) as a bargaining chip against an unstable state authority. When examining the problematisation of foreign national traders in postcolonial and developing countries it is therefore necessary to not only investigate the actions of traders or the nature of postcolonial identity politics. The trigger sparking anxieties towards shops can ultimately lie in the make up of their political spheres – i.e. in the

²⁶¹ Report of the d Hoc Joint Committee in Probing Violence Against Foreign Nationals, 19 November 2015, available at <https://pmg.org.za/taled-committee-report/2609/>, date accessed 4 March 2017.

²⁶² Ibid.

²⁶³ The South African Government's description of Operation Fiela, available at <http://www.gov.za/operation-fiela>, date accessed 4 March 2017.

²⁶⁴ Jonisayi Maromo 'The numbers behind Operation Fiela' *Mail & Guardian*, 7 September 2015, available at <http://mg.co.za/article/2015-09-07-the-numbers-behind-operation-fiela>, date accessed 4 March 2017. Kadija Patel 'Operation Fiela and our history of kicking out illegal immigrants' *Daily Vox*, 28 May 2015, available at <https://www.thedailyvox.co.za/operation-fiela-and-our-history-of-kicking-out-illegal-immigrants/>, date accessed 4 March 2017.

²⁶⁵ Government of South Africa 'operation Fiela contributing to peace, order' 26 June 2015, available at <http://reliefweb.int/report/south-africa/operation-fiela-contributing-peace-order>, date accessed 4 March 2017.

competition between fragile state institutions, and local informal locations of political power in the context of poverty and economic stagnation.

3.7 Conclusion

Political leaders and state officials involved in the governance of foreign national spaza shopkeepers offered numerous reasons for their interventions. Generally four core motivations were mentioned namely that foreign national spaza shopkeepers caused economic harm to South Africans, engaged in unfair and illegal activities, were often targeted by robbers, and that failure to curb their shops could lead to looting or violent attacks on them. However, these explanations do not fully add up. While foreign national spaza shops threatened many South African spaza shopkeepers' livelihoods, a number of parties benefitted from their presence including landlords and consumers. These stakeholders collectively outnumbered South African spaza shopkeepers. It was also unlikely that foreign national spaza shopkeepers engaged in more illegal or unfair practices than South African spaza shopkeepers. Furthermore, heightening the regulation of victims of crime is questionable way of protecting them, especially in the absence of clear efforts to target offenders. Likewise attempting to prevent attacks on foreign national shopkeepers through unconstitutional and unlawful measures would at least be accompanied by a series of other initiatives aimed at reducing such threats such as taking effective action against perpetrators of threats, looting and murder.

While Bonacich, Fanon and Mamdani offer further explanations for desires to limit shops, namely that the solidarity found amongst foreign national traders threatens host societies, and that perceptions of rights linked to indigeneity cause ethnic and national groups to seek ways to rid their localities of shops operated by outsiders, a further dynamic contributes to the shop *gevaar* in South Africa. In particular, governance actors' anxieties over foreign national spaza shopkeepers is a response to socially dissatisfied citizens, who have found foreign national spaza shops a useful means to garner attention from the state.

Thus the shop *gevaar* is not about any substantial mischief having been conducted by foreign national spaza traders. Interventions are also not primarily aimed at protecting shopkeepers' lives and properties. Rather the threat relates to the

widespread anger of township residents who feel the promises of democracy have been unfulfilled. When they target foreign spaza shops they are communicating their discontent to an anxious state and political leadership. These actors in turn attempt to act against shops in order to show their commitment to the needs of South African citizens, dissuade South African shopkeepers from further incitement, and divert attention away from themselves and their own shortcomings.

The following chapter explores how the governance of foreign national spaza traders plays out in practice. It observes how social discontent and economic interests play a key role in these interventions and the political dynamics involved. To better understand this state of affairs, the chapter examines the theories of Arendt, Foucault and Agamben who all argue that the elevation of economic concerns in the political sphere is characteristic of the modern age. It assesses the strengths and weaknesses of their accounts in relation to the thesis's investigation of the political implications of governance activities in a post-colonial and developing world context.

4. The politics of life: Theories of the social and their applicability to the governance of foreign national spaza shopkeepers in South Africa

Note here, too, the depoliticisation of politics in the treatment of the alien-as spectre, of their displacement into a technicist discourse about demography and economic sociology, about health and disease, about social pathology and criminality.²⁶⁶

4.1 Introduction

The task of curbing foreign national spaza shops is easier said than done. The ways in which governance actors (ranging from police, South African spaza shopkeepers, community civic groups, foreign national community representatives, and mediators) envisioned their interventions rarely panned out as intended. Instead governance efforts encountered a number of challenges, including protests by landlords, local level bribery, and legal constraints. Despite these conflicting goals, most parties actively engaged in governance shared a preoccupation with economic concerns and interests more than forwarding political rights and freedoms.

This chapter investigates the varied and contested actions and goals of different governance actors and explores how they reflect a political sphere that is guided more by economic interests than political and constitutional values such as inclusivity, equality and dignity. In this way governance reflects features of Arendt, Foucault and Agamben's theories of 'the social' or 'biopolitics', which argue that politics in the modern age has seen the entry of private economic concerns of the home enter the political sphere.

However, these theories were formulated in very different contexts to that of post-apartheid South Africa. Arendt, Foucault and Agamben were located in western industrialised countries when developing their theories. This influenced their theories in several ways. For example, they all largely presuppose the political sphere as being located in centralized and bureaucratic nation states. In contrast the South African political sphere is characterized by a large degree of informality and localized

²⁶⁶ Comaroff and Comaroff (note 23) at 650.

and autonomous groupings of political power. South Africa also confronts postcolonial legacies of racial oppression, widespread poverty and economic inequality. The chapter therefore sets out Arendt, Foucault and Agamben's accounts of the social and assesses their applicability to the thesis topic, which focuses on the politics of governance activities in a postcolonial and developing world context.

4.2 Attempts to govern foreign national spaza shops

In response to the perceived threat posed by foreign national spaza shopkeepers, state actors including the police, the national Department of Trade and Industry, as well as the Department of Small Business Development have all sought to intervene and restrict the ability of foreign national spaza shops to operate. However in practice this task confronts a number of obstacles. The current legal framework governing foreign national spaza shopkeepers in the country makes it difficult for state actors to clamp down on foreign national spaza shops. The country is a signatory to the Geneva Convention relating to the Status of Refugees, and has enacted legislation that permits asylum seekers and refugees to live and work in the country. The constitution also protects foreign nationals, as rights such as the right to equality and dignity apply to all people in the country whether or not they are citizens.

Furthermore, while spaza shops tend to be characterized as 'informal' businesses (in the sense that many are not registered with formal institutions), they do not necessarily operate illegally. Until recently, township zoning schemes in Cape Town permitted the operation of shops and businesses from residential premises, so long as the dominant use of the property remained residential and they did not cause a nuisance.²⁶⁷ Many other townships across the country are regulated by the still existing apartheid law titled the 'Black Communities Development Act 4 of 1984', which permits the operation of businesses on residential premises.²⁶⁸ At the same time spaza shopkeepers in Cape Town are not required to possess business permits

²⁶⁷ Clause 6.4.1 (a) of the Zoning Regulations under the Land Use Planning Ordinance 15 of 1985 (Lupo) sets out that properties zoned as Informal Residential Zones may utilise properties for business purposes on condition that the dominant use of the property remains residential, the use will not be disturbing to neighbours, or interfere with the amenities of the direct neighbourhood. New zoning regulations governing Cape Town came into effect in March 2013. These were replaced by the City of Cape Town's Municipal Planning By-Law of 2015, which permits the establishment of 'house shops' as additional use rights of the property, subject to conditions set out under section 26 and 28.

²⁶⁸ 4.9.1 (a) of the Act's Town Planning Scheme states that 'any occupier of any unit of accommodation may utilise such unity for any social, religious, occupational or business purpose subject to the following conditions: (i) the dominant use of the property shall remain residential; (ii) the use concerned shall not be disturbing to neighbours; and (iii) the use concerned shall not interfere with the amenity of the neighbourhood'.

or licenses.²⁶⁹ Local authorities therefore cannot easily turn to by-laws and zoning schemes to evict traders. Even in instances where by-laws do require spaza shops to possess licenses, the state would be obliged to apply the law with equal measure against South African businesses, which would do little to quell local conflicts. These legal dilemmas facing governance actors were summed up by Minister of Small Business Development, Lindiwe Zulu's plea to South African spaza shopkeepers that "The Bill of Rights protects them, the constitution protects them, so how do we integrate them? Make them understand the law?"²⁷⁰

The state has on many occasions attempted to change this formal regulatory state of affairs. However, its efforts to adapt or reinterpret current policy have been met with court cases, which the state lost. Government attempts to prevent asylum seekers and refugees from working have run into conflict with the constitution, as courts have maintained that asylum seekers' and refugees' rights to dignity would be undermined by wholesale prohibitions against them working (whether as employees or business owners), as they could be left indigent as a result. In the *Watchenuka* case, the Supreme Court of Appeal found that a general prohibition by the Standing Committee for Refugee Affairs against asylum seekers undertaking employment in the country was an unjustifiable 'invasion of human dignity'.²⁷¹ Similarly the Supreme Court of Appeal in the *Somali Association of South Africa*²⁷² case ruled that a blanket ban against asylum seekers and refugees engaging in self-employment was also an affront to their dignity as it risked condemning 'the appellants to a life of humiliation and degradation'.²⁷³ Therefore foreign national spaza traders' general compliance with township trading laws (whether in respect of zoning schemes or licensing and permitting by-laws), as well as constitutional barriers to adapting or selectively enforcing laws against foreign national spaza shopkeepers, make utilising the formal legal system and its enforcement mechanisms an unviable option for governance actors. This however does not illustrate that governance actors have been motivated and guided by the country's constitutional framework and political rights principles in their strategies. Instead the constitutional dispensation is viewed more a hurdle and obstacle forced on them as a consequence of litigation instituted by opposing civil

²⁶⁹ See notes (156 to 159).

²⁷⁰ Lindiwe Zulu, quoted in 'Call to regulate spaza shops' *Star*, (staff reporter) 3 February 2015, available at <http://www.iol.co.za/news/south-africa/gauteng/call-to-regulate-spaza-shops-1.1812745#.VW73UlyQdUQ>, date accessed 4 March 2017.

²⁷¹ *Minister of Home Affairs and others v Watchenuka and another* 2004 (4) SA 326 (SCA) At para 33.

²⁷² *Somali Association of South Africa* case (note 171).

²⁷³ *Ibid* at para 43.

rights groups. For example, it was only as a result of a court action brought by foreign national community groups that were represented by Lawyers for Human Rights that state actors ceased their practice of depriving foreign national spaza shops of business licenses in Limpopo province and closing down their businesses.

The absence of formal legal options has resulted in governance actors ranging from state officials to local political leaders choosing alternative regulatory strategies that did not rest on formal legal pretexts. Informal governance is a useful means of establishing rules without needing to overcome legal and constitutional hurdles entailed in passing or applying legislation. In the field sites in Cape Town, local level governance interventions often took the form of informal trade agreements between South African and foreign national spaza shopkeepers that were aimed at resolving South African shopkeepers' antagonism towards foreign national spaza shops. These agreements entailed foreign nationals agreeing to cease opening new spaza shops in certain areas, and sometimes also obliged them to fix their prices, keep an agreed distance away from South African spaza shops, or only own a restricted percentage of businesses in a neighbourhood.²⁷⁴

Negotiations leading to these agreements were precipitated by protests by South African spaza shopkeepers, who organised themselves into retailers associations such as Siyakha Business Trust in Masiphumelele, Zankanyo Retailers Association in Khayelitsha, the Khulani Small Business Association in Kraaifontein, and the Lower Crossroads Business Forum in Philippi East. A number of South African spaza shopkeepers wielded significant local political power in the field sites. Police in Philippi East and Kraaifontein described that mobilisations against foreign national spaza shopkeepers were led by South African 'big bosses', who owned a number of local businesses ranging from spaza shops to shebeens, bottle stores, fisheries, and butcheries. These individuals were often politically influential, with many being members of political party branches and participating in South African National Civic Organisation (SANCO) structures. For example, when South African shopkeepers mobilised against foreign national spaza shopkeepers in Philippi East in 2011, they sent out threatening notices to landlords under the banner of SANCO. In Kraaifontein South African 'big bosses' also occupied leadership positions within SANCO. When police investigated a spate of murders of Somali spaza shopkeepers in the township,

²⁷⁴ Gugulethu agreement (note 128).

they therefore raided the offices of SANCO, as well as the local ward councillor since the 'big bosses' under investigation were also SANCO leaders.

State representatives (such as police, councillors, and local departments of economic development) along with NGOs and community organisations presided over trade negotiations between foreign nationals and South African spaza shopkeepers in the field sites and further afield,²⁷⁵ and frequently supported their regulatory outcomes. This is illustrated through a series of meetings I attended in Khayelitsha in March and April 2012 that were aimed at addressing South African traders' complaints that Somali traders had opened new shops in violation of a local trade agreement barring any new spaza shops. The agreement had been entered into in 2008 after South African spaza retailers belonging to Zanokhanyo Retailers Association sent out threatening notices to foreign national spaza shopkeepers in Khayelitsha. The notices, which were dated 22 August 2008 informed foreign national spaza shopkeepers to close their businesses for 21 days during which 'all matters regarding your existence in our communities are being discussed'.²⁷⁶ In response to the notices police arrested several Zanokhanyo leaders and kept them in custody until they were prepared to enter into negotiations with their foreign national counterparts. The outcome was an agreement dated 27 November 2008 and signed by Zanokhanyo and the Somali Retailers Association, which stated that: 'Both Zanokhanyo and Somali committee must approve all new shops opening in the Khayelitsha vicinities, in order to prevent unprecedented clashes of businesses which might result in conflicts'.²⁷⁷ Although the written agreement did not specifically refer to foreign national spaza shops, Somali retailers, police and community members stated that in practice it was aimed at curtailing foreign national businesses. Somali spaza traders stated that they would face severe local backlash were they to request a South African business to close shop, and police in Harare police station stated that South Africans were free to open as many businesses in Khayelitsha as they wished.

However, over the next few years many Somali traders continued opening new businesses in spite of the agreement. In March 2012, infuriated members of

²⁷⁵ See notes 129 to 131.

²⁷⁶ Original Letter (note 119)

²⁷⁷ Copy of agreement (note 121)

Zanokhanyo drove in a convoy of 'about thirty people in ten cars'²⁷⁸ to several Somali owned shops in Khayelitsha and attempted to forcibly close down the shops. When intercepted by the police, the South African traders argued that they were simply enforcing the trade agreement.²⁷⁹ In response to the protest, local police organised a meeting at Lingeletu-West police station on 7 March 2012. Lingeletu-West police station is a barren faced-brick building just off Spine Road, a main traffic artery in Khayelitsha. The meeting was held in a small community hall at the station, where invited representatives sat on a podium at the front of the hall and an audience of about 80 people were sitting white plastic chairs spread out below. On the podium sat the meeting chairperson, Reverend Mfundisi 'Templeton' Mbekwa, two Somali community representatives, two South African retailers' representatives, and Sibongile Mbotwe, the Special Advisor to the Minister of Police. About ten Somali Spaza shopkeepers attended the meeting - most of whom arrived together in a small group about half an hour into the meeting. The chairperson, Reverend Mbekwa, began the meeting by setting out the reason for why it had been called. He explained that:

The businesses are enough now and there is no help from law enforcement. Shopkeepers now feel like they must take it upon themselves. They went to the shops which were given notice and which were still standing. Where is the agreement? They therefore took it upon themselves and closed the shops.²⁸⁰

Mbekwa then set out the meeting's agenda:

The Agenda today says 'how can we limit the influx of new shops and monitor systematically'. How valid is the 2008 agreement. Is it doable? How best can we do it with the help of government? Once it gets ugly we can do this before it happens.²⁸¹

²⁷⁸ Interview, Somali Retailers Association representative, 21 August 2012.

²⁷⁹ Interview, Khayelitsha community activist, Rondebosch, 28 April 2015.

²⁸⁰ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, Khayelitsha, 7 March 2012.

²⁸¹ Ibid.

Thereafter Mbekwa invited Mbotwe to address the crowd. However instead of setting out the formal legal framework governing businesses in the township, Mbotwe urged shopkeepers and community leaders in Khayelitsha to respect the agreement, stating that:

The beauty of Khayelitsha post-2008 is this agreement. We must ask the Somalis to give an audit of shops in 2008 and we start from there. Then we go to the community and speak to them. We say we want to avoid 2008 and we therefore reached an agreement. The police will come and make sure the agreement is enforced in each and every community.²⁸²

A question and answer session followed where South African spaza shopkeepers voiced their frustrations about foreign national spaza and highlighted the need to work more closely with community structures and the police. Towards the end of the meeting some Somali community representatives started questioning the legality agreement. For example, a Somali community leader queried whether it was legal to limit the shops of 'minority group of people'. Another Somali community representative stated that 'I would like to highlight that we want a lasting solution for the conflict and we as the Somali Association of South Africa would like to contribute our side to get a peaceful procedure to the conflict, which don't violate our rights and those of our South African counterparts'. This drew the ire of a number of South Africans in attendance, with one member of the crowd shouting that:

That Somali man is arrogant because they have money to buy their way. You undermine leaders in our country. You are provoking us and you better stop that. The reason for this meeting is to minimize Somali shops.

Thereafter the meeting descended into angry shouts and loud chatter, with one attendee raising a spear and threatening to assault one of the Somali traders who had spoken. Thereafter Mbekwa officially closed the meeting with a promise that a follow up meeting would be called soon. Despite clear confusion about the law, as well as direct and open threats against a number of foreign national spaza

²⁸² Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, Khayelitsha, 7 March 2012.

shopkeepers in attendance, police officials and SAPS leaders present at the meeting remained silent on or sidestepped these issues.

Not all state officials and departments involved in the governance of foreign national spaza shops in Khayelitsha supported the informal regulatory arrangement in the township. Although having previously participated in legally questionable fining of foreign national shops for not possessing business licenses,²⁸³ the municipal law enforcement department from the City of Cape Town, which was tasked with enforcing by-laws, objected to the local trade agreement. At a follow up meeting held on 20 March 2012, a representative from the department read a prepared statement that announced that the department could not shut down and remove new foreign national spaza shops in the township, as Khayelitsha was a 'free trade area' where residents were permitted to operate businesses on private properties. The statement ended:

Lastly I want to read 'Foreign nationals and their human rights':

- Foreign Nationals are entitled to be treated equally before the law and have their human rights protected.
- They have the right to move about freely.
- To work as long as they have a valid permit.
- Students are allowed to perform part time jobs.
- They are entitled to conduct businesses if they have proper refugee papers.
- They are entitled to access public services such as health and education.

I ask the meeting to respect this because it was not drawn up by me, but by the government.²⁸⁴

Predictably this advice was not well received by South African retailers in attendance. A South African shopkeeper threatened: 'The 2008 agreement is being

²⁸³ Informal conversations with police in Kraaifontein.

²⁸⁴ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, Khayelitsha, 7 March 2012.

forsaken because of the perception it has no legal status. This breeds anarchy. If you say the 2008 agreement is not going to be implemented you are breeding anarchy'.²⁸⁵ Another shopkeeper more measuredly observed that 'There seem to be two different laws. Mr Titus [from the municipal law enforcement department] deals with the laws of this country. However there are also the laws of the people as to how things work in the locations, which brings in clashes'.²⁸⁶

At a general meeting between Khayelitsha residents and police leaders the following week, police representatives continued calling for the implementation of the trade agreement in Khayelitsha. In particular, the national Minister of Police, Nathi Mthethwa called for the 'Memorandum of Understanding' between foreign national and South African spaza shopkeepers to be renewed.²⁸⁷ The Provincial Commissioner of Police, Arno Lamoer concurred with the minister emphasising that the 'MOU' needed to be 'respected and honoured... Let's find a way of ensuring that the understanding works rather than regulation by the government'.²⁸⁸

At a further meeting held on 18 April 2012 more discussion ensued about the legality of the informal trade agreement. General Molo, representing the SAPS appealed that residents stop renting out their properties to foreign nationals and complained that foreign national shops needed to be permitted. When a municipal law enforcement official raised the point that spaza shopkeepers did not require permits, Molo replied: 'The problem is to define a business. Let's stop talking about regulating. The point is you need a structure with a toilet to have a business. You can't have a business in a shack'.²⁸⁹ He added that:

We can't have businesses in a house or shack or sleep in the business... We will arrest the person and go to the municipality because the law allows us.²⁹⁰

²⁸⁵ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, Khayelitsha, 7 March 2012.

²⁸⁶ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, 20 March 2012.

²⁸⁷ Meeting between police leaders and Khayelitsha community at Lookout Hill, Khayelitsha, 29 March 2017.

²⁸⁸ Ibid.

²⁸⁹ Meeting between South African and Somali spaza shopkeepers, Lookout Hill, Khayelitsha, 18 April 2017.

²⁹⁰ Ibid.

As mentioned, Khayelitsha's zoning schemes allow businesses to operate from private residential premises. This point was repeatedly raised at meetings by law enforcement officials, but almost completely ignored by police, the chairperson of the meeting, and South African spaza shopkeepers in attendance. These parties refused to publicly acknowledge and emphasise the formal legal framework governing spaza shops in Khayelitsha, let alone pay lip service to the political and constitutional rights of foreign nationals.

Apart from overseeing informal trade agreements, police in Cape Town also engaged in unlawful fining operations against foreign national spaza shops. Between November 2011 and February 2013, foreign national spaza shopkeepers from townships and neighbourhoods across Cape Town ranging from Khayelitsha, Kraaifontein, Gugulethu, Elsies Rivier and Observatory reported having been fined by police. Their fines, which ranged from R1,000 to R1,500, gave the reason of 'trading without a licence' and cited 'the Local Authorities Act', which did not exist.²⁹¹ Some traders were doubly confused by the fact that police informed them that they were being fined for keeping their shops open too late. At a meeting in Khayelitsha the Chairperson reiterated that that foreign national spaza shopkeepers had been fined for being open too late: 'All shops should be closed at 9pm and open at 6pm... Police are invited to investigate and fine the shops after 9pm.'²⁹² Foreign national spaza shopkeepers in Elsies Rivier described that police eventually ceased fining them, and instead entered their shops and pepper sprayed them for operating past the police-set curfew time.

Police fining operations varied from place to place. In Gugulethu traders reported that police politely issued fines and left, while in Elsies Rivier and Observatory police arrested traders and drove them to local police stations where they were held in custody for several hours. It is likely that the Provincial Commissioner of Police ordered the operations. For example Somali traders in Elsies Rivier stated that the station commander of Ravensmead police station had informed them at a meeting that the Provincial Commissioner of Police had ordered the fining of foreign-owned

²⁹¹ Fines cited the 'Local Authorities Act 19 of 1974'. However no Act exists in South Africa under the title 'Local Authorities Act'. 'Act 19 of 1974' does exist, but it is titled the 'Subdivision of Agricultural Land Amendment Act' and does not relate to trading licenses.

²⁹² Meeting between South African and Somali spaza shopkeepers, Lookout Hill, Khayelitsha, 18 April 2017.

shops.²⁹³ Similarly, police sector managers in Philippi East stated that their orders came ‘from above’.²⁹⁴

Police conduct at meetings in Khayelitsha as well as fining operations throughout Cape Town illustrate that political rights and democratic notions of the rule of law were far from the minds of senior police leaders. In fact General Molo’s assertions in Khayelitsha of what the law ‘allows’ did not only show a lack of interest in the country’s constitutional framework and political rights principles. It demonstrated a highly pliable attitude towards the law in general – almost as though he was entitled to decide the content of the law as he spoke. In other words the law was whatever senior leaders said it was, only to be corrected in the event of threats of formal legal action.²⁹⁵ This shows both an abandonment of the values of the constitution (which includes the principles of the rule of law and equal treatment before the law) as well as a culture of regulatory informality, where social rules do not only arise from legislation, but also from decrees made by senior political leaders. While these leaders may not have the support of the legislature and formal courts, they have the support of South African shopkeepers, and confront little resistance from local communities. This phenomenon is mirrored in Chatterjee’s notion of ‘political society’ in postcolonial states where state actors attend to the at times unlawful claims of informal political groupings out of recognition of their socio-economic needs as well as out of political expediency.²⁹⁶

Residents – the largest stakeholder group – rarely participated in spaza shop negotiations. In Gugulethu and Philippi residents were unaware of informal agreements that governed spaza shops in their neighbourhoods. In contrast some residents in Khayelitsha were familiar with informal spaza shop rules. However, this was not through attending negotiations, themselves, but having been informed of negotiation outcomes after the fact by SANCO representatives. While some residents in Khayelitsha felt sympathetic towards local shopkeepers and supportive of any arrangements that could promote peace and business opportunities for South Africans, others criticised the restrictions as they viewed foreign spaza shops as providing convenient services to local residents and landlords. Nevertheless whether

²⁹³ Interview, Somali trader, Cravenby, 28 September 2012.

²⁹⁴ Interview, Philippi East police officers, Philippi East, 22 November 2011.

²⁹⁵ As occurred in Khayelitsha in 2009 when shopkeepers hired attorneys to represent them against local police who attempted to close down their shops (see Chapter three).

²⁹⁶ Chatterjee (note 32) at 40.

they wished foreign national businesses to remain or leave, their reasoning was usually economic more than political. It related to the perceived economic benefits foreign national spaza shops offered the local community, rather than the political values such as equality before the law, dignity and plurality.

While informal trade agreements and police fining enabled actors to circumvent the law, informality has its own shortcomings. While many informal trade agreements were entered into in Cape Town and further afield, few lasted into the long term. There were many reasons for this. Firstly agreements' lack of formal legal authority meant that informal rules were difficult to enforce, as parties could not turn to police or courts. Instead South African and foreign national spaza shopkeepers found themselves having to close down new foreign national spaza shops themselves, which was a challenging task. In Masiphumelele, a Somali shopkeeper stated that he had tried to enforce the agreement prohibiting new foreign national spaza shops against a new Ethiopian trader, who argued that the agreement did not apply to him. After repeated confrontations, the Ethiopian trader laid charges of intimidation against him at the local police station, which spelled the end of his efforts to block new competitors.²⁹⁷

The Khayelitsha agreement of 2008 also almost immediately suffered a number of hurdles due to its lack of enforceability. Parties to the agreement falsely assumed that Somali community representatives would be able to effect its terms. However Somali community representatives complained that new Somali spaza shopkeepers frequently ignored their requests to close down their businesses. A Somali Retailers Association representative complained that there was little that he could do to close down new Somali shops in Khayelitsha:

Because if it [the agreement] was in 2008 and this person comes in 2009, he says 'No I was not there when you were doing this agreement, so I want to do my own thing'.... and he has a right from the government. He will show you the paper that says he has a right to go and seek employment, study and work. So it becomes a problem for you to stop him.²⁹⁸

²⁹⁷ Interview, Masiphumelele Somali trader, Masiphumelele, 2 February 2012.

²⁹⁸ Interview, Somali Retailers Association representative, Bellville, 10 January 2011.

He added that police attempts to close down new Somali shops in Khayelitsha in 2009 were also hindered when several Somali traders hired attorneys to intervene. Their attorneys argued that South Africa was a free market, and that their clients were not party to the agreement, after which the police then 'got advice from seniors telling them to pull out'.²⁹⁹ Thereafter police ceased becoming involved in enforcement. A police sector manager in Khayelitsha likewise described that Somalis hired lawyers as a check on police activities stating 'They have lawyers. If you search without a warrant they bring lawyers to the police station'.³⁰⁰ Police attempts at fining foreign national spaza shopkeepers for trading without a license (or exceeding curfews) also proved unsuccessful, as their fines - which cited fictional legislation - were not valid in law.³⁰¹ When traders went to defend their cases in court, court officials told them that their matters had been dropped, and the news quickly spread via word of mouth that the fines were invalid. As a result foreign national spaza traders came to simply ignore their fines.

South African spaza shopkeepers in Khayelitsha also encountered resistance when trying to close down shops themselves. For example, when Zanokhanyo Retailers Association attempted to forcibly close down ten Somali shops in Town Two, Khayelitsha in March 2012,³⁰² the son of one of the affected landlords protested the closure of the shops and organized a small following to resist their efforts. When Zanokhanyo representatives later approached the local police station for assistance local police informed them there was nothing they could do.³⁰³

The 2009 Gugulethu agreement faced a different challenge. The detailed arrangement prohibiting new foreign national spaza shops, fixing their prices, moving shops 100m away from South African shops and setting the percentage of foreign shop numbers at 30 percent fell apart early on when a new shopping centre named 'Gugulethu Square' opened in the centre of the township.³⁰⁴ The shopping centre housed a both a Shoprite and a Spar supermarket, all within walking distance of local residents,³⁰⁵ and which were not party to the price fixing agreement. As a result

²⁹⁹ Interview, Somali Retailers Association representative, Bellville, 26 October 2011.

³⁰⁰ Interview, Khayelitsha police sector manager, Khayelitsha, 23 August 2012

³⁰¹ See note 291.

³⁰² Interview, Khayelitsha community activist, Rondebosch, 28 April 2015. Telephone interview, Somali Retailers Association representative, 21 August 2012.

³⁰³ Interview, Khayelitsha community activist, Rondebosch, 28 April 2015.

³⁰⁴ Interview, Gugulethu Somali trader, Gugulethu, 1 February 2012.

³⁰⁵ Ibid.

surrounding spaza shops chose to abandon their higher fixed prices in order to compete and stay in the market.³⁰⁶

A further key obstacle to informal trade agreements came from South African landlords who resisted attempts to prevent them from leasing their shop premises to foreign nationals. In contrast to South African spaza shopkeepers, landlords generally drew little sympathy from governance actors. Senior state officials and mediators overseeing trade negotiations often viewed landlords as traitors to their communities, and the leasing out of property to foreign shopkeepers as a phenomenon that needed to be eradicated. For example, a Provincial Government report on the 2006 conflict in Masiphumelele states that:

Landlords operate from a different power base as the ordinary person who is landless. Landlords also have the power to abuse this privilege, which might often lead to an attitude of oblivion with regard to the aspiration for social and economic justice.³⁰⁷

A General Molo from the SAPS explained at a meeting between foreign national and South African spaza shopkeepers in Khayelitsha that the blame for the expansion of foreign national spaza shops in the area lay with South African landlords. He contended that:

'We are faced with an internal problem. The problem is with the people of Khayelitsha. The people of Khayelitsha are giving land to foreigners and hire containers to foreigners. That is the problem. When we talk about the influx we're lying. It's the business people hiring to foreigners'.³⁰⁸

Despite their negative reputation amongst political leaders involved in governance, South African landlords nevertheless were frequently able to block local level interventions to drive out foreign national businesses from township neighbourhoods.

³⁰⁶ Interview, Gugulethu Somali trader, Gugulethu, 1 February 2012.

³⁰⁷ See note 103 at 47.

³⁰⁸ General Molo of the SAPS addressing meeting between South African and Somali spaza shopkeepers, Lookout Hill, Khayelitsha, 18 April 2017.

Like South African spaza shopkeepers, many landlords wielded local economic and political power. For example, when South African shopkeepers tried to drive foreign spaza shops out of Philippi East in 2011, a prominent 'shebeen' (township bar) owner and landlord of a foreign run spaza shop negotiated on behalf for foreign national spaza shopkeepers and their landlords.³⁰⁹ Landlords similarly influenced local civic structures such as SANCO. When SANCO held a meeting in Philippi East about foreign national spaza shops, no decision could be made because shopkeepers were split between those who operated shops themselves and those who had rented their shops to foreign tenants.³¹⁰ This was further complicated by the fact that many landlords were SANCO members.³¹¹ SANCO in Khayelitsha was similarly divided. At a meeting between foreign national and South African spaza shopkeepers in the area, a Somali community representative complained that 'On the one side SANCO says the shops must close, but the other side says the shops must not close'.³¹² A councillor in Khayelitsha explained that most SANCO members did not want to remove new Somali shops because landlords were benefitting from rent.³¹³ Likewise, a SANCO ward chairperson in Khayelitsha explained that 'the problem is that if I keep the agreement [preventing new foreign national spaza shops] and try to implement it I am seen as going against the landlords'.³¹⁴ Landlords' economic interests were therefore a key stumbling block for enforcing informal trade agreements.

Sometimes local residents also resisted efforts to close down shops. This was not so much out of consideration for the law or foreign traders' rights, but mainly for personal economic reasons. A Khayelitsha community activist explained that a number of residents in her neighbourhood initially supported the efforts South African traders to remove foreign national competition, but then changed their minds:

For two days people were supporting the local shop owners when they were closing shops down because there was an opportunity for them to loot. But then on the third day things changed. Up to now, the people now who are

³⁰⁹ Interview, Philippi East, 22 November 2011.

³¹⁰ Interview, SANCO member, Lower Crossroads, Philippi East 20 January 2012.

³¹¹ Ibid.

³¹² Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, 20 March 2012.

³¹³ Interview, Khayelitsha ward councillor, Khayelitsha, 22 June 2012.

³¹⁴ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, 20 March 2012.

looting shops say 'but now what about us?' The people who are renting shops started to stand up for themselves and say 'no you are not going to let these guys do it because at the end of the day its our homes now that they're breaking'. So then now we've got another march. From the same ones that were looting, they say 'No we're defending the Somalians'.³¹⁵

Efforts to regulate foreign national spaza shops at local levels were also allegedly compromised by alleged bribery. Foreign national and South African shopkeepers in the field sites accused each other of bribing local leaders to advance their interests. For example, South African traders in Khayelitsha lambasted foreign national spaza traders for allegedly bribing police, community policing forums, street committees and SANCO leaders, to allow them to open new shops in contravention of the informal agreement.³¹⁶ Somali shopkeepers in Khayelitsha and Kraaifontein complained that local leaders extorted them by continually requesting 'donations' and personal financial assistance such as contributing to relatives' funeral costs and paying their children's school fees.³¹⁷ A leader of the Somali Retailers Association described that when he turned down further requests from SANCO leaders in Khayelitsha for donations he was informed via a text message that he was 'playing with fire'.³¹⁸ Foreign spaza shopkeepers also suspected that mediators were being bribed by South African spaza shopkeepers to sway governance outcomes in their favour. Bribery or extortion therefore also likely impacted on the enforcement of informal agreements in the field sites.

Lack of legal enforcement mechanisms, supermarket competition, resistance by South African landlords and some residents, and allegations of bribery therefore prevented informal trade agreements from being consistently and fully implemented. These inhibiting factors did not stem from any particular concern over asylum seekers' or refugees' rights and livelihoods, but related to how their economic footprint was perceived.

³¹⁵ Interview, Khayelitsha community activist, Rondebosch, 28 April 2015.

³¹⁶ Meeting between South African and Somali spaza shopkeepers, Lingeletu West police station, 7 March 2012.

³¹⁷ Somali community representatives in Kraaifontein claimed that after meeting a local ward councillor about violent crimes affecting the Somali community in the area, she continually contacted them requesting 'donations' for family expenses.

³¹⁸ Telephone interview, Somali Retailers Association representative, 23 July 2012.

Despite much sympathy for the plight of South African spaza shopkeepers, both formal and informal governance mechanisms offered them little recourse. This situation necessitated South African trader to lobby the state to come up with new formal regulatory frameworks. In doing so relied on their membership of local civic groups, business chambers such as the National African Federated Chamber of Commerce and Industry (Nafcoc) and political party connections. These calls gradually paid off. Murmurings about new national policy developments first occurred in July 2011, when during a visit to Khayelitsha, the national police commissioner, Bheki Cele, complained about foreign national businesses in the area and stated 'One day, our people will revolt, and we've appealed to DTI [Department of Trade and Industry] to do something about it'.³¹⁹ The matter was raised again early the following year in ANC's March 2012 national policy conference discussion document, which suggested that asylum seekers be barred from operating spaza shops in townships.

In June 2012 the ANC in Western Cape announced that it would push to cut the number of foreign national spaza shops in the country during the ANC's upcoming policy conference – stating that the demand originated from its township branches.³²⁰ These efforts appear to have born fruit following year when in March 2013 the Department of Trade and Industry (DTI) published a draft Licensing of Businesses Bill. At the time, the Minister of Trade and Industry, Rob Davies, explained that the Bill would be used to curb the activities of foreign national 'tuck shops or whatever' that failed to act in accordance with the law.³²¹ However, the Bill was met with a cold reception across all sectors of South African business, as it required all businesses in South Africa - from large corporations to street hawkers - to possess business licenses, which could potentially have stifled economic activity in the country. Those found engaging in unlawful practices could face penalties of up to ten years imprisonment.³²² The DTI subsequently carried out public consultations in a number of provinces, but little ever came of the proposed legislation.

³¹⁹ Quoted in Quinton Mtyala 'Cele's xenophobic outburst' *Cape Times*, 7 October 2011, available at <http://www.iol.co.za/news/crime-courts/cele-s-xenophobic-outburst-1.1152621#.UA1-6GjQ9UQ>, date accessed 4 March 2017,

³²⁰ Clayton Barnes 'Cut number of foreign spaza shops – ANC' *Cape Argus*, 25 June 2012, available at <http://www.iol.co.za/news/politics/cut-number-of-foreign-spaza-shops---anc-1326536>, date accessed 3 March 2017.

³²¹ Address to small businesses in Orange Farm (see note 138).

³²² Section 27 of draft Licensing of Businesses Bill 2013.

Then in March 2014, the DTI once again gave signals of further policy interventions when it unveiled the National Informal Business Upliftment Strategy (Nibus). The strategy identified 'Legal and Regulatory Environment' as a key intervention to address the 'foreign trader challenge'. The document describes the challenge as encompassing:

... evidence of violence and unhappiness, trading in illegal and illicit goods (e.g. contrabands) [sic], social protection (towards decent work in the sector), intellectual property, particularly for indigenous [sic] business etc.³²³

Nibus states that in developing its legal and regulatory strategy, examples were drawn from countries such as Ghana where foreign nationals are prohibited from opening small businesses. Yet the document says very little as to what its legal and regulatory strategy will be. It only mentions that the DTI will make 'appropriate follow-ups and provide strategic inputs into two of the Bills currently being processed, namely the 2013 Licensing of Business Bill'³²⁴ (not mentioning the second bill under consideration). It explains that the 'issue of addressing the plight of foreign traders will be dealt with during these engagements [sic]'.³²⁵

Nibus was subsequently taken over by the national Department of Small Business Development, which was established after the 2014 national elections to generate job opportunities in the small business sector in line with the National Development Plan.³²⁶ The plan, which was launched in August 2012 by the National Planning Commission, sets out the country's vision to eliminate poverty and reduce inequality by 2030, and rests largely on the expectation that small and medium sized enterprises will create 90 percent of new jobs in the country.³²⁷ The Minister of Small Business Development, Lindiwe Zulu, stated that the idea of creating the ministry came in response to lobbying by South African small businesses, in particular by the National African Federated Chamber of Commerce (Nafcoc), an organisation

³²³ Nibus (note 133) at 10.

³²⁴ Ibid at 30.

³²⁵ Ibid at 30 to 31.

³²⁶ 'Somalian businesses a great example for South Africans – Lindiwe Zulu' *City Press*, 27 May 2014, available at <http://www.news24.com/Archives/City-Press/Somalian-businesses-a-great-example-for-South-Africans-Lindiwe-Zulu-20150429>, date accessed 4 March 2017.

³²⁷ National Development Plan 2030 (NDP) 2012 at 140.

claiming a membership of 150 000 mostly 'black' businesses.³²⁸ Matodzi Liphosa, the CEO of Nafcoc, described the Department as the organisation's 'brainchild',³²⁹ and identified two key threats to Nafcoc's constituency as foreign national businesses and the growth of shopping malls.³³⁰

The formal regulation of foreign national spaza shops became of greater urgency after the outbreak of widespread xenophobic violence Gauteng and KwaZulu-Natal in January and April 2015. The violence in Gauteng was precipitated by the shooting of a fourteen year-old boy by a Somali spaza shopkeeper in Snake Park Soweto, who was allegedly part of a group attempting to rob his shop.³³¹ Attacks against foreign nationals erupted in KwaZulu-Natal a few months later in March 2015 after King Goodwill Zwelithini delivered a speech at a 'moral regeneration' event in Pongola, where he berated foreign national businesses as dirty and untidy, and called on foreigners to leave the country, stating 'we ask that immigrants must take their bags and go where they came from'.³³² President Jacob Zuma responded to the attacks by appointing an Inter-Ministerial Committee of 14 ministers to examine the 'broader management of migration' and to work with wider society to address what he saw as the 'underlying socio-economic causes of the tensions' between South Africans and foreigners.³³³ He emphasized that the government was obliged to address complaints raised by South African citizens, which included the displacement of South African small traders by foreign nationals.³³⁴ Lindiwe Zulu similarly called for the development of laws governing foreign national shops to be 'fast tracked'.³³⁵

³²⁸ Lindiwe Zulu interview with CNBC Africa, 4 June 2014, available at

<http://www.cnbc africa.com/news/southern-africa/2014/06/04/minister-lindiwe-zulu-has-a-huge-task-on-her-hands-john-endress/>, date accessed 11 May 2015.

³²⁹ 'Nafcoc takes credit' *City Press* 3 August 2014, available at <http://www.news24.com/Archives/City-Press/Nafcoc-takes-credit-20150429>, date accessed 11 May 2015. Chris Barron 'Seeking real value from ANC's new spaza' *Sunday Times: Business Times* 3 August 2014, available at <http://www.bdlive.co.za/business/2014/08/03/seeking-real-value-from-ancs-new-spaza?service=print>

³³⁰ 'Nafcoc takes credit' *City Press* 2014-08-03 <http://www.news24.com/Archives/City-Press/Nafcoc-takes-credit-20150429>, date accessed 11 May 2015.

³³¹ Sapa 'Soweto: Violence escalates between locals and foreigners' Mail & Guardian, available at <http://mg.co.za/article/2015-01-22-two-dead-foreign-owned-shop-burnt-in-soweto>, date accessed 22 January 2015.

³³² Extract from the translated speech available at <http://www.enca.com/south-africa/listen-zulu-king-foreign-nationals>, date accessed 17 March 2015.

³³³ Open letter by Jacob Zuma 'South Africa is not a xenophobic nation': a letter from Jacob Zuma', available at <http://www.theguardian.com/world/2015/apr/28/south-africa-is-not-a-xenophobic-nation-a-letter-from-jacob-zuma>, date accessed 25 May 2015.

³³⁴ Ibid.

³³⁵ 'Laws regulating foreign owned spazas must be fast tracked: Zulu' *SABC*, 27 January 2015, available at <http://www.sabc.co.za/news/a/bfdc37004715bf689b21bf686e648436/Laws-regulating-foreign-owned-spazas-must-be-fast-tracked:-Zulu-20152701>, date accessed 4 March 2017.

In this context the department of Home Affairs developed and published the draft Refugees Amendment Bill of 12 October 2015, which is the first post-apartheid attempt *in law* to significantly and specifically curtail the ability of asylum seekers and refugees to operate businesses in the country. Unlike earlier state attempts to stem foreign national businesses, the current Bill comprises a new legal framework governing refugees and asylum seekers in the country. In particular it completely bars asylum seekers from establishing businesses, and only permits them the right to work for 'an employer' in restricted circumstances.³³⁶ However, once again the state appears to overlook the plight of those who could be left without any means to support themselves. The Bill states:

If, after assessment, it is found that an asylum seeker is unable to sustain himself or herself and his or her dependents, as contemplated in subsection (6), that asylum seeker *may* be offered shelter and basic necessities provided by the UNHCR.³³⁷ (Emphasis added)

By stating that asylum seekers who cannot support themselves or their dependents 'may' be offered shelter and basic necessities, rather than 'shall', the Bill envisions that providing basic support to asylum seekers is only optional. Job seeking is difficult for many asylum seekers who grapple with language barriers, possess only temporary residency permits, and hold qualifications, which are frequently not recognised by many South African employers. At the same time the Bill makes no explicit provision for social support for those unable to find employment as a result of being excluded from engaging in entrepreneurial activities. Such a provision will therefore likely once more be an uphill legal battle for the state, as it again leaves open the possibility that many asylum seekers could be forced into destitution. This in turn will arguably compromise their constitutional rights. As the Supreme Court of Appeal emphasised in the *Somali Association* case:

When, during argument before us, we enquired of counsel what was to happen to destitute asylum seekers and refugees, no answer was forthcoming. There appeared to be some suggestion that, regrettably, some persons might be left to their destitution. This attitude is unacceptable and

³³⁶ Section 15 of the draft *Refugees Amendment Bill* of August 2015.

³³⁷ *Ibid.*

contrary to constitutional values.³³⁸

At the same time some political leaders have called for even further measures to be taken against foreign national businesses. In March 2016 the Premier of the North West province called for all foreign national spaza shops in his province to be confiscated and handed over to South Africans.³³⁹ On the eve of Human Rights day and the anniversary of the Sharpeville massacre, the Secretary General of the African National Congress, Gwede Mantashe, attempted to explain the Premier's call by stating that many nations in Africa 'say small businesses must be the preserve of that nation. Because small business constitute incubator for business people of the country'[sic].³⁴⁰ These pronouncements, which pay little heed to the historical observations of Fanon and others,³⁴¹ again illustrate how the economic interests of nationals enjoy a key position in the South African political sphere.

While legislative developments are slowly underway, the state has attempted to assuage South African spaza traders and small business leaders by implementing strategies to support South African township businesses and informal traders associations. For example, in June 2014 the Gauteng provincial government launched a Revitalisation of the Township Economy Strategy.³⁴² The draft strategy document identifies foreign shopkeepers as a challenge facing township enterprises, which have experienced a 'hostile take-over by foreign entrepreneurs'.³⁴³ The strategy will see R1 billion invested in township business infrastructure over five years, and will see the provincial government prioritise the procurement of goods from township areas.³⁴⁴ Further support to the spaza market included the hosting of

³³⁸ *Somali Association of South Africa* case (note 171) at para 44.

³³⁹ Boitumelo Tshehle 'North West Premier Supra Mahumapelo to bar foreign owned spaza shops' *The Sowetan*, 18 March 2016, available at <http://www.sowetanlive.co.za/news/2016/03/18/north-west-premier-supra-mahumapelo-to-bar-foreign-owned-spaza-shops>, date accessed 1 March 2017.

³⁴⁰ Mantashe (note 137).

³⁴¹ Fanon (note 31). Mamdani (note 39).

³⁴² Gauteng Premier David Makhura, State of the Province Address, 27 June 2014, available at <http://www.gautengonline.gov.za/Speeches/Documents/SOPA%202014%20speech%20by%20Gauteng%20Premier%20David%20Makhura.pdf>, date accessed 5 March 2017.

³⁴³ Gauteng department of economic development, 'Revitalisation of the township economy draft strategy' (undated) at 12, available at <http://www.ecodev.gpg.gov.za/Documents/Draft%20GTER%20Strat.pdf>, date accessed 5 March 2017.

³⁴⁴ Staff Reporter 'Gauteng Premier Pledges R1 billion To Improve Township Infrastructure' *SA Breaking News* 8 October 2014, available at <http://www.sabreakingnews.co.za/2014/10/08/gauteng-premier-pledges-r1-billion-to-improve-township-infrastructure/>, date accessed 5 March 2017. City of Johannesburg 'Gauteng inject R3.4-bn into township economy' 23 February 2016, available at http://joburg.org.za/index.php?option=com_content&view=article&id=10341:gauteng-inject-r34-bn-into-township-economy&catid=88:news-update&Itemid=266, date accessed 5 March 2017.

a spaza summit in March 2016, and developing partnerships between grocery retail giant Pick n' Pay and spaza shopkeepers, through enabling spaza shops to tap into in Pick n' Pay's distribution channels.³⁴⁵

State support to the spaza sector also comes in the form of technical and financial assistance to informal retailers associations.³⁴⁶ In particular Nibus entails close cooperation between the state and informal retailers associations through interventions such as improving the capacity of informal traders associations, and relying on them in the roll out of the DTI's products and services.³⁴⁷ Furthermore the Minister of Small Business Development, Lindiwe Zulu, called for a larger budget for her department, as 'many requests from small and medium enterprises - largely owned by black people - are financial'.³⁴⁸

Nafcoc also stands to benefit from state support. The chamber is participating in North West Premier's 'village, township and small dorps' enterprise development strategy, which will see the provincial government partner with Nafcoc to set up four massive wholesalers in the province. These wholesalers will provide low cost goods to South African spaza shops and will be backed by state surety and guarantees worth R200 million.³⁴⁹ These forms of support and cooperation between the state, spaza businesses and their representative associations will not only assist the spaza sector, but also improve relations between frustrated retailers, lobby groups and the state.

The ways in which governance interventions have unfolded over time demonstrate that attempts to curb foreign national spaza shops have been constrained and relatively unsuccessful. Landlords often stymie local informal agreements, as they

³⁴⁵ South African government media statement 'MEC Lebogang Maile outlines progress on township economic revitalisation' 23 Jun 2015, available at, <http://www.gov.za/speeches/mec-lebogang-maile-media-briefing-key-priorities-economic-development-and-agriculture-and>, date accessed 5 March 2017. Gauteng Province website 'Gauteng Hosts Spaza Shops Summit' 28 March 2016, available at <http://www.ecodev.gpg.gov.za/MediaDesk/News/Pages/Gauteng-Hosts-Spaza-Shops-Summit.aspx>, date accessed 5 March 2017.

³⁴⁶ Nibus (note 133) at 33.

³⁴⁷ Ibid at 28.

³⁴⁸ Sibongile Maputi 'South Africa: Small Business Development Budget Inadequate, Committee Hears' *AllAfrica* 10 May 2016, available at <http://allafrica.com/stories/201605101504.html>, date accessed 5 March 2017.

³⁴⁹ Tshehele (note 339). Tsholofelo Mathibedi 'Govt throws lifeline to spaza owners in N West' *SABC News* 12 April 2016, available at <http://www.sabc.co.za/news/a/a0b1e4004c60b5dc81d0f79ffda8f5e4/Govt-throws-lifeline-to-spaza-owners-in-N-West-20161204>, date accessed 5 March 2017.

view them as conflicting with their own economic interests. Agreements also lack legitimate enforcement mechanisms. National leaders have engaged in lengthy processes of formulating policy plans, and intend to amend the country's refugee regime, but these efforts may not pass constitutional muster. What these governance efforts share in common is a preoccupation with the economic concerns of different South African stakeholders. While state officials seek to appease South African shopkeepers' anxieties over competition, other actors such as residents, landlords, or local leaders seeking to extract bribes participate to advance their own varied and competing economic interests. While constitutional limits have been enforced to a degree, most governance actors treat the constitution more as an inconvenient restriction to be skirted informally if possible, rather than as a set of principles that they seek to champion. This political climate of economic contestation, devoid of substantial reference to political rights values reflects important political themes in contemporary South Africa.

4.3 Theorising the governance of foreign national spaza shopkeeper: Arendt, Foucault and Agamben

We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity.³⁵⁰

These words appear on the preamble of the South African constitution, which was passed not in 1787, as was the case with the American constitution, but just over 20 years ago in December 1996. Yet, governance methods and strategies relating to foreign national spaza shops reflected few of these principles. While South African law predominantly remains consistent with political rights principles set out in the constitution, governance actors to a large degree prioritised economic interests or expediency over these principles when devising interventions. For example, state representatives frequently condoned informal agreements that undermined the rule of law and discriminated against foreign nationals. A number of South African traders were prepared to loot, murder or threaten their competition to advance their business interests, and NGOs and the UNHCR mediated agreements that undermined refugee

³⁵⁰ Preamble of the South African Constitution (note 17).

and asylum seekers rights, despite having the advancement of human rights amongst their core mandates. All these efforts elevated the economic demands of South African spaza shopkeepers over the political rights concerns. Only the city's law enforcement department and a few foreign national community representatives explicitly showed discomfort with the fact that interventions entailed discriminating against certain groups in the basis of their nationality and ethnic origin. When referred to, the constitution was seen more as an inconvenient hurdle or a source of provocation against South African traders, than of a set of shared goals to forward.

Economic concerns were not only at the forefront of governance interventions in respect of foreign national spaza shopkeepers. They also made up a vital component of the general logic of broader society. For example, many township residents were prepared to attack and loot foreign national spaza shops to demonstrate their economic discontent to political leaders. These interests overrode those relating to the rights and well being of traders. Even those objecting to and stymying governance interventions did not do so not out of concern for political freedoms and constitutional rights, but rather for personal economic reasons. For instance, landlords complained about potential loss of rent and the destruction to their properties by looters, and many community leaders could be relied on on condition that their pockets were adequately lined. Economic factors, not political freedoms lay at the crux of their decision-making. These forms of reasoning and mind-sets – largely devoid of political rights principles and constitutional concerns – saw further conflicts emerge between the differing economic interests of varied stakeholders.

These dynamics indicate that the constitution's foundational principles of 'dignity, equality and freedom'³⁵¹ were not aligned to the demands and beliefs of wide sector of South African society. They signalled a break with the values so prevalent in the country's early years of democracy, and reflects that diverse segments of South African society see overt discrimination against specified groups, not as repugnant, but as a necessary and justifiable way of ensuring social harmony. Instead many governance strategies reflected an apartheid-era sentiment of separate development where business rights in certain neighbourhoods became designated to certain population groups. Only this time these arrangements were not formally legislated,

³⁵¹ Section 7(1) of the Constitution states that 'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.'

but overseen informally through NGOs, local civic bodies, and state departments alike. This has implications for political freedom in South Africa, as regimes that discriminate against certain groups, flout the law, and show a lack of concern for diversity and people's basic dignity, inhibit people's engagement in public affairs as free and equal participants.

Instead of the constitutional and political rights values set out above, the governance of foreign national spaza shopkeepers demonstrates that the South African political sphere has become largely preoccupied with economic questions, which frequently override the inclusive and liberatory values of the anti-apartheid struggle and the country's early democracy. This scenario is not specific to South Africa and the governance of foreign national spaza shopkeepers. A number of theorists have described that the entry of private economic concerns into the political sphere as a general phenomenon of the modern age. In particular Arendt's theory of the 'social' and Foucault and Agamben's accounts of 'biopolitics' all critique how matters relating to sustaining life now feature strongly in the political realm. Although they used distinct terms, all three theorists base their theories on the same notion that ancient Greek distinction between the public sphere of politics and the private realm of the household has become blurred in modern times. The former realm was traditionally housed political speech and action, while the latter domain encompassed all economic matters related to the maintenance of life and the survival of the species.

For example, Arendt argues that the 'social' sphere is a consequence of the ancient Greek philosophical distinction between the public and private spheres having become obscured in modern times. She states that:

The distinction between a private and a public sphere of life corresponds to the household and the political realms, which have existed as distinct, separate entities at least since the rise of the ancient city-state; but the emergence of the social realm, which is neither private nor public, strictly speaking, is a relatively new phenomenon whose origin coincided with the emergence of the modern age and which found its political form in the nation-state.³⁵²

³⁵² Arendt *The Human Condition* (note 33) at 28.

She describes that this phenomenon, that is: 'The emergence of society—the rise of housekeeping, its activities, problems, and organizational devices—from the shadowy interior of the household into the light of the public sphere, has... blurred the old borderline between private and political'.³⁵³

Similarly, Foucault argues that 'biopolitics' is the phenomenon of political power taking on role of 'administering life'.³⁵⁴ He states that: 'For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question'.³⁵⁵ Agamben also describes 'biopolitics' as the blurring of the ancient Greek distinction between the private and public spheres. For him 'the entry of *zoē*. into the sphere of the *polis* - the politicization of bare life as such - constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought'.³⁵⁶ While South African theorists frequently emphasize the role of economic concerns in the treatment of foreign nationals in the country,³⁵⁷ detailed theories of the social – as set out by Arendt Foucault and Agamben - have not been explored in detail in this context. It is this theoretical orientation that guides the thesis in examining the political implications of the governance of foreign national spaza businesses.

However, all three theorists were or are based in the West and never claimed that their theories had broader application than Europe and America. This calls for an urgent revisit of their theories to assess the degree to which they address key features of governance in postcolonial and developing countries such as South Africa. Furthermore because their accounts of the social vary in terms of subject matter and style, it is also necessary to investigate which of their theories are most suitable to the thesis's focus on the political implications of governance activities. The following sections thus set out Arendt, Foucault and Agamben's theories of the social, and examine their applicability to the thesis' topic and context.

³⁵³ Arendt *The Human Condition* (note 33) at 38.

³⁵⁴ Ibid 139.

³⁵⁵ Michel Foucault *The History of Sexuality Volume 1: An introduction* (English translation copy 1978, originally published in French in 1976) Pantheon Books, New York at 139.

³⁵⁶ Giorgio Agamben *Homo Sacer: Sovereign Power and Bare Life* (1998) Stanford University Press, Stanford, California at 4.

³⁵⁷ Steinberg (note 30) and Landau (note 30).

4.4 Arendt's theory of the social

For Arendt the social is a hybrid realm, which is formed when concerns regarding the sustenance of life flow from the private sphere of the household into the public sphere traditionally reserved for political engagement. She argues that the social realm has come to the fore in the modern age and takes the political form of the nation state. At the same time, Arendt shows that the modern era, while dominated by social forms of government, has also witnessed bold exhibits of political action. She sees these forms of authentic politics as occurring most vividly during the course of revolutions and popular uprisings. However she argues that these revolutions have largely failed at founding political freedom and instead tend to culminate in different social forms of government instead. Arendt's theory of the social therefore encompasses revolutionary and emancipatory scenarios, in order to understand why and how they relinquish their political goals and give rise to social realms instead. This is of importance to understanding why the governance of foreign national spaza shopkeepers reflects a general absence of political rights values, and instead exhibits new notions of emancipation and liberation founded on aspirations for economic survival and mobility.

4.4.1 Arendt's distinction between the private and public spheres

Arendt's account of the social realm draws on the ancient Greek distinction between the private and public spheres. She states that in ancient Greece the private realm was traditionally the realm of the family and household, where people were driven by their physical needs and concerned with the maintenance of human life. The realm was ordered in a hierarchical way as the household head traditionally ruled over the rest of the family.

Arendt describes that in contrast to the private realm, the ancient Greek public realm (epitomised by the Greek *polis*) provided a space where people engaged in political deliberation regarding matters relating to the common world. Because the public realm was preoccupied with matters relating to common human affairs, it excluded private concerns that were solely connected to the purpose of making a living and sustaining life.³⁵⁸ Furthermore, for Arendt the ancient Greek public realm was a realm of equality in the sense that participants were equal on the level of peers, neither

³⁵⁸ Arendt *The Human Condition* (note 33) at 37.

having to rule nor be subject to rulership. For her, political action is inspired by shared principles rather than private interests, and possesses the goal of public freedom.³⁵⁹ She states that unlike motives, principles inspire from 'without' and 'are much too general to prescribe particular goals'.³⁶⁰

Arendt links the private and the public realm to three fundamental activities of life (the *vita activa*), namely labour, work and action.³⁶¹ In her view labour and work traditionally belonged in the private sphere, as they were concerned with the sustenance of life or the making of useful or necessary objects.³⁶² She states that the activity of labour corresponds to life, as it produces sustenance necessary to feed and maintain the human body's life processes. The activity of work corresponds to the human condition of 'worldliness', which for Arendt means the stable, lasting man-made world of 'things'.³⁶³ In contrast Arendt believes that 'action' - the highest activity of the *vita activa* - is located in the political sphere whose primary activities were speech and action. She states that to act denotes 'to take initiative, to begin, to set something into motion'.³⁶⁴ This can only occur through interacting and engaging with other people. Action therefore corresponds to the human condition of plurality 'to the fact that men, not Man, live on the earth and inhabit the world'.³⁶⁵ Conversely 'to be isolated is to be deprived of the capacity to act'.³⁶⁶ Arendt argues that action is closely associated to freedom, as she equates freedom to the ability to act. Only by engaging in action through speaking and acting in the presence of others can one experience freedom. Thus 'to be free and to act are the same'.³⁶⁷

Action is also closely aligned to Arendt's concept of power, as she holds that power arises when individuals come together to engage in action.³⁶⁸ For her, power is not necessarily associated with the state or a sovereign, but can exist whenever people congregate to act in concert.³⁶⁹ Arendt distinguishes power from other means of rule including strength, which exists in a singular object or person; authority, which is

³⁵⁹ Hannah Arendt 'What is freedom?' in Hannah Arendt *Between Past and Future* (1961) Viking Press, New York 151 to 152.

³⁶⁰ Ibid at 152.

³⁶¹ Arendt *The Human Condition* (note 33) at 12.

³⁶² Ibid at 12 and 13.

³⁶³ Ibid at 7.

³⁶⁴ Ibid at 177.

³⁶⁵ Ibid at 7.

³⁶⁶ Ibid at 188.

³⁶⁷ Arendt 'What is freedom?' (note 359) at 153.

³⁶⁸ Ibid 200.

³⁶⁹ Hannah Arendt *On Violence* (1970) Houghton Mifflin Harcourt Publishing Company, New York at 43 to 46.

vested in a person or office; and violence, which is instrumental in nature as it uses implements to multiply or substitute natural strength.³⁷⁰ Through emphasising action in her analysis of freedom and power, Arendt reveals that no political condition is preordained or irresistible. She states that 'historical processes are created and constantly interrupted by human initiative, by the *initium* man is insofar as he is an acting being'.³⁷¹

Arendt holds that because political action in the ancient Greek public realm entailed speech and debate, the public realm excluded violence.³⁷² She argues that the use of violence to 'command rather than persuade',³⁷³ was a pre-political phenomenon, which was used to overcome necessity and enter the public realm – for example by forcing people to become slaves. The absolute rule of despots therefore mimicked the household, and did not comprise political action. In other words: 'absolute, uncontested rule and a political realm properly speaking were mutually exclusive'.³⁷⁴

Arendt's reliance on the ancient Greek distinction between the private and public realms is not without problems, primarily because the majority of people in ancient Greece were excluded from participating in politics.³⁷⁵ Arendt states that entry into the political realm in ancient Greece depended first of all on conquering necessity and freeing oneself from the demands of the household, as well as owning a house and thereby having location in the world.³⁷⁶ Those who were subject to the urgencies of life, such as women (who engaged in giving birth), slaves (who participated in labour to support life) and the poor (who were subject to the needs of their bodies) were excluded from the *polis* and partaking in political action. She states that private wealth was a condition for admission to the public life because it assured that the owner was not tied down with issues relating to sustaining his life, and was free to engage in public affairs. However, even those who possessed wealth could exclude themselves from the public realm should they chose to pursue further riches instead of relying on their wealth to lead a political life.³⁷⁷

³⁷⁰ Arendt *On Violence* (note 369) at 43 to 46.

³⁷¹ Arendt 'What is freedom?' (note 359) at 170.

³⁷² Arendt *The Human Condition* (note 33) at 27

³⁷³ *Ibid* at 27.

³⁷⁴ *Ibid* at 28

³⁷⁵ *Ibid* at 32.

³⁷⁶ *Ibid* at 30 and 61 to 62.

³⁷⁷ *Ibid* 65.

A number of scholars have criticised Arendt's description of ancient Greek curtailments on people's entry to the public realm as elitist.³⁷⁸ To a degree this criticism is correct. Arendt does not criticise or specifically distance her theory from the problematical aspects of the ancient Greek city-state. At the same time her political theory should not be taken as an attempt to directly mirror the ancient Greek city-state. Her reference to the Greek *polis* was instead intended as a metaphor to draw on, rather than a literal aspiration.³⁷⁹ For her, 'The *polis*, properly speaking, is not the city-state in its physical location; it is the organization of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be'.³⁸⁰ Furthermore, the political vision that she develops in *On Revolution* differs markedly from ancient Athens. In particular she argues for the establishment of a political realm that is open to all who have a passion for public freedom and wish to participate. Exclusion from such a sphere would be voluntary, as those who are not interested in political matters could choose to not involve themselves. Therefore in contrast to the Greek city-state, Arendt's political theory, which draws on certain classical Greek political principles, is relatively inclusive and does not specifically exclude women, the poor, or the property-less from political life (as was the case in ancient Greece).

Arendt's distinction between the private and political sphere has also been intensely criticised as naïve and destructive.³⁸¹ In *The Human Condition* Arendt articulates a strict separation between the public and private spheres and problematically contends that:

The fact that the modern age emancipated the working classes and the women at nearly the same historical moment must certainly be counted

³⁷⁸ Margaret Canovan 'The Contradictions of Hannah Arendt's Political Thought' (February 1, 1978) 6:1 *Political Theory* 5. Hauke Brunkhorst 'Equality and elitism in Arendt' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2006) Cambridge University Press, Cambridge, UK.

³⁷⁹ Maurizio Passerin d'Entrevue 'Hannah Arendt' (10 April 10 2014), in Edward N. Zalta (ed) *Stanford Encyclopedia of Philosophy* available at <http://plato.stanford.edu/entries/arendt/#ActPowSpaApp>, date accessed 5 March 2017.

³⁸⁰ Arendt *The Human Condition* (note 33) at 198.

³⁸¹ Albrecht Wellmer 'Arendt on Revolution' in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* (2001) 232, Jeremy Waldron 'Arendt's constitutional politics' also in Dana Villa (ed) *The Cambridge Companion to Hannah Arendt* 206 and Maurizio Passerin d'Entrevue *The Political Philosophy of Hannah Arendt* (1994) 62. James P. Clarke 'Social justice and political freedom: revisiting Hannah Arendt's conception of need' (1993) 19 *Philosophy Social Criticism* 333 - 347. Nancy Fraser *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (1989) University of Minnesota Press, Minneapolis at 160.

among the characteristics of an age which no longer believes that bodily functions and material concerns should be hidden.³⁸²

Wellmer views Arendt's efforts to concretise a distinct political and private realm as 'the great weakness of her political theory'.³⁸³ He argues that the public sphere cannot simply ignore issues relating to the economy, and social justice. Fraser believes that Arendt's distinction depoliticises important social issues, and that needs are subject to far more varied and contested interpretations than Arendt acknowledges.³⁸⁴

In the late modern era of widening economic inequality, globalisation, and heterogeneity, it would be ridiculous to exclude key issues such as race, gender, sexuality, the economy and poverty (which Arendt on many occasions categorises as 'private') to the domain of the household and out of sight from the public and political sphere. Arendt's early categorical exclusions of bodily and hence in her view private issues (such as poverty, race and gender) from the political sphere are thus highly problematic.

However, a careful analysis of Arendt's work over time suggests that her initial strict distinction between private and political matters becomes more nuanced. Instead of her rigid categorical exclusion of gender and labour issues from the political realm set out in *The Human Condition*, she eventually envisions these issues as falling within the political realm so long as they are political in nature, i.e. that they are debateable, inspired by broad principle, and are linked to the political goal of public freedom.³⁸⁵ In her essay 'Reflections on Little Rock'³⁸⁶ Arendt suggests that the division between the private and public sphere is more complex and that certain issues may in fact have both private and public aspects. For example, she states that the issue of marriage can be private or public depending on the context, and

³⁸² Arendt *The Human Condition* (note 33) at 41.

³⁸³ Wellmer (note 381) at 232.

³⁸⁴ Nancy Fraser (note 381) at 160.

³⁸⁵ Vanya Gastrow 'The demise of revolutionary politics and the rise of terror? Assessing Hannah Arendt's hypothesis of the "social question" in post-apartheid South Africa' (Jan 01, 2012) University of Cape Town Masters' thesis at 47 to 55, available at <https://www.mysciencework.com/publication/show/8082f38adec1bf982fe973324f5b7c41>, date accessed 5 March 2017.

³⁸⁶ Arendt, Hannah 'Reflections on Little Rock' (1959) in Peter Baehr (ed) *The Portable Hannah Arendt* (2000) Penguin Books, New York at 231.

argues that if marrying one's chosen spouse brings one in conflict with the law (for instance in the case of interracial or gay marriage), the issue becomes a political matter, relevant for public debate and action.³⁸⁷

Similarly in *On Revolution*, Arendt maintains that poverty can arouse the political principle of solidarity out of which individuals can 'establish a community of interest with the oppressed and exploited'.³⁸⁸ She also states that poverty can be the result of political factors such as exploitation, evident in slave economies and violent expropriations during early capitalism.³⁸⁹ These discussions reveal that Arendt does not view poverty as completely separate from political concerns and can have political dimensions.

A decade later at a conference in 1972 Arendt again demonstrated a far more nuanced account of the division between the public and political realms. Here she reformulated her account of political issues, and described them as matters that are debatable and cannot be solved with certainty. She contrasted this with private administrative issues, which she viewed as matters that can be conclusively settled.³⁹⁰ To elaborate, she stated that the question of whether adequate housing demands integration is a political question, while the factual need of adequate housing itself is a social issue. She further maintained that seemingly 'private' or 'social' concerns such as education, health or urban problems could have political sides to them.³⁹¹ Thus Arendt's taxonomical distinction between the public and private sphere, which characterises her earlier work in *The Human Condition* evolves over time to encompass a more careful, complex and flexible approach to understanding the public and private spheres and their contents. Unlike the largely untenable separations between the public and private spheres in her earlier work, these latter understandings offer constructive tools for examining the concepts of the private and political.

³⁸⁷ Arendt 'Reflections on Little Rock' (note 386) at 239.

³⁸⁸ Hannah Arendt *On Revolution* (first published in 1967 by Viking Press, reprinted in 1990 by Penguin Books), Penguin Books, London at 88 to 89.

³⁸⁹ Ibid.

³⁹⁰ Karin A. Fry Arendt: *A Guide for the Perplexed* (2009) Continuum International Publishing, London at 109 referring to Mervyn Hill *Hannah Arendt: the recovery of the public world* (1979) St Martin's Press, New York 317 to 318.

³⁹¹ Ibid.

4.4.2 Arendt's social realm

In Arendt's view the classical Greek distinction between the public and private realms has become blurred in modern times. This is because private administrative matters relating to the sustenance of life have intruded upon the public realm, which was traditionally reserved for political speech and action. As a result she argues that the public realm has become transformed into a 'social' realm, which is neither strictly public nor private. Arendt describes that the term 'social' is of Roman, not Greek origin and referred to the mere companionship that people shared by virtue of being limited by the needs of biological life. The rise of the social has caused both political and private spheres to decline, as populations become increasingly preoccupied with the demands of society, which Arendt defines as a 'super-human family'.³⁹² People thus have lessening regard for the intimacy of the household or the political realm of debate and distinction. Arendt describes that the social realm finds its political form in the nation-state, where 'we see the body of peoples and political communities in the image of a family whose everyday affairs have to be taken care of by a gigantic, nation-wide administration of housekeeping'.³⁹³

Members of society are not equal on the levels of peers. Instead like a family, they exist as members of a household living under the despotism of the household head.³⁹⁴ Arendt describes that society bases itself on social codes and rules that 'tend to "normalize" its members, to make them behave, to exclude spontaneous action or outstanding achievement'.³⁹⁵ In her view, modern society has evolved to a point where mass membership and the strength of unanimous interest and opinion have meant that one-man rule is no longer required. Instead members of society are ruled by 'nobody' in the form of bureaucracy. For her, this rule by nobody 'is not necessarily no-rule; it may indeed, under certain circumstances, even turn out to be one of its cruellest and most tyrannical versions'.³⁹⁶

In Arendt's subsequent writing, she uses the examples of the French and American revolutions to explore how revolutionary struggles for political freedom become subsumed by private administrative concerns and turn social. She shows that while

³⁹² Arendt *The Human Condition* (note 33) at 29

³⁹³ *Ibid* at 28.

³⁹⁴ *Ibid* at 40.

³⁹⁵ *Ibid*.

³⁹⁶ *Ibid*.

social realms share certain core characteristics, they can emerge in varied ways and take dramatically different forms. In post-revolutionary America, the social took the form of mild limited constitutional government, whereas in post-revolutionary France (and in Arendt's view all other post-revolutionary aftermaths) it materialised as a one-party dictatorship fed by uprisings of the poor and characterised by violent purges. Arendt examines why this was the case by studying the actions of revolutionary leaders and the contextual forces that weighed on them. This has resonance for many post-colonial countries, where, as depicted by Fanon,³⁹⁷ the initial political goals of liberation struggles have frequently become overwhelmed by the economic demands of newly emancipated citizens. Similarly the governance of foreign national spaza shopkeepers in South Africa exhibits increasing disillusionment with constitution principles, and a growing frustration amongst South Africans with the slow pace of economic redress in the post-apartheid era.

4.4.3 Arendt's concept of revolution

Arendt argues that despite their political goals, revolutions have so far merely produced in two forms of social government – limited constitutional government on the one hand, and one-party dictatorships on the other. By far the most common outcome has been the latter, with only the American revolution culminating in less disastrous limited constitutional government. She states that:

It is true that wherever the revolution was not defeated and not followed by some sort of restoration the one-party dictatorship, that is, the model of the professional revolutionary, eventually prevailed...³⁹⁸

To understand how the social manifests in the aftermath of liberation and revolution, Arendt examines the divergent courses of the French and American revolutions. For Arendt the two key features of revolution are the goal of founding freedom, along with novelty, in the sense of starting something completely new. She believes the goal of founding freedom is achieved via the enactment of a constitution that establishes a durable public space where people can engage in political speech and action. This is because for her 'political freedom, generally speaking, means the right "to be a

³⁹⁷ Arendt *On Revolution* (note **Error! Bookmark not defined.**).

³⁹⁸ *Ibid* at 262 to 263.

participator in government”, or it means nothing’.³⁹⁹ The constitution of freedom involves both the act of ‘constituting’, which encompasses widespread public engagement and deliberation in framing a constitution, as well as a constitution in the sense of a final document. Importantly, in her view (and quoting Wolfgang Kraus) ‘the people should endow the government with a constitution and not vice versa’.⁴⁰⁰

Arendt describes that only in America were revolutionary actors able to complete the revolution by founding a lasting constitution through widespread public debate and engagement. This was partially due to the absence of what she terms the ‘social question’ (or the predicament of poverty) in the country. Consequently revolutionary actors never became distracted from their original political goals. Arendt believes that revolutionists were not swayed by the presence of slavery, as ‘slavery carries with it an obscurity even blacker than the obscurity of poverty; the slave, not the poor man was wholly overlooked’.⁴⁰¹

Apart from not being burdened by mass poverty, American revolutionists’ political experience also made them better suited to constituting freedom. Arendt argues that in America public freedom was a lived experience drawn from diverse organised political bodies. This created a platform for the American constitution to be debated clause-by-clause from local to national levels. It also meant that the authority of the framers of the Constitution was never doubted, as it was directly derived from subordinate authorised bodies that existed on district, township and county levels.⁴⁰²

Arendt argues that conversely, French revolutionary leaders confronted a nation that struggling with severe poverty and widespread hunger. This resulted in leaders needing to prioritise the urgent needs of the poor above building political institutions. She describes that at the same time the ability of revolutionary leaders in France to establish a lasting constitutional order was further weakened by their lack of practical political experience, as leaders derived primarily from the ‘*hommes de lettres*’ (or men of letters), whose political background – unlike American revolutionists – was based in theory and learned accounts from classical Greece. As a result Arendt

³⁹⁹ Arendt *On Revolution* (note 388) at 218.

⁴⁰⁰ Arendt quoting Wolfgang H. Kraus ‘Democratic Community and Publicity’ in *Nomos (Community)*, vol II (1959) in *On Revolution* at 145.

⁴⁰¹ Arendt *On Revolution* (note 388) at 71.

⁴⁰² *Ibid* at 165.

believes that the French constituent assemblies did not draw on widespread public engagement and organisation in drafting their constitutions, and their members' authority was constantly in question.⁴⁰³

Although Arendt describes the American revolution as a success, she argues that the country eventually diverted from its original revolutionary ambitions. Thus merely securing a constitution does not guarantee the perpetual realisation of the goals of revolution. Arendt believes that in order for revolutionary achievements to last, the spirit of the revolution – or in other words the original principles that inspired revolutionists - must be kept alive. She describes these principles as 'public freedom, public happiness, public spirit'.⁴⁰⁴ For her, despite America's success at completing its revolution, the country failed to preserve the spirit of the revolution, which caused the gains of the revolution not to last. As a result both the French and the American revolutions eventuated in social realms that were largely preoccupied with advancing the economic concerns and welfare of citizens.

4.4.4 Post-revolutionary social realms: Limited constitutional government and one-party dictatorships

In order to understand the post-apartheid political context in which the governance of foreign national spaza shopkeepers takes place, it is useful to consider Arendt's account of post-revolutionary politics. Arendt describes that despite their original political ambitions, the revolutions in France and America eventually brought about governments that were social in nature. Although the American revolution succeeded in founding a constitution through intense public deliberation, the country soon stagnated into what she terms 'limited constitutional government'. At the same time, the predicament of poverty saw the French revolution transform into an 'uprising of the poor' and eventual one-party dictatorship. In both scenarios private concerns and interests eventually seeped into political spheres, transforming their nature and seeing the advent of social realms. This has relevance for contemplating the South African political sphere, which similarly emerged out of struggle for political emancipation, only to thereafter confront acute socio-economic dilemmas.

Post-revolutionary America: Limited constitutional government

⁴⁰³ Arendt *On Revolution* (note 388) at 165.

⁴⁰⁴ Ibid at 221.

For Arendt the simple enactment of a constitution does not *per se* signify the successful completion of revolution. In her view constitutional government alone is simply a form of 'limited government', as it amounts to 'nothing more or less than government limited by law, and the safeguard of civil liberties through constitutional guarantees'.⁴⁰⁵ She states that limited government can be traced back possibly as far as the Magna Charta and feudal rights in Europe, and forms the foundation of not only constitutional government, but a range of governments, including limited monarchy, where laws curtail monarchical powers.⁴⁰⁶ In Arendt's view, limited government in no way seeks to set out the 'new revolutionary powers' of the people, but simply aims to limit the power of government. She argues that this type of constitutionalism is the goal of rebellions, not of revolutions, in that rebellion (the first, violent stage of revolution) aims at liberation, while revolution aims to found freedom. For her constitutional rights and civil liberties are essentially identical to freedom of movement, as they mean no more than 'freedom from unjustified restraint'.⁴⁰⁷

Arendt views the American constitution as the only example of a truly revolutionary constitution, as it sought not only to limit the power of the state, but also to establish a space where freedom could be exercised. This involved not only setting limitations on state power (as in the case of limited government), but also on the power of society.⁴⁰⁸ She quotes James Madison's statement that:

It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part.⁴⁰⁹

This essentially necessitated protecting minority groups from the power of the majority through constitutional checks and balances. Such checks and balances went beyond the protection of civil liberties, or the traditional separation between the legislative, executive and judicial arms of government. Arendt describes that their key feature was their generation of a new centres and distributions of power. This was

⁴⁰⁵ Arendt *On Revolution* (note 388) at 143

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid* at 32.

⁴⁰⁸ *Ibid* at 146.

⁴⁰⁹ *Ibid* at 147, quoting Jacob E. Cooke *The Federalist* (1787) Meridian, 1961 at 51.

necessary because 'Power can be stopped *and* still be kept intact only by power'.⁴¹⁰ She states that American drafters realised that power could not only be checked by laws, as laws could always be overturned by the power of the majority. Furthermore, even in the hypothetical case that laws could withstand the power of the majority, they operated in a way to limit and decrease power, rather than enhance it. Thus Arendt argues that the American principle of separation of powers entailed building a mechanism into government, which generated power without allowing it to overrun other centres of power.⁴¹¹ This was achieved through the establishment of a republic based on separate federal governments, whose power was unconnected to the central government. In Arendt's view the distribution of varied opposing powers creates more power, not less.⁴¹² Thus she argues that the greatest revolutionary achievement of America's constitution was that it abolished sovereignty from its system of state power. For her this was vital to the success of the revolution, as 'in the realm of human affairs sovereignty and tyranny are the same'.⁴¹³

Arendt argues that subsequent revolutions have overlooked the revolutionary element of constitution making (i.e. the founding of freedom) exhibited in America, partly because so many failed revolutionary upheavals ended in some form of 'limited government'. She states that in many former colonial countries post-independence constitutions were not an outcome of revolution, but were instead:

... imposed, on the contrary, after a revolution had failed, and they were, at least in the eyes of the people living under them, a sign of defeat, not of its victory. They were usually the work of experts... Their purpose was to stem the tide of revolution, and if they too served to limit power, it was the power of the government as well as the revolutionary power of the people whose manifestation had preceded their establishment.⁴¹⁴

Arendt therefore believes that it is important to distinguish between constitutions that are adopted because of the failure by a people to constitute their own government, and the American constitution, which was a result of a peoples' deliberate effort at

⁴¹⁰ Arendt *On Revolution* (note 388) at 151.

⁴¹¹ *Ibid* at 151 to 152.

⁴¹² *Ibid* at 152.

⁴¹³ *Ibid* at 152.

⁴¹⁴ *Ibid* at 144.

founding their own political space of appearance. Even though they may appear similar, imposed constitutions generally set out to limit power, and are weakened by widespread popular mistrust towards them.⁴¹⁵

While America succeeded in enacting a truly revolutionary constitution, Arendt believes that its potential was never fully realised, and like many failed revolutionary upheavals, the form of government that eventually emerged in the country was 'limited constitutional government'. She argues that this was an outcome of the failure to identify and remember the 'treasure' of the revolution, namely the sense of 'public happiness' and 'public freedom' gained from engaging in political affairs. Arendt argues that American citizens soon forgot these enjoyments when confronted with scores of newly arrived immigrants seeking the promise of affluence and riches. Public happiness took on a new meaning and was reconceived as the pursuit of purely *private* happiness. Arendt states that as a result, freedom in America became increasingly understood as freedom from politics, rather than engaging in public affairs.⁴¹⁶ Public concerns were seen as falling within the domain of the state, while the place of the citizen was located in his or her private life, whose ideals became 'abundance and endless consumption'.⁴¹⁷ Instead of engaging in the political sphere as envisioned by the drafters of the constitution, Americans understood constitutional laws as protecting their private lives from state interference and advancing their individual welfare. Happiness became located in the home, and entailed the accumulation and display of private wealth, rather than appearing and distinguishing oneself in the public realm.⁴¹⁸

Arendt believes that the public passivity that accompanies limited government can lead to the erosion of political freedoms. So far this had been averted in America, where she says 'revolutionary notions of public happiness and political freedom' have never altogether vanished from the scene, due to the strong constitutional foundations that the founders were able to establish.⁴¹⁹ However, she suspects that these foundations may possibly yield to the pressures of wealth, as they yielded to the pressures of poverty and misfortune in Europe.

⁴¹⁵ Arendt *On Revolution* (note 388) at 146.

⁴¹⁶ *Ibid* at 135.

⁴¹⁷ *Ibid* at 139.

⁴¹⁸ *Ibid* at 70.

⁴¹⁹ *Ibid* at 138, 146 and 149.

Thus Arendt describes that in America the public political realm became invaded by 'private' administrative concerns, turning it 'social'. Instead of *revolutionary* constitutional government, Americans eventually settled for *limited* constitutional government, and the happiness of society became seen as the 'only legitimate object of good government'.⁴²⁰ Arendt states that the principles that eventually came to dominate American politics were:

... civil liberties, the individual welfare of the greatest number, and public opinion as the greatest force ruling an egalitarian, democratic society. This transformation corresponds with great precision to the invasion of the public realm by society; it is as though the originally political principles were translated into social values.⁴²¹

Revolutionary France: Uprising of the poor and one party-dictatorship

Arendt describes that the social realm that emerged in the aftermath of the French revolution was sharply contrasted to that of America. This was because the French revolution occurred in a context of mass poverty, with the result that once political liberation was achieved, the attention of revolutionary actors quickly shifted to the dire economic conditions of the populace. In Arendt's view this signalled the premature ending of the French revolution, which for her amounted to a failure, as it unleashed an uprising of the poor that culminated in a one-party dictatorship characterized by terror and violent purges. The resulting dictatorship was social in nature as political leaders believed that the welfare of the people was the primary purpose of political engagement, and that the 'substance of politics was not action but administration'.⁴²² Arendt argues that dictatorships are the inevitable fate of all revolutions that break out in contexts of widespread poverty.⁴²³ She therefore argues that the 'social question' (or the predicament of poverty) is a key factor determining the outcome of revolutions.

⁴²⁰ Arendt *On Revolution* (note 388) at 128.

⁴²¹ *Ibid* at 221.

⁴²² *Ibid* at 273.

⁴²³ *Ibid* at 112.

To understand how precisely the 'social question' leads revolutionary struggles for political freedom to one-party dictatorships, Arendt studies the thinking and actions of revolutionary leaders. She argues that unlike the American revolutionary leaders, French revolutionists struggled to be seen as 'one of the people' as they tended to be men of letters rather than of action, and did not share the same economic background as their followers. This gave rise to a legitimacy crisis amongst revolutionary leaders in France crisis once liberation once political liberation was accomplished.

In Arendt's view the French revolutionists needed to find a way to relate themselves to the cause of the poor if they wished to retain credibility. This was achieved through 'virtue', which meant 'to have the welfare of the people in mind, to identify one's own will with the will of the people'.⁴²⁴ Virtue necessitated having compassion for the poor, by possessing the ability to suffer with them. Arendt argues that the leaders' newly discovered virtue and realigned wills caused them to divert their attention from establishing institutions to support a republic towards focussing on the direct needs and wants of the people. For Arendt, the uniting of wills between the leadership and the poor was further enabled through the identification of a common enemy. This enemy was the particular will and interest hidden within each citizen, which stood in opposition to the general will of the people. Arendt argues that all revolutions that have been inspired by the French revolution presuppose 'that the interest of the whole must automatically, and indeed permanently, be hostile to the particular interest of the citizen'.⁴²⁵

Arendt describes that this celebration of selflessness and compassion for the poor spelled disaster for the French revolution, as it introduced sentiments and passions into the political realm. The emotion of compassion negated reason, as thought and inner dialogue were seen as selfish and inhibiting people from losing themselves in the suffering of the poor.⁴²⁶ Arendt argues that when the leaders of the French revolution declared their compassion for the poor the emotion they were in fact experiencing was not compassion, but pity. In her view compassion cannot be felt for a collective body, as co-suffering entails relating to individuals in their singularity. Compassion is also not eloquent, but mute, awkward and expressed in gestures

⁴²⁴ Arendt *On Revolution* (note 388) at 75.

⁴²⁵ Ibid at 79.

⁴²⁶ Ibid at 80.

rather than in words.⁴²⁷ Pity entails being sorry, but not struck in the flesh. Unlike compassion, pity can depersonalise groups and classes, and reach out to the masses, thereby becoming overwhelmed by an ocean of suffering. This boundless suffering, which existed within the souls of the revolutionary leaders, as well as amongst the France's masses, resulted in leaders losing the capacity to hold onto specific considerations and principles, and reality more generally. Arendt states that Robespierre was the first to introduce pity-inspired virtue to the political sphere in France, with the result that laws and justice were overrun by emotion and violence.⁴²⁸ Arendt argues that 'Pity, taken as the sprig of virtue, has proved to possess a greater capacity for cruelty than cruelty itself'.⁴²⁹

Arendt describes that from this point on the French revolution disintegrated into civil war and violent chaos. Unlike the American revolution, which founded freedom through building lasting institutions, the French revolution went down the path of lawlessness inspired by the virtue of unrestricted pity for the suffering of the poor. Furthermore Arendt argues that revolutionary leaders could not fully shake off their individual wills and interest, resulting in them not being able to live up to their professed virtue. As a result the French political sphere became swamped with hypocrisy and paranoia. The revolution therefore eventually not only targeted the hypocrisy and corruption at the Court at Versailles and of French high society, but also turned against the political deliberations of Constituent Assembly. Arendt describes that in reaction to the apparent hypocrisy of the Court and Constituent Assembly, the revolutionary leaders saw the poor and those that showed compassion towards them as naturally good.⁴³⁰ However, she argues that the danger in this is that absolute goodness knows no middle ground and cannot engage in persuasion and negotiation or make sense of laws. It therefore can only act violently in response to perceived evil.

Arendt believes that instead of creating a climate of virtue and goodness, the celebration of the suffering of the poor as the purest form of virtue triggered the *malheureux* (the 'unfortunate') of France to transform into the *enragés* (the 'enraged'). This was because rage is 'the only form in which misfortune can become

⁴²⁷ Arendt *On Revolution* (note 388) at 86.

⁴²⁸ *Ibid* at 90.

⁴²⁹ *Ibid* at 89.

⁴³⁰ *Ibid* at 81.

active'.⁴³¹ However, for Arendt, rage cannot lead to any positive transformation of society. This is because the inspiring principle of rage is vengeance, not freedom, and furthermore because rage is impotent and becomes active when impotence reaches its final stage of despair.⁴³²

Through their attempts to address the immediate needs of the poor, revolutionary leaders in France transformed the political realm into a social one. Arendt states that 'Since the revolution had opened the gates of the political realm to the poor, this realm had indeed become "social"'.⁴³³ However the social realm that emerged in the aftermath of the revolution in France differed markedly from the American one. Instead of merely entering into the political realm, private household concerns completely overwhelmed the political sphere in France. Arendt explains that:

... with the downfall of political and legal authority and the rise of revolution, it was people rather than general economic and financial problems that were at stake, and they did not merely intrude into but burst upon the political domain. Their need was violent, and as it were prepolitical; it seemed that only violence could be strong and swift enough to help them.⁴³⁴

Arendt argues that this sudden appearance of rage and violence in France created conditions for the emergence of the social in the form of the one-party dictatorship, rather than limited constitutional government. She asserts that the institutions of freedom, which materialised during the course of the French revolution in the form of popular assemblies, became replaced by the party, which revolutionists saw as the best suited to liberating citizens from poverty.⁴³⁵

Arendt concludes that uprisings of the poor and the eventual dictatorships that follow are the curse of all revolutions that break out in circumstances of extreme poverty, as revolutionary leaders cannot help but try to solve the problem of mass poverty with political means. The result is that far from founding freedom, or liberating the poor

⁴³¹ Arendt *On Revolution* (388) at 110.

⁴³² Ibid at 111.

⁴³³ Ibid at 90 to 91.

⁴³⁴ Ibid at 91.

⁴³⁵ Ibid at 66.

from necessity, such revolutions unleash misery and descend into terror instead.⁴³⁶
This because the 'force' of poverty outweighs that of oppression:

What has always made it so terribly tempting to follow the French Revolution on its foredoomed path is not only the fact that liberation from necessity, because of its urgency, will always take precedence over the building of freedom, but the even more important and more dangerous fact that the uprising of the poor against the rich carries with it an altogether different and much greater momentum of force than the rebellion of the oppressed against their oppressors. This raging force may well nigh appear irresistible because it lives from and is nourished by the necessity of biological life itself.⁴³⁷

Arendt is therefore not only interested in describing the social realm, she also seeks to understand the types of social spheres that emerge in the aftermath of revolutions, in particular because they differ so significantly revolutionists' original political ambitions. The governance of foreign national spaza shopkeepers in South Africa reflects many of the above themes. For example, the struggle against apartheid eventually culminated in the establishment of a constitution that to an extent 'limits' state actors' ability to intervene and curb foreign national spaza shopkeepers. At the same time many political formations have regrouped around socio-economic causes, and frequently demonstrate their frustration or 'rage' through violent demonstrations – including xenophobic riots against foreign national spaza shops. These actions appear to mirror the chaos brought about by the *enragés* in revolutionary France.

4.5 Other theories of the social: Foucault and Agamben

Foucault and Agamben both explore how the modern age is characterised by the blurring of the boundaries between the private and public spheres. Like Arendt they describe how private matters relating to the sustenance of life have entered the public sphere, which was previously reserved for political deliberation. Although Agamben believes that life was never completely excluded from the political sphere (on the contrary he believes it was implicitly included by virtue of its exclusion), he argues that modern age has seen it move away from the fringes of the political domain and overlap with political life.

⁴³⁶ Ibid At 112.

⁴³⁷ Ibid at 112.

Foucault never appeared to have been aware of Arendt's theory of the social and referred to the phenomenon 'biopolitics', a term that was later adopted by Agamben. Their analyses differ somewhat from Arendt's in that they are less concerned with how the social or biopolitics impacts on the political sphere of freedom and action. Rather than lamenting the decline of authentic politics (i.e. the 'treasure' of revolutions), Foucault and Agamben emphasise how social realms control and regulate individual bodies and collective populations and entail biological notions of belonging that rest on racism and exclusion. This has implications for analysing the governance of foreign national spaza shopkeepers, which similarly involves a preoccupation with the lives of South African traders, to the detriment of those of foreign national shopkeepers.

4.5.1 Foucault and biopolitics

In the 1970s Foucault identified a phenomenon, which he termed 'biopolitics' and defined as 'power over life'.⁴³⁸ It rests on his observation that in the modern age the classical notion of politics has been reversed. He argues that political power - instead of comprising a higher and additional activity to the life process - is now centrally concerned with managing and controlling the life functions of the human species.⁴³⁹ In this way Foucault's account of biopolitics largely mirrors Arendt's description of the social, which similarly entails the entry of private concerns relating to life into the political sphere.

According to Foucault political power traditionally lay in a sovereign's right to decide the life or death of his subjects. This came in the form of 'taking life or letting live'. However, he argues that since the 19th century, power has become preoccupied with nourishing and ordering life.⁴⁴⁰ Foucault describes that political struggles have responded to this new system of power by adapting traditional notions of rights. He states that:⁴⁴¹

⁴³⁸ Foucault *The History of Sexuality* (note 355) at 139.

⁴³⁹ Ibid at 138.

⁴⁴⁰ Michel Foucault *Society Must Be Defended: Lectures at the College de France 1975 to 1976* (1997) Picador, New York at 241.

⁴⁴¹ Foucault *The History of Sexuality* (note 355) at 145.

The "right" to life, to one's body, to health, to happiness, to the satisfaction of needs, and beyond all the oppressions or "alienations," the "right" to rediscover what one is and all that one can be, this "right" - which the classical juridical system was utterly incapable of comprehending was the political response to all these new procedures of power which did not derive, either, from the traditional right of sovereignty.⁴⁴²

Foucault's notion of biopolitics (which he also refers to as 'biopower') thus focuses particularly on the ways in which power is exercised in the modern age. Foucault sets out a detailed account of what he means by power. For him power is a 'multiplicity of force relations' that function at various levels.⁴⁴³ Thus state sovereignty, laws and domination, are not given at the outset, but are 'only the terminal forms power takes'.⁴⁴⁴ Foucault describes that power is omnipresent, not because it is unified and consolidated, but because it is localized and constantly produced at myriad points. He believes that rather than being an institution or a structure, power 'is the name that one attributes to a complex strategical situation in a particular society'.⁴⁴⁵

Foucault differentiates his concept of power from what he terms the 'juridical notion of power', which originates in medieval monarchical forms of government.⁴⁴⁶ Juridical power comes in the form of visible legal prohibitions and interdictions. But Foucault sees power today as working in masked and subtle ways, and that it is these hidden forms that are most effective.⁴⁴⁷ Foucault offers a simple reason for this, stating that 'power is tolerable only on condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms'.⁴⁴⁸ In his view, instead of representing power, juridical discourses cover up and hide the actual mechanisms of power.⁴⁴⁹ He argues that revolutionary movements since the French Revolution have made the mistake of assuming that power lies in legal systems and the exercise of law. Foucault thus states that: 'In political thought and analysis, we

⁴⁴² Foucault *The History of Sexuality* (note 355) at 145

⁴⁴³ Ibid at 92 and 93.

⁴⁴⁴ Ibid at 92.

⁴⁴⁵ Ibid at 93.

⁴⁴⁶ Ibid at 86.

⁴⁴⁷ Ibid at 2.

⁴⁴⁸ Ibid at p86.

⁴⁴⁹ Ibid at 88.

still have not cut off the head of the king'.⁴⁵⁰ For Foucault, modern methods of power aimed at ordering people's lives and bodies do not operate through rights, law and punishment, but by technique, normalization and control, all of which run within and beyond state systems.⁴⁵¹

Foucault argues that modern power no longer operates through the traditional right of sovereignty, as sovereignty could not contest with the demographic growth and industrialization of 18th century – both at the bottom level of detail and at the top mass level.⁴⁵² He states that instead of relying on sovereignty as a modality, power modified itself in two ways. On the one hand its apparatuses adjusted to disciplining the individual body through surveillance and training. On the other hand, at the mass level, power mechanisms adapted to the phenomenon of population through engaging in intricate procedures of organization and centralization.⁴⁵³

As a result Foucault believes that modern biopolitics comes in two interconnected forms.⁴⁵⁴ The first form emerged at the end of the seventeenth century and during the course of the eighteenth century, and saw power concentrated at the individual level on 'the body as machine'. This involved optimising and controlling individual bodies through disciplines such as schools, universities and army barracks. The second form of biopolitics emerged during the latter half of the eighteenth century and focussed at the mass level on regulating the 'species body'.⁴⁵⁵ In this case power was addressed to collective populations, and saw the state concern itself with issues of public health and demography such as birth rates, life expectancy, migration, and the environment in which people lived, which would be studied through measurements and statistics.⁴⁵⁶ Foucault states that 'The old power of death that symbolized sovereign power was now carefully supplanted by the administration of bodies and the calculated management of life'.⁴⁵⁷ Thus like Arendt he sees the social as administering people's lives and welfare through expansive bureaucracies. Foucault sums up:

⁴⁵⁰ Foucault *The History of Sexuality* (355) at 25 and 88.

⁴⁵¹ Ibid at 89.

⁴⁵² Foucault *Society Must Be Defended* (note 440) at 249.

⁴⁵³ Ibid at 249 to 250.

⁴⁵⁴ Ibid at 242. Foucault *The History of Sexuality* (note 355) at 139.

⁴⁵⁵ Foucault *The History of Sexuality* (note 355) at 139. Foucault *Society Must Be Defended* (note 440) at 242.

⁴⁵⁶ Foucault *Society Must Be Defended* (note 440) at 243.

⁴⁵⁷ Foucault *The History of Sexuality* (note 355) at 139 to 140.

So we have two series: the body-organism-discipline-institutions series, and the population-biological processes-regulatory mechanisms-State. An organic institutional set, or the organo-discipline of the institution, if you like, and, on the other hand, a biological and Statist set, or bioregulation by the State.⁴⁵⁸

Foucault concerns himself more with the second form of biopolitics, i.e. that biopolitical regulation of bodies as species, as he sees biopolitics as reaching its crystallisation when politics concerns itself with the problem of population at the mass level – i.e. the species body.⁴⁵⁹ At this level, the collective economic and political effects of population require regulation rather than individual discipline. Political interventions evolve from attempting to modify individual bodies, to intervening at the level of general phenomena. This entails complex systems of centralisation at a state level.⁴⁶⁰

In Foucault's view the individual body and species-body are connected by the element of the norm, as norms discipline bodies, as well as regularize populations. Like Foucault, Arendt also views the social as normalizing its members rather than encouraging action and distinction. Foucault believes that through the norm of discipline and the norm of regularization, power took control of all life in the 19th century, starting from the level of the body and reaching across entire populations.⁴⁶¹ He describes that managing bodies and populations requires ongoing regulation and steering. As a result the age of biopolitics has seen the rise of mass bureaucracies that rely on norms and regulations rather than the direct use of law and the judicial system.⁴⁶²

For Foucault, the political focus on nourishing and ordering life has not seen a corresponding reduction in bloodshed and death. He argues that when the life and existence of populations is in question, it sees the emergence of wars that entail whole scale massacre and slaughter of people under the banner of life.⁴⁶³ In his view the Nazi holocaust was illustrative of biopolitical forms of war where heavily bureaucratic regimes unleash death upon those seen as threatening the

⁴⁵⁸ Foucault *Society Must Be Defended* (note 440) at 250.

⁴⁵⁹ Ibid at 245.

⁴⁶⁰ Ibid at 250.

⁴⁶¹ Ibid at 253.

⁴⁶² Foucault *The History of Sexuality* (note 355) at 144.

⁴⁶³ Ibid at 137.

management of bodies, race and species. He states that the appearance of death on a mass scale is caused by the increasing reversal of the sovereign's right to decide life or death, which traditionally entailed taking life or letting live. In the biopolitical age this has been replaced with the regulating power to make live or let die. In other words the 'power to *foster* life or *disallow* it to the point of death'.⁴⁶⁴

Foucault emphasises that race is vital to understanding biopolitics and its preoccupation with fostering - and annihilating - life. He argues that this is because racism is the only way to justify the biopolitical trait of murdering for the sake of strengthening life. Racism functions as a means to fragment the human species into subspecies, and frames certain 'subspecies' of people as biological threats. It thereby draws lines between who must live and who must die.⁴⁶⁵ Foucault believes that without racism biopower would be unable to kill, as it would run counter to its mission to nurture and grow life. In his view racism does not only run along the lines ethnicity or skin colour, but can also include biological or evolutionist thinking towards the mentally ill, criminals, class enemies or political adversaries.⁴⁶⁶ He describes that racism adopts the mentality of war in the way it targets certain groups of people – i.e. 'in order to live you must destroy your enemies'.⁴⁶⁷ However, when applied on the species level, death does not only serve to guarantee safety (as in the case of war), but also guarantees the elimination of inferior races and hence makes life in general stronger.⁴⁶⁸ Foucault argues that such killing does not only take the form of murder, but also 'indirect murder'. This can involve 'exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on'.⁴⁶⁹ Foucault believes that this dynamic is evident not only in murderous states such as the Nazi Germany, but inscribed in all modern states – both socialist and capitalist. For example, he states that like modern capitalist states, socialist states also see their essential function as 'to take control of life, to manage it, to compensate for its aleatory nature, to explore and reduce biological accidents and possibilities'.⁴⁷⁰ The governance of foreign national spaza shopkeepers in South Africa entails a biopolitical exposure of foreign national traders to death through lack

⁴⁶⁴ Foucault *The History of Sexuality* (note 355) at 138.

⁴⁶⁵ Foucault *Society Must Be Defended* (note 440) at 254.

⁴⁶⁶ *Ibid* at 261 to 262.

⁴⁶⁷ *Ibid* at 255.

⁴⁶⁸ *Ibid*.

⁴⁶⁹ *Ibid* at 256.

⁴⁷⁰ *Ibid* at 261.

of police protection and governance policies that attempt to outlaw their means of securing a livelihood.

Like Arendt's rise of the social, Foucault's concept of biopolitics rests on the idea that politics is today largely concerned with the life process, which was traditionally located in the private sphere of the home. This results in the emergence of giant bureaucracies tasked with administering and regulating people's lives and bodies. While Arendt's theory emphasises how this development erodes and limits the prospects of authentic politics, Foucault focuses on how the social deprives people of their ability to wield control over their lives and bodies, and becomes murderous towards those perceived as a threat to the life of the nation. Unlike Arendt, Foucault does not examine the emergence of the social or biopolitics from the perspective of actors. Instead he focuses on historical trends and institutional behaviours.

Agamben builds on Foucault's analysis of biopolitical racism and exclusion - i.e. the sovereign right to 'let die' – by examining how modern biopolitical racism entails the expulsion of unwanted life from the juridical order. The condition of foreign national spaza shopkeepers can be said to mirror this condition in that the operation of the law is frequently suspended in relation to them. While Agamben also draws on Hannah Arendt, he refers more to her thoughts on totalitarianism, than her analysis of the social.

4.5.2 Giorgio Agamben, biopolitics and *homo sacer*

In the late 1990s Agamben developed an alternative theory of the social. Like Arendt and Foucault he argues that modernity is characterised by the entry of life into the political realm. He describes that the politicization of bare life 'constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought'.⁴⁷¹ In his view the traditional classical exclusion of life from the *polis* has been reversed, and matters relating to reproduction and the sustenance of life are no longer confined to the domain of the home.⁴⁷²

⁴⁷¹ Agamben *Homo Sacer* (note 356) at 4.

⁴⁷² Ibid.

Agamben begins his analysis by looking to classical Greek political theory where natural, simple life (in Greek *zoē*) was traditionally excluded from political life or *bios*. Yet unlike Arendt and Foucault, he argues that *zoē* was never completely excluded from the political sphere, as political life was constituted through what was excluded from it. As a result natural life was implicitly included in Western political systems.⁴⁷³ Agamben therefore believes that Foucault's concept of biopolitics needs to be improved upon, as:

‘what characterizes modern politics is not so much the inclusion of *zoē* in the *polis* - which is, in itself, absolutely ancient - nor simply the fact that life as such becomes a principal object of the projections and calculations of State power’.⁴⁷⁴

Instead he argues that the rise of the social or biopolitics in modern times emerges when simple biological life no longer exists on the fringes of the political realm but overlaps with political life so that it is impossible to make out the distinction between what is excluded and included, and accordingly what is *bios* and *zoē*. Agamben also argues that although Arendt and Foucault identified the blurring of the boundaries between the spheres of politics and life, they failed consider the phenomenon of totalitarianism and the concentration camp in their analyses of the social. He states that while Arendt examined totalitarianism, she did not connect it to her later theory of the social. In Agamben's view Arendt and Foucault's omission to explore these phenomena left both of their theories incomplete, as he believes that totalitarianism and the camp comprise the starkest examples of biopolitics in our age.

Agamben uses the concept of *homo sacer* to illustrate his theory. *Homo sacer* is a figure in ancient Roman law who had been expelled from *bios* or political life in society, and only possessed bare life. Because he held no political rights or legal protections, one could not be punished for killing him. He was furthermore excluded from the divine world so he could not be sacrificed. *Homo sacer* therefore exists in a state of exception to legal rules and orders. Yet this does not mean that he is wholly excluded from juridical systems. Agamben states that:

⁴⁷³ Agamben *Homo Sacer* (note 356) at 7.

⁴⁷⁴ Ibid at 9.

The most proper characteristic of the exception is that what is excluded in it is not, on account of being excluded, absolutely without relation to the rule. On the contrary, what is excluded in the exception maintains itself in relation to the rule in the form of the rule's suspension.⁴⁷⁵

Agamben describes that *homo sacer's* exile into the state of exception was created through banishment. In monarchical times banishment and the establishment of the state of exception was the prerogative of the sovereign who could decide who was included and excluded from society. Agamben argues that the sovereign's ban of *homo sacer* constituted the political realm, as by exiling *homo sacer* and reducing him to bare life, the sovereign established the boundaries between *bios* and *zoē*. He states that *homo sacer* preserves 'the originary exclusion through which the political dimension was first constituted'.⁴⁷⁶ Like *homo sacer* the sovereign was located outside of the political sphere and was an exception from natural and divine law. The sovereign's decision to ban was not a once off occurrence, but operated continually. To be included in the political realm therefore entailed being subjected to an 'unconditional power of death'.⁴⁷⁷

For Agamben the era of the sovereign monarch and his power to banish *homo sacer* has come to an end. Yet the figure of *homo sacer* still exists in modern political systems in a new way. In particular he argues that *homo sacer* is no longer banished outside of *bios* (i.e. political life), but today corresponds with sovereignty and is located in the centre of the political realm. This state of affairs has come about through the biopolitical vesting of sovereignty in natural life. Agamben believes that the vesting of sovereignty in bare life is common to both 20th century totalitarian regimes and modern democracies, as both trace their roots to well-intentioned 18th century democratic declarations of rights, which replaced traditional monarchies. With the introduction of the rights of man, sovereignty no longer lay with divinely authorized monarchs, but became spread amongst all subjects in newly created nation states on the basis of their birth. For Agamben birth equates to 'bare natural life', thus making life the 'immediate bearer of sovereignty'.⁴⁷⁸ He argues that instead of founding political life or *bios* through banishing *homo sacer*, political sovereignty

⁴⁷⁵ Agamben *Homo Sacer* (note 356) at 17 to 18.

⁴⁷⁶ *Ibid* at 83.

⁴⁷⁷ *Ibid* at 90.

⁴⁷⁸ *Ibid* at 127.

and the bearing of rights is constituted through repeating the sovereign exception and isolating bare life or *corpus* in each person.⁴⁷⁹ Agamben argues that biopolitics came to the fore at this time, as natural life's place in the political realm was no longer restricted to the sovereign's exception of *homo sacer*. Instead each citizen's natural life became the object of politics, as well as the bearer of sovereign rights, and the principal role of the state became the care of the 'body of the people'.⁴⁸⁰

In Agamben's view 'modern democracy does not abolish sacred life but rather shatters it and disseminates it into every individual body, making it into what is at stake in political conflict'.⁴⁸¹ Like Arendt and Foucault, he believes that this political preoccupation with life has a disturbing underbelly. In particular he argues along the lines of Foucault that when life becomes what is at stake in politics, the state seeks to eliminate perceived threats to the biological health of the nation. This results in the identification of enemies to the people. For Agamben the weakening of the nation-birth link since before the First World War has accelerated this desire to purge. As a result even individuals born within a nation's territory can be considered as not possessing 'authentic' life.⁴⁸² The rights of man have therefore become progressively separated from citizenship.⁴⁸³

Agamben argues that the mechanism used to rid the nation of abnormal bodies is the 'camp'. These camps are created through states of emergency and martial law.⁴⁸⁴ He explores the role of the camp in modern western states by looking to the concentration camps of totalitarian regimes, which in his view were the most pure and absolute biopolitical spaces in history. These camps were not products of the law, but rather outcomes of martial law and states of emergency that suspended laws. Camps amounted to states of exception, as their inhabitants had been expelled from society and political life. Like *homo sacer* in the state of exception, the bare life of the camp inhabitants established the limit for who belonged and who was excluded from society. However, in the camps, the state of exception no longer entailed being banished from an ordered location (as in monarchical times), but rather being localized in an orderless space. In Agamben's view camps are not

⁴⁷⁹ Agamben *Homo Sacer* (note 356) at 12.

⁴⁸⁰ Ibid at 147.

⁴⁸¹ Ibid at 124.

⁴⁸² Ibid at 132.

⁴⁸³ Ibid at 134.

⁴⁸⁴ Ibid at 167.

specimens of a brutal past. They continue to feature on the political scene, evidenced by spaces such as Guantanamo Bay, certain city outskirts, and zones *d'attentes* such as the Hotel Arcades in Roissy France, where in 1992 French officials detained four Somali refugees and denied them entry to French territory. Thus he concludes that the modern nation state is characterized by four elements – state, birth, land and camps.⁴⁸⁵

Agamben believes that it is never clear which individuals or groups fall within and outside of the state's classification of the 'people'. This is because the term 'people' is a fractured concept that lacks a unified interpretation. The perception of who belongs to the people therefore continually evolves resulting in new camps as well as 'new and more lunatic regulative definitions of the inscription of life in the city'.⁴⁸⁶ This renders all citizens liable to having their rights suspended and their bare life exposed. He states 'If today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*'.⁴⁸⁷ He states that the camp is no longer a physical location, but the 'hidden paradigm of the political space of modernity', suggesting that we all are potentially *homo sacers* living in a state of exception with only bare life and little else to protect us from the biological whims of the nation.

Agamben's account of biopolitics draws greatly on Arendt's earlier deliberations on totalitarianism. In *The Origins of Totalitarianism* Arendt explores the failure of human rights laws to protect those fleeing totalitarian genocide. She concludes that in the era of nation states, human rights regimes in effect only applied to national citizens. Stateless people were reduced to bare life – much like animals – without any legal protections. This mirrors Agamben's concept of *homo sacer* and the camp inhabitant who is banished from political society, and possesses nothing but bare life. Like Agamben, Arendt argues that this state of affairs derives from the 18th century French Declaration of the Rights of Man and its vesting of sovereignty in natural life. She states that although man was the original source and goal of laws, when it came to matters of government 'the 'people' rather than 'man' emerged as sovereign. For Arendt, man had therefore 'hardly appeared as an emancipated, completely isolated being who carried his dignity within himself without reference to some larger

⁴⁸⁵ Agamben *Homo Sacer* (note 356) at 176.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid at 115.

encompassing order, when he disappeared again into a member of a people'.⁴⁸⁸ Refugees who were not considered one of the 'people' therefore came to lack any legal rights. Like Agamben, Arendt also compares the modern exclusion of bare life by nation states, to ancient and medieval banishment. She states that modern exclusion of the stateless from national juridical orders is more extreme than ancient and medieval banishment, which was simply intended to compel the surrender of accused, and came to an end with the introduction of effective law enforcement systems and extradition treaties.⁴⁸⁹

Agamben shares Foucault's concern with how the social and biopolitics delineates between normal and authentic citizens and those who comprise a biological threat to the nation. For both theorists the problem of life being the centre of politics is that belonging becomes framed as a biological question, resulting in certain people being stripped of legal protections and excluded from society for not meeting constantly evolving biological or racial criteria. Unlike Foucault and Arendt, Agamben does not concentrate in detail on the substance of the political realm itself - apart from its capacity to exclude and expel. He therefore overlooks what occurs within the political sphere when it becomes concerned with matters relating to life. The next section compares the theories of Arendt, Foucault and Agamben and assesses their relevance to the thesis.

4.6 Theories of the social and their suitability to the thesis

Arendt, Foucault and Agamben's theories of the social share the same core observation that modern age has seen a blurring of the classical Greek distinction between the private realm of the household and public political sphere epitomized by the Greek *polis*. Such blurring is likewise evident in the governance of foreign national spaza shopkeepers, where the advance of diverse economic interests is a central political concern. Arendt focuses largely on the substance of the social realm, in particular its administrative nature and its tendency to erode political freedom. Foucault also highlights the administrative and bureaucratic qualities of the social realm, and their totalizing ability to control and regulate human life. However unlike Arendt he pays less attention to how the social impacts on political action and republican ideals. Foucault and Agamben also grapple with how the social realm

⁴⁸⁸ Hannah Arendt *The Origins of Totalitarianism* (1948) Harcourt Brace & Company, Florida at 291.

⁴⁸⁹ Ibid at 302.

excludes through its racist and biological criteria for belonging. For Foucault, this involves mass murdering for the sake of strengthening life, while Agamben describes how biopolitics constitutes the political realm by suspending the rights of those who are not considered to authentically belong to the 'people'.

Given their varied focuses and emphases, it is necessary to assess the suitability of Arendt, Foucault and Agamben's respective approaches to the thesis topic, which focuses on the governance of foreign national spaza shopkeepers and what it reveals about the nature of politics in a postcolonial and developing world context. This entails examining their theories on three levels. The first level relates to the reach of their theories, and the comprehensiveness of the themes they cover. The second level of assessment concerns their relevance to governance contexts in South Africa and other postcolonial and developing states. On a third level it involves examining the suitability of the theories for a study of governance as an *activity*.

In terms of reach, Arendt, Foucault and Agamben's theories cover four broad features of the social, namely its substance, how it can be moulded by surrounding socio-economic conditions, how it emerges during the course or aftermath of emancipatory struggles, and how it excludes from political life. Arendt focuses on the first three of these features. She pays close attention to the substance of the social, which she describes as being technicist, managerial and bureaucratic. She emphasises that the administrative nature of this realm has the effect of constraining and even excluding possibilities for authentic political action, and hence the realisation of political freedom.

Arendt also analyses how socio-economic conditions shape social realms. Using the examples of the American and French revolutions, she explores how contexts of economic prosperity can better enable political actors to fend off private concerns and establish lasting political institutions. In contrast she believes that the predicament of poverty can quickly undermine the attainment of political goals. Lastly, Arendt examines social realms against the backdrop of revolutionary struggles for political freedom. In doing so she explores how the predicament of poverty impacts on emancipatory and revolutionary goals, and sees struggles for political freedom culminate in social forms of government instead.

Foucault similarly examines the substance of the social – in particular its bureaucratic and regulative qualities. However his interest lies less in its impact on political freedom and action, and more in how social spheres or ‘biopolitics’ take control over people’s lives and bodies. Unlike Arendt, he is also interested in how the social realm excludes those considered ‘abnormal’ or ‘degenerate’ and who are therefore perceived as posing a biological threat to the nation.⁴⁹⁰ However, Foucault does not explore the social in contexts of revolutionary struggle, or investigate how different socio-economic forces shape the ways in which social realms arise. In contrast to Arendt and Foucault, Agamben is almost solely preoccupied with the excluded – epitomised by *homo sacer* who is banished from political life and possesses nothing but bare life. In other words, he does not analyse the condition of those who are *included* in political life, except that they pose the constant threat of losing their prime position and being rendered *homo sacer* at any moment.

Thus Arendt, Foucault and Agamben cover different features of the social, while also overlapping to a degree. While all the above analyses are relevant to understanding the political implications of the governance of foreign national spaza shopkeepers in South Africa, Arendt’s theory of the social carries the most weight in terms of the reach of her theory. This is because her account of the substance of the social specifically explores how it impacts on the nature of political spheres, especially when it comes to political rights and freedoms. In contrast, Foucault concentrates more on the social’s impact on populations, i.e. how it disciplines individual bodies and takes control over people’s lives. Agamben also tends not to focus on the social’s impact on the political sphere, but rather on those whom the social sphere excludes. The thesis topic examines what governance reveals about the nature of South Africa’s political sphere, as opposed to its effect on population’s lives and how it expels perceived biological threats. In other words it looks to excluded groups to understand the workings of the political sphere, rather than *vice versa*.

A second level of analysis relates to the relevance of Arendt, Foucault and Agamben’s theories of the social to the governance context in South Africa and other postcolonial ‘developing’ states. By ‘developing’ states the thesis refers to countries that experience relatively high levels of poverty and do not have wealthy, advanced

⁴⁹⁰ Foucault *Society Must Be Defended* (note 440) at 255.

developed economies and large middle classes. All three theorists were located in western industrialised nations such as the US, Germany, Italy and France when developing their accounts of the social and never claimed to comprehensively describe phenomena in developing or postcolonial countries. Yet their theories still resonate with broader regions and contexts given how issues relating to life have encroached into political spheres across the globe. In South Africa for example, the governance of foreign national spaza shopkeepers illustrates that the political goals of diverse parties ranging from community leaders, South Africa spaza shopkeepers, and landlords largely focused on their private economic interests rather than more general political and public concerns.

Other similar observations regarding the entry of economic concerns into the South African political sphere have been made before. For example, in his analysis of the 2008 xenophobic attacks in South Africa, Landau argues that violence was fueled by the idea that foreigners threatened popular beliefs in state driven 'salvation through economic transformation'.⁴⁹¹ Similarly Steinberg diagnoses the 2008 violence as driven by struggles for state patronage.⁴⁹² In his view to be free in South Africa today means nothing more or less than to 'expect a better life'.⁴⁹³ He states:

[F]reedom is associated with rapid upward mobility, and especially with the idea that one can progress from living in the townships, in which black people were historically confined by law, to the suburbs, once reserved for whites.⁴⁹⁴

The entry of economic concerns into the political sphere is also evident in many other postcolonial developing states. Chatterjee describes that in postcolonial states in Africa and Asia:

Ideas of republican citizenship often accompanied the politics of national liberation. But without exception—and this is crucial for our story about politics in most of the world—they were overtaken by the developmental state

⁴⁹¹ Landau (note 30).

⁴⁹² Steinberg (note 30) at 1.

⁴⁹³ Steinberg (note 19) at 355.

⁴⁹⁴ Ibid at 352.

which promised to end poverty and backwardness by adopting appropriate policies of economic growth and social reform.⁴⁹⁵

Fanon similarly notes how in the aftermath of liberation anti-colonial movements quickly abandoned their political and democratic goals, choosing to focus on the narrow economic task of nationalising economies.⁴⁹⁶ The social can therefore emerge in a number of different regions and periods.

These observations call for a revisit of Arendt, Agamben and Foucault's theories in new contexts. This involves assessing the degree to which their theories can accommodate features of postcolonial and developing countries' political and governance landscapes, which exhibit widespread informality, high levels of poverty and inequality, and postcolonial identity and emancipatory politics. Unlike many Western industrialised states, many developing countries see bureaucratic centralised state governments exist alongside informal political power structures.⁴⁹⁷ For example, Chatterjee describes how in post-colonial countries in Africa and Asia there exist parallel forms of governance that involve populations and governmental agencies engaging in negotiation and rule making over local level issues such as security and welfare.⁴⁹⁸ He terms this phenomenon 'political society', and distinguishes it from political systems rooted in modern notions of sovereignty and democracy.⁴⁹⁹ The governance of foreign national spaza shopkeepers in South Africa similarly illustrates that the South African state competes with a number of wielders of political power in the country. In addition to the state, informal governance structures such as SANCO branches and informal retailers associations carried out a significant role in local level informal rule making and enforcement, as well as influencing formal state policies through lobbying, petitioning and holding posts within the ruling party. As a result adherence to formal laws in the field sites was not very strict.

⁴⁹⁵ Chatterjee (note 32) at 37.

⁴⁹⁶ Fanon (note 31).

⁴⁹⁷ Karen Tranberg Hansen and Mariken Vaa (eds) *Reconsidering Informality: Perspectives from Urban Africa*, (2004) Nordiska Afrikainstitutet, Spain. Andrew F. Cooper and Asif B. Farooq 'BRICS and the Privileging of Informality in Global Governance' (November 2013) 4:4 *Global Policy* 428 – 433. Ananya Roy 'Why India cannot plan its cities' (2009) 8:1 *Planning theory* 76-87. Colin McFarlane *Urban Informalities: Reflections on the formal and informal* (2012) Ashgate Publishing, USA.

⁴⁹⁸ Chatterjee (note 32) at 37 to 38.

⁴⁹⁹ *Ibid* at 37.

In contrast Arendt, Foucault and Agamben's accounts of the social depict models of government where political power is almost completely subsumed under a nation state and its mass bureaucracy. Arendt, Foucault and Agamben all view the social or biopolitics as manifesting in large formalized and technocratic state governments. For example, Arendt depicts the social realm as a sphere of bureaucracy and administration that takes its 'political form in the nation state'. Foucault likewise argues that biopolitics in its most crystallised form comprises 'bioregulation by the State'. This occurs at the end of the 18th century, when life at the mass level comes under *state* control. Agamben views biopolitics as an outcome of the nation state's vesting of sovereignty in the body of each citizen. His theory therefore also associates the social with formal state government. In this regard all three theorist's analyses therefore fall short of explaining political conditions in many postcolonial developing countries where state authority can be weak and unstable. This leaves their theories unexplored in respect of how the social realm would operate in the absence of any unified political power.

However, despite this limitation, Arendt and Foucault's theories do *not per se* exclude the possibility that the social can manifest in political spheres beyond the state. Arendt's concept of political sphere is not specifically located in the realm of the nation state. For example, she equates the political realm to any space where political *action* is exercised, and views political power as acting in concert. Thus her analysis of the political sphere extends to informal town hall meetings in revolutionary America and the assemblies of revolutionary France. Her approach therefore does not presuppose that political realms are located in state institutions or that political power is necessarily equated to state sovereignty. This in turn enables her theory to accommodate the phenomenon of informal political power.

Foucault's theory also does not constrain political power to the sphere of the state. He urges theorists to avoid associating power solely with the monarchic institutions and juridical systems and to 'cut off the head of the king'.⁵⁰⁰ He defines power as a 'multiplicity of force relations' that operates at various levels.⁵⁰¹ Foucault's analysis therefore also accommodates informal mechanisms of power. In contrast, Agamben's theory rests on the assumption that political power is monopolised by a

⁵⁰⁰ Foucault *The History of Sexuality* at 25 and 88.

⁵⁰¹ Ibid 92 and 93.

formal centralised government. He associates sovereignty and political life with the nation state and formal citizenship, and does not consider contexts where political power does not derive from the state. Agamben's theory is therefore limited when it comes to examining the role of informality in governance and political systems.

Another factor that distinguishes many developing countries from those in the West is that they contend with widespread poverty and economic inequality, which weigh on governance actors and influence their politics. These economic pressures can contribute to threats of civil strife. For example, the 2014 UN Habitat State of the African Cities report describes that the protests that sprung up across in North Africa in 2010 during the 'Arab Spring' resulted 'not only from lack of political participation, but was also embedded in sheer social frustration'.⁵⁰² It warns that:

... the Arab Spring offers a salutary lesson to governments across the world: if the needs, aspirations and grievances of the urban masses are not addressed, civic unrest is surely on the horizon.⁵⁰³

This warning was subsequently born true in other African countries such as Burkina Faso and Ethiopia, where popular uprisings emerged in 2014 and 2016 respectively, largely sparked by economic grievances combined political abuses and lack of state responsiveness.⁵⁰⁴ Similar themes have emerged in South Africa. For example, many local residents who participated in attacks on shops, joined in not only because of xenophobic sentiment, but also out of frustration with their economic circumstances.⁵⁰⁵ These urgencies have seen poverty reduction and economic growth become a core theme of the political sphere and concerns of governance in the public realm in the country.

⁵⁰² UN Habitat 'State of African Cities 2014: Re-imagining sustainable urban transitions' (2014), available at <https://unhabitat.org/wpdm-package/state-of-african-cities-2014-re-imagining-sustainable-urban-transitions/>, date accessed 5 March 2017 at 32.

⁵⁰³ Ibid at 32.

⁵⁰⁴ Herve' Taoko and Adam Nossiter 'Mayor's Home Burned as Burkina Faso Protests Continue' *New York Times*, 27 April 2011, available at <http://www.nytimes.com/2011/04/28/world/africa/28burkina.html>, date accessed 5 March 2017. Aaron Maasho 'Ethiopian protesters attack factories in Africa's rising economic star' *Reuters*, 8 October 2016, available at <http://www.reuters.com/article/us-ethiopia-unrest-idUSKCN1270MX>, date accessed 5 March 2017. Asafa Jalata 'Why the Oromo protests mark a change in Ethiopia's political landscape' *The Conversation*, 14 August 2016, available at <https://theconversation.com/why-the-oromo-protests-mark-a-change-in-ethiopias-political-landscape-63779>, date accessed 5 March 2017.

⁵⁰⁵ See chapter three 'Unpacking the shop *gevaar*: justifications for curbing foreign national spaza shops'.

Despite Arendt being based in the West, her theory speaks directly to this issue. In particular, she closely examines the role of poverty and destitution on the development of social realms in her analysis of the French revolution. She argues that the form that social realms take can be swayed by the predicament of poverty or what she terms the 'social question'. This is because when people's basic needs are not met their suffering can result in violent uprisings and popular rage. In France this saw the revolution cave to the pressures of poverty and hunger and culminate in a one-party dictatorship. In contrast, she argues that the American revolution played out in relative economic prosperity, resulting in the revolution being followed by limited constitutional government. Unlike Arendt, Foucault and Agamben do not cover the impact of economic deprivation on social realms. Their theories do not shed light on how the social manifests in contexts where poverty and inequality are rife.

Post-colonial political contexts are also often characterised by appeals to identity. Many theorists have observed how identity politics plays a central role in the governance and politics of many postcolonial states.⁵⁰⁶ This is illustrated by Fanon's account of the 'pitfalls of national consciousness' and Mamdani's depiction of how indigeneity becomes a test for rights in postcolonial periods.⁵⁰⁷ Chatterjee explains:

In many cases, classificatory criteria used by colonial governmental regimes continued into the postcolonial era, shaping the forms of both political demands and developmental policy. Thus, caste and religion in India, ethnic groups in Southeast Asia, and tribes in Africa remained the dominant criteria for identifying communities among the populations as objects of policy.⁵⁰⁸

Mbembe similarly argues that postcolonial African discourses are often rooted in the idea of 'autochthony' that links notions of identity and citizenship to territoriality and membership of a common genealogy.⁵⁰⁹ He believes that type of thinking lends

⁵⁰⁶ Chatterjee (note 32). Fanon (note 31). Mamdani (note 39). Edwards W. Said 'Yeats and decolonialism' in Terry Eagleton, Fredric Jameson, and Edward W. Said *Nationalism, colonialism, and literature* (1990) University of Minnesota Press, Minneapolis, MN. Achille Mbembe 'African Modes of Self-Writing' (2002) 14:1 *Public Culture* 239.

⁵⁰⁷ See chapter three 'Unpacking the shop *gevaar*: justifications for curbing foreign national spaza shops'.

⁵⁰⁸ Chatterjee (note 32) at 37.

⁵⁰⁹ Mbembe (note 506) at 266.

towards territorial warfare and exclusion of foreigners, and stifles the development of plural citizenship and political rights across the continent.⁵¹⁰

The effects of colonialism and apartheid linger on in South Africa today and play important role in the country's politics. South African society is still defined and divided along racial and ethnic lines, ranging from the spatial geography of South African cities to workplace prejudice and discrimination. Identity politics also manifests in xenophobic attitudes towards foreign nationals who are often seen as depriving black South African nationals of the economic rewards of liberation.

Postcolonial identity politics is largely absent from Arendt's theory of the social. In this sense her analysis lacks a degree of relevance to the South African political context, as it fails to explore how the social interplays with the themes of race, citizenship and identity. Although Arendt explores identity politics in her work on totalitarianism⁵¹¹ as well as on Jewish identity,⁵¹² she does not link these analyses to her conception of the social. Her theory of the social thus fails to explore how it connects to identity issues, which are key concerns of postcolonial governance and politics. Identity politics in relation to the social is better explored by Foucault and Agamben, whose theories view the social realm as based on racism and xenophobia. Foucault and Agamben pay close attention to how the political preoccupation with life, entailed in biopolitics, involves the exclusion and marginalisation of those who that are considered abnormal or a biological threat to the nation. For Foucault this comes in the form of racism, while Agamben sees it as manifesting through the suspension of juridical orders in respect of those who are perceived as not belonging to the vaguely defined 'people'. However on closer inspection, Arendt does touch on identity politics in her work on the social in her examination of how political leaders appeal to class (as opposed to race or citizenship) to engender themselves to their followers and garner legitimacy. These themes can likewise apply to postcolonial context where in place of (or addition to) sympathising with the poor, leaders rely on claims to advance the economic interests of certain national, race or ethnic groups in order to demarcate belonging and find ways to legitimise themselves and their regimes.

⁵¹⁰ Mbembe (note 506) at 266.

⁵¹¹ Arendt *The Origins of Totalitarianism* (note 488).

⁵¹² Hannah Arendt *The Jew as Pariah: Jewish Identity and Politics in the Modern Age* (1978) Grove Press Inc., New York.

The contribution of Arendt's theory of the social towards understanding postcolonial politics lies more in her assessment of how social realms emerge during the course of and aftermath of emancipatory struggles. In particular she investigates how calls for political freedom evolve into demands for social and economic emancipation and how this influences the nature of post-liberation political spheres. This analysis is of relevance to the South African and other postcolonial contexts, where many citizens and political leaders continue to view their countries as being in the process of continued revolution and struggle against the social and economic legacies of colonialism. In these countries politics is not only about preserving and sustaining freedoms, but also about the promise of advancing a full liberation, which is yet to come. This expectation weighs on the shoulders of those who govern, and is often also exploited by them.

Postcolonial identity politics is often linked to concepts of emancipation from colonisation.⁵¹³ For example, Fanon observes how struggles against colonialism in newly independent states transform into nationalist claims for economic emancipation.⁵¹⁴ For Said, resistance against imperialism is often conducted in the name of nationalism,⁵¹⁵ which while useful, can also be 'a deeply problematic ideological, as well as sociopolitical, enterprise.' He adopts Fanon's call for a liberation, which 'involves, in Fanon's words, a transformation of social consciousness beyond national consciousness'.⁵¹⁶ In South Africa identity politics is also closely linked to emancipatory ambitions, as many citizens believe that freedom from apartheid and colonialism remains unmet so long as black South Africans continue to suffer from poverty and social exclusion. Thus a number of South African spaza shopkeepers did not only see foreign national traders as interfering with their economic entitlements as citizens, but also with their abilities to enjoy to the fruits of liberation from apartheid.⁵¹⁷

Arendt laments that many revolutionary struggles for political freedom veer off course and become solely preoccupied with economic issues. As a result authentic political

⁵¹³ Chatterjee (note 32). Fanon (note 31). Said (note 506).

⁵¹⁴ Fanon (note 31) at 148.

⁵¹⁵ Said (note 506) at 74.

⁵¹⁶ Ibid at 83.

⁵¹⁷ See chapter three 'Unpacking the shop *gevaar*: justifications for curbing foreign national spaza shops'.

action goes into decline. This is especially the case in contexts of mass poverty, as Arendt argues that poverty is more urgent, and carries a greater force than the burden of political oppression. She describes this phenomenon as loss of the 'treasure' of revolution. This loss is a central theme in the writings of many postcolonial theorists such as Fanon, Mamdani and Chatterjee.⁵¹⁸ For example, Fanon glorifies the political action entailed in liberatory struggles. He states that:

The nationalist militant... discovers in real action a new form of political activity which in no way resembles the old. These politics are the politics of leaders and organizers living inside history who take the lead with their brains and their muscles in the fight for freedom.⁵¹⁹

However, he argues that these emancipatory struggles have so far failed to achieve their intended goals in the aftermath of liberation. Fanon blames this largely on the nationalist middle classes. He argues that:

... the national middle class does not follow this heroic, positive, fruitful, and just path; rather, it disappears with its soul set at peace into the shocking ways—shocking because anti-national—of a traditional bourgeoisie, of a bourgeoisie which is stupidly, contemptibly, cynically bourgeois.⁵²⁰

Like Arendt and Fanon, Mamdani argues that in the aftermath of liberation, emancipatory struggles become preoccupied with accessing economic 'entitlements' based on race and indigeneity.⁵²¹

Arendt's analysis of the social in the context of emancipatory struggles and their aftermaths - although based primarily on the French revolution - thus speaks directly to many postcolonial situations. Like the French revolutionaries and their followers, many political leaders and citizens in postcolonial states conceive of freedom in economic more than political terms. In contrast neither Foucault nor Agamben

⁵¹⁸ Chatterjee (note 32). Fanon (note 31). Mamdani (note 39).

⁵¹⁹ Fanon (note 31) at 147.

⁵²⁰ Ibid at 150.

⁵²¹ Mamdani (note 39).

approach the social from the perspective of liberatory politics. Their accounts of the social treat political power as operating from an entrenched and static state platform, and exerting itself over a largely passive populace. This characterises the established social welfare states of Europe, more than the unstable emancipatory political projects of many postcolonial states, where full freedom from colonialism is often perceived as being unmet, and hence a central goal and beckoning of the political sphere.

Thus although based in the West when developing their theories, Arendt, Foucault and Agamben's accounts of the social address many core predicaments found in postcolonial and developing world countries. Of the three theorists, Arendt's theory most comprehensively grapples with postcolonial and developing world themes. In particular she explores how poverty and economic inequality destabilise political regimes and eventually come to direct social spheres in a dictatorial, as opposed to liberal constitutional, political direction. Furthermore, her concept of political action is flexible enough to encompass informal political power. She is also keenly interested in how the social manifests in the aftermath of emancipatory struggles. Foucault and Agamben's theories relate to postcolonial conditions predominantly in their analyses of how the politicisation of life results in racism towards those that physically or racially divergent or 'abnormal'. A similar theme emerges in many postcolonial states, where the entry of economic concerns into the political sphere manifests in rights and entitlements being linked to one's race, ethnicity or genetic origin.

Thus despite being located and largely preoccupied with western contexts, Arendt, Foucault and Agamben's theories still speak to many postcolonial developing countries such as contemporary South Africa. To various degrees they address key features of political and governance systems in these regions such as informality, poverty and economic inequality, and postcolonial identity and emancipatory politics. Of the three, Arendt's theory most comprehensively addresses these features, as her concept of the political sphere accommodates informal power, and delves into how poverty, compounded by desires for social emancipation, moulds social realms. Foucault and Agamben's contributions lie in their analyses of how the social realm excludes those who pose a biological threat to the body of the nation. Similar trends are evident in postcolonial states where access to rights and entitlements often rest on biological criteria such as race, indigeneity or autochthony.

The third level of analysis relates to the suitability of Arendt, Foucault and Agamben's theories of the social to a study of governance as an *activity*. The thesis defines governance as the activity of steering social order by those exercising a degree of authority. It thus attempts to examine the political contestations and actions involved in generating and influencing social orders. It distinguishes governance from the structures and forces, which are contextual factors that surround governance actors.⁵²² Arendt's analysis of power as acting in concert, and her interest in how human actors constitute social and political realms, corresponds with the thesis' interest in exploring socio-legal phenomena from the perspective of action. In this regard both Foucault and Agamben's theories are lacking. Neither Foucault nor Agamben focus on action or agents in their accounts of the social. For example, despite emphasizing the multifarious ways in which power operates Foucault's discussion of power does not specify the role of people and their actions within it. This makes it difficult to distinguish the human protagonists in processes of power from contextual factors that surround them and shape their motivations, thoughts and ability to act.⁵²³ Foucault's vagueness when it comes to analyzing human actors within the workings of power, thus limits the applicability of his theory to the thesis, which focuses on the human activities involved in governance. Despite this shortcoming, his analysis of the omnipresence and complexity of power, as well as the subtle and invisible ways in which it operates, can play an important role in understanding the structures and forces that weigh on governance actors.

Agamben focuses on what he terms the 'sovereign power' of the monarch and later 'state power' in his analysis of biopolitics. However, he does not define power or explain how it operates or is composed. He furthermore does not explore the human actions and decisions that support and maintain biopolitical regimes and the motivations behind them. As such his theory is difficult to apply to the thesis' study of governance. For him modern political life is constituted by expulsion, i.e. in monarchical times it was established via the sovereign's ban of *homo sacer*, and in modern times through the isolation of bare life in every person. Thus it is almost created by default, rather than any deliberate action. His omission to understand how human agents establish political spheres and wield power limits the applicability of his theory to the thesis's analysis of governance.

⁵²² See chapter two 'Methodology'.

⁵²³ Ibid.

4.7 Conclusion

Various state, informal and hybrid organisations and groupings have attempted to govern foreign national spaza shopkeepers in South Africa. In the process governance actors have had to weigh the political values of equality, inclusivity and dignity, against the economic interests of South African nationals. This clash of economic interests against political rights and freedoms displays the extent to which economic matters relating to the maintenance of life have entered the South African political domain. In particular governance actors both supporting and contesting the presence of foreign national businesses in the field sites tended to resort to economic, as opposed to political reasons for their continued stay or forced departure. As such theories of the social and biopolitics – i.e. the blurring of the distinction between the public sphere of politics and private sphere of life – are vital to exploring the political significance of the governance of foreign national spaza shopkeepers in South Africa.

Yet Arendt, Foucault and Agamben's theories differ substantially in terms of the subject matter that they cover, and their theories were also not specifically intended to address political dynamics in postcolonial developing world contexts. This makes it necessary to assess how suitable their theories are to the thesis, which relies on a case study of what governance reflects about the nature of politics in a postcolonial and developing world context.

On closer inspection all three theorists touch on different aspects of the social and none can be said to be more comprehensive than the others. However, Arendt's emphasis on the erosion of political freedoms as a consequence of the rise of the social speaks to the core inquiry of the thesis regarding the nature of the political sphere in South Africa. Arendt's theory also has the added advantage that it examines the rise of the social from the perspective of action. In this way it does more than simply describe the substance of the social, but also explains how it is generated and molded by diverse political actors. This makes her theory particularly relevant to the thesis, which views governance as an active process.

Arendt, Foucault and Agamben's analyses all have some relevance to features of governance and politics in postcolonial and developing states. A weakness of all three theories is that they all associate the social realm with the domain of the nation state and its expanded bureaucracy. In this sense none of them envision how the social would manifest in a situation where state authority and control is weak and unstable, and formal state governments find themselves having to negotiate and share power with diverse informal political structures. At the same time Arendt and Foucault's theories do not specifically exclude such a scenario, as they both conceive of political power very broadly – with Arendt viewing it acting in concert, and Foucault understanding power as a 'multiplicity of force relations'.

Of the three theorists Arendt's theory most comprehensively deals with postcolonial and developing state conditions. This is because her theory explores social realms in contexts of poverty and economic insecurity (e.g. in revolutionary France and Russia), which are heated issues in many developing states, having played a role in motivating popular protests such as the Arab Spring, and the Burkinabé uprising. Arendt's description of revolutionary struggles and why they tend to generate differing forms of social realms is also of importance to governance in postcolonial struggles, where formal independence does not spell the end of emancipatory battles against colonialism. While Arendt's theory fails to examine how social realms link to issues of race and identity, overall she accounts for several core contextual factors that weigh on governance actors in postcolonial developing states such as South Africa.

Foucault and Agamben theories of the social deal expansively with the themes of racism and identity politics, which are important features of postcolonial politics and governance. Yet in other ways their theories fall short of dealing comprehensively with critical factors that impact on governance in the postcolonial and developing world. Neither theorist considers how poverty may act as a force on political actors and influence biopolitical regimes. While Foucault's theory of power is flexible enough to cover informal governance structures, Agamben's theory associates political power with monarchies or nation states. This makes his theory lack application to informal and hybrid governance and political systems and how they intersect and interrelate with state institutions. Neither Foucault nor Agamben consider how the social operates in contexts of emancipatory politics, which typifies

continued postcolonial efforts to free citizens from the economic legacies of colonial conquest and oppression.

5. The fractured social: The political significance of governance interventions

5.1 Introduction

Governance interventions that are aimed at regulating foreign national spaza shops in the South Africa have rarely unfolded as intended, as they frequently collide with competing economic interests held by diverse formal and informal actors, groups and institutions. In these battles, political and constitutional rights concerns often take a back footing. This shows that private economic interests play a central role in the South African political sphere (including its formal, informal and hybrid dimensions), and hence that South African politics is largely social or biopolitical.

This chapter draws on Arendt, Foucault and Agamben's theories of the social in assessing what the governance of foreign national spaza shopkeepers reveals about the nature of South Africa's political sphere. It finds that the social realm in South Africa differs from their accounts in two significant respects. First, Arendt, Foucault and Agamben portray the social as being concerned with the goal of sustaining human life. Arendt also views the social realm in America as advancing the 'American dream' of consumption and abundance.⁵²⁴ In South Africa the social sphere is concerned with a third additional aim, namely to facilitate economic *mobility*. This latter goal is frequently incompatible with the former two. Thus the social realm in South Africa comes into conflict with itself. In particular, political concerns for economic mobility clash with other social goals of *fostering life* or *consumption*. This makes finding a path to advance overall economic advancement in the country more difficult and contentious.

Second, as discussed in the previous chapter, the social sphere in South Africa is not a centralised bureaucratic monolith. It is a splintered and multifaceted system of power where no single political entity enjoys full authority. This results in a complex configuration and sharing of power between formal state institutions and informal grassroots organisations – what the thesis terms the 'fractured social'. These two dynamics – the conflicted social realm, and phenomenon of fractured power – that manifest in the governance of foreign national spaza shopkeepers, comprise two central features of South Africa's contemporary political landscape. These features

⁵²⁴ Arendt *On Revolution* (note 388) at 139.

shape the nature of the country's constitutional democracy as well as its ability to fully address the economic legacies of colonialism and apartheid. Given that many other postcolonial and developing states face demands to advance economic mobility, and contend with devolved political power, the lessons of the 'fractured social' realm may well apply further afield.

5.2 The conflicted social realm

The South African social realm has no clear unified goal. On the one hand it is preoccupied with the sustenance or fostering of life as in Arendt's description of revolutionary France, and Foucault and Agamben's accounts of biopolitics. This is illustrated in the state's role out of social grants, and provision of public housing and healthcare. At the same time the social sphere also celebrates conspicuous consumption and abundance as in Arendt's post-revolutionary America, evident in the lavish lifestyles of many political leaders such as the state president.⁵²⁵ Lastly, the South African social realm is also characterised by an aspirational hope of enabling economic and social mobility in the form of economic growth and self-reliance through access to jobs, education and business opportunities. Mobility has continued to elude a number of South Africans whose lives have not sufficiently changed since the advent of democracy. Although South Africans are formally politically liberated, the country is still characterised by stark economic inequality, lagging youth unemployment and persistent poverty.⁵²⁶

As a result, freedom and emancipation are no longer principally associated with political rights, as they were at the dawn of democracy.⁵²⁷ Neither are they simply equated to having the ability to meet one's basic bodily needs. Instead they are increasingly associated with accessing economic opportunities that can improve one's life circumstances. For example, when explaining the need to uplift South Africans through the creation of small businesses, the Minister of Small Business

⁵²⁵ The Public Protector of South Africa 'Secure in Comfort' report, March 2014, available at <https://dc.sourceafrica.net/documents/8074-final-report-21h00.html>, Date accessed 5 March 2017.

⁵²⁶ Statistics South Africa (notes 255). World Bank (note 256).

⁵²⁷ For example, the founding values of the South African Constitution set out in section 1 of the Constitution, relate more to political, than economic, rights and freedoms. The section provides that:

1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

(b) Non-racialism and non-sexism.

(c) Supremacy of the constitution and the rule of law.

(d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Development, Lindiwe Zulu has repeatedly described the country as experiencing an on-going economic liberation struggle. In her view freedom in South Africa will not be achieved 'until all our people – blacks, workers, women, children, youth and people with disabilities - have been extricated from the crippling jaws of economic exclusion and are empowered to taste the fruits of our liberation'.⁵²⁸ To achieve this her department would 'adopt policies that respond to the economic aspirations of the historically oppressed and marginalised... because our struggle for liberation was for the economic emancipation and empowerment of our people'.⁵²⁹ This sentiment is mirrored in Landau's view that the 2008 xenophobic violence in South Africa was driven by aspirations for economic 'salvation',⁵³⁰ and Steinberg's belief that the violence was underpinned by notions of freedom that were associated with upward mobility and expecting a 'better life'.⁵³¹

South African spaza shopkeepers in the field sites also linked economic mobility and opportunity to notions of freedom and liberation from oppression. In particular they perceived foreign national spaza shops as limiting their economic freedom: 'Somalis are displaced because of war and now we welcome them and are displaced and oppressed'.⁵³² Another shopkeeper complained about the lack of regulation restricting foreign national spaza shops stating: 'If you say Khayelitsha is not regulated you are trying to systematically oppress the black people'.⁵³³ This reflects a key post-apartheid dilemma – namely that political liberation has not seen the advent of significant social transformation in South Africa. In this emancipatory context, the social takes on the added goal of economic mobility. It is this issue, and not only issue of sustaining physical life, or encouraging endless consumption that characterises the South African social sphere.

While foreign national spaza shopkeepers may play a role in advancing South African livelihoods, they are not viewed as advancing South African economic freedom, which is framed from the emancipatory standpoint of mobility, rather than

⁵²⁸ Lindiwe Zulu, speech given that at the Principal and Vice Chancellor's Women's Empowerment gala dinner, UNISA on 6 August 2014, available at <http://www.dsbd.gov.za/assets/speech---minister-lindiwe-zulu---final---unisa--6-08-2014.pdf>, date accessed 5 March 2017.

⁵²⁹ Media statement by the Department of Trade and Industry 'Small Business Department to Upscale Its Support to Small Businesses and Co-Operatives - Minister Zulu' 30 March 2015, available at <https://www.thedti.gov.za/editmedia.jsp?id=3295>, date accessed 5 March 2017.

⁵³⁰ Landau (note 30) at 216.

⁵³¹ Steinberg (note 19) at 352 and 355.

⁵³² South African shopkeeper at meeting at Lingeletu West police station in Khayelitsha, 20 March 2012.

⁵³³ South African shopkeeper (ibid).

just basic sustenance. Shops' economic contributions are thus often overlooked by South Africans who are anxious for opportunities to launch themselves out of poverty through entering the spaza market – even if this remains simply a pipe dream or ambition rather than a reality. Political leaders promising to bring prosperity to marginalised and poor black township residents are therefore placed under pressure by South African spaza retailers associations.

While sustaining and nourishing the lives of citizens as well as opening up a theoretical space of economic mobility are all of vital political importance, the latter goal often obfuscates attempts at achieving the former. For example, policies that are aimed at preventing asylum seekers from operating small informal grocery businesses could inhibit access to low priced basic goods. They could also force asylum seekers to compete with poor South Africans in the job market. Yet, at the same time spaza shops are perceived as potential avenues for the economic mobility of South African and hence their long awaited economic freedom and liberation. This is evident in ANC Secretary General Gwede Mantashe's explanation of the North West's plan to confiscate foreign national spaza shops by stating that small businesses must be 'incubators' for South Africans.⁵³⁴ This clash between the goals of sustaining and fostering life, enabling consumption, and advancing mobility creates a conflicted social sphere, where various parties' competing interests are difficult to neatly unravel and simultaneously advance.

5.3 The fractured social realm

The governance of foreign national spaza shopkeepers illustrates that many political structures beyond the state are engaged with private concerns. Understanding this 'fractured' social realm necessitates first of all describing the various formal, informal and hybrid organisations and individuals involved in local and national level governance. Secondly, it entails analysing how these parties interact, collaborate and influence each other. This is achieved by examining the fractured social from the perspective of action.

⁵³⁴ Mantashe (note 137).

5.3.1 The fractured social and its parts

The governance of foreign national spaza traders shows that the South African social realm is not a unified coherent bureaucracy. It exhibits a conglomeration of formal, informal and hybrid governance actors ranging from the South African National Civics Organisation (SANCO), South African retailers associations, political party branches, police, local councillors, NGOs, and national government departments such as the South African Police Service (SAPS) and the Department of Small Business Development. While South Africa's fragmented political sphere has frequently been observed,⁵³⁵ the thesis goes further to examine how devolved political power plays out when economic concerns increasingly enter and dominate the realm of politics, and the location of foreign national spaza shopkeepers in this process.

Arendt, Foucault, and Agamben's descriptions of the social focus on how it is exemplified in formalised state bureaucracies, rather than how it works in contexts of widespread informal political power structures. The South African government largely mirrors Arendt, Foucault and Agamben's analyses of the social as bureaucratic and managerial, as it operates through formalized channels that administer welfare and services to target populations. In particular it reflects Arendt's description of 'limited constitutional government', which for her means 'nothing more or less than government limited by law, and the safeguard of civil liberties through constitutional guarantees'.⁵³⁶ Arendt describes that limited constitutional government sets out to advance and protect each person's pursuit of private happiness by limiting state interference in people's private affairs.⁵³⁷ Rights to equality, human dignity, privacy and property in the South African constitution protect the rights and freedoms of inhabitants from invasion or abuse by the state. At the same time the South African state sets out to foster and manage life processes through socio-economic interventions such as social grants and public healthcare.

For Arendt limited constitutional government is preferable to tyrannies and dictatorships, but falls short of revolutionary ambition of not only liberating citizens

⁵³⁵ Thiven Reddy 'The "Cabbage and the Goat": Xenophobic Violence in South Africa' (2012) 44 *African Historical Review* 3-28. Noor Nieftagodien 'Xenophobia's local genesis: Historical constructions of insiders and the politics of exclusion in Alexandra Township' in Loren B. Landau (ed) *Exorcising the Demons Within* (April 2012) United Nations University Press, Tokyo, New York, Paris at 109.

⁵³⁶ Arendt *On Revolution* (note 388) at 143.

⁵³⁷ Ibid at 133.

from oppression, but also building 'a new house where freedom can dwell'.⁵³⁸ This involves founding a new political order that guarantees a durable space for engaging in public affairs. South African limited constitutional government founded no substantial and durable space for the exercise of public freedom. Instead the constitution sets out distinctions between municipal, provincial and national powers, and leaves citizens with few formal avenues for direct political participation in government other than the vote, and sporadic invitations to make presentations to or consult the state.

Thus limited constitutional government can do little to unseat the basic order of society. Since the enactment of the South African constitution in 1996, political freedoms such as the rights to equality and dignity have improved, but social and economic inequities have persisted and arguably widened.⁵³⁹ While the constitution sets out positive socio-economic rights, these rights are largely conditional and incremental. For example, when it comes to people's rights to health care, food, water and social security, the state only has an obligation 'to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights'.⁵⁴⁰ Socio-economic rights in the constitution therefore place little immediate burden on the state or society to fundamentally and hastily alter systemic inequalities in South African society. At the same time limited constitutional government is also hampered by its bureaucratic nature, which tends to entrench established norms and customs, as well as quell the spontaneity, creativity and risk taking needed to re-envision and implement fundamental change.

However, state and bureaucratic phenomena only make up a section of the South African political sphere. The South African political sphere also extends to the informal domain of street based residents' meetings, interest group mobilisations, and their contested and conflicting outcomes. Township governance structures

⁵³⁸ Arendt *On Revolution* (note 388) at 35.

⁵³⁹ Prof. Margaret Chitiga, Dr Emmanuel Sekyere and Nthabi Tsoanamatsie 'Income inequality and limitations of the Gini index: the case of South Africa' (November 2014) *HSRC Review*, available at <http://www.hsrc.ac.za/en/review/hsrc-review-november-2014/limitations-of-gini-index>, date accessed 5 March 2017. 'Why is South Africa still so unequal?' *BBC News* 13 May 2015, available at <http://www.bbc.com/news/world-africa-32623496>, date accessed 5 March 2017. Andile Makholwa 'FactCheck: is South Africa the most unequal society in the world?' *The Conversation*, 30 September 2015, available at <https://theconversation.com/factcheck-is-south-africa-the-most-unequal-society-in-the-world-48334>, date accessed 5 March 2017.

⁵⁴⁰ Section 27 of the South African Constitution (note 17).

reflect a high degree of informal and hybrid rule-making and enforcement. At times these processes are conducted separately and parallel to the state and its institutions, while in other instances non-state actors collaborate with state officials and leaders in the generation and enforcement of informal rules as well as formal laws. This is new territory for understanding the social and biopolitics, as Arendt, Foucault and Agamben did not consider how the social manifests in contexts of fragmented and hybrid power.

Traits of informal political spheres in South Africa were demonstrated in the township field sites in Cape Town. Diverse informal groupings participated in political activity in these neighbourhoods. The most dominant organization was the SANCO, which represented township civic groups on street, area, ward, and township levels, and also had provincial and national representation. Matters that could not be resolved by street committees were referred to area committees, which represented numerous streets.⁵⁴¹ These committees in turn reported to ward committees, which worked alongside municipal ward councillors.⁵⁴²

While SANCO and South African retailers associations featured most prominently in the local level governance of foreign nationals spaza shopkeepers, other grassroots organisations, such as political party branches, church groups, sports teams, and taxi associations, were also involved. For example, in Khayelitsha, Reverend Mbekwa of the Church of Restoration mediated the township's trade agreement between foreign national and South African spaza shopkeepers in 2008 and chaired subsequent meetings between traders. Party politics also played a role in local governance given that many South African spaza shopkeepers were also ANC and SANCO members. For example, in 2012, ANC township branches in the Western Cape province called for the reduction of foreign national spaza shops in townships.⁵⁴³ Reverend Mbekwa was also affiliated to the ANC, becoming the leader of the party's religious wing in the Western Cape and leading prayers at the party's 103rd birthday event in Cape Town in 2015.⁵⁴⁴ Taxi associations were allegedly active in governance efforts in Masiphumelele where they reportedly participated in violent mobilisations against

⁵⁴¹ Interview, Philippi East SANCO chairperson, Philippi East, 26 November 2010.

⁵⁴² Ibid.

⁵⁴³ Clayton Barnes 'Cut number of foreign spaza shops – ANC' *IOL News*, 25 June 2012, available at <http://www.iol.co.za/news/politics/cut-number-of-foreign-spaza-shops---anc-1326536>, date accessed 5 March 2017.

⁵⁴⁴ Staff reporter 'Bishop vows to hold government to account' *Uplifting Star*, July 2015 at 2, available at <http://upliftingstar.com/downloads/Uplifting-Star-July-2015.pdf>, date accessed 5 March 2017.

foreign spaza shopkeepers in 2006. Their motivation at the time was that residents were shopping locally at foreign national spaza shops and relying less on taxis to transport them to more distant supermarkets.⁵⁴⁵ In other instances taxi associations protected foreign national spaza shops – especially those operating in the vicinity of taxi ranks.⁵⁴⁶ Some taxi owners were also landlords of foreign national spaza shops, resulting in these shops receiving added protection.⁵⁴⁷

These formations were not unique to the field sites, but are typical to many townships across the country. SANCO is a national body with a presence in many townships across the country. Furthermore other organisations in the field sites such as South African retailers associations, political party branches, and taxi associations can be found in many localities beyond Cape Town's townships. Thus the attempts by governance actors in the field sites to regulate foreign national spaza shops provide a window to understanding the workings of the informal township politics more broadly.

Many township grassroots organisations in South Africa trace their roots the political structures that emerged during the internal struggle against apartheid – in particular those of the United Democratic Front (UDF) that was founded in the 1980s. The UDF was established as an umbrella front for diverse anti-apartheid groups within the country.⁵⁴⁸ At the time the ANC was banned and based in exile, and unable to organise openly inside the country. The UDF originally formed in 1983 in protest against state plans to reform the apartheid policy of influx control and the introduction of a tricameral government consisting of white, Indian and coloured representatives.⁵⁴⁹ Black South Africans would be unrepresented in government, and white representatives given disproportionate powers.⁵⁵⁰ From its beginning, the UDF linked direct goals to a larger vision. For example, UDF leader Frank Chikane urged

⁵⁴⁵ Staff reporter "We'll drive out Somalis" *Mail & Guardian*, 13 Oct 2006, available at <http://mg.co.za/article/2006-10-13-well-drive-out-somalis>, date accessed 5 March 2017. Pearlie Joubert 'Nafcoc calls for Somali purge' *Mail & Guardian*, 5 Sep 2008, available at 'http://mg.co.za/article/2008-09-05-nafcoc-calls-for-somali-purge, date accessed 5 March 2017.

⁵⁴⁶ When I interview foreign national businesses at Nyanga train station they reported that they had experienced no crime because the area was monitored by taxi bosses. A khayelitsha spaza shopkeeper similarly stated that his shop was safe as it was near the taxi rank.

⁵⁴⁷ A Somali trader in Khayelitsha reported that his shop did not experience crime, as his landlord was taxi boss. Another stated that his shop was crime free and was not looted in 2008, as his landlord was a taxi boss.

⁵⁴⁸ Tom Lodge *All, here, and now: Black politics in South Africa in the 1980s* (1991) Ford Foundation and David Philip Publishers, Cape Town at 74 to 75.

⁵⁴⁹ *Ibid* at 47.

⁵⁵⁰ Jeremy Seekings *The UDF: A history of the United Democratic Front in South Africa 1983-1991* (2000) David Philip Publishers, Cape Town at 2.

South Africans to protest against influx control and tricameral reform proposals in order to bring down apartheid system and 'put up a government by the people, where the people shall govern according to their will'.⁵⁵¹

The broad values of the UDF included non-racialism and unity amongst South Africans from different backgrounds. Numerous organisations and bodies fell within the auspices of the UDF ranging from trade unions, women's groups, sports clubs, religious organisations, and youth groups.⁵⁵² Amongst them were groups from different income backgrounds, such as the Mowbray Interracial Group based in a middle class suburb in Cape Town, and trade unions and township civic groups representing low-income South Africans.⁵⁵³ Collaboration between diverse groups and affiliates was facilitated by the fact that the UDF did not possess a detailed ideology but was rather guided by broad political principles.⁵⁵⁴ Although affiliates tended to organise around immediate and specific goals such as protesting against Bantu education or seeking better working conditions for labourers, involvement in the UDF saw them tie these efforts to a common broader national struggle of opposing apartheid.⁵⁵⁵ While the UDF exhibited leadership on local, regional and national levels, its affiliates were autonomous bodies, not subordinate branches.⁵⁵⁶ As a result the front was largely decentralised and non-hierarchical and leaders often had limited control over what affiliates did on the ground.⁵⁵⁷

The UDF developed a strategy of 'people's power', which entailed weakening the state through various forms of popular mass action such as strikes, consumer boycotts and withholding rent.⁵⁵⁸ People's power also involved the creation of 'parallel institutions' in the form of township street committees.⁵⁵⁹ Street committees oversaw municipal issues such as street cleaning and rubble removal, and also set

⁵⁵¹ Seekings (note 550) at 58 quoting Frank Chikane on the day of the launch of the UDF, 20 August 1983.

⁵⁵² Ibid 15 and 60. Lodge (note 548) at 34. Ryland Fisher 'Remembering the United Democratic Front' *The Daily Maverick*, 19 August 2013, available at <http://www.dailymaverick.co.za/opinionista/2013-08-19-remembering-the-united-democratic-front/#.V59SkWP3Xww>, date accessed 5 March 2017.

⁵⁵³ Keith Gottschalk, 'United Democratic Front, 1983-1991: rise, impact and consequences' in Ian Liebenberg, Fiona Lorton & Bobby Nel et al (eds) *The Long March: the story of the struggle for liberation in South Africa* (1994) (1994) Kagiso-HAUM, Pretoria at 190.

⁵⁵⁴ Ibid at 192.

⁵⁵⁵ Lodge (note 548) at 52 quoting Zwelakhe Sisulu 'The herald of a new era' *Sowetan*, 24 August 1983 at 5.

⁵⁵⁶ Seekings (note 550) at 15.

⁵⁵⁷ Michael Neocosmos 'Civil society, citizenship and the politics of the (im)possible: rethinking militancy in Africa today' (November 2009) 1:2 *Interface* 301.

⁵⁵⁸ Seekings (note 550) at 169.

⁵⁵⁹ Ibid at 313.

up informal 'people's courts' to adjudicate disputes.⁵⁶⁰ These courts became increasingly violent during the course of the 1980s, with punishments including lashings, and 'necklacing,' which involved forcing a rubber tire containing kerosene around an accused's chest and setting it alight.⁵⁶¹ After the unbanning of the ANC in 1991, leaders of the UDF disbanded the front, and established SANCO in its place in 1992 to oversee remaining township civic bodies.⁵⁶² The intention was that SANCO would focus on development and 'bread and butter' issues, while ANC branches would concern themselves with political matters.⁵⁶³

Many features of the UDF linger on in township political life. For example, the UDF's call for people's power through the creation of parallel institutions persisted in the township field sites where non-state actors and structures continued to wield local authority, and many residents' continued to fear and distrust state institutions, such as the SAPS and the formal judicial system. Street committees largely continued to operate under the banner of SANCO and oversaw municipal issues and local disputes. Local level organisations such as spaza retailers associations, taxi associations, political party branches and street committees continued to rely on the concept of 'people's power' to disrupt the state and have their demands heard through violent protest action. This was evident in frequent service delivery protests, strikes and xenophobic riots in the field sites.

Yet, township political structures in the field sites were at the same time significantly different from their predecessors that existed under the UDF. Unlike the UDF in the 1980s, grassroots organisations in the field sites lacked any overall unifying political principles. Instead, as interest groups, their priorities were to advance the economic and developmental concerns and aspirations of their members. These structures in were thus essentially social. In particular they had more in common with the social realm that Arendt describes emerged in the aftermath of the French revolution than that of the American revolution. This was because member's private concerns did not

⁵⁶⁰ Cherry, Janet 'Hegemony, democracy and civil society: political participation in Kwazakele township' in Glenn Adler and Jonny Steinberg *From comrades to citizens: the South African civics movement and the transition to Democracy* (2000) Macmillan Press, London at 108. Jeremy Seekings 'After Apartheid: Civic organizations in the "New: South Africa' in Glenn Adler and Jonny Steinberg (eds) *From comrades to citizens: the South African civics movement and the transition to Democracy* (2000) Macmillan Press, London at 169.

⁵⁶¹ Lodge (note 548) at 138 and 97. Human Rights Watch report 'The Killings in South Africa: The Role of the Security Forces and the Response of the State' 8 January 1991, available at <https://www.hrw.org/reports/1991/southafrica1/6.htm>, date accessed 5 March 2017.

⁵⁶² Seekings (note 560) at 21.

⁵⁶³ Glenda Daniels, 'Beyond protest politics', July/August 1991, *Work in Progress* 13.

simply enter into local political structures (as occurs in the case of limited constitutional government), but instead completely overwhelmed them. Their political actions were mainly aimed at furthering their members' economic welfare for its own sake, without any substantial link to broader political and public goals. For example, South African retailers associations focused on the business challenges facing their members without considering other economic stakeholders such as township consumers, landlords or the country's legal framework. Taxi associations would both attack and protect foreign national spaza shops depending on how they impacted on their economic interests.

Unlike the UDF, which became an umbrella front for diverse organisations seeking political freedom, grassroots interest groups in the field sites operated in silos, with little reflection on the broader social and political ramifications of their actions. These groups generally no longer mutually collaborated with wider civil society towards a shared political vision. Instead they drew on government and civil society assistance to advance the immediate economic interests of their constituencies.

The lack of broader political principle guiding grassroots groups in the field sites meant that at times leaders forgot to further the interests of their own stakeholders and entered the political fray for their own personal gain. A Philippi resident explained that: 'In Philippi, street committees are there by name... The only reason why they are being maintained is that the people involved in the leadership maintain their gatekeeper status for any projects coming from the outside'.⁵⁶⁴ A Khayelitsha resident described that SANCO members used their political positions for self-gain 'At the end of the day if you are a SANCO member or community leader you do not get paid, but you get paid at some way'.⁵⁶⁵

Non-governmental organisations (NGOs) and the United Nations High Commission for Refugees (UNHCR) were also involved in the informal governance of foreign national spaza shops in the field sites through offering expert advice or mediation services. These groups' goals (such as the advancement of refugee and human rights) were often more political than social, but the structure of these organisations was more bureaucratic and thus 'social' than political in form. For example, NGOs

⁵⁶⁴ Interview, Philippi resident, Cape Town city centre, 22 November 2010.

⁵⁶⁵ Interview, Khayelitsha community activist, Rondebosch, 28 April 2015.

and the UNHCR were largely top-down and hierarchical. They had no significant and effective presence in township political life and governance structures and thus had little influence over township governance and rule making. In contrast NGOS achieved greater impact through litigation, evident in several court battles, which they won in favour of refugees and asylum seekers over the state.⁵⁶⁶

5.2.3 The governance of foreign national spaza shops from the perspective of *action*

While it is useful to examine diverse state and non-state structures engaged in governance and their goals and motivations, in order to understand the nature of the political sphere that they generate, it is necessary to explore how these structures work and interrelate in practice. This involves examining how agents within these systems strategise, collaborate and respond to varied contexts – i.e. how they act. Arendt's theory is valuable in this regard, as her analysis of the social and how it emerges in emancipatory contexts is framed from the perspective of *action*. By focusing on action, Arendt sheds light on the individuals and groups that drive and maintain social realms and how they respond to contextual factors such as unstable state legitimacy, lingering poverty, and popular rage.

When it came to acting, the diverse political structures and organisations involved in the governance of foreign national spaza shopkeepers faced different types of strengths and vulnerabilities. As mentioned, NGOs and the UNHCR had very little influence in regard to township politics in the field sites, as they enjoyed no formal authority, and had almost no significant presence in townships. NGOs were generally not based in townships, but rather in the city centre or in middle class suburbs. They operated in a top-down hierarchical way and their leaders and members largely came from different demographic groups to township residents. As a result their involvement in the governance of foreign spaza shopkeepers was limited to engaging as mediators and observers, or instituting litigation. At meetings between foreign national and South African spaza shopkeepers in the field sites NGO actors witnessed and at times facilitated the establishment of informal agreements that amongst other things prohibited new foreign national spaza shops from opening in certain neighbourhoods. For example, the NGO Africa Unite mediated a trade agreement in Masiphumelele in 2006 and was also involved in attempts to

⁵⁶⁶ *Somali Association of South Africa* case (note 171). *Watchenuka* case (note 271).

renegotiate the Khayelitsha agreement in 2011.⁵⁶⁷ The UNHCR mediated a trade agreement in Gugulethu in 2009 which stipulated that foreign national spaza shops could not open new shops in the area, should charge the same prices as South African traders, and move their businesses a set distance away from South African shops. These outcomes usually went against NGOs' and the UNHCR's general mandates of advancing human rights, as agreements undermined the rule of law, and foreign nationals' rights to equality, dignity and to work.

Informal discussions with NGO activists during the course of the research shed some light on their involvement in local governance arrangements. Some NGO activists defended these arrangements as the only way to avoid violence and anarchy against foreign national spaza shopkeepers in townships. This revealed their own powerlessness in the face of social conflict, as without any institutional authority, popular support, or local presence, they had almost no ability to intervene to protect foreign national spaza shopkeepers in the township field sites. Instead it was left up to state actors and township grassroots organisations to deliberate and decide on interventions, and hence to act. Other NGO members stated that they initially supported informal trade agreements, as they mistakenly did not realise at the time that agreements were unenforceable, unlawful and discriminatory. A few were also sympathetic to the cause of South African traders and felt that despite their illegality, the informal trade agreements were justifiable compromises. These two latter views were largely fed by two common traits amongst NGO activists in Cape Town. First was a conscious or subconscious perception of foreign nationals' as second-class citizens. Many NGOs in Cape Town experienced asylum seekers and refugees as powerless charity cases and help seekers. This often bred perceptions of asylum seekers and refugees as being tenuous guests in the country that were not entitled to compete with or inconvenience South Africans. Despite being sympathetic and at times even passionate about the plight of asylum seekers and refugees, NGO activists often had skewed perceptions of their rights and social status.

A second trait of some NGO activists was a tendency to hold racist stereotypes of foreign national spaza shopkeepers. These activists tended to filter their perceptions of foreign national spaza shopkeepers through a lens of right-wing racism and combined with left-wing ideological stereotypes. The outcome was a casting of

⁵⁶⁷ Interview, Somali Retailers Association representative, Bellville, 14 November 2010.

foreign national spaza shopkeepers as foreign capitalists seeking to exploit poor South Africans in the name of unbridled wealth. This view was most clearly espoused by the Sustainable Livelihoods Foundation in Cape Town, which likened foreign national spaza shops to American grocery chain Walmart, and claimed foreign national spaza shops (or 'investors') gained an economic advantage through relying on 'cheap, imported labour'.⁵⁶⁸ Some human rights activists in Cape Town revealed similar suspicions of foreign spaza shopkeepers in passing discussions. A refugee activist in Cape Town was convinced that most foreign national spaza shops in the city were secretly owned by a handful of wealthy Somalis living in Bellville. He was also sceptical of a Somali shopkeeper's claim to have suffered police brutality, advising me that the alleged victim was probably lying in order to fraudulently seek payment through a civil action. This was despite the fact that the victim – my fieldwork assistant – had visible wounds, had been examined by two different medical practitioners, and that the police investigation identified several members of the SAPS' tactical response team as likely perpetrators. Another NGO community activist disclosed to me that she was alarmed by how Somali shopkeepers repeatedly risked their lives for the sake of accumulating wealth. Such prejudices likely resulted in some NGO activists sympathising more with South African spaza retailers, whom they perceive as victims of wealthy and conspiring foreign national capitalists. These biases were largely absent amongst townships residents – possibly because they were more closely located to foreign national spaza shops and had greater exposure to the economic and living conditions that traders lived under. Thus NGOs' general powerlessness, their distance from township political life, as well as prejudices amongst some of their members (subtle or overt) inhibited them from substantively influencing the outcome of informal governance arrangements.

The only way that NGOs had a direct impact on governance outcomes was through instituting litigation against state transgressions. For example, in 2012 Lawyers for Human Rights instituted litigation against several government departments in response to 'Operation Hardstick' in Limpopo Province,⁵⁶⁹ which involved police raids and closures of hundreds of foreign national spaza shops in the province. In its judgement the Supreme Court of Appeal condemned the state's actions and affirmed asylum seekers and refugees' right to self-employment. Such achievements were attained by NGOs not because they wielded local political power and influence, but

⁵⁶⁸ Andrew Charman, Leif Petersen and Laurence Piper 'Somali spaza shops operate like Walmart' *Cape Times*, 13 October 2011.

⁵⁶⁹ *Somali Association of South Africa* case (note 171).

rather because litigation involved harnessing the institutional power of the country's limited constitutional government.

Like NGOs, foreign national community organisations such as the Somali Association of South Africa (SASA), and the Somali Retailers Association (SRA) enjoyed little popular backing or allegiance in the township field sites. Intimidation, murders and continual threats also gave them little space to manoeuvre. A member of the Somali Retailers Association explained:

We signed the agreement in Khayelitsha out of pressure from local people. Even though it was agreed it came out of pressure from local people. People will ask 'why are Somalis signing these agreements?' That is probably the answer then. You have to say 'yes yes' otherwise you know, someone can even shoot you.⁵⁷⁰

Similarly, a Somali community representative described that meetings in Gugulethu in 2009 became so threatening that on one occasion Somali delegates secretly vacated a meeting without informing the remaining participants. Eventually they discontinued attending meetings in Gugulethu altogether due to levels of intimidation from South African spaza shopkeepers in attendance.⁵⁷¹

Power dynamics were evident not only in the ways in which foreign spaza shopkeepers were threatened in meetings, but also in the ways in which they were generally addressed and treated by South African spaza shopkeepers and mediators alike at meetings that they attended. For example at a meeting between South African and foreign national spaza shopkeepers in Khayelitsha in 2012 a South African trader argued that 'Those who are influxing and coming as flies must stop their businesses and leave'. In response, a Somali shopkeeper complained about his choice of words, stating 'We can't refer to Somalis as "flies". We do not like that. It infringes our human dignity. We are not flies we are human beings.' The chairperson of the meeting then intervened and defended the statement by explaining that 'He

⁵⁷⁰ Telephone interview, Somali Retailers Association representative, 2 August 2012

⁵⁷¹ Ibid.

was making an example, he was just using the word “flies”.⁵⁷² Meetings were also not venues of genuine debate and deliberation on a level playing field, as discussions took place under duress and were limited to agendas decided in favour of South African traders. Furthermore, given the power play involved - few state actors, NGOs or Somali shopkeepers were prepared to raise objections.

Not all foreign national spaza shopkeepers entered into agreements out of duress. Others supported informal trade agreements out of sympathy towards the plight of South African spaza shopkeepers and viewed them as fair and reasonable. Irrespective of the law, these traders did not think that foreign spaza shop activities should be causing any detriment to their South African competitors.⁵⁷³ For them, compromising on certain principles such as the rule of law and constitutional rights was worth the hope of peace. Some foreign national spaza shopkeepers were also content with agreements, as they enabled them to continue operating their shops, and prevented new competition from entering their vicinities.⁵⁷⁴

In contrast to NGOs and foreign national community organisations, informal grassroots organisations in the field sites such as SANCO and South African spaza retailers associations were embedded in poor township neighbourhoods. Because they were part of local township communities they possessed a better understanding of local political dynamics and sentiments. This gave them the capacity to incite and mobilise local residents behind their cause. The authority of these informal grassroots structures was not rooted in the constitution and formal legislation, but rather in the popular support and recognition they received from their local constituencies – be they residents or fellow shopkeepers. Unlike the state, grassroots organisations could therefore act and drive change through direct forceful measures that did not have to go through careful legislative checks and balances. For example, residents associations often punished alleged criminals using violent methods such as beatings or necklacings, and South African retailers demanded that foreign nationals closed their spaza shops or faced having their businesses looted. Their lack of accountability to the law and constitution enabled them to take radical,

⁵⁷² Meeting between South African and Somali spaza shopkeepers at Lingeletu West police station, Khayelitsha, 20 March 2012

⁵⁷³ Informal conversations with Somali community activists.

⁵⁷⁴ Many of the Somali traders interviewed were glad that other Somalis could not open new shops in Khayelitsha. Police in Harare stated that the agreement only prevented new entrants – not existing Somali traders - from opening new shops, stating ‘if Abdul has been there for a while he can open as many shops as he wants’. Interview, Harare sector managers, Harare, Khayelitsha, 7 December 2012.

swift and direct action – such as banning new foreign national spaza shops - unconstrained by constitutional concerns and bureaucratic processes.

Although informal grassroots structures such as SANCO and South African spaza retailers associations could harness the power of the 'people' and largely act without concern for legal frameworks, they were limited in what they could achieve, as they did not possess the means to implement highly effective and widespread change. They lacked the economic and bureaucratic capabilities of the state, which oversees and operates mass social programmes, and possesses a firm hold over formal law enforcement and justice systems. Informal grassroots organisations' ability to carry out action was therefore localised and often haphazard. For example, informal trade agreements between foreign national and South African spaza shopkeepers related to specific townships and did not extend over entire cities, provinces or the country. Enforcement of these agreements was also difficult, as actors were left to resort to self-help, which could be risky and give rise to disputes between competing local stakeholders such as South African shopkeepers and landlords.

At the same time the governance of foreign national spaza shopkeepers shows that state actors also experienced shortcomings in their capacity to effect change. The state – being a form of limited constitutional government – has restricted ability to meet the demands of local actors. As already mentioned, the South African government is constrained by the constitution, and thus cannot achieve the radical and swift economic reform often demanded of it. This was evident in state actors' struggles to implement policies to curtail the ability of asylum seekers and refugees to operate businesses, as South African traders' socio-economic demands came into conflict with asylum seekers and refugees' rights to dignity. While state leaders paid much lip service to the need for regulatory and legal interventions, constitutional hurdles continuously obstructed their efforts. In contrast to informal grassroots organisations, the state could not act through the blunt axe of force unrestrained by legal and constitutional concerns.

The inability of limited constitutional government in South Africa to achieve the direct change demanded of it by grassroots interest groups causes a further fracture, as state institutions clash with the desires of political officials that inhabit them. For example, while the laws governing township trade are clear, political leaders

engaged in governance of foreign national spaza shopkeepers often overlooked these laws in their efforts to meet the calls of South African spaza retailers.

The desire amongst many state leaders and officials to appeal to South African spaza shopkeepers was further motivated by their weak and uneasy legitimacy. This state of affairs was partly a legacy of the UDF and its distrust of state institutions (especially the police service). At the same time the unstable authority of South African political leaders within the state mirrored the Arendt's description of the dilemma confronting the French revolutionaries, i.e. they could not claim to suffer the same economic predicaments as their followers. While South African political leaders within the state often professed to advance the economic liberation of the poor and marginalised, they did not form part of that social stratum. Instead they tended to belong to more affluent economic income brackets than their electorate of black township residents on whose support they relied on to remain in power. To maintain their legitimacy amongst voters, senior state officials needed to demonstrate that they empathised with the concerns of their political party's constituency – or as Arendt puts it in relation to the French revolutionists – that they 'belonged to the people'.⁵⁷⁵ This situation did not face informal grassroots leaders who shared more or less the same social conditions as those they claimed to represent.

One way that government leaders addressed this legitimacy dilemma was through emphasising their commitment to the economic emancipation of black South Africans. This is different to Arendt's analysis of revolutionary France, where revolutionists sought to found their legitimacy through their joint will to advance the economic interests of the poor in general. This distinction is likely because oppression and marginalisation in France was more class than race-based. Identity politics enhanced the legitimacy of political leaders in South Africa, especially of those who belonged to the same racial demographic as their followers. It enabled them to stress their shared history of disenfranchisement and oppression, and current experience of systemic racial prejudice and exclusion in South Africa. State leaders involved in the governance of foreign national spaza shopkeepers frequently made appeals to the need to advance the economic interests of black South Africans in particular.⁵⁷⁶ The relationship between political leaders and township residents was

⁵⁷⁵ Arendt *On Revolution* (note 388) at 74.

⁵⁷⁶ See chapter three 'Unpacking the shop *gevaar*: justifications for curbing foreign national spaza shops'.

therefore strengthened through fighting for the economic liberation – not the necessarily of the poor as a collective - but more specifically of black South Africans. As Lindiwe Zulu stated before parliament: ‘The ANC has and always will be about emancipation of Africans’.⁵⁷⁷

Because of their respective shortcomings and weaknesses neither state actors nor popular informal groupings in South Africa enjoy full power and authority and cannot achieve effective action independently. This situation necessitates state and non-state actors collaborating and working together to attempt to overcome their limitations. The governance of foreign national spaza shopkeepers reflects this cooperation and reliance between formal and informal actors. Because of the absence of legal avenues to implement the demands of South African spaza retailers, state representatives condoned or actively endorsed informal governance arrangements that did not pass constitutional scrutiny. This was all the more necessary given the ‘threat’ or *gevaar* posed by the people. For example, police hosted meetings between foreign national community representatives and South African retailers associations where informal trade agreements were entered into that barred new foreign national shops. State leaders such as the advisor to the national minister of police, Sibongile Mbotwe and Eastern Cape local government and traditional affairs MEC Mlibo Qoboshiyane gave these arrangements their blessing, with Mbotwe describing the Khayelitsha trade agreement as the ‘beauty of Khayelitsha’.⁵⁷⁸ In Khayelitsha and Kraaifontein police worked with municipal law enforcement officials to enforce informal agreements, while in Philippi East they assisted South African spaza retailers by conducting audits of foreign nationals shops.⁵⁷⁹ These hybrid regulatory approaches enabled state actors to by-pass legislative limitations and appease South African township retailers by restricting the economic activities of foreign nationals. This illustrates how together state actors and informal grassroots organisations make up a fractured social sphere whose parts are entwined by mutual reliance and the overall purpose to advance the economic interests of their stakeholders and electorates.

⁵⁷⁷ Lindiwe Zulu, speech given during the course of a no confidence vote of president Jacob Zuma in Parliament, 1 March 2016.

⁵⁷⁸ Meeting between South African and Somali spaza shopkeepers at Lingeletu West police station in Khayelitsha, 7 March 2016.

⁵⁷⁹ Informal conversations with Kraaifontein police officials. Meeting between South African and Somali spaza shopkeepers at Lingeletu West police station in Khayelitsha, 20 March 2016.

When working together, both state and grassroots bodies find particular means to influence each other and steer outcomes in their favour. In particular, grassroots actors in the field sites often harnessed the widespread fury of poor and marginalised township communities. Threats of xenophobic attacks were a key bargaining tool for South African retailers associations who frequently warned of violence should their demands not be met. State actors were well aware that poverty and economic inequality in the country comprised a tinderbox. They therefore took South African traders' threats to create havoc seriously and acted with caution and attempted to appease shopkeepers when threats were made. South African retailers also emphasised past and present racial oppression as way of putting pressure on state actors. At a meeting in Khayelitsha in 2012, A South African spaza shopkeeper criticised a law enforcement official who had described the township as a 'free trade area':

I am shocked because if you work for this government, which says *Batho Phele* 'People First'. Now you want to leave it shows you don't put people first... If you say Khayelitsha is not regulated you are trying to systematically oppress the black people.⁵⁸⁰

While a key way that popular grassroots movements can sway the state is through their ability to incite popular anger and let loose violence, the state manipulates popular grassroots leaders and their followers through offers of patronage on the one hand or through the criminal justice system on the other. This was evident in governance strategies and responses to the shop *gevaar*, where the state responded to mobilisations by South African spaza shopkeepers by offering technical and financial support to retailers and their representative associations. For example, the Gauteng provincial government offered to link spaza shops to distribution channels of the national supermarket Pick n' Pay. Furthermore in 2016 the North West premier announced plans to set up wholesalers in partnership with Nafcoc that would be backed by state guarantees and sureties worth R200 million. The state could temporarily diminish South African retailers' threats through these offers of assistance. However too much reliance by grassroots organisations on state assistance could give rise to a conflict of interest, as they become dependent on the

⁵⁸⁰ Meeting between South African and Somali spaza shopkeepers at Lingeletu West police station in Khayelitsha, 20 March 2016.

institution they also aim to hold to account. Some residents saw township grassroots structures as compromised because of their reliance on the state. A youth in Khayelitsha argued that:

There is a need to educate the youth about who they are, where they come from, why they are in their situation and how to get out of it... Street committees don't talk about these things, but only about money. They are connected to political parties and people in power don't want to talk about these things... Street committee leaders have a face, but they are not the ones leading the community because they have their bosses.⁵⁸¹

Another way that the state can exert control over grassroots organisations is through resorting to the formal criminal justice system. Heavy police action is often recruited in South Africa in response to popular service delivery protests and strikes.⁵⁸² However, such action rarely occurred when it came to mobilisations against foreign national spaza shopkeepers. In some situations state leaders asserted that South African spaza traders wishing to use violence against their foreign national counterparts would be met with the full force of the law. But in actuality this seldom occurred. For example, in June 2009, a Somali community leader was murdered shortly after attending a meeting between Somali and South African spaza shopkeepers in Gugulethu. The provincial MEC of community safety Lennit Max promised that the police would do all they could to bring the killer to justice.⁵⁸³ However Somali community leaders stated that police never contacted them to discuss to murder and the crime remained unsolved several years later.

The SAPS's approach to mobilisations and threats by South African traders against foreign national spaza shops was also passive. Nowhere in Cape Town were South African spaza traders investigated and prosecuted for threatening or attempting to close down foreign national businesses. A police officer overseeing negotiations between Somali and South African traders in Philippi East stated that police chose

⁵⁸¹ Interview, Site C Khayelitsha, 5 February 2011.

⁵⁸² Mark Wohlwender 'South Africa four years on from the Marikana mine massacre – in pictures' *The Guardian* 16 August 2016, available at <https://www.theguardian.com/world/gallery/2016/aug/16/south-africa-four-years-on-from-the-marikana-miners-massacre-in-pictures>, date accessed 5 March 2017. Kwanele Sosibo 'Who was Andries Tatane?' *Mail & Guardian*, 21 Apr 2011, available at <https://mg.co.za/article/2011-04-21-who-was-andries-tatane>, date accessed 5 March 2017.

⁵⁸³ Gugulethu agreement (note 128).

not to investigate South African traders for threatening foreign shopkeepers and attempting to close down shops by force because police wished to be 'neutral'. Western Cape Community Safety MEC Lennit Max similarly advised police at a meeting between Somali and South African spaza shopkeepers in Gugulethu in 2009 to 'be as neutral as possible in the trade conflict' between the two groups.⁵⁸⁴ Neutrality makes little sense when one side is breaking the law and the other is not. But the logic becomes clearer in the context of state actors' desires to avoid an outbreak of broader violence and anarchy and maintain legitimacy. Political leaders within the state – while claiming to combat the threat posed by foreign national spaza shops, or protect traders – were in fact mainly motivated by their fear of the people. The state could not crack down on South African spaza shopkeepers, as they had the capacity to unleash widespread public unrest. Not only could such actions provide an avenue for residents to express their discontent with the state, but it could also put the state in the awkward position of having to protect foreigners against attacks by South Africans.

State actors could not afford to be perceived as siding with foreign nationals given their appeals to represent and advance the interests of poor black South African. Like Arendt's account of revolutionary France, clamping down on parties engaging in attacks on foreign national spaza shops could lead to township communities perceiving state and party leaders as going against their professed virtue, resulting in state and party leaders being seen as hypocrites. This perception amongst the poor could trigger even wider unrest – this time against the perceived hypocrisy of the government and the political elite. The state thus had little to gain, and could even lose legitimacy by enforcing the rights of foreign nationals against South Africans. Instead of acting against various South African perpetrators of crime, the state took visible action against foreign nationals in the aftermath of xenophobic attacks. This is evident in the government's launch of 'Operation Fiela' (meaning 'sweep' in Sesotho) shortly after a series of xenophobic attacks in Kwa-Zulu Natal and Gauteng in April 2015.

The fractured social, illustrated by the governance of foreign national spaza shopkeepers, presents an unstable alliance between formal state actors and informal grassroots political structures, neither of which possesses outright authority and

⁵⁸⁴ Gugulethu agreement (note 128) at 1.

sovereignty in South Africa's townships. As a result they engage in constant power play and alliance building. This process has two key impacts. Firstly, the collaboration between state actors and informal interest groups acts aggressively against constitutional principles, which in turn undermines political freedom. Secondly, it does little to advance the overall economic wellbeing of the public.

When the state attempts to counter its weak authority by claiming to advance the economic interests of poor black South Africans, its authority becomes rooted in these claims, rather than in constitutional powers and frameworks from which the state's power is theoretically meant to derive. As a result the private interests of citizens do not only influence laws (as in the case of limited constitutional government), but begin to trump laws and constitutional protections. This causes limited constitutional government to become increasingly tyrannical and uprooted from the country's constitutional framework, presenting a new form of social realm.

This re-anchoring of state authority in claims to advance the life of certain categories of people, results in constitutional protections failing to protect those groups falling outside on the 'body' of the people. The state cannot afford to destabilise its already weak legitimacy by concerning itself with the lives and interests of outsiders. This causes the state to suspend and 'neutralise' the law in relation to these groups. For example, threats and intimidation by South African traders against foreign national spaza shopkeepers in the field sites were not investigated and prosecuted, but addressed through mediation processes and clemency for accused. In this way foreign spaza shopkeepers reflected Agamben's *homo sacer*. They existed outside of the national 'body of the people' and thus lacked recourse to legal protections, which in Agamben's view are vested on the basis of birth and increasingly and more vaguely the notion of 'authenticity'.⁵⁸⁵ In the case of the fractured social, this suspension of the law and its protections does not only occur in the formal sphere, but the informal as well. Furthermore, unlike Agamben the suspension of the law does not occur via special legal mechanisms such as 'states of emergency' or martial law, but through a shared understanding that state authority rests on its appeals to the people and alliances with key stakeholders, more than on legal and constitutional precepts.

⁵⁸⁵ Agamben *Homo Sacer* (note 356) at 132.

Furthermore, when the life of certain categories of people becomes what is at stake in politics rather than broader principles relating to the public good, those falling outside of these categories lose their claims not only to laws, but also to life and sustenance. By emphasising the need to uplift and economically emancipate poor black South Africans many state leaders fell into the trap identified by Foucault in his analysis of biopower. For him, identifying certain race groups whose lives must be fostered and supported, necessitates racism, as it entails eliminating racial 'subspecies' that are seen as biological threats to the population. Instead of fostering these lives they are *disallowed* 'to the point of death'.⁵⁸⁶ The governance of foreign spaza shopkeepers reflects this trend, with the state unwilling to intervene to protect the lives and livelihoods of foreign spaza shopkeepers, and policy proposals frequently showing indifference to whether or not foreign nationals were exposed to destitution. A Supreme Court of Appeals judge even suspected that 'Operation Hardstick' in Limpopo was intended to leave foreign national spaza shopkeepers in a state of indigence, so that they would feel forced to leave the country.⁵⁸⁷ The judge stated:

In the present case, one is left with the uneasy feeling that the stance adopted by the authorities in relation to the licensing of spaza shops and tuck-shops was in order to induce foreign nationals who were destitute to leave our shores.⁵⁸⁸

The undermining of constitutional rights principles entailed in the fractured social eventually diminishes the potential for political engagement and freedom in the country. For Arendt political freedom requires a public space of appearance where diverse participants can engage in debate and deliberation over matters relating to public affairs. This was largely encapsulated by the UDF whose diverse affiliates created a platform for people to participate in political action via linking their immediate concerns with greater political and public goals. However, without adherence to values and principles such as equality, diversity, and dignity, there cannot be an open and free political platform to deliberate on public affairs. This was evident in meetings between South African spaza and foreign national spaza shopkeepers, where formal and informal governance actors – more concerned with

⁵⁸⁶ Foucault *The History of Sexuality* (note 355) at 138. Foucault *Society Must Be Defended* (note 440) at 247.

⁵⁸⁷ *Somali Association of South Africa* case (note 171) at para 44.

⁵⁸⁸ *Ibid.*

political expediency and satisfying the interests of local interest groups - did not view foreign national spaza shopkeepers as equal participants possessing human dignity. As a result foreign national traders and community leaders were insulted, threatened and effectively prevented from airing authentic opinions. Such a state of affairs constrains prospects for political freedom, as political spaces tended to shut down speech, stifle competing opinions. At the end of the day decisions were reached and rules are established not through open discussion and free debate, but rather through meeting the demands of the loudest and those who had the capacity and inclination to unleash the most violence. Rules and laws become an outcome of successful political conquests, rather than a product of considered political processes that are aimed at servicing the public good.

The fractured social therefore shows that the political energy and loose unity of the UDF was never effectively channelled and leveraged in post-apartheid South Africa. Not only does the political focus on fostering life and social mobility lead to the murder (direct and indirect) of racial 'subspecies' along the lines of Foucault, or their expulsion from the body politic, and with it the suspension of legal protections as described by Agamben. The devolution of political power and authority illustrated in the fractured social realm does not generate greater political participation and freedom. The erosion political rights principles such as equality, dignity and inclusivity entailed in the fractured social realm instead makes free and open engagement in public affairs more difficult and elusive. Therefore while the fractured social realm involves grassroots and state bodies collaborating and mutually influencing each other, the outcome is not a democratic and progressive politics.

Second, despite the close and overlapping relationships forged between state and non-state actors entailed in the fractured social realm, their interactions and alliances can do little to address broader systemic inequality and poverty in society, and in many ways act against these goals. This is because the dominance of the private concerns in the public domain has the effect of depoliticising struggles to their detriment. For example, grassroots organisations in the field sites failed to link the economic goals of their members to broader political principles or values. This turned them into fragmented interest groups bent on advancing the economic mobility interests of their members - be they shopkeepers, taxi drivers, local residents - with very little concern for wider society. Such a state of affairs worked against advancing

the economic interests of the many, as development was seen in a fragmented and blinkered way rather than comprehensively and systemically. In this sense the fractured social is not only a social realm that lacks overall unity and comprises both formal and informal elements. Its non-state components are splintered even further into a myriad of informal interest groups that compete with each other in order to best advance the private concerns of their members.

Furthermore, over time the state, having limited authority in township neighbourhoods distracts itself from the tasks of limited constitutional government – i.e. of ensuring measured and gradual change in conformity with constitutional laws - and attempts to appease the chaotic and at times violent demands of grassroots interest groups, and their threats to unleash the wrath of poor and marginalised township residents. It largely abandons its social goals of ensuring the broader sustenance of life. Instead the state focuses on short-term measures aimed at maintaining political stability and legitimacy in key electoral strongholds through satisfying narrow interest group demands. This is evidenced by state actors' approaches to foreign national spaza shops, where instead of devising strategies to leverage the economic opportunities posed by foreign national businesses, they preoccupied themselves with finding any possible means – legal or manifestly illegal and discriminatory - to contain or even rid neighbourhoods of foreign national spaza shops. The result is a confused and conflicting economic policy that threatens many economic stakeholders, such as township consumers and landlords.

The governance of foreign national spaza shopkeepers shows that the fractured social realm is thus incapable of comprehending the complexity of South Africa's political and economic landscape. The needs of the public are placed on a second footing to the more direct demands of grassroots interest groups. The fractured social is thus incapable of navigating and reaching a balance between its conflicting social goals of fostering life and aiding economic mobility. This gives rise to stunted policies that serve particular interest groups as opposed to achieving broader upliftment and transformation of society.

The overlooking of constitutional rights concerns, and with it, the weakening of political freedom does not only impact on marginal and vulnerable groups (such as foreign nationals, or alleged thieves and delinquents). It furthermore limits the ability

of political actors to resolve underlying factors contributing to social discontent. This is because the absence of an authentic political space means that there are few platforms in the country where groups' immediate objectives can be debated in light of their wider economic or political concerns, and the broader public interest. The state cannot host widespread political debate and deliberation between diverse groups regarding social and economic transformation and inequities, as it is hefty, opaque and bureaucratic institution. Furthermore, the state is not geared towards facilitating fundamental change in the country given that the constitution envisages slow and incremental socio-economic development in the country that avoids interrupting general social orders. NGOs staffed by middle class professionals and based in the city centre, tended to have top-down structures and little presence in township political life. While the informal sphere offers a potential opening for greater political engagement, grassroots interest groups were inward facing and addressed mostly the private interests of leaders or the immediate demands of their members, without tying tie these concerns to broader shared political rights values such as equality, freedom and dignity.. This means that the South African political sphere is largely deprived of a space where participants from all walks of life can freely engage in genuine discussion, debate and deliberation about the challenges society faces, including migration, poverty and economic inequality. The absence of an accessible and plural political platform prevents communication between different facets of society that could form the basis of a new and more inclusive vision for the country. Instead socio-economic stagnation and inequities are left unaddressed, and battles are played out using foreign nationals as proxies.

The governance of foreign national spaza shopkeepers therefore shows that the political sphere in contemporary South Africa cannot deal with major questions of economic transformation and development in the country. The state is focussed on limited interference in the private domain, the slow delivery of welfare, and increasingly with the conflicted economic demands of scattered interest groups – not with systemic and radical change. At the same time people's collective power grows in an uncontrolled way to represent the interests of fragmented groups. The fractured social realm – the collaboration between limited constitutional government with grassroots private interest groups – that eventuates from this dichotomy is not any better, and comes at the cost of broader mobility, the rule of law, political freedom and fostering life itself. This is illustrated by the governance of foreign national spaza shopkeepers, where economic opportunities and prospects for inclusive growth were

constricted, laws ignored, and the population's basic survival was put at risk through proposed policies that are aimed at curtailing small retail providers of food and basic household items.

The abandonment of political principles entailed in the emergence of the fractured social puts all – not just foreigners – at risk. The inability of the fractured social realm to grapple with more complex and systemic facets of poverty and inequality results in a situation is created where many South Africans – especially those living in low income areas - are left seething with resentment and frustration at the slow pace of change in the country. Instead of realising economic emancipation in relation to distributions of power and wealth, South Africans experience a continuation of the economic status quo with no adequate venue to deliberate on finding constructive paths forward. Without substantial transformation of society, the more popular frustration and violence is likely to persist and grow in the country. This will give rise to increased rage and violence (largely mirroring Arendt's 'uprising of the poor') that will continue to weaken the legitimacy and authority of limited constitutional government. Political leaders will continue to leverage identity and patronage to appease electorates and interest groups, and show increasing less regard to the law, whose processes are too slow and inaccessible to respond adequately to popular anger and frustration. The outcome could very much mean the failure of limited government in South Africa, and with it the democratic 'miracle' that came with the fall of apartheid. Instead limited constitutional government could follow grassroots interest groups and become indifferent to the law, and reliant on popularism and unrestrained violence to generate authority. This would see limited constitutional government in South Africa decay into a one party dictatorship, much like Arendt's account of post-revolutionary France.

Another possibility is that overall economic decline in South Africa could be such that many South Africans will become disillusioned in the self-interested politics of grassroots groups and the manoeuvrings of politicians' identity politics. Instead of providing political support based on identity and patronage, South Africans could instead inquire into which grassroots structures and political parties effectively deliver services and contribute to general economic growth and welfare. In such an event limited constitutional government may well be reinvigorated in the country, but transformation of South Africa's unequal society would still prove to be elusive. To

build a political space that can cater for the types of participation and principles needed to transform South Africa's economically unequal and divided society, a complete renewal and rebuilding of the political sphere would be necessary. Along the lines of Arendt, such a sphere would provide a space for debate and deliberation about public affairs – including how to link myriad local developmental concerns to broader political values such as inclusivity, political freedom, and equality. But the impetus for such far-reaching change would likely require a context of severe political and economic decline and impasse.

5.3 Conclusion

The thesis' critical evaluation of the governance of foreign spaza shopkeepers shows that private household concerns relating to life are firmly lodged within South African political sphere. However, this differs from the accounts of Arendt, Foucault and Agamben. Firstly, these concerns do not only relate to fostering life and consumption, but also meeting emancipatory calls for economic mobility in the form of economic growth, jobs and economic self-reliance. Secondly, unlike Arendt, Foucault and Agamben's descriptions of the social, the South African social realm manifests not only in the state institutions, but also in informal grassroots organisations. This results in political dynamics that are largely overlooked by the above three theorists' accounts. While South Africa's formal state institutions mirror Arendt's description of limited constitutional government, a myriad of fragmented interest groups also exist that seek to advance the particular economic interests of their members.

These two components of the South African social sphere – limited constitutional government on the one hand and informal grassroots interest groups on the other do not present a progressive form of politics. Instead political efforts towards advancing the lives of particular population groups gives rise to a desire to expel and exclude others. It also sees a constriction of constitutional rights and political freedoms. Furthermore these two spheres working together are unable to substantially transform South African society, which, despite the advent of democracy, continues to be characterised by structural and systemic inequality that runs to a great extent along the lines of race. The state, being a mass bureaucracy controlled by elected officials, provides little effective space for political deliberation and decision making that could address complex systemic challenges. While it cooperates with grassroots

organisations, the nature of its interactions is not that of broad and open debate, but of focussed stakeholder engagement about the roll out of specific services, development projects and patronage opportunities. At the same time township grassroots interest groups – be they SANCO, spaza associations, or taxi associations - have no unifying purpose, and focus inwardly on the demands of their members be they service delivery, business concerns, or job creation. This inhibits their ability to bring about extensive transformation of South African society that focuses on the wider public interest and benefit. As a result socio-economic stagnation and inequities are left unaddressed, and battles are played out using foreign nationals as proxies. This points to a need for new popular alliances and engagement that are unified by broader political values, which seek to advance the interests of the public at large.

The fractured social is of relevance to other postcolonial developing countries that similarly exhibit social spheres that extend beyond formal bureaucratic governments and include numerous local level informal interest groups. When these realms come under the sway of the social and are confronted by contexts of widespread poverty and popular demands for economic freedom, the outcome can very much see political spheres uproot themselves from political principles and public concerns. The fractured social may even have growing applicability to traditional western states, which are similarly encountering growing nationalism, inequality and weakening state establishments.

6. Conclusion

The thesis explores what the governance of foreign national spaza shopkeepers reveals about the nature of politics in a postcolonial developing world context – namely contemporary South Africa. The governance phenomena that the thesis critiques includes the formal, informal and hybrid laws and social rules that govern foreign national spaza shops, how these laws came into being, the degree to which they are implemented, and the contextual structures and forces weighing on governance actors.

Given that the thesis is interdisciplinary and relates to legal, social and political phenomena and their interrelation, it locates itself in law and society movement, which examines law from a social science perspective. The thesis defines governance as the ways in which individuals or bodies exercising a degree of authority attempt to steer social or public order. By focussing on governance rather than ‘law’ enables the thesis to explore laws from a social science perspective. Governance is a site of action and political contestation where laws are developed and applied. Its processes therefore shed light on the linkages between legal phenomena and their social and political settings. Furthermore the term ‘governance’ – unlike ‘government’ - incorporates both state and non-state activities. Governance is also a useful approach to understanding law and society in contexts of rapid social and political change, as it sheds light on the development and evolution of laws, policies and social rules over a period of time, as opposed to a static snapshot of them. The thesis does not regard governance as a structure or force, but rather as the human endeavour of steering social order that shape society by those exercising a degree of authority. In other words governance is form of *action*.

6.1 Justifications for governance practices and their limitations

The case study involves examining the justifications for governance interventions, how they unfolded over time, and their political significance. Governance interventions mainly involved curbing the number of foreign national spaza shops, rather than supporting businesses or leaving them to be. This was evidenced by informal trade agreements that prohibited foreign national spaza shopkeepers from establishing new shops in certain townships, as well as police fining operations that disproportionately targeted foreign national shops. New draft legislation also suggests prohibiting asylum seekers from operating businesses altogether.

Governance actors offered several reasons for these strategies. A common reason given for the need to limit foreign spaza shops was the perception that these shops closed down business opportunities for existing and potential South African spaza shopkeepers. Foreign national spaza shops were thus argued to be generally harmful to local economies. Furthermore their greater success in the market was often attributed to unfair business tactics or cultural traits that South Africans could not adopt. Other reasons given for the need to curb foreign national business include that they engaged in unlawful activities, the presence of their businesses contributed to increased rates of business robbery, and failure to curb their businesses would see shopkeepers fall victim to violent attacks. The thesis argues that the above reasons for curbing foreign national businesses did not adequately add up and were not fully genuine.

For instance, foreign national spaza shopkeepers' business practices were neither 'unfair' nor difficult for South Africans to imitate. Shopkeepers relied on practices such as forming partnerships, and targeting specials and low prices when procuring goods. These were not highly complex, but were largely generic and commonplace business strategies. Furthermore, a close analysis of local economic conditions revealed that foreign national spaza shopkeepers offered many economic advantages. They paid substantial rent to landlords, and benefited local consumers, suppliers and wholesalers. Thus, although South African spaza traders' anger over new competition is understandable from their perspective, they were only one of many different stakeholders and were small in number relative to other stakeholders who stood to be negatively affected by efforts to curb or reduced foreign national spaza shops. It is therefore not immediately clear why governance actors would forward the interests of South African retailers over a number of other stakeholders, and go so far as to breach the law on many occasions to meet their demands.

Furthermore, while many foreign national spaza shops operated informally, this does not mean that shops and the business practices that they rely on were 'illegal' *per se*. Many township zoning schemes permitted the establishment of businesses on residential properties. Asylum seekers and refugees also enjoyed the right to operate businesses in the country. While a number of foreign national spaza shopkeepers were known amongst police to possess unregistered firearms and illicit cigarettes,

these activities did not pose major social threats. For example, South Africans were far more likely to use unlawful firearms against foreign nationals than the other way around. This, as well as the fact that governance actors showed little concern about the lawfulness of South African business activities suggests that illegal behaviour was not a key factor driving attempts to curb foreign national businesses. As to the third common justification – that foreign spaza shops fell disproportionately victim to business robberies and hence contributed towards increasing crime statistics - the thesis argues that drastic efforts to curb shop numbers (including unlawful fining operations) were not accompanied by similar efforts to clamp down on perpetrators of such crimes. This suggests that business robberies affecting shops were not the only concern driving police interventions. Lastly, many governance actors claimed that informal agreements barring new foreign spaza shops were a necessary means to prevent violent and at times deadly attacks on foreign national spaza shopkeepers. However, the state showed little concern when it came to rooting out perpetrators of violent crimes such as looters and South African spaza shopkeepers who frequently sent intimidating letters to foreign national traders, and threatened them directly at numerous meetings in the presence of police, NGOs and other state officials. Thus competition, illegality, business robbery and threat of violent attacks, do not sufficiently explain governance interventions that are aimed at limiting and reducing foreign national spaza shops.

Theorists such as Weber, Bonacich, Fanon, Mamdani have suggested further reasons for why foreign national traders or 'minority middlemen' are so often viewed as a threat to host populations. Weber describes that host populations often despise 'pariah' groups. He does not give explicit reasons for this, but his account highlights pariah people's distinctive religious traits and social separation from mainstream societies. Bonacich argues that middleman minority groups' economic activities and 'solidarity' draw the ire of settled communities who view them as unassimilable and economically extractive and parasitic. Low levels of integration and assimilation contributed towards antagonisms towards foreign national spaza shopkeepers' in the field sites, whose general lack of familiarity and close contact with host communities allowed stereotypes and fears about them to go unchecked and enabled criminals to target them with impunity. However, the shortcoming of this explanation is that it does not focus enough on how broader social and political contexts also feed into shops being viewed by various parties as a threat.

Fanon and Mamdani focus less on the actions of foreign national traders (be it their economic activities or general failure to assimilate), and more on social and political contexts to explain hostilities towards them. In particular they both highlight how in many postcolonial countries, notions of rights and entitlements that are linked to indigeneity result in the targeting of perceived 'settlers' and outsiders. This causes certain national, ethnic or racial groups to view businesses operated by foreigners and other outsider groups as rightfully belonging to them. However, the thesis argues that while indigeneity did influence many South Africans to harbour negative perceptions about foreign national spaza shopkeepers, it did not explain the urgency behind interventions, which frequently involved breaching the law. This was especially the case given that most residents did not view the presence of these traders as of serious concern of theirs. Views about foreign spaza shops differed between residents. However, generally their anxieties and frustrations about shops were peripheral, and not urgent priorities. The main protagonists behind attacks on foreign nationals businesses and calls to regulate them were a much smaller group, namely South African spaza traders who were concerned about economic competition.

Yet, on many occasions, South African spaza shopkeepers encountered little difficulty in inciting residents against foreign national spaza shops. Such attacks demonstrated widespread xenophobic *disregard* towards foreign national spaza traders, but not necessarily acute *antagonism*. Many participants in mob violence were motivated less by discontent towards foreigners, than general frustration with life circumstances such as poverty and unemployment. Foreign national traders also made easy and expendable targets, given that they fell outside of township social and political life and the protections these offered. This, compounded by weak state responses to crime, left foreign spaza shopkeepers and their shops largely defenseless against public violence and crime in general.

Expressing discontent and frustration through looting and public violence against foreign national spaza shops also served to communicate dissatisfaction to political leaders and the state. Foreign national spaza shops are symbolic of economic mobility in township neighbourhoods. The popular violence against foreign national spaza businesses was thus also a call on leadership to accelerate the economic mobility of South African township inhabitants. It is this discontent amongst the

people, so easily incited by local South African political and business leaders, which threatened the state and fed its urge to curb the activities of foreign national spaza shops. By clamping down on foreign national spaza shops through governance interventions, political leaders demonstrated their commitment to the economic cause of township residents. They also appeased South African retailers and lessened their desires to incite the popular violence. Targeting foreign spaza shops also tacitly attributed township economic woes to the economic activities of foreign nationals – rather than the actions (or inactions) of state departments and politicians. Thus despite political leaders' and state bodies' reasoning and declared intentions (be it migration, competition, illegality or crime) the primary threat with which governance actors were concerned was that of public disillusionment and anger in their failed promises and policies. The thesis therefore maintains that while the above-mentioned reasons for curbing foreign national spaza shops influence governance actors, they did not comprise the core motivations and drives behind governance interventions. Instead the primary 'gevaar' or threat that was being addressed by governance efforts related to the disillusionment of many people living in low-income township neighbourhoods and the ability of South African spaza traders to incite their discontent. This put the state and political leaders on a back footing.

6.2 Governance in practice: The entry of the economic into the political

Having analysed various parties' drives to curtail foreign national spaza shops through governance, the thesis goes on to explore how governance interventions have played out in practice. It finds that the priorities of governance actors were largely economic in nature and often trumped political and constitutional rights concerns. While laws generally ran consistent to the constitution, the interests and priorities of political actors frequently did not, and their actions therefore often breached state laws. For example, senior state officials condoned informal agreements that undermined various laws including constitutional rights and freedoms and South African traders were prepared to kill for the sake of their business interests. Economic concerns were also central to how political issues were rationalised amongst ordinary township residents. For example, residents described looters as being motivated by the prospect of opportunistically accessing free goods as well as raising attention towards their dire economic circumstances. Their personal economic interests thus took precedence over the rights and freedoms of foreign national spaza shopkeepers, and political rights values in the constitution in

general. In addition economic issues were central to the ways in which civic groups and residents rationalised the presence of foreign national spaza shops in their neighbourhoods, as they tended to emphasise economic benefits such as product prices and rent as reasons for shops to remain, more than political values such as freedom, diversity and equality.

Thus irrespective of whether governance actors supported the barring of new foreign national spaza shops, or wished them to remain and grow, their motivations were primarily economic. They were rarely if ever linked to broader political principles and constitutional rights concerns such as the rights to equality and dignity and the value of diversity. This was surprising given that governance efforts entailed discriminating against particular demographic groups and overlooked formal laws. Although constitutional litigation prevented several formal state attempts at curtailing foreign national spaza shops by prohibiting asylum seekers from working or accessing business licenses, this was less a reflection of state actors' commitment to the constitution, and more an indication of how the constitution acted as a barrier to state actors' preferred actions and policies.

The governance of foreign national spaza shopkeepers in South Africa therefore indicates that the political sphere is largely governed by the private economic concerns of citizens, and that political rights principles have to a large degree fallen out of favour. This observation is not unique, and has been made by many theorists. Arendt, Foucault and Agamben in particular believe that the modern age is characterised by a political preoccupation with private matters relating to the maintenance of life. Arendt terms this phenomenon 'the social', while Agamben and Foucault refer to it as 'biopolitics'. Although they use distinct terms, they essentially identify the same phenomena, namely the modern blurring of the ancient Greek separation between the public sphere of politics and the private realm of the household. The elevation of economic concerns in the South African political sphere, entailed in the governance of foreign nationals spaza shopkeepers, reflects this trend. It hence indicates that South African political sphere is essentially social, as private economic concerns preoccupy a large range of political actors. Theories of the social therefore guide the thesis in examining and critiquing the governance of foreign national spaza businesses and theorizing its political implications.

Although Arendt, Foucault and Agamben's theories share a common concern with the politicisation of life in the modern age, their analyses differ significantly. The thesis compares their different approaches to the social and assesses their relevance and shortcomings in relation to a study of governance in South Africa and other postcolonial developing world contexts. In so doing, it examines their analyses on three levels, namely their reach (what aspects of the social they cover), their relevance to postcolonial developing states such as South Africa, and their suitability to a study of governance as a human *activity*.

When it comes to reach, Arendt, Foucault and Agamben's theories of the social together encompass four broad features, namely they explore the substance of the social realm, how social conditions shape it, how it emerges in contexts of emancipatory struggles, and the social realm's tendency to exclude certain groups from political life. Arendt's theory is preoccupied with the first three features of the social. It analyses the substance of the social realm by examining its technocratic and bureaucratic nature and its impact on political freedom, how its forms can differ depending on the economic conditions under which it emerges, and how it emerges during the course of or aftermath of revolutionary struggles for political freedom.

Like Arendt, Foucault is interested in the substance of the social, and its bureaucratic and regulative qualities. However, he does not examine the social in emancipatory contexts or how it's impacted on by surrounding economic conditions. Instead he is more concerned with the social realm's capacity to exclude those perceived as posing a biological threat to the nation, such as people who are considered to be 'abnormal' or 'degenerate'.⁵⁸⁹ Agamben is also preoccupied with those who are expelled from political life due to the vesting of citizenship in birth and hence in the body of the 'people'. But Agamben's theory overlooks the substance of the social realm, as it does not explore the condition of those who are *included* in political life, apart from the fact that they face a constant threat of having their rights suspended and being relegated to *homo sacer*. Although all three theorists overlap to a degree, Arendt, Foucault and Agamben have different emphases when it comes to their theories of the social. Arendt and Foucault explore the substance of the social realm – in particular its normalising and bureaucratic nature (and in the case of Arendt, how it impacts on authentic political action). Foucault and Agamben share an interest in

⁵⁸⁹ Foucault *Society Must Be Defended* (note 440) at 255.

those who are excluded because they are seen as a biological threat to the body of the nation. Of the three theorists, only Arendt examines how emancipatory politics come under the influence of the private concerns and are shaped by social conditions such as mass poverty.

A second level of analysis assesses the degree to which Arendt, Foucault and Agamben's accounts of the social are relevant to the South African governance environment. This is because all three theorists' work is based on Western contexts such as the US, Germany, France and Italy, and none of them make any claim to comprehensively describe occurrences in developing or postcolonial countries like South Africa. Yet their theories still touch on issues that are relevant to broader governance contexts. For example, Arendt's theory of the social examines the impact of poverty and inequality on the emergence of social realms, and explores how the social unfolds in contexts of revolutionary struggle. Likewise widespread poverty and economic inequality shape governance in many developing countries, and politics in many postcolonial countries is often linked to emancipatory goals that are aimed at freeing citizens from the economic legacies of former colonial regimes. Furthermore, although Arendt's theory contends that the social realm is epitomised by centralised state bureaucracies, her theory of power can also accommodate the informal political groupings, which characterise local governance in South Africa, as well in many developing countries. What Arendt's theory of the social lacks in terms of having broader application is an investigation of how it relates to the politics of race and identity, which is a key dynamic in contemporary South African governance (and an increasingly globalising world). In contrast, Foucault and Agamben both view racism as ingrained in the fabric of the social realm and explore how it excludes those who are seen as a threat to the national body of peoples. They examine how the political focus on life results in the marginalisation of people who are considered abnormal or a biological threat to the nation.

Foucault also locates politics and power beyond the sphere of formal government. His theory can therefore also account for the phenomenon of informality, which characterises a large part of South African governance. Agamben does not factor in poverty, emancipatory politics or informal locations of power in his framework of biopolitics. He assumes all political life is located within the domain of the nation state. Those who are outside of the state's mechanisms have no power - only bare

life. Unlike Arendt, neither Foucault nor Agamben explore the social against the backdrop of poverty and emancipatory politics. This omission limits the suitability of their theories to the South African context, where poverty is a key force impacting on the social realm, and where governance actors navigate a chaotic emancipatory political project rather than manage stable welfare states.

The third level of analysis examines how appropriate Arendt, Foucault and Agamben's theories are to the thesis' study of *governance*. The thesis understands governance as an activity. Yet, of the three theorists only Arendt analyses the social realm or biopolitics from the perspective of action, as her theory concentrates on the human actors engaged in constituting social and political realms. It thus sheds light on different ways in which people usher in and maintain social realms, as opposed to just outlining features of the social realm itself. Although Foucault describes the complex and numerous ways in which power functions and governs, he does not explore workings of power from the perspective of human agents. Instead for Foucault, power comprises multiple 'force relations', which include human actions and contextual factors framing them.⁵⁹⁰ This makes it difficult to identify the human role in generating, maintaining and wielding power, which is a key aspect of governance.

Agamben explores the 'sovereign power' of the monarch and later 'state power' in his analysis of biopolitics. However, he does not offer a definition of power, i.e. whether it is a result of people acting in concert, or whether it includes the structures, institutions and norms influence people on a daily basis. Irrespective, his analysis overlooks the human actions that maintain biopolitical regimes. For example, he constitutes political life not through the actions of members of a political community, but rather as a *defacto* result of the act of expulsion.

All three theorists' analyses of the social have advantages and drawbacks in terms of their scope, their appropriateness to the South African governance context, and the degree to which they assist in analysing the phenomenon of governance as an action. While the thesis draws on all three theorists' work, it relies most heavily on Arendt's analysis of the social, which on the whole has greater application to the

⁵⁹⁰ Foucault *The History of Sexuality* (note 355) at 92 and 93.

thesis. The weakness of her approach for the purposes of the thesis is that she does not consider the role of identity and race in her conception of the social. Her account therefore lacks a degree of insight into a core theme in South African and postcolonial politics and governance – something that Foucault and Agamben hone in on. But on other grounds her analysis offers comprehensive foundations for a critical examination of the governance of foreign migrant spaza businesses through the philosophical lens of the social.

6.3 The fractured social and its implications for South Africa's political and economic agenda

The thesis then investigates what the governance of foreign national spaza shopkeepers reveals about the nature of the South African political sphere. It argues that the country's political sphere is essentially social given the vital role that economic interests play in it. However, the South African social sphere is characterised by two significant features that differ from Arendt, Foucault and Agamben. First is that the South African social realm is in conflict with itself. It aspires to maintain and sustain the lives of the people and meet their basic physical necessities, for example through offering social welfare grants. It also celebrates material abundance and consumption. At the same time it seeks to advance the economic *mobility* of South African nationals through opening up business and job opportunities. This is an important goal, as mobility has continued to elude many South African township residents whose basic living conditions have changed little since the advent of democracy. As a result liberation in the country is seen as merely partial, with full emancipation only being realised once formerly oppressed black South Africans can escape poverty and economic marginalisation.

However these differing social goals come into conflict with each other when tackling the issue of foreign national spaza shops. On the one hand spaza shops provide reasonably priced basic goods to low income consumers on flexible terms and in close proximity to where they live. They therefore enable people to engage in consumption and meet their basic physical needs. At the same time they cause agitation amongst sectors of society, as they are seen as taking up economic opportunities that 'belong' to South Africans. Thus the social realm is governed by differing and irreconcilable goals, and attempts to advance the latter goal often result in threatening or undermining the former one.

Secondly, not only are the goals of the social realm in conflict with each other, but the social realm itself is fractured and dispersed between manifold formal and informal locations of power. This situation reflects a very different type of social sphere to that described by Arendt, Foucault and Agamben, who associate the sphere with the realm of the nation state and its characteristics of centralisation and bureaucratisation. In contrast the South African 'fractured' social realm is spread across state as well as informal grassroots structures, giving it a different form and nature. The thesis puts forward the argument that these two dynamics – a conflicted social realm, and phenomenon of fractured power – are core features of the South Africa's contemporary political landscape.

The thesis examines the conflicted and fractured social realm by setting out the various actors and participators in governance, and how these parties interact and attempt to influence each other and sway governance interventions in their favour. It argues that South African state's centralised and managerial features largely mirror more conventional notions of the social realm described by Arendt, Foucault and Agamben. In particular it closely reflects Arendt's description of 'limited constitutional government', which sets out to protect peoples' private liberties from state intrusion, while also advancing the basic economic interests of citizens. The South African constitution, which binds the state, similarly provides political protections and conditional socio-economic rights. However, its limited nature also means that the state encounters barriers in taking radical transformative actions.

Yet the state is not the only locus of political power in contemporary South Africa. The political sphere is also typified by informal grassroots power structures that, like the state, are essentially social. These organisations (such as SANCO, political party branches, church groups, and business sector associations) reflect features and methods of the internal anti-apartheid movement in the 1980s that organised under the banner of the United Democratic Front (UDF). This includes using similar tactics and mechanisms to those of the UDF's strategy of 'people's power', which entailed weakening the state through popular mass action and the setting up of parallel institutions.

However, unlike the UDF, township grassroots organisations lack any shared political goals. Instead they largely consist of separate interest groups each aiming to advance the economic and developmental concerns and aspirations of their members. In this sense they are also essentially social. However, unlike limited constitutional government, which attempts to balance private and political concerns through constitutional checks and balances, township grassroots structures are almost wholly preoccupied with the private interests of their members. The authority of these informal grassroots structures (where such exist) is not rooted in the constitution and formal legislation, but instead through the support they receive from their constituencies. This means that they can take forceful and direct measures without concern for formal laws and the country's constitutional framework. At the same time they lack the financial and institutional capacity of the state. Their impacts thus tend to be localised and haphazard. For example, informal trade agreements between foreign national and South African spaza shopkeepers were limited to specific townships and were inconsistently enforced. While these groups collaborated with government and civil society, this was done for the benefit of their members or the personal interests of leaders rather than out of concern for a common world. Because they lacked broader political aspirations, they operated in silos, with little concern for the wider effects of their actions. NGOs, the UNHCR, and migrant community organisations also participated in governance, but possessed very little power to shape governance outcomes. Meetings were thus largely a test between the wills of state actors and informal township interest groups.

At the same time both the state, and informal grassroots groups encounter hurdles in achieving change. As mentioned, the state – being a form of limited constitutional government – is restrained by the law and the constitution. It therefore cannot implement the radical reforms demanded of it, in this case the immediate closure of foreign national spaza shops. Its protections of individual rights meant that it could not utilise unrestrained force in achieving its goals. This was evident in constitutional court cases, which struck down the state's attempts to curtail asylum seekers' ability to work and close down their businesses. It was also apparent in the state's inability thus to pass legislative reforms to limit foreign nationals from operating spaza shops in the country.

The constitutional limitations on the state cause internal conflict between the state's institutions, and political actors who inhabit them and wish to appeal to their electoral constituencies. State actors thus engage in informal governance in the absence of being able to legislate new policies or adapt existing ones.

As a result of their respective shortcomings and limitations neither state actors nor popular informal groupings enjoy full power and authority in South Africa's townships. They respond to this dilemma by collaborating and working together to attempt to overcome their limitations. The governance of foreign spaza shopkeepers reflected this cooperation in its hybrid regulatory approaches, which included state actors working with civic structures and informal retailers associations to establish local informal rules governing the spaza market. These arrangements enabled political leaders within the state to by-pass legislative limitations and demonstrate their commitment South African township retailers over their foreign competitors – and thus their symbolic prioritisation of South African nationals in general. The state's involvement in grassroots governance also legitimised and strengthened informal grassroots organisation influence in their localities, especially through promises of financial aid and technical assistance. Together state actors and informal grassroots organisations made up a fractured social realm whose components were interwoven through mutual reliance and aimed at appealing to the economic interests of their constituencies.

When collaborating, these two spheres – the formal state and informal grassroots groups – find means to influence each other. The state does so through patronage and recourse to its security and justice arms, while informal grassroots structures rely on their capacity to incite local frustrations – including that of unleashing xenophobic violence. Yet, in the field sites the state rarely acted on its own threats to reign in criminal action against foreign national spaza shopkeepers through reliance on formal police and justice mechanisms. This was because such action would put the state in an uncomfortable position of potentially having to protect foreigners from being attacked by South Africans. Thus the state failed to apply the law, and let looters off the hook, and their inciters entered mediation and conflict resolution processes rather than being subject to police investigations and prosecutions.

However this system of devolved political power is neither progressive nor transformative. While devolutions of power have the potential to advance progressive forms of politics by encouraging greater participation in public affairs and buffering against the bureaucratic rule by ‘nobody’,⁵⁹¹ the governance of foreign national spaza shopkeepers shows the contrary. This is because when the political sphere seeks to serve the bare economic interest of certain national or racial groups, those falling outside of these categories become expendable. The governance of foreign national spaza shopkeepers mirrors Foucault’s theory of the social by illustrating how the lives of those not belonging to the body of the people become disposable. Instead of tracing and prosecuting perpetrators of violent crimes affecting them, governance actors attempted to address crime by clamping down on victims. For example, agreements prevented foreign nationals from opening new spaza shops in many townships, police engaged in fining operations against them, and sought to prevent asylum seekers from accessing business licenses. Much like Agamben’s observation, governance actors largely suspended the application of laws in relation to traders who fell outside of formal and informal body politics. These were often replaced with social rules regulating foreign national spaza shops that were completely out of sink with legal and constitutional frameworks. This is most clearly illustrated by the North West Premier’s call to confiscate all foreign national operated spaza shops in his province – despite asylum seekers and refugees possessing the right to operate businesses in the country.

Furthermore, many of the rights in the constitution are corner stones for political freedom in the country. When political actors rest their claims on economic interests rather than deriving them from principles such as dignity, equality and inclusiveness then political freedom becomes undermined. For example, South African spaza shopkeepers failed to recognise foreign nationals as equal human beings, thus curtailing their ability to engage freely in political debate and decision-making. Instead mediators and South African spaza shopkeepers shut down attempts by foreign national spaza traders to voice independent opinions and meetings were littered with insults and personal threats on participants’ lives. The outcomes of these engagements were not mutually debated and negotiated agreements that aimed to further the public good, but rather unequal arrangements that were entered into under duress.

⁵⁹¹ Arendt *The Human Condition* (note 33) at 40.

The underpinning of the political sphere with economic concerns stifles political freedom in other ways. For example, many community leaders saw their role as largely economic, and leveraged their position of authority to threaten and extort bribes from foreign national community representatives. At the same time state officials neutralised township activism through financial and technical support and dependency, which was distributed through political channels. Thus, as Arendt emphasises, the political sphere of public freedom becomes threatened when politics centres on issues relating to the private domain of the home.

The collaboration between the state and grassroots informal structures also realises few benefits to low-income residents, and has done little to address broader systemic inequality and poverty in society. Grassroots organisations, having largely abandoned their political goals, have become isolated interest groups advancing the economic concerns of their members with little thought for the wider impacts of their demands. When working together, the situation is further aggravated, as grassroots interest groups become increasingly incorporated within state patronage networks. Furthermore, political leaders within the state increasingly ignore the limits of the country's constitutional framework as well as their basic task of advancing citizens' socio-economic wellbeing in an incremental and measured way in order to meet the isolated demands of grassroots interest groups. This is made more complicated by the fact that South Africa experiences a conflicted social realm where emancipatory calls for economic mobility come into conflict with the basic needs of the people.

Ultimately the fractured social realm is unable to provide a political venue to deliberate on progressive and widespread socio-economic transformation and justice in society. The state's bureaucratic and complicated administrative processes mean that there is no platform for citizens to participate in direct political action in partnership with the state. Instead state consultative processes are sporadic, and recommendations need not be taken up. Likewise the political values and strategies of the UDF did not persist into the post apartheid era. What remains in South African townships are informal grassroots organisations which are largely interest groups that demand agreement (often on threat of force) rather than debate and free exchange of opinions. The NGOs based in more affluent neighbourhoods and city centres are largely top-down, enjoy little popular following, and engage the public

largely through press releases or once off seminars, rather than regular discussion and debate between equals. There is thus almost no established political realm in post apartheid South Africa where actors from all walks of life can freely engage in genuine discussion, debate and deliberation about the common challenges society faces.

The end consequence is that the transformation of South Africa's unequal society is left unaddressed and low-income township residents become increasingly frustrated. The resulting battles between disgruntled citizens and the state are played out against foreign national spaza shopkeepers, who fall outside of the body politic and its legal protections. Thus the shop *gevaar* sees foreign national spaza shops become set up by South African traders as proxy targets for both popular anger against the state, and state attempts to apportion fault elsewhere and demonstrate its allegiance to the 'people'. The thesis thus argues that the governance of foreign national spaza shops illustrates that the South African political sphere is not geared towards meaningful economic and social transformation promised at the advent of democracy. The collaboration between state and non-state actors does little to address each sphere's deficiencies. To the contrary their cooperation weakens both their abilities to address the needs of poor marginalised township residents and erodes the political gains of the liberation struggle.

6.4 Concluding thoughts

The thesis' critical assessment of the governance of foreign national spaza shopkeepers demonstrates that the generation of laws and normative orders - through governance - is a valuable means to understand the broader society that we live in and the nature of its politics. It shows how the political sphere has become swayed by economic concerns, which in turn shapes the nature of laws and social rules and their manner of enforcement. When a state with weak authority and claiming to advance the economic interests of citizens comes up against pressing social discontent and calls for economic emancipation, it sees the private concerns of nationals come to dominate the political realm altogether. Governance actors within the state scramble to show commitment and allegiance to their constituencies, with the result that laws and social rules come to separate from constitutional boundaries, and are decided on the basis of group membership and private interest. The centring of politics on the fragmented private interests thereby has the effect of undermining

constitutional rights and political freedoms. This results in marginal groups falling outside the protections of the law and their lives exposed to death. It also weakens the ability of political actors to address systemic and underlying causes of socio-economic grievances.

The fractured social thus raises many questions about popular notions of constitutional democracy and grassroots engagement. It highlights that when devolved power hinges on isolated economic interests it can undermine political freedom and participation. Goals are achieved not through persuasion, but through threats, violence and even death, largely meted out against society's most vulnerable. At the same time laws evaporate due to ambiguous and contested state authority, and become replaced by informal *ad hoc* degrees and social rules born from political expediency. These themes are pertinent to other regions that have likewise witnessed the 'rise of the social' in contexts of poverty, informality and emancipatory politics.

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Annexure 1: Research protocols for initial research culminating in report titled 'Elusive Justice: Somali traders' access to formal and informal justice mechanisms in the Western Cape' (Vanya Gastrow with Roni Amit (2016) African Centre for Migration & Society)

A) Question to Somali shopkeepers

1. When did you open your shop and where?
2. Incidents of crime affecting your business
3. Police responses to crime/crimes
4. Community responses
5. Are you affected by shop searches and fining?
6. Any informal agreements regulating business?
7. When did crime first start to increase and why?
8. When did major influx of Somalis to Cape Town occur and why?
9. Why do Somalis move around between different towns and city in South Africa?

B) Questions to residents

1. Describe local community structures. How do they work?
2. What do you think of Somali shopkeepers opening shops?
3. Do Somali shopkeepers need permission from street committees to open shops. Do some open without permission? What happens to such shops?
4. Are Somali shopkeepers integrating? Do they attend community meetings? Do other foreigners attend community meetings?
5. Are community structures important to keeping law and order in townships? How?
6. Do street committees investigate attacks on foreign shops? Why or why not?
7. Do you think foreign shopkeepers are here legally or illegally? Why?
8. Are shops ever looted during service delivery protests? If so why and how does it begin? What is the response of the police?
9. What do you think the solution is?

C) Questions to police:

1. For example any robberies, hijacking, crimes organized by SA traders, crimes organized by Somali traders?
2. Who are the alleged culprits of attacks?
3. When did patterns of crimes against Somali shopkeepers first begin to become noticeable in the area?
4. When did Somali traders first begin opening businesses?
5. When did robberies of Somali shops first start becoming noticeable?
6. When did orchestrated crimes carried out by competing SA traders start becoming noticeable. Has such crime subsided?
7. Do police experience any particular difficulty investigating crime committed against Somali shops, if so what types of difficulties?
8. What kind of factors strengthen investigations into shop attacks?

D) Questions to prosecutors:

1. Is business robbery the same as robbery at non-residential premises?
2. Have you ever been involved in cases regarding crime committed against Somali traders?
3. What types of crimes were committed against the Somali traders in the cases you were involved in?
4. Who were usually the accused in such cases and what were their motivations?
5. When did you first come across Somali shopkeeper cases?
6. Have you come across cases where Somali complainants have accused other Somali traders of crime? - What was the nature of the dispute leading to such crime?
7. What are the main difficulties experienced prosecuting crimes affecting Somali traders?
8. Have you ever prosecuted crime committed against South African traders or residents in your area? If so, did you tend to experience the same types of difficulties?
9. Have you secured any convictions in respect of crime committed against Somali traders? What were the key factors that led to the success of the case?

10. Do you think that some statements may have been written without the assistance of a translator?

Annexure 2: Focus group protocol for report titled 'Somalinomics: A case study on the economic dimensions of Somali informal trade in the Western Cape' (Vanya Gastrow with Roni Amit (2016) African Centre for Migration & Society)

How do businesses work?

1. Location of shops: How do you choose where to open businesses? Why in townships? Is there a difference between black and coloured townships? Is there higher supermarket competition in coloured townships?
2. Do you place low or higher mark-ups on goods? Why?
3. Why rent shops from landlords?
4. Supply practices: collective buying? Sharing transport? Bulk buying?
5. Employment and housing practices: Are spaza shop employees relatives or of the same clan? Are they newcomers to SA? Do some shops employ SA shop assistants?
6. How do Somalis raise investment into shops?
7. Do you operate shops alone or in partnership? Why use multiple shareholding as a means of shop ownership?
8. What offerings and services do you provide to draw customers – e.g. credit for pensioners

Contribution to the economy - discuss:

1. Rent to landlords
2. Small-scale suppliers and manufacturers
3. The wholesale market
4. South African employees (e.g. cleaners) working in Somali shops
5. South Africans working for Somalis in Bellville
6. Consumers
7. Somali traders