

**Seventh Forum on Minority Issues
25 & 26 November 2014**

**“Preventing and addressing violence and atrocities targeted
against minorities”**

***Alana Bailey, Deputy CEO: International Affairs
AfriForum***

AfriForum is a South African civil rights organisation focusing on minority rights (and especially Afrikaner rights). It aims to activate the South African civil society to participate positively in the promotion and protection of minority rights outside the realm of party politics. Currently it has between 112 000 and 113 000 members and 135 branches at local level countrywide in South Africa. As such, AfriForum is concerned about the violence and atrocities targeted against minorities in South Africa, an increasing phenomenon that is being met with denial by the authorities, or is written off as mere crimes. The complex nature of these incidents require specialist, impartial attention to ensure that the situation does not deteriorate even further.

A specific manifestation of such violence that is a primary concern for AfriForum, is farm attacks. The South African government's failure to curb this phenomenon, is one of the country's most pressing concerns. Consequentially, a campaign for the prioritising of farm attacks is one of AfriForum's principal campaigns. According to calculations in 2013 of a leading authority on crime research, the Institute for Security Studies, and the agricultural union, TAU SA, the farm-murder rate amounts to between 120 and 130 murders per 100 000. This is more than four times the South African murder average, which is one of the highest in the world at 31 per 100 000 per year; and more than 17 times the world average for murder, which is put at about 7 per 100 000 per year. These farm attacks are being perpetrated against members of all groups; however most of the victims of such attacks are Afrikaner farmers.

South Africa is a country of minorities. Of the eleven major identity groups in the country, no single cultural group constitutes a majority.

As a result of this complicated situation, measures were taken in the South African Constitution of 1996 to protect the rights of all South African minorities. This included the establishment of institutions to guard democracy and ensure that residents are protected from any form of abuse by any individual, group, party or other institution. These bodies include:

- the Auditor General;

- the Commission for Gender Equality;
- the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- the Independent Electoral Commission;
- the Public Protector;
- the South African Human Rights Commission;
- an independent authority to regulate broadcasting (this role is being fulfilled by the Independent Communications Authority of South Africa);
- the Pan-South African Language Board.

The principle of safeguarding the rights of minorities by the establishment of such institutions via the Constitution, seems to be an ideal solution. However, in practice, this has not proven to be the case in the past 18 years. The results of a survey undertaken in South Africa's Gauteng province by a partnership comprising the University of Johannesburg, the University of the Witwatersrand, the Gauteng government and the South African Local Government Association revealed in August 2014 that levels of racial and xenophobic intolerance are increasing. Other studies point to a similar increase in gender-based violence.

AfriForum believes that the lack of success achieved by these bodies can be ascribed to the interference of the South African ruling party, the ANC.

The principal action plan of the ANC is the National Democratic Revolution (NDR). Philosophically, the NDR is anchored in Marxism, Leninism, Stalinism, Maoism, Existentialism and varieties of Africanism. It emphasises radical social, political and economic transformation.

A requirement of the plan is the consolidation of power bases in all fields of society, politics and the economy. The political party has to coordinate and manage such power bases with the revolutionary ideal as objective. Strategies deployed to achieve this goal, include the use of legislation and cadre deployment. Such cadres take over and consolidate power bases in strategic positions, as political control must precede economic control and social reconstruction on way to the achievement of the NDR's revolutionary ideals.

If the abovementioned bodies were to function as intended, they would be a formidable impediment to the implementation of the NDR or any similar programme promoting the interests of a specific group at the cost of the rest of the country's residents, especially members of minorities.

Therefore these institutions are in practice increasingly being paralysed, due to cadre deployment within, but also the provision of insufficient funding which makes it impossible for them to operate optimally, by not providing them with any binding powers to make their rulings enforceable and by casting suspicion on the competence and

agendas of these bodies whenever they dare to criticise the ruling party or any of its representatives.

The recent track-record of these institutions reveals the extent of the paralyses that has already set in. Due to limited time, only a few examples in this regard will be mentioned, based on issues that AfriForum is dealing with currently.

- The **Auditor-General** regularly uncovers mismanagement and corruption in state organisations, yet the guilty parties are often merely redeployed in other positions before disciplinary action can be taken against them. Misappropriated funds are rarely recovered. This explains why South Africa's Transparency International ranking dropped from number 36 in 2002 to number 72 in 2013.
- The **Commission for Gender Equality** that was supposed to be independent from political parties and assured of wide powers by the Constitution, was a casualty of the emerging politics of patronage, as Prof Shireen Hassim, Professor of Politics at Wits University, describes it. While gender-based crimes increase in South Africa, with specific reference to rape and so-called corrective rape, this commission's voice is not heard. Its past is clouded in controversy. In 2010, a report by independent auditors found the commission to be in such a chaotic state that it recommended that it should be placed under "mentorship". Currently, it is difficult to see whether the commission is doing anything of significance. The most recent media statement on its website dates back to 10 October 2014. In the past 4 months, only two entries appeared on its Facebook page.
- The **Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities** is increasingly focusing on nation building, instead of on the protection of communities' rights – the role it was established to fulfil. Cadre deployment was the final kiss of death to this commission, which is now under the firm control of the ANC. As a consequence the management of the commission now regularly attends the ANC's working group meetings on cultural affairs in order to align the commission's activities with the aims of the ANC. The commission also paid the expenses of its chairperson to attend the ANC's centenary celebrations. The hijacking of the commission by the ANC has not only resulted in the commission being of no use to minorities, but it is now even being used as an instrument to oppose the claims of minorities. When AfriForum in 2012 started a campaign to protect Afrikaans as a medium of education in schools, the commission issued a statement criticising AfriForum's campaign. Ironically, the commission should have been the one institution which AfriForum ought to have been able to approach for support in this regard. Complaints to this commission by AfriForum were met with the promise of a meeting. It was scheduled for the end of October, but a few days beforehand, we were informed that the appointment

had been cancelled as something more important had come up. No efforts have been made by the commission to reschedule.

- The **Independent Electoral Commission** seems to be functioning well, as the 2014 elections had been found to be free and fair, but the shadow of a corruption scandal involving a contract for the leasing of property to the value of R320 million is hanging over the Commission. As a result of this, the Chairperson, Pansy Tlakula, resigned. Even though the scandal does not seem to be directly related to election processes, the commission cannot afford any uncertainty about its independence, impartiality and credibility. Therefore this scandal has direct bearing on perceptions regarding the state of democracy in South Africa.
- The **Public Protector** has an ombudsman function and may investigate any level of government. The most notorious investigation of the recent past is Public Protector Thuli Madonsela's investigation of the so-called Nkandla scandal, involving R246m of taxpayers' money spent on State President Jacob Zuma's private homestead. Her findings that the President should be held accountable for the costs, saw threats against the Public Protector surfacing. This included personal threats, as well as warnings that she would be removed from her position and threats of litigation. Every possible technique has been used by die ANC to discredit her findings, culminating in an ad hoc parliamentary committee comprising ANC members only, finding the President had not done anything wrong. In consequence, Parliament has literally become a battle scene with riot police being called in to remove members of opposition parties for making statement contradicting the ad hoc committee's ruling.

The intimidation of the Public Protector is not unique. In July 2011, AfriForum requested the United Nations Special Rapporteur for Human Rights Defenders to come to the aid of the Public Protector after she was similarly subjected to intimidation while investigating yet another lease scandal involving senior police officials. As a result of her investigations, Police Commissioner Bheki Cele, as well as Ministers Sicelo Shiceka and Gwen Mahlangu-Nkabinde had to step down from their positions.

In October 2014 her pleas for additional funding in order to be able to do her work properly, fell on deaf ears. What the outcome of this refusal will be, remains to be seen.

The abovementioned cases prove that any action by a constitutional body that dares to criticise the ruling party, is a shortcut to intimidation and if possible, even destruction – an intolerable situation.

- The independence of the **Independent Communications Authority of South Africa** can be questioned too. During the elections of 2014, the South African public broadcaster, the SABC, refused to air two advertisements of opposition parties, the DA and the EFF, criticising the ANC. The decision to refuse the ads was upheld by ICASA, causing press freedom organisations to raise red flag about the state of media freedom in South Africa. In October 2014 the Minister of Communications, Faith Muthambi, seemingly acted unlawfully by ordering ICASA board members to vacate their offices, once again raising questions about the independence of ICASA.
- The **South African Human Rights Commission** is chaired by Adv Lawrence Mushwana, a former Public Protector notorious for investigating a so-called Oilgate scandal. This incident involved state funds being transferred to the ANC shortly before the 2004 general elections. Mushwana's investigation and findings were so superficial, that the Court of Appeals rejected his report. Judge Robert Nugent, with four colleagues concurring, found that Mushwana's investigation "was so scant as not to be an investigation at all". This casts serious doubts on the impartiality of Mushwana as individual, but also re the body he heads. Once again a lack of funding and powers to enforce rulings hampers the efficiency of the Commission.

In May 2008, South Africa experienced horrendous, wide-spread xenophobic attacks. It took the Commission two years to issue a report regarding this matter. Meanwhile these attacks continue, with incidents happening all over the country and many foreign nationals testifying to intimidation, violence and exploitation by representatives of the authorities, as well as members of the public. The report seems to have contributed little towards finding solutions.

In September 2014 the Commission held hearings on the abovementioned issue of farm attacks in South Africa. AfriForum's report compiled for the hearings is attached. We have just been informed that no report or ruling in this regard will be made available by the SAHRC before well into 2015. Meanwhile these violent attacks involving a disproportionate amount of violence, torture and murder continue daily in our rural areas, putting the food security of all South Africans at risk, decimating agricultural expertise in the country and causing this vulnerable minority to live in a state of constant fear.

- The **Pan South African Language Board** was created in terms of the Constitution with the aim of protecting and promoting language rights in the country. It currently is undergoing yet another process of restructuring after mismanagement and funding misappropriation scandals. Currently it fulfils little more than a symbolic role when the language rights of South Africans are disregarded. AfriForum has been and is involved in numerous actions where the

state has to be taken to court to ensure compliance with constitutionally guaranteed language rights. In 2012 the Use of Official Languages Act was adopted after such litigation. The regulations of this act required of all national state and state related departments and institutions to publish language policies for public inputs and adoption before November 2014. A mere five institutions (out of hundreds) complied with the requirements to a degree. The cut-off date was postponed with six month for the rest. Meanwhile there is no legal framework according to which these institutions may be held accountable when minorities' language rights are violated. This illustrates the blatant disregard the ANC government has for basic human rights.

One of the worst cases we can use to prove the outcome of this situation, involves the sexual abuse of a boy, aged four. In 2013 AfriForum became involved in this case. The boy's mother is a cleaner, earning less than 25 Euros a month. When she discovered that he had been a victim of sexual molestation, she immediately laid charges against the alleged offender. According to procedure, a case worker should immediately have been appointed to evaluate the boy and present the court with a report in order for legal action to proceed. No case worker could be found that spoke the language of the child (which incidentally is Afrikaans, the third most commonly used first language of the eleven official languages of South Africa, spoken by 13,5% of all South Africans). When still not having a report after more than two months, the court threatened to dismiss the case. AfriForum stepped in and provided funding for a private case worker to be involved. The trial is being heard now, with several other victims of this man coming to the front to testify against him now. However, how many similar cases of people being denied justice are out there simply because they speak a minority language, have little income and are therefore in effect sentenced to suffer atrocities?

The above-cited examples illustrate that a constitution may provide measures to protect minorities against human rights violations, abuse, violence and atrocities. However it also illustrates that bodies instituted to provide such protection, may even in a so-called democracy, struggle to remain functional and impartial.

AfriForum suggests the following solutions:

- Such institutions should be provided with adequate funding, in such a manner that a specific majority, interest group or political party cannot sever the funding or manipulate it in order to exert control over the body itself.
- The spending of such funds should be transparent and staff misappropriating resources should be held accountable immediately.
- The processes followed to appoint staff, should be transparent and protected from interference by any majority, interest group or political party. The impartiality and credibility of staff should be unquestionable.

- Adequate powers should be given to these bodies in order to enforce their rulings.
- Where the state, a majority, an interest group or political party exerts undue influence on any such body, measures should be in place to protect the body, its rulings and its staff.
- Civil society, the media and the judiciary should all remain vigilant and should any irregularities regarding the above processes come to light, alert the public immediately, while taking steps to counteract the violations.
- The international community, represented by organisations such as this forum, also have a crucial role to play in this regard, by making countries aware of best practices to prevent atrocities being committed against minorities. It should exert all possible influence where such atrocities occur, or even where the potential for such violations of human rights to take place, exist, to ensure the protection of the minorities.

The South African situation set out above is negative. We realise that situations in some other countries are far more dire, but that is no reason for allowing the situation in South Africa to deteriorate even further. We appeal to the UN Forum on Minority Issues and the international community in general to take note of the situation and to join us in efforts to have a sound balance of forces restored, as the South African Constitution had intended. This would also mean voicing support for the protection of the independence of the South African media and by guarding the independence of the country's judicial system.

We thank you.