

**INDIVIDUAL COMPLAINT OF SOLIDARITY TRADE UNION (SOUTH AFRICA) TO THE
COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION**

**TO THE: UNITED NATIONS COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION**

**CONCERNING: EARLY WARNING PROCEDURE: SOUTH AFRICAN
GOVERNMENT'S CONTRAVENTION OF ARTICLE 2 READ WITH
ARTICLES 4, 5 AND 6 OF THE COVENTION ON THE
ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

BROUGHT ITO: ARTICLE 14 OF THE CONVENTION

MAY 2017



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Information About Solidarity

Solidarity is the oldest Trade Union in South Africa. It represents approximately 170 000 members. Over the years Solidarity has launched, and joined, several human rights disputes, ranging from the right to equality, language disputes, religious disputes and the like.

Solidarity is an organisation that aims to ensure that the rule of law is upheld, human rights are respected and that Government is held accountable to the Constitution and International Conventions.

In submitting this early warning, Solidarity acts;

- in its own interest as a non-government organisation with standing;
- in the interest of its members who reside within the Republic of South Africa;

Who have suffered actual or potential prejudice in consequence of the South African Governments' failure to, without bias, investigate, prosecute and or discipline State officials and politicians who have made discriminatory statements and racist hate speech in contravention of Article 4 read with Article 5 of the Convention.

Solidarity has further received the support of **405 000** South Africans to submit this complaint.

An Early Warning

South Africa had its first democratic election in 1994 and Nelson Mandela became a symbol of reconciliation. However, over the last few years there has been a rapid escalation of hate speech by extremist organizations and elected and appointed officials, against foreigners and those classified as white.

Notwithstanding the fact that complaints have been lodged, at the appropriate institutions, the high-ranking officials who have committed these acts have in most cases not been punished, reprimanded or disciplined.

As will be noted from the factual analysis below, and the report attached hereto, the State and State Institutions such as the South African Human Rights Commission have been quick to condemn, investigate and prosecute ordinary

citizens who make themselves guilty of discriminatory statements and or racist hate speech, albeit in a racially biased manner, however politicians and high ranking state officials have been left unscathed.

The prohibition on hate speech and discriminatory statements has been applied horizontally between citizens, but not vertically between state officials and citizens.

Solidarity submits that:

- 1) There is a presence of a significant and persistent pattern of racial discrimination in South Africa;
- 2) There is a presence of a pattern of escalating racial hatred and violence, racist propaganda and appeals to racial intolerance by persons, groups or organizations, which are notably committed by elected or other State officials;
- 3) A practice of impunity regarding:
 - a. Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin;
 - b. Development and organization of militia groups and/or extreme political groups based on a racist platform

In the Committee's concluding observations on the fourth to eighth periodic reports of South Africa, it has already expressed its concerns at the rise of hate crimes and hate speech in the State party including physical attacks against certain ethnic groups and non-citizens, discriminatory statements by State officials and politicians, and the increase in the use of media and the internet to propagate racist hate speech.¹

In its concluding remarks the Committee made, amongst others, the following recommendations:

The Committee further recommends that the State party ensure all incidents of hate crimes and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status. The Committee calls on the State party to conduct educational campaigns to address the root causes of prejudices and promote tolerance and respect for diversity, with a focus on the role and responsibilities of journalists and public officials in that regard.

¹ Paragraphs 12 and 13 of the concluding observations

Articles Violated

Solidarity submits that the South African Government has violated and failed to comply with its obligations in terms of Article 2(1)(a)(b) and (c) of the Convention read with Article 4, Article 5(a) and (b) as well as Article 6. The aforementioned Articles provides as follows:

Article 2

1. *States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*
 - (a) *Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
 - (b) *Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*
 - d) *Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) *Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the*

provision of any assistance to racist activities, including the financing thereof;

- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;*
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;*
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;*

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Facts Warranting an Early Warning

“We should be aware that hatred is not a natural and spontaneous sentiment—it is usually the outcome of propaganda and incitement to hatred, hostility and violence carried out at several levels, including social, political and media.”

Navi Pillay, United Nations High Commissioner for Human Rights²

Policies or practice of impunity regarding development and organization of extreme political groups based on a racist platform

#FeesMustFall and Black First Land First

The student movement #FeesMustFall was formed in October 2015. They originally called for a freeze on the increase in tertiary tuition fees. Over time their demands shifted to free tertiary education for all students. While this goal has noble features, the methods used by the organization have been violent and racist.

Between October 2015 and November 2016, campuses across South Africa were closed down for weeks at time. Poor students withstood the worst of the shut downs since they were deprived of access to libraries and computer centres. Minimal access to other educational resources left them particularly vulnerable.

UCT fallist leader Masixole Mlandu stated:

It must be known that we are prepared to push the boundaries of power, for us there is no turning back beside death. We will usher into this country

² United Nations Human Rights Office of the High Commissioner, Xenophobia Factsheet, 2013.

an attitude of black rage, black liberation, an attitude that threatened the foundation of whiteness. We are clear South Africa by the end of this year will have to confess to its sins.³

Slovo Magida, a UCT student protestor was seen wearing a shirt with the words “Kill All Whites”.⁴ After Wits student leader Mcebo Dlamini was arrested for inciting violence on campus, protestors graffitied the words “Fuck the Jews” and “Kill a Jew” onto a university building.⁵ Dlamini had previously stated: “What I love about Hitler is his charisma and his capabilities to organise people. We need more leaders of such calibre. I love Adolf Hitler”.⁶ The anti-Semitic graffiti may have been linked to this statement.

Nationwide shutdowns of Universities were accompanied by buildings being attacked and destroyed. The University of North West Administration and Science buildings were burned.⁷ The University of Johannesburg main auditorium was torched, at a loss of R100 Million (\$7.5 Million).⁸ Books were burned at libraries at the University of Kwa Zulu Natal⁹ and the University of the Witwatersrand.¹⁰ Artworks were burned at UCT.¹¹

These acts of arson were performed against a backdrop of overtly racist speech from leaders in the fees must fall movement.

³ <https://www.facebook.com/masixole.mlandu/posts/979557248839665>

⁴ *Hotz v UCT* 2016 ZASCA 159

⁵ <https://www.thedailyvox.co.za/allegations-anti-semitism-wits-graffiti-calling-kill-jew-found-campus/>

⁶ <http://witsvuvuzela.com/2015/04/27/src-president-says-i-love-hitler/>

⁷ <https://mg.co.za/article/2016-02-25-nwu-closes-mafikeng-campus-indefinitely>

⁸ <https://www.dailymaverick.co.za/article/2016-05-17-uj-arson-university-gets-interdict-while-no-aggrieved-parties-claim-responsibility/>

⁹ <http://www.enca.com/south-africa/fire-breaks-out-at-ukzn-howard-college-law-library>

¹⁰ <http://www.news24.com/SouthAfrica/News/100-books-destroyed-in-wits-library-fire-20161020>

¹¹ <http://www.iol.co.za/capetimes/news/paintings-set-alight-at-uct-1985428>

Lyndsay Maarsdorp, a fallist and the national spokesperson for Black First Land First stated:

We can no longer talk of black pain as if it is not affecting black people. Neither can we talk of white privilege as if it is not benefiting white people. Black pain is because of white privilege. Black people are oppressed, because white people remain the oppressor. If we want to destroy white systems then we must too be prepared to destroy the ones those systems benefit. Its utter stupidity to think white people will allow us to destroy the thing that gives them privilege and us pain. We must now practice a degree of madness. Destroy the systems, capitalism, the neocolonial structure, burn the buildings, destroy the enemy!¹²

When will we kill them? ... South Africa. A country without a name. Just a location. A reminder to coloniser where the land mass is, which they stole... Fuck White People. ... I have aspirations to kill white people, and this must be achieved!¹³

Fallist leader Ntokozo Qwabe was filmed assaulting a white law student. In response, he said that he wished he'd "*whipped the white apartheid settler colonial entitlement out of the bastard.*" When asked by the Sunday Times whether #FeesMustFall had become anti-white racism, he retorted that "*there can never be racism against white people.*"¹⁴

The claim is particularly galling, given that whites are an ethnic minority comprising less than 9% of the population.¹⁵ Whites hold very few positions in government. The President's cabinet contains 35 Ministers and 36 Deputy Ministers. Only one Minister is white¹⁶ and two Deputy Ministers are white.¹⁷ Every court in South Africa is headed by a Judge President or Chief Justice. The Chief Justice of the Constitutional Court is black and there are no white Judge

¹² <https://twitter.com/LindsayMaasdorp/status/780484461880311809>

¹³ <http://www.politicsweb.co.za/documents/raceballs-4>

¹⁴ <http://www.timeslive.co.za/sundaytimes/opinion/2017/01/15/So-Many-Questions-On-FeesMustFall-in-2017>

¹⁵ South African 2011 Census

¹⁶ <https://www.parliament.gov.za/ministers>

¹⁷ <https://www.parliament.gov.za/deputy-ministers>

Presidents on the Supreme Court of Appeal or any of the eight provincial High Courts. The only court headed by a white Judge President is the specialist Competition Appeal Court.¹⁸

University of Cape Town (UCT) Lecturer Dr Lwazi Lushaba addressed a group of protesting students saying, *"we're happy to coexist with white people, but they need to know, primarily these institutions belong to us."*¹⁹

Max Price, the UCT Vice Chancellor stated: *"what we have pursued is an appeasement policy in the last year."*²⁰ UCT, protestors were granted clemency and despite their violent and racist behaviour they have been allowed to continue their studies without sanction.²¹

Grave Statements and Racist Propaganda by Elected Officials

Member of parliament and leader of the Economic Freedom Fighters (EFF), Julius Malema has used overtly racist speech to mobilise support and garner votes. After being charged with breaching the Riotous Assemblies Act for inciting his followers to invade land he spoke to a rally of supporters outside of court. He stated the following:

I am here to disturb the white man's peace. They are right, the white man has been too comfortable for too long. We are here unashamedly to disturb the white man's peace. Because we have never known peace. We don't know what peace looks like. They have been living peacefully. They have been swimming in a pool of privilege. They have been enjoying themselves because they always owned our land. We, the rightful owners, our peace was disturbed by white man's arrival here. They committed a black genocide. They killed our people during land dispossession. Today, we are told don't disturb them, even when they disturbed our peace. They

¹⁸ <http://www.judiciary.org.za/heads-of-superior-courts.html>

¹⁹ <http://www.news24.com/SouthAfrica/News/uct-lecturers-must-refuse-to-teach-student-activist-20161005>

²⁰ <https://martinplaut.wordpress.com/2017/01/09/university-of-cape-town-the-zombies-have-taken-over-the-institution/>

²¹ https://www.uct.ac.za/usr/downloads/2016-11-07_UCT_resolution.pdf

found peaceful Africans here. They killed them! They slaughtered them, like animals! We are not calling for the slaughtering of white people, at least for now.

We will not chase white people into the sea. We will give them portion... That is where you stay. And you can't own bigger than us. You are a visitor. Visitors must behave. They must know the land belongs to the people of South Africa, the indigenous people of South Africa. [...] For as long as the land is not in the hands of black people we remain a conquered nation! We are conquered! We are defeated! 1994 means NOTHING without the land! Victory will only be victory if the land is restored in the hands of rightful owners. And rightful owners unashamedly is black people. No white person is a rightful owner of the land here in South Africa and in the whole of the African continent. This is our continent, it belongs to us.²²

EFF spokesperson Mbuyiseni Ndlozi speaking to a crowd outside the Middelburg Magistrate's Court said the following about Malema's speech:

They say Commander in Chief is inciting violence. Commander in Chief says to them 'You slaughtered Black People in order to take this country. We should be slaughtering you! We should also be calling for white genocide. We should be calling for white massacre. We should be arming all of you! That you go and take revenge! But we are not doing that!' Nobody has called for a white massacre. Nobody has called – none of the African leadership – has said to our people 'Go and take revenge!' We are not saying that! We are not saying that! You will not find any of our leaders asking for revenge. Yet when we say 'Bring back the land!' they say we are inciting violence....²³

²²<http://www.politicsweb.co.za/news-and-analysis/we-arent-calling-for-the-slaughtering-of-white-peo>

²³ <http://www.politicsweb.co.za/documents/raceballs-8-special-race-hate-edition>

The editor of Politicsweb, James Myburgh has drawn parallels with the words used by the EFF and the tactics used by NAZI propagandist Joseph Goebbels.

The propaganda of Goebbels' (and others) aggressively accused the Jews of having done what the National Socialists proceeded to do to them. Thus, the expulsion of the Jews from state employment and the professions was justified by propaganda claiming the Jews had unfairly seized the best jobs for themselves; the dispossession of the Jews by propaganda that they had stolen their wealth from honest Germans; the murder of the Jews by propaganda that they were murderers of Germans; the war on the Jews by the claim that the Jews had declared war on Germany; and so on.

The language used [by Malema] ("White People", "they", "them") combines all white individuals – the young and old, the long dead and the yet to be born – into a single group. Highly negative attributes (murder, criminality, genocide, viewing black people as "animals" etc.) are then ascribed to each member of this entity. This is done by taking crimes committed or allegedly committed by members of this group – recently or hundreds of years ago - and then attributing guilt to the group as a whole. The suggestion is then made that "White People" deserve to be punished, but because of the great powers of patience and forgiveness of "Black People" they have not (yet) been. However, if "they" continue with their crimes and "racism" against Black People, and refuse to return that which they stole, all bets are off the table.²⁴

During the ANC's 103rd birthday event in Cape Town in 2015, the President of South Africa, Jacob Zuma said Jan van Riebeeck's arrival in South Africa was the beginning of all South Africa's problems (City Press, 17 June 2016). *"How can you say we told the Afrikaners to go? No, I said the problem began when Jan van Riebeeck came here,"* he said. According to him, Van Riebeeck's arrival paved the way for racial discrimination.

Several complaints about the incident were quickly lodged with SAHRC due to

²⁴ <http://www.politicsweb.co.za/opinion/malema-goebbels-and-the-art-of-racial-propaganda>

Zuma's extremely high profile and the extensive executive influence he wields as head of state. The rights body confirmed in February 2015 that it was indeed examining complaints of hate speech against Mr Zuma (News24, 18 February 2015). "*We have accepted these complaints and have started with the investigation,*" SAHRC spokesperson Isaac Mangena said. The ANC's response this, via Keith Khoza, read as follows: "*We believe that the president, whatever remarks he made, would be vindicated.*" A thorough Internet search showed no proof that the ANC ever denounced the president for those remarks or took special punitive measures against him. No evidence could also be found of any other political party, except the Freedom Front Plus who laid one of the charges at the SAHRC, condemning the remarks.

In June 2016, the SAHRC set a new deadline of 4 July 2016 for Mr Zuma to reply to the complaints against him (News24, 17 June 2016). This was after the FF+ as one of the complainants had to bring an application in terms of the Promotion of Access of Information Act (PAIA) to force the SAHRC to provide information on the reason why no progress had been made with the investigation. Zuma also showed blatant disregard for an earlier deadline of 8 May 2015 to provide the SAHRC with a response, with the SAHRC taking no action against him. The SAHRC's response was that the many complaints on the matter had to be consolidated. No further developments a propos the SAHRC's handling of the matter could since be found

Alleging racism as a diversionary tactic

On 30 March 2017, President Zuma fired Minister of Finance Pravin Gordhan. South Africans of all races and political affiliation took to the streets to demonstrate. Protestors marched outside Parliament, the Union Buildings and in city centres across the nation calling for President Zuma to resign.²⁵

President Zuma responded to the marches against him by saying:

²⁵ <http://ewn.co.za/2017/04/07/thousands-join-anti-zuma-march-at-union-buildings>

There is a resurgence of racism in our country. It is also clear that racists have become more emboldened. The marches that took place last week demonstrated that racism is real and exists in our country. Many placards and posters displayed beliefs that we thought had been buried in 1994, with some posters depicting black people as baboons. It is clear that some of our white compatriots regard black people as being lesser human beings or sub-human. The racist onslaught has become more direct and is no longer hidden as was the case in the early years of our constitutional democratic order. Racists no longer fear being caught or exposed. In the fight to combat racism, we should look beyond only overt racist utterances and public displays that we saw during the marches last week. We should also look at the ideological and institutional machinations that continue to give racism more traction.²⁶

The President received explicit support from Black First Land First. Members of the organisation attended anti-Zuma marches sang "Zuma My President" and chanted "One Settler One Bullet" while holding placards that read "#HandsOffZuma".²⁷

Media Bias

"Propaganda is the first step to hell. Propaganda is always done by bringing the attention of the people to one side and taking the attention from the other side."

Hans Fritzsche, senior official in Goebbels' Propaganda Ministry²⁸

Solidarity has produced an extensive report outlining selective reporting on racism in South Africa, which is attached hereto. The report shows that racist statements made by whites received 1286 media mentions on average, while

²⁶ <https://www.dailymaverick.co.za/article/2017-04-10-trainspotter-abuse-inc-zuma-uses-hani-memorial-to-stage-counterattack/>

²⁷ <https://mg.co.za/article/2017-04-07-zuptamustfall-protest-gets-tense-outside-gupta-mansion-in-saxonwold>

²⁸ Leon Goldensohn, The Nuremberg Interviews: Conversations with the Defendants and Witnesses, at 59

racist statements by black received only 66 mentions on average.²⁹ This demonstrates that there is an overwhelming tendency in the press to ignore anti-white racism. James Myburgh notes that:

By contrast, every physical or verbal assault, or insult, or act of racial impertinence, directed by a white person against black people receives huge coverage and sets off wave after wave of condemnation. Demands are then made for the severest of punishments, no matter how disproportionate to the actual offence, and for ever more stringent measures to stamp out the scourge of (anti-black) "racism" once and for all. When media loses its sense of balance and proportion in this way – and becomes fixated on the wrongdoing of individuals from a particular minority – it has turned away from journalism towards racial propaganda.³⁰

On 4 January 2016, a Facebook post from Penny Sparrow, an estate agent in a small coastal town became national news. With the following statement, she racistly compared black beachgoers to monkeys.

These monkeys that are allowed to be released on New Year's eve and New Year's day on to public beaches towns etc obviously have no education what so ever so to allow them loose is inviting huge dirt and troubles and discomfort to others. I'm sorry to say that I was among the revellers and all I saw were black on black skins what a shame. I do know some wonderful and thoughtful black people. This lot of monkeys just don't want to even try. But think they can voice opinions about statute and get their way oh dear. From now I shall address the blacks of South Africa as monkeys as I see the cute little wild monkeys do the same, pick drop and litter.³¹

²⁹ Dr Eugene Brink and Connie Mulder, *Racism, hate speech and double standards: not a simple black and white matter*, 2017.

³⁰ <http://www.politicsweb.co.za/opinion/malema-goebbels-and-the-art-of-racial-propaganda>

³¹ <http://city-press.news24.com/News/penny-sparrow-back-in-court-on-criminal-charges-for-racist-comments-20160912>

Ms Sparrow was found guilty of hate speech by an equality court and received a large fine. The story received 4501 media reports and drew significant attention away from President Zuma.³²

Velaphi Khumalo, a member of the African National Congress (ANC) and government official responded to Sparrow with the following:

I want to cleans this country of all white people. we must act as Hitler did to the Jews. I don't believe any more that the is a large number of not so racist whit people. I'm starting to be sceptical even of those within our Movement the ANC. I will from today unfriend all white people I have as friends from today u must be put under the same blanket as any other racist white because secretly u all are a bunch of racist fuck heads. as we have already seen [all sic].

Khumalo's comment only received 136 media reports and was largely forgotten.³³

It is commonplace for anti-white statements to be expressed in the press. On 17 March 2017, the publication Black Opinion published an article by Xola Skosana stating that:

Helen Zille [former leader of the Democratic Alliance] can spew all the tripe she likes, she is safe for as long as we have Black liberals who sing, "Not All Whites Are The Same". The script should be one, whites came, whites stole, whites raped, whites killed and whites must pay!³⁴

On 16 January 2017, Foreign Policy published a story about the civil rights organisation Afriforum. The following quote from Panashe Chigumadzi was included in the article:

³² Dr Eugene Brink and Connie Mulder, *Racism, hate speech and double standards: not a simple black and white matter*, 2017.

³³ Dr Eugene Brink and Connie Mulder, *Racism, hate speech and double standards: not a simple black and white matter*, 2017.

³⁴ <http://blackopinion.co.za/2017/03/17/beware-black-liberals-like-ferial-haffajee/>

I believe all white people are structurally racist... I don't believe white South Africans are Africans. They remain settlers as long as they have not returned land to black people. I say white people should leave with what they came on ships with.³⁵

A History of Violence

In May 2008, South Africa was plagued by an outbreak of xenophobic violence. Sixty-two people lost their lives because of escalating hatred, which was left unchecked.³⁶ A Mozambiquen man named Ernesto Nhamuave made international headlines after he was beaten, stabbed and ultimately burned alive.³⁷

The Human Sciences Research Council produced a report on the attacks. The following quote is from a respondent who was interviewed:

We were against these people from the onset that's when terms like "makwerekwere" (derogatory term for foreigners) came about, we were against them in a light manner but now people are getting angry that is why they beat them up, their numbers are growing and some have babies this side it's as if this is their hometown; this violence happened because people are getting angry, this thing has always been there but it wasn't as strong as it is now. We never said we are happy to live with them but it was a light thing so people resorted to violence because of the realisation that the situation is getting serious.

The rhetoric used against white people mirrors much of the hatred that was expressed against foreigners. It is vital that action is taken before the onset of further tragedy.

³⁵ <http://foreignpolicy.com/2017/01/16/the-last-white-africans/>

³⁶ L.B. Landau (ed), *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa*, 2011

³⁷ <http://www.dailymail.co.uk/news/article-1024858/The-tale-flaming-man-picture-woke-world-South-Africas-xenophobia.html>

Reaction of the South African Human Rights Commission

As a NHRI, the SAHRC is guided by the Paris Principles adopted by the United Nations General Assembly in 1993 , and in terms of the declaration entered by the State under article 14(2) of the ICERD which confirms that, *'the South African Human Rights Commission is the body within the Republic's national legal order which shall be competent to receive and consider petitions from individuals or groups of individuals within the Republic's jurisdiction who claim to be victims of any of the rights set forth in the Convention'* the SAHRC is the institution whose task it is to maintain ICERD in South Africa. As far as racial matters are concerned, the HRC has a major role to play.

As will be noted from the attached report the SAHRC has been reluctant to investigate racial hate speech committed by public officials and members of parliament and where they have indeed investigate some complaints these investigations was overtly done in a racially biased manner.

The SAHRC's biasness towards white people was further confirmed by their comments made in the media regard the report published by Solidarity, where they have stated that:

Seeking to portray a sector of society, which continues to enjoy considerable social and economic privilege, as 'victims' based on superficial analyses of media reporting on incidents of racism on social media, is disingenuous

The SAHRC is mandated by the Constitution to monitor, protect and educate on human rights, not police private social media platforms or function as a 'Net Nanny'³⁸

In light of the aforementioned it needs to be noted that Solidarity has submitted a complaint to the SAHRC, however clear from the above reaction by the SAHRC is that the complaint will be ineffective.

Required Relief

General Recommendation 35 on the combating of racist hate speech states that:³⁹

States parties should give due attention to all manifestations of racist hate speech and take effective measures to combat them. The principles articulated in the present recommendation apply to racist hate speech, whether emanating from individuals or groups, in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events.

Incitement characteristically seeks to influence others to engage in certain forms of conduct, including the commission of crime, through advocacy or threats. Incitement may be express or implied, through actions such as displays of racist symbols or distribution of materials as well as words. The notion of incitement as an inchoate crime does not require that the incitement has been acted upon, but in regulating the forms of incitement referred to in article 4, States parties should take into account, as important elements in the incitement offences, in addition to the considerations outlined in paragraph 14 above, the intention of the speaker, and the imminent risk or likelihood that the conduct desired or intended by the speaker will result from the speech in question,

³⁸ <http://city-press.news24.com/News/more-media-coverage-consequences-for-white-racists-than-black-racists-solidarity-20170411>

³⁹ Adopted by the Committee at its eighty-third session (12–30 August 2013), at paras 7 and 16.

considerations which also apply to the other offences listed in paragraph 13.

It is submitted that the facts presented above confirm that:

- 1) There is a presence of a significant and persistent pattern of racial discrimination in South Africa;
- 2) There is a presence of a pattern of escalating racial hatred and violence, racist propaganda and appeals to racial intolerance by persons, groups or organizations, which are notably committed by elected or other State officials;
- 3) A practice of impunity regarding:
 - a. Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin;
 - b. Development and organization of militia groups and/or extreme political groups based on a racist platform

As such we request that the Committee:

- 1) Request the Secretariat to collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and non-governmental organizations on the situation under consideration;
- 2) Adopt a decision including the expression of specific concerns, along with recommendations for action, addressed to:
 - (i) The State party concerned;
 - (ii) The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, or the independent expert on minority issues;
 - (iii) Other relevant human rights bodies or special procedures of the Human Rights Council;
 - (iv) Regional intergovernmental organizations and human rights mechanisms;

- (v) The Human Rights Council;
- (vi) The Special Adviser of the Secretary-General on the prevention of genocide;
- (vii) The Secretary-General through the High Commissioner for Human Rights, together with a recommendation that the matter be brought to the attention of the Security Council

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