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**SUMMARY OF THE KEY FINDINGS AND RECOMMENDATIONS OF THE REPORT ON THE SAHRC INVESTIGATION INTO ISSUES OF RULE OF LAW, JUSTICE AND IMPUNITY ARISING OUT OF THE 2008 PUBLIC VIOLENCE AGAINST NON-NATIONALS**

**Introduction**

Following the outbreak of the public violence against non-nationals in May 2008, the South African Human Rights Commission (SAHRC) conducted an investigation to uncover underlying causes that led to the outbreak of violence in areas that were affected. The SAHRC, based on the findings the SAHRC formulated recommendations that require intervention from different government departments. This paper will highlight the key findings and recommendations that have a bearing to the Department of Social Development, which the Portfolio Committee on Social Development will have to monitor their implementation.

**Key findings**

**1. Participation in community structures**

The investigation found that members of other nationalities complained of their exclusion from community structures such as the Community Policing Forum (CPF). Even though non-nationals would be invited at such meetings, they reported that they feel unwelcome at such meetings. They also reported that they often could not understand community announcements, as these were made in languages they were not adept in.

**Recommendations**

- The Department should ensure that when nation building policy is advocated, the risks of nation building in terms of cementing prejudices against non-nationals should be pointed out and ways of mitigating this risk outlined. This was already highlighted in the Department's Concept Paper on Social Cohesion/Inclusion in Local Integrated Development Plans<sup>1</sup> (LIDPs) that was adopted in August 2009. The Concept Paper outlines that municipalities are expected to incorporate aspects of social cohesion in their IDPs. It also notes the importance of integrating non-nationals in a way that strengthens social cohesion.

<sup>1</sup> Cloete, P and Kotze, F. (2009). Concept Paper on Social Cohesion/Inclusion in Local Integrated Development Plans: Final Draft.



- National government should adopt the Department of Social Development's recommendations for continued monitoring, evaluation and research on social cohesion, and especially the call for demographic information about the migration patterns of international migrants into communities and the compilation of community profiles in order to understand community dynamics.
- Through the Social Cohesion Working Group the Department should arrange a workshop between parties to community mediation and proactive reintegration initiatives across the country, with a view to establishing some best practice guidelines.
- Ensure that the Social Cohesion working Group deliberates on and nominates a lead department to develop provincial conflict resolution capacity for the purpose of developing, restoring and maintaining social cohesion in areas affected by social conflict.
- Ensure that the appointed lead department continually monitors all conflict resolution initiatives and evaluates them on a quarterly basis, in consultation with station level police, community policing forums and community organizations.
- Ensure that the appointed lead department holds an annual indaba to discuss the success and failures of such initiatives and develop best practice for future initiatives.
- Make provision in the Department's recommendations on social cohesion for improved oversight of local institutions, especially in communities at risk.
- Place more emphasis in social cohesion policy on the importance of disciplinary or judicial outcomes where community leaders obstruct social cohesion through negligent indifference, corruption or personal agendas.
- Ensure that social cohesion policy recognises nuances in the concept of "community", such as the potential for so-called "community leaders" to act against community interests.
- Work with the Department of Home Affairs in immigration-related aspects of the Population Policy.
- In a nation building policy, acknowledge and mitigate the implicit risk of cementing prejudices against non-nationals.



## **2. The quality of grassroots democratic governance**

The investigation found that causes of the outbreak of violence against non-nationals related to the following factors:

- *Poor quality of relationships between local residents and key officials involved in governance of informal settlements*

A report issued by the International Organisation for Migration<sup>2</sup> on the causes of the 2008 violence found out that communities that had properly functioning structures were able to prevent or mitigate violence. In other communities, the absence of such structures, their disfunctionality or the activities of self-appointed leadership groups facilitated or even directly incited violence.

In addition, a report submitted by the Gauteng provincial government noted that "a disconnection between the local political leadership with their constituency creates a perception that government is not concerned about local issues, claiming that the consequent political marginalization and dissatisfaction create "fertile grounds for xenophobia"<sup>3</sup>.

- *The related prevalence of indifferent, corrupt and/or authoritarian leaders*

The residents interviewed by the SAHRC expressed their lack of confidence in the police. They indicated that attacks on foreigners in Ramaphosa began as a consequence of the failure of police to disperse or arrest a crowd of non-nationals who gathered at the entrance to the informal settlement holding makeshift weapons. Locals, as a result felt they were forced to resort to their own devices in dealing with security in the area.

The respondents also indicated that the ward committee in Ramaphosa at the time of the attacks had been ineffective and corrupt, and there had not been an operational CPF. In essence, the investigation revealed that a lack of trust in government institutions, together with an absence of functioning communication channels and legitimate representation in the area meant that the potential conflict was not resolved in time to prevent a popular justice response.

The investigation also found that uncooperative councillors could have hindered risk management and response. In Cato Manor, in KwaZulu-Natal, respondents alleged that a

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<sup>2</sup> Cited in SAHRC report

<sup>3</sup> Cited in SAHRC report



problematic local councillor had disabled the CPF, which was functioning effectively prior to his term of office. The Johannesburg municipality records also noted a failure of councillors to participate in reintegration processes.

Another investigation conducted by the FMSP<sup>4</sup> in 2008 revealed that the overwhelming impression of violence-affected communities was that community involvement remained at the self-help, community-control level rather than through partnership or meaningful consultation.

SAHRC investigation further found that in the affected communities there was cumulative effect of distrust in the judicial system, which was seen as ineffective in removing criminals from communities. Police on the other hand expressed frustration over complaints' and witnesses' disinterest in following the judicial process to resolution.

### **Recommendations**

- The Department of Social Development's policy makers should recognize the potential role of local institutions, including participatory bodies such as CPFs, in mitigating or inciting violence, and make provision in their recommendations on social cohesion for improved oversight of such bodies, especially in communities at risk.
- The Department should place more emphasis on the importance of meaningful disciplinary or judicial outcomes where community leaders obstruct social cohesion through negligent indifference, corruption or personal agendas. This would give more weight to its recommendation to ensure functional monitoring and evaluation mechanisms.

### ***3. Management of migration and human settlement in urban peripheries***

The SAHRC investigation found that vulnerability to public violence is exacerbated by the lack of interventions to manage and formalize informal settlements which receive large numbers of internal and international migrants. The visits by the SAHRC to areas affected by violence revealed a lack of road infrastructure, street names, street lights and shack numbers. This, for instance, made it difficult or impossible for police to locate a shack without assistance, which meant requesting the complainant to meet police at a lit area and guide them to the scene. This in turn placed the complainant in danger and caused a delay in responding. Also, with no record of the legitimate "owner" of a shack it became difficult to have establish legal basis for cases to be opened against those who occupied the shacks of displaced non-nationals and there was no way for police to identify a legitimate claimant.

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<sup>4</sup> Cited in SAHRC report





The above findings are in line with the Department of Social Development 2009<sup>5</sup> review of the Population Policy. It noted that the scale of migration (both internal and international) is resulting in urban settlement patterns that are unsustainable “from a personal as well as a service delivery point of view”, and calls for much more to be done by government.

#### **Recommendation**

- The Departments of Social Development and Home Affairs should work together on immigration related aspects of the Population Policy.

#### **Progress made by the Department**

In its 2009/10 Annual Report<sup>6</sup>, the Department reported that it rendered technical advice and assistance on a number of population policy-related matters, including organizing a stakeholder workshop to formulate recommendations for the National Development Planning and Implementation Forum on social cohesion and xenophobia.

It also conducted consultation meetings and workshops with the provincial population units and Integrated Development Plans (IDPs) champions in consultation with the Statistics South Africa, the Department of Cooperative Governance and Traditional Affairs, the Development Bank of Southern Africa and the Youth Commission on the integration of population concerns into the IDPs. A guideline document was developed to assist local municipalities with integrating population policy into IDPs.

#### **Implications for the Committee**

- The Committee should monitor the progress made by the Department in implementing the recommendations made by SAHRC. In particular it should monitor how issues of social cohesion in relation to non-nationals and to South African societies in general are addressed by the Department and what has been the impact.
- It should be briefed by the Department on the status of its Concept Paper on Social Cohesion/Inclusion in Local Integrated Development Plans (LIDPs).

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<sup>5</sup> Cited in SAHRC report

<sup>6</sup> Department of Social Development. 2009



#### Questions:

- Did the investigation take into consideration the diverse viewpoints of its respondents in relation to gender and age? Other studies<sup>7</sup> have found that respondents of different gender and gender groups reflected different perspectives to violence against non-nationals.
- To what extent did the investigation consider the viewpoints of non-nationals?
- The recommendations of the report refer on several times to social cohesion, in its opinion how does the SAHRC view the issue of social cohesion in the country both in relation to the issues pertaining to non-nationals and societies in generally? Which areas require most attention from Government (and the Department of Social Development)?
- One of the recommendations in the report is that there should be continued monitoring and evaluation and research on social cohesion, especially on the demographic information about the international migration patterns. Who in its view would the SAHRC advice to lead the implementation of this recommendation? Or what will be the role of the Department of Social Development in its implementation as it may seem its implementation is the responsibility of the Department of Home Affairs?
- In its view what does the SAHRC envisage the role of the social partners, that is, NGOs, CBOs and FBOs in the implementation of some of its recommendations?
- The report recommends that the Social Working Group should arrange a workshop to encourage mediation and reintegration initiatives. Who comprises this group and what is its mandate?

#### Conclusion

The outbreak of violence against non-nationals revealed that South Africa needs to strengthen its social cohesion policies as part of its nation building. The change to a democratic government opened up opportunities for South Africa to forge partnerships (or trade agreements) with other African countries. In addition, political and economic instability

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<sup>7</sup> Hadlan, A. undated. Violence and Xenophobia in South Africa.



in some African countries forced their citizens to migrate to neighbouring countries. The result has been that South Africa has become one of the preferred receiving countries. As a result it has been experiencing a high number of non-nationals migrating to the country. This therefore calls for the South African Government to develop policies and mechanisms to deal with this challenge. As shown by the recommendations of the SAHRC, social cohesion is critical in dealing with this challenge.

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**Reference list:**

Cloete, P and Kotze, F. (2009). Concept Paper on Social Cohesion/Inclusion in Local Integrated Development Plans: Final Draft.

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