



# THE WORLD MUST KNOW

(2020–2022)

## **The continued persecution of minority communities in South Africa since 2020**

A report by AfriForum and Opignor

July 2022



AfriForum is a not-for-profit South African civil rights organisation. With more than 300 000 active members, AfriForum is the largest civil rights organisation in the Southern Hemisphere. AfriForum focuses on the rights of minorities such as Afrikaners and Afrikaans-speaking people on the one hand, while on the other also working continuously to protect the constitutional and civil rights of South Africans.

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## Abbreviations used in this report

<b>ANC</b>	African National Congress
<b>B-BBEE</b>	broad-based black economic empowerment
<b>BEE</b>	black economic empowerment
<b>DA</b>	Democratic Alliance
<b>EFF</b>	Economic Freedom Fighters
<b>HPCSA</b>	Health Professionals Council of South Africa
<b>SAHRC</b>	South African Human Rights Commission
<b>SCA</b>	Supreme Court of Appeals
<b>SU</b>	Stellenbosch University
<b>Unisa</b>	University of South Africa
<b>UP</b>	University of Pretoria

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## Introduction

In 2020 AfriForum published an extensive report on the persecution of minority communities in South Africa titled *The world must know: The persecution of minority communities in South Africa*.<sup>1</sup> This report formed part of AfriForum's 2020 international liaison tour to the United States, where the organisation met with influential persons and created awareness about issues such as farm attacks and murders, hate speech against minorities, romanticisation of violence against minorities and South Africa's many racially discriminatory laws.

The international tour was a great success. AfriForum strengthened many previously established relationships and friendships, and established new contacts and allies.

In 2020, a few months after the release of AfriForum's report and the US liaison tour, the world went into a strict Covid-19 lockdown. Travel was significantly restricted and, in some countries, banned altogether. Globally, the response of every country to the pandemic included a laundry list of new policies and legislation. Since 2020 South Africa has seen its fair share of new policies and legislation. However, many of these were tainted by the ruling African National Congress (ANC) party's racial agenda and their ideology of the so-called national democratic revolution.

This follow-up report to AfriForum's 2020 *The world must know* report seeks to document all new legislation, incidents and policies that relate to the theme of the persecution of minority communities in South Africa and that have been implemented or proposed, or have occurred since the release of the first report in 2020. The report will also provide updates on many of the policies, laws and incidents that were documented in the previous report. References to and more details on every story, policy and incident documented in this report can be found in the footnotes.

## Racially discriminatory laws in times of Covid and beyond

The South African government launched the R200 million Tourism Relief Fund in 2020 to provide support to small, micro- and medium-sized enterprises through grants. The fund aimed to assist tourism establishments such as resort properties, lodges and backpacker venues, bed and breakfasts, guest houses, restaurants (not attached to hotels), conference venues (not attached to hotels), car rental companies, tour operators and travel agents.<sup>2</sup> Notably, it was announced that this relief fund would be guided by broad-based black economic empowerment (B-BBEE) legislation, meaning the racial make-up of the ownership of these businesses determined whether their owners qualified to receive relief from the fund.<sup>3</sup> Mmamoloko Kubayi-Ngubane, the Minister of Tourism, justified the racial criteria for the fund and stated that it was "perfectly rational" to use B-BBEE compliance levels (racially discriminatory legislation) as part of the process to distribute the

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<sup>1</sup> AfriForum. 2020. *The world must know: The persecution of minority communities in South Africa*. Available at <https://afriforum.co.za/en/theworldmustknow/>. Accessed on 29 March 2022.

<sup>2</sup> Moodley, J. 2020. *Questions around fairness of business relief fund*. IOL, 17 April. Available at <https://www.iol.co.za/the-post/news/questions-around-fairness-of-business-relief-fund-46824585>. Accessed on 29 March 2022.

<sup>3</sup> Phakathi, B. 2020. *Support for ailing tourism sector will be guided by BEE, says minister*. *BusinessDay*, 7 April. Available at <https://www.businesslive.co.za/bd/national/2020-04-07-support-for-ailing-tourism-sector-will-be-guided-by-bee-says-minister/>. Accessed on 29 March 2022.

R200 million Tourism Relief Fund.<sup>4</sup> Even during a pandemic – when businesses that are owned and operated by people of all races suffered and/or had to close their doors permanently – the ANC government still prioritised its racial agenda.

Many civil society organisations and political parties heavily criticised the race-based criteria of the Tourism Relief Fund. The Institute of Race Relations argued that the Minister of Tourism’s stated intention to help only some people and not others based on the colour of their skin makes a mockery of South Africa’s constitutional democracy.<sup>5</sup> The Minister challenged the remarks made by the Democratic Alliance (DA) MP Hildegard Boshoff, who accused the Department of playing the “race card”. The Minister argued that her “white compatriots” who were B-BBEE non-compliant had chosen to ignore the laws of South Africa and therefore only had themselves to blame if they were to be excluded from the Tourism Relief Fund.<sup>6</sup>

AfriForum and the labour union Solidarity challenged the racially discriminatory relief fund in the Northern Gauteng High Court.<sup>7</sup> In April 2020 the High Court ruled in favour of the Department of Tourism’s use of race as criterion when providing Covid-19-related relief to businesses in the tourism sector. AfriForum and Solidarity appealed the ruling.<sup>8, 9</sup> In September 2021 the Supreme Court of Appeal (SCA) ruled in favour of AfriForum and Solidarity regarding the race criterion for payment in terms of government’s Tourism Relief Fund, and declared it unconstitutional.<sup>10</sup> The Department of Tourism announced that it would appeal the ruling, while AfriForum and Solidarity responded that the two organisations were ready to defend the ruling – namely that the Department’s Tourism Relief Fund is illegal – in the Constitutional Court.<sup>11</sup> The Department of Tourism filed a notice of appeal in the Constitutional Court in late 2021. This case is still ongoing.

Also in 2020, AfriForum and Solidarity instructed their legal teams to bring an urgent application for review against Khumbudzo Ntshavheni, the Minister of Small Business Development, and her department over the use of black economic empowerment (BEE) racial requirements in the provision of relief to small businesses that had applied for relief due to hardships brought on by the Covid-19 pandemic. This followed the statement by Ntshavheni in a parliamentary meeting that BEE requirements would apply when applications for relief were considered.<sup>12</sup> AfriForum and Solidarity obtained an interim interdict and are proceeding with the review application. The case is ongoing.

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<sup>4</sup> Ndaba, B. 2020. ‘Perfectly rational’ to use B-BBEE levels to distribute R200m relief, says tourism minister. IOL, 29 April. Available at [https://www.iol.co.za/news/politics/perfectly-rational-to-use-b-bbee-levels-to-distribute-r200m-relief-says-tourism-minister-47324919?utm\\_source=twitter&utm\\_medium=social](https://www.iol.co.za/news/politics/perfectly-rational-to-use-b-bbee-levels-to-distribute-r200m-relief-says-tourism-minister-47324919?utm_source=twitter&utm_medium=social). Accessed on 29 March 2022.

<sup>5</sup> African News Agency. 2020. Tourism minister’s BEE plan amid coronavirus crisis mocks democracy, says IRR. IOL, 12 April. Available at <https://www.iol.co.za/news/tourism-ministers-bee-plan-amid-coronavirus-crisis-mocks-democracy-says-irr-46615744>. Accessed on 29 March 2022.

<sup>6</sup> Daniel, L. 2020. Tourism minister lashes out at BEE critics ahead of ConCourt challenge. *The South African*, 5 May. Available at <https://www.thesouthafrican.com/news/tourism-relief-fund-bee-codes-constitutional-court-challenge/>. Accessed on 29 March 2022.

<sup>7</sup> AfriForum. 2021. AfriForum and Solidarity approaches court over Department of Tourism’s racist fund. Available at <https://afriforum.co.za/en/afriforum-and-solidarity-approaches-court-over-department-of-tourisms-racist-fund/>. Accessed on 29 March 2022.

<sup>8</sup> Khumalo, J. 2020. High Court in favour of tourism department using race as a criterion when providing Covid-19 relief. *City Press*, 30 April. Available at <https://www.news24.com/citypress/News/high-court-in-favour-of-tourism-department-using-race-as-a-criterion-when-providing-covid-19-relief-20200430>. Accessed on 29 March 2022.

<sup>9</sup> AfriForum. 2020. AfriForum to appeal against ruling that Department of Tourism is allowed to use race as criterion when allocating relief. Available at <https://afriforum.co.za/en/afriforum-to-appeal-against-ruling-that-department-of-tourism-is-allowed-to-use-race-as-criterion-when-allocating-relief/>. Accessed on 29 March 2022.

<sup>10</sup> Smith, C. 2021. Use of BEE criteria for govt’s R200m Covid-19 tourism relief is unlawful, SCA finds. *News24*, 22 September. Available at <https://www.news24.com/fin24/companies/use-of-bee-criteria-for-govts-r200m-covid-19-tourism-relief-is-unlawful-sca-finds-20210922>. Accessed on 29 March 2022.

<sup>11</sup> AfriForum. 2021. AfriForum and Solidarity in Constitutional Court about illegal racial tourism fund. Available at <https://afriforum.co.za/en/afriforum-and-solidarity-in-constitutional-court-about-illegal-racial-tourism-fund/>. Accessed on 29 March 2022.

<sup>12</sup> Dhlamini, S. 2020. AfriForum and Solidarity seek legal application against Small Business Minister over Covid-19 relief funding. *Polity*, 29 April. Available at <https://www.polity.org.za/article/afriforum-and-solidarity-seek-legal-application-against-small-business-minister-over-covid-19-relief-funding-2020-04-29>. Accessed on 29 March 2022.

In March 2021 AfriForum submitted commentary regarding the proposed amendments to the legal practitioner's B-BBEE legal sector code. In its commentary AfriForum expressed concern over the fact that it was becoming increasingly difficult for white legal practitioners to compete, because various major role-players in the industry (such as the Road Accident Fund) prefer to use black legal practitioners simply because of their race. AfriForum therefore criticised the new codes as racist, discriminatory and immoral.<sup>13</sup>

In January 2021 Solidarity wrote to the World Health Organization about concerns over the South African government's plans to apply BEE policies and criteria to the rollout of vaccines. This came after *Rapport*<sup>14</sup> reported that President Cyril Ramaphosa informed a high-level ANC meeting that the rollout of vaccines would provide an opportunity to push BEE policies. Solidarity took the stance that the pandemic was threatening people's lives and that regulations should make it as easy as possible to acquire vaccines. Race-based barriers should not be part of this process.<sup>15</sup>

AfriForum also instructed its legal team to direct an attorney's letter to President Ramaphosa in which it requested written confirmation whether government intended to apply BEE measures and requirements to the procurement, distribution and administering of Covid-19 vaccines, as had been reported.<sup>16</sup> In May 2021 AfriForum's application to halt any BEE requirements in the Covid-19 vaccine rollout was heard in the Northern Gauteng High Court. AfriForum requested the Court to compel Tito Mboweni, the Minister of Finance at the time, to use his discretion in terms of Section 3 of the Framework for Preferential Procurement Policy Act 5 of 2000, to exempt all state organs from applying BEE requirements (i.e., racial criteria) for vaccine procurement.<sup>17</sup>

In 2022 AfriForum lodged a formal complaint for unfair racial discrimination perpetrated by the Government's Gender-Based Violence and Femicide Response Fund and Tshikululu Social Investments, due to their discrimination against the TEARS foundation through their funding criteria. AfriForum acted on behalf of the TEARS foundation, a non-profit organisation that has been at the forefront of South Africa's response to sexual and gender-based violence since 2012. In their application process for funding from the organisations mentioned, TEARS was requested to identify the population group or racial identity of the directors and to submit a B-BBEE certificate or affidavit. The application process exclusively makes provision for the following population group categories: *African, Coloured, Foreign national* and *Other*. These stringent racial categories served as a clear barrier for TEARS to seek funding.<sup>18</sup>

The extent of race obsession in South Africa is demonstrated in this case, where an organisation that fights gender-based violence is barred from receiving funding because they do not meet BEE

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<sup>13</sup> AfriForum. 2021. *AfriForum to fight against new BEE codes for legal sector*. Available at <https://afriforum.co.za/en/afriforum-to-fight-against-new-bee-codes-for-legal-sector/>. Accessed on 29 March 2022.

<sup>14</sup> De Lange, J. 2021. *Swart sakelui moet baat by entstof, sê Cyril*. Netwerk24, 24 January. Available at <https://www.netwerk24.com/netwerk24/Nuus/Politiek/swart-sakelui-moet-baat-by-entstof-se-cyril-20210124>. Accessed on 29 March 2022.

<sup>15</sup> BusinessTech. 2021. *Warning over plan to use South Africa's Covid-19 vaccines for BEE*. 27 January. Available at <https://businesstech.co.za/news/trending/463564/warning-over-plan-to-use-south-africas-covid-19-vaccines-for-bee/>. Accessed on 29 March 2022.

<sup>16</sup> AfriForum. 2021. *AfriForum writes attorney's letter to Ramaphosa requesting copy of proposed BEE vaccine policy*. Available at <https://afriforum.co.za/en/afriforum-writes-attorneys-letter-to-ramaphosa-requesting-copy-of-proposed-bee-vaccine-policy/>. Accessed on 29 March 2022.

<sup>17</sup> Qukula, Q. 2021. *Court hears AfriForum's bid to block BEE vaccine policy*. CapeTalk, 20 May. Available at <https://www.capetalk.co.za/articles/416952/court-hears-afriforum-s-bid-to-block-bee-vaccine-policy>. Accessed on 29 March 2022.

<sup>18</sup> AfriForum. 2022. *AfriForum lodges formal complaint at the Equality Court for illegal racial discrimination against TEARS Foundation*. Available at <https://afriforum.co.za/en/afriforum-lodges-formal-complaint-at-the-equality-court-for-illegal-racial-discrimination-against-tears-foundation/>. Accessed on 29 March 2022.

requirements. This case is further indicative of the racially discriminatory environment which the ANC has excused, fostered and encouraged through its racial agenda and policies in South Africa.

Despite the major failures of and damage caused by BEE and other racially discriminatory policies, the ANC appears determined to not only continue with these, but to intensify them. In June 2021 Thulas Nxesi, the Minister of Employment and Labour, said that the South African government will introduce new, stricter, more aggressive BEE laws to speed up racial transformation.<sup>19</sup> South African business group Sakeliga criticised this move, stating that these new BEE laws would let the Minister “make up rules for himself”.<sup>20</sup>

In September 2020 the Independent Communications Authority of South Africa announced its plans to introduce new BEE regulations for the information and communications technology sector before the end of the 2020/2021 financial year.<sup>21, 22</sup> In November 2021 the South African government announced that stricter BEE laws are planned for South Africa in 2022.<sup>23</sup> In March 2022 the Financial Sector Conduct Authority published its draft strategy for promoting stricter racial transformation and BEE rules that are planned for South Africa’s banking and finance sector.<sup>24</sup>

In February 2022, the organisation Sakeliga achieved victory in its campaign against racially discriminatory policies such as BEE when the Constitutional Court ruled that BEE regulations issued in 2017 by Pravin Gordhan, the former Minister of Finance, were invalid and unconstitutional. These regulations, issued under the Preferential Procurement Policy Framework Act 5 of 2000, allowed state organs to disqualify bidders from a tender if they were not 100% black owned.<sup>25, 26, 27</sup> Following the Constitutional Court ruling, the National Treasury Director-General Dondo Mogajane issued a circular to government departments, stating that tenders advertised before 16 February 2022 must be finalised in terms of the Procurement Regulations struck down by the Constitutional Court, tenders advertised on or after 16 February 2022 must be held in abeyance, and no new tenders should be advertised. Against this background the ANC government therefore confirmed that its racial agenda is more important than service delivery. Clinic doctors may therefore soon be suffering shortages of essential equipment and firefighters will be without protective gear due to this ‘advisory’.<sup>28</sup>

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<sup>19</sup> *BusinessTech*. 2021. Minister says South Africa will introduce stricter new BEE laws to speed up transformation. 25 June. Available at <https://businesstech.co.za/news/business/501301/minister-says-south-africa-will-introduce-stricter-new-bee-laws-to-speed-up-transformation/>. Accessed on 29 March 2022.

<sup>20</sup> *BusinessTech*. 2021. New BEE laws let minister ‘make up rules for himself’: business group. 14 April. Available at <https://businesstech.co.za/news/business/482921/new-bee-laws-let-minister-make-up-rules-for-himself-business-group/>. Accessed on 29 March 2022.

<sup>21</sup> *BusinessTech*. 2020. New BEE rules planned for South African ICT companies. 8 September. Available at <https://businesstech.co.za/news/technology/432062/new-bee-rules-planned-for-south-african-ict-companies/>. Accessed on 29 March 2022.

<sup>22</sup> *MyBroadband*. 2020. *New black ownership rules for South African ISPs and telecoms companies here soon*. 8 September. Available at <https://mybroadband.co.za/news/telecoms/366554-new-black-ownership-rules-for-south-african-isps-and-telecoms-companies-here-soon.html>. Accessed on 29 March 2022.

<sup>23</sup> *BusinessTech*. 2021. Stricter BEE laws planned for South Africa in 2022. 17 November. Available at <https://businesstech.co.za/news/business/538418/stricter-bee-laws-planned-for-south-africa-in-2022/>. Accessed on 29 March 2022.

<sup>24</sup> *BusinessTech*. 2022. Stricter transformation and BEE rules planned for South Africa’s banking and finance sector. 1 March. Available at <https://businesstech.co.za/news/banking/563564/stricter-transformation-and-bee-rules-planned-for-south-africas-banking-and-finance-sector/>. Accessed on 30 March 2022.

<sup>25</sup> *Minister of Finance v Afribusines NCP CCT 279/20*

<sup>26</sup> Sakeliga. 2022. *Sakeliga achieves first significant ConCourt roll-back of BEE*. Available at <https://sakeliga.co.za/en/sakeliga-achieves-first-significant-concourt-roll-back-of-bee/>. Accessed on 30 March 2022.

<sup>27</sup> *BizNews*. 2022. BEE abuse – eternal vigilance needed: Anthea Jeffery. 24 February. Available at <https://www.biznews.com/sa-investing/2022/02/24/bee-abuse-vigilance-needed>. Accessed on 30 March 2022.

<sup>28</sup> *BizNews*. 2022. When BEE matters more than service delivery. 7 March. Available at <https://www.biznews.com/thought-leaders/2022/03/07/bee-service-delivery>. Accessed on 30 March 2022.

Ramaphosa said in May 2022 that BEE policies are a crucial part of economic recovery after the pandemic.<sup>29</sup> These policies amount to racial discrimination. He also announced the appointment of a new broad-based black economic empowerment advisory council that will be responsible for advising the government on the “intensified transformation” of the economy.<sup>30</sup>

AfriForum’s legal team directed a letter to Absa Bank in June 2022, demanding clarity on its use of racial criteria in granting business financing. AfriForum received complaints from members of the public about Absa’s alleged qualifying criteria for loans to small and medium enterprises. To qualify for such a loan, Absa requires applicants – among other requirements – to have at least 51% black ownership. These loans provide access to loan amounts between R50 000 and R1,5 million for new and existing businesses with a minimum of 51% black ownership in all sectors, except agriculture.<sup>31</sup>

## Expropriation without compensation: Amendment of the Constitution and introduction of the 2020 Expropriation Bill

In 2021 the amendment to Section 25 of the Constitution to allow for the expropriation without compensation of private property failed to pass in the South African National Assembly. The ANC failed to obtain the required two-thirds majority it needed – 204 MPs voted in favour of the bill and 145 against, with no abstentions. A total of 267 votes was required for a two-thirds majority.<sup>32</sup> The main reason for the amendment failing to pass was that the Economic Freedom Fighters (EFF) had demanded that it must enable full state custodianship of property, while the ANC had only proposed that state custodianship be applicable to “certain land” within the context of expropriation.<sup>33</sup> AfriForum warned that the fight to defend property rights in South Africa is not over, and that these rights will likely be threatened again in the future.<sup>34</sup>

Despite the ANC failing to secure the necessary parliamentary votes to amend Section 25 of the Constitution in 2021, President Ramaphosa stated on 8 January 2022 that the ANC wants to move forward with its plans to introduce land expropriation without compensation in 2022.<sup>35</sup> In December 2021 Ronald Lamola, the Minister of Justice, said: “Changing the Constitution was just one instrument we could have used ... The matter is now ended. We will now use our simple

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<sup>29</sup> Njilo, N. 2022. BEE is crucial part of economic recovery after pandemic, says Cyril Ramaphosa. *BusinessDay*, 30 May. Available at <https://www.businesslive.co.za/bd/national/2022-05-30-bee-is-crucial-part-of-economic-recovery-after-pandemic-says-cyril-ramaphosa/>. Accessed on 30 May 2022.

<sup>30</sup> *BusinessTech*. 2022. Ramaphosa appoints BEE council in big transformation push for South Africa. 1 June. Available at <https://businesstech.co.za/news/business/592462/ramaphosa-appoints-bee-council-in-big-transformation-push-for-south-africa/>. Accessed on 9 June 2022.

<sup>31</sup> AfriForum. 2022. *AfriForum challenges Absa on racially discriminatory criteria for business financing*. Available at <https://afriforum.co.za/en/afriforum-challenges-absa-on-racially-discriminatory-criteria-for-business-financing/>. Accessed on 17 June 2022.

<sup>32</sup> Gerber, J. 2021. *National Assembly fails to pass constitutional amendment to allow land expropriation without compensation*. *News24*, 7 December. Available at <https://www.news24.com/news24/southafrica/news/breaking-national-assembly-fails-to-pass-constitutional-amendment-to-allow-land-expropriation-without-compensation-20211207>. Accessed on 30 March 2022.

<sup>33</sup> Phakathi, B. 2021. *ANC shifts stance on land custodianship to appease EFF*. *BusinessDay*, 21 June. Available at <https://www.businesslive.co.za/bd/politics/2021-06-21-anc-shifts-stance-on-land-custodianship-to-appease-eff/>. Accessed on 30 March 2022.

<sup>34</sup> AfriForum. 2021. *AfriForum welcomes Land Expropriation Bill’s failure to pass before the National Assembly*. Available at <https://afriforum.co.za/en/afriforum-welcomes-land-expropriation-bills-failure-to-pass-before-the-national-assembly/>. Accessed on 30 March 2022.

<sup>35</sup> *BusinessTech*. 2022. *Two big changes planned for South Africa in 2022: Ramaphosa*. 10 January. Available at <https://businesstech.co.za/news/government/549578/two-big-changes-planned-for-south-africa-in-2022-ramaphosa/>. Accessed on 30 March 2022.

majority to pass laws that will allow for expropriation without compensation.”<sup>36</sup> These examples demonstrate how private property rights continue to be threatened in South Africa.

The Expropriation Bill was published and gazetted in October 2020, and it has since been introduced as part of the parliamentary process in the National Assembly. According to the Bill, expropriation is defined as “compulsory acquisition of property by an expropriating authority”, which means any state organ or department may expropriate private property. The Bill enables the expropriation of any “property” and thus is not limited to land, but includes all movable property, such as a person’s possessions, as well as immovable property, such as buildings, houses and infrastructure.<sup>37</sup> This Bill does not flow from the process to amend Section 25 of the South African Constitution to enable expropriation without compensation. The Expropriation Bill seeks to open up a new avenue for the government to expropriate private property within the framework of Section 25 of the Constitution.<sup>38</sup>

In 2021 AfriForum submitted written commentary to the Portfolio Committee on Public Works and Infrastructure against the Expropriation Bill.<sup>39</sup>

## Riots, unrest and looting during July 2021

In July 2021 South Africa experienced the worst occurrence of violent unrest, rioting and looting since apartheid had ended in 1994.<sup>40</sup> The unrest and looting mostly took place in the provinces of KwaZulu-Natal and Gauteng. More than 300 people died, more than 200 shopping centres were looted, and factories and warehouses were robbed and burned down. The rioting caused damage worth USD1,7 billion (R25 billion) according to the state insurance company that handles the claims.<sup>41</sup> According to the government, at least 40 000 businesses were looted, burnt or vandalised, a total of 90 pharmacies were destroyed “beyond revival”, and the total losses to the national economy are estimated to be R50 billion rand (USD 3,4 billion).<sup>42</sup> In 2022 the South African Minister of Basic Education claimed the damage caused to schools during the 2021 unrest amounted to more than R200 million.<sup>43</sup>

Among areas most affected by the rioting and looting were the cities of Durban, Pietermaritzburg and Johannesburg, all of which have sizeable populations of Indian South Africans, a minority

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<sup>36</sup> Cele, S. & Vecchiato, P. 2021. *South Africa’s ANC drops constitution change for land reform*. Bloomberg, 8 December. Available at <https://www.bloomberg.com/news/articles/2021-12-08/south-africa-s-anc-pursues-land-grab-without-constitution-change>. Accessed on 30 March 2022.

<sup>37</sup> Turner, K.J. 2021. *WATCH: This is what you need to know about the Expropriation Bill of 2020*. IOL, 21 March. Available at <https://www.iol.co.za/news/politics/watch-this-is-what-you-need-to-know-about-the-expropriation-bill-of-2020-318fbceo-96dd-456e-84f7-037ac570ea66>. Accessed on 30 March 2022.

<sup>38</sup> Du Plessis, E. 2020. *South Africa has another go at an expropriation law. What it’s all about*. *The Conversation*, 1 November. Available at <https://theconversation.com/south-africa-has-another-go-at-an-expropriation-law-what-its-all-about-148379>. Accessed on 30 March 2022.

<sup>39</sup> AfriForum. 2021. *AfriForum submits comments on Expropriation Bill*. Available at <https://afriforum.co.za/en/afriforum-submits-comments-on-expropriation-bill/>. Accessed on 30 March 2022.

<sup>40</sup> Cohen, M. 2021. *Why South Africa just suffered its worst riots since apartheid*. Bloomberg, 13 July. Available at <https://www.bloomberg.com/news/articles/2021-07-13/why-ex-leader-s-arrest-cast-south-africa-into-turmoil-quicktake>. Accessed on 30 March 2022.

<sup>41</sup> Magome, M. 2021. *South African riots to cost \$1.7 billion in insurance claims*. AP News, 8 September. Available at <https://apnews.com/article/africa-business-riots-south-africa-cyril-ramaphosa-5a4852f2349058dc39345426df87482d>. Accessed on 30 March 2022.

<sup>42</sup> AfricaNews. 2021. *South Africa unrest hits 40,000 businesses, government says*. 21 July. Available at <https://www.africanews.com/2021/07/21/south-africa-unrest-hits-40-000-businesses-government-says/>. Accessed on 30 March 2022.

<sup>43</sup> Mkhwanazi, S. 2022. *School vandalism during July riots cost Department of Basic Education R200 million*. IOL, 8 March. Available at <https://www.iol.co.za/news/politics/school-vandalism-during-july-riots-cost-department-of-basic-education-r200-million-53ac7480-bc81-4909-91b4-60c964f8dfd2>. Accessed on 30 March 2022.

community. There were widespread reports of businesses owned by Indians and South Africans from Indian origin that had been targeted by looters.<sup>44</sup>

A leader within the South African Indian community stated:<sup>45</sup>

The Indian people are being targeted in all areas of KwaZulu-Natal and Johannesburg. There are 1,3 million in South Africa, although all are not in danger presently, but it's heading that way. We have been crying out to the South African government to send the South African Defence Force to assist. They are not coming through. Our Indian brothers and sisters together with South African police forces cannot cope, they being outnumbered.

In August 2021 provincial leaders of the EFF in KwaZulu-Natal embarked on a march in Phoenix, a South African suburb with approximately 85% Indian inhabitants in the north of Durban, against “racist Indians”.<sup>46</sup> This followed a major incident during the 2021 July riots referred to as the “Phoenix massacre”.<sup>47</sup> Ravi Pillay, a representative for the Social Cohesion Group, told the South African Human Rights Commission (SAHRC) in June 2022 that “the labelling of the entire Phoenix community and the characterisation of the events in Phoenix as a ‘massacre’ has demonised the entire Indian community because of the actions of a few”.<sup>48</sup>

In November 2021 a witness testifying before the SAHRC hearings about the violence that occurred in Phoenix during the 2021 unrest claimed that most Indians were racist. The witness said that social cohesion programmes would only work once Indian South Africans acknowledged their racism.<sup>49</sup> The South African Indian population were also the victims of widespread racist abuse on social media platforms and even incitement to violence against them.<sup>50</sup> During the unrest Prince Mangosuthu Buthelezi, the traditional leader of the Zulu nation, made an impassioned plea for an end to the anti-Indian sentiment that had arisen.<sup>51</sup>

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<sup>44</sup> Prabhu, S. 2021. Indians targeted in South Africa: In South Africa, Indians and their businesses attacked amid civil unrest & Pro-Zuma riots. *RepublicWorld*, 16 July. Available at <https://www.republicworld.com/world-news/africa/in-south-africa-indians-and-their-businesses-attacked-amid-civil-unrest-and-pro-zuma-riots.html>. Accessed on 30 March 2022.

<sup>45</sup> Mohan, G. 2021. Govt raises concerns over attacks on Indians in South Africa as violence spreads in country. *IndiaToday*, 15 July. Available at <https://www.indiatoday.in/india/story/-we-are-outnumbered-govt-raises-concerns-attacks-indians-south-africa-1828312-2021-07-15>. Accessed on 30 March 2022.

<sup>46</sup> Singh, O. 2021. EFF protest against ‘racist Indians’ changed to march for solidarity after unity meeting. *TimesLIVE*, 4 August. Available at <https://www.timeslive.co.za/politics/2021-08-04-eff-protest-against-racist-indians-changed-to-march-for-solidarity-after-unity-meeting/>. Accessed on 30 March 2022.

<sup>47</sup> Erasmus, D. & Hlangu, L. 2021. ‘Phoenix massacre’: What really happened in the deadly collision of brutalised communities. *Daily Maverick*, 28 July. Available at <https://www.dailymaverick.co.za/article/2021-07-28-phoenix-massacre-what-really-happened-in-the-deadly-collision-of-brutalised-communities/>. Accessed on 30 March 2022.

<sup>48</sup> Mokgobu, A. 2022. WATCH: Indian community 7 demonized for Phoenix killings, SAHRC hears. *JacarandaFM*, 21 June. Available at <https://www.jacarandafm.com/news/news/watch-indian-community-demonised-phoenix-killings-sahrc-hears/>. Accessed on 22 June 2022.

<sup>49</sup> Singh, K. 2021. ‘Just a few Indians are not racist’ — witness tells SAHRC hearing on the July unrest. *News24*, 16 November. Available at <https://www.news24.com/southafrica/news/just-a-few-indians-are-not-racist-witness-tells-sahrc-hearing-on-the-july-unrest-20211116>. Accessed on 30 March 2022.

<sup>50</sup> *OpIndia*. 2021. Indians face racist abuse online, threatened with rape and massacre as violence breaks out in South Africa. 13 July. Available at <https://www.opindia.com/2021/07/indians-in-south-africa-rape-massacre-racism-threats-social-media-incite-violence/>. Accessed on 30 March 2022.

<sup>51</sup> *Firstpost*. 2021. ‘Indians have been here for over 100 yrs’: Zulu leader’s impassioned plea to stop anti-Indian sentiment in South Africa. 22 July. Available at <https://www.firstpost.com/world/indians-have-been-here-for-over-100-yrs-zulu-leaders-impassioned-plea-to-stop-anti-indian-sentiment-in-south-africa-9827741.html>. Accessed on 30 March 2022.

## Senekal and the “Kill the Boer” trial of Julius Malema/EFF

### Senekal

In 2020 Brendin Horner, a 21-year-old farm manager, was stabbed, strangled and tied to a pole by his attackers. This brutal murder of a young man on a farm sent shockwaves through the community and inspired thousands to gather in the town of Senekal to protest against farm murders.<sup>52</sup> Horner’s murder was not an isolated incident, as AfriForum’s extensive 2022 report on farm attacks and murders<sup>53</sup> demonstrated. Between 2016 and 2021, 364 verified farm murders took place in South Africa.<sup>54</sup> Horner’s murder was simply the last straw for the community concerned.

At the second gathering of protestors in Senekal in October 2020, the EFF showed up for a “counter protest”. At this “counter protest” EFF leader Julius Malema claimed the following in his speech: “... there is no farm murders in South Africa. There are no white farmers being killed in South Africa.” In addition, he called white South Africans “visitors” to South Africa.<sup>55</sup> EFF supporters also chanted the infamous song “Kill the Boer! Kill the farmer!” outside the Magistrate’s Court in Senekal, where the accused murderers of Horner were being tried, and while the family of the victim were inside the court.<sup>56</sup> Farm murder denialist Julius Malema was photographed sitting next to Police Minister Bheki Cele in court that day.<sup>57, 58</sup>

In 2020 the DA laid criminal charges against EFF MP Mbuyiseni Ndlozi for incitement to arson in Senekal on 16 October 2020. Ndlozi sang a song which translated to “call the fire brigade and burn these Boers”.<sup>59</sup> Four days later, runaway fires destroyed 100 000 hectares of farmland in the same province.<sup>60</sup>

### The AfriForum vs Julius Malema/EFF trial

[In this section all timestamps in the footnotes refer to the two saved livestreams on YouTube of Julius Malema’s testimony. The link to each video can be found in the footnote attached to the title for day 1 and day 2 in this section.]

AfriForum’s hate-speech case against Julius Malema, leader of the EFF, Mbuyiseni Ndlozi and the EFF was heard in the Southern Gauteng High Court in Johannesburg in February 2022. AfriForum lodged its complaint in October 2020 after supporters of the EFF sang “Kill the Boer! Kill the

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<sup>52</sup> Head, T. 2020. Free State farm murder: Two arrested for ‘torturing and killing’ 21-year-old. *The South African*, 4 October. Available at <https://www.thesouthafrican.com/news/free-state-farm-murder-who-killed-brendin-horner-suspects-arrested/>. Accessed on 30 March 2022.

<sup>53</sup> AfriForum. 2022. *Trends in farm murders and an analysis of arrests and prosecutions 2016-2021*. Available at <https://afriforum.co.za/wp-content/uploads/2022/03/Trends-in-farm-murders-and-an-analysis-of-arrests-and-prosecutions-2016-2021.pdf>. Accessed on 1 April 2022.

<sup>54</sup> AfriForum. 2022. *364 farm murders in six years, only 33% of those arrested convicted*. Available at <https://afriforum.co.za/en/364-farm-murders-in-six-years-only-33-of-those-arrested-convicted/>. Accessed on 1 April 2022.

<sup>55</sup> African Socialists. 2020. *Malema Senekal Full Speech*. [YouTube video]. 16 October. Available at <https://youtu.be/xblZh5TMP88>. Accessed on 30 March 2022.

<sup>56</sup> Netwerk24 Video. 2020. *KYK: Boere en EFF van aangesig tot aangesig in Senekal*. [YouTube video]. 16 October. Available at <https://youtu.be/hxpgP8WmwiQ>. Accessed on 30 March 2022.

<sup>57</sup> Nicolson, G. & Simelane, B. 2020. Street showdown at the Senekal corral as courtroom drama unfolds. *Daily Maverick*, 16 October. Available at <https://www.dailymaverick.co.za/article/2020-10-16-street-showdown-at-the-senekal-coral-as-courtroom-drama-unfolds/>. Accessed on 1 April 2022.

<sup>58</sup> Pelsler, W. [Twitter]. 16 October 2020. Available at <https://twitter.com/waldimar/status/1317029375368437761>. Accessed on 1 April 2022.

<sup>59</sup> Benghu, C. 2020. Mbuyiseni Ndlozi’s ‘fire brigade’ song scores him a criminal charge from the DA. *TimesLive*, 23 October. Available at <https://www.timeslive.co.za/politics/2020-10-23-watch-mbuyiseni-ndlozis-fire-brigade-song-scores-him-a-criminal-charge-from-the-da/>. Accessed on 1 April 2022.

<sup>60</sup> McCain, N. 2020. *Runaway fires destroy 100 000 ha of Free State farmland*. *News24*, 20 October. Available at <https://www.news24.com/news24/southafrica/news/watch-runaway-fires-destroy-100-000ha-of-free-state-farmland-20201020>. Accessed on 1 April 2022.

farmer!” outside the Magistrate’s Court in Senekal, where those accused of 21-year-old farm manager Brendin Horner’s murder were being tried.

This case is of particular significance due to how it lays bare the political zeitgeist that is reigning in South Africa, where prominent political leaders and their supporters show no remorse for farm murder victims, often deny that this unique crime exists, and even call for violence and killing of people or an entire race group collectively.

#### *Day 1 of the cross-examination of Julius Malema*<sup>61</sup>

During the trial, Malema refused to condemn EFF supporters who sang “Kill the Boer! Kill the farmer!” at Senekal in 2020<sup>62</sup> after he was shown video evidence of the event.<sup>61 (at 05:04:52)</sup> Malema justified their hate speech by arguing that his supporters “are angry”. It was presented<sup>61 (at 05:11:33)</sup> to the court that Malema denied the occurrence of farm murders in his speech at Senekal.<sup>63</sup> Malema was presented<sup>61 (at 05:22:45)</sup> with two cases in which anti-white racial hatred can be clearly connected to farm attacks and murders. Malema denied<sup>61 (at 05:28:28)</sup> that racial hatred could play a role in farm murders, even in the cases presented. When Malema was asked whether white people could be victims in South Africa, he answered: “No, not at the current moment. No, no, no, no.”<sup>61 (at 05:50:56)</sup>

#### *Day 2 of the cross-examination of Julius Malema*<sup>64</sup>

On 8 February 2022, day 2 of the trial, EFF supporters blocked the gate to the court when AfriForum’s team left the building. After being forced by the South African Police Service (SAPS) to disperse, they started chanting “Kill the Boer! Kill the farmer!” directly at the AfriForum team as they passed by<sup>65</sup> – the very song which the court case was about. When Malema was shown the video footage of this incident, he refused to condemn them and testified as follows: “I can sing it myself.”<sup>64 (at 00:45:21)</sup>

When Malema was presented<sup>64 (at 01:02:40)</sup> with a case where a mother and daughter were tortured to death and the words “Kill the Boer” were written in blood on the wall in their house, he dismissed it by calling it mere “criminality” and testified that he could not say whether racism was a motive in this particular murder.

Referring to past comments of Malema where he said: “We are not calling for the slaughtering of white people ... at least for now”,<sup>66</sup> Malema was asked whether he would pledge that he would never call for the slaughtering of white people.<sup>64 (at 01:11:15)</sup> Malema responded that he easily would do so. Malema was then requested by advocate Oppenheimer to make such a pledge under oath, which Malema immediately refused. When Malema was asked whether it could be him in future who would indeed make such a call, he testified that he might call for the slaughtering of white people in future; he could not rule out the possibility.<sup>67</sup> It needs to be reiterated that Julius Malema is the leader of the third largest political party in South Africa and a Member of Parliament.

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<sup>61</sup> AfriForum. 2022. *Dag 7: AfriForum v Malema*. [YouTube video]. 16 February. Available at <https://youtu.be/X7HzQKOSNgg>. Accessed on 30 March 2022.

<sup>62</sup> AfriForum. 2022. *AfriForum v Malema*. [YouTube video]. 7 February. Available at <https://www.youtube.com/watch?v=N8w6wB8L-So>. Accessed on 1 April 2022.

<sup>63</sup> AfriForum. 2022. *AfriForum v Malema*. [YouTube video]. 7 February. Available at <https://youtu.be/N8w6wB8L-So?t=61>. Accessed on 30 March 2022.

<sup>64</sup> AfriForum. 2022. *Dag 8: AfriForum v Malema*. [YouTube video]. 17 February. Available at <https://youtu.be/fTv5q1NsdmM>. Accessed on 30 March 2022.

<sup>65</sup> Conscious Caracal. 2022. *EFF sings “Kill the Boer, the farmer” outside South Gauteng High Court in Johannesburg*. [YouTube video]. 9 February. Available at <https://www.youtube.com/watch?v=UE2djyYfvLo>. Accessed on 30 March 2022.

<sup>66</sup> Solidariteit. 2016. *Malema: We won't kill whites ... at least for now*. Available at <https://youtu.be/FrILQFbVOs>. Accessed on 30 March 2022.

<sup>67</sup> AfriForum. 2022. *Malema testifies that he may call for slaughtering of white people in the future*. Available at [https://youtu.be/\\_D9CFwJJ8k](https://youtu.be/_D9CFwJJ8k). Accessed on 1 April 2022.

On day 1 of the cross-examination, when asked about his radical rhetoric,<sup>61 (at 05:31:06)</sup>,<sup>68</sup> Malema testified: “I never said I’m someone moderate. I am very radical and very militant.” On day 2 of his cross-examination, Malema again described the EFF as a “very radical and militant” party.<sup>64 (at 02:02:48)</sup> When asked whether he would endorse the use of violence to achieve the EFF’s revolutionary aims, Malema responded: “When the time comes, and the conditions on the ground necessitate that arms must be taken, we will do so without hesitation.” When Malema was asked if he is scared of killing, he responded: “I am not scared of killing. A revolutionary is a walking killing machine.”<sup>64 (at 02:14:40)</sup>

Malema demonstrated his support for the idea of holding racial groups collectively accountable for crimes that they did not personally commit, exclusively based on their race.<sup>64 (at 01:16:24)</sup> When asked whether he still believed that “all white people are criminals and should be treated as such”, as he has stated in the past,<sup>69</sup> Malema answered: “Yes.”<sup>64 (at 02:31:35)</sup>

When asked whether he would stop singing “Kill the Boer” if he saw that there was a risk that singing it would lead to murder,<sup>64 (at 02:40:20)</sup> Malema answered: “No.” Advocate Oppenheimer told Malema:<sup>64 (at 02:41:45)</sup> “The complainant has led evidence of someone whose wife was murdered in front of him, who is now paralyzed. He testified in this court. He said, whenever he hears that song [“Kill the Boer! Kill the farmer!”], it brings back the memory of that day. He broke into tears in this court. That is trauma. That is legitimate trauma. Does that evidence motivate you to stop singing that song?” Malema responded: “No.” Oppenheimer asked: “So that individual case would not move you?” Malema responds: “No, I am not moved.” When Oppenheimer asked Malema about the legitimate pain and trauma of farm attack survivors, Malema responded: “I said I am not moved. I said I am not moved. Let me repeat five times. I’m not moved by that case you brought here. I am not moved! And if that will make me lose this case, let me lose it! I am not moved.”<sup>64 (at 02:44:30)</sup>

The closing arguments in this case have since concluded and judgement has been reserved.

## Targeting minority heritage

In 2020 the lobby group known as the Black People’s National Crisis Committee demanded that certain public statues be removed, starting with the Louis Botha statue at the main entrance of Parliament, where they staged a picket on Youth Day.<sup>70</sup> In March 2022 the Louis Botha statue in front of the Parliament building in Cape Town was vandalised with spray paint and an angle grinder by people wearing EFF regalia.<sup>71</sup> Louis Botha was the first prime minister of the Union of South Africa and a hero of the Second Anglo-Boer War (1899–1902).

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<sup>68</sup> This timestamp refers to day 1 of the cross examination of Julius Malema.

<sup>69</sup> IOL. 2011. *Malema: White people are criminals*. 8 May. Available at <https://www.iol.co.za/news/politics/malema-white-people-are-criminals-1065708>. Accessed on 30 March 2022.

<sup>70</sup> Hlati, O. & Feketha, S. 2020. *Lobby group wants Louis Botha statue at Parliament removed*. IOL, 17 June. Available at <https://www.iol.co.za/capetimes/news/lobby-group-wants-louis-botha-statue-at-parliament-removed-49475386>. Accessed on 30 March 2022.

<sup>71</sup> Evans, J. 2022. *Parliament’s Louis Botha statue targeted with spray paint and an angle grinder*. News24, 16 March. Available at <https://www.news24.com/news24/southafrica/news/parliaments-louis-botha-statue-targeted-with-spray-paint-and-an-angle-grinder-20220316>. Accessed on 30 March 2022.

In 2020, a statue of Cecil John Rhodes was vandalised at Cape Town's Rhodes Memorial, with the head of the statue being chopped off.<sup>72</sup>

In 2020 the statue of Paul Kruger standing on Church Square in Pretoria was vandalised.<sup>73</sup> Kruger was the President of the former South African Republic from 1883 to 1902, and the international face of the Boer republic's cause, particularly during the Second Anglo-Boer War. Kruger is considered a hero to many in the Afrikaner community. The statue's face and hands were covered with red paint and the word 'killer' was painted on it. The fence built to protect the statue was damaged, while the statues of two Boer soldiers next to Kruger's statue were also spray-painted. In 2021 there were renewed calls by the EFF for the removal of the statue of Paul Kruger.<sup>74</sup>

In April 2021 the 100-year-old bronze bust of General Koos de la Rey was stolen from his grave in the Lichtenburg cemetery, in the North West province. The grave was also vandalised. The bronze bust of the iconic South African Anglo-Boer War leader and Afrikaner folk hero was made in 1917.<sup>75</sup>

In January 2022 it was announced that the name of the historic Karoo town of Cradock could be changed to eNxuba or Kaladokhwe. The renaming of East London to Gompo is also being considered.<sup>76</sup> Since 2021 the Eastern Cape town of Uitenhage has been renamed to Kariega and King Williams Town is now known as Qonce.<sup>77</sup> In 2021 the city of Port Elizabeth was renamed Gqeberha.<sup>78</sup> Nathi Mthethwa, the Minister of Sport, Arts and Culture, rejected all 13 000 objections that had been received to these heavily criticised name changes in the Eastern Cape.<sup>79</sup> In 2022 it was reported that ten more towns and locations were being considered for renaming in the Eastern Cape.<sup>80</sup>

The DA claimed in May 2022 that it had received information that Mthethwa had already started a process to attempt to remove the "Afrikaans" from the Afrikaans Language Monument and Museum in Paarl, Western Cape.<sup>81, 82, 83</sup> Many Afrikaans speakers showed up to protest the

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<sup>72</sup> Raborife, M. 2020. *Cecil John Rhodes statue in Cape Town vandalised, head chopped off*. News24, 14 July. Available at <https://www.news24.com/news24/southafrica/news/cecil-john-rhodes-statue-in-cape-town-vandalised-head-chopped-off-20200714>. Accessed on 30 March 2022.

<sup>73</sup> Mahope, R. 2020. *Paul Kruger statue vandalised again*. Pretoria Record, 24 June. Available at <https://rekord.co.za/341452/paul-kruger-statue-vandalised-again/>. Accessed on 30 March 2022.

<sup>74</sup> Moatshe, R. 2021. *EFF renews calls for removal of Paul Kruger statue on Church Square*. IOL, 27 September. Available at <https://www.iol.co.za/pretoria-news/news/eff-renews-calls-for-removal-of-paul-kruger-statue-on-church-square-71975f62-d824-46c5-9ce4-dff5ca884bc1>. Accessed on 30 March 2022.

<sup>75</sup> Magnus, L. 2021. *FAK still hoping to find missing De la Rey bust*. SABC News, 20 April. Available at <https://www.sabcnews.com/fak-still-hoping-to-find-missing-de-la-rey-bust/>. Accessed on 30 March 2022.

<sup>76</sup> Dayimani, M. 2022. *Cradock to become Kaladokhwe? 10 more Eastern Cape towns and landmarks could be renamed*. News24, 24 January. Available at <https://www.news24.com/news24/southafrica/news/cradock-to-become-kaladokhwe-10-more-eastern-cape-towns-and-landmarks-could-be-renamed-20220124>. Accessed on 30 March 2022.

<sup>77</sup> *George Herald*. 2021. *Govt gazettes new names for Port Elizabeth, King Williams Town*. 24 February. Available at <https://www.georgeherald.com/News/Article/National/govt-gazettes-new-names-for-port-elizabeth-king-williams-town-202102240836>. Accessed on 30 March 2022.

<sup>78</sup> BBC. 2021. *South African city of Port Elizabeth becomes Gqeberha*. 24 February. Available at <https://www.bbc.com/news/world-africa-56182349>. Accessed on 30 March 2022.

<sup>79</sup> *BusinessTech*. 2021. *Government dismisses all objections to Port Elizabeth, Uitenhage name changes*. 21 June. Available at <https://businesstech.co.za/news/government/499807/government-dismisses-all-objections-to-port-elizabeth-uitenhage-name-changes/>. Accessed on 30 March 2022.

<sup>80</sup> *BusinessTech*. 2022. *More name changes planned for South Africa – including major towns*. 25 January. Available at <https://businesstech.co.za/news/government/552856/more-name-changes-planned-for-south-africa-including-major-towns/>. Accessed on 30 March 2022.

<sup>81</sup> *SowetanLive*. 2022. *DA waves red flag over Mthethwa's plan to remove Afrikaans from Taal Monument*. 21 May. Available at <https://www.sowetanlive.co.za/news/2022-05-21-da-waves-red-flag-over-mthethwas-plan-to-remove-afrikaans-from-taal-monument/>. Accessed on 30 May 2022.

<sup>82</sup> *Pretoria FM*. 2022. *Proses begin glo om Afrikaans uit te laat uit die Taalmonument*. 18 May. Available at <https://www.pretoriafm.co.za/proses-begin-glo-om-afrikaans-uit-te-laait-uit-die-taalmonument/>. Accessed on 19 May 2022.

<sup>83</sup> *Schreiber, L*. 2022. *DA verwerp Mthethwa se haatlike plan om Afrikaans selfs uit Afrikaanse Taalmonument te verwyder*. Available at <https://www.da.org.za/2022/05/da-verwerp-mthethwa-se-haatlike-plan-om-afrikaans-selfs-uit-afrikaanse-taalmonument-te-verwyder>. Accessed on 19 May 2022.

proposed name change.<sup>84</sup> The Afrikaans Language Monument commemorates the semicentenary of the Afrikaans language being declared an official language of South Africa separate from Dutch.

## Continued decline of Afrikaans language rights and education

In 2020 the SCA ruled that Afrikaans must be reinstated as a medium of instruction at the University of South Africa (Unisa) after an appeal by AfriForum. According to the university's website, "Unisa is the largest open distance learning institution in Africa and the longest standing dedicated distance education university in the world".<sup>85</sup> SCA President Judge Mandisa Maya ruled that the new language policy adopted by Unisa was unconstitutional and unlawful and was set aside. This came after a 2016 decision by Unisa to make the university an exclusively English-only medium of instruction institution.<sup>86</sup>

For further context, a damning report by a ministerial task team severely criticised the institution and its council for their lack of good governance and failure to safeguard the academic future of the institution. In the face of the big administrative challenges faced by the institution as identified by this task team, it is highly unlikely that the university will have the capacity to reimplement Afrikaans as medium of instruction, which means that this is only a symbolic victory.<sup>87</sup>

In March 2021 the DA launched a petition to protect the right to mother-language instruction at Stellenbosch University (SU) against "persistent attacks by the university management".<sup>88</sup> Out of the 26 public universities in South Africa, only two were still offering some modules in Afrikaans at the time, one of these two being SU.

In March 2021, the SU Senate accepted a recommendation from its academic planning committee that it can deviate from faculties' language implementation plans for the first semester of the year concerned by offering tuition in English only.<sup>89</sup>

In June 2021 student organisation StudentePlein released a video to document a diverse group of students' stories regarding the dismantling of Afrikaans at SU and the enforcement of English in student life.<sup>90</sup>

In October 2021 the DA and StudentePlein took its battle with SU over the institution's language policy to the Western Cape High Court. The DA accused the university of using the Covid-19 pandemic as a ploy to do away with Afrikaans as a medium of instruction.<sup>89</sup>

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<sup>84</sup> Solomons, L. 2022. *DA protests over plan to remove Afrikaans from Taal Monument's name*. News24, 28 May. Available at <https://www.news24.com/news24/southafrica/news/pics-da-protests-over-plan-to-remove-afrikaans-from-taal-monuments-name-20220528>. Accessed on 30 May 2022.

<sup>85</sup> Unisa. 2021. *The leading ODL university*. Available at <https://www.unisa.ac.za/sites/corporate/default/About/The-leading-ODL-university>. Accessed on 31 March 2022.

<sup>86</sup> *The Citizen*. 2020. *Court victory for Afrikaans at Unisa*. 1 July. Available at <https://www.citizen.co.za/news/south-africa/education/2312311/court-victory-for-afrikaans-at-unisa/>. Accessed on 30 March 2022.

<sup>87</sup> Naidu, E. 2016. *Council 'has dismally failed UNISA', states damning report*. *University World News*, 15 October. Available at <https://www.universityworldnews.com/post.php?story=20211015142356889>. Accessed on 31 March 2022.

<sup>88</sup> SABC News. 2021. *DA launches petition to make Afrikaans equal to English at Stellenbosch University*. 24 March. Available at <https://www.sabcnews.com/da-launches-petition-to-make-afrikaans-equal-to-english-at-stellenbosch-university/>. Accessed on 30 March 2022.

<sup>89</sup> Charles, M. 2021. *DA, student organisation want court to declare Stellenbosch University language policy 'unlawful'*. News24, 21 October. Available at <https://www.news24.com/news24/southafrica/news/da-student-organisation-want-court-to-declare-stellenbosch-university-language-policy-unlawful-20211021>. Accessed on 30 March 2022.

<sup>90</sup> StudentePlein. 2021. *Listen*. Available at <https://youtu.be/jeevJLRRdcw>. Accessed on 30 March 2022.

In December 2021 the Council of SU approved the proposed new language policy for the institution, marking the end of a consultative revision process that started in October 2020.<sup>91</sup> StudentePlein, which represents Afrikaans members in nine university faculties, rejected the new language policy, stating that it “represents a continuation of an English university, with Afrikaans and Xhosa decorations on top”, as brought about by the 2016 language policy.<sup>92</sup> StudentePlein said in a statement:<sup>91</sup>

The normative commitments to an Afrikaans offer in the preamble to the new Language Policy do not manifest at all in its operational terms, which are still largely based on student demand, staff availability and available resources. Language implementation is also made subject to what is “reasonably practicable” in 16 different places in the new policy – but only when it comes to Afrikaans and Xhosa.

AfriForum Youth rejected the new language policy as well, with AfriForum Youth Manager Bernard Pieters stating the following:<sup>93</sup>

The language policy is written in such a way that even if as few as two classes are offered at SU in Afrikaans it basically complies with all aspects of the new policy. SU says they want to promote multilingualism, but by reducing and downgrading Afrikaans it certainly does not meet the dictionary definition of “promoting”.

Earlier in 2021, StudentePlein reported that it had been informed that student leaders of Minerva Residence in Stellenbosch were “acting uncompromisingly” towards multilingualism after complaints were lodged over residence leadership indicating that songs for the student event Molassesêr – an activity where first-year students sing and perform for their fellow students – would only be performed in English.<sup>94</sup>

The SAHRC also received complaints that students at SU were being prohibited from speaking Afrikaans in private spaces, including residences, bedrooms, on WhatsApp and even on park benches in front of student residences. An investigation was subsequently launched.<sup>95, 96</sup> The DA unearthed new evidence backing up the claims that this discrimination was taking place against Afrikaans-speaking students at SU. Furthermore, the DA revealed that the management of SU was secretly of the opinion that there is “nothing wrong” with prohibiting Afrikaans students from speaking their mother language in residences and on campus.<sup>97</sup>

Similarly, in February 2022, students who reside in university residences at the University of Pretoria (UP) alleged that they were prohibited from using any other language apart from English

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<sup>91</sup> Vellai, M. 2021. Stellenbosch University Council approves new language policy. *Cape{town}etc*, 3 December. Available at <https://www.capetownetc.com/news/stellenbosch-university-council-approves-new-language-policy/>. Accessed on 30 March 2022.

<sup>92</sup> Petersen, T. 2021. *Afrikaans, Xhosa are ‘decorations’: Stellenbosch University student body slams new language policy*. News24, 3 December. Available at <https://www.news24.com/news24/southafrica/news/afrikaans-xhosa-are-decorations-stellenbosch-university-student-body-slams-new-language-policy-20211203>. Accessed on 30 March 2022.

<sup>93</sup> Nombembe, P. 2021. AfriForum Youth slams new language policy at Stellenbosch University. *TimesLIVE*, 3 December. Available at <https://www.timeslive.co.za/news/south-africa/2021-12-03-afriforum-youth-slams-new-language-policy-at-stellenbosch-university/>. Accessed on 30 March 2022.

<sup>94</sup> Petersen, T. 2021. *Call for English-only songs at annual first-years’ show raises hackles at Stellenbosch University*. News24, 30 March. Available at <https://www.news24.com/news24/southafrica/news/call-for-english-only-songs-at-annual-first-years-show-raises-hackles-at-stellenbosch-university-20210330>. Accessed on 30 March 2022.

<sup>95</sup> Petersen, T. 2021. *SAHRC probe into alleged ban on Afrikaans at Stellenbosch University to resume*. News24, 14 June. Available at <https://www.news24.com/news24/southafrica/news/sahrc-probe-into-alleged-ban-on-afrikaans-at-stellenbosch-university-to-resume-20210614>. Accessed on 30 March 2022.

<sup>96</sup> Mabuya, C. 2021. *DA wants to take Stellenbosch University language policy to Parliament*. SABC News, 11 March. Available at <https://www.sabcnews.com/da-wants-to-take-stellenbosch-university-language-policy-to-parliament/>. Accessed on 30 March 2022.

<sup>97</sup> Democratic Alliance. 2021. *“Nothing wrong” with banning “exclusionary” Afrikaans, says SU management*. Available at <https://www.da.org.za/2021/09/nothing-wrong-with-banning-exclusionary-afrikaans-says-su-management>. Accessed on 30 March 2022.

in the residences, even in private conversations. However, the UP's management denied the allegations and the students did not pursue the issue further.<sup>98</sup>

In January 2022 the South African government indicated that it is persisting with an effort to give itself more power over language policies at schools – including the main language of instruction. These additional powers are included in the Basic Education Laws Amendment Bill, which grants the final authority for admission and language policies to provincial heads of department. Currently, school governing bodies have this authority if it comprises members who were elected by the parents of that school's learners.<sup>99</sup>

AfriForum objected to these proposed amendments on the grounds that this could result in a situation where single-medium Afrikaans schools no longer have legal standing to refuse the admission of learners who do not speak the language of instruction. For more than five years AfriForum has been objecting to the planned legislation which aims among others to centralise any decisions on schools' admission and language policies in the hands of the state, instead of the communities in which the schools are located. Despite overwhelming public objection in this regard, these proposals remain part of every new version of the Bill.<sup>100, 101</sup>

AfriForum announced a victory for Afrikaans in February 2022, which entailed the registration of a psychology student as an intern by the Health Professionals Council of South Africa (HPCSA).<sup>102</sup> AfriForum assisted the student, Du Toit Genis, with a lawsuit against the council, after the student's application for registration had been refused simply because his honours degree certificate is in Afrikaans. The HPCSA accepted the certificate and finally registered Genis after AfriForum intervened. More complaints of a similar nature against the HPCSA were received; however, the complainants unfortunately withdrew their allegations, fearing victimisation.

In March 2022, Angie Motshekga, the Minister of Basic Education, announced that the Department would move forward with plans to incorporate more languages at schools to offer mother-language education to more South Africans;<sup>103</sup> however, she acknowledged that it would be very difficult to do so in a single-medium school environment beyond the 2015 schools in which pilot programmes are currently being conducted. This, seen together with a lack of concrete plans to expand the programmes as well as the absence of any timelines, indicates that the Department does not really envisage empowering the majority of children in the country.

Meanwhile, a fierce debate about the definition of indigenous languages is raging after the implementation of the Language Policy Framework for Public Higher Education Institutions in January 2022. This policy framework recognises only languages belonging to the Bantu language family as being indigenous, thereby excluding the Khoi, San and Nama languages, as well as Afrikaans. The policy framework emphasises the promotion of indigenous languages by tertiary

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<sup>98</sup> Bosman, J. 2022. Status of Afrikaans is being actively threatened – Afrikanerbond. *Politicsweb*, 14 February. Available at <https://www.politicsweb.co.za/politics/status-of-afrikaans-is-being-actively-threatened->. Accessed on 31 March 2022.

<sup>99</sup> *BusinessTech*. 2022. South Africa proposes major language change for schools. 14 February. Available at <https://businesstech.co.za/news/government/557980/south-africa-proposes-major-language-change-for-schools/>. Accessed on 30 March 2022.

<sup>100</sup> Nkosi, B. 2021. *AfriForum says proposed language policy is 'an attack' on Afrikaans schools*. IOL, 15 March. Available at <https://www.iol.co.za/the-star/news/afriforum-says-proposed-language-policy-is-an-attack-on-afrikaans-schools-75719dcd-17c9-4f54-9179-8546eb3fbb35>. Accessed on 30 March 2022.

<sup>101</sup> AfriForum. 2022. *AfriForum mobilises countrywide for public consultation on Schools Bill*. Available at <https://afriforum.co.za/en/afriforum-mobilises-countrywide-for-public-consultation-on-schools-bill/>. Accessed on 30 March 2022.

<sup>102</sup> AfriForum. 2022. *AfriForum wins significant victory for Afrikaans*. Available at <https://afriforum.co.za/en/afriforum-wins-significant-victory-for-afrikaans/>. Accessed on 30 March 2022.

<sup>103</sup> *BusinessTech*. 2022. Big language changes planned for schools in South Africa. 10 March. Available at <https://businesstech.co.za/news/government/566738/big-language-changes-planned-for-schools-in-south-africa/>. Accessed on 31 March 2022.

institutions, but in terms of its definition, the Khoi, San and Nama languages and Afrikaans will be excluded from this right to be promoted. In response, the DA has since called on UNESCO to compel the Minister of Higher Education to declare all of these languages as indigenous and to cease all forms of exclusion and discrimination against these languages.<sup>104</sup> The ANC has since been compelled to recognise that Afrikaans (together with the Koi, San and Nama languages) are indeed indigenous, African languages.<sup>105, 106</sup>

## Conclusion

AfriForum's main aim with *The world must know* reports is to document in detail as well as expose to the international community the continued persecution of minority communities in South Africa, as well as the ANC government's anti-Western sentiments. The first report, released in 2020, received significant positive and supportive feedback from civil rights organisations, think tanks and public figures abroad. It was this positive reaction that encouraged AfriForum to follow up the 2020 report with an updated version, which outlines the relevant events to this report's subject matter in the years 2020–2022.

AfriForum greatly appreciates everyone who shares these reports, and those who use it as a reference source in their own writing and publications. AfriForum will continue to research, document and publish its *The world must know* reports in the coming years.

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<sup>104</sup> Charles, M. 2021. DA wants UN to force Nzimande to recognise Afrikaans, Khoi, San, Nama languages as indigenous. News24, 18 November. Available at <https://www.news24.com/news24/southafrica/news/da-wants-un-to-force-nzimande-to-recognise-afrikaans-khoi-san-nama-languages-as-indigenous-20211118>. Accessed on 31 March 2022.

<sup>105</sup> Mabuza, E. 2022. DA welcomes Nzimande's opinion that Afrikaans, Khoi, San languages are indigenous to SA. *TimesLIVE*, 12 May. Available at <https://www.timeslive.co.za/news/south-africa/2022-05-12-da-welcomes-nzimandes-opinion-that-afrikaans-khoi-san-languages-are-indigenous-to-sa/>. Accessed on 13 July 2022.

<sup>106</sup> Head, T. 2022. Major u-turn! ANC forced to recognise Afrikaans as "indigenous language". *The South African*, 11 May. Available at <https://www.thesouthafrican.com/news/breaking-anc-u-turn-is-afrikaans-indigenous-language-south-africa/>. Accessed on 13 July 2022.