

TOWARDS THE RECOGNITION OF FARM MURDER AS A DISTINCT CRIME IN SOUTH AFRICA: A MULTIDISCIPLINARY HUMAN RIGHTS APPROACH

A mini-dissertation Submitted to the Faculty of Law of the University of Pretoria, in partial fulfillment of the requirements for the Degree of Masters in Multidisciplinary Human Rights (MPhil)

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15 December 2014



DECLARATION

I, **Keabetswe Masego Mokgoko, 04400887** do hereby declare that **Towards the recognition of farm murder as distinct crime in South Africa: A multidisciplinary human rights approach** is my own unique work. It has never been presented or submitted at any other university or institution. All sources used herein or quoted by me have been acknowledged and validated. It is thus in this regard that I declare this work as originally mine and acknowledge all omissions and ambiguities as my own. Furthermore, this mini-dissertation is hereby presented in partial fulfilment of the requirements for the award of MPhil Degree in Multidisciplinary Human Rights for the year 2014. I know and understand the contents of this declaration and consider the facts contained herein to be binding my conscience and me.

K.M Mokgoko

.....

SIGNATURE

I, **Tshepo Madlingozi**, supervisor of **Keabetswe Masego Mokgoko**, do hereby declare that I have read the contents of the above-mentioned mini dissertation titled **Towards the recognition of farm murder as distinct crime in South Africa: A multidisciplinary human rights approach**, and have endorsed it for the partial fulfilment of the degree programme of MPhil: Multidisciplinary Human Rights. I know and understand the contents of this declaration and consider the facts contained herein to be binding my conscience and me.

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Signed at the University of Pretoria on the 10th December 2014



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DEDICATION

To my late mother Rebecca Mmabatho Mokgoko, though you may be gone, memories still live on forever. Thank you for teaching me to always have PMS (Personal Mission Statement) in life, and at no time to rely on ABC (Accusation, Blame and Complaints).

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- Last but not least, Tshepo Madlingozi, my supervisor. Thank you for your mentorship, patience, guidance, continuous support, constructive criticism on earlier drafts, and for imparting intellectual knowledge to this dear young mind. I have indeed been privileged to have worked with a professional of your calibre.

“It always seems impossible until it is done” – Nelson Mandela

ABBREVIATIONS

SAHRC	South African Human Rights Commission
SACCI	South African Chamber of Commerce and Industry
ICCPR	International Covenant on Civil and Political Rights
UDHR	Universal Declaration of Human Rights
AGRISA	Agricultural South Africa
TAU	Transvaal Agricultural Union
CIAC	Crime Information Analysis Centre
TAUSA	Transvaal Agricultural of South Africa
SAIRR	South African Institute for Race Relation
UNCAT	United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
TRC	Truth and Reconciliation Commission
SAPS NOCOC	South African Police Service National Operational Coordinating Committee
CERD	Convention on the Elimination of All Forms of Racial Discrimination
ANC	African National Congress
ISS	Institute for Security Studies
APLA	Azanian People's Liberation Army
PAC	Pan Africanist Congress of Azania
SAPS	South African Police Service
SANDF	South African National Defence Force
UNDHRD	United Nations Declaration on Human Rights Defenders
ACHPR	African Charter on Human and People's Rights
ECHR	European Convention for the protection of Human Rights and Fundamental Freedoms
EU	European Union
EFF	Economic Freedom Front
CSVV	Centre for the Study of Violence and Reconciliation
PEP	Post-exposure prophylaxis

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Motivation of study

Murder is escalating at a perpetual rate, approximately 17 068 murders were registered in the Republic of South Africa in 2013/2014, signalling an increase from 16 250 in 2012-2013.¹ The above-mentioned statistics are significant because they indicate that 809 more individuals were murdered, some of them farmers, family members of farmers and farmworkers in 2013-2014 as compared to 650 of the previous year.² The citizens of South Africa have become accustomed to a culture of violence, from the Anglo Boer war where Boers/farmers rebelled against Britain rule in the Transvaal, the xenophobic attacks of 2008 where migrants were murdered by South African citizens, the “Marikana-Massacre” where police opened fire and killed Lonmin miners, and the recent farm attacks which have compelled the South African Human Rights Commission (SAHRC), in the case of *Freedom Front v SAHRC*³ to perceive the “Kill the farmer, kill the Boer” song as hate speech under section 16(2)(c) of the South African Constitution, as it encourages individuals to murder “maburu” or rather farmers.

However, the researcher is of the opinion that in order to understand farm attacks/murder, one cannot simply isolate South Africa from the rest of Africa because throughout African history, one has witnessed wars in Zimbabwe, Mozambique, Angola and Darfur just to name a few where victims are hacked with pangas, or necklaced to death. A recent media report, highlighted that the total number of farmers who died as a result of farm attacks in South Africa, greatly exceeded the total number of individuals who were deceased as a result of wars in Zimbabwe, Mozambique, Angola and the Mau-Mau rebellion in Kenya combined.⁴ After reading the article, I felt compelled to undertake this proposed study.

1.2 Problem statement

In order to fully comprehend farm attacks/murder, it is necessary to contextualise or rather delineate the problem. Since 1991, farmers both Black and White have been subjected to severe attacks, and it is worth noting that the prevalence of farm attacks is 700% statistically higher in South Africa, than anywhere in the world.⁵ What is most concerning is that in the last official SAPS data on farm murder in 2007, 88 farmers were slain.⁶ The South African Chamber of Commerce and Industry (SACCI) contends that every farm killing costs the South African economy roughly R2 million (R 1932 846, 00) annually and

¹ <http://www.issafrica.org/uploads/ISS-crime-statistics-factsheet-2013-2014.pdf> (accessed 15 August 2014).

² Ibid.

³ *Freedom Front v SAHRC* 2003 11 SA BCLR 1283 (CC).

⁴ *Beeld* reported on farm attacks and murder on the 20th August 2009. The key finding worth highlighting is the ratio for farm attacks and farm murder were 13: 1, meaning for every thirteen attacks one murder occurred.

⁵ C Bezuidenhout & H Klopper “Crimes of a violent nature” in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011) 202.

⁶ Solidarity Research Institute C Bezuidenhout “An overview of farm attacks in South Africa and the potential impact thereof on society” November 2012 9.

approximately 39 982 active farms were in operation during 2007, decreasing yearly with the last recorded farms estimated to be 36 900.⁷

It is easy to attribute farm murder as just another sign of the disastrous crime rate in the country, but such a view would leave three very important questions unanswered as highlighted in literature⁸ :

- Firstly, why is farm murder so thoroughly premeditated, while statistics indicate that the vast majority of crimes in South Africa are attributed to alcohol, drug addiction, interpersonal and domestic conflict?⁹
- Secondly, why are attacks on farming communities so excessively cruel, again contrasting with the situation regarding the majority of other murders in South Africa?
- Why is general murder decreasing, whilst farm murder seems to be increasing in South Africa?¹⁰

1.3 Research questions

When a research question or statement is used, it must be formulated in such a way that it can be explored and answered within a single study, or divided into sections where each study addresses a specific section.¹¹ This implies that the research question must be clear, concise and formulated in such a way that it is self-explanatory. Taking cognisance of the position of authors such as Vithal and Jansen that a research question should directly relate to the goal of the study,¹² the following research questions for this study, inspired by unanswered questions in the problem statement above, were formulated as follows:

- Will recognising farm murder as a distinct crime be an effective way to combat and prevent attacks on the farming community?
- Has farm murder increased after 1994, in comparison to general murder in South Africa?
- What is the motivation behind the need to resort to gratuitous violence (torture) during attacks on commercial farms

1.4 Goal of the research study

In order to move forward, a distinct aspect must be clarified namely the goal of the research study. A goal is “the end to which all ambition or effort is directed” and thus means the results that the study aims to

⁷ Ibid.

⁸ N Moolman “Farm attacks: Are there any ulterior motives?” (2000) 13 *Acta Criminologica* 64

⁹ Ibid.

¹⁰ Crime Information Management Centre *The incidence of serious crime: Quarterly Report 3/98* South African Police Service (1998) 42.

¹¹ C Bless et al *Fundamentals of social research methods: An African perspective* (2006) 21.

¹² JD Jansen & R Vithal “Planning a research proposal” in Maree & Van der Westhuizen (eds) *First steps in research* (2007) 30.

achieve in the broadest sense.¹³ For the researcher this means that the goal of the research is the outcome that is envisaged, or in other words, the end result the researcher wishes to achieve through the study. Thus the goal of the proposed study is to attempt to highlight reasons why South Africa urgently needs to recognize farm murder as a distinct crime category, so that government can direct resources for its prevention because the absence of this recognition violates rights of farmers.

1.5 Significance of study

Farm murder is a phenomenon that is mainly distinctive to South Africa. This is despite the fact that Section 12(1)(c) of the Constitution of the Republic of South Africa, Act 108 of 1996 guarantees every person “the right to security of persons, also including the right to be free from any and all forms of violence, be it from public or private sources”,¹⁴ however farmers are denied the safeguarding of these rights because of the gratuitous violence and torture inflicted on them during farm attacks. In an attempt to respect and protect the dignity and security of all humanity, the Constitution provides full immunity and freedom from all forms of torture. Evidently, torture of any form as enshrined in article 1 of the United Nation Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) of 1975 is also condemned. Similarly article 7 of the International Covenant on Civil and Political Rights, hereinafter ICCPR¹⁵ as well as article 5 of Universal Declaration of Human Rights (UNDHR) similarly reiterate this sentiment.¹⁶ Inasmuch as the government of South Africa is aware of attacks against the farming community, South African statutory or common law does not define farm murder as a distinct crime category, but rather farm murder is classified like any other murder with “Farm attack” employed as a preferred concept used to define crimes committed against persons on farm.¹⁷

1.6 Research methodology

Research methodology is defined as a plan of action of the way research will be conducted in order to answer research questions with the aim of achieving the goal of the study.¹⁸ The methodology employed here is desktop research. The researcher intends on analyzing primary sources such as legal instruments pertaining to farm attacks at a national, regional and international level. Secondary sources to be consulted include journal articles, legal reports, online reports and books. I selected secondary sources

¹³ CB Fouche & AS De Vos “Problem formulation” In AS De Vos & H Strydom (eds) CB Fouché & CSL Delpont *Research at grass roots for the social sciences and human sciences professions* (2005) 100.

¹⁴ Hereinafter the Constitution. The above-mentioned right is modelled on article 5(b) of the International CERD (1966) which infers the “right of security of persons” and protection by the State against violence.

¹⁵ International Covenant on Civil and Political Rights (16 December 1966), article 7.

¹⁶ Universal Declaration of Human Rights (1948), article 5. The above-stated charter implies farm attack is a violation of the basic right to life, security and protection.

¹⁷ C Bezuidenhout & H Klopper “Crimes of a violent nature” in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011) 202.

¹⁸ E Babbie *The practice of social research* (2007) 87.

because relevant data is readily available that will provide detailed knowledge on the topic at hand. The researcher opines that the proposed study demands a multidisciplinary approach to arrive at a sufficiently satisfactory answer, and seeks to employ Constitutional law and Human rights law in order to establish the constitutional and legislative protection offered to farmers within the national framework, as well as international obligations that have been placed on the state with regard to protecting the security of all persons.

With regards to the discipline of criminology, a victimology theory of crime by Lawrence Cohen and Marcus Felson's routine activities theory will be with employed, in order to highlight the factors that play a role in increasing farmers' susceptibility to attacks. Robert K Merton's sociological theory of anomie will be utilized in order to illustrate why farm attacks occur in South Africa as well as delineate who the perpetrator of the attack is. I chose to borrow from the discipline of Sociology and Criminology in order to highlight the rationale behind enactment of legislation specifically aimed at preventing, combating, prohibiting, as well punishing the perpetrators of farm attacks, because I was inspired by Prof Viljoen who contended that even though the field of human rights is "deeply legal" in nature, a multi-disciplinary approach is progressively establishing its dominance.¹⁹ The aim of collecting all the necessary information in the abovementioned fashion is to critically assess the situation in South Africa, and find a solution employing multiple disciplines hence the title of this mini-dissertation *Towards the recognition of farm murder as a distinct crime in South Africa: A multidisciplinary human rights approach*.

1.7 Limitations and delineation of study

The significance of any research undertaken is limited by difficulties encountered during research. The first limitation encountered in this study was the statistics used in order to determine the true extent of farm murder/attacks in the Republic of South Africa. The three main bodies responsible for the production of statistics on farm murder/attacks are Agricultural South Africa (AgriSA), Crime Information Analysis Centre (CIAC) and the South African Police Service National Operational Coordinating Committee (SAPS NOCOC).²⁰ I realized that AgriSA mostly conducted research on commercial farms and the problem is that farm attacks and farm murder on smallholding farms might have been ignored, thus leading to the overemphasis of attacks on commercial farms.²¹ I also discovered that research conducted by the CIAC may suffer a problem of underreporting of farm attacks/murder because statistics of farm murder and attacks were significantly higher post 1994 especially between the period of 1997-1998 as compared to pre-1994 where miniscule research or rather data was captured.²² With regards to

¹⁹ F Viljoen "Disciplinary beyondness: A background to the conference and collection of papers (2012) xiii.

²⁰ V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 85.

²¹ Ibid.

²² Ibid.

NOCOC, the institution gathers data for operational purposes immediately after the attack had occurred, therefore the victim on the farm would either be recorded as injured or dead, however the statistics or rather research might be skewed because hypothetically what if the victim who was recorded as injured suddenly dies, the incident would have been recorded as a farm attack instead of a farm murder.²³ I therefore am compelled to contend that the accurate extent of the gravity of the situation can only be determined with accurate precision, had the number of farmers or individuals residing on a farm been previously established as well as the number of the number of attacks/murder reported, however South Africa does not have exact statistics of the number of farmers residing in the Republic of South Africa to date.²⁴

Delineations explain what exactly falls within the researcher's scope of study and what does not, and as such, this study will not be concerned with other crimes such as for example corrective rape or looting of foreigners shops in the townships, to be afforded the status of a distinct crime, but is only concerned with farm attack/murder to be a differentiated crime from general murder.

1.8 Literature review

The relevant literature available for the proposed study can be categorized as journal articles, legal reports, online reports, books as well as grey material such as unpublished conference papers, dealing with the phenomenon of farm attack/murder in South Africa.

Most publications estimate the likelihood of a farmer being murdered in South African as compared to the general population, this can be seen in the work of Bezuidenhout, who contends that the chances of a farmer being murdered, is estimated to be four to eight times higher than the average citizen more specifically a policeman.²⁵ Bezuidenhout conducted research comparing the murder rate in the United Kingdom as well as in South Africa, and concluded that farm attacks occurred eight times more in South Africa than in other countries.²⁶ Bezuidenhout's findings were that 16,834 murders (34 murders out of every 100.000 of the population) were recorded between the period of April 2009 to March 2010.²⁷ However, Burger disputes Bezuidenhout's claim and estimates that a farmer is twice as likely to be murdered, evidence to highlight his argument is that 81 murders were recorded during 2011/2012, i.e. a ratio of 51 murders per 100 000t.²⁸ The South African Institute for Race Relation (SAIRR), who made use of statistics provided by Transvaal Agriculture of South Africa (TAUSA), are however on the fence

²³ Ibid.

²⁴ Ibid.

²⁵ Solidarity Research Institute C Bezuidenhout *Overview of farm attacks in South Africa and their potential impact on society* (2012) 9.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Solidarity Research Institute J Burger *From Rural Protection to Rural Safety: How government changed its priorities* (2008) 68.

regarding this dispute of the likelihood of farmers being murdered as compared to the general population. SAIRR argued that farmers were not uniquely under attacks as compared to the general population, however a week later, it retracted the claim, stating that new evidence highlighted that farmers were twice as likely to be murdered than ordinary citizens,²⁹ a notion that resonates with Burger.

The focus of most publications has been on scientific validity of statistics available that would help shed light on the true nature and extent of farm attacks. Institutions such as Human Rights Watch, Africa Check and the Institute for Security Studies (ISS) opine that some researchers exaggerate statistics in order to advocate a certain agenda or perpetuate an ideology. Human Rights Watch blames the government for protecting farmers whilst neglecting farm labourers who need more protection as compared to the farm owners.³⁰ Africa Check,³¹ as well as the project manager of the ISS, Lizette Lancaster vehemently stated that the current murder rate of white people in South Africa is less than all racial groups combined³² because out of the 1,378 murder docketts that SAPS documented in 2009, a mere 1,8% were White race whilst 86,9% were Black.³³ Thus white people are not in danger because they only constitute 8,85% of the total population.³⁴

TAUSA however disputes research conducted by ISS, Africa Check and Human Rights Watch that concluded white farmers are not in danger as compared to black farmers because out of the 115 farmworkers that were murdered, 105 were black and only ten were white, and in terms of immediate family of the farmers 375 murdered were white whilst only 32 were black.³⁵ Given the fact that 375 White family relatives were murdered as compared to 32 Black relatives might seem as if white people are targeted, however one must remember that there are more white-owned farms in comparison to black-owned farms as well as more black people than white people in South Africa. It is thus clear from available literature that the fact that different racial and ethnic groups fall victim to farm attacks, is an indication that attacks are aimed against the farming community and not white farmers only.

In all the above stated publications, no attention has been afforded for the promulgation of distinct legislation pertaining to farm murder as a distinct crime, this study will therefore aim to contribute in filling this identified gap, by addressing the possibility of recognizing farm murder as a distinct crime in South Africa.

²⁹ <http://www.issafrica.org/iss-today/farm-attacks-and-farm-murders-remain-a-concern> (accessed 1 September 2014).

³⁰ <http://www.hrw.org/reports/2001/safrica2/> (accessed 29 July 2014).

³¹ An NGO that partnered with the School of Journalism at WITS University, with the mandate of double-checking facts in South Africa especially with highly contested topics such as murder, rape and farm attacks.

³² <http://www.economist.com/blogs/baobab/2013/07/news-africa> (accessed 1 August 2014).

³³ <http://www.thesouthafrican.com/red-october-to-protest-against-genocide-of-white-south-africans-in-london/> (accessed 10 November 2014).

³⁴ *Ibid.*

³⁵ <http://www.issafrica.org/iss-today/farm-attacks-and-farm-murders-remain-a-concern> (accessed 1 September 2014).

1.9 Conceptualization of operational definitions

In order to avoid any ambiguities or omissions, it is necessary to examine operational definitions as well as key concepts such as farm attacks, victims of farm attacks, torture and gratuitous violence.

1.9.1 Definition of farm attacks

Farm attacks can be defined according to SAPS NOCOC as well as Crime Information Analysis Centre (CIAC), as any “attack on farms and smallholdings, whether with the intent to murder, rape, and rob on inflict bodily harm”.³⁶ The definition further incorporates “all actions aimed at disrupting farming activities as a commercial concern, whether for motive by ideology, labour disputes, land issues, revenge, grievances, racist concerns on intimidation”³⁷. This definition is accepted as the operational definition by the Committee of Inquiry into Farm Attacks.³⁸

The researcher is of the opinion that the above-stated definition by SAPS NOCC and CIAC is too wide in scope and therefore farm attacks for the purposes of this thesis will be defined as crimes such as murder, robbery, abduction, rape, arson, murder, vehicle theft and assault against a farmer, his family and residents of a farm or smallholding. The implication of the above definition is that the crimes must occur on a farm and the victims must be residents of the farm or visitors on the farm. However, it must be noted that crimes such as domestic violence that occur on farms fall outside of the scope of this definition. I am only concerned restricts myself to acts committed on the farm.

1.9.2 Victims of farm attacks

Victims of farm attacks include the farmer, his/her immediate family and/or labourers who are directly involved in the attacks. However, a whole spectrum of individuals might rightly claim to be victims of farm attacks, such as emergency personnel summoned to the scene after an attack has occurred as well as individual who witnessed the torture and brutality.³⁹ Thus it is necessary to limit the scope of the term “victim”.⁴⁰ For the purpose of the dissertation, the operational definition of a

³⁶ Criminal Justice Monitor, *Report of the Committee of Inquiry into Farm Attacks* (2003) SAPS. See also C Bezuidenhout & H Klopper “Crimes of a violent nature” in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011) 202.

³⁷ Ibid.

³⁸ The Committee of Inquiry into Farm Attacks, which comprised of agricultural organizations, farmers, farm workers and individuals concerned with rural safety, was established by former National Commissioner of Police Jackie Selebi in 2001. The Inquiry was appointed in terms of section 31 (1)(11) of SAPS Act (Act no 68) Of 1995. The mandate of the Commission was to investigate the motivation as well as factors that play a role in farm attacks especially when considering crimes that occur on farms such as rape, robbery and murder with the aim of making recommendations on research findings.

³⁹ V Hornschuh “A victimological investigation of farm attacks with specific reference to farmers’ perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization” unpublished MA thesis, University of Pretoria, 2007 14.

⁴⁰ Solidarity Research Institute L Claseen “The significance level of brutality and overkill” (2012) 38.

victim of farm attacks is therefore any farmer, members of his family and labourers who suffer physical injury, emotional and/or psychological harm at experiencing or witnessing the attack.

1.9.3 Definition of torture

Article 1 of the UNCA, defines torture as “any act by which excessive pain or suffering is experienced, whether physical or mental, and is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or is suspected of committing.”⁴¹ Torture employed during farm attacks is mainly attributed to forcing farmers to reveal where valuables such as money or firearms are kept, especially during a robbery or rather a home invasion.

1.9.4 Definition of gratuitous violence

The subjective definition of gratuitous violence according to the Centre for the Study of Violence and Reconciliation (CSVSR) is based on the understanding of the word gratuitous, which means “unnecessary violence”, and thus excludes any form of violence to which there is an established goal.⁴² This type of violence is characterised especially by the absence of empathy. When individuals describe this type of violence as unnecessary, it is possible that this description reflects their morality (be it over- or understated), or their feelings regarding the unfathomable nature of this type of violence.

1.10. Contents of the mini-dissertation

The proposed layout of the dissertation is given below:

Chapter 1: General introduction

In the introductory chapter 1, the reader will be orientated regarding the themes presented in the proposed study. The proposed chapter seeks to contextualize the problem and highlight the scope of the research study.

Chapter 2: An overview of farm attacks in South Africa

In this chapter, the focus is on highlighting the nature and extent of farm murder, thus an exposition of crimes committed during farm attacks, reasons for gratuitous violence more specifically torture, a profile of perpetrators involved in the attacks, an exposition of consequences of farm attacks, as well as the theoretical framework that will help shape premise of reasoning will be discussed.

⁴¹ United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975.

⁴² The Centre for the Study of Violence and Reconciliation *Why does South Africa have such high rates of violent crimes?* (2009) 105.

Chapter 3: Criticism of legislation pertaining to farm attacks

In chapter 3, I will discuss legislation pertaining to farm attacks because in chapter 2, I dealt with crimes committed during a farm attack. I aim to provide a snapshot of national, continental as well as universal guarantees for farmer's rights, as well as jurisprudential developments on the protection of the above mentioned rights in South Africa.

Chapter 4: Towards the recognition of farm murder as a distinct crime: Lessons from the human trafficking legislation

In Chapter 4, I will employ a case study of human trafficking in order to contextualize the problem before legislation was enacted, as well after legislation had been adopted. I hope to illustrate that perhaps we can draw lessons from human trafficking, thus this chapter attempts to answer of my research questions stated in chapter 1, will recognising farm murder as a distinct crime (legislation) be an effective way to combat and prevent attacks on the farming community?

Chapter 5: Conclusion and recommendations

In the concluding chapter, the researcher seeks to ascertain whether the goal of the research study has been achieved. The researcher will also determine whether the research questions formulated in chapter 1 were answered or not. Furthermore, recommendations emanating from the research study will be made.

CHAPTER TWO

AN OVERVIEW OF FARM ATTACKS IN SOUTH AFRICA

2.1 Introduction

In this chapter, I aim to discuss firstly the nature and extent of farm attacks because I reckon that it is problematic that the last recorded statistics from SAPS on farm attacks was in 2007 and that no global statistics currently exist to shed light on the nature and extent of the problem at hand.⁴³ Secondly, I will discuss crimes committed during farm attacks such as armed robbery, assault, rape, abduction, murder, vehicle theft, arson and rape. Third, I will discuss gratuitous violence because the motivation to act aggressively against others is affected by a variety of factors, such as a culture of violence, racism, failure of land redistribution, economic inequalities (shortage of opportunities), and frustration. Fourth, a profile of suspects involved in farm attacks will be discussed, in an attempt to comprehend the dynamics of farm attacks/murder, as well as the circumstances surrounding the behaviour of the attackers. Fifth, I plan to provide an exposition of consequences of farm attacks such as death and injury, economic consequences and psychological harm. Last but not least, a theoretical framework will be established especially its relevance towards explaining the phenomenon of farm attacks/murder which will be followed by a summary of conclusion.

2.2 Nature and extent of farm attacks

Farm attack(s)/murder is a controversial topic in South Africa. Institutions such as AgriSA perpetuate the notion that farm murder must be afforded a priority crime status because it captured 1541 murders and 10151 attacks between 1994-2008, an average of 0.3 murders a day,⁴⁴ and further documented 5200 farm attacks between the period of January 1991 and September 2005 in which 5200 farmers were murdered.⁴⁵ TAU, motivated by tackling the food security crisis in South Africa, captured 1266 murders and 2070 attacks in the period between 1991-2009, an average of 0.2 murders daily.⁴⁶ The ISS of the University of Pretoria, reported 1073 murders and 1013 attacks in the period from 1993-2009, an average of 0.2 murders a day and in 2012 TAUSA recorded 1022 farm murders between the period of 2007-2012. It was however significant in the study conducted by TAUSA that Whites constituted 951 of individuals murdered whilst 71 of individuals murdered were Blacks.⁴⁷

⁴³ C Bezuidenhout & H Klopper "Crimes of a violent nature" in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011) 203-204.

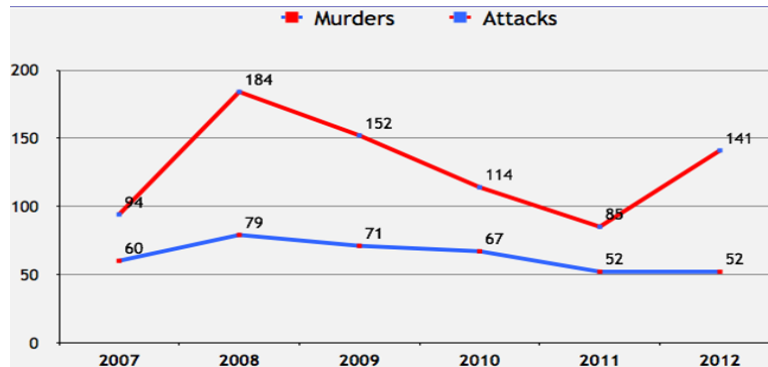
⁴⁴ Ibid.

⁴⁵ <http://www.agriinfo.co.za/Agri%20SA/A.../crimecontent.html> (accessed 12 September 2014)

⁴⁶ C Bezuidenhout & H Klopper "Crimes of a violent nature" in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011) 204.

⁴⁷ The Institute for Security Studies *Farm murders: A national Priority?* (2012) 7 A power point presentation presented by Johan Burger at the Crime and Justice programme in 2012.

Figure 1: Illustration of farm murder and farm attacks by TAUSA



Source: Institute for Security Studies *Farm murder a national priority?* (2012) 5

From the above stated statistics in figure 1, it is clear that farm attacks and farm murder were highest in 2008 and 2009 and declined in 2011. I am of the opinion that farm attacks could have declined in 2011 because after the 2010 world cup, the citizens of South Africa were still hyped up on being a united nation and feelings experienced after the World Cup still lingered. However, farm attacks started dramatically increasing again 2011 as well as in 2012 as can be noted in figure 1, I reckon that it may have been caused by tension leading to the elections especially with the issue of land redistribution. Gauteng seems to be affected the most since nearly 20% (663) of the 3 319 farm attacks that have been recorded between 1990 and 2012 occurred in Gauteng according to a study found in a book called *Treurgrond: Die Realiteit van Plaasanvalle (Place of Sorrow: The realities of Farm Attacks)*.⁴⁸

There are three phases of farm attacks worth considering when one attempts to comprehend the nature of attacks, namely the reconnaissance phase, the operational phase and finally the escape phase which would be discussed shortly. With regards to the **reconnaissance phase**: This phase is characterized by observation of movements on the farm that is about to be targeted, as well as strategies such as poisoning dogs or cattle, intimidation, threatening phone calls, setting alight crops, occupying land after a land claim has failed and inexplicable disappearances of workers.⁴⁹ Perpetrators often place the farm they intend to attack under surveillance for an average of three to four days before the actual attack occurs.⁵⁰ The majority of attacks, are aimed at farm owners, managers, lessees because perpetrators yield satisfactory economic gain from attacks, evidently robbery is a motive in 90% of the cases and gangs of 3 to 6 and sometimes up to a maximum of 13, sometimes led by an older person instigate attacks.⁵¹

⁴⁸ <http://www.news24.com/SouthAfrica/News/Farm-attacks-worst-in-Gauteng-study-20130509> (accessed 2 May 2014).

⁴⁹ JMJ Visser *Violent attacks in South Africa* (1998) 22. See also C Bezuidenhout & H Klopper "Crimes of a violent nature" in C Bezuidenhout *A Southern African Perspective on Fundamental Criminology* (2011) 203.

⁵⁰ V Hornschuh & T van Wijk, "Victims of farm attacks" in L Davis & R Syman (eds) *Victimology in South Africa* (2005) 220-221.

⁵¹ *Ibid.*

The **operational phase** is the second phase where perpetrators attack the farm. This phase can be usually characterised by attempts at getting close to the victims, followed by a physical onslaught that may result in fatalities, injuries, psychological harm and financial losses.⁵² Ambushes are usually successful when the perpetrators know the potential victims' routine such as for example, perpetrators pretending to be SAPS or SANDF members, and recently a security guard who was tasked with guarding an elderly couple instigated the attack and murdered the couple.⁵³ Lastly the **escape phase**: This is when the mission or rather attack has been completed and offenders leave with either their getaway car, the victim's car or on foot.⁵⁴ Attackers usually leave the scene of the crime on foot, however, in some instances; perpetrators may use the victims' vehicle to flee as well as to transport stolen goods from the targeted farms.⁵⁵ The farmer's children may also be taken hostage for the purpose of driving the vehicle for the attacker.⁵⁶

Farm attacks frequently occur at the end of the month due to awareness that salaries and wages will be paid. Preferred days for attacks are Thursday, Friday and Sundays because temporary labourers often go home over the weekends and thus can take stolen goods along with.⁵⁷ Late afternoon or during the night are the most preferred times for attacks because it is perceived that most farmers as well as their families would be at home in a more relaxed atmosphere for example cooking or watching television unaware of the attack that is about to occur.⁵⁸

2.3 Crimes committed during farm attacks

Literature indicates that the most prevalent crimes committed during farm attacks are armed robbery, assault, rape, abduction, arson, vehicle hijacking or rather vehicle theft and murder,⁵⁹ which will be discussed shortly.

- **Aggravated robbery**

A sub-category of robbery is aggravated robbery, which includes interpersonal violence. The violence refers to offenders who are in the possession of firearms or other weapons, threatening victims with

⁵² V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 94.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ V Hornschuh & T van Wijk, "Victims of farm attacks" in L Davis & R Syman(eds) *Victimology in South Africa* (2005)

⁵⁷ JMJ Visser *Violent attacks in South Africa* (1998) 3.

⁵⁸ Ibid.

⁵⁹ V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 94. See also V Hornschuh & T van Wijk, "Victims of farm attacks" in L Davis & R Syman(eds) *Victimology in South Africa* (2005)221.

serious bodily harm or commit grievous bodily harm.⁶⁰ Handguns are preferred weapons since in 62% of cases; either a revolver or a pistol was used, resulting in 24% of victims suffering physical injuries.⁶¹ Thus I am compelled to conclude that when one considers armed robbery, especially as a crime that occurs on farms, one can clearly see that just enough violence is used to attain objects desired. It is only in a few cases where unnecessary violence is used especially in cases where victims resist and refuse to give in to demands.

- **Assault**

With regards to assault, offenders employed violence or the threat of violence when they attacked the homes of farmers in order to deter resistance in approximately 30% of cases, and victims were verbally attacked in 100% of case with threats of death or insults/swears hurled at them.⁶² The researcher is of the opinion that the second most serious crime next to murder is assault because the application of physical force may cause permanent physical injuries, and it goes hand in hand with the offence of robbery.

- **Abduction**

Abduction is a crime that is instigated against the farming community, and in some cases, a farmer's wife and family are detained for eons and eons whilst perpetrators anticipate the return of the farmer to the homestead with the intention to murder him.⁶³ In certain instances, both the farmer and his spouse are murdered.⁶⁴

- **Vehicle theft**

Vehicle hijacking intersects and overlaps with vehicle theft during an attack. Hijacked vehicles form part of the economy and on average hijackers receive the following amounts for the type of vehicle, to only name a few: BMW – R14 500; Mercedes Benz (all types) – R18 700, Honda Ballade – R4 750, Toyota Corolla – R900, Volkswagen VR6 – R13 500 and for all types of Volvo's, payment on average is R25 000.⁶⁵

- **Rape**

Although men can be victims of rape during farm attacks, female are most vulnerable because 70 women were raped during attacks in 2001, however, it is estimated that **rape** occurs in 10% of all cases

⁶⁰ Ibid.

⁶¹ G Newham "Reclaiming our homes? Tackling residential robberies in Gauteng" (2008) 23 *SA Crime Quartely* 7

⁶² RJ Zinn "Inside information: Sourcing crime intelligence from incarcerated house robbers" (2008) 32 *SA Crime Quartely* ISS 64.

⁶³ BW Haefele *Violent attacks on farmers in South Africa: Is there a hidden agenda?* Crimas International Conference May 1999 6.

⁶⁴ Ibid.

⁶⁵ J Irish-Qhobosheane & N Moshe "A Booming Trade: Vehicle hijacking in South Africa" in J Irish Qobosheane *Gentlemen or Villains, Thugs or heroes* (2007)133-135.

of farm attacks.⁶⁶ The report of the Committee of Inquiry into farm attacks contends that black women often were victims of this horrendous crime, and were attacked whilst walking to a nearby farm; however the recording of rapes as farm attacks instead of the offence may be attributed to the exaggeration of statistics on farm attacks.⁶⁷

- **Arson**

Arson on farms is usually the result of retaliation tactics such as setting alight the farmhouse, or crops in order to deceive victims to leave the home thus making them vulnerable to attacks planned by perpetrators.⁶⁸

- **Murder**

Murder however is the most serious crime committed during farm attacks because often victims are raped, abducted and murdered afterwards, in which case the crimes are recorded as murders and perpetrators who commit murder during attacks are motivated by the fact that the victim was known to him prior the attack.⁶⁹ Although many of the farm attacks seem to be of a criminal nature and are often ascribed to prevailing socio-economic conditions especially in rural areas, some attacks may reveal concealed motives, which now bring me to the next section reasons for torture.

2.4 Reasons for gratuitous violence (Torture) during farm attacks

Throughout history aggression has helped the human species to survive, most noteworthy the earliest documentation of gratuitous violence or rather murder is documented in the bible in the case of *People v Cain* where Cain (a tiller of the ground) murdered his brother Abel (a shepherd) and his punishment was exile.⁷⁰ The Summit of Rural Safety and Security attribute the gratuitous violence evident in farm attacks to a climate of lawlessness, intolerance and the violent manner in which conflict is the preferred method to attain both political and personal objectives.⁷¹ Prominent reasons for the use of torture during farm

⁶⁶ V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 105.

⁶⁷ Ibid.

⁶⁸ BW Haefele *Violent attacks on farmers in South Africa: Is there a hidden agenda?* Crimas International Conference May 1999 11. See also V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 105.

⁶⁹ H Schutte "A theoretical perspective on farm attacks in the South African farming community" (2005) 18 *Acta Criminologica* 79.

⁷⁰ IM Rosenberg & YL Rosenberg "Cain rose up against his brother Abel and killed him: Murder or manslaughter?" (2001) *Georgia Journal of International and Comparative Law* 37.

⁷¹ H Strydom & SC Schutte "A theoretical perspective on farm attacks in the South African Farming Community" (2005) *Southern African Journal of Criminology* 18.

murder/attacks include and are not limited to a culture of violence, racism, failure of land redistribution and economic inequalities which will be discussed shortly.

2.4.1 Culture of violence

The motivation of gratuitous violence (torture) can be as a result of the culture of violence. With regards to a culture of violence, Strydom and Schutte postulate that certain characteristics must be taken into consideration such as extreme violence and torture associated with attacks, for example victims are tied, limbs removed, boiling water or hot oil is thrown at victims, or family members are forced to rape each other whilst perpetrators watch.⁷² Physical and mental tactics are employed with the intent to humiliate and cause physical damage, and according to Mistry and Dlamini, the most common form of violence the offenders displayed during attacks was burning, strangulation of a victim, pointing of a firearm and gagging the victim with a cloth.⁷³ Such aggressive behavior was displayed before a victim was shot.⁷⁴ An important finding in the research is that half of the offenders were of the opinion that the violence inflicted on their victims was provoked; meaning the victims tried to fight off the attackers or arguably tried to escape.⁷⁵ As a result of mass demonstrations and uprisings, many of the youth have lost their respect for authority, the abolition of the death sentence, granting of amnesty and the release of prisoners on parole are contributing factors that have caused potential criminals to lose their fear of punishment as well as contribute to the culture of violence or rather gratuitous violence witnessed in South Africa.⁷⁶

2.4.2 Racism

Gratuitous violence can also be attributed to Apartheid. Apartheid has led to a deeply rooted hatred for Boers or Afrikaners, and hatred and intimidation can be seen as important motivators for torture, evidently with slogans such as "One Settler, One Bullet"⁷⁷ which were chanted at rallies during Peter Mokaba era which prompted the "armed struggle".⁷⁸ Farm murder can also be attributed to actions of liberation movements before 1994, such as APLA, Poqo military wing of the PAC and Umkhonto we Sizwe (MK), the military wing of the ANC, because many of these attacks are executed with military precision.⁷⁹ However it is important to note that Strydom and Schutte's assertion that many of these attacks can be attributed to actions of the liberation movement can be criticized because what is

⁷² H Strydom & SC Schutte "A theoretical perspective on farm attacks in the South African Farming Community" (2005) 120 *Southern African Journal of Criminology*.

⁷³ Solidarity Research Institute L Claseen "Chapter four: The significance level of brutality and overkill" (2012) 46.

⁷⁴ Ibid.

⁷⁵ Ibid. See also D Mistry "Ploughing in resources Investigation of farm attacks" (2003) 23.

⁷⁶ V Hornschuh & T Van Wijk *Victims of farm attacks in L DAVIS & R Snyman* (2005) 219.

⁷⁷ Solidarity Research Institute C Bezuidenhout "An overview of farm attacks in South Africa and the potential impact thereof on society" November 2012 17.

⁷⁸ C Bezuidenhout & H Klopper "Crimes of a violent nature" in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011) 203.

⁷⁹ H Strydom & SC Schutte "A theoretical perspective on farm attacks in the South African Farming Community" (2005) 120 *Southern African Journal of Criminology*.

problematic about attributing attacks to liberation movement is that one can also argue that Apartheid in itself was a nightmare of unending gratuitous violence and the liberation movements were formed to fight against white supremacy. For freedom fighters, fire arms symbolise freedom and during attacks offenders are armed, however it must be noted that the intention is not murder but the acquisition of firearms especially hunting rifles.⁸⁰

Reasons provided at the TRC for farm murders were as follows as highlighted in literature:⁸¹

“You cannot reconcile the “dispossessed” with the dispossession, the whites are still in power and calling the shots” - Jan Shoba of PAC task force in Botshabelo on commanding attacks.

“White farmers contributed to the economy of the Apartheid regime, and that is a reason for the attacks on their communities” - Oupa Kgotle former APLA commander

It is worth noting that some of the sentiments put forth during the TRC on farm murders still echo today for instance former Deputy President Kgalema Motlanthe asserted that:

“Farmers should be blamed for violent attacks since they use illegal immigrants, pay them poorly and treat them bad”⁸²

The above-mentioned statements give rise to a concept termed “political racism”. Van Zyl opines that hatred can be a factor and in an attempt to minimise the hatred, farmers must communicate and aim to have a positive relationship with the labourers.⁸³ Keenan is of a different opinion however, in that he believes that political motives are not present in attacks and as such should not be a factor that is still relevant today in post-Apartheid South Africa.⁸⁴

2.4.3 Failure of land redistribution

The motivation to act gratuitously may also be attributed to land, as postulated by the Institute for Contemporary history,⁸⁵ especially when one considers the myriad Apartheid laws such as the Natives Land Act of 1913 (Bantu Land Act) which stipulated that only certain areas could be owned by natives. Other laws include but are not limited to the Group Areas Act, the squatter laws Act 21 of 1895, Native Locations Act of 1879, 1848 Glen Act and the Native Land Act of 1913 which assigned land according to different races and ethnicities.⁸⁶ Some individuals believe that white settlers stole land from black

⁸⁰ FT Mlandla *Debate on farm conflicts: points to ponder. Rural Safety Summit, SANDF* (2001) 2.

⁸¹ N Moolman “Farm attacks: Are there any ulterior motives?” (2000) 13 *Acta Criminologica* 64.

⁸² C Bezuidenhout & H Klopper “Crimes of a violent nature” in C Bezuidenhout *A Southern African Perspective on Fundamental Criminology* (2011) 203.

⁸³ L Van Zyl “Victims of farm attacks: Psychological consequences” (2007) 3 *Acta Criminologica: CRIMSA Conference Special Edition* 137 12.

⁸⁴ T Keenan “Kill the Boer, kill the farmer” (1998) 76 *Finance week* 14.

⁸⁵ D Mistry “Ploughing in resources Investigation of farm attacks” (2003) *SA Crime Quarterly ISS* 6.

⁸⁶ DL Miller *Land title in South Africa* (2000) 16.

ancestry and the fact that land is the property of black farmers makes it an abomination that whites still own 87% of all agricultural land in South Africa.⁸⁷ Instigation of individuals to claim land and the demand for the expropriation of land without compensation, a sentiment that resonates with the Economic Freedom Front (EFF), under the leadership of Julius Malema can be attributed to farm attacks because many individuals realize that promises of land redistribution made by government will never be actualized and thus have resorted to taking back what is due to them.

2.4.4 Economic inequalities

Farm attacks can also be attributed to poverty, unemployment and frustration which may lead to xenophobia.⁸⁸ Human Rights Watch observed in 2003 that farm labourers received low wages and female farm workers, seasonal labourers and illegal workers were subjected to discrimination, as compared to permanent farm workers.⁸⁹ The fact that farm work remains un-unionised is also a contributing factor. Many White farmers are reportedly employing illegal immigrants as labourers who are not remunerated fairly and when immigrants complain, some farmers may report the illegal labourers to immigration officials which may lead some illegal farm workers to seek revenge.⁹⁰ A study conducted in Limpopo and Mpumalanga concluded that 22% of incidences of farm attacks were motivated by retaliation whilst 40% were motivated by robbery.⁹¹ I would like to refer to a sociological term namely relative deprivation to highlight the anger that immigrants may feel at the discrepancy between what they think they deserve and what they actually have.⁹² However, I am also aware that black legal citizens of South Africa may reckon the remuneration that the migrants receive as unfair, because it is assumed that immigrants are saturating the job market, and thus citizens may attack the farmer and his labourers as a form of retaliation

2.5 Profile of suspects involved

Mistry and Dlamini profiled perpetrators of farm attacks, in an attempt to understand as to who is responsible for farm attacks. The study constituted of 48 participants and all of the participants were black males.⁹³ The findings were as follows:

- Majority of perpetrators were unmarried young black South African males

⁸⁷ N Moolman "Explaining farm attacks in South Africa" *12 Acta Criminologica* (1999) 48.

⁸⁸ BW Haefele *Violent attacks on farmers in South Africa: Is there a hidden agenda?* Crimas International Conference May 1999 6.

⁸⁹ H Schutte "A theoretical perspective on farm attacks in the South African farming community" (2005) *18 Acta Criminologica* 84.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² HJ Smith et al "Relative Deprivation: A theoretical and meta-analytical review" (2012) *3 Personality and Social Psychology Review* 203.

⁹³ V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 122.

- Between the ages of 15-35, with 23% of perpetrators under the age of 18
- Majority were unemployed (71%)
- 6% of perpetrators attacked the farm because of hatred for white people
- Majority were raised in single headed-households (56%)
- Execute farm attacks with calculated military precision
- Often use heavy-calibre weapons
- Prefer to work in groups of two or three
- Low level of education (46%)⁹⁴

A significant finding in the research was that 48% of perpetrators decided to attack the farm because of prior knowledge of money at the farm.⁹⁵ It can thus be concluded that suspects involved in farm attacks tend to be impoverished and unmarried young black males, who prefer to work in groups, with little or no education, from dysfunctional family backgrounds.

2.6 Consequences of attacks

Farming in South Africa is a high risk occupation, given the fact that 25 000 farmers in 2005 sought other occupation and left the farming enterprise.⁹⁶ Farm attacks have a negative influence on investor confidence, foreign trade, and decreased production on farms leads to increased unemployment and food insecurity. In this regard, farm attacks can be divided into the following categories namely death and injury, economic consequences and psychological harm which will be discussed shortly.

2.6.1 Death and injury

First, the death of farmers (breadwinners) places a heavy burden on inexperienced spouses to usurp farming activities. It is estimated that 17% of attacks result in the farmer being murdered and as such farming activities may take 18 months before production on farm is at its optimum again.⁹⁷ Secondly, children are left orphaned with less incentive to carry on farming after completion of studies, and would rather opt for less labour-intensive farming as a precautionary safety measure, which in turn impacts on the labour force. a significant decrease from 1, 2 million to 900 000 labour force was noted in 1998.⁹⁸ Lastly, victims of attacks often sell the farm because of serious medical injuries sustained

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ L Van Zyl "Victims of farm attacks: Psychological consequences" (2007) 3 *Acta Criminologica: CRIMSA Conference Special Edition* 137 61.

⁹⁷ H Schutte "A theoretical perspective on farm attacks in the South African farming community" (2005) 18 *Acta Criminologica* 87.

⁹⁸ N Moolman "Explaining farm attacks in South Africa" (1998) 12 *Acta Criminologica: Southern African Journal of Criminology* 48.

during an attack that prohibits them to continue effectively with normal farming activities.⁹⁹ In cases where farmers or members of their families are raped, some may be infected with human immunodeficiency virus and psychiatric treatment may be required which is also an additional expense.

2.6.2 Economic consequences

It is estimated that every farm murder results in 20-30 job losses because some farmers or surviving families may sell a farm after an attack.¹⁰⁰ The choice of farmers to opt for large scale production lines as opposed to small scale as a prevention measure to reduce robbery, has led to a loss of 107 million in small stock production annually.¹⁰¹ It is estimated that roughly a third of South African businesses support agriculture, which in turn assists in secondary job creation of 800 000 individuals from 4000 farm schools,¹⁰² therefore an attack on the farming community is counter-productive. Insurance in most cases might scantily cover the loss of property or arson since motor vehicles, firearms, livestock, machinery, farm houses and household items have to be replaced at current market prices.¹⁰³ Thus farmers may be forced to recuperate losses incurred by reducing staff or selling assets for example livestock and such measures may have dire consequences on the economy stability in rural areas, as well as the country.¹⁰⁴

2.6.3 Psychological harm

Individuals who witnessed or were confronted with actual threatened or injury, may experience irreversible psychological harm which may cause mental health problems.¹⁰⁵ In a study conducted by Van Zyl on the perceptions of victims of farm attacks, it was found that the victims experienced helplessness, anger, excessive fear, guilt, insecurity, frustration, horror, uncertainty regarding the future, a heightened sense of distrust in strangers and loss of control and security after the attack.¹⁰⁶ When an individual's belief system is shattered, especially one that concerns personal safety, self-blame may result. A significant impairment in psychological dysfunctional state, ultimately leads to impairment in

⁹⁹ H Schutte "A theoretical perspective on farm attacks in the South African farming community" (2004) 18 *Acta Criminologica* 94.

¹⁰⁰ Ibid.

¹⁰¹ N Moolman "Explaining farm attacks in South Africa" (1998) 12 *Acta Criminologica: Southern African Journal of Criminology* 50.

¹⁰² H Schutte "A theoretical perspective on farm attacks in the South African farming community" (2005) 18 *Acta Criminologica* 26.

¹⁰³ H Schutte "A theoretical perspective on farm attacks in the South African farming community" (2004) 18 *Acta Criminologica* 95.

¹⁰⁴ Ibid.

¹⁰⁵ V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 17-18.

¹⁰⁶ L Van Zyl "Victims of farm attacks: Psychological consequences" (2007) 3 *Acta Criminologica: CRIMSA Conference Special Edition* 137 (2008)145-146.

mental, social or other important areas of functioning, for example the strain may cause a breakdown in family relations.¹⁰⁷ It is not possible to holistically determine the effects of an attack on individuals; however the majority of victims experience severe trauma and eventually post-traumatic stress syndrome characterized by sleep disturbances, eating disorders and emotional numbness.¹⁰⁸ One can thus deduce that a farm attack can have extreme psychological and emotional consequences on the victims.

2.7 Theoretical framework

Robert K Merton's anomie theory will be employed, chosen by the researcher to help shed light on the motivation for farm attack by perpetrators. Subsequently the routine activity theory of Lawrence Cohen and Marcus Felson will be outlined to indicate how in the absence of a capable guardianship, the risk of victimisation is probable. The above-mentioned theories contribute to a better understanding of the nature and extent of farm attacks, as well as its geographic and demographic distribution.

2.7.1 Robert K Merton's anomie theory

Merton believed that deviant behaviour, just like conforming behaviour is as much the result of the social structure. Merton postulated that within most societies, people wanted to achieve cultural goals such as financial success and there are certain socially acceptable ways (institutional means) of attaining financial success and a comfortable lifestyle.¹⁰⁹ The conflict between the socially acceptable ways and the cultural goals causes what Merton termed anomie,¹¹⁰ especially given the fact that Apartheid left many Blacks economically disadvantaged. Not all social classes in society (South Africa) have equal opportunities to legally achieve cultural objectives,¹¹¹ therefore frustration results which then cause some individuals to turn to the modes of adaptations namely: conformity, innovation, ritualism, retreatism, ritualism and rebellion, in an attempt to achieve cultural objectives such as wealth.¹¹²

¹⁰⁷ SG Shoman *et al*; *International handbook of victimology* (2010) 190.

¹⁰⁸ Solidarity Research Institute C Bezuidenhout *Overview of farm attacks in South Africa and their potential impact on society* (2012) 19.

¹⁰⁹ GB Vold *et al* *Theoretical Criminology* (2002) 137-139.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

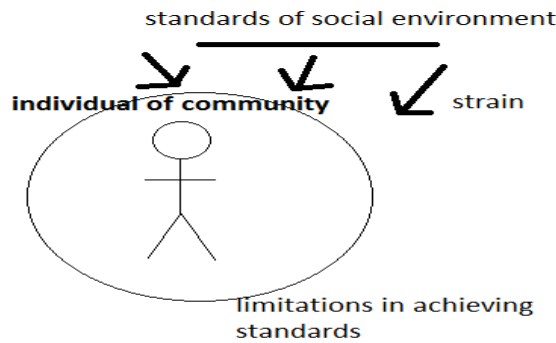


Figure 2: Illustration of Robert K's anomie theory

Rebellion as a mode of adaptation is the best form of adaptation to contextualize farm murder in South Africa. To illustrate this theory and its applicability in a South African context consider this: The average age of a farm attacker is between 19 and 26 years and on average has committed 103 other types of crimes over a period of seven years before apprehension, 70% of offenders are a product of a broken home, example divorce.¹¹³ An average of 30% of all attackers have committed murder, or will not hesitate to commit murder, but murder only occurred in 2% of the cases.¹¹⁴ Only 17% of attackers are foreigners and South Africans constitute the remaining 83%, and only 20% of perpetrators had matric.¹¹⁵ 76% were unemployed and the 10% who did have work, confessed to quitting after they found out how much they could earn with robberies especially on farm attacks.¹¹⁶ The fact that 20% of farm attack perpetrators had no matric would, would mean less opportunities of acquiring tertiary level education, blocked opportunities and in some case this would result in an unemployed frustrated youth.

2.7.2 The routine activity/opportunities theory of Cohen and Felson

The routine activity/opportunities theory of Lawrence Cohen and Marcus Felson emphasizes the role that available opportunities will play in the hedonistic calculus that an offender undertakes when committing a crime.¹¹⁷ Three components known as the crime triangle have to coincide at any given time in order for a crime to occur namely a motivated offender, a suitable target and absence of capable guardianship.¹¹⁸ The absence of any one of these prerequisites greatly reduces crime. The relevance of the routine activity theory to attacks on farmers can be understood in terms of the following three components:

¹¹³ http://www.issafrica.org/crimehub/uploads/Understanding_&_Preventing_Home_Invasion_in_SA.pdf (accessed 14 June 2014).

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ SE Brown *et al Criminology: Explaining Crime and its context* (2007) 172.

¹¹⁸ *Ibid.*

- **Motivated offender**

A motivated offender is one who perceives some type of benefit in engaging in criminal activities; evidently the majority of farm attacks are committed for economic gain with robbery serving as a primary incentive as validated in the study conducted by the ISS where 97% of perpetrators confessed to committing crimes purely for economic gain.¹¹⁹ Where revenge is the motive, the attack may be exclusively brutal, perpetuated by unsettled disputes and unfair labour practices as was speculated to be in the case of Eugene Terreblanche. Attending social, cultural or religious events that generally occur away from the farms, leaves many farmsteads unattended, which provides an opportunity for perpetrators to break in and enter at leisure and await the arrival of the family in the seclusion of their homes.¹²⁰ Therefore the structured lifestyle of farmers, guided by a set routine, may precipitate attacks of farmers because the routine may easily be learned by potential offenders.¹²¹

- **Suitable target**

Many farmers are desirable targets for both instrumental as well as symbolic reasons. Instrumental reasons such as for example farmers keeping cash on farms to pay weekly wages to labourers as well as the fact that majority of farmers possess motor vehicles, firearms and electrical appliances, all of which are sought after items, acquired for resale purposes.¹²² A symbolic reason could be for example that farmers are targeted to satisfy expressive needs since most farmers are often perceived to be architects Apartheid. The isolation of farms contributes to farmers' vulnerability because cell phones in rural areas usually have a poor signal, which hampers communication, and many elderly farmers are vulnerable because of a decline in physical strength and sensory impairment.¹²³ Certain suitability factors might lead a perpetrator to believe a certain farmer is vulnerable such as for example, an offender being in possession of firearms, previous experience in personal victimisation, and an organized syndicate, intoxication of drugs and alcohol which results in impaired judgement and erases fear of apprehension from the minds of potential offenders.¹²⁴

- **Absence of a capable guardian**

¹¹⁹ http://www.issafrica.org/crimehub/uploads/Understanding_&_Preventing_Home_Invasion_in_SA.pdf (accessed 14 June 2014).

¹²⁰ J Olivier & P Cunningham "Victims' perception of farms and small holdings in the Eastern Cape, South Africa" (2006) 19 *Acta Criminologica* 115-126.

¹²¹ A Saponaro *Theoretical approaches in victimology in Peacock, R. (Ed.) Victimology in South Africa* (2013)11.

¹²² V Hornschuch "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 69.

¹²³ Ibid.

¹²⁴ Ibid.

The absence of a capable guardian refers to the lack of a person or an object that has an ability to prevent a crime from occurring through calculated actions or just mere presence at a certain location.¹²⁵ Farmers are more often victimised by individuals residing on farms in the same area, or in settlements and townships situated in the same area. An increase in guardianship may cause a decline in predatory acts, however, it is unfortunate that most farmers do not have the privilege of relying on security forces or neighbours who could serve as casual observers, because most farms are isolated and police resources are inadequate in rural areas.¹²⁶ In the event of a farm attack, it is usually only the victim's neighbours who can respond rapidly enough to apprehend the culprits, very often the police cannot reach the farm in time to prevent the attack or respond fast enough after the attack because in most cases the culprits flee.

2.8 Concluding remarks

Although various organisations have conducted research, much of the data is scientifically scant because it fails to provide an accurate picture of the nature and extent of farm murder/attacks, since data fails to provide a detailed "analysis" of whom, within the farming community is most vulnerable.¹²⁷ To explain this flaw, the researcher would like to refer to an analogy; one cannot actually see the picture when one is in the frame. Crimes committed during farm attacks such as rape, murder, arson, assault, robbery, vehicle theft and kidnapping can be divided into four categories of motive, such as intimidation, political-racial, robbery and labour related matters. When one studies the types of crimes committed during farm attacks, the routine activities theory of Cohen and Felson revealed factors that makes farmers and farmworkers vulnerable to attacks such as the isolated nature of smallholdings, lifestyle exposure that and daily routines. Thus one can argue that a farm attack victim essentially plays a role in victimization in that his/her behaviour can be a precipitating factor in crime causation.

When one considers profile of suspects involved in above-mentioned crimes, one has to take into consideration that the crimes are mostly committed by a group of organised perpetrators who ruminate on premeditated criminal acts and acting in a group allows for greater anonymity. Gratuitous violence (torture) during farm attacks can be attributed to hatred, revenge, disputes, socio-economic status, political reasons, land claims, and racial issues. I think the reason why torture is employed during farm attacks is because it satisfies one's own (perpetrators) emotion "expressive violence". Upon consideration that all racial groups fall victim to farm attacks, it can be argued that firstly such attacks are not necessarily racially motivated, secondly perpetrators of farm attacks do not want the land and that financial gain is the prime motive, however, I am of the opinion that nature and brutality of farms attacks, as well as the amount of pain and suffering inflicted on the victim, can after be attributed to

¹²⁵ SE Brown *et al Criminology: Explaining Crime and its context* (2007) 173.

¹²⁶ M Schonteich & J Steinberg "Attacks on farms and small holdings: an evaluation of the rural protection plan" (2000) *Institute for Security Studies* 3.

¹²⁷ <http://mg.co.za/article/2010-04-08-anatomy-of-a-farm-murder> (accessed 26 June 2014).

hatred and revenge, and perhaps to the previous injustices and oppression of other racial groups. When frustration results people resort to modes of adaptations to survive such as rebellion, so the motivation behind the need to resort to gratuitous violence (torture) during attacks on commercial farms can be explained better understood when one considers Merton's anomie theory.

In the next section, Chapter 3, the researcher plans to critique legislation pertaining to farm attacks because the researcher dealt with various crimes committed farm attacks in the current chapter which are but not limited to armed robbery, assault, rape, abduction, vehicle theft, arson and murder

CHAPTER THREE

CRITICISM OF LEGISLATION PERTAINING TO FARM ATTACKS

3.1 Introduction

The aim of this present chapter is to undertake a critique of existing legislation pertaining to farm attack. This aim will be achieved by assessing whether South African legislation pertaining to farm attacks is sufficient. As such the South African Constitution will be discussed and legislation pertaining to common-law crimes committed during farm attacks such as murder, arson, sexual assault (rape), assault, abduction, armed robbery and vehicle theft. Other relevant human rights instrument that South Africa has ratified will also be discussed. The researcher aims to provide a snapshot of national, continental as well as universal guarantees for farmer's rights, as well as jurisprudential developments on the protection of the above mentioned rights in South Africa.

3.2 The Constitution of the Republic of South Africa Act 108 of 1996

Section 12(1) (c) of the Constitution, infers that every person has the right 'to freedom from all forms of violence from either public or private sources', however this right is far from realized for farmers since the country comprises of a society of people with a culture of violence, which is often linked to a high rate of violent crimes.¹²⁸ The farmers' right to equality contained in s 10, the right to bodily and physical integrity assured in s 12(2), human dignity guaranteed in s 9 and right to life in s 11 of the Constitution should be enhanced through appropriate response and policy decisions from government to address the issue of farm attacks effectively.

Section 7(2) of the Constitution obliges the state to protect, respect, promote and fulfill rights contained in the Bill of Rights, most noteworthy section 12 (1)(c) which imposes a positive duty on the state to take positive actions to advance this right.¹²⁹ To illustrate the above-mentioned duty, the researcher would like to refer to the case of *Carmichele v Minister of Safety and Security and Another* [2001] 4 SA 938 (CC), where Carmichele filed a civil claim against the state, asserting that the acts and omission of both the police and the prosecutor made the state liable for damages.¹³⁰ Alix Carmichele was attacked by an offender awaiting trial on charges of rape and attempted murder in 2005, resulting in grave injuries.¹³¹ After aggravating factors were considered such as a history of violent behavior towards women, previous conviction for indecent assault, the Court released the perpetrator nonetheless with neither the prosecutor nor investigating officer opposing bail nor the possibility of

¹²⁸ M Schonteich & J Steinberg "Attacks on farms and small holdings: an evaluation of the rural protection plan" (2000) *Institute for Security Studies* 3.

¹²⁹ I Currie & J de Waal *The Bill of Rights Handbook in Association with lawyers for Human Rights and the Law Society of South Africa* (2005) 284.

¹³⁰ L Artz & D Smythe 'South African policies supporting victim's rights' in R Peacock (eds) *Victimology in South Africa* (2013) 54

¹³¹ *Ibid.*

re-incarceration even after he was found lurking outside Carmichele's residence.¹³² The High Court and Supreme Court of Appeal ruled that South African law did not place such a positive obligation on the state; however the Constitutional Court established that a positive duty is imposed on the police through the Constitution and other relevant legislation and on this basis the matter was referred back to the trial court to weigh evidence on the matter at hand, which was found in Carmichele's favour in 2002.¹³³ The Court in *Carmichele v Minister of Safety and Security* 2001(4) SA 938(cc), adopted description of positive dimension of article 2(1) of the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR).¹³⁴ Thus it can be deduced from the abovementioned case that the Court without any ambiguity whatsoever, places a positive obligation on the state to respect, promote, protect and enforce the right to freedom from violence be it from either public or private sources.

In fulfilling the positive obligation enshrined in the Constitution, the South African Police Service Act 68 of 1995¹³⁵ offers support to all victims, including victims of farm attacks and its functions are to:

- ensure the safety and security of all persons and property,
- uphold and safeguard the fundamental rights of every person as guaranteed by chapter three of the Constitution;
- ensure co-operation between the Service and the communities it serves in the combating of crime;
- reflect respect for victims of crime and an understanding of their needs; and
- ensure effective civilian supervision over the Service

Realistically speaking, it is practically impossible for SAPS to guarantee the safety of every farmer in the country. In addition, given the size, geographical isolation and dispersion of many South African rural areas, it is unlikely that many of the police strategies particularly those based on consistent visible police presence can be sustained to a point where it succeeds in curbing crime, thus policing can really only be reactive in nature.¹³⁶

¹³² Ibid.

¹³³ *Carmichele v Minister of Safety and Security and Another* [2002] (10) BCLR 1100 (c).

¹³⁴ Article 2(1) of the ECHR provides as follows "The State's obligation in this regard extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against persons backed up by law-enforcement machinery for the prevention, suppression and breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventative measures to protect an individual whose life is at risk from the criminal acts of another individual".

¹³⁵ V Hornschuh "A victimological investigation of farm attacks with specific reference to farmers' perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization" unpublished MA thesis, University of Pretoria, 2007 23.

¹³⁶ J Olivier & P Cunningham, "Victims' perception of farms and small holdings in the Eastern Cape, South Africa" (2006) 23 *Acta Criminologica*.

3.3 The right to defend human rights defenders

Article 1 of the UN “Declaration on Human Rights Defenders”¹³⁷ (DHRD) of 1998 sets out the right to defend human rights, or rather the right to promote and protect human rights. It explicitly infers that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at national and international level”. Even though the Constitution of the Republic of South African does not express provision explicitly acknowledging the above mentioned right, the right is nevertheless relevant because DHRD was endorsed in 1999 by the former Organization of African Unity (now AU) through the “Grand Bay (Mauritius) Declaration and Plan of Action”, which unambiguously encourages African States to implement the DHRD in Africa.¹³⁸

The Inter-American Commission on Human Rights holds that the above-mentioned right involves three important dimensions namely the individual, collective and social dimension which will be discussed shortly.¹³⁹ Firstly, the individual dimension embraces a set of fundamental rights guaranteed which are but not limited to the right to life, personal liberty, human treatment, privacy, and protection of their dignity, among others.¹⁴⁰ Henk Van Der Graff, assistant general manager of TAUSA, lodged a case at the International Criminal Court at The Hague, against the South African government on grounds of genocide, alleging that the South African government has failed to protect the rights of the farming community, most noteworthy the right to life because more than 15500 farm murders have occurred since 1990.¹⁴¹

The collective dimension denotes rights of association, assembly, and some aspects of freedom of expression, which are rights that demand the participation of groups of persons.¹⁴² Afriforum, in terms of section 22 of the Companies Act 61 Of 1973, is a non-governmental, non-profit organisation concerned with the protection and development of civil rights most noteworthy minority rights.¹⁴³ Therefore in 2011, in the case of *Afriforum v Julius Sello Malema*,¹⁴⁴ a complaint was lodged about the singing of 'dubula ibhunu' (Shoot the Boer) with a contention that the song was directed against white males, and that a causal connection between the song and

¹³⁷ The instrument’s full name is the “Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms”. However, the title of the above mentioned instrument is normally abbreviated to “Declaration on Human Rights Defenders”.

¹³⁸ See para 19 of the 1999 Grand Bay Declaration and Plan of Action.

¹³⁹ <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm> (accessed 16 August 2014) 8.

¹⁴⁰ Ibid.

¹⁴¹ <http://www.farmersweekly.co.za/news.aspx?id=15883&h=SA-farm-attacks-and-murders-denounced-by-EU> (accessed 1 September 2014).

¹⁴² <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm> (accessed 16 August 2014) 8.

¹⁴³ K Pillay From “Kill the Boer” to “Kiss the Boer” - has the last song been sung? (2003) *SA Public Law* 222.

¹⁴⁴ 2011 12 BCLR 1289 (EQC).

incitement to murder farmers exist. The South African Bill of Rights (Act 108, 1996) prohibits the state and any person from unfairly discriminating against anyone on one or more grounds, including race, belief, culture, and language amongst other things. Similarly Article 2 of the African Charter on Human and People's Rights (ACHPR), as well as Article 19 of ACHPR further underlines that all persons shall be equal and entitled to the same rights. In addition, article 2 of the International Covenant on Civil and Political Rights (ICCPR), articles 3 and 14 of the ECHR, article 7 of the UDHR,¹⁴⁵ as well as articles 14 and 16 of the ICCPR¹⁴⁶ further reiterate this sentiment of equality before the law. Thus the the Equality Court found that hate speech was present in Mr Malema's use of the struggle song and upheld that the right to freedom of expression does not surpass the dignity rights of those targeted by the lyrics. Section 16(2) of the Constitution, similarly with section 20 of the ICCPR, attempts to criminalise a variety of actions which are representative of Apartheid crimes, and places three limitations on the freedom of expression in that firstly, it may not be used to propagate war, secondly, it may not be used to incite violence and finally it may not be used to advocate hatred that is based on gender, ethnicity, race or religion, and harm may not be incited against the above-mentioned groups.

Finally, the social dimension refers to the public interest involved in the promotion and protection of the activities carried out by human rights defenders. Indeed, due to the fact that human rights activists seek to achieve positive social changes, any violation of their right to defend human rights, negatively affects the entire society since everyone would have benefited from their work had their rights not been undermined in the first place.¹⁴⁷ In 2012, the farmer's union managed to convince 48 EU parliamentarians to sign a motion that was tabled in Parliament, condemning farm attacks and murder which compelled Henk Van der Graff to address political parties, non-governmental organizations as well as the EU Parliament on the failure of South Africa to recognize farm attacks/murder as a priority crime. In light of the above, Article 5(b) of the DHRD, recognizes the right of all persons to form, join and participate in non-governmental organizations, associations or groups, for the purpose of promoting and protecting human rights and fundamental freedoms.¹⁴⁸

3.4 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

Having dealt with the rights to defend human rights defenders, I now turn to the Criminal Law Amendment Act. In the previous chapter, I dealt with crimes committed during farm attacks and rape was one of the crimes that were identified. Rape, sexual assault and sexual offence are defined by the Criminal Law Sexual Offences and Related Matters Amendment Act 32 of 2007, hereinafter the Act, as follows:

¹⁴⁵ Universal Declaration of Human Rights (1948), article 7.

¹⁴⁶ International Covenant on Civil and Political Rights (16 December 1966) articles 14 and 16.

¹⁴⁷ <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm> (accessed 16 August 2014) 8.

¹⁴⁸ <http://www.farmersweekly.co.za/news.aspx?id=15883&h=SA-farm-attacks-and-murders-denounced-by-EU> (accessed 17 August 2014).

Rape: “Any person (“A”) who unlawfully and intentionally commits an act of sexual penetration with a complainant (“B”), without the consent of B, is guilty of the offence of rape”.¹⁴⁹ Sexual assault: “A person (“A”) who unlawfully and intentionally inspires the belief in a complainant (“B”) that B will be sexually violated is guilty of the offence of sexual assault”.¹⁵⁰ Sexual offence: Any sexual act against a non-consenting person, child or mentally disabled person, whether it be rape, sexual assault, sexual penetration, or sexual violation.

The Act has its fair share of weakness such has been severely criticized. Despite extensive lobbying, consent was acknowledged as an element of the offence in that firstly, the implication of the Act is that sexual penetration is only unlawful if the prosecutor can prove beyond reasonable doubt that the victim did not consent or rather was incapable of appreciating the nature of the act.¹⁵¹ Cases of rape or sexual assault involving injuries when a person is under the age of 16 attract a minimum sentence of 10 years for a first time offender, 20 years for a third and subsequent offender and 15 years for a second time offender.¹⁵² Such sentences are obligatory under section 51(3) unless the Court finds “substantial and compelling reasons” to digress from them.¹⁵³ The onus thus rest on the conduct of the victim as was highlighted in the case of *S v Zuma* where the Court acknowledged that the perpetrator honestly believed that the complainant consented to sex because the perpetrator had no prior intention to rape the victim; this requirement is problematic and is further reiterated by section 1(2) of the Act as “voluntary or uncoerced agreement”.¹⁵⁴ Evidently such a requirement would make it difficult for victims of rape in general, as well as victims who were raped during a farm attack to prove in the court of law. I am of the opinion that the only two witnesses in most cases of rape is the victim and the perpetrator himself, and worst case scenario is when then the victim contracts HIV from the perpetrator after the crime of rape during a farm attack.

Secondly, although the ACT prescribes that victims of rape, including those who were raped during a farm attack, have the right to PEP to prevent contraction of HIV, the problem is that the health department as well as SAPS have little or no training regarding applicable knowledge and skills on how to implement the procedure of post exposure prophylaxis to prevent the contraction of HIV. In addition more information on health care after sexual crimes should be available to victims since PEP needs to be administered at least 72 hours after the incident and the victims of rape have to either approach a health care facility or a police station in order to access PEP.¹⁵⁵ Inasmuch as Thuthuzela centres¹⁵⁶ offer support to victims of rape, the problem is that they are

¹⁴⁹ Criminal Law (Sexual Offences and Related Matters Amendment Act) 32 of 2007.

¹⁵⁰ Ibid.

¹⁵¹ L Artz & D Smythe “South African policies supporting victim’s rights” in R Peacock (eds) *Victimology in South Africa* (2013) 64.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

only located in public hospitals where the incidence of rape is high thus many victims that are raped on farm holdings, as well as rural areas do not have access to such services because they are isolated.

Third, section 30-39 of the Act explicitly infers that all accused sex offenders, including those who raped during a farm attack be subjected to compulsory HIV testing and a life sentence can meted and doled out to an offender if for example the perpetrator knew that he was HIV positive when committing the act of rape. Critics¹⁵⁷ are of the opinion that such a provision is unconstitutional even though the aim of this provision seeks to give effect to victim's rights. Advocates of victim's rights contend that testing will ostensibly provide the complainant with a peace of mind,¹⁵⁸ however, I am of the opinion however, that it is only when both the victim and complainant are forced to test for HIV, both practise safe sex, are both taking PEP, with the acknowledgement that both the perpetrator as well as the complainant may be in the window period, that compulsory testing may effectively work.

3.5 Criminal Law Amendment Act 105 Of 1997

In an effort to prevent violent crimes such as murder, rape, arson, assault, vehicle theft and abduction in South Africa as I have already discussed in chapter two as crimes committed during farm attacks, parliament enacted legislation that recommended mandatory minimum sentences for various offences contained in section 51 and 52 of the Criminal Law Amendment Act (105 Of 1997), which was amended by the Criminal Law Amendment Act 38 Of 2007.¹⁵⁹ As I have already stated in chapter 1, there is no specific crime as farm attack, but it is rather a myriad of offences referred to in Schedule 1 of the Criminal Procedure Act, 1977 such as abduction and arson, punishable by either 5, 7 or 10 years if the accused had with him or her at the time a firearm, or indecent assault on a child under the age of 16 years, with the intent to do grievous bodily harm, punishable by either 10, 15 or 20 years.

Taking the life of another individual is a serious offence and thus South African criminal law defines murder as the "unlawful and intentional killing" of another individual.¹⁶⁰ Certain types of murder as listed in schedule II of the Criminal Procedure Act are punishable by a five to 25 year sentence, and in some cases life sentences are imposed where limbs are dismembered, when the murder was planned and pre-meditated, the murder is accompanied by rape or the victim is a police officer or material witness in a murder.¹⁶¹ According to Human

¹⁵⁶ Thuthuzela project is led by the National Prosecuting Authority's Sexual Offences and Community Affairs Unit (SOCA), in partnership with various donors as a response to the urgent need for an integrated strategy for prevention, response and support for rape victims.

¹⁵⁷ S Rohrs 2008 "Half-heated HIV related services for victims "In Artz, L & Smythe (eds) 2008. *Should we consent? Rape Law Reform in South Africa*.

¹⁵⁸ L Artz & D Smythe 'South African policies supporting victim's rights" in R Peacock (eds) *Victimology in South Africa* (2013) 63.

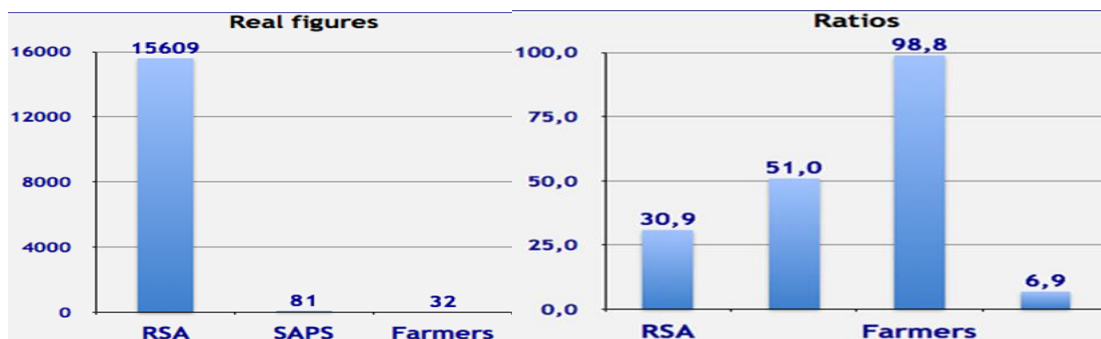
¹⁵⁹ Ibid.

¹⁶⁰ J Burchell & JM Milton *Principles of Criminal Law* (2007) 444.

¹⁶¹ L Artz & D Smythe 'South African policies supporting victim's rights" in R Peacock (eds) *Victimology in South Africa* (2013) 64.

Rights watch, even when a conviction is attained for farm attacks the sentence is grossly inadequate since farm murder is still classified as general murder and thus statistics are scientifically scant.¹⁶² The Viljoen Commission of Inquiry into the Penal System of the Republic of South Africa vehemently contends that an imposition of minimum sentences for farm attack perpetrator, contained in section 51 and 22 of the Criminal Law Amendment Act, would lead to human rights violations and Van Der Heer Committee opines that the only rationale for the enactment of mandatory minimum sentences stems from the public outcry for heavier impositions of punishment, especially regarding crimes committed on smallholding which require urgent attention.¹⁶³

Figure 3: Illustration of general murder of citizens, farm murder and murder of SAPS officials for the year 2012 in South Africa



Source: Institute for Security Studies *Farm murder a national priority?* 2012

Although it is clear from the above illustration that the ratio of farm murder (98,8) as compared to general murder(30.9), and that the chances of farmer being murdered is four to eight times more than the average policeman in South Africa, the implementation of minimum mandatory sentences contained in section 51 and 52 of the Criminal Law Act 105 of 1997, has been widely criticized by human rights scholars and activists. The researcher also agrees with critics because the Act has failed a major principle of legality since it is ambiguous as to what constitutes “compelling and substantial reasons” especially when one considers rape cases in general and rape cases that occurred during a farm attack for example, let us consider the case of *S v Abrahams* [2002] SACR 116 (SCA) where the accused who had raped his daughter had been sentenced to only seven years because Judge Foxcroft pronounced that compelling and substantial reasons existed in that the accused was “sexually jealous and possessive of his daughter”, thus his actions were justified because he wanted access to her first before other boys and possibly other men would deflower her.¹⁶⁴

¹⁶² <http://www.hrw.org/reports/2001/safrica2/> (accessed 26 August 2016).

¹⁶³ University of South Africa Department of Criminology JJ Nesser “Mandatory minimum sentences in a south African context” June 2001.

¹⁶⁴ L Artz & D Smythe ‘South African policies supporting victim’s rights’ in R Peacock (eds) *Victimology in South Africa* (2013)65.

The researcher would like to refer to another case where the sentencing court deviated from minimum mandatory sentencing in *S v Malgas*¹⁶⁵ and the Court advocated for a lesser sentence because a life sentence as punishment would not fit the crime and would be unjust to the criminal and needs of society and be thought of as a cruel, inhumane or degrading treatment as was also found to be the case in *S V Niemand* [2002] (1) SA 21(CC) where it was declared unconstitutional to imprison habitual criminals indefinitely as was provided for in the Correctional Services Act III of 1998 by a maximum of fifteen years.¹⁶⁶

One can thus argue that it seems as if the offenders have more rights than victims of farm attacks in South Africa and thus I agree with Redpath and Donovan in that Criminal Law Amendment Act has no deterrent value, but has rather created chaos in the criminal justice system, evidently in all high and regional court the average time it takes for a serious crime such as farm murder to be sentenced is between 25-27 months and arduous cases lead to fewer convictions.¹⁶⁷

In the case of *S v Zinn* 1969 (1) SA 231 (A), the concept of a “sentencing triad” was developed and Judge Rumpff stated that the seriousness of the crime, the offender and his or her circumstances and the interest of the community should be considered when determining an appropriate sentence. The triad of Zinn was employed in the sentencing of farm attack perpetrators in *Sihlangu and Another v S*,¹⁶⁸ where it was alleged that a group of young men attacked an elderly couple on a farm in Hartebees, and stole property belonging to Mr and Mrs Erasmus. Mrs Erasmus sustained serious injuries as a result of being tied up with a rope, and died as a result of strangulation. Her spouse Mr Erasmus was assaulted, recovered from his injuries but tragically died as a result of cancer a few months after the incident.¹⁶⁹ When the accused appealed, the court ruled that the brutality accompanied by the attack as well as the interest of the community were of greater significance than the personal circumstances of offenders and thus the accused’s appeal was dismissed with life imprisonment prescribed as a minimum mandatory sentence.¹⁷⁰ To some human rights proponents, such a sentence might prove a triumph for human rights, but I reckon that the Criminal Law Amendment Act 105 Of 1997, has contributed to the overcrowding in the prison population, and has does nothing whatsoever to deter farm attack perpetrators since recidivism rates are estimated to be between 85% and 94% in South Africa.¹⁷¹

3.6 Concluding remarks

¹⁶⁵ [2001] (2) SA 1222 (SCA).

¹⁶⁶ I Currie & J de Waal *The Bill of Rights Handbook in Association with lawyers for Human Rights and the Law Society of South Africa* (2005) 307.

¹⁶⁷ Open society Report, M Donovan & J Redpath, “The impact of sentencing in South Africa”, 2006 13.

¹⁶⁸ [2014] 21 ZANWHC.

¹⁶⁹ Southern African Legal Institute *Sihlangu and Another v S* [2014] 21 ZANWHC.

¹⁷⁰ Ibid.

¹⁷¹ L Muntingh *After Prison: The case for offender reintegration*. ISS Monograph 52. Brooklyn: Institute for Security Studies (2001)6.

I am of the opinion that present legislation does not adequately address the situation of farm attack victims, and thus the South African government should provide a multidisciplinary platform from which to condemn violating behaviour against victims of farm attacks. Legislation pertaining to victims' rights should provide meaningful justice to those who seek remedies from it. Within the African continent, farmers are considered a vulnerable group because of the particularities of their circumstances. Section 2,9, 12(1)(c), section 16,39(1) and 231-233 of the South African Constitution was discussed, as well as relevant human rights contained in the ACHPR which include, but are not limited to; the rights of equality (Articles 2 and 19), Article 7 of the UDHR as well as articles 14 and 16 of the ICCPR, the Sexual Offences Act and Related Matters Act, Criminal law Amendment Act as well as the right to defend human rights (DHRD).

Although the rights of farmers may be guaranteed, most of the rights cannot be realized due to the absence of legislation that formally recognizes farm murder as a distinct crime. With regards to the right to defend human rights defenders, the work of non-governmental organizations which specifically target this issue is essential for the advancement of the fundamental rights of farmers, and represents a fundamental contribution to the realization of rights. Inasmuch as mandatory minimum sentencing should be implemented as an intervention to ensure that appropriate severe sentences are meted out to persons accused of violent crimes against the farming community, clearly they seem to be ineffective in deterring perpetrators but rather lead to overcrowding in prisons. In light of the human rights instruments, the jurisprudence and the factual examples mentioned above, the researcher believes that it is imperative that the Republic of South Africa takes note of the current circumstances surrounding farm attacks/murder in an effort towards creating legislation that is solely dedicated to preventing farm murder/attacks.

CHAPTER FOUR

TOWARDS THE RECOGNITION OF FARM MURDER AS A DISTINCT CRIME: LESSONS FROM THE HUMAN TRAFFICKING LEGISLATION

“No country can yet lay claim to genuine, extensive experience in dealing with trafficking as a criminal phenomenon. Most are developing and adapting their responses on the run, often under strong political pressure and principality through trial and error”.¹⁷²

4.1. Introduction

This present chapter seeks to provide a case study of human trafficking in order to contextualize the problem of human trafficking before legislation was enacted as well after it had been enacted, with the hopes of illustrating that perhaps lessons from human trafficking can be drawn and legislation for farm murder can be enacted in the near-future. This chapter also attempts to answer one of my research questions posed in chapter 1, will recognising farm murder as a distinct crime be an effective way to combat and prevent attacks on the farming community? I seek to achieve this aim firstly with a contextualization of human trafficking, secondly to discuss human trafficking before the advent of legislation, and thirdly legislation that pertaining to human trafficking namely the South African Prevention and Combating of Trafficking in Persons Act (PACOTIP), No 7 of 2013.

4.2. Defining human trafficking

Behind the guise of any major town or city, is a thriving commerce of human being in that the selling of human beings is a multi-billionaire lucrative profitable business second to drug trafficking.¹⁷³ Human trafficking is a global organised crime,¹⁷⁴ or rather phenomenon which involves firstly cross border trafficking, which is trafficking of person across national borders and secondly internal trafficking; trafficking of persons within the country which dates back to the 19th century.¹⁷⁵

Trafficking of persons, where human beings are treated in a fashion akin to commodities, sold, exchanged and bought, is defined by the Palermo Protocol, or rather one of three supplementary protocols to the United Nations Convention on Transnational Organized Crime¹⁷⁶ as:

¹⁷² A Gallagher & P Holmes “Developing an effective criminal justice response to human trafficking- lessons from the front line” (2008) 18 (3) *International Criminal Justice Review* 218.

¹⁷³ CV Chitupila “Gold between their legs? Trafficking in women for sexual exploitation: An analysis of the SADC response at national and regional level” unpublished LLM thesis, Makerere University, 2009 3.

¹⁷⁴ South Africa Law Reform Commission “Trafficking in Persons” Issue Paper 25 2004 1.

¹⁷⁵ Bermudez, L. ‘No experience necessary: The internal trafficking of persons in South Africa’ 2008 IOM

¹⁷⁶ The three mentioned Protocols augmenting the UN Convention against Transitional Crime are firstly the Protocol to Prevent, Suppress and punish Trafficking in Persons, secondly the Protocol against Smuggling of Migrants by Land, Sea and Air and lastly the Illicit Manufacturing and Trafficking in Firearms, their Parts, Components and Ammunition.



“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”¹⁷⁷

The above stated definition of the Palermo Protocol, is the first minimum standard that South Africa must incorporate into domestic law and exploitation in article 3(a) of the Palermo Protocol, shall include at a minimum, the exploitation in the form of prostitution or other forms of sexual exploitation, in which 79% cases globally are attributed to this form of exploitation,¹⁷⁸ forced labour or services (18%), slavery or practices similar to slavery as well as servitude or the removal of organs.¹⁷⁹

The second minimum standard refers to “trafficking persons”, but pertains to incidents where children younger than 18 are trafficked.¹⁸⁰ Thus the protocol implies that only the intention, as well as the exploitative purpose needs to be proved, in order for the offence of trafficking person where children are victims.¹⁸¹ The International Labour Organisation estimates that that 12,3 million persons, meaning adults and children are trafficked for sexual exploitation, domestic servitude, forced and bonded labour.¹⁸² The United States government sponsored research project, estimates approximately 800,000 trafficked persons across the border globally with the exclusion of those trafficked internally, whilst Free the Slaves, a non- governmental organisation estimates that 27 million slaves worldwide to date exist.¹⁸³ The consent of a trafficked person to the intended exploitation...shall be irrelevant where any of the... [fore-mentioned] means...have been used. Human trafficking thus involves a violation of trafficked person rights such as the right to security of persons, dignity, freedom from cruel, inhuman and degrading treatment, the right to life and reproductive rights.¹⁸⁴

4.3. The situation pertaining to human trafficking in South Africa

Before 2013, various statutory laws and common laws were employed to deal with human trafficking such as for example the Criminal law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which criminalizes sex trafficking, the Children’s Act 38 of 2005, which criminalizes all types of child trafficking, the Prevention of Organised Crime Act 121 of 1998 and the Immigration Act 13

¹⁷⁷ The Palermo Protocol, article 3.

¹⁷⁸ UNOD “Global Report on Trafficking in Persons” 2009 6.

¹⁷⁹ Ibid.

¹⁸⁰ University of Free State “Combating Human Trafficking: The South African legal context” Kruger, HB, 2010 2

¹⁸¹ Ibid.

¹⁸² US Department of State “Trafficking in Persons Report” 2009 8.

¹⁸³ Y Sallie, “Human Trafficking- A Geographical Perspective” 2010 3 *Geodate* 2.

¹⁸⁴ CV Gold between their legs? Trafficking in women for sexual exploitation: An analysis of the SADC response at national and regional level” unpublished LLM thesis, Makerere University, 2009 Chitupila 3.

Of 2002 just to name a few. Other offences included but were not limited to kidnapping, assault, and extortion. Kruger contends that because the above stated legislations were a fragmented response and did not fully comply with the minimum standards of the Palermo Protocol, most noteworthy regarding a response to domestic law; it was deemed necessary for a legislative reform process pertaining to human trafficking in South Africa.¹⁸⁵ Firstly Kruger contends that the Sexual Offences Act failed to comply with the Palermo Protocol because it only recognizes exploitation of a sexual nature only and the Children's Act failed because of inclusion of illegal adoption in the Act which is controversial because for an illegal adoption to be considered as trafficking, the primary motive must be for exploitative purposes, an argument that resonates with Kaasan..¹⁸⁶

4.4 Legislation pertaining to human trafficking in South Africa

South Africa became a signatory of the Palermo Protocol in 2000 and ratified it in February 2004,¹⁸⁷ and as party to the Protocol, South Africa was obliged to adopt into domestic law, the minimum standards fashioned in the Protocol.¹⁸⁸ Most noteworthy, legislation pertaining to human trafficking has recently been adopted by Parliament in July 2013 in order to enforce greater punitive measures against transgressors of human trafficking, a third minimum standard provided for in article 5(1) of the Protocol, as well as to be more considerate of the needs of victims of human trafficking in South Africa. Contained in the South African Prevention and Combating of Trafficking in Persons Act (PACOTIP), No 7 of 2013, provisions made are the following:

- A person who is found guilty of human trafficking could be penalised with a fine (up to R100 million) or imprisonment (life sentences) or both a fine and imprisonment in terms of section 13(a) of PACOTIP.¹⁸⁹
- In terms of section 15(a)(b) of PACOTIP, foreign victims will be awarded a 3-months visitor's visa in order to recover and reflect and such a visa could be extended if further co-operation is needed for the investigation. If a foreign victim assists the South African Police Service or the National Prosecuting Authority, permission to apply for permanent residency may be granted in terms of section 31(2)(b) of the Immigration Act.¹⁹⁰

This section of the South African legislation attempts to address one of the major needs of foreign victims – the need for visas while awaiting the finalisation of legal proceedings, or

¹⁸⁵ University of Free State "Combating Human Trafficking: The South African legal context" Kruger, HB, 2010 1.

¹⁸⁶ Ibid.

¹⁸⁷ CV Chitupila "Gold between their legs? Trafficking in women for sexual exploitation: An analysis of the SADC response at national and regional level" unpublished LLM thesis, Makerere University, 2009 3.

¹⁸⁸ University of Free State "Combating Human Trafficking: The South African legal context" Kruger, HB, 2010 1

¹⁸⁹ Prevention and Combating of Trafficking in Persons Act 7 of 2013:20

¹⁹⁰ Ibid.



ability to return to their country of origin. Deporting both victim and trafficker hinders prosecution and enhances the potential for retribution or re-trafficking.¹⁹¹

- Section 22(1) makes provision for the criminal prosecution of victims of trafficking and takes account whether the criminal offence by the victim was as a direct result of the person's position as a victim of trafficking,¹⁹² most noteworthy the Act attempts to protect the rights of victims, given that victims of foreign trafficking often face arrests for crimes associated with their trafficking experience – such as prostitution and immigration violations.¹⁹³ In March 2014 the Brazilian government, upon recognition and validation of the South African Prevention and Combating of Trafficking in Persons Act, No 7 of 2013, released a woman who was convicted for drug smuggling after recognizing that she was a victim of human trafficking.¹⁹⁴

The government increased training efforts in anticipation of the South African Prevention and Combating of Trafficking in Persons Act impending promulgation, in 2013. Tsireledzani which loosely translates to “let's protect each other” comprises of the National Prosecuting Authority, government departments, media houses and civil society.¹⁹⁵ Tsireledzani thought it was necessary to provide training to role-players and the National Prosecuting Authority visited all nine provincial offices with the objective of anti-trafficking training of 150 prosecutors, the training of all the magistrates in each and every region, as well as the training of 60 investigative police consigned to “Hawks” units nationwide.¹⁹⁶

The International Organisation for Migration, led trainings in 2013 for 70 South African diplomats *en route* to consular positions abroad and the Department of Social Development also facilitated trainings in Gauteng, Western Cape, and KwaZulu-Natal for social service professionals and funded non-governmental organisations to expedite trainings of hospital staff in order to adequately identify and assist victims of human trafficking.¹⁹⁷ These trainings are necessary because the effects of trafficking on the victim are severe and concentrated on the violation of human rights in particular – due to the de-humanising practices involved. The experiences of victims of human trafficking include

¹⁹¹ http://www.washingtonpost.com/opinions/human-trafficking-around-the-world-hidden-in-plain-sight-by-stephanie-hepburn-and-rita-j-simon/2013/08/16/f3abff0a-f87e-11e2-8e84-c56731a202fb_story.html.

¹⁹² Prevention and Combating of Trafficking in Persons Act 7 of 2013 sec22 (1).

¹⁹³ Ibid.

¹⁹⁴ US Department of State Diplomacy in Action *Office to Monitor and Combat trafficking in Persons 2014 Trafficking persons Report*.

¹⁹⁵ [http:// www.tsireledzani.gov.za](http://www.tsireledzani.gov.za) (accessed 15 December 2014).

¹⁹⁶ US Department of State Diplomacy in Action *Office to Monitor and Combat trafficking in Persons 2014 Trafficking persons Report*.

¹⁹⁷ Ibid.

entrapment, physical and emotional abuse, exposure to major health risks such as HIV/AIDS, discrimination, exposure to hazardous working conditions and economic exploitation to a greater extent than experienced by individuals in the general population.¹⁹⁸ Such experiences have lasting consequences on the health and well-being of victims.¹⁹⁹ Victims of human trafficking have furthermore reported high levels of depression, suicide attempts, anxiety, post-traumatic stress disorder and shame, so it is important for prosecutors, magistrates, police, hospital staff and diplomats to be sensitive and cognisant of such facts.

Since legislation specific to human trafficking has been enacted, the government has convicted three traffickers, commenced prosecution of 12 other suspected traffickers, and two other labour traffickers.²⁰⁰ In February 2014, a watershed case of ukuthwala (forced marriage) is also worth mentioning, since for the first time in South Africa, a man was sentenced to 22 years for rape charges as well as for the purchase, abuse and exploitation of a 14 year old girl at the Western Cape High Court.²⁰¹ In November 2013, the Atlantis Magistrate Court prosecuted a defendant for prostituting two minors, and the Sabie Magistrate Court currently is still trying a February 2013 case which involves a Mozambican minor for the purposes of sexual exploitation by a South African businessman and a Mozambican woman, whose close associate has already been sentenced to 15 years imprisonment for selling a Mozambican woman.²⁰²

4.5. Concluding remarks

Given the fact that South Africa has been considered a prime country with regard to human trafficking, and has various avenues that allow for the transportation of persons through the country to the destination countries, the country has made significant progress in proactively and reactively responding to this clandestine international crime with the passing of the legislation regarding human trafficking.²⁰³ I do however acknowledge that South Africa is a Tier-Two country, meaning that it does not fully comply with the USDOS Trafficking in Persons Report, and there are lot cases of human trafficking that are pending such as the 2011 “Point Durban case”. However, since legislation has been passed in South Africa, there has been a significant increase in prosecution of human trafficking in South Africa, given the fact that there were only three reports of nine trafficking related convictions in 2009 as compared to the number of cases to date as I have already

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ US Department of State Diplomacy in Action *Office to Monitor and Combat trafficking in Persons 2014 Trafficking persons Report.*

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ http://www.washingtonpost.com/opinions/human-trafficking-around-the-world-hidden-in-plain-sight-by-stephanie-hepburn-and-rita-j-simon/2013/08/16/f3abff0a-f87e-11e2-8e84-c56731a202fb_story.html



stated above.²⁰⁴ We can thus possibly draw lessons from human trafficking in order to advocate for a distinct legislation pertaining to farm attacks in South Africa.

²⁰⁴ M, Segrave “Human trafficking with a focus on Africa” in R Peacock (eds) (2013) *Victimology in South Africa* 233.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

“Farm attacks are not merely attacks on farmers or the farming community. They attack South Africans...food security...investment potential...the right to privacy...physical integrity...right to life...peaceful coexistence...healthy race relations...and the battle for justice.”²⁰⁵

This mini-dissertation sought to argue that farm murder should be recognized as a distinct crime in South Africa, in order for government to direct resources for its prevention because the absence of this recognition violates the rights of farmers. In order to determine whether above-stated goal of study as stated in chapter 1 was achieved, as a point of departure, I am compelled to reiterate research finding in chapter 1, that South African law does not recognize farm murder as a distinct crime category. Even though attacks occur 700% more in South Africa as compared to globally.²⁰⁶ From the findings of the research study, farmers must be considered a vulnerable group in South Africa because the lifestyle and occupation of farmers precipitates attacks attributed to the isolated nature of smallholdings. I agree with Hornschuch, that factors such as isolation of farmers and inadequate guardianship, provide offenders with opportunities to attack farmers,²⁰⁷ as was further corroborated by the routine activities theory of Cohen and Felson in chapter 2, highlighting the absence of guardianship in farmer’s lifestyles.

5.1 Attainment of research questions

Research can only prove to be valuable if research questions stated in chapter 1 are evaluated, discussed and attained.

- Has farm murder increased after 1994, in comparison to general murder in South Africa?

I discovered that much of the data on farm attack/murder is scientifically scant because SAPS stopped releasing data on farm attacks statistics in 2007;²⁰⁸ this made it complex to ascertain whether or not farm murder has increased since 1994, in comparison to general murder in South Africa. Although various institutions have conducted research on the phenomenon of farm attacks/murder,

²⁰⁵ Solidarity Research Institute E Roets “Introduction: A national campaign against farm attacks”(2012) 4.

²⁰⁶ C Bezuidenhout & Klopper “Crimes of a violent nature” in C Bezuidenhout *A Southern African Perspective on Fundamental Criminology* (2011) 202.

²⁰⁷ V Horchsuch “A victimological investigation of farm attacks with specific reference to farmers’ perceptions of their susceptibility, the consequences of attacks for farmers and the coping strategies applied after victimization” unpublished MA thesis, University of Pretoria, 2007 328.

²⁰⁸ <http://mg.co.za/article/2010-04-08-anatomy-of-a-farm-murder> (accessed 26 June 2014).

crimes committed during farm attacks such as rape, murder, arson, assault, robbery, vehicle theft and kidnapping as discussed in chapter 2, prior to 2007, were recorded as “farm attacks” and this may have inflated statistics, however, after 2007, when an individual was raped, abducted and ultimately murdered, the crime is just recorded just murder and not farm murder by the SAPS NOCOC.

AgriSA’s research was focused on commercial farms and thus farm murder on smallholding farms might have been ignored, which explains the overemphasis of attacks on commercial farms with a staggering 1541 murders and 10151 attacks in the period of 1994-2008,²⁰⁹ which significantly differed from the ISS at the University of Pretoria’s research that captured 1073 murders and 1013 attacks in the period from 1993-2009.²¹⁰ However illustration 3, in chapter 3 clearly gave a most accurate picture showing that out of 15,609 murders that were recorded in 2012, the ratios was as follows farmers (98,8), SAPS (51,0) and general murder (30,9), which clearly showed that the research question indeed was confirmed that farm murder is indeed increasing at an alarming rate as compared to general murder.

The second research question put forth in chapter 1 is:

- What is the motivation behind the need to resort to gratuitous violence (torture) during attacks on commercial farms?

In chapter 2, research findings under the heading of reason for gratuitous violence (torture), was that that gratuitous violence (torture) during farm attacks can be attributed to hatred, revenge, disputes, socio-economic status, political reasons, land claims, and racial issues. The motivation to act aggressively is affected by a variety of factors, such as a culture of violence, economic inequalities, failure of land redistribution, and a shortage of opportunities, frustration, and poverty. Merton’s anomie theory was employed to highlight the social class stratification in South Africa, and it was significant in illustrating the fact that not everyone has access to legally institutional means of achieving cultural objectives (wealth), thus frustration results because only 20% of farm attackers had matric, many unemployed and from broken homes (70%), many attackers may blame the white farmers and see them as architects of Apartheid. However, I am of the opinion that the motivation for torture during farm attacks is because it satisfies one’s own emotion “expressive violence”, most noteworthy the perpetrators’ emotions because of the nature and brutality that characterizes farms attacks, as well as the amount of pain and suffering inflicted on the victim. I formulated my opinion on the fact that 50% of the offenders in Mistry and Dlamini’s study, were of the opinion that the

²⁰⁹ C Bezuidenhout & Klopper “Crimes of a violent nature” in C Bezuidenhout *A Southren African Perspective on Fundamental Criminology* (2011)203.

²¹⁰ Institute for Security Studies *Farm murders: A national Priority?* (2012) 7 A power point presentation presented by Johan Burger at the Crime and Justice programme in 2012.

violence inflicted on their victims was provoked; meaning the victims tried to fight off the attackers or arguably tried to escape.²¹¹

In an effort to evaluate my third research question stated in chapter 1 as:

- Will recognising farm murder as a distinct crime be an effective way to combat and prevent attacks on the farming community?

The research findings in chapter 3 that sought to undertake a critique of legislation pertaining to farm attacks, prove that that current legislation such as Sexual Offences and Related Matters Act, and the Criminal law Amendment Act does not adequately address the situation of farm attack victims. South Africa is in dire need of a legislation reform process pertaining to farm attack victims because mandatory minimum sentencing do not seem to be deterring farm attack perpetrators but rather contribute to the recidivism rates and overcrowding in prisons. Even though the rights of farmers are outlined in the South African Constitution s 2, s9, s12(1)(c), s16,s 39(1) and s 231-233, as well as other relevant other human rights instruments such contained in the African Charter of Human and People's such as the rights of equality (Articles 2 and 19), Article 7 of the UDHR and articles14 and 16 of the ICCPR just to name a few, most of the rights cannot be realized due to the absence of legislation that formally recognizes farm murder as a distinct crime, and the work of human rights defenders or rather non-governmental organizations is essentially hampered in advancing the fundamental rights of farmers.

Chapter 4 was significant in illustrating by means of the human trafficking case study that South Africa has porous borders which lead to various avenues for the transportation of persons through the country to the destination countries. However, the country has made significant progress in responding to the urgent problem of human trafficking with the enactment of the South African Prevention and Combating of Trafficking in Persons Act, No 7 of 2013. Although the legislation does fully comply with the USDOS Trafficking in Persons, there has been a significant increase in prosecution. I contend that surely South Africa might possibly learn lessons from human trafficking, towards the recognition of farm murder as a distinct crime.

5.2 Recommendations emanating from study

The researcher thus recommends that firstly, government must immediately work towards the recognition of farm attacks as a distinct crime in South Africa, by means of a legislation that is solely dedicated to farm attacks/ murder instead of over reliance on myriads of legislations as is the

²¹¹ D Mistry "Ploughing in resources Investigation of farm attacks" (2003) 6 SA Crime Quarterly 23

situation currently prevailing now. Government needs to draw lessons from human trafficking and implement policies to combat, prevent and possibly prosecute perpetrators of attacks.

Secondly police statistics on farm murder/attacks should be released with immediate effect, in order to cast light on the subject as I have already discussed at length that statistics in South Africa are scientifically scant and distorted by political and racial motives. Third, special investigative units for farm attacks/murder, as well as for rural safety at ground level must be established because it inasmuch as the Rural Protection Plan was introduced to combat attacks on farms as discussed in chapter 1, there are however aspects of the plan that must be improved- such as the security forces- particularly where farmers are far removed from the nearest police station or arm base.²¹²

Fourth, proposed legislation of farm attacks must do more to promulgate victim's rights as opposed to offender's rights. I do acknowledge that the South African Services Charter for Victims of Crime and the Minimum Standards on Services for Victims of Crime, currently emphasizes seven rights that all victims of crime are supposed to have, which include the right to offer information during the criminal investigation and trial, the right to be treated with fairness, the right to protection and the right to social, medical and legal assistance, and in addition the Integrated Victim Empowerment Policy was established with the purpose of ensuring that legislation should, at all times, include the principles of victim empowerment in order to set relevant standards for the provision of victim empowerment, with the emphasis of shifting the focus of the state, to services provided to the victims of crime rather than on the conviction of the perpetrator.²¹³

In taking note of both the Victim Empowerment Policy, as well as the South African Services Charter for Victims of Crime and the Minimum Standards on Services for Victims of Crime, I acknowledge that they both constitute important recognitions that farm attacks are a serious violation to human right, and thus I recommend that such above-mentioned policies should form the core basis of envisaged legislation of farm attack/murder. For example, the Victim Empowerment Policy may in the case of farm attacks, serve an important purpose of providing emotional support services for survivors of farm attacks to come to terms with the incident, thus having a Victim Empowerment Policy in place for survivors of farm attacks must be prioritized as a goal to reach for relevant role players.

In addition, service providers, magistrates, prosecutors, diplomats and police should be trained as was done with similar to preparations to enact legislation for human trafficking, in order to provide victims with the necessary assistance that they rightfully deserve whether primary or secondary

²¹² J Schonteich & J Steinberg *Unequal Protection: The State Response to Violent Crimes on South African farms* (2000) 3,4,19.

²¹³ L Artz & D Smythe "South African policies supporting victim's rights" in R Peacock (eds) *Victimology in South Africa* (2013) 54-55.



victims of farm attacks. It is evident that such a programme of training should involve various role-players as part of a multi-disciplinary team working from a multi-dimensional field. Hence the researcher is of the opinion that such a training programme will require the input of a multi-disciplinary team of professionals such as criminologists, lawyers, social workers, psychologists, counselors, the police, pastors as well as volunteers and community members. In hopes that this research will stimulate future research, I would then like to suggest for future researchers, to conduct much needed research on the eagerly anticipated and envisaged legislation for farm murder in order to respond to this atrocious crime.



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