

## SAHRC shocked at the acquittal of seven policemen accused of murdering Andries Tatane



Picture courtesy of IOL

The South African Human Rights Commission joins the rest of the country and international community in expressing shock at the acquittal of the seven policemen accused of the murder of Andries Tatane.

The verdict has definitely sent shock waves in the same way as did Tatane's brutal killing.

This acquittal has indeed induced a sense of shock and dismay to many people, some of whom see it as a travesty of justice and an affront to democracy and the rule of law.

As you are aware the SAHRC made findings against the police in this matter, that the police meted out brutal force that caused Tatane's death and that such actions were and remain reprehensible in a democratic State that South Africa is. We stand by our findings and are aware that Minister of Police is

appealing this.

The Commission also remains convinced, even more so after this Court ruling, that its own findings and recommendations are correct and that there was a violation of the right to life. In actual fact part of the verdict vindicates us in that the Court correctly found that the police used brutal force resulting in the death of Tatane.

The finding by the Court that the police indeed used brutal force is a negative indictment on the police and the Police Department must work harder to eradicate this reprehensible behaviour within the police before it completely erodes any semblance of confidence on the police which can only lead into anarchy and lawlessness.

It is therefore worth noting that the outcome of this criminal case has no bearing whatsoever on the SAHRC findings and recommendations. Our findings and recommendations remain valid unless set aside on appeal or review.

Therefore this criminal proceedings and outcomes must be distinguished from the proceedings and outcomes of an administrative or quasi-judicial proceedings such as ours, in a number of key respects, including the fact that the objective of a criminal trial

was to establish criminal liability for purposes of criminal sanction. On the other hand, the objective of the investigation of the SAHRC was to establish violation of human rights in terms of the Bill of Rights for declaratory purposes. In this respect, the SAHRC's objective and mandate was to pronounce on the rights of citizens to protest, picket and demonstrate and to balance these with the limitations of the State to infringe upon these rights.

Finally we urge the Tatane family, relatives and friends to find solace on the fact that the Court found that Andries died as a result of brutal force of the police which in itself opens the way to a possible success of a civil litigation against the police.

But it would be worrying if at the end of the day, no one is held liable for Tatane's death.

“...the outcome of this criminal case has no bearing whatsoever on the SAHRC findings and recommendations. Our findings and recommendations remain valid unless set aside on appeal or review.”

## Zama Khumalo lays flowers to Westdene victims



Zama Khumalo laid flowers at Johannesburg's West Park Cemetery on 13 March 2013 as part of the SAHRC led mediation agreement.

The Commission received numerous complaints against Zama Khumalo for his Facebook posting calling for a “big black braai” to celebrate the deaths of 42 white children who

drowned after their school bus plunged into Westdene dam in Johannesburg, on March 27 1985. According to the posting, the party was to take place on the anniversary of the tragedy, according to Khumalo's Facebook update. **Pf**

## The people especially women continue to face challenges in accessing their rights



By Pregs Govender, Deputy Chair

“South African women still face serious challenges in realising their human rights as enshrined in the Constitution”, the South African Human Rights Commission (SAHRC) Deputy-Chairperson Pregs Govender said at an event to commemorate the International Women’s Day on 08 March 2013. “We need to understand why there are still such high levels of poverty, inequality, unemployment and violence directed at women and girls,” said Govender at a Section 05 Committee meeting.

The Deputy Chairperson further highlighted how the resulting patterns of landlessness, unemployment, precarious employment, poverty, inequality and violence have increased in the country and the linkages of these to macro-economic policy.

The meeting theme was Connecting the Dots: Patriarchy, macro-economic policy, Socio-economic Rights & Gender Based Violence. The meeting was held to assist the Commission in assessing the country’s progress towards the realization of the rights of women living in a patriarchal society such as South Africa, as well as the progressive realization of socio-economic rights.

The meeting further served as prep-

aration for the Commission’s National Hearing on Water and Sanitation taking place on 19 March at the Pan-African Parliament in Midrand.

Nomfundo Walaza from Desmond Tutu Peace Centre indicated that there has to be a concerted effort by all stakeholders, including government, to fight Human Rights violations. “Let’s open the doors of parliament. We are alienated from our leaders. How do you hold people accountable who are there, and we are here? They sit in high chairs in parliament and are not accountable. If government is not accountable, it means we put people there to serve themselves and not us,” she added.

Jacky Dugard from Socio-Economic Rights Institute of South Africa (SERI) added that Human Rights violations are so widespread that her organisation has moved beyond strategic litigation in an attempt to address them. SERI has been litigating several complaints, around various socio-economic rights, but decided to include advocacy and human rights education in their attempts to develop consciousness amongst communities around economic and social rights as well as civil and political rights.

“My organisation is 3 years old, and were always working on issues from a local government perspective. There is a strange discrepancy around decentralisation being about bringing power closer to the people, however it seems to actually make power more remote from people. Local communities feel excluded from the formal economy and politics.”

Sipho Mthathi talked about building women’s movements as a critical way of claiming power and transforming society.

Kumba Zuma from Water Aid talked about their work across the African continent including their work on social audits.

The Commission on Gender Equality raised the continuing complaints about poor service delivery, which impact negatively on women. “If we talk about empowering women we must also focus on the point of how we alleviate poverty. According to the MDG’s, we were meant to halve poverty by 2015, but how are we going to achieve that goal?”

Mark Heywood from Section 27 raised concern about the lack of human rights knowledge. “We need to amplify knowledge about rights so that people can fight their own battles. As we build these movements we cannot micromanage everything, so we have to give people a framework for struggle so that they can conduct their own struggles then we can begin to connect the dots,” Heywood said. “People have more power than they ever had in history, to change the world they live in”.

Bonni Myersfeld of the Centre for Applied Legal Studies (CALs) talked about connecting the dots between the right to water and the lack of accountability of mining companies.

Ayanda Mvimbi from UN Women, spoke about the need to scrutinize budgets from a human rights and gender perspective.

The Commission presented its draft report from water and sanitation hearings held in 2012 across all 9 provinces. This report would be formally presented during the National Hearing on 19 March. The Presidency through the Department of Performance Monitoring and Evaluation (DPME), will respond to the Commission and provide indication of how government plans on implementing the Commission’s recommendation on water and sanitation.

The meeting called on the Commission to use its Constitutional mandate and powers to make sure that these challenges are addressed with respective Government departments.



# The Big Interview

SAHRC senior officials interacting with various TV and Radio stations during some of the interviews that took place during Human Rights Month. *Pfanelo* dedicates this page to giving snippets of the engagements.



# In the seat with Joyce Tlou, Head of Human Rights Advocacy



## *Tell us about Joyce in a nutshell?*

I wear a number of hats in my professional and personal spheres as a lawyer, wife, mother, sister and colleague. I take all my roles seriously and I endeavor to straddle the various roles to the best of my ability. I am a rather private person, I try to separate my professional and private lives to the extent that it takes a while for most people to get to know me. However, what you see is what you get, take me as I am and we will get on well just fine. I have a dry and wry sense of humor so you need to think on your feet when you are around me.

## *Where were you born and how was it for you growing up?*

I was born in and grew up in Zimbabwe, at a mission school on the outskirts of a small town called Rusape in the scenic Manicaland highlands province. The mission comprised of a boarding school,

carpentry vocational training centre and a pioneering rehabilitation centre for disabled children where my parents worked. The area has a cool climate, has a number of small scale garden market farmers so we grew up eating organically grown food that is now all the rage. I was the last born in a family of three so I grew up being teased and enduring sibling-bullying as the baby in the family. To make up for this, I ask close colleagues to call me "vakoma" which is an affectionate term meaning "big sister" and I enjoy the term immensely. I was good at volleyball, possibly because of my lanky frame and height. I excelled at school and went to two of the oldest prestigious Anglican mission schools in Manicaland province called St Augustine's in Penhalonga and St David's Bonda where I completed my Cambridge O- and A- levels in terms of Zimbabwe's schooling system.

## *Educational background?*

I studied law at the University of Zimbabwe, graduating with a BL and LLB respectively, many moons ago---so you can guess my age! In 1990 I moved to South Africa and obtained a Masters in Law from Wits University with a major focus on international human rights law. I also obtained post graduate certificates in refugee law from York University in Canada and humanitarian law from University of Lund in Sweden. I started my professional career in government service as a public prosecutor and state attorney in criminal law, moved into private legal practice in family law, then a brief spell in consultancy doing commercial work and then

spent a considerable amount of time in the NGO sector working on human rights and humanitarian law.

## *Describe your position at the Commission and explain what it means to you holding that position?*

I am the Human Rights Advocacy unit's coordinator and I took up the position in July 2012. I initially joined the Commission in 2006 as the non-nationals' and migration coordinator and would have happily continued in the post had it not been for the internal restructuring process. Nevertheless, I enjoy HURAP work as it is an extension of my previous post and prior work that I did for so many years in the NGO field. The post calls for overseeing and managing the Commission's promotional mandate that is mainly vested within the unit. I view it as an honor to be entrusted with the position as one is consciously making a positive contribution to building a human rights culture within the broader society.

## *In a summary can you take us through your day at the Commission?*

Each day is different as one never knows what a new day brings. However in general terms I start off the day with a mini- briefing session with the head office team where we check what is urgent for the day, what to prioritize and follow up on. General coordination through calls and e-mails to other internal business units, provinces and external stakeholders run throughout the day where I attend to queries, making follow ups on outstanding issues or giving advice and authorizing payments. In addition I attend various meetings such as senior management, task team, inter-programmatic and stakeholder external meetings. After this I work on implementing the resolutions that come out of those meetings. Drawing, editing and compilation of reports, working with and supervising the team also takes up a considerable amount of time. The work is hectic, especially when we are planning on hosting an >>>





... event as the unit is primarily responsible for overall coordination with other units to ensure a successful event takes place. In summary the work is about coordination, which involves pulling various strings and threads together to meet the outputs of the unit and Commission. I have a small but supportive team that ably assists me in my job.

*What motivates you and what inspires you?*

I am motivated by being able to make a positive difference in someone else's life. I am humbled by the clients that we serve and the trust they place in us, but more so by those few who always take time to say a simple thank you in appreciation. I am continually inspired

by the solid freedoms and values that are enshrined in South Africa's Constitution which is a solemn reminder of how we should never take these rights for granted.

*Favourite activities?*

I am a avid reader of contemporary works of writing by African writers and anything else that is newsworthy. I enjoy listening to not your "run of the mill" African music. I love travelling, sampling the local cuisine and getting to meet people from all walks of life and experiencing different cultures. I de-stress by tending to my vegetable patch and taking my feisty dogs on walks in my neighborhood.

*Any interesting thing that people don't know about you?*

I am a firm believer in second chances in life through the provision of an enabling environ-

ment. As a result I am a volunteer counselor at the local prison and I assist at a halfway house for recently released female prisoners. I am also an informal foster mother to a number of refugee/migrant orphans. I am proud that my first such girl I fostered is now a program officer with UNDP in Congo Brazzaville and the second is a trainee diplomat with the new state of South Sudan.

*Tell us more.....*

I always try and excel at what I do so I resent lazy people who are all talk, who often blow meaningless hot air but are not productive. I cherish and value family and my friendships to the extent that I make friends for life. My secret (up till now) is that I have such a bad memory with names but interestingly, I will easily recall when and where I met you even after 10 years. So, I hope you now have a sense of who Joyce is!



# Thank you Super team

The Office of the Deputy Chairperson would like to thank the Secretariat for tireless efforts that resulted in a well organised National Human Rights Hearing



# Welcome to Mpuma Koloni

*Pfanelo* profiles the Eastern Cape Provincial Office



**Meet the team: Front row: from right: Yolokazi Mvovo (AO), Brandon Ainslie (Intake officer), Nomathemba Tyulu (LO) Back row: from right: Aubrey Mdazana (HURAP officer), Nomawethu Mhlope (AA) Loyiso Mpondo (LO/Acting PM)**

## The office shares prudent lessons on its stakeholders engagements

**By Aubrey Mdazana, Human Rights Advocacy Officer**

*The Eastern Cape office has undertaken a number of stakeholder engagements over the passing financial year covering a wide range of thematic areas. Out of such an exercise, some lessons were learnt which are considered prudent that they be shared with the rest of the Commission.*

The fundamental tenant is that the Commission undertakes stakeholder engagements with good intent, i.e. that there is willingness and capacity to receive and respond to stakeholder feedback in the development of organisational strategies and initiatives and that the business responds to the perceptions and views of its stakeholders in ways which accommodate their views and values.

The key aim in this element is to translate the learning, insights and agreements from engagement into action. The Commission often conducts stakeholder engagements and report on those, however fail to review the process and act on the information

gained through engagement. It is important to ensure that consultative views have not been worthless.

The ideal is that we should provide complete, coherent and consistent responses to all significant issues identified during these engagements and communicate with stakeholders on how these will be managed. In practice this will not always be either feasible or desirable.

However, engagement is a two-way activity and if stakeholders invest time and other resources to enable us to improve our practice, and we wish them to continue to do so, it is reasonable to respond to that input. Where possible, stakeholders should be informed of the impact of their contribution, if only in a generic way. Once consultations have taken place, stakeholders will want to know which of their sugges-

tions have been taken on board, and what measures are to be put in place to address their concerns. Issues that are priorities for either the Commission or stakeholders should particularly be addressed. Once an appropriate course of action has been determined, given the issue(s) identified, there is a need to formulate proposals for action in the light of the probable response from stakeholders to each proposal.

The benefits to the Commission of engaging in a meaningful way are various, including enhanced reputation, strengthened capabilities, and improved relations. If any of this has to be achieved, there is a need for the Commission to provide some measure of support for some activity to follow up on some of the interventions undertaken. Resources become central in ensuring that such is realised. **Pf**

**Did you Know?** Over and above of being responsible for Mpumalanga and Northern Cape, Chairperson Adv Mushwana is responsible for Eastern Cape. He temporarily stepped to the boots of Commissioner Baai who unfortunately passed away in 2012



# What is the EC Department of Education doing to realise, protect and promote the right to education?



**Shocking... Children standing outside a dilapidated mud school in the Eastern Cape**

unions to implement the 2013 posts establishment as declared by the MEC.

Further, problems surrounding learner transportation are apparent. Of the 102 000 pupils that require transportation only 54 000 are currently benefiting. Issues of infrastructure, budget constraints and tender processes are cited as the challenges that the Department is faced with.

Looking at the above, it is evident that there is very little that the Education Department is doing to address the plight of learners in the Province. National Department has intervened and placed the Department under administration.

**Pf**

**Loyiso Mpondo  
Legal Officer/ Acting Provincial  
Manager**

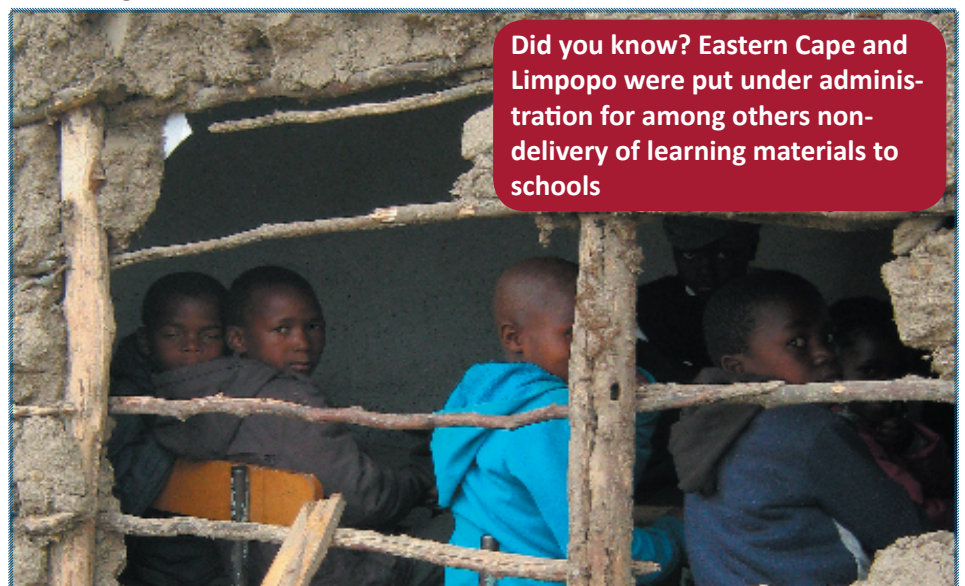
The right to education is entrenched in sec 29 of the Bill of Rights. It does not require progressive realisation to be fulfilled but rather should be imminent. In the Eastern Cape, in more instances than not, this has not been so. This is evidenced by the reality that the province is still marred by the presence of mud schools, amongst other problems.

The Education Department adopted an initiative to eradicate mud schools by 2015, there is dreadfully slow movement in fulfilling this undertaking. During 2011/2012 financial year the Department was meant to have built 50 schools, in 2012/2013 another 50 but so far they have completed only 10 schools. Reasons given to SAHRC for the delay include budgetary constraints and that some schools have less than 135 learner enrolments.

Corporal Punishment is an issue that seems to burden the Department. In a recent survey released by Stats SA, EC has the highest percentage despite its abolishment. The office handled three such cases, in one a child had lost her eyesight as a result. After the SAHRC's involvement, the teacher in question was dismissed and is currently facing criminal and civil cases.

To add salt to injury, recently the MEC: Education was quoted in the media making controversial statements that could reasonably be seen as inciting and promoting acts of corporal punishment. SAHRC has called upon him to issue an unconditional written retraction and apology.

The shortage of teachers and overcrowding in schools is a major issue facing the Department. The office is currently investigating a matter of a school where there are 132 learners in one classroom as a result of shortage of teachers. In a meeting recently held between SAHRC and the Department, they advised they are facing hesitation from teachers'



**Did you know? Eastern Cape and Limpopo were put under administration for among others non-delivery of learning materials to schools**

**Pic: Pupils at one of the mudschools in the Eastern Cape**

## Meet the new Chief Operations Officer, Lindiwe Khumalo

*The COO plays an integral role of assisting the CEO in running day to day activities of the Commission. With that in mind Pfanelo met with Lindiwe Khumalo to talk about her immediate tasks and roles.*



**SAHRC COO Lindiwe Khumalo**

As you were previously employed as the Regional Manager of the Free State Office, how does your current position vary from your previous one?

My role as Provincial Manager was very much that of implementation of programmes of the Commission in the Province.

My role as Chief Operations Officer is a more strategic one; I am tasked with the overall responsibility of executing the Strategy of the Commission. My focus is now on ensuring that the operations of the Commission are functioning; that the available human resources are deployed and utilized effectively; that processes and procedures are efficient; that day-to-day activities are conducted in an integrated manner; that all Units produce agreed outputs; and that, overall, the work of the Commission impacts the lives of ordinary people in South Africa.

That said, I should say that having served in a Province, in an implementation role, I am suitably equipped to understand both the challenges and opportunities of the Commission in the field.

What are some major roles that you have

to play as the COO of the Commission?

I am required to provide leadership and guidance to Senior Managers; to ensure that the Commission has the right person for the right job; that staff are capacitated to do what they are employed to do; that they have clear goals. Beyond this I am tasked to manage and control outputs; where these are met, to motivate for incentives and rewards; and where these are not met, to motivate for performance management decisions to be made.

Are you looking forward to the challenges that come with the position?

I am. One of the challenges of operations is that of introducing change to work processes and to work ethic. Trying to achieve this attracts the risk of pushback. I am faced with the task of managing the impact of change. Change is not easy, but does have to happen if we are to become the leading institution in the human rights sector that we are designed to be.

What are the objectives that you would like the Commission to reach?

I have said this before – I would like the Commission to operate efficiently and effectively. I believe that there is a lot of room for improvement in this regard. I would also like to see the Commission becoming more impactful in the way that it carries out its programmes. I would like the public value of the Commission, in the estimation of the common citizen, to be high. The ultimate objective is for the citizens that pay our monthly salaries, through their taxes, to feel that they are receiving value for their money.

Through your leadership skills what culture would you like to develop in the Commission?

I would like to encourage Senior Managers to lead by example. The role of a leader is that of demonstrating how things can and should be done, and to energize their teams to follow suit. Leaders who issue instructions, and cannot demonstrate their own competence, are not “leading” – they are merely “presiding”. These kinds of leaders are bound to lose credibility and legitimacy in the eyes of those that follow.

Do you think the Commission has reached its Constitutional Mandate of protecting and promotion human rights/ and if not what can be done internally to ensure the protection and promotion of human rights at all cost?

We are doing a lot of good work, but we can do more. As a lawyer, I see a huge opportunity to increase our impact by litigating more. The impact of a court judgment or a declaratory order on human rights awareness and protection is far-reaching and cannot be overestimated. In order to litigate more, we need to strengthen the technical skills of our legal services programme to be able to respond to complaints swiftly and effectively. This of course can only be done with adequate funding. I hope that the funding concerns of the Commission will be addressed by Parliament soon. **Pf**

### Did you know?

**Lindiwe Khumalo was previously the Free State Provincial Manager**



# Happy Birthdays

Commissioner  
Mokate  
23 April

Julian Masimila  
21 April



Isaac Mangena  
18 April

Oupa Dithejane  
17 April

Mpho Tau  
28 April

Kebohlale Motseothata  
12 April

Dikeledi Mosikare  
11 April

## Proposed Internal Seminar Schedule

- \* 31 April 2013, Commissioner Love: (4 April is International Day for Mine Awareness and Assistance in Mine Action)
  - \* 31 May 2013, Dr Kgamadi Kotmesi: Research: Racism
- \* 28 June 2013, Commissioner Mokate: (Children's Week & Youth Month)
  - \* 4 June is International Day of Innocent Children Victims of Aggression)
- \* 26 July 2013, Northern Cape: World Population Day (Nelson Mandela Day)
- \* 30 August 2013, Commissioners Programme: (Exploring a Vision for Chapter 9 House)
  - \* 25 October 2013, Fola Adeleke: PAIA
- \* 29 November 2013, Dr Karam Singh: Research
- \* 6 December 2013, Chairperson, Adv Mushwana: HIV and AIDS and Human Rights

## Events Calendar

Tuesday, 02 April 2013, Hearing on non delivery of learning materials