

Fanelo

"It's Your Right"

Transforming Society. Securing Rights. Restoring Dignity



Volume 08

The South African Human Rights Commission Newsletter

01 - 31 May 2013

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Africa Day, 25 May

Africa Day is the annual commemoration of the 1963 founding of the Organization of African Unity (OAU), presently recognized as the African Union (AU). The African Union, comprised of 53 member states, has brought together the continent of Africa to collectively address the challenges it has faced, such as armed conflict, climate change, and poverty.

Africa Day info

Quote

For Africa to me... is more than a glamorous fact. It is a historical truth. No man can know where he is going unless he knows exactly where he has been and exactly how he arrived at his present place.

Maya Angelou

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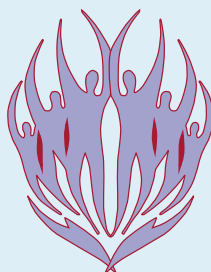
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Kayum Ahmed – CEO, Editor in Chief

April was a difficult month for the Commission and for me personally. It was a particularly difficult time because I retrenched seven colleagues after a lengthy reorganization process that started more than two years ago. The seven colleagues had been employed at the Commission for several years and had established relationships and friendships throughout the organization.

While the retrenchment process was the last resort for the Commission and particularly difficult for me, I could never imagine the negative impact it must have had on the former colleagues themselves. These colleagues had been through the direct placement process and had participated in several competitive placement interviews without any success. Consequently, there was little choice but to retrench these individuals since we could no longer afford to pay their salaries. The precarious financial position that the Commission finds itself in, further exacerbated the situation.

While the retrenchment process was difficult, it was also necessary. In order to build an organization that is effective and efficient, we need to find a balance between the best interest of those employed by the organization, and those who are served by the organization.

Having dealt with nearly 9,000 complaints of human rights violations in the 2012/13 financial year, one of the primary aims of the reorganization process was to ensure that we developed mechanisms to fast-track the handling of complaints. The ultimate aim is to ensure that the best assistance is offered to the people we serve. This includes a clear and consistent complaints handling procedure, accessible offices, and highly skilled members of the secretariat.

The budget for legal services has therefore been increased by 226% for the 2013/14 financial year,

provincial offices have more legal services staff at senior levels than ever before, and we recently implemented our electronic complaints handling system to ensure proper monitoring of cases. All these efforts will result in ensuring that we are able to better serve the poorest and marginalized members of our society.

The Commission has entered an exciting phase in the implementation of its strategic plan with the launch of critical hearings into water and sanitation, education, older persons and other key socio-economic rights. After two years of putting in place the requisite mechanisms to ensure that the Commission is able to effectively and efficiently deliver on its broad mandate, we are slowly beginning to see the Commission play a leading role in human rights in South Africa.

The utilization of public and closed hearings has proven to be quite effective in holding the government accountable. During the SAHRC's public hearings on water and sanitation, Commissioners travelled across the country to meet with communities and government representatives to ascertain the challenges pertaining to one of the most basic rights.

During our most recent hearings on the supply of learning materials to schools across the country, we utilized our subpoena power to ensure that provincial and national representatives from government departments were present at the hearings. Government officials presented information to a panel of Commissioners who posed questions about the systemic challenges prevalent in the education system.

Hearings are particularly effective for matters of national significance or systemic human rights violations since it allows for all the evidence and information to be presented within a specified time before a panel of experts. The panel is then able to collate the information, develop an interim report for public comment, and finalise the report once comments are received. Furthermore, hearings held at the national office where government departments either travel to the SAHRC head office or are connected via telephone or video conference in one of our provincial offices, are relatively inexpensive. Given the limited budget that we operate within, the hearing process is able to provide an inexpensive but effective mechanism for holding the government accountable.

As the SAHRC moves toward becoming a focal point for human rights in South Africa through transforming society, securing rights and restoring dignity, we hope to develop more effective and efficient mechanisms to deal with human rights violations across the country and to better assist the people we serve.

Kayum Ahmed
Chief Executive Officer



Right to food: SAHRCs rallying call for 2013



**Alucia Sekgathume
Communications Officer**

The South African Human Rights Commission will use this year, 2013 to campaign and promote the right to food as a basic human right for everyone in the country. It is not only inextricably linked to human dignity but goes to the core of human survival.

The stark reality in the country is that many people and in particular those who are vulnerable, such as children, the elderly,

persons with disabilities, women and those living in rural areas do not have sufficient food.

The Commission as South Africa's national human rights institution continues on promoting recommendations of the right to food for everyone at a domestic level and proceeds on monitoring government's implementation and involvement to ensure that everyone's human right to food is met. This is an important step in South Africa as the Commission demonstrates its commitment to ensuring that the right to food is enjoyed by everyone in the country.

Addressing the recent Internal Seminar to launch the right to food campaign on 18 April 2013, SAHRC Deputy Chairperson Pregs Govender raised concern over the connection between the multinational businesses and Government, which results in food not reaching the poorest who need it most. She said that the country needs people who will stand up against those who violate their rights.

Deputy Chair further linked the lack of access to water and sanitation to the lack of the right to food. She also warned against dependence on the Genetically Modified Foods which is replacing traditional staple home-grown food. "In our country today, over 80% of staple food is genetically modified. Only people with money are able to access organic food," she added.



Deputy Chair Pregs Govender addressing staff during the seminar



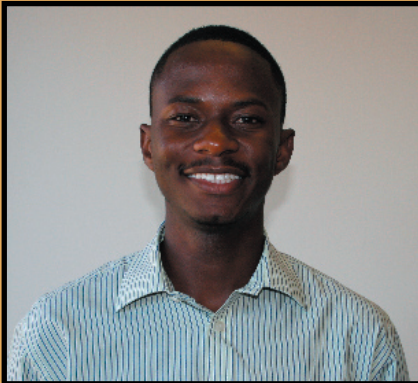
The recently hosted Internal Seminar provided a platform for staff members to contribute towards the right to food campaign.

Did you know?

- * Overweight and obesity are advancing rapidly in the developing world as well ... [while] 80 percent of the world's hungry children live in countries with food surpluses.
- * 40%-50% of all food ready for harvest never gets eaten.
- * Much of the best agricultural land in the world is used to grow commodities such as cotton, sisal, tea, tobacco, sugar cane, and cocoa, items which are non-food products or are marginally nutritious, but for which there is a large market.

World Food Programme

There is no life without food



Busiso Moyo: Research Associate

It goes without saying that the right to food enjoys significant protection at the international, regional and national levels. Sadly, such protection has not been translated adequately into the progressive realisation of the right to food in South Africa. Currently there are approximately 14 million people in South Africa who are vulnerable to food insecurity and 1.5 million children under the age of 6 years who are stunted by chronic malnutrition. In November 2011, a South African newspaper reported about the demise of four siblings in the North West Province who were overcome by hunger. They died in their quest to find their mother and sister who had left in search of food. The post mortem results revealed that the cause of death was hunger and dehydration after they had walked a distance of more than 10 km. This tragedy is a grim reminder that despite the international law and national legislation as well as the existence of institutions that are mandated to monitor and assess the state's obligations in respect of the realisation of the right to food, the mechanisms that are employed to ensure accountability are wholly insufficient. As such, the challenge is that even though the insufficiency is recognised, many institutions have struggled to find real solutions to their monitoring methodologies so that they can hold the government accountable for its action or non-action. Is there a realistic panacea to the problem?

The challenge of realising the right to food goes beyond monitoring the

performance of government but involves the assessment of the role of business in the control and supply of food. For example, in 2006, the Competition Commission in South Africa uncovered the price fixing of bread by a cartel made up of Pioneer Foods, Tiger Brands and Premier. The cartel agreed to increase the price of bread to customers, to fix their prices to distributors and not poach each other's independent distributors. The effect of this was that the price of bread increased by approximately 30 cents, distributors discounts were slashed from 90 cents to 75 cents and distributors were refused alternatives. To quote the National Consumer Forum: "The bread case is a living example of how an unjust economy can further impoverish poor communities and destroy opportunities for small businesses." Noticeably, section 27 of the South African Constitution guarantees the right to food. However, if one tracks the impact of inflation on the poor, one finds that their purchasing power (CPI) is being eroded because the basket of goods on which the CPI is based is determined by the middle class and the elites. Worse, poor South Africans face even greater prejudices as research has found that the goods being sold in township supermarkets have a shorter shelf life, packaging is poor, origins of products are obscure and labelling virtually non-existent. The poor carry a disproportionate financial and health burden as a result of this unfair system based on the dictates of the market.


Amidst the above-mentioned, important to note, is that one of the most massive unregulated experiments on humans ever is being carried out right here in South Africa. South Africans are the first people in the world to consume a genetically modified (GM) food as a staple. According to industry sources more than 75% of our white maize is now GM. This means that the *pap* and *samp* consumed daily in the majority of South African households is now mainly comprised of genetically modified maize. This commodification of food leaves food security

at the mercy of the market. There is no central global oversight or planning to secure sufficient food stocks as a buffer. Food is controlled by the market, not by logic, and certainly not by benevolence.

So how do we fix this broken system? How can we move away from increasingly unhealthy and un-natural food, which is directly responsible for unprecedented rates of obesity, diabetes, heart diseases and cancer, which simultaneously ravages both planet and people?

The overwhelming expert consensus is that in order to begin to fix the problem we must start to shift from large-scale commodity agriculture toward localised, diversified and resilient farming systems. We need to reduce the distance our food travels. We need to reconnect with the source of our food. We don't need slow food as much as smart food. In contrast, the present system is incredibly stupid on all counts except that of extracting profit.

We know that we can feed the world by shifting human food production toward localised, sustainable, diverse, smart farming systems. While this may entail some changes in how we eat and shop, it is critically important to initiate a planned transition in order to initiate these changes without creating systemic shocks and instability within the food chain. On the other hand, the damage wrought on the planet is mirrored in the damage on our health. We really need to turn onto the smart path.

If no urgent response is formulated in response to the obvious challenges facing the realization of the right to food - all of us will feel the impact of this perfect storm, but yet again it will be the poorest amongst us who are most seriously affected. This has serious implications for social stability - as was seen in Egypt with the 2008 food riots, for a country like South Africa beset by the twin challenges of poverty and inequality the ball needs to get rolling!! 

SAHRC concludes proceedings into non-delivery of learning material to schools, awaits further submissions

SAHRC held investigative hearings to assess the status of Government's realisation towards access to basic education as enshrined in the Constitution.



Commissioners Mokate and Love led the SAHRC delegation in the investigative hearings on non-delivery of learning materials

The South African Human Rights Commission has concluded preliminary proceedings into the hearings to investigate the non-delivery of primary learning materials to schools across the country.

The hearing started on the 2 April 2013 following concerning reports around the non-delivery of school learning material, notably in the Eastern Cape and Limpopo.



The hearing provided an opportunity for SAHRC to assess the non-delivery of learning material

The Commission invited the presence of the Director-General at the Department of Basic Education and all provincial MECs for Education from the beginning of the hearing, to present oral and written responses to a listed number of questions around the challenges of delivery of learning material to schools.

An interim report following this hearing was compiled and presented to Parliament on 30 April 2013.

The panel has, however, elected not to declare the proceedings closed to facilitate a further consultative process with interested stakeholders who have not presented their submissions yet, and to, if need arises,

elicit further clarification from government.

After all submissions have been received, a consolidated report on the state of delivery of learning material to schools in the nine provinces, containing recommendations will be submitted to Parliament for implementation.

The hearing is in line with the constitutional mandate of the Commission which includes the role of investigating human rights violations of the rights of children to basic education. **Pf**

Those with comments can visit www.sahrc.org.za

Did you know?

The SAHRC launched Charter of Basic Education Rights in January 2013

Lack of delivery of learning materials was first reported in 2012 in Limpopo and the Eastern Cape

Charter is available at www.sahrc.org.za

SAHRC welcomes apology by Eastern Cape MEC for Education over comments that violate the rights of children



MEC Mandla Makupula
Picture courtesy of ECDoE.gov.za

The South African Human Rights Commission (SAHRC) has welcomed the apology tendered by the Eastern Cape MEC for Education, Mr Mandla Makupula, following statements he is alleged to have made to a group of students on the 9 March 2013. Mr Makupula is alleged to have said the following:

- “No child... who is still dependent on their parents for food and shelter, has any rights.”
- “I asked myself what was wrong with that boy. His father did go to the initiation school, but because of the rights now, he did not want to go there himself ... I wish he had been my child, I would have hit him on the head with a knobkerrie and he would have gone to that initiation school crying.” (In reference to a boy in the Eastern Cape who initiated legal proceedings against his father after being forced to attend initiation school)
- “Some of the things said by learners here left me wondering as I do not think it was you speaking

... some of you were more eloquent and articulate standing here at this podium. I could see some things are too much advanced for you to know and say here.” (In response to the addresses delivered by the learners)

These statements evoked widespread public outcry, culminating in a complaint being laid with the Commission against the MEC. The SAHRC conducted a preliminary investigation and elected to write to Mr Makupula, indicating the nature and extent of the alleged violation and recommending that he apologise and unconditionally retract the statement.

In response, the MEC, requested a meeting with the Commission to discuss these issues. As a consequence of these proceedings, the MEC has signed a statement indicating that

1. “I understand the offensive nature of my statements
2. I understand that the statements undermine the human rights of children in South Africa and are contrary to the dictates of the Bill of Rights;
3. Notwithstanding the fact that I understand and appreciate that my statements caused widespread offence, and undermined the human rights of children in South Africa, I would like to record that it was never my intention to do so;
4. I hereby accordingly unequivocally retract the said statements I made; and
5. I further unconditionally apologise for the statements I made.”

The SAHRC welcomes the willingness of the MEC to engage and appeals to those in public office to refrain from making statements that violate the rights in the Constitution. Instead these officials should use public platforms to communicate in a manner that respects and upholds the rights of others, including children. **Pf**

“I understand the offensive nature of my statements”

Did you know?

Section 29(1) of the Constitution of the Republic of South Africa (1996) provides that everyone has the right to basic education.

The right to basic education is immediately realised. It is not subject to progressive realisation within available resources.

Basic education must be made available by State to all children

Availability of education refers to what must be in place before the right is accessed.

Source: Charter of Children's Basic Education Rights

SAHRC satisfied with progress made in enclosing toilets in Rammulotsi



Thumbs up: SAHRC officials went along with Moqhaka Municipality officials during inspection of enclosed toilets

The South African Human Rights Commission (Commission) is satisfied that the dignity of people of Rammulotsi, Viljoenskroon in the Free State is restored. The assertion follows inspection that was conducted on 09 April 2013, in Rammulotsi together with the Moqhaka Local Municipality and the Department of Human Settlements to assess progress made in the enclosure of open toilets.

The inspection forms part of the Commission's findings and recommendations that the Municipality violated the right to dignity of people of Rammulotsi by building them unenclosed toilets. Furthermore, the Commission recommended that the Municipality must furnish it with progress report after every six months detailing measures taken to enclose open toilets.

The finding follows complaint lodged with the Commission in 2010 that the Municipality violated people's rights by building unenclosed toilets in Rammulotsi. Subsequently, the Commission investigated the complaint in line with its mandate to monitor and assess the observance and realisation of the rights enshrined in the Constitution.

The Commission commends the Municipality and the Department of Human Settlements' role in making sure that the residence of Rammulotsi can use sanitation in a dignified manner. However, there are a few shortcomings that it raised concern on:

- Unscrupulous building contractors who instigated indigent households to demolish existing toilet enclosures;
- Members of political formations complicit in demolishing of toilet enclosures; and
- Lack of general awareness (dissemination of information) regarding enclosed toilets.

The Municipality and the Department of Human Settlements have made a commitment to address some of the shortcomings noted during the inspection, including those sites that were visited by the Commission before end of April 2013.

The Commission further confirmed that the initial 1831 toilets that formed part of our investigation were enclosed. The Department of Human Settlements also enclosed an additional 253 toilets, some of which were demolished by residents.

The Commission awaits a final report from both organs of state on or before 10 May 2013. The Commission is content with the progress made in enclosing toilets and further supports the proposal made by the Municipality to enact a municipal by-law to halt or curb any further demolishing of existing toilet structures, as the process of enclosing all toilets will end in April 2013. **Pf**



Acting Provincial Manager Buang Jones talking to an elderly as part of inspection

Visit to Rammulotsi changed my perspective on service delivery

When SAHRC visited Rammulotsi township on Tuesday, 09 April 2013, little did I know that the journey would wipe off the agonising memories of the earlier inspection, which had left a dark cloud in my mind. Seeing the changes and joy on the faces of the elderly proved to be a much needed therapeutic experience.



Wisani Baloyi
Communications Officer

The journey to Rammulotsi inspection proved to be an interesting experience, although a little overwhelming at times, as I relived the memories of the 2011 visit where I saw the sad faces of the elderly who seemed content that the unenclosed toilets would never be finalised. The right to dignity seemed like something foreign to them.

I thought if my mind was shuttered then when I saw in disbelief toilets that were not flushing, others with sewages that were not working, poorly constructed structures that were already falling before all structures could be enclosed, I wondered how it would be should I find the situation to be worse .

Being a softy I remember looking through the camera lens as I continued to take pictures while colleagues inspected the toilets and shook their heads.

The burning question that remained unanswered since the first inspec-

tion was around the feeling of those people who had no choice but were forced to relieve themselves in toilets that were not flushing. I could not eat properly after the inspection as the experience was overwhelming.

As we were about to reach Rammulotsi, I said if the experience was too much for me then what about the people who had to live in that degrading situation and had to shut out their minds daily in order to eat food.

We arrived around 10H00 in the morning and patiently waited at the corner of Rammulotsi and Viljoenskroon, flanked by journalists who were there in their numbers to report on the progress.

The Moqhaka Municipality Mayor, Jihad Mohapi, arrived around 11H30 flanked by his entourage that comprised of strong security personnel. As we joined the convoy which was moving at a fast pace, I said to Isaac, "The strong security presence is strange. I wonder what the Mayor is afraid of; maybe the toilets are not enclosed." Isaac replied by saying, "mzala (cousin) you will never know, maybe he is afraid that people might attack him."

Contrary to my theory, our first stop was one of the houses that in 2011 had the toilet that was enclosed with makeshift rusty zinc structure. To the joy of my heart it was properly enclosed this time.


As promising as the first stop was, I was still not convinced that the dignity of all people of Rammulotsi was restored, but a few more inspections

proved to be the much needed news of the day, as all the places we went to had enclosures.

The faces of residents had changed from those that could not smile, to chanting the name of the Mayor. For me it was the much needed therapeutic experience to erase the previous shocking memories. Even though I did not get responses on how people managed to eat food while toilets outside were not flushing and had bad odour all over, their smiles had all the answers I needed, dignity was restored.

The Rammulotsi experiences reminded me of the SAHRC's Economic and Social Rights Report, which indicates concern over Government's lack of a Human Rights approach when providing services. Had the Human Rights element been provided in the whole construction of toilets in Rammulotsi, the people would not have suffered the humiliation of using toilets at night as the structures were not enclosed.

However, I commend the Mayor who came and found the shocking and embarrassing situation where people's right to dignity had been violated by the construction of unenclosed toilets but worked tirelessly to steer the team that provided enclosures. Subsequent to the inspection the Mayor thanked the Commission for having contributed to changing the lives of people of Rammulotsi.

The whole experience made me feel proud to be an employee of the SAHRC. 

SAHRC Strategic Plan tabled in Parliament

Year one of the 2011 to 2014 Strategic Plan (April 2011 to March 2012) focused primarily on providing the nonnegotiable core deliverables whilst undergoing a major organisational restructuring exercise. This exercise resulted in the development of a new structure that is aligned to the mission and vision of the South African Human Rights Commission (Commission). The restructuring process has been an exceptionally challenging exercise that forced us to rethink our roles and responsibilities, and to question our individual and collective responsibility to the people we serve.

the priority for the 2012/2013 period consisting of solidly entrenching the organisational structure.

The initial focus, resource and infrastructure development comprised of the following:

- developing a full set of policies and standard operating procedures across the Commission;
- ensuring the infrastructure facilitates the meeting of all compliance requirements;
- developing and implementing a comprehensive capacity development plan to ensure that all employees are competent, knowledgeable and performance-driven;
- implementing effectively the

The foundation has been laid and the basics largely in place with respect to these resource and infrastructure development commitments. The organizational restructuring process is almost fully complete, with critical management posts filled including the Chief Financial Officer and Chief Operations Officer.

The final year of the 2011-14 Strategic Plan (April 2013 to March 2014) will focus on consolidating and sustaining the previous commitments and strategic areas identified at the beginning of the period. The available resources and infrastructure will be utilised to maintain the core deliverables, with a view to creating a solid baseline for the ensuing strategic plan period of 2014 to 2017. In that period, the Commission will build on this baseline to give attention to intended outcomes and impact based strategic planning.



Strategic Plan 2013 - 2016

At the same time, the restructuring process generated new opportunities and ideas, it allowed for a process of deep introspection, and created a platform for debate and discussion. Furthermore, the restructuring process has allowed for the appointment of new staff members who will bring a diverse range of skills and talents to the Commission. Year two of the 2011 to 2014 Strategic Plan (April 2012 to March 2013) commenced with the appointment of a new management team. The appointment process began in April 2012, with

performance monitoring, evaluation and reporting system at the organisational, programme and individual levels throughout the Commission to ensure that all programmes operate effectively;

- providing all the traditional support services cost effectively and efficiently;
- ensuring adequate and timely funding; and
- effectively drawing on existing offers of expert assistance for the development of source materials to adapt as required for internal capacity development, advocacy products, etc.

The rethinking process initiated during the 2010/11 financial year has led to the start of a process of reimagining the Commission. While the rethinking process focused on a deep and substantive analysis of the issues facing the Commission and led to the development of a new mission, vision and organisational structure, the re-imagination process allows us to look ahead and to consider new ideas and different approaches to our mandate.

As the Commission approaches the end of the current strategic planning period, it is confident in the realisation of targeted performance, amidst the challenges of organisational restructuring. The achievement rate of targets improved from 67% in 2010/2011 to 89% for the 2011/12 financial year. This achievement is expected to remain consistent or improve in the 2012/2013 period.

>>>>>>

Some of the key achievements in

the current financial year, 2012/2013, include:

- maintenance of A status award as a highly effective National Human Rights Institution;
- fulfilling the international, regional and local obligations of chairing the Network of African National Human Rights Institutions;
- appointment as Chair of the International Coordinating Committee (ICC) of National Human Rights Institutions
- release of the Andries Tatane Report;
- involvement in the Marikana investigations, Lenasia housing debacle and Lindela refugee camp matters;
- launch of Basic Education Charter, being the 3rd in the world, after the United Kingdom and Ireland;
- upgrading of the flowcentric system to ensure speedy and effective complaints handling; and
- conducting of water and sanitation hearings across the 3 provinces to promote accountability of public service delivery institutions, etc.

Considering local and International developments in the area of human rights jurisprudence, as well as the increase in social justice movements and the politicisation of economic and social rights, the next five to ten years may see the emergence of a new kind of national human rights institution. The Commission is going to have to evolve to keep up with developments in South Africa and across the world in order to remain relevant and responsive to the needs of the poor and marginalised.

The use of social media, the

This is an extract from the 2013 - 16 Strategic Business Plan



Knowledge is power: SAHRC trains librarians on Access to Information



Librarians at the informative session on the Promotion of Access to Information Act

Lesedi Sojane SAHRC Librarian

On 25 April 2013, twenty seven (27) librarians/information professionals gathered at the SAHRC's training centre for a workshop on the Promotion of Access to Information Act (PAIA).

Lesedi Sojane, South Gauteng Coordinator of the Special Libraries Interest Group, (which is part of the Library and Information Association of South Africa (LIASA), approached Nokwanda Molefe, PAIA Advocacy Officer, to provide training on PAIA.

Chantal Kissoon, former head of PAIA and now Gauteng Provincial Manager welcomed the participants and outlined the mandate of the Commission.

Nokwanda's presentation centered on key aspects such as:

- The background to the Act
- Various sections of the Act
- PAIA manuals and section 32 reports, and
- The cycle of making requests

The interest of the participants was also maintained by the DVD played on the use of the Act to access information to realise socio economic rights/social justice.

The participants thanked the SAHRC for hosting an informative workshop. Plans are already underway for future interactions on this legislation. There is more interest on PAIA especially now that there are debates on the Protection of Personal Information Bill and the Protection of State Information Bill.



SAHRC welcomes international guests

The Commission welcomed guests and shared knowledge and experience with Rwandan, Iraqi and Israeli delegates. *Pfanelo* gives you the lowdown in pictures



Commissioner Mokate after sharing experiences on her work on the rights of children



Adv Mushwana addressing delegates on torture



Commissioner Titus shared experiences on torture



The Iraqi delegation came in numbers to learn best practices



Israeli journalists, Mr and Mrs Gideon Levi during a recent visit



Delegates at the Association for the Prevention of Torture project on "Reinforcing the role of African NHRIs in the prevention of torture"



SAHRC pays tribute to Mr Tom Boya



Extract from letter by SAHRC Chair Adv Mushwana



Picture courtesy of Sowetan

MESSAGE OF CONDOLENCE FROM SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The South African Human Rights Commission has received with shock and dismay the news of the passing-on of Mr Tom Boya. Mr Boya was a dedicated and committed servant of South Africa in the promotion and protection of the rights of older persons in South Africa. For many years Mr Boya was championing the respect and promotion of older persons in the country, most notable, he negotiated the older person's desk in the Office of the Presidency.

Mr Tom Boya served on the Section 5 Committee for Older Persons which was responsible for advising The South African Human Rights Commission on matters relating to the Elderly. He was also the Chairperson of the South African Older Persons Forum. The SA Human Rights Commission sends its heartfelt condolences to Boya's family, relatives and friends.

We have lost a dedicated foot soldier who always sought to ensure that the rights of the elderly are promoted and protected at all times. The SA Human Rights Commission was still expecting more from Mr Tom Boya.

We will greatly miss him for his determination and dedication in championing the rights of older persons, which were at the centre of his heart.

May his soul rest in peace. 

The SAHRC seeks legal opinion on the constitutionality of the final Protection of State Information Bill


The South African Human Rights Commission has noted the passing of the Protection of State Information Bill by the Parliament of South Africa. The Commission is currently seeking legal opinion on the constitutionality of the final Bill to ensure that it does not unjustifiably infringe the right of access to information and other constitutional rights that will affect the pursuit of a transparent society.

The Commission has in the past

stressed that the constitutional right of access to information must form the fundamental basis for the consideration of any law aiming to protect legitimate secrets of government. The Commission believes the right of access to information is necessary for the fight against corruption and pivotal in the realisation of other rights and in combating poverty.

In our submission to Parliament, the Commission expressed numerous concerns, some of which were

not addressed in the amended Bill. These include the impact of the bill on the right of access to information and freedom of expression, the insufficiently independent classification review board, the limited public interest defence, the need for a public domain defence, among others.

The Commission will continue to fight to promote and protect human rights in South Africa, including the right to access to information. 

In the seat with Peter Makaneta, Chief Financial Officer



Tell us about Peter in a nutshell?

I am the eldest son in my family of seven children. I am married and have three sons.

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

I was born in a village called Stinkwater in Hammanskraal. Being a rural village, I had grown up around a very disadvantaged community with limited access to key services but we have survived although there has been some improvement wherein there is water & electricity in the village. As an eldest son I had to take responsibility for improving the status of my family to that which is thriving.

Educational background?

I matriculated in 1992 at Dr. Moreosele High School and later obtained a BCom, BCom. Honours Accounting and a Mas-

ters of Business Leadership degrees from Unisa. I am a Certified Internal Auditor (CIA) through the Institute of Internal Auditors and I also have a Certification in Control Self-Assessment (CCSA)

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

I am currently a Chief Financial Officer. As a CFO I am responsible for ensuring:

- Compliance with prescribed laws, rules and regulations (E.g. PFMA, Treasury Regulations, SCM, HR, IT, PPPFA etc)
- Reliability and integrity of financial information
- Effectiveness and efficiency of systems (be it HR, IT and Supply Chain Management)
- Safeguarding of the Commission's assets

Lastly I am also responsible for facilitating the enterprise risk management processes of the Commission. This role involves co-coordinating efforts with all the Line Managers to ensure that all the strategic and operational risks in their business units are being managed effectively to ensure achievement of the Commission's objectives and mandate.

To me being a CFO, together with my

team in Corporate Support Division as well all colleagues of the Commission, we are very critical in providing support to enable the CEO (Accounting Officer) in delivering the key responsibilities required of him by the PFMA.

Our role is to drive the process of ensuring that the Commission upholds clean administrative governance which would ensure that ALL monies received by the Commission are spent effectively, efficiently and responsibly

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

Depending on which day of the month, my day ranges from preparing financial reports for different stakeholders, processing requisitions or payments, responding to audit findings from internal/external auditors, responding to a query that arose as a result of a system glitch, travel queries, supplier queries etc.

What motivates you and what inspires you?

I am motivated by the potential that exists in being able to make a difference to the next person's life and the hope I have that one day things will be better, inspires me.

Favourite activities?

Team-building sessions, travelling, watching soccer and spending time with family.

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

Not much **Pf**

Welcome to Gauteng

Pfanelo profiles the Gauteng Provincial Office



Back row: Phillip Molekoa, Chantal Kisoona, Nthabiseng Kwaza, Tshepo Sehloho, Lauren O'Reilley and Sebongile Mutlwane

Front row: Ayanda Mdletshe, Kisha Candasamy, and Eileen Carter

How long is a piece of string?



Chantal Kisoona
Gauteng Provincial Manager

Recently in a discussion with a senior public official about the need for public consultation, he responded by referring to the time public consultation requires by asking “how long is a piece of string?”. This question really captures the frustration most officials feel when they embark on the process of consultation before implementing or embarking on a decision which affects people. How much of consultation is

enough, can a timeline be fixed and how will this affect delivery of the project?

Across disciplines globally and certainly at some levels in South Africa consultation has come to be viewed as a necessity to ensure fairness and full consideration of factors impacting on a matter or decision. Our courts have been mindful of this need and have time and time again sent public bodies back to the drawing board to ensure that consultation with affected parties takes place before they embark on action which adversely affects communities.

Decisions relating to housing, as in the cases of *Port Elizabeth Municipality v Various Occupiers*; and *Blue Moonlight Properties (Pty) Ltd v Occupiers of Saratoga Avenue and Another*, where the municipalities had proceeded to evict occupiers, or with regard to municipal decisions to discontinue

the provision of basic services in the cases of *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*; and *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others* highlight this need. In fact our courts have gone so far as to find legislation like the Slums Act, which did not allow for meaningful consultation to be declared unconstitutional as was seen in the case of the informal dwellers [the *Abahlali base Mjondolo Movement of SA and Another v Premier of the Province of Kwa Zulu Natal and Others*] case. In each instance the courts have demanded that the acting authority consult with the affected communities to fully understand their problems and to reach alternative solutions to ensure that their basic rights were protected as much as possible before resorting to extreme action.

What these cases mean is that it is insufficient to merely share information and deem this a consultation. >>>>>>>



The Gauteng Provincial Office recently mediated between Zama Khumalo and several complainants over a racial message posted on Facebook.

Something more substantive is required in the form of *meaningful consultation* and engagement. It means that in the shaping and developing of normative frameworks or policies, information relied on should be obtained from the communities themselves in a bottom-up approach and not a top-down approach. In this way the realities in communities are taken into account when developing policies and implementing them.

A few conditions need to be met for meaningful consultation with communities to occur. These conditions require a commitment to the process and value of consultation itself, transparency and the sharing of information to enable informed participation. Our legal frameworks are designed to encourage the creation of such conditions through laws like the Promotion of Access to Information Act [PAIA], the Prevention of Illegal Evictions Act [PIE] and the Promotion of Just Administrative Action Act [PAJA]; and the public service has entrenched this commitment in the Batho Pele Principles. These are however only formal commitments. To translate these into a reality, a culture of consultation needs to be developed

and embedded in all decision making, whether decisions are around major issues like tolls; education and health or local cemeteries, traditional courts and matters impacting on the factory floor.

The surge in corruption, unnecessary and wasteful spending, delayed and failed projects are daily manifestations of a lack of transparency, information sharing and consultation. As a result communities remain at a remove from important processes like the Integrated Development Planning process, and budget allocations which affect them and render them unable to participate in decision making which affects their daily lives.

Meaningful consultation does not mean that everything arising from the consultative process will be taken on board by decision-makers, instead it means that honest consideration of input occurs, competing and complementary interests are addressed and that the end result is one which works better, most people understand and support. The same principles apply to organizations. In instances where employees are not honestly consulted, the organization is less likely to enjoy the wealth of diverse input, creativity and mutual support to achieving organisational

goals that buy-in and understanding can bring. Instead the organization is seen at operating at a remove from its employees, disregarding valuable information and insight that can increase productivity and attainment of goals.

It is therefore of some concern that despite clear authority and need for meaningful consultation, the culture of planning and implementation of projects without adequate consultation appears to prevail in many sectors. If, on the basis of complaints received by the Commission, and comments of the type by the official referred to above, consultation is treated as a mere compliance formality, our frameworks will continue to be theoretically excellent but substantively and practically wanting. It bears remembering that in the South African context, consultation resulted in a Constitution revered by the rest of the world, a commitment to a new democratic order premised on the very thing we appear to be struggling with-defining the proverbial strength of a piece of string by its length.



Did you know?

Gauteng Provincial Office receives around 1600 complaints a year.

Complaints are received through walk ins, telephone, online and fax

Gauteng Office is contacted on 011 877 3750

Over and above being responsible for Human Rights and Law Enforcement, Prevention of Torture, Commissioner Titus is responsible for Gauteng Office

Bullying, a form of child abuse?



Eileen Carter:
Legal Officer

In February 2013 the Gauteng Provincial Office of the South African Human Rights Commission received a complaint regarding the bullying of children at school. The matter related to a child being teased and victimised by his peers, and resulted in him wanting to avoid school.

There are numerous definitions ascribed to the term bullying, however it can be characterized as being one or more individuals "aggressing on a vulnerable peer, primarily to assert control or power." The actions that may be deemed as bullying may also be categorised as other psychological violence such as harassment, victimisation, abusive threats and intimidation.

School bullying is a specific form of violence that children are exposed to and more often than not, this form of abuse targets vulnerable children. Although bullying is sometimes difficult to establish, its consequences are serious and range from poor performance, to children becoming withdrawn, fearful, or resisting school. According to a Yale University study, bully victims are between two (2) to nine (9) times more likely to consider suicide than non-victims.

The incidence of bullying is quite widespread. This led to the Committee on the Rights of the Child, an international

body which monitors the rights of children, identifying bullying as a form of violence against children in its general Comment issued in 2011. The Committee also emphasised the importance of children's participation in the development of prevention strategies in relation to bullying in its comment.

Conversely, in terms of section 28 of the Constitution every child has the right to be protected from maltreatment, neglect, abuse or degradation. The question therefore arises, whether bullying constitutes a transgression in terms of section 28.

The Children's Act 38 of 2005 defines abuse in relation to a child as any form of harm or ill-treatment of a child. It goes on to list examples of what may constitute abuse and includes bullying by another child as an example of abuse. According to Neser bullying includes physical, verbal, emotional as well as relational bullying. Emotional bullying includes terrorising, extorting, defaming, humiliating, blackmailing and ranking of personal characteristics such as disability. Depending on the facts of the case, name-calling, or being pushed around on the school grounds, may therefore constitute child abuse as defined in the Children's Act.

In addition, section 110 of the Children's Act creates an interesting twist in the case of bullying. Section 110 states that any teacher who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, must report said conclusion to a designated authority. As bullying constitutes abuse, should a child be victimised by his or her peers at school, and present a physical injury as a result thereof, there is an onus on the teacher who is aware of such bullying, to report same to designated officials. Should the teacher fail to comply with this duty, he or she may be guilty of an offence.

Section 8 of the Schools Act 84 of 1996 furthermore states that each

school must have a code of conduct aimed at creating a disciplined, goal-oriented school environment. This may indicate towards preventative practices regarding bullying, and places another obligation on the school to prevent and address same. The Committee on the Rights of the Child have furthermore indicated that a school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1) of the United Nations Convention on the Rights of the Child.⁷ The prevention and reporting of bullying, and in essence, child abuse, therefore lies squarely within the mandate of schools and must be respected.

Nevertheless, if the bullying results in assault, threats of violence and criminal harassment, parents and school authorities must report same to the South African Police Service. This may initiate appropriate criminal investigation and other recourse in law.

Bullying, due to its adverse impact on learners, is therefore much more than a phenomenon where children should be encouraged to grow a thicker skin. It may have criminal and civil implications, for both the bully and the educator.

In 2012, a learner from the Lethabong Secondary School in Soshanguve hanged himself as a result of bullying. Such cases are instructive to institutions such as the Commission and Department of Basic Education, to understand the full implications such conduct has on learners, and to hold schools to account for the promotion of respect and human rights values between learners, educators and parents. In this regard communities too need to be made more aware of the adverse effects of bullying, to encourage healthy school environments where children are able to participate free from fear and abuse, and reach their full potential.

Why we have to celebrate International Human Rights Day?



Human Rights Advocacy Officer Phillip Molekoa addressing community members at the Diepkloof Welfare Centre, Soweto about the rights of women

Phillip Molekoa
Human Rights Advocacy Officer

The Gauteng Provincial Office hosted a community dialogue in celebration of International Women’s Day, which was held in Diepkloof, Soweto, on 8 March 2013. International Women’s Day is rooted in the struggle of women to participate in society on an equal footing with men. Every year the world celebrates International Women’s Day to honor the struggle for equality, justice, peace and development. Furthermore, the day also provides an opportunity for the world to recognize women’s achievements in all sectors of society including politics, economics and society.

The theme of the community dialogue was ‘the elimination and prevention of all forms of violence against women and girls’. The Gauteng office worked with other organizations to create widespread awareness on gender based violence in the community. It is common knowledge that violence against women and children continues to be a serious problem in South Africa. This situation has contributed to South Africa’s infamous dubbing as one of the most violent societies in the world.

Two issues were given priority by participants. These were discussions on

the plight of refugee women; and that of gays and lesbians in the community. Central to this focus was a consideration of whether we as a society are doing enough to protect the rights of refugees in general and gays and lesbians within our communities?

The approach was to encourage an understanding of the experiences of the affected groups. Through encouraging this awareness and understanding, tolerance is increased and prejudice and abuse reduced. Women remain a vulnerable group in any society and refugee women are much more vulnerable to abuse, exploitation, violence and xenophobia. The majority of migrant women speak only French, Portuguese, Swahili or other languages, making them more vulnerable. Participants were shocked to learn that many migrant and refugee women in South Africa would have already experienced sexual violence in their home country or during the journey to South Africa. Some had been forced to exchange sexual favours with border officials for permission to enter the country.

Further, victims of sexual violence are often treated with skepticism and suffer secondary victimization at the hands of police officials once

they do gain entry into the country. Lastly, refugee and migrant women also face domestic violence in their homes, at the hands of their husbands and partners. Due to pressure and fear of being discovered as having entered the country illegally, cultural or religious beliefs, these violent crimes in the home go unreported.

South Africa’s Constitution is regarded as amongst the most progressive in the world, guaranteeing protection regardless of gender, race, ethnicity, culture, religion or language. In spite of the legal framework that grants protection, homophobia still persists, and hate crimes are often not reported or go unpunished. There is also a perception that homosexuality is immoral, unnatural, unGodly and unAfrican. These crimes, motivated by prejudice and hatred towards others send a message of intolerance to other members of the group to which the victim belongs.

One other worrying pattern of crime against lesbians is the phenomenon of “corrective rape” which has been documented in Gauteng and Western Cape townships was also raised. Corrective rape is carried out by men who believe they can “cure” lesbians and change their sexual orientation. This trend has seen an increase in yet a further form of violence and discrimination against lesbians.

As we celebrate nineteen years of our democratic achievements, we need to ask ourselves whether we have become the society we envisaged, whether we live in accordance with the values that shaped our democracy that needs to hold us as a diverse society. A great deal of further awareness is required not just at community level but in all spheres of our lives to ensure that intolerance, prejudice-based hatred and crime against vulnerable groups is eradicated and respect is fostered. Every individual needs to live a life of integrity and dignity in the spaces we occupy and become agents of positive change. **Pf**

Happy Birthdays

02 May
Sindi-leigh McBride

06 May
Anthony Wyngaard

12 May
Yuri Ramkisoorn
Amanda Mmari
Karam Singh

Judy Hollenbach
05 May

13 May
Kebalepile Modise

25 May
Wisani Baloyi
Shafeeqah Salie

26 May
Tammy Carter

Proposed Internal Seminars Schedule

* 24 May 2013, Commissioner Love: (4 April is International Day for Mine Awareness and Assistance in Mine Action)

* 28 June 2013, Commissioner Mokate: (Children's Week & Youth Month)

* 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

Gauteng Provincial Office upcoming interventions

- PAIA Community Session, Mamelodi, 15 May 13
- Charter of Children's Basic Education Rights, NASGB Soweto - 27 June 13
- PAIA Community Feedback, 3 July 13

New Employees

Thandiwe Matthews, Senior Legal Officer: Legal Services, Head Office

Mpho Boikanyo: Senior Legal Officer, North West

Zamile Mbanjwa: Admin Assistant, Strategic Support and Governance