

Fanelo

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Transforming Society. Securing Rights. Restoring Dignity
The South African Human Rights Commission Newsletter



Volume 26

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Commissioners leading from the front

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Reflections on farming hearings



**ICC bureau meeting
in South Africa**



Universal Children’s Day, 20 November

By resolution 836(IX) of 14 December 1954, the General Assembly recommended that all countries institute a Universal Children’s Day, to be observed as a day of worldwide fraternity and understanding between children. It recommended that the Day was to be observed also as a day of activity devoted to promoting the ideals and objectives of the Charter and the welfare of the children of the world. The Assembly suggested to governments that the Day be observed on the date and in the way which each considers appropriate. The date 20 November, marks the day on which the Assembly adopted the Declaration of the Rights of the Child, in 1959, and the Convention on the Rights of the Child, in 1989.

In 2000 world leaders outlined the Millennium Development Goals (MDGs) – which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015. Though the Goals are for all humankind, they are primarily about children. UNICEF notes that six of the eight goals relate directly to children and meeting the last two will also make critical improvements in their lives.

At the 2013 UN Treaty Event, which were held 24–26, and 30 September and 1 October at New York Headquarters, United Nations officials urged Member States, which have not done so, to ratify the Convention on the Rights of the Child and its three Optional Protocols, stressing that this is vital to protect children from abuse and mistreatment worldwide.

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Pfanelo is a publication of the South African Human Rights Commission
Private Bag X2700, Houghton
Johannesburg 2041
Tel: (011) 877 3600 • Fax: (011) 643 6472
www.sahrc.org.za / info@sahrc.org.za



Editor in Chief: Kayum Ahmed, CEO

Editorial Team:

- Siyasanga Giyose, Head of Strategic Support and Governance
- Isaac Mangena, Head of Communications
- Mthokozisi Mbambo, Strategy and Performance Specialist
- Wisani Baloyi, Communications Officer (Internal)
- Alucia Sekgathume, Communications Officer (External)
- Sizakele Ntoyi, Legal Secretary
- Zamile Mbanjwa, Admin Assistant

Pfanelo Editorial team reserves the right to publish, edit, and reject articles or pictures.

CONTRIBUTORS

- **Adv Mushwana, SAHRC & ICC Chair**
- **Commissioner Danny Titus, Human Rights and Policing**
- **Commissioner Mohamed Ameerma, Housing and Access to Justice.**
- **Pandelis Gregoriou, Head of Legal Services**
- **Thandiwe Matthews, Senior Legal Officer**
- **Kebothhale Motseothata, Visiting student**

Calls for SA to prioritise hunger alleviation

JOHANNESBURG: The government must prioritise hunger alleviation, a study released on 16 October 2014 recommended. “We are proposing a national act that will put hunger at the heart of government policies,” Oxfam’s Economic Justice Campaign Manager, Rashmi Mistry, said.

“All government departments must come together so that it is not just one department, like Agriculture, that will be responsible for food security. It does involve rural development, social development, all government departments.”

Mistry was speaking following the release of the study, titled “Hidden Hunger in South Africa”, which was intended to expose what hunger meant in South Africa and the fact that not enough was being done to address the issue.

The study found that a quarter of South Africans regularly suffered from hunger. “South Africa is supposed to be a food-secure nation, producing enough food to adequately feed everyone but the reality is that one in four people currently suffers hunger on a regular basis,” Mistry said.

She said hunger stripped away people’s dignity and perpetuated people’s problems. She said more needed to be done for change to be effective in the country.

She called on the government to intervene and come up with legislation to help fight hunger. “We need to introduce a national act that will be a bottom-up process with the communities who are facing hunger. It will take a long time to implement that but in the meantime, the government must address the issue of implementing policies, co-ordi-



Without adequate food, the needy man die from malnutrition.

nation and re-sourcing of policies to address issues of hunger,” said Mistry.

According to the study, one in four people in the country suffered from hunger and an additional 28.3 percent were at risk of hunger.

It was undertaken in nine different municipalities in three provinces – Limpopo, Western Cape, and the Eastern Cape. The choice of provinces was based on the national poverty statistics from Stats SA in 2012.

Mistry said they were hoping to take their findings to the government. “We are hoping to speak to the government because we need them to hear the stories we have talked about. The government needs to hear these stories and speak to those people as well to understand what they need in order to address hunger,” she said.

SA Human Rights Commission Deputy Chairperson Pregs Govender echoed the sentiments and challenged the government to take action.

She said the government was aware of the statistics but had done nothing about the problem. “Everyone knows these statistics... every head who is in the government has come across the statistics, but what is the gap between knowing this theoretically and being moved to use their power to change this reality,” she said.

Govender said that was the first founding value of the constitution which was linked to every human right. “Rights are interdependent. If you don’t have one right, you don’t get to enjoy the others,” said Govender.

Source: Sapa 

Farm attacks decreasing, Commissioner Phiyega tells SAHRC

Farming



National Police Commissioner, Ria Phiyega at the SAHRC hearing on farming

National Police Commissioner Ria Phiyega said farm attacks have decreased over the past four years. She said this during a national hearing on safety and security in farming communities, hosted by the South African Human Rights Commission on 06 October 2014.

The South African Human Rights Commission convened this hearing due to evidence from the current crime statistics, complaints lodged with the SAHRC regarding violence in farming communities, media reports and other anecdotal accounts, which all point to the fact that safety and security, and human rights protections in farming communities still remains a significant challenge.

Commissioner Phiyega said a manual database is maintained by the SAPS where all incidents of violence on farms and small hold-

ings are captured and analysed for sharing during safety priority committees. The database indicates a constant decrease over the past four years.

“We would like to see an inclusive and integrated approach to ensure that these statistics remain consistent as the issue of lack of resources also plays a major role”, she said.

“Farmers are important stakeholders of this country and a summit will be hosted in terms of the community outreach programmes and will be rolled out and implemented in 7 provinces to assist in combating these farm murders”, said Phiyega.

She further indicated how incidents of violence on farms and small holdings for the year 2013/2014 have decreased sig-

nificantly and said that there is a lot of work that needs to be done in reaching out to farmers, as in some rural areas like Kuruman, a police station would be about 90km away, which makes it difficult for crime scenes to be treated as emergencies.

The South African Human Rights Commission is expected to table a report that will be presented to Parliament with outcomes of these farm hearings containing responses from various government departments, the South African Police Services, the African Farmers Association of South Africa (AFASA), Food and Allied Workers Union (FAWU) and Agricultural Research Council.



Commissioner Titus reflects on safety challenges in farms

Farming



Dr Danny Titus, SAHRC Commissioner responsible for Human Rights and Policing

The month of October 2014 has been adopted by the Department of Agriculture, Forestry and Fisheries as “Food Security Month”. It is dedicated to raise awareness about food production. This marks the beginning of the planting season under the theme: “Through Food Security, Job Creation and Economic Growth - We move South Africa Forward.”

Reflecting recently on his interaction with stakeholders in the agricultural sector the Minister of Agriculture, Forestry and Fisheries, Mr. Zenzeni Zokwana recently expressed himself as follows:

“I have been amazed by the passion of commercial farmers who bear the tough responsibility of ensuring our countrymen (sic.) have sufficient food. I have also come across extremely hardworking smallholder producers who work, through rain and sunshine, to produce food and create livelihoods for their families.

The farming unions have kept me informed about the loopholes and opportunities, and of course, the media is also keeping

a very close eye on what we do.” It is against this backdrop of food security in our country that the South African Human Rights Commission concluded its National Hearing relating to Safety and Security Challenges in Farming Communities this month. The Commission’s report with its recommendations is being prepared.

The Commission has been approached by Afriforum with their concerns that the incidences of farm murders have increased, that the violent nature of the killings were unacceptable, and that the impact that these killings have on the farming community, the economy and food security merits our concern. The Commission

decided that a national hearing will raise the awareness of this human rights violation of killings both against owners as well as farm workers and that it is also a valuable opportunity to consider the implementation of earlier reports of the Commission relating to safety on farms. A wide range of witnesses testified over a period of three days providing the hearing with clear analyses and recommendations. We were also provided with victim statements and one victim testified about the attack on her and her husband’s farm, which injured her seriously and led to her husband’s immediate death. She graphically detailed the cruelty and the senselessness of the attacks on farms. What also



Commissioners Ameermia and Titus at the hearing

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We have to make farms safe again

Farming

From page 5

came through was the determination and passion to farm, a commitment that after this traumatic experience drove her back to the same farm to continue with her passion for her farm. From the workers' side evidence was presented by the Food and Allied Workers' Union (FAWU) about their experiences on farms. They are there to mediate between workers and owners on matters of labour relations. In some cases it works well while in others it seems as if the race question still lurks strongly on farms. Organised agriculture had four presentations by Agri-SA, Transvaal Agricultural Union, African Farmers Union and the African Farmers Association of South Africa. It was testified that while the general perception is of farmers being white and threatened, that there are thousands of black farmers that are experiencing feelings of unsafety and attacks as well. One of our questions related to political or criminal motivation. The evidence was overwhelmingly that it is criminal although in some cases strong racial remarks have been made during the attack. Three government departments were called viz. Justice, Rural Development and the South African Police Service. Two experts drs. De Kock and Burger testified regarding the statistics, their credibility and made recommendations. Practical solutions came from a wide range of witnesses and one of the witnesses from the Coordinating Community Policing Forum in Gauteng gave a clear outline regarding cooperation with a broad range of stakeholders and its successful implementation in bringing down incidences of crime.

The South African Police Service presented their evidence with the



De Doorns strike exposed serious challenges that are faced by the farming sector

National Commissioner of Police General Riah Phiyega answering questions herself. The seniority of the delegation indicated the seriousness with which the SAPS takes their responsibility. They outlined a number of strategies that they are implementing to address crime in its national context as well as the inclusive nature of their approach e.g. including traditional leaders in rural crime prevention strategies.

It was quite positive to see how witnesses could engage with each other at the hearing. People who did not really have been in contact with each other could interact and exchange contact particulars. One of the witnesses, Dr. Johan Burger from the Institute for Security Studies, refers to farm robberies as "robbery with the intention to kill". He referred to the senselessness of the killings by referring to how an 85-year old man who was no threat to the killers, was nevertheless strangled to death. Back to the Minister of Agriculture, Forestry and Fisheries, Mr.

Zokwana:

"Agriculture is the foundation of developing nations. In South Africa, agriculture has been identified as having the potential to be a key job creator. In fact, the President has given the agricultural sector the challenge to create a million jobs by 2030. We also have a food security and nutrition policy that is our guiding document for food production."

If agriculture is the foundation of our nation, if it has the potential to be a key job creator, and if it is our South African guiding sector for food production, we have to make our farms safe again, our farmers, our farm workers, and their families secure in their tenure and turn around the senseless attacks and killing fields.

Pf

The farming report is currently being drafted. Once finalized, it will be tabled in Parliament and shared with the public.

SAHRC probes dark heart of Lindela

Report by Mail & Guardian: Reports of violations at the repatriation centre for detained illegal immigrants have grabbed the attention of human rights organisations.

For years, there have been credible reports about human rights abuses at the Lindela Repatriation Centre in Krugersdorp. (Adam Broomberg and Oliver Chanarin, courtesy the Goodman gallery)

The South African Human Rights Commission (SAHRC) has launched an investigation into the alleged violation of the human rights of the illegal immigrants detained at the Lindela Repatriation Centre.

The Gauteng manager of the SAHRC, Ms Chantal Kisoona, said the Commission visited the centre on Friday October 10 2014, and detainees had complained about human rights violations and the "matter is now under investigation".

An attorney from the Legal Resources Centre, Naseema Fakir, said the organisation would visit Lindela on Friday to try to establish the facts following the allegations of human rights abuses.

The Mail & Guardian reported last week that 25 Nigerian detainees were allegedly shot at and beaten by security guards working for Bosasa Operation, the private company that runs the facility on behalf of the Home Affairs Department.

The M&G has since learned about the death of an illegal Malawian immigrant who was detained at



Detainees at Lindela allege that their rights are grossly violated

Lindela on August 8, despite being ill when the police delivered him there.

Detainees have accused Bosasa and Home Affairs officials of keeping his death a secret. The cause of the detainee's death could not be established. Some Interns said many people at the centre contracted flu and had Tuberculosis.

Kisoona said the Commission would forward the allegations to the Home Affairs Department. She said that Parliament had asked for a meeting with the Commission on October 28 2014, to discuss the allegations but the Commission was not available on that day. "We are expecting Parliament to reschedule the meeting," she said.

Last week the M&G reported that 10 security guards allegedly beat the Nigerians with batons and shot at them using rubber bullets

to force them to end their two-week hunger strike.

Five of the hunger strikers said they started the strike to draw attention to the poor living conditions in the facility.

They claimed that most of the detainees at Lindela, especially those from Nigeria, had been kept illegally for more than 120 days. Their other complaints included difficulty in getting legal representation, overcrowding, bad food and poor treatment by the centre's staff.

Their version of events could not be corroborated by independent witnesses.

However, several reports, court cases and investigations, and independent verification by a range of human rights bodies and lawyers over more than a decade paint a picture of abuse, torture and a

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When people are sick, authorities give them Panado - Former detainee

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trampling on the rights of the detainees.

The centre, in Krugersdorp on the West Rand, can accommodate 4000 detainees.

The M&G understands that at least 14 Nigerians who were badly injured during the alleged shooting incident have since been deported.

Bosasa spokesperson Papa Leshabane finally commented this week about the shooting incident.

He said security guards were responding to a scuffle between Nigerians and a Tanzanian accused of "stealing from one of them". He denied any knowledge of a hunger strike.

"We are not aware of any hunger strike at Lindela in the past weeks. Inmates have been attending to the kitchen as always during meal times," he said.

A source with first-hand information about the deal between Bosasa and the Home Affairs Department said that "in terms of the contractual agreement between the two parties, the security guards should have called the police officers to intervene in the event of the fight or protest waged by the detainees".

But Leshabane said: "Our security intervened and the Nigerians started assaulting the security officials, leaving them no option but to defend themselves, the Tanzanian and the property."

Referring to the death of the Ma-

lawian man, Leshabane said a report on the deceased "was never kept a secret as it was made available to the Department of Home Affairs".

The M&G was told that the detainee had been treated at the clinic in the centre and then taken to the Leratong hospital in Kagiso township, where he died.

Home Affairs Department Spokesperson Mayihlome Tshwete failed to respond to questions about the death of the detainee and about human rights abuses at Lindela.

A former Lindela detainee, Jean Kufil Lukila (44), from the Democratic Republic of Congo, told the M&G last week that there were "too many people in one room and people fell sick", and that "when they go to the clinic, they give them only Panado tablets".

He was arrested in 2011 because his asylum-seeker permit had expired. He was detained for 162 days.

He recalled an incident when "a Congolese died because, after he vomited blood, he was not given proper medication".

Last month, the Human Rights Commission released a report on its two-year investigation into "The State of Health and Health Care Services at Lindela".

The report found that there was a "lack of measures to ensure continuity of treatment with respect to chronic medication, particularly with regard to TB and HIV treatment, among other findings".

The report recommended that the Home Affairs Department "should provide the Commission with a comprehensive report outlining the challenges it has identified and steps it will take to remedy such barriers to the realisation of the right to health care", among other things.

During the M&G's visit to the centre, the wife of the dead Malawian detainee was among the visitors. She was there to talk to Bosasa officials about her husband's death. She allegedly told one visitor that her husband had died after he had spent "a short time" at Lindela.

The M&G was unable to talk to her.

A group of 1 000 Malawians reportedly attacked a security guard inspecting their cells "because of the mounting frustration that their deportation has been unnecessarily delayed".

The guard was apparently rescued by his colleagues and was unharmed.

Last month, the Malawians decided to go on a hunger strike but called it off after 300 of them were deported.

A Bosasa source said the Home Affairs Department had not contacted the company directors.

"They had not even asked [Bosasa] to hand over the CCTV footages of the shooting incident," the source said.

The former Head of the National Prosecuting Authority, Vusi Pikoli, tweeted: "Are we as South Africans turning a blind eye to allegations of human rights violations at Lindela and other police stations? It can't be!"

Pf

Who watches the watchmen?



By Pandelis Gregorius
Head of Legal Services

It has been almost two months since a ground breaking judgment against the Department of Home Affairs in which Judge Tsoka of the High Court of Johannesburg declared the actions of officials of the Lindela Repatriation Centre unlawful and unconstitutional and gave the South African Human Rights Commission (SAHRC) unfettered access to the facility. Although the Department of Home Affairs and the company contracted by DHA to undertake the day to day running of Lindela, BOSASA holdings, have been taken to court hundreds of times for the release of individuals from the centre, the significance of this particular judgment cannot be underestimated due to the potential it has to curb a systemic violation of the law, affecting thousands of detainees.

The Lindela Repatriation Centre in Krugersdorp has been in operation since 1996. It has the capacity to hold up to 4000 people and is the only facility in South Africa where migrants are processed for deportation. The United Nations High Commissioner for Refugees and other bodies have regularly

raised concerns over the violations of detainees' rights dating back to at least February 2000.

For a long time, civil society organisations such as PASSOP, Lawyers for Human Rights and the Legal Resources Centre (LRC), have played the role of monitoring the facility, but gaining access is extremely difficult. The SAHRC, an institution given extensive powers under Chapter 9 and section 184 of the Constitution, has the mandate to monitor activities at Lindela, but even this has been hampered in the past by the refusal of Lindela officials to issue reports.

Monitoring by the LRC has shown that on-going non-compliance with the law has occurred both within Lindela and at the police stations where arrested migrants are held while their documentation is verified.

Police may arrest a person on suspicion of being in South Africa

illegally. There have been cases where these include South African nationals who are not holding identity documents. Once an arrest is made, the police must assess whether a suspected illegal migrant has a valid visa or permit within 48 hours, after which the person must be released or informed that he or she is being deported and transported to Lindela for deportation. The 48 hour rule is routinely broken and people can be kept in police cells for weeks on end. This comes with its own problems, especially when detainees require medication, are working or have families to support.

In terms of the Immigration Act, once at Lindela, detention can only be extended past 30 days with a warrant from a magistrate's court, but this rule is not consistently applied. In fact, in one instance, the LRC discovered a warrant stamped and issued before the detainee even arrived at Lindela, suggesting a cover up

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The Commission constantly receives queries about ill treatment of non-nationals at Lindela Repatriation Centre

Eviction: Why are people still being subjected to unlawful evictions , 20 years into democracy



The reasons why there is an urgent need for government of the Republic of South Africa to ratify and domesticate the International Covenant on Economic, Social and Cultural Rights (ICESCR) to give effect to the constitutional right to housing as entrenched and guaranteed in section 26 of the Bill of Rights.

By Adv. Mohamed Shafie Ameer-mia

Whilst South Africa celebrates 20 years of constitutional Democracy, October 2014 is perhaps the right month for introspection for all South Africans to make a clarion call to the government of the Republic of South Africa to urgently consider ratifying and domesticating into our law, the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is significant in that 20 years ago, on the 3rd October 1994, South Africa signed the ICESCR. It was also in the month of October, where another historical milestone addressing housing challenges in South Africa occurred, when 14 years ago, the South African Constitutional Court delivered the landmark judgment on socio eco-

omic rights in the Grootboom (housing) case. The Grootboom case crystallised the transformation of the law on housing and evictions in South Africa. However, the principles encapsulated in that historic landmark (housing) judgment and the state's housing legislation, continue to ring hollow, to people who have to bear the brunt of evictions and demolitions as this article is being written.

The jurisprudential pronouncements of the South African courts in relation to the constitutional right of access to adequate housing has revealed, that through giving content to the substantive provisions in the Constitution, and through interpretation of the progressive legislative framework, the courts have infused new normative legal requirements to evic-

tion matters in South Africa. These legal requirements include, inter alia, the need to meaningfully engage, with affected communities, and the state's obligation to provide alternative accommodation where the unlawful occupiers would be rendered homeless as a result of eviction. Thus, as a result of the innovative interpretation, the courts have created a 'new cluster of relationships between the parties involved in eviction proceedings.'

However, notwithstanding this, people in South Africa are still at risk of being arbitrarily evicted or having their homes demolished. This begs the question of why after twenty years into a democracy, unlawful evictions feature all year round in South Africa, especially, such as the most recent 2014 Lwandle evictions that were



Scores were left homeless as a result of the eviction

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Ratification of the ICESCR would make it mandatory for the South African courts to consider the principles enshrined in this covenant when dealing with eviction cases

carried out by the South African National Roads Agency Limited has revealed. The answer appears to simply lie in the fact that South Africa has not ratified the ICESCR. Indeed, it has been noted that notwithstanding the non-ratification of the ICESCR by South Africa, there is room for an interpretive approach to give teeth to the value of the rights enshrined in the Constitution as the courts may use binding, as well as non-binding laws, as tools of interpretation (see *S v Makwanyane and Another* 1995 (3) SA 391 (CC), para 35, and *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169, para 26).

However, ratification of the ICESCR would make it mandatory for the South African courts to consider the principles enshrined in this covenant when interpreting these rights i.e. the right to housing, as enshrined and entrenched in the Constitution. This will therefore logically mean that South Africa's jurisprudence will have to be in sync with these international treaty obligations as encapsulated in the ICESCR. In essence, this will imply that the courts will have to grant strong protection to the 'minimum core approach' as devised by the UN Committee on Economic, Social and Cultural

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Rights (CESCR) which they have thus far refused to endorse, preferring the 'reasonableness test' (see *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) 2005 SA 721 (CC) and *Mazibuko and Others v City of Johannesburg and Others* 2010 4 SA 1 (CC)).

By ratifying and domesticating the ICESCR into our law, it will mean that the General Comments issued by the CESCR will become a significant tool in assisting our courts in maintaining a consistent jurisprudential line of march giving effect to South Africa's domestic laws and policies and South Africa's (international) obligations under the ICESCR (Liebenberg, 1995).

As a result of the ratification of the ICESCR, South Africa will have to, at the very least, provide a bare minimum protection to socio-economic rights, such as basic shelter and housing (UNCESCR, General Comment No. 3, para 10). South Africa will also have to ensure that it abides by the CESCR's comments. For instance, it will have to ensure that all evictions are carried out humanely, or, in accordance with the spirit of 'ubuntu'. It will have to ensure that due process of law has been followed prior to the granting of an eviction order, and that no one will be rendered homeless or have their human rights violated as a result of the eviction (UN CESCR, General Comment 7).

Through the process of ratification of the aforesaid treaty, South Africa will have to act *intra vires* the principles enshrined in the ICESCR, as it would have bound itself to give effect to the obligations, goals and standards of the ICESCR. South Africa will then be

subjected to the reporting procedures carried out by the CESCR, whereby the implementation of the rights protected in the ICESCR are monitored, through the assessment of the State's reporting obligations.

In conclusion, by South Africa domesticating the ICESCR Convention and signing it into our law, it will also provide a platform for the South African Human Rights Commission to de facto exercise its de jure power to 'monitor the implementation of, and compliance with, regional and international conventions and treaties, regional and international charters relating to the objects of the Commission' (South African Human Rights Commission Act 40 of 2013 [section 13 (1) (b) (vi)], and thereby to transform society, secure rights and restore dignity, for Without rights there cannot be freedom Without freedom there cannot be development

Without development there cannot be transformation.

Adv. Mohamed Shafie Ameeria is the Commissioner at the SA Human Rights Commission, responsible for Housing and Access to Justice.

Meanwhile

The mass eviction of more than 800 families from SA National Roads Agency (Sanral) land in Lwandle near Somerset West earlier this year was illegal, Human Settlements Minister Lindiwe Sissulu said.

"The parties who knowingly conspired and effected the eviction,

Lwandle eviction illegal

From page 11

mainly Sanral, the City of Cape Town, the sheriff of Strand, the SA Police Service, and the law enforcement agencies of the City of Cape Town, acted irregularly," she told MPs in the National Assembly.

Tabling the report of a ministerial inquiry into the evictions - which took place on 2 and 3 June this year - she said the court order the agencies had used to effect the mass removal of the families did not authorise them to do so.

The community had occupied the land illegally.

"A court order was obtained with a specific directive to prevent the imminent invasion of the land on 24 January. The same court order did not authorise Sanral or anybody else to effect an eviction."

Sisulu said that among the findings of the report was that Sanral had "knowingly abused the court order to effect the eviction".

The court application made was for an interim interdict, limited to preventing further invasion only.

"Sanral knew that, and all the agencies that co-operated with Sanral knew that. The court order was not an eviction. The court did not authorise the removal of any persons or structures already erected on the land. Therefore, the evictions on 2 and 3 June this year were illegal."

Sisulu said the agencies did not have an eviction order, and did not follow the due processes of the law, as set out in the Prevention of Illegal Eviction and Prevention of Unlawful Occupation of Land Act.

"And, therefore, their actions - all of them - were illegal."

Such mass evictions could not be tolerated in South Africa.

"What happened here, between the City of Cape Town, Sanral and the SA Police Service, was despicable, immoral and criminal."

She said those who broke the law, and "carried out acts of immoral vandalism", should be held accountable.

Pf

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within the Department of Home Affairs.

Extension of detention cannot go on indefinitely. The maximum amount of time a person can be detained is 120 days. However, in 2012 the LRC assisted with the release of over 80 people, all of whom had been in Lindela for longer than 120 days and in one instance, close to a year.

Despite the 30 day and 120 day rules applying from the day of arrest, officials at Lindela have been calculating the start of the period as the date that detainees are processed at Lindela.

In 2012, armed with this information, the LRC, representing PAS-SOP and the SAHRC, embarked on

strategic litigation. This was done not only to declare the practice of contravening the 30 and 120 days rules unconstitutional and in contravention of the Immigration Act, but to enable the SAHRC to fulfil its Constitutional mandate of monitoring the facility. The court battle culminated in judgment ordering the Department of Home Affairs and officials at Lindela to provide the SAHRC with regular reports on detainee numbers and their status and to allow the SAHRC regular access to the facility.

So far, the Department has been allowing the SAHRC access to the facility. However, cases of contravention of the 30 and 120 day rules have still been identified. The LRC and SAHRC hope that

these contraventions will cease in time, but if necessary, litigation will continue.

For a facility, which has the power to deprive people of their freedom for little more than a suspected illegal presence in South Africa, it is essential that civil society watch the watchmen. The judgment has given the SAHRC additional tools, which will hopefully translate into the prevention of illegal detention and deportation, reduce corruption and mismanagement and ensure compliance with the law.
ENDS

Pandelis Gregoriou is the Head of Legal Services at the SA Human Rights Commission, and has worked intimately on the rights of the migrants in Lindela. Pf

Craigpark Residents Association and Alsilinx NPC resolve dispute over Scouthall at ERF 24, Craighall Park

In August 2014, the South African Human Rights Commission (the SAHRC) received a complaint from Ms Lebohang Litha on her behalf and on behalf of Alsilinx NPC (the Complainant).

Alsilinx NPC entered into an agreement with the City of Joburg Property Company SOC LTD (the JPC) to lease Erf 24 Craighall (the Property). The lease agreement permits Alsilinx NPC to use the Property for community and early learning purposes and to make improvements to the property.

Despite the rights granted to the NPC in terms of the lease agreement to occupy the Property, Ms


Litha has faced opposition from persons, some of whom appear to be members of the Craigpark Residents' Association (the CRA). In addition, she objected to a publication about the non-profit company in the Craigpark Resident's newsletter and on Facebook.

The Complainant alleged that the opposition to her operation of the non-profit company is in violation of her rights to dignity, equality, privacy and property.

On 10 September 2014, the Commission engaged with Ms Litha, the JPC and the Craighall Residents Association. All parties engaged in a voluntary mediation,

facilitated by the SAHRC.

The JPC undertook to provide additional security and signage in the disputed area. The CRA indicated its concern about the conduct of the alleged residents and apologised for the publication. It undertook to correct the article in a special edition of the CRA Newsletter and on the CRA Facebook page. Both parties undertook to work together and engage more closely in the future for the benefit of the community.

As a result, a settlement agreement was signed by the parties on 19 September 2014. 

SAHRC strongly disassociates itself from false information following mediation with Mongezi Mahlangu and James French

The South African Human Rights Commission (the Commission) received complaints about violations to the rights to dignity and equality from James French, Alice Choe, Mongezi Mahlangu and Mome Mahlangu.

The complaint by Mr French and Ms Choe was premised on allegations relating to xenophobic comments, discharge of a firearm and physical assault. These allegations were later expanded to include false media publications and broadcasting. The complaint by Mr and Mrs Mahlangu was premised on an allegation of the use of the



Ms Chantal Kisoona flanked by Mr James French and Mr Mongezi Mahlangu at the signing of an agreement.

Continues to page 14

The parties' on-going unhappiness with the fulfilment impacted on the terms of agreement

From page 13

"K-word" by Mr French during the same altercation.

The Commission engaged in two lengthy conciliation and mediation processes with the parties. However, despite the resolutions made in the initial agreement between the parties, the mediation efforts were unsuccessful.


One of the terms initially agreed to between the parties on 18 September 2014 was that Mr and Mrs Mahlangu would issue a written apology, which would be published within 7 (seven) days of the signing of the agreement in each of the media outlets that incorrectly reported the incident e.g. Daily Sun, Sunday World, Twitter. Mr French alleged that this had not been done.

Following this alleged breach, a further term was agreed to be-

tween the parties on 8 October 2014 that a tweet including a link to the apology would be posted by Mrs and Mr Mahlangu on their respective twitter accounts, together with a media statement about the complaint and settlement thereof. Ms Choe and Mr French raised concerns about the content of the media statement and the tweet that was to be posted by Mr and Mrs Mahlangu on their respective twitter accounts.

The parties' on-going unhappiness with the fulfilment of terms impacted on certain allegations involving criminal conduct, which formed one of the bases of the complaint from Mr French and Ms Choe. In addition, Mr French raised certain new violations which had not formed a part of the initial complaint to the Commission. Mr Mahlangu and Mrs Mahlangu also indicated their intention not

to proceed with the mediation and advised of their intent to have the matter resolved through litigation. The Commission considered the matter together with the need to ensure both parties benefit by having their concerns ventilated through and determined by the courts should they wish to do so. On this basis the Commission deemed the mediation and reconciliation efforts between the parties to have been unsuccessful.

In the course of renegotiating terms of settlement, the content of the television program, Ek Se, which aired on E-TV on 7 October 2014 (the repeat broadcast of which occurred on 8 and 9 October 2014), was brought to the attention of the Commission. The Commission records that any reference to the 'South African Human Rights Commission' assisting with the deportation of the person referred to in the program by Mr Mahlangu are false. The Commission strongly disassociates itself from the false information broadcast in the program and reserves its rights to bring its concerns about the program content to the attention to the Broadcasting Complaints Commission of South Africa. 

SAHRC, Pastor Bougardt reach agreement in Equality court case

The South African Human Rights Commission (SAHRC) is happy and welcomes an agreement that has been reached in the matter before the Equality Court between the Commission and Pastor Oscar Peter Bougardt.


The matter was settled after participation in the process of mediation between the Commission and Pastor Bougardt, before the Honourable Mr Justice Bozalek at the Western Cape High Court in Cape Town.

The SAHRC instituted proceedings against Pastor Bougardt in terms of section 20 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, in respect of an alleged contravention of section 10(1) of the Equality Act and section 9 and 10 of the Constitution.

The settlement agreement prohibits Pastor Bougardt to, among others, publishing further statements that are discriminatory or incite hatred or harm on the grounds of sexual orientation.

The matter has been settled between the parties, and the SAHRC is happy about the settlement.

No further statements would be made in this regard.

The SAHRC will, at the request of Pastor Bougardt and at a date still to be determined, give a workshop on the intersection between the Constitutional right to religion, the right not to be discriminated against, and the freedom of expression. 

Failure by Social Development Dept. to adequately fund the Johannesburg Association for the Blind contributes to human rights violations, SAHRC finds

The South African Human Rights Commission (SAHRC) has found that systemic challenges such as late payments, lack of coordinated approaches to address disability issues within residential facilities contributed to human rights challenges found at the Johannesburg Association for the Blind.

The Commission initiated an own investigation following an expose' by the SABC Programme, "Cutting Edge" where seven blind students who were residents at the association's premises alleged that they were evicted by the association out of their residence with no alternative accommodation. The programme alleged that these students were forced to sleep outside the building for two nights.

Furthermore, the programme also focused on the alleged misuse of vehicle by the CEO, and the consequent unavailability for use by residents impacting on residents' freedom of movement; as well as the alleged poor quality and quantity of food served to residents.

Having conducted preliminary assessment, the Commission narrowed its investigation to allegations regarding evictions and poor or inadequate food in line with its constitutional mandate, after finding no evidence of misuse of the vehicle by the CEO.

The association is partly financed through donations, the payment of rent by residents and partly subsidised by the Department of Social Development (DSD).

The Commission considered the allegations as presented in the programme, interviews conducted with the students-residents, the meetings held with representatives from the as-

sociation, and the facts gleaned from the Commission's own inspection of the association premises.

The Commission found the following:

- Allegation that seven residents were evicted: The Commission found that only one student-resident was evicted, following a series of internal disciplinary procedures. Having considered the internal process leading up to the eviction, the Commission found that there was no violation in this respect.
- With regard to allegations that food served was of poor quality: The Commission noted that the DSD does provide social security to the school, as informed by the Memo of Understanding. However, failure by the DSD to ensure consistency regarding payment dates hinders the school's ability to plan and budget, limiting its ability to take advantage of costs cutting measures and has an indirect impact, and limiting effect on the residents' right to food. The MOU does not indicate the date at which the DSD shall make payments, it only stipulates that such payment shall be made at four installments.
- Refusal for students to picket: The protection of the right to complain is important in South Africa considering the country's history of inequality. Residents featured in the programme were attempting to exercise their rights to assemble and protest. Actions by the association not to allow these students to picket amounted to limiting their right to protest. However, the Commission accepts that the school was acting to protect the rights of other vulnerable non-protesting residents as well as staff. Therefore, the Commission finds the limitation to have been reasonable and justi-

fied.

The SAHRC recommends that within six month of receipt of this report:

- The DSD revisit the terms of the existing MOU between it and the school and that both parties enter into an agreement for fixed dates for payment of subsidies.
- The school develops guidelines to assist donors, outlining preference regarding quality of perishable donations and preferred timelines for receipt.
- Within three months of receipt of this report consult on, and review its existing complaints handling procedures with residents and stakeholders with a view to making revisions to specifically include provisions for timeframes for respondents to complaints, completion of a log report for each complaint received with timeframes for the completion of such reports, the exercise by residents of the right to peaceful protests with clear procedure on how and where such protests shall take place.

The association provides the Commission with a report setting out its progress in respect of the implementation of the recommendations within six months of receipt of this report.

The Commission recognizes that the association has had a long history of excellent service in the disability sector. Organisations dealing with the disabled do invaluable work in providing for, protecting and empowering vulnerable members of our society. The Commission further recognises that these organisations are dependent on the good will of others.

SAHRC welcomes SAJBD's acceptance of apology following anti-semitic comments

The South African Human Rights Commission (SAHRC) has found against Mr Ziyaad Kayat following his anti-semitic comments in the social media.

In July 2014, Mr. Kayat sent a message to the inbox of the Facebook page of the South African Jewish Board of Deputies (SAJBD) that read, "All Jews are pigs" and "I think we should kill you SA Jews and kill your kids and let you feel what the Palestinians are feeling."

The SAJBD thereafter laid a com-

plaint about this message with the SAHRC.

The SAHRC viewed the comments made by Mr. Kayat as a contravention of amongst other laws, Section 16 of the Constitution, which prohibits expression that incites violence or advocates hatred based on religion or ethnicity and constitutes incitement to cause harm.

Following a number of engagements with the SAHRC, Mr. Kayat, on 26 September 2014, signed an unequivocal apology to the SAJBD, the SAHRC and the South African

public.

In this apology, Mr. Kayat retracted the comments and acknowledged the comments were wrong and uncalled for. He expressed his commitment to the Constitution.

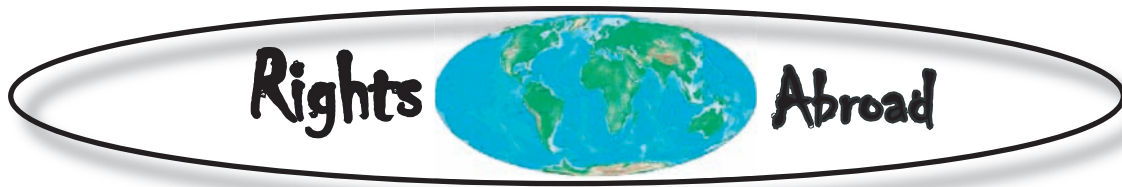
On 2 October 2014, the SAJBD expressed its acceptance of Mr. Kayat's apology, which the SAHRC also accepts and welcomes.

The SAHRC urges the public to engage with social media in a responsible manner. 

Meet the new Nehawu SAHRC branch leaders



Anti - clockwise: Sibongiseni Tula, Secretary; Tawana Malapane, Assistant Secretary, Makutla Mojapelo, Treasury; Bafana Malunga, Deputy Chairperson; and Nobesuthu Cekiso, Chairperson. 



Review of Human Rights gains and downfalls across the world

ICC BUREAU MEETING OPENING ADDRESS

Johannesburg South Africa, 16 October 2014
 Adv. Mabedle L. Mushwana, ICC Chair (South Africa)



I wish to welcome all Bureau Members, our partners, OHCHR and UNDP to Johannesburg.

I also wish to acknowledge the presence of my fellow Commissioners from the South African Human Rights Commission.

I am acutely aware that everyone in this room has exceedingly busy schedules and that it is not easy to accommodate the time that is

required to travel and be present here for this 2 day meeting.

Since our last Bureau Meeting and Annual General Meeting in Geneva in March, there have been numerous significant events that have occurred around the globe that have impacted on the promotion and protection of human rights.

Here in Africa, and increasingly throughout the world we are battling with the outbreak of the Ebola virus at a scale that has never been witnessed before.

On our African continent we continue to experience many conflicts. However, world attention was grabbed 6 months ago with the abduction of the 219 Nigerian girls allegedly by Boko Haram, our special word of thanks and appreciation to those NHRIs who continue sending messages of support and advice.

In July and August we witnessed the renewed and intensified conflict in Israel-Palestine precipitating to Operation Protective Edge and the death of over 2000 Palestinians and 71 Israelis.

Outside Africa there was the downing of the Malaysian airline flight MH17 on July 17th over the Ukraine in which 298 victims tragically lost their lives; and there are ongoing calls for accountability for those responsible.

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Anti-clockwise: Ms Veronica Irima Modey-Ebi, UN High Commissioner for Refugees, Deputy Regional Representative; Mrs Judith Cohen, SAHRC ICC Officer and Advocate B. Malatji, SAHRC Commissioner.

Whilst all of this was happening, the conflict in Syria and Iraq has continued unabated.

We are now confronted with disturbing daily reports about the activities of ISIS which; I presume, is based upon intolerance and the rejection of many universally accepted human rights norms and standards.

The recent increase in pro democracy protests in Hong Kong demonstrates the desire of students and ordinary citizens to ensure respect for fundamental human rights.

These examples that I have mentioned are but some of the challenges that confront the world at this present moment in time. They also provide opportunities for National Human Rights Institutions (NHRIs) to act and challenge

the ICC to ask difficult questions about the role of NHRIs and what it is that NHRIs should be doing when confronting such situations.

How does the ICC support colleagues who are facing challenging situations such as those that I have just mentioned?

Possibly the most encouraging development during the past months that I have witnessed has been NHRIs reaching out to each other and assisting at many different levels.

My office was contacted by the Sierra Leone Human Rights Commission requesting that the ICC assists in securing assistance from other NHRIs to help them respond to the complex and challenging human rights issues that the spread of the Ebola virus is

evoking.

The abduction of the Nigerian girls by Boko Haram led to various letters being addressed to the ICC by NHRIs requesting that more is done to assist in this conundrum. This in turn has led to consultation within the regional Network of African National Human Rights Institutions and requests being sent to colleagues in Nigeria and the surrounding countries to urge their governments to do more in securing the release of the abducted girls.

The Independent Human Rights Commission of Palestine reached out to NHRIs for support and this was facilitated through the ICC. There was a tremendous outpouring of support from members to the Palestinian NHRI.

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From page 19

We are also aware that the UNDP has undertaken a major restructuring process and we need to hear how this will impact on the ICCs relationship with this valuable partner

The ICC continues to be concerned about the Iraqi Commission and stands combat ready to mount its support in the event such a request is made.

So too, the ICC stands ready to engage with colleagues in Hong Kong regarding their desire to become observer member of the ICC as they communicated when we met in Qatar last year.

We are all aware of what is currently happening in the Maldives where the commissioners have had charges of high treason brought against them by the Supreme Court on the basis of the contents of their NHRI Report to the Human Rights Council for purposes of that country's Universal Periodic Review.

This has led to an unprecedented response that is ongoing being coordinated by the Asia Pacific Forum.

A couple of weeks ago, as Chairperson of the ICC, I directed correspondence on this matter with a request for action to the new High Commissioner for Human Rights, Zeid Raad Al Hussein as well as other UN representatives at the highest levels and human rights experts. I also had the opportunity to meet the new High Commissioner

whilst in Geneva during September and he expressed his support for the ICC and the work of NHRIs in general.

It is deeply encouraging that ICC members see value in the institution as they now, more often than not, reach out when faced with difficult situations.

It also raises questions around the role of the ICC in such situations and what can be expected of members when requests for assistance are received.

Also, what is it that the regional coordinating committees and the ICC should do and whether we should only be reactive or pro active as well.

In the midst of all of these developments, at an internal level the most pressing and serious matter that has required attention is that of the various challenges we are confronting in relation to the ICC accreditation process.

The issues are numerous and relate to the interpretation of the ICC Statute, procedural issues and processes, roles, responsibilities and reporting lines of those involved in the process, amongst others.

The ICC stands and falls in terms of its recognition and legitimacy on the accreditation process because it has enormous repercussions at an international level in terms of how NHRIs are perceived.

The work of the SCA and secretariat services that are provided by NIRMS must undoubtedly be acknowledged.

It is clear that the challenges may no longer be dealt with in an ad hoc manner or just by the SCA but rather collectively.

The challenges are also not insurmountable but rather need to be dealt with head-on in a manner that will strengthen the accreditation process.

As the leadership of the ICC we need to move more swiftly in addressing these issues.

To this end, we need to leave Johannesburg with a clear road map on how these matters will be addressed going forward.

The ICC has had a busy period since March in Geneva and there has been substantial engagement by NHRIs in the Human Rights Council, UPR, treaty body processes and other mechanisms.

In May this year the ICC held a successful 5 days training with 18 NHRI staff members from all regions with the support and cooperation of the Friedrich Ebert Stiftung (FES) and OHCHR on NHRI and international human rights mechanisms.

The ICC is currently exploring and developing further avenues of training with these partners.

In September 2014, the ICC held a one day meeting with the Committee on the Rights of Persons with Disabilities.

The occasion was historic in that it was the first one day meeting between a treaty body and NHRIs. In addition, IT technology was provided for the first time by the UN in order that all NHRIs could follow the proceedings by web casting.

Further, more than 10 NHRIs were able to actively participate with live contributions through video conferencing technology.

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The ICC received a clean audit for 2013 and currently sits on some cash reserves

An important highlight was the adoption by the Human Rights Council in September of the Australian led NHRI Resolution.

Whilst the Resolution was passed without a vote, it must be noted that not all countries co sponsored the resolution and there were some difficult negotiations during the passage of this resolution.

During this Bureau meeting, decisions are required on the ICC's participation in New York on a range of matters including the General Assembly, the Sustainable Development Goals process, work in the areas of ageing and the Conference of States Parties in relation to the Disability Convention that takes place in New York.

We are also aware that the UNDP has undertaken a major restructuring process and we need to hear how this will impact on the ICCs relationship with this valuable partner.

It is clear that there are ever increasing opportunities, expectations and demands on the ICC.

What is required of the ICC fast outpaces the association's structure within a framework in which resources are not increasing. This raises many questions on how the ICC organizes itself and includes members in the day to day work of the ICC, particularly in thematic areas.

I am acutely aware that this Bureau meeting marks the half way

point in my term of office as ICC Chair.

We must already begin planning for the Chairpersonship of the ICC being passed to the European Region in order that there is a smooth transition.

So too do we need to begin discussing the upcoming 2015 ICC International Conference to be hosted by Mexico.

In Geneva, in August we welcomed Agnes Gracia to the Geneva Office. She will be with the ICC assisting Katharina Rose for a period of one year.

However serious discussions are required in relation to the staffing of the ICC Head Office, the needs of the association and what can be afforded within the context of increasing demands and expectations.

The ICC received a clean audit for 2013 and currently sits on some cash reserves.

We have also received more positive news that EU funding may be forthcoming.

Should this occur, the ICC will need to determine how these funds will be used in a manner that is consultative and strengthens the organization in the long term.

In sum, the world around us is changing and even moved in many directions that are detrimental to the promotion and protection of human rights during the past 6 months.

The ICC has also changed and moved both in response to these developments but also in terms of ensuring that its Strategic Plan is implemented and that the association is strengthened and better equipped to deal with these ever changing opportunities and challenges.

We have much to cover over the next 2 days and there has been careful preparation in order to ensure that we maximize our time here together.

I am looking forward to your active engagement and valuable contributions as we determine the way forward for the ICC's collective leadership and representatives of all of our members.

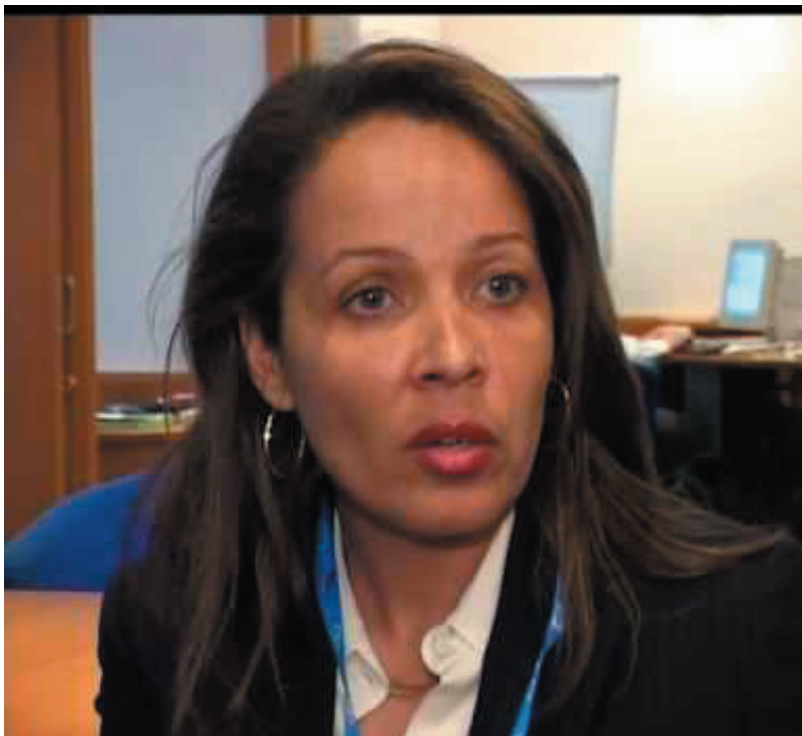
Lastly I would like to update you on the books that the ICC presented to the Canadian Human Rights Commission in memory of Jennifer Lynch. David Langtry, the Chairperson of the Canadian Human Rights Commission informed my office that the book presented to the Commission is on permanent display at the Commission's office and that Jennifer's husband was especially touched by the gift and all the messages sent to her family by the global NHRI fraternity in her honour.

Thank you for all your support in remembering Jennifer's legacy. May her soul rest in peace.

Pf

Former SAHRC Commissioner makes impact at international fora

SAHRC Congratulates former Commissioner Charlotte V. McClain-Nhlapo on her appointment as Disability Advisor in the Social, Urban, Rural and Resilience (GP SURR) Global Practice of the World Bank Group.



Charlotte V. McClain-Nhlapo has been appointed as Disability Advisor in the Social, Urban, Rural and Resilience (GP SURR) Global Practice of the World Bank Group.

Her appointment comes at a time when the World Bank Group is working to mainstream disability in development under its twin goals to end poverty and promote shared prosperity.

As Disability Advisor, Ms. McClain-Nhlapo will focus on working with and supporting operational teams across the institution to ensure

that Bank policies, programs and projects take people with disabilities into consideration. Her responsibilities include: leading the production of analytical products; analyzing and articulating Bank policy on disability and development, and the role that the Bank should play; establishing criteria and an operational results framework for monitoring the outcomes of the Bank's disability work.


As a well-respected human rights lawyer in disability and child rights, Ms. McClain-Nhlapo currently serves as USAID's coordi-

nator for disability and inclusive development, appointed by U.S. President Barak Obama in 2011 to lead the government's efforts in disability inclusive development, from developing policies and country strategies to technical assistance for program implementation.

Prior to this, she worked as a senior operations officer at the Bank to integrate disability inclusive development into operations in the East Asia Pacific and Africa regions.

Earlier in her career, she was appointed by President Nelson Mandela to the South African Human Rights Commission focusing on social and economic rights, disability rights and child rights. From 1996 to 1998, she also served as a project officer on child protection for UNICEF.

She holds a Master's Degree in international law and administration from the University of Warsaw, Poland, and an LLM from Cornell Law School.

Ms. McClain-Nhlapo was selected to this position through a competitive process, and her appointment is effective December 19, 2014. 

Did you Know

During her SAHRC tenure, Commissioner Charlotte McClain-Nhlapo's focus area was social and economic rights

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

Entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,


Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of

the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries. more information is available on <http://www.ohchr.org> 

Did you know?

CRC@25

The SAHRC is planning an event to look at how has South Africa protected its Children for the past 20 years

How can I define myself without paying homage to the Southern tip of the continent of Africa?



**Kebothhale Motseothata,
Visiting student**

How can I define myself without paying homage to the Southern tip of the continent of Africa? Every fibre of my being resonates with the aura of this land and the souls of its people are etched in the depths of my love for it. My strength lies in the core of its plateau and my spirit glides towards its majestic escarpment. My serenity elevates to the peaks of the Drakensberg mountains and my blood flows in its narrow, fertile valleys. Shameless in her existence and purposeful in her existence, South Africa remains the diviner of inexplicable miracles. Her diverse tongue is in constant agony with her different skin colours. Her beauty lies tainted by the war between her brilliant thoughts and fears, and the more she explores her identity, the more her history haunts her.

This geographical location will only find a common name when its people realize that the chains

of separations of separation were long washed off when all its seas and sands collided to give its people a second chance at peace. After years of tribal and racial wars, we finally have a chance to unite and rebuild, yet our wounds cripple us. What a waste of brilliance to become computer screen activists and collective naggers. Like a defeated, alcoholic mother who no longer finds herself worthy of life, South Africa's children nag her to insanity. Thinking that they are finding solutions to stop her constant agony, all they do is drive her to seek more solace in the bottle. Thereby perpetuating the very weakness they attempt to strengthen. In pursuit of peace, she silently hymns digital struggle songs and hopes her children will follow the scriptures of the 1996 brilliant bible of the supreme law. As the foot of Africa, she struggles to walk and her blisters ooze the hateful puss that sickens the rest of the continent.

The Bantu are said to have followed the sun from the East, travelled along the streams of Nubia all the way to the heart of Africa. Uneasy in their settlement, they continued chasing the sun until it led them to the womb of this land. They were reborn to identities that sharpened the tip of Shaka's spear and roared with lions that solidified Mhudi and Rathaga's unconditional love. South Africa's welcoming spirit played telepathy with Jan Van Riebeck's compass, allowing him to place refreshments on her table. And so her historic battles began.

Amidst the agony of a tormented past, her true liberation lies in pages of a document that remains taboo to those who unconsciously reject the possibility of authentic peace. The Freedom Charter, collected from the people, by the congress of the people, for the people:

"South Africa belongs to all who live in it, black and white and that no government can justly claim authority unless it is based on the will of the people." The inability of the chosen government to deliver in all areas of the country's development should not be the reason for further separation. The inhabitants of the land should unite to come up with solutions to our political predicaments without pointing fingers at each other.

"Our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality." Until we truly come together and assess the mistakes of the past with the aim of rectifying the loopholes of the present, the country shall remain stagnant and bitter. For what good is unity if it is built on defense and fear?

"The people shall share in the country's wealth." In order to find common ground, Let us probe both the resources looted by current politicians and apartheid politicians. For a regime beneficiary's finger bends when he points at issues like Nkandla while his bank account reeks of millions acquired through apartheid corruption.

From page 24

We are too brilliant a nation, too rich in culture and diversity to still be watering these uncontrollable weeds of separation

Progress delays when one party constantly points out the faults of another without acknowledging his own. The country’s wealth can only be shared once everyone empties their pockets.

“The land shall be shared amongst those who work it.” Ubuntu does not entail living in thousands of acres of land while those who work for you live in alums and plastic houses. When will we come together and devise ways of peacefully sharing our beautiful land amongst each other? What good is inhabiting any land if one has no ownership of its soil? South Africa had enough land for all who live in it. Why are we so selfish to share it with those who also need it?

“The aim of education shall be to teach the youth to live their people and culture, to honour human brotherhood, liberty and peace.” The quality of education will not improve by harboring our youth

in private schools, while we allow those who cannot afford a good education to lie destitute in the hands of a system that continues to fail them. Until the people of this country find solidarity in improving the living conditions of the disadvantaged, unity will seize to prevail.

The intellectual gap between the well educated and the uneducated will be contaminated by the need for materialism and those who lack any kind of skills and resources will survive by attacking the livelihood of those who do.

The essence of culture and authentic peace will prevail if all South Africans truly unite in celebrating their differences. If the government is deemed to fail the

youth, then parents must unite to create the change they need in the minds of their children.

“There shall be peace and friendship” These are no times for war. No form of violence will solve our problems. The miracle of this country lies in its potential to flourish in peace and the foundations laid by the liberation struggle and all those who fought to make this country what it is, were such that Ubuntu must prevail. South Africans must find a way to live with one another in harmony.

None should threaten the existence of another and all races should unite and learn from each other. We are too brilliant a nation, too rich in culture and diversity to still be watering these uncontrollable weeds of separation.

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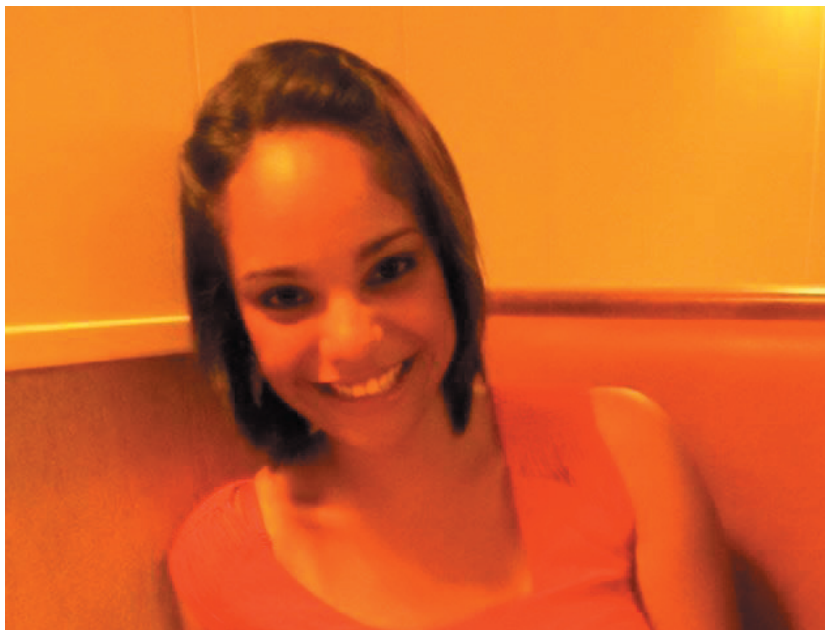
01. SAHRC Chairperson, Adv Mushwana intervening in the Mkhondo eviction.
02. Commissioner Titus heard how the San were restricted from their cultural way of living

In the Seat



with Thandiwe Matthews

Senior Legal Officer, Legal Services



Tell us about Thandi in a nutshell? We are also interested in the name Thandi

Well, I'm one of four children – the only girl with three brothers, one older and two younger, who all give me a bit of a hard time but they're good to have around. I really am a mixed masala of interests and contradictions. I love politics and reading, especially fiction books based on real life situations and events – it's the way I learn about the world and am able to imagine what it must be like being a young woman in countries different to my own. But I also love fashion and silly gossip magazines, and commercial music. Shoes, handbags, chocolate and creamy cheese are my weaknesses.

My name is Thandiwe. It was given to me because my parents wanted me to know that in a country as divided

as ours at the time that I was born, and despite the apartheid regime's every attempt to divide people, particularly the coloured and black populations of Cape Town, that I was an African first.

They wanted me to be proud of my diverse heritage, and to ignore the arbitrary racial categories that apartheid imposed on all of us. My mother initially wanted to name me Malaika because she fell in love with Miriam Makeba's song, and my dad Tsitsikama – I'm happy they settled on Thandi.

The only problem is that unfortunately I cannot speak Zulu or Xhosa, which is very bad and I need to learn soon. I'm not the only one in my family with a so-called African name – I have a cousin named Dineo, and my younger brother's second name is Sipho.

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

I was born and raised in Cape Town to a very diverse and eccentric family. My mother comes from a traditional Cape Malay family and my father grew up in Athlone on the Cape Flats. Growing up in a family that was quite active in the struggle against apartheid was interesting – on the one hand my parents wanted to ensure that I had a normal routine, while on the other, I was exposed to the realities that the majority of our people were experiencing from quite an early age. Despite the fact that I grew up in the suburbs, my parents made sure that I didn't live in a bubble. Both of my parents worked but I was never alone. I would spend some days after school when I wasn't at after-care with my father covering stories in townships, and sometimes would be left in the care of strangers while he ran around getting pictures. Or I would spend time with my grandparents being told stories concerning Islamic history and culture while I practiced my Quran lessons in preparation for Madrassa classes. On Saturday mornings I would go with my mother to work sometimes – she headed up libraries in Grassy Park and Elsie's River – and would participate in activities that they arranged for children from those communities. Or I would spend time at the community advice centre that she volunteered at. Or I would help marshal at rallies and protests singing freedom songs at the top of my lungs. I also participated in anti-racism workshops for children from different backgrounds and communities.

But I was also privileged enough to travel quite a bit from a young age, again because my parents wanted me to know that there was a bigger world out there, with loads of different people and cultures. So from the

continues to page 27

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age of two, I've been travelling both on the continent and further abroad – I think this has been the biggest gift my parents have given me, even though they lost me for a few hours in a market in Lesotho when I was still a toddler!

Educational background?

I attended primary and high school in Cape Town. I matriculated from Westerford High School, and then completed my undergraduate social sciences degree at UCT. I then completed my LLB at Wits, and later went on to pursue a Masters in Development Studies, specializing in human rights, development and social justice at the International Institute of Social Studies based at The Hague, Netherlands.

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

I'm an SLO in the Legal Services Programme at Head Office. This is quite a new position, which was established during restructure. I am currently responsible for co-ordinating National Hearings in conjunction with Commissioners, as well as assisting the Head of Legal Services in managing the Appeals System. We provide legal support to the Commissioners, as well as our various Provincial Offices. We also draft opinions and vet Investigative Reports coming from the Provinces, as well as provide strategic documents when requested. I enjoy my position most times, because it's exposed me to strategic thinking and development, which I

thoroughly enjoy. It's provided me with an opportunity to make use of the various skills I've obtained during my career thus far, and has provided me with invaluable insight as I continue to develop my career path.

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

I always start my day off with some coffee and fruit. I then check my emails and attend to whatever requests have been made. I then plan my day by creating a "to-do" list determined by tasks and events that I have diarized. I then meet with team members in the unit to make sure that we're attending to our necessary tasks in an orderly and timeous manner so that we can meet our deadlines, and then I start completing the tasks I've set for myself for the day. I almost always have lunch in my office and leave once all of the tasks that I've set for myself for the day have been completed.

Day outside office?

I really enjoy writing about things that interest me, so I spend a lot of time doing research and writing pieces relating mainly to the intersection between law and the socio-political economy in my free time. I believe that besides law being about rules, it also plays a fundamental role in both shaping the society that we live in, as well as being shaped by that society. So I'm constantly observing how law can be both a sword and a shield in defending human rights.

But I also enjoy just hanging out with friends, mainly in Parkhurst, Braamfontein and Maboneng, and I thoroughly enjoy eating out – my Saturdays always start with a good eggs benedict, usually followed by some sushi for lunch. But most times you'll find me on my couch watching good

series or movies – I'm obsessed with the Good Wife, recently discovered An Honourable Woman, and find Orange is the New Black highly entertaining.

What motivates and inspires you?

It sounds cheesy but I really am inspired by our Constitution. I have witnessed first-hand the sacrifices that were made to get us to where we are; I have seen the pain that those sacrifices have caused but also the joy when we became a democracy and realizing that it was all worth it. SO regardless of how challenging our country may become, I will always fight for the values contained in our constitution because it really is an amazingly inspirational document. I think that everyone, regardless of who you are, deserves to enjoy every right contained in our constitution, so I want to continue making whatever small contribution I can because I'm learning that small steps lead to giant leaps and that every bit counts.

Favourite activities?

I need to start exercising more because I enjoy everything that's not good for me – red meat with lots of fat, rich foods, lots of sweets and chocolate. So I really enjoy eating! And just reading a good book. And writing. And lively debates about how to save the world. I also really enjoy travelling, and try to visit a new place at least once a year.

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

I played classical music until I was in matric - I played the piano and the clarinet. But since I haven't been practicing in over ten years, I've forgotten how to read music!

Pf

Snippets

African Rights Groups Back Habre Court

141 Organizations From 32 Countries Praise Senegal, AU Effort November 2, 2014

While some African leaders have claimed that Africa is unfairly targeted by international courts, a challenge has been to put teeth into African justice. This case could help to do that.

George Kegoro, executive director of the International Commission of Jurists-Kenya

141 African human rights groups from 32 countries today issued an open letter expressing support for the efforts by Senegal and the African Union to prosecute crimes committed during the rule of former Chadian president Hisséne Habré.

Habré, who is accused of thousands of political killings and systematic torture from 1982 to 1990, was indicted in July 2013 by the Extraordinary African Chambers created by Senegal and the African Union, and is now in pre-trial detention. If the judges decide that a trial is warranted, the case is scheduled to begin in early 2015.

"A fair and transparent trial for Mr. Habré, should the evidence support the case going forward, would be a milestone in the fight to hold accountable the perpetra-

tors of atrocities," the letter says.

"While some African leaders have claimed that Africa is unfairly targeted by international courts, a challenge has been to put teeth into African justice," said George Kegoro, executive director of the International Commission of Jurists-Kenya, one of the letter's signatories. "This case could help to do that."

Victims of crimes committed during Habré's rule have campaigned for 25 years to bring him to court. But it was only in 2012 that the International Court of Justice enjoined Senegal to begin proceedings against Habré "without further delay" if it did not extradite him, and the new Senegalese government of Macky Sall promised to organize a trial.

"Hisséne Habré's victims have been tenacious in their struggle to bring him to justice," said Yasmin Sooka, director of the Foundation for Human Rights in South Africa. "It is crucial for the trial and prosecutorial process to be exemplary, as it would send an important signal that it is possible to hold perpetrators to account in Africa and that victims of serious violations in Africa also matter." Sooka was a member of the South African Truth and Reconciliation Commission (TRC) and later of the Truth and Reconciliation Commission in Sierra Leone.

The open letter also calls on the government of Chad to provide

fair and transparent trials for officials from Habré's administration who are facing charges there, including two who are also being sought by the chambers' prosecutor. Those trials are scheduled to begin on November 13th.

The signatories of the letter include the leading human rights organizations in Chad and Senegal.
Source: Human Rights Watch

ACDP admits jumping the gun

November 14 2012 at 01:55pm
By Bheki Mbanjwa Comment on this story

The ACDP has called on men to protect women against violence.

Durban - THE African Christian Democratic Party (ACDP) has conceded that it may have been premature to protest against what it initially believed were attempts to scrap Christian holidays from the national calendar.

"It does seem like we might have jumped the gun on this issue. Our experience has shown that the time to jump up and down is during the early stages of these processes, because if you wait until it goes to Parliament, then it becomes a fait accompli," said Jo Ann Downs, the party's national chairman.

This comes after the Commission

for the Protection and Promotion of Cultural, Religious and Linguistic Communities (CRL) reacted angrily to the party after its protest march on Saturday.

It said it never wanted to do away with these holidays because that would go against its mandate of protecting all religious groups.

Public Protector dedicates latest international award to her team, South African colleagues, whistleblowers, people and government

Friday, 17 October 2014

Public Protector Adv. Thuli Madonsela on Friday welcomed with a deep sense of humility her selection as the winner of Transparency International's Integrity Award for 2014.

Transparency International is a global movement, formed in 1993, with a mission to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.

Its Integrity Awards were created in 2000 to recognise the courage and determination of the many individuals and organisations fighting corruption around the world.

Public Protector Madonsela, who will be presented with the award at a ceremony in Berlin, Germany

on Friday evening, said: "I accept the accolade with deep humility on behalf the Public Protector Team, fellow integrity institutions in South Africa, whistleblowers and the resilient people of South Africa, particularly the complainants, for their resolute stance and efforts against corruption and related maladies."

She also said she was convinced the award also recognizes the efforts of the government of South Africa in creating and respecting a formidable legal and institutional framework for preventing and combatting corruption and malfeasance.

Public Protector Madonsela further said the honour represented recognition of South Africa as a great country that has committed itself to achieving social justice for all through ensuring that the potential of all its people is freed and that their quality of life is improved.

She said there was recognition that to achieve social justice, the state must regulate fairly and justly, and where appropriate, provide basic services to the people, and that corruption is a virus that undermines all such efforts.


The accolade was further an assurance that democratic South Africa, as she turned 20, was a country still on track in terms of claiming its place as a global citizen committed to good governance and reeding itself of corruption and other maladies that undermine good governance, constitutional democracy and the rule of law, Public Protector Madonsela added.

She said the country has the necessary laws, institutions and will among its people and leaders to pursue good governance while

shunning corruption, which, she reiterated, was a societal and global problem, rather than a government issue and that everyone needed to play their part in fighting it.

"It is an honour and privilege to be recognized as part of a nation that is committed to doing the right thing for all its people," Public Protector Madonsela said. "Nobody said it would be easy; our global icon, former President Nelson Mandela, warned that despite our benevolence, mistakes may be made, hence the importance of the legal and institutional framework that limits excesses in the exercise of public power and the vigilance of civil society organizations like Corruption Watch and the media in ensuring public accountability."

She thanked institutions such as Transparency International for taking an interest in domestic and global governance, saying that this recognizes that "as long as there is injustice somewhere, sustainable peace cannot be enjoyed anywhere."

According to Transparency International, about 127 nominations for this year's award were submitted by the public and some of the body's 100 chapters around the world. The jury for the awards is a committee of 11 individuals from across the world, who have been active in the anti-corruption movement for many years. 

According to Transparency International, about 127 nominations for this year's award were submitted by the public and some of the body's 100 chapters around the world

Happy Birthday

The following colleagues are celebrating their birthdays in November. Please join us in wishing them well.

Nomvuyiseko Mbala (HO) – 1st
Eric Mokonyama (MP) – 2nd
Bokankatla Malatji (HO) – 4th
Tshanga Netshifuli (HO) – 8th
Buang Jones (FS) – 9th
Pandelis Gregoriou (HO) – 11th
Lisa Ally (HO) – 16th
Nicola Whittaker (GP) – 17th
Mohammed Johaar (WC) – 18th
Alfred Ramanyoga (HO) – 19th
Nelther Magazi (WC) – 22nd

Appointments

Pfanelo would like to congratulate the following colleagues on their appointments

Robert Tyrell – Research Associate, Research

Kenneth Machevele – Payroll Practitioner

Nomathamsanqa Manamela – PA to the Deputy Chairperson

Walter Nene – Transferred to the North West as Human Rights Advocacy Officer

Omolara Akintoye – Research Associate to Commissioner Malatji

Hlengiwe Mkhize – Promoted to Executive PA to the Chairperson