



**ANNUAL
Human Rights Advocacy
and Communications
Report**

2015 - 2016

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¹ At the time of writing of the report, the finalisation of the declaration was still pending

EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

This report is a reflection of the advocacy work of the Commission over the 2015-2016 financial year in promoting human rights.

The aim of the report is to:

- I. Highlight and analyze the advocacy interventions undertaken during the Commission's 2015-2016 financial year.
- II. Synthesize those critical and pertinent issues that emanate from the Commission's multi-level activities and initiatives both nationally and provincially.
- III. Provide a cumulative and analytical narrative compendium of the Commission's key advocacy areas and related activities as a record to gauge the successes and challenges in achieving what the Commission had set out to do.

Outline of the Report

The report consists of five chapters, presented as follows:

Chapter 1 introduces the work of the Commission, the operational principles of the Advocacy and Communications (AdvoComm) unit. The major thematic activities for the period are presented together with the methodology that is utilised for these thematic activities.

Chapter 2 focuses on socio-economic rights and discusses the activities carried out through the public outreach engagement model as well as the sub theme of corporal punishment.

Chapter 3 focuses on equality and discusses some of the activities conducted on the basis of the listed grounds for non-discrimination such as racial discrimination and hate speech; sexual orientation, gender identity and expression; youth, nationality and disability in the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).

Chapter 4 focuses on access to justice and some of the mechanisms available for redress.

Chapter 5 focuses on media and communications activities as a critical mode of advocacy.

Each chapter is presented in the format of significance of theme, followed by a summary of activities and closes with key findings and recommendations.

Methodology

The methodology employed by the Commission in carrying out the advocacy activities followed the broad steps of scoping and research; planning; actual implementation through the hosting of activities; post evaluation through the administering of evaluation forms, questionnaires and observations; and reporting through the development of individual reports for each activity.

CHAPTER 1

INTRODUCTION



CHAPTER 1: INTRODUCTION

Mandate of the South African Human Rights Commission

The South African Human Rights Commission (the Commission) is established by the Constitution of the Republic of South Africa, of 1996, as an independent national human rights institution.

In respect of its advocacy role, Section 184 (1) of the Constitution mandates the Commission to:

- a) Promote respect for human rights and to harness a culture of human rights;
- b) Protect the development and attainment of human rights; and
- c) Monitor and assess the observance of human rights for all South Africans.

The South African Human Rights Commission Act 40 of 2013 enables the Commission to operate and obligates it to function as a vanguard responsible for protecting, promoting, and monitoring a vibrant atmosphere within which our constitutional democracy may wholly be realised.

As a national human rights institution (NHRI), the Commission's mandate is rooted in the *Principles Relating to the Status of National Institutions* (the Paris Principles)². Adopted by the United Nations General Assembly in 1993, the Paris Principles guide NHRIs in their duties and responsibilities as guardians and cornerstones of human rights.

Section 3 of the Paris Principles provides for the promotion and effective implementation of international norms and standards relating to human rights as one of the key objectives of all NHRIs.

This principle is woven into the provisions of the Commission's enabling legislation as well as other legislation that informs its functions. Three national statutes comprising the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA); the Promotion of Access to Information Act 2 of 2000 (PAIA) and the Promotion of Administrative Justice Act 3 of 2000 (PAJA), make express reference to the role of the Commission in respect of the promotion of specific human rights.

The Commission's 2014-2017 Strategic Plan guides the promotional mandate of the Advocacy and Communications unit as recorded under Strategic Objective 3; which is to enhance and deepen the understanding of human rights and promote a human rights culture. At the level of internal operations, the promotional mandate of the Commission resides primarily within the Advocacy and Communications unit. The implementation of which is primarily carried out through the Commission's offices located in the respective nine provinces of the country. The Commission is deeply vested in addressing the general lack of human rights knowledge and literacy in society.

² *Principles Relating to the Status of National Institutions*, adopted by the United Nations General Assembly Resolution 48/134 in 1993, generally referred to as the Paris Principles.

The questions are therefore how it may expand its existing reach, and refine its strategies to improve sensitisation and empowerment of vulnerable groups and communities. These core responsibilities for advocacy and communications are the cogs through which access to justice and rights assertion for vulnerable groups and communities may be realised.

Thus, the Commission's 2014-2017 Strategic Plan places emphasis on its promotional mandate and places advocacy at the core of the Commission's work. To support the realisation of the strategic placement, the Commission prioritised rural communities as a specific category, for its outreach activities. This specific focus is intended to assist the organisation's assessment of the extent to which rural communities are able to use the law as an instrument for social change.

Human rights education is an integral part of the right to education and is increasingly gaining recognition as a human right in itself. Knowledge of rights and freedoms is considered a fundamental tool to guarantee respect for the rights of all.³ The ability to assert rights are critical within communities to address past inequalities and prevailing conditions resulting from poverty. There is a crucial link between a person's awareness of their rights and the pressure they will place on the state and private institutions to fully realise those rights. This was acknowledged by the former Secretary General of the United Nations, Boutros Boutros-Ghali, who stated that:

"It has long been recognized that an essential element in protecting human rights was a widespread knowledge among the population of what their rights are and how they can be defended."

The Commission's advocacy interventions are mainly informed by a process of analysis of the statistics of the complaints it receives; issues in the public domain, such as the topical issues that are reported on in the media, and independent research reports in terms of extent, prevalence and intensity, as well as the type of requests it receives from various stakeholders. The Commission also develops, produces and distributes informative human rights materials in easy to understand and accessible formats, to complement its advocacy activities.

Through advocacy, communities get to know of the Commission as an independent and impartial body outside of government and courts that they are able to request assistance from when their rights are violated. In this role the Commission acts as a link between the state and society by bridging the gap between the enjoyment of rights on paper and in reality.

³ <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/human-rights-education> [accessed on 24 June 2015]

CHAPTER 2

SOCIO-ECONOMIC RIGHTS



CHAPTER 2: SOCIO-ECONOMIC RIGHTS

2.1.1 *Significance of theme*

Socio-economic rights are enshrined in the Constitution⁴, with the main objective of making provision for access to basic human needs such as resources, opportunities and services that are necessary for human beings to lead a dignified life. Socio-economic rights are at the core of maintaining human dignity, especially among the previously marginalised and vulnerable groups, as these rights have a direct bearing on the need to improve their quality of life. The Constitution places an obligation on the State to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of these rights⁵. The collapse of the apartheid system and emergence of democracy raised great hopes for a better life for all, particularly among indigenous, poor and marginalised groups. Radical socio-economic transformation is the basic prescript for improving the lives of all South Africans. Thus, the eradication of poverty and addressing the socio-economic inequalities left by apartheid remain a priority for the post-apartheid government.

South Africa has become a better place to live in with more people having access to housing, health, education and other basic services. However, the same cannot be said with regards to the rural areas of the country, where progress has been slow in addressing these challenges. For many communities in rural areas, household incomes are often insufficient to meet the basic daily needs of families. High levels of poverty, unemployment, land insecurity, illiteracy, and backlogs in infrastructure development for roads, access to clean water, sanitation, health care, education and lack of electricity remain major challenges for most rural communities.

Whilst policy and legislation on basic services recognises the need to prioritise access to basic services to the poor, full delivery has not been achieved in the 20 year period since democracy. One contributory factor is the distribution of resources between the three tiers of government, from national, to provincial government and further down to a local level within municipalities. The myriad service delivery problems experienced by both the urban poor and communities in rural areas are well documented in the Commission's preceding report.⁶ These problems in turn lead to situations where people feel helpless and demand redress of their rights.

The Commission acknowledged that the dire and distinctive human rights needs of rural people have not received the desired level of attention they require. In response, the Commission sought to address this by prioritising the advancement of human rights promotion and protection to people in rural areas and at the same time increasing its institutional presence on the ground, to be better able to respond to the challenges confronting people in these far-flung areas through a number of initiatives and interventions.

⁴ Section 27

⁵ *In re: Certification of the Constitution of the Republic of South Africa* 1996 10 BCLR 1253 (CC) and *Government of the Republic of South Africa v Grootboom* 2000 11 BCLR 1169 (CC)

⁶ SAHRC Annual Advocacy Report 2014-5, page 19-21

2.1.2 Summary of activities

Building on the successful pilot project that the Commission introduced in 2014 in the form of public outreach engagements (internally referred to as clinics)⁷, the Commission undertook to continue with this project for the 2015-6 financial year. The public outreach engagements serve communities in rural areas that are normally far from the urban centres where the Commission’s provincial offices are based. The beneficiaries of these public outreach engagements are the poor and disadvantaged who are in need of the Commission’s services. The engagements thus afford the Commission an opportunity to take its services directly to the people and to engage on human rights issues that affect them directly at the local level. In line with the Commission’s Annual Performance Plan for 2015-6, the public outreach engagements served as a platform to interface with communities and to amplify awareness on the focus areas of access to justice, child friendly complaints and access to information.

Provincial offices analysed the complaints they each received. Areas with the highest number of complaints were then identified as being in need of interventions. The nature of the complaints assisted in the determination and design of the type of required intervention. This process of analysis also showed certain areas with very few or no complaints at all. The offices then worked from the premise that people may not be engaging with the Commission due to a lack of awareness of their rights or the existence of the Commission, its role and the services it renders.



Attendees during a community engagement

⁷ Ibid

The format of the public outreach engagements is fluid as each office determines the best outreach model to employ for each area. They are normally conducted by both the advocacy and legal officers over two or three days in a given locality. They can take the form of general or thematic public information sessions, including door to door visits and distribution of various promotional materials, such as pamphlets on specific rights as well as items that assist with branding and marketing the organisation.

The advocacy officers speak to the mandate of the Commission and the services it renders, about human rights, explaining key concepts and record complaints that communities might have. These complaints are then dealt with in line with the Commission's Complaints Handling Procedures.

The table below indicates that 28 public outreach engagements were conducted and reached 4 723 people across all provinces as follows:

Date	Province	Area	Number of Participants
22-24 July 2015	Northern Cape	Colesburg	411
24 July 2015	Free State	Springfontein	76
30 July 2015	North West	Verdwaal , Itsoseng	46
24-27 Aug 2015	Free State	Parys, Sasolburg and Helbron	204
25-26 Aug 2015	Gauteng	Orange Farm	187
12-14 Aug 2015	Limpopo	Moletjie	264
18-20 Aug 2015	Mpumalanga	Emgwenya and Belfast	154
21-22 Aug 2015	Western Cape	Clanwilliam	45
1-2 Sept 2015	Western Cape	Louwville	37
2-4 Sept 2015	Northern Cape	Kuruman	165
16 Sept 2015	Kwazulu Natal	Claremont	74
21-23 Sept 2015	Limpopo	N'wamitwa	297
21-22 Sept 2015	Western Cape	Beaufort West	42
22-23 Sept 2015	Gauteng	Khutsong	183
2 Oct 2015	Eastern Cape	Xhora Mouth	505
20-22 Oct 2015	Mpumalanga	Sheepmore, KwaDela and KwaZanele	200
22 Oct 2015	North West	Mokgareng, Taung	66
27 Oct 2015	Eastern Cape	Engcobo	72

Date	Province	Area	Number of Participants
27-29 Oct 2015	Free State	Excelsior, Tweespruit and Thaba Nchu	480
27-28 Oct 2015	Western Cape	Uniondale	56
28-29 Oct 2015	Gauteng	Stinkwater, Hammanskraal	53
17-18 Nov 2015	Free State	Hoopstad	124
17-18 Nov 2015	Mpumalanga	Elukwatini and Kromdraai,	104
27 Jan 2016	Eastern Cape	Idutywa	120
28 Jan 2016	North West	Dinokana, Zeerust	56
11-13 Feb 2016	Limpopo	Segopye	285
24-26 Feb 2016	Kwazulu Natal	Madadeni, Osizweni and Newcastle	157
16-18 Mar 2016	Kwazulu Natal	Underberg, Himeville and Mqatsheni	259

In contrast to the initial pilot project, this time around the Commission conducted initial scoping exercises which, in addition to desk top research, included preliminary site visits and pre-planning meetings with identified local key stakeholders for each area. The scoping exercise assisted in issue identification and in establishing which government departments, agencies and other institutions supporting democracy could supplement the work of the officers in the hosting of the public outreach engagements.

Provincial offices also conducted follow up visits to the same areas where they had conducted outreach sessions during the previous year. The purpose of these visits was to assess progress regarding previous complaints that had been raised in the initial engagements as well as the extent to which state agencies had responded to the Commission's findings and recommendations in specific complaints. The follow up public outreach engagements afforded the provincial office the opportunity to address some of these issues and for state officials to address outstanding issues by engaging directly with the communities.

One noteworthy public outreach engagement is one hosted by the Eastern Cape office on 2 October in Mqhele village in Xhora Mouth, Elliotdale. This engagement was of singular significance as the Commission used a multi-pronged approach to engage. In addition to usual outreach activities, it also launched the National Emergency Medical Service Report. The launch followed a public hearing to investigate access to medical services for communities in the Eastern Cape that the Commission had hosted the previous year. The venue was strategically selected as it was framed in its location in an area, which has poor infrastructure, is generally inaccessible and is characterized by little or no access to basic services.

The location was intended to highlight the myriad challenges that people in such areas in the Eastern Cape experience daily, to expose their reality and heighten their visibility.

The launch was well attended by the community which had lodged the initial complaint against the Mbashe Local Municipality, non-governmental organisations (NGOs) in the health and human rights sector as well as relevant provincial government departments. The latter had made commitments to address the dire situation such as the lack of ambulance, proper equipment in ambulance and adequate personnel. Additional concerns that had been raised in the initial hearing related to challenges in respect of access to information and service delivery issues on access to water, electricity and roads.

The public outreach engagement was a resounding success in that the community was able to directly verify the progress reports by state departments. The state also accepted the findings and recommendations in the report and the proposed action plan to remedy the situation. The intervention provided opportunities for individual and community engagement; and the launch of the report became a valuable yardstick by which the community and other stakeholders could measure the progressive realization of rights at local level and hold duty bearers to account. A carefully planned media strategy, took the messaging through to local and national media⁸ thereby ensuring high visibility of the concerns around rights violations in rural communities.

2.1.3 Key Issues

The public outreach engagements provided fertile material for issue identification. While issues raised by participants in these sessions largely related to levels of service from local municipalities, they permitted closer consideration for the identification of trends and patterns which emerged through an overview lens. The following basic issues were noted as key concerns from the communities which participated in the various public outreach engagements for the period under review:

- I. Rampant evictions from farms whereby farm workers and their families are being forced out of the farms once they are old and cannot work anymore.
- II. Demolition of graves and refusal permission to access grave sites to families seeking to perform cultural rituals at grave sites.
- III. Demolition of graves without relocation of same in the development of road infrastructure
- IV. Erratic water supply systems and inefficient sanitation services. This is exacerbated by the continued drought that is affecting the country and region as a whole, as well as an increase in strike action by municipal workers. The direness of the situation is graphically captured by a community member at Maseohatshe village in the Northern Cape who lamented thus, *“we have to wake up before dawn and rush to the river to collect water before the animals muddy the water as we have to share the little water available with our livestock”*.

⁸ Refer to page 50

- V. Government services are normally not easily accessible and communities walk long distances to access basic government services such as pensions, grants and health care. This situation is compounded by the lack of infrastructure such as community halls, clinics and poor roads.

Whilst the above issues may be considered basic, it is important to note that these issues impact negatively on the community's access to basic services and in turn, basic human rights. The inclusion of key government departments and local municipality officials in the public outreach engagements, assists with either eliciting undertakings or immediate implementation of basic improvements such as the introduction of mobile clinics and water tanks at regular intervals such as that implemented within a month of the clinic, at the said Maseohatshe village by the John Taolo Gaetsewe District Municipality.

The Commission has further noted that at times communities lacked adequate information on a number of issues. In response a session on the promotion of access to information was included in the community dialogues. The discussions reveal the important role that access to information and information dissemination can play in enabling people to access their rights. There is a recognition by communities of the value in public participation processes that affect them, improved dialogue and how to hold their elected leadership accountable.

In reviewing the public outreach engagements during the periodic monthly and quarterly reporting sessions, the Commission acknowledged the significance of the continued use of this model as an outreach initiative. The public outreach engagements are an effective form of reaching out to rural communities that are far from the Commission's provincial offices. They increase the footprint, reach and visibility of the institution in not only creating and enhancing awareness on human rights, but also enable the communities to advocate for their rights.

The public outreach engagement model included media statements which provided detail around the sessions to increase participation. The statements relating to each engagement were provided to community media and posted on the Commission's website. In certain instance community radio stations provided interview opportunities to Commission officials conducting the outreach activities. In keeping with its promotional mandate the Commission has cemented existing media relationships and established new relationships with a range of media at local level. The Communications sub-unit is primarily responsible for nurturing these relationships through the issuing of media statements and responding to media queries on the work of the Commission as well as on news events that have a human rights aspect. Communications, through media platforms have been able to reach wider local audiences to increase participation, awareness and dialogue in communities.

There is a high volume of media responses to Commission media statements, invitations and other communications, indicating a high level of interest in the work of the Commission and a large appetite for insights into human rights and how they are being achieved in South Africa in general.

The Communications department has forged relationships with some of the following news organisations, including local, regional and community news outlets:

ANN7	Jozi FM	Radio NFM	SABC News
Cape Times	Khanya FM	Radio Riverside	SABC Question Time
Channel Africa SABC	Lesedi FM	Radio Turf	SABC Radio
Channel Islam	Mohodi FM	Radio2000	SABC Rights & Recourse
CNBC Africa	Morning Live SABC	Rainbow FM	SABC TV (Interface)
Daily Dispatch	Motsweding FM	SABC Channel Africa	SAFM
Die Son	Munghana Lonene	SABC Channel404	SANC News
eNCA	Namibian Broadcasting Corporation	SABC Morning Live	Sunday Times
Energy FM	News24	SABC Morning Live	The Cape Times
eTV Sunrise	Power FM	The Sowetan	The New Age
EWN	Radio 2000	Ukhozi FM	Tru FM
Forte FM	Radio 702	Voice of the Cape	The Herald
Gagasi FM	Radio Islam	Vuma FM	The Star
The Herald	Radio Mafisa	Wits Vuvuzela	The Times
Ikwewezi FM	Radio Namibia	Thobela FM	

The range of topics covered in reporting on the Commission are broad, but key topics have included:

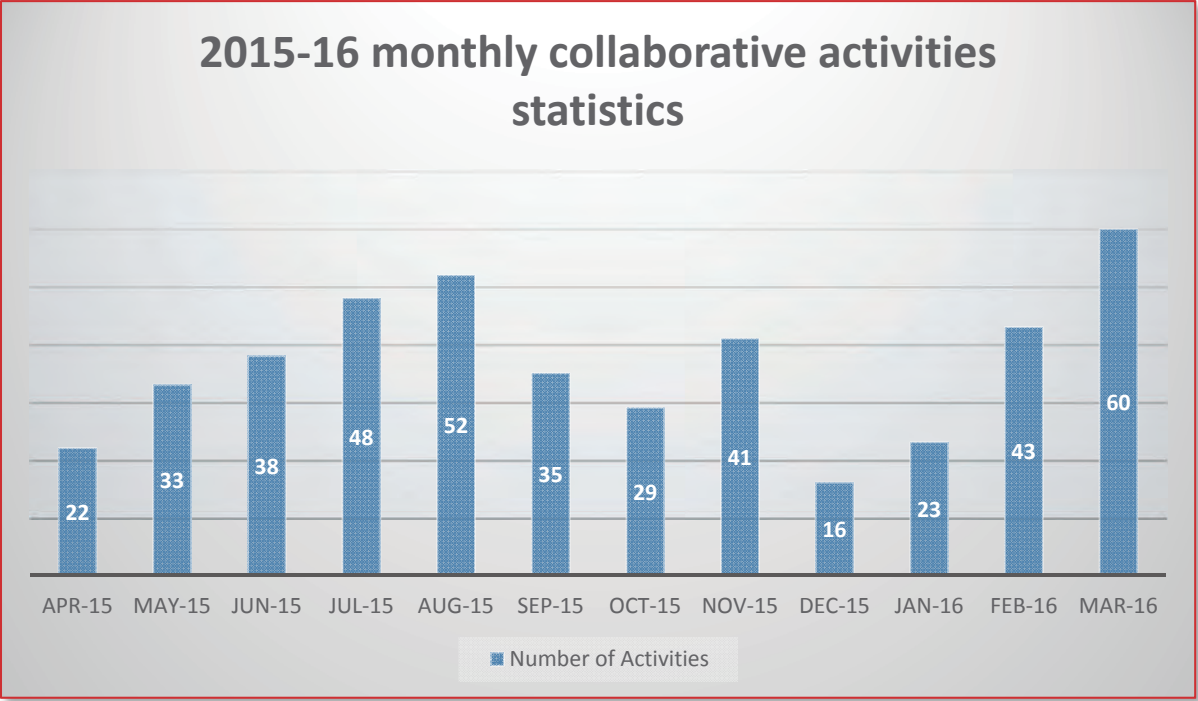
- 20 Year Anniversary of the SAHRC
- Access To Justice
- The Bill Of Rights
- Children's Rights
- Citizenship
- Corporal Punishment
- Disability
- Disability Toolkit
- Discrimination In The Workplace
- Equality Cases
- Freedom Of Expression

- Freedom Of Religion
- Hate Speech
- How To Lodge A Complaint with the SAHRC
- Human Dignity
- Human Rights Day
- LGBTI
- Ongoing SAHRC Investigations
- Mandate Of The Commission
- Provincial Visits by Commissioners
- Older Learner In NW School
- Racism
- Right To Basic Education
- Rights To Protest
- Violence during Protests

The media – print, electronic, online, and social media – are all invaluable partners in spreading the advocacy messaging as well as the work and activities of the Commission.

2.2 Collaborative activities

The Commission is one of a number of independent institutions that the Constitution has established as a mechanism to strengthen constitutional democracy. The Commission also recognises that it needs to collaborate with a broad range of state and non-state actors in fulfilling the Bill of Rights. The Commission thus supports, collaborates and partners with various other role players that use varied strategies to influence policies that are responsive to the needs of the people. This includes international organisations; civil society that encompasses non-governmental, community and faith based organisations; traditional leadership; academia and the private sector as their work complements and reinforces the Commission's mandate. For the year under review, the Commission undertook a sizable number of wide ranging promotional activities across the provinces. The 439 activities included making presentations, participation in planning meetings and actively participating in human rights related events by other stakeholders, as reflected in the table below:



One of the viable mechanisms employed by the Commission in strengthening stakeholder relations and carrying out its promotional mandate that is gaining credibility is the use of the Forum for Institutions Supporting Democracy (FISD) whereby provincial Chapter 9-10 bodies⁹ meet regularly to plan, implement joint activities and support each other in undertaking their respective mandates. It reinforces the ideal of strengthening and enhancing working relationships, maximises the use of scarce resources and promotes the sharing of knowledge and best practices among bodies with a common purpose. This coordinated approach to systemic issues will significantly advance the collective objectives of institutions supporting democracy.

2.3 Corporal punishment

A comprehensive legal framework protects children at an international, regional and local level. The Convention on the Rights of the Child (CRC), the African Charter on the Rights of the Child, the Constitution¹⁰ as well as the Children’s Act 38 of 2005 all entrench the basic rights of children regionally and internationally.

Corporal punishment is defined as any punishment in which physical force is used with the intent to cause some degree of pain or discomfort¹¹. It includes hitting children with a hand or object, kicking, shaking or throwing children, scratching, pinching, biting or pulling their hair, forcing them to stay in uncomfortable positions, locking or tying them up, burning and scalding.

⁹ The founding members are the Auditor General, Commission for Gender Equality, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Electoral Commission of SA, Financial & Fiscal Commission, Independent Communications Authority of SA, Pan South African Language Board, Public Protector, Public Service Commission and South African Human Rights Commission.

¹⁰ Sections 28, 10 and 12

¹¹ Article 19 of CRC

Corporal punishment in any environment, including home, school and society at large, is a violation of children's rights to protection from all forms of violence and results in physical, emotional and psychological harm.

The South African Schools Act 84 of 1996 prohibits the administration of corporal punishment in schools. Any person who contravenes this is guilty of an offence and liable to conviction to a sentence which could be imposed for assault. Principals and educators are mandated by the Act to report on incidents where a child has been abused in a manner causing physical injury, and this includes corporal punishment.¹²

The Mpumalanga provincial office received complaints relating to the use of corporal punishment from a community member who witnessed such incidents at seven schools in Secunda, Ermelo and Amersfoort in Gert Sibande District Municipality. Noting the relatively high number of complaints from a particular district, the office resolved that in addition to investigating the complaints, it should include an educational component into its interventions so as to have a holistic response. The office then conducted two workshops in Ermelo on 17 September 2015 and at Ehlanzeni on 8 October 2015. Along the same vein, the Kwazulu Natal office also noted that it had pending complaints on the issue and decided to host a seminar in Durban on 17 February 2016 around corporal punishment.



Attendees during a Commission's Roundtable discussion)

The participants in the engagements appreciated the protection of the rights of children and acknowledged the outlawing of corporal punishment in schools. It is noted that corporal punishment remains more prevalent in rural schools than in urban schools. A call was made for parents to assume more active involvement in the education of their children through the school governing bodies as well as taking personal interest in the work of the child.

¹² Section 110 (1) of Children Amendment Act 41 of 2007

In the absence of alternatives, the Department of Education must and adopt, publicise through training and ensure the implementation of alternative positive disciplinary methods within the education system.

An assessment of the interventions indicated that the discussions provided a safe space for both educators and learners to voice their frustrations at some of the aspects of the education system. The participants were able to share some of the coping mechanisms against challenges they encounter in the learning and teaching environment. Most importantly, they were provided with information and a greater understanding of corporal punishment and proposals on how to address it.

The Chairperson's presentation at the SAHRC conference on Corporal Punishment in May 2016 received considerable media coverage and was reported on in City Press (*Corporal punishment violates children's rights*, 29/5/2014), The Citizen (*SAHRC concerned by use of corporal punishment*, 30/5/2014), Independent Online (*Corporal punishment 'reflects society'*, 29/5/2015), the website of the Human Sciences Research Council (*Corporal punishment: the thin line between discipline and punishment*, 29/5/2014), and also on other sites.

CHAPTER 3

EQUALITY



CHAPTER 3: EQUALITY

3.1 Significance of theme

The right to equality is a fundamental right in our Constitution, demanding that rights be interpreted through the lens of equality as a core value.¹³ In order to understand and realise the rights in the Constitution, everyone, especially vulnerable and marginalised groups need to understand the right and how it may be exercised. When citizens are empowered, not only are they able to respect basic fundamental rights such as the right to equality; but are also able to assert them and contribute positively to a climate of mutual respect for human rights and national social cohesion.

The Commission is acutely aware of its mandate to educate and build awareness on equality, economic and social rights and other rights in the Bill of Rights; through its advocacy work. PEPUDA requires the Commission to assess and report on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problem¹⁴. The Commission thus published and launched the 2014-2015 Equality Report on 25 June 2015, which report is an assessment of the progress made as well as challenges encountered with regards to equality for the stated period.¹⁵



Commissioner Malatji during the disability toolkit launch

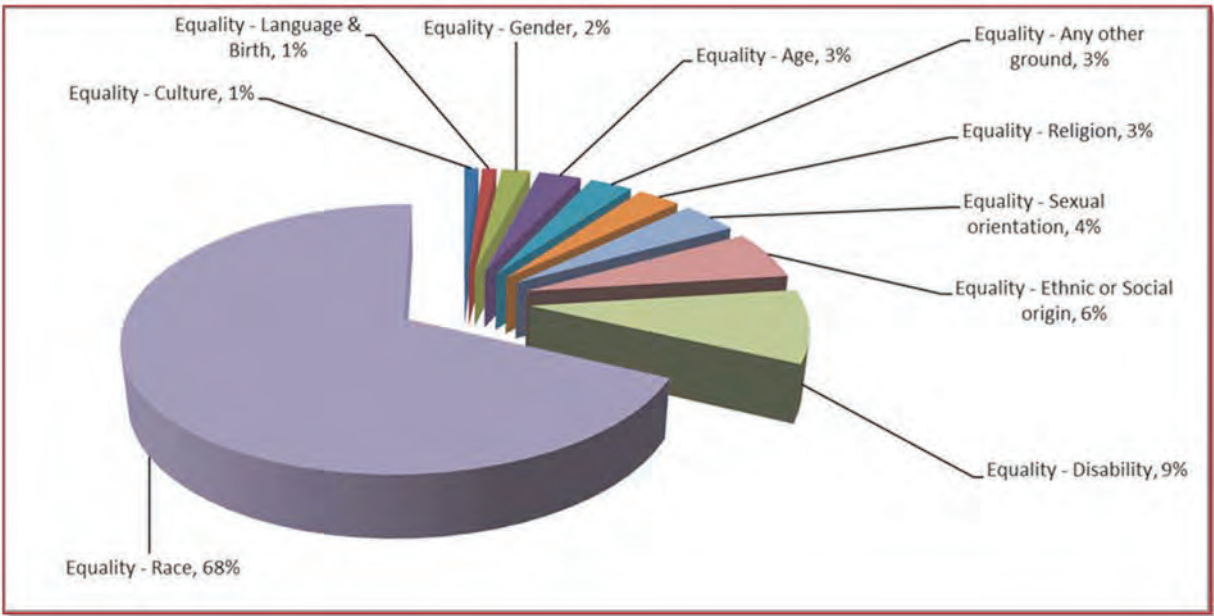
¹³ Section 9 of the Constitution

¹⁴ Section 28 of PEPUDA

¹⁵ Report is available at www.sahrc.org.za

The Commission’s Trends Analysis Report indicates that equality-based violations have been on the increase over the past two years. The rate of equality based complaints to the Commission have remained persistently high. As in previous years, the largest number of equality complaints are race-based; as indicated in the graph below:

Equality complaints as at end March 2016



The statistics are a clear indication of the need for intensified and broad awareness of the right to equality and how rights may be vindicated through various forums in order to accelerate the achievement of substantive equality in the country. Such responses must also be directed at the marginalised groups within the broader society of the country where the needs are most pronounced. In addition, a collaborative and collective effort by all role players of the state, institutions supporting democracy and civil society is required to promote and raise awareness, deepen levels of understanding and sustain a human rights culture.

Sector focused engagements and interventions are some of the outreach methods utilized by the Commission as it undertakes its promotional mandate. These are meant to provide information about human rights generally but with a specific focus on the various grounds for non-discrimination, such as sexual orientation, race, gender, sex, ethnic, belief and social origin as set out in the Constitution.

3.2 Summary of Activities, Key Findings and Recommendations

3.2.1 Racial discrimination and hate speech

Through the Constitution, South Africa continues to commit to the core values of respect for human dignity and equal treatment of all persons, by all and in all settings. However, in January 2016 the publication of race based comments on various social media platforms sparked fierce debates that indicate that race remains a contentious, divisive and sensitive issue confronting the country.

This national conversation also challenged the country in general to consider governments response to racism, racial discrimination and hate speech in the past and solicited further suggestions on what could be done going forward.

In marking its 20 years of existence¹⁶ the Commission hosted a national conference that focused on the issue of racism at Gallagher Estate on 14-15 March 2016. The conference provided a national platform to critically evaluate South Africa's performance with respect to racial healing and reconciliation as well as to elicit national consensus on how best to address continuous historical racism and its modern permutations. It also presented an opportunity for dialogue and discussion with diverse stakeholders to arrive at a consensus that may inform the position of the Commission, enrich the on-going public debate on hate speech, and inform and influence the further position of Government on racism, racial discrimination and hate speech¹⁷.

A comprehensive report of the conference may be sourced through the Commission's website: www.sahrc.org.za. What follows here is a brief synopsis of the event from an advocacy and communications lens.



Adv. Richard Sizani of the PSC, Adv. Thuli Madonsela Public Protector, Adv. George Bizos human rights lawyer, Thoko Mpumlwana CGE

The conference was attended by a broad range of stakeholders from government, international organisations, the judiciary, policy makers, chapter 9 and 10 bodies, business leaders, academia and civil society.

¹⁶ The Commission was inaugurated on 1 October 1995

¹⁷ Concept note on SAHRC's 20 year anniversary National Conference on Racism, 10 February 2016

Amongst the notable keynote speakers were the Honourable Thabo Mbeki, former President of the Republic of South Africa; Honourable Baleka Mbethe, the Speaker of the National Assembly; Honourable Michael Masutha, the Minister of Justice and Correctional Services and Honourable Mathole Motshekga the Chairperson of the Portfolio Committee on Justice and Constitutional Development.



Chairperson of the SAHRC Lawrence Mushwana and former President of the Republic Thabo Mbeki

The media strategy for the conference entailed both a general media campaign and a targeted campaign in order to get maximum coverage for the conference and the issues under discussion.

The conference was broadcast live on SAFM. It received widespread coverage by national, regional, provincial and community radio stations, including:

ANN7	Channel Africa SABC	Channel Islam
CNBC Africa	Ikwekwezi FM	Jozi FM
Lesedi FM	Mohodi FM	Motsweding FM
Munghana Lonene	Radio Turf	Radio2000
SABC Morning Live	SABC TruFM	SAFM
Vuma FM		

The media strategy included a targeted approach where specific media organisations or presenters were approached to interview key Commission staff so that key messages on the conference, its theme and on human rights in general could get communicated. Commission staff conducted live interviews and spoke to the issues under discussion at the conference.¹⁸ The two day conference yielded thought provoking discussions and resulted in a declaration¹⁹ that records the findings and recommendations. (See Annexure 1: *Midrand Declaration Against Racism*)



Panellists during a breakaway session at the racism conference

Going forward, the Declaration will serve as a road map for the Commission as the country continues to grapple with the issue of racism, racial discrimination and related intolerances. It is gratifying to note that the Department of Justice (the Department) launched a series of stakeholder consultations on the National Action Plan to Combat Racism, Racial Discrimination and Related Intolerance (NAP) 2016-2021 in Cape Town on 29 February 2016 after a 13 year period of various drafts of NAP. Given its role as a national human rights institution, the Commission will be supporting the Department in the process of national public consultations to raise public awareness, mobilise various stakeholders to interact with the draft document and contribute constructively towards shaping the final plan.

¹⁸ Commissioner Mokate, Commissioner Titus, Commissioner Malatji, Shireen Motara (COO), Chantal Kisoona (Provincial Manager, Gauteng), Yuri Ramkisoona (Senior Researcher), Isaac Mangena (Communications Co-ordinator), Mpho Boikanyo (Provincial Manager: North West)

¹⁹ At the time of writing, the declaration had not yet been signed by the participants. The Commission will publish a separate detailed report of the conference proceedings to be made available at www.sahrc.org.za.

New platforms for expression have provided the medium for discrimination in the form of hate speech on social media. The Commission's monitoring of incidence of hate speech indicates that it is on the increase in South Africa. While social media appears to be providing the largest platform globally for the exercise of the right to expression and opinion; it is also ironically providing the largest platform for racist hate speech, offending in its wake the right to dignity of people.

The Northern Cape provincial office noted a concerning trend, on the increasing use of the "k-word" and "hottentot" epithets. In turn the office had instituted 6 matters pertaining to hate speech in various Equality Courts across the province.

The office hosted an information session in Kimberley for educators at St Cyprian's Grammar School on 21 November. This was a direct response to a complaint that the office had dealt with, where in a mathematics lesson, a teacher had compared the intelligence of her grade 2 learners to that of a baboon. A mediation process resulted in an agreement between the parties that a sensitisation workshop be conducted with staff members at the school, symbolising the Commission's to deepening an understanding of equality through the frame provided by alternative dispute resolution.



Community members attending a community engagement of the SAHRC

It was clear the educators did not believe that racism was rampant in the school, stating that it was an isolated incident. They were of the firm view that children of such a young age were not capable of racial profiling and instead thought the parents of one learner had over-reacted; which assertion the Commission does not support. The Commission will consider hosting a follow up and expanded workshop to include parents and members of the school governing body in the next financial year.

Interventions such as this confirm that human rights education can contribute to the attitudinal changes which impact on long-term prevention of human rights abuses and represents an important investment in the endeavour to achieve a just society in which all human beings can co-exist in harmony.

3.2.2 Sexual orientation, gender identity and expression

The continued heinous attacks on people of different sexual orientation such as gays and lesbians are an indication of lack of tolerance and between cultural practise or belief and South Africa's pluralistic society. This points to the need to not only condemn homophobic violence, but increase educational awareness of the principle of equality on the basis of sexual orientation, as guaranteed by the Constitution. Noting the focussed constitutional mandate of the Commission for Gender Equality (CGE), the Commission supplements the work of the CGE to undertake educational interventions to address this concern.

The Commission also responds to topical issues and events that are in the public domain. Following a tragic incident in Ventersdorp where a young female²⁰ was found strangled to death with a shoe lace and a wire and had allegedly raped; the North West provincial office undertook an investigation into the matter. The family was convinced that her death was due to her sexual orientation as she was openly lesbian. To create public understanding of the right to non-discrimination, the office then conducted a public information session at Tshitshing community hall which is the area that the murder took place in on 7 October 2015. The Commission was supported by the provincial CGE, the South African Police Service and civil society groups that work on the issues of sexual orientation under the umbrella term of lesbian, gay bisexual and trans-gendered individuals (LGBTI).

²⁰ The death of Gift Disebo Makau was reported in *The Times* newspaper of 18 August 2014



Group Discussion during the SOGIE conference

The discussion reflected a general high level of prejudice and intolerance amongst the public with examples of highly discriminatory practices against the LGBTI community being made. Religion and culture featured as backdrops and justifications for a lack of acceptance of those who are viewed as “different”, reflecting societal constructs of sexual orientation as being heterosexual. It was clear that the stigma attached to sexual orientation and gender identity or expression that fall outside the expected heterosexual, non-transgender norm relegates many LGBTI people to the margins of society.

Following a request from stakeholders in the LGBTI sector, the Free State office hosted a roundtable discussion in Bloemfontein on 28 November 2015, after concerns were raised regarding the lack of human rights education on sexual orientation amongst learners in the province. The discussion was held in collaboration with the Department of Education to understand and address the gravity of homophobia at schools in the province as well as an attempt to engender a broader understanding of sexuality.



Presentation during SOGIE conference

The findings from this discussion confirmed that homophobic violence and abuse targeting LGBTI learners occurs on a regular basis with learners being harassed and assaulted by peers and educators at school. Such learners continue to be exposed to a lack of support systems, lack of affirming material in schools and teachers who express derogatory and hostile sentiments in and out of the classroom environment. For such young people, they also experience estrangement from friendships. As a result some skip school attendance as they feel unsafe and this can lead to underachievement at school.

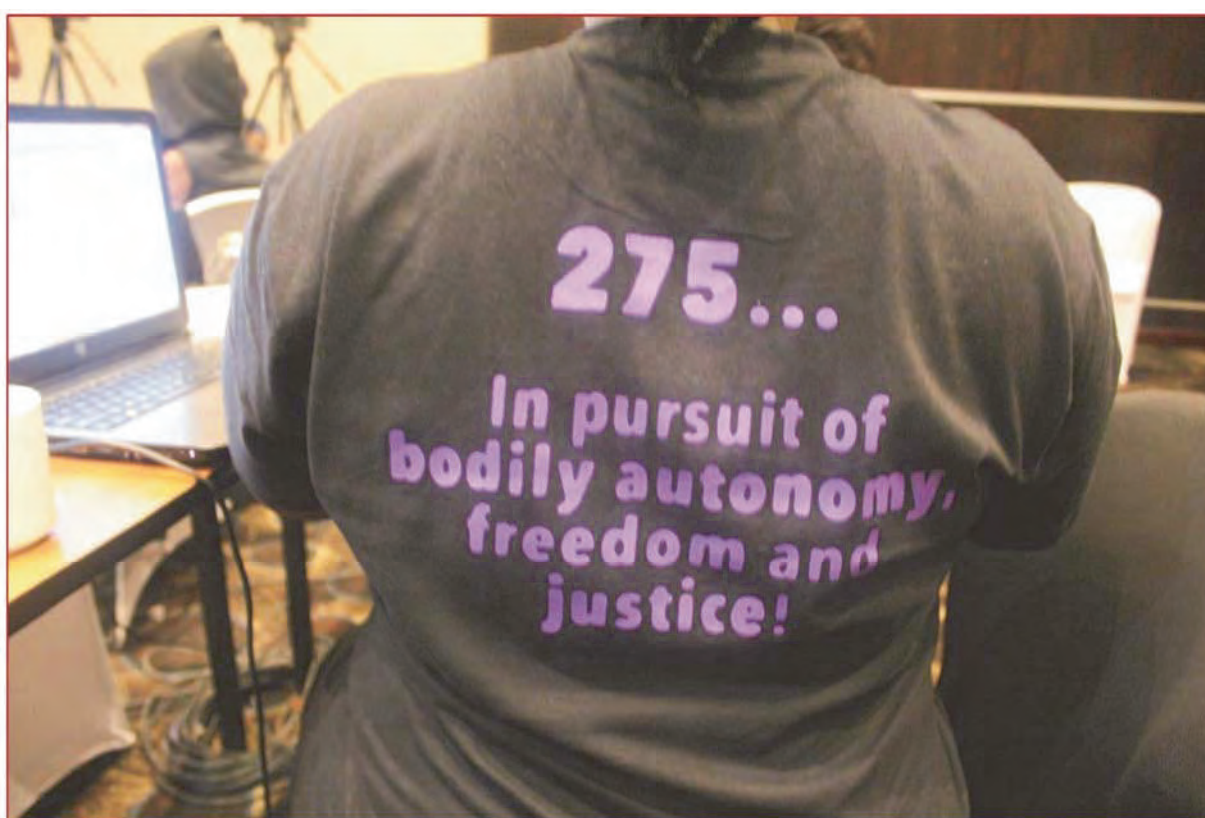
Among the key recommendations, the Commission re-emphasizes and calls for implementation of the recommendations from its previous *Report on School-based Violence*²¹ in schools. Concerted and intensified efforts at awareness raising on issues of sexual identity need to continue on a regular basis to targeted sectors; such as sensitivity training for educators by the department and public debate sessions at schools. Both the department and the Commission must develop and widely distribute promotional material on sexual identity and sexual expression.

The Commission also publicised its Complaints Handling Procedures and child friendly mechanisms and continues to encourage learners to lodge complaints where there is a violation of human rights. The Commission gave undertakings that it will continue to work with stakeholders in the sector to fight stigma, intolerance and harassment on the issue to transform our society into one where there is human dignity, freedom and equality.

²¹ South African Human Rights Commission *Report on Public Hearing on School-based Violence* (2008)

The issue of gender based violence continues to be of concern to both the South African Human Rights Commission and the CGE. Following Western Cape media reports on the prevalence of gender based violence²², the Western Cape provincial office identified the town of Atlantis as one of the many areas for possible interventions. Atlantis has experienced a rise in prostitution and human trafficking, with women and children being the predominant victims. The Atlantis Women's Movement, a local non-governmental organisation indicated that in 2009 it assisted 16 trafficking victims but that since then the number has nearly quadrupled to 67 victims.

The Commission, in partnership with the Department then hosted a community awareness session on 24 August 2015 and a roundtable discussion for key government departments in Atlantis on 25 August 2015.



T-shirt of an attendee of the SOGIE conference

Amongst some of the findings from these interventions was the fact that victims are usually women and children who often require a facility that helps to provide a safe refuge. It was also established that victims require a system that supports them from the beginning of the incident, until justice has been served as well as the requirement for more substantive support to rehabilitate the perpetrators.

²² Special reference is made to the widely publicised brutal rape and murder of Anene Booysen in Bredasdorp, as carried in News 24, EWN, and Cape Times of 31 October 2013.

The issues relating to violence and discrimination based on sexual orientation, gender identity and expression (colloquially referred to as SOGIE) have featured at the international and regional level of the United Nations and African Commission respectively and resulted in resolutions on the protection against violence and other human rights violations against persons on the basis of real or imputed sexual orientation or gender identity²³. Both bodies emphatically condemn the violation of LGBTI rights and encourage states to take leadership in the implementation of the said resolutions. Despite these progressive and noble intends, it is recognised that LGBTIs continue to suffer discrimination and violence in many parts of the globe and South Africa is no exception.

The Commission hosted an African Regional seminar as a platform for dialogue amongst African States on finding practical solutions on how to bring an end to violence on the basis of SOGIE and to take Resolution 275 from the African Commission forward. The conference took place in Johannesburg from 3 to 5 March 2016 and saw more than 180 delegates from across the African continent in attendance.

The premise for South Africa to advance SOGIE is equality and human dignity for all, meaning that LGBTIs are entitled to the same rights and protections as any other human being and member of society and includes the right to be protected against violence and torture.



SAHRC Chairperson L Mushwana, Justice Minister, Minister Michael Masutha and civil society representative at SOGIE

²³ Resolution 17/19 adopted by the UN Human Rights Council on 17 June 2011 and Resolution 275 adopted by the African Commission on Human and Peoples Rights at the 55th ordinary session in Luanda, Angola on 28 April-12 May 2014 respectively

The robust discussions highlighted some findings, such as:

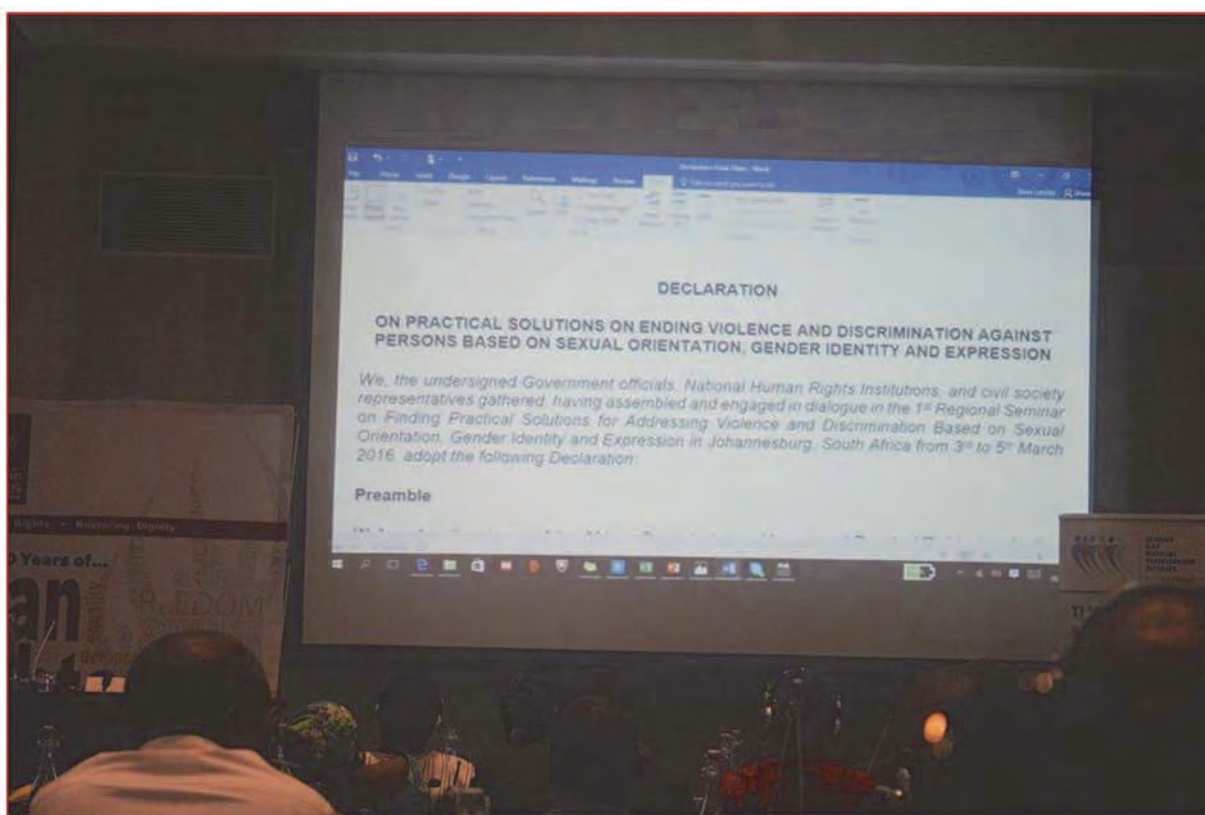
- I. The need to debunk the ideology of homosexuality as being Western as most African States use this as a basis for rejecting LGBTIs. The popular ideological argument that homosexuality was not an African notion, is a reductionist argument and a simplification of a complex human phenomenon that is not unique to Africa but is experienced throughout the world. African communities are encouraged to put away all repugnant aspects of African culture and embrace a progressive culture of human rights.
- II. Whilst people were entitled to their opinion on SOGIE issues and even disapprove of same sex relationships, a balance in favour of human rights needs to be struck. The African Charter on Human and People's Rights imposes a duty on member states to respect and consider human beings without discrimination²⁴.
- III. States continue to rely on the criminalisation of homosexual conduct, therefore laws that prohibit freedom of association and assembly and criminalise sexual orientation should be repealed.

The conference noted that a multi-disciplinary approach is required, and the following were made as practical recommendations:

- I. Direct political will and action is required from state departments to implement LGBTI friendly policies;
- II. NHRIs need to engage other role players such as political players, the police, cultural and religious leaders, the judiciary and policy makers;
- III. Civil society must report discriminatory practices and strengthen support networks;
- IV. The media must play an important role in information dissemination and must report objectively on SOGIE rights without sensationalising issues;
- V. Sustained training for the judiciary and law enforcement agencies on LGBTI rights needs to be carried out; with legal representation for LGTBIs also being provided;
- VI. National Prosecution Authorities must collaborate with law enforcement agencies and civil society to ensure successful prosecutions and protection must be accorded to witnesses and victims to prevent further victimization;
- VII. Academia must incorporate human rights issues in curricula and contribute research on this issue;
- VIII. Health workers must be sensitised on the needs of transgender communities;
- IX. Faith based organisations must be engaged to enhance cohesion and tolerance;
- X. International bodies must collaborate to counteract violence, highlight areas of institutional weaknesses; document violations, hold governments to account through state reporting mechanisms and also work with relevant departments to ensure protection of sexual minorities including among non-citizens.

²⁴ Ibid

Communications provided media support in the form of media releases and outreach to an array of media outlets. A report titled “SOGIE in the Spotlight”, which spoke to the objectives of the events as well as the key issues around violence and discrimination based on sexual orientation, gender identity and expression, was published on the Commission’s website to enable engagement on the report with broader stakeholders in civil society, media, the academy and the general public.. The report also made reference to key stakeholders, including: the Minister of Justice and Correctional Services, Michael Masutha; Deputy Minister of Justice and Constitutional Development, John Jeffery; SAHRC Chairperson, Lawrence Mushwana as well as human rights groups, international and regional bodies, civil society and academics from around the continent.



The declaration

The declaration, which is a broad statement of the conference deliberations and resolutions, is annexed hereto. (Annexure 2: *Declaration²⁵ On Practical Solutions On Ending Violence And Discrimination Against Persons Based On Sexual Orientation, Gender Identity And Expression*) In conclusion, the strongest message to take away from the discussion is that all stakeholders need to mobilise, carry out education and awareness to root out stereotypes and promote societal and attitudinal change.

²⁵ At the time of writing of the report, the finalisation of the declaration was still pending

3.2.3 Youth

Young people need to carve an identity and future of their own and to have their voices heard on the most relevant and important issues affecting their lives as they face challenges unique to their age. It is therefore important that young people are provided accessible platforms through which to bring their perspectives and suggestions on issues affecting them so as to unlock the potential within them.



Attendees during a workshop

In recognition of this, the Free State and Mpumalanga provincial offices hosted separate dialogues to examine the human rights challenges facing young people in their respective provinces. Recalling the injustices that occurred in 1976, and noting the crucial role that human rights education plays in society, the Free State office hosted the event in commemoration of national Youth day on 25 June 2015 at the University of the Free State. The event was also aimed at reflecting on the progress the province has made on youth issues since the dawn of democracy and also explore ways to increase youth participation in human rights activities and development in their communities. The Mpumalanga office hosted its dialogue on 24 June 2015 in Matshiding, to also emphasize the positive role that youth can play in fostering a culture of social cohesion.

Young people from across diverse groups, interests, institutions and political affiliation participated in the respective events which allowed active participation and easy sharing of opinions. Some of the key findings were:

- I. The lack of integration of youth issues into decision-making processes and structures of government;
- II. Human rights challenges as a result of gender, class, geographic location and socio-economic status and that;
- III. The struggles of young people are often overlooked due to a range of competing development priorities, which results in the exclusion of young people from mainstream policies, programmes and governance structures.

At a very basic and practical level the dialogues identified the triple threat of poverty, inequality and unemployment as the greatest concerns for young people; including access to health care in terms of sexually transmitted diseases and HIV/ Aids. The participants also indicated that a pervasive sense of helplessness was one of the main reasons why the youth resorted to service delivery protests, which protests at times turn violent.

The dialogues recommended the need to mainstream youth issues within the general policy making process and for stakeholders to respond timeously and adequately to concerns raised by young people. For its part the Commission undertook to increase human rights awareness sessions and information dissemination through tertiary institutions and schools to ensure the active participation and involvement of young people as volunteers in its public outreach engagements. Going forward, the Commission will be strengthening its partnership with the Institute for Reconciliation and Social Justice based at the University of the Free State in running focus group discussions with students on a broad range of human rights issues including access to information.

In partnership with the Community Law and Rural Development Centre, the Kwazulu Natal provincial office hosted a dialogue in commemoration of Youth day at Mtubatuba on 29 June 2015. The focus was on the youth in the Umkhanyakude District, as according to research and media reports, the district experiences the highest number of unplanned teenage pregnancies in the province within the age group of 18 – 19 year olds²⁶. The dialogue sought to ascertain the root causes for the high rate of teenage pregnancy in the area and discuss strategies to reduce the high levels of pregnancies.

The youth were ear marked as the main beneficiaries of this intervention and approximately 160 youths attended, among whom were a number of pregnant teenagers. Parents, community elders and relevant provincial government departments such as Basic Education, Social Development and Health were in attendance.

Among some of the findings were the challenges that pregnant learners faced such as discomfort at wearing normal school uniform, sitting at desks for a prolonged period, peer pressure, lack of awareness on reproductive health and poor sex education both at school and at home and the stress of raising a child whilst one is still also a child.

²⁶A Review of Teenage Pregnancy in South Africa, Partners in Sexual Health, 2013 at pg. 7.

The dialogue strongly recommended that the Department of Education partner with schools to intensify life orientation skills, in particular discussions with learners on a regular basis about sex education as well as issues affecting the youth generally. The meeting also agreed on the need to expand attendance to larger groups and other areas for an even wider reach. The community were grateful to the Commission for tackling this important social issue that was affecting the community.

3.2.4 Discrimination based on social origin, and or, nationality

The Commission noted with the concern, yet another outbreak of xenophobic attacks against foreign nationals that erupted from 8 April 2015. These attacks are a reflection of the uncomfortable sense of deep resentment, underlying hatred and discriminatory attitudes against foreign nationals that continue to simmer since the widely publicized 2008 attacks and further back since 1994.²⁷ Studies on xenophobia have attributed such hatred of non-nationals to a wide range of causes, among which are perceived threats of the fear of loss of social status and identity, contestation for scarce resources, micro-politics in poor informal settlements and townships and community based violence²⁸. Although less widespread than the one in 2008, the 2015 spate of violence seemed to flare up predominantly in the greater Durban and Johannesburg areas. In Kwa-Zulu Natal, media reports indicated 8 people were killed whilst thousands sought refuge in shelters that were set up in and around the greater Durban area by the provincial government and 5 645 who were voluntarily repatriated.²⁹

The Commission received a number of complaints and media interest nationally regarding the xenophobic attacks, and in particular complaints on the comments attributed to as having been uttered by King Zwelithini against non-nationals with speculation that this could have been the trigger for the outbreak³⁰. In marked contrast to 2008, the 2015 incidences saw the country quickly rallying and responding to the issue; with public condemnation of the violence from across all walks of life and the media houses utilizing various communication channels and slogans, some of which still run to date.³¹

Official responses to the violence were reasonably swift, with President Jacob Zuma appointing an Inter-Ministerial Committee on Migration (IMC) on 28 April 2015. The Kwazulu Natal provincial government in turn appointed the Special Reference Group on Migration and Community Integration, chaired by the former UN High Commissioner for Human Rights, Judge Navi Pillay. The terms of reference for the IMC were broadened to include, amongst other things, the underlying causes for the tensions between communities and non-nationals; migration policy, repatriation of affected non-nationals, the rising levels of lawlessness, conducting of dialogues with communities and dealing with acts of criminality through interventions such as Operation Fiela/ Reclaim.³²

²⁷ Timeline of Xenophobic Violence in SA <http://sahistory.org.za> [accessed 17 April 2016]

²⁸ <http://www.saccps.org/pdf>

²⁹ Statement by Inter-Ministerial Committee on Migration <http://www.gov.za/17-May-2015>

³⁰ The comments were made at a moral regeneration event in Pongola on 21 March 2015

³¹ SAFM still runs the "Say No To Xenophobia" campaign with clips in various African languages

³² Government's crime fighting blitz described as "multi-disciplinary intergovernmental operation aimed at eliminating criminality and restoration of order," <http://www.gov.za> [accessed 21 April 2016]

As the Constitution is applicable to all persons within the Republic, this means fundamental rights such as that the right to life, freedom and security of person, prohibition of unfair discrimination on any grounds and freedom from free arbitrary eviction or deprivation of property apply not only to citizens but also include foreign nationals. The viewing of non-nationals as the 'other' or 'outsider' in relation to 'self' can promote a culture of exclusion, rejection and unease rather than accommodation and integration. It therefore remains the aim of the Commission to address the preconceived notions of the "other," whilst at the same time promoting a respect for human rights and a culture of human rights.

The Commission thus held various public outreach interventions in the form of public information sessions, dialogues and discussions across its provincial offices³³ to create an enabling platform for communities to engage on issues that directly impact on them; promote social cohesion within communities and also reinforce the rights and responsibilities of both migrants and host communities towards each other. The interventions were also aimed at identifying and assessing the possibilities of developing coherent and coordinated provincial responses to counter discrimination and violence, and recommitment to protecting non-nationals. The Commission's activities were also meant to coincide with the international commemoration of either Africa Day which falls on 25 May or World Refugee Day which also falls on 20 June and were held as follows:

Date	Province	Venue	Number of Stakeholders
25 May 2015	Western Cape	Zwelethemba Hall, Worcester	111
17 June 2015	Northern Cape	Tol Speelman Hall, Upington	97
18 June 2015	Gauteng	Mlambo Hall, Atteridgeville, Pretoria	65
20 June 2015	Gauteng	Club Rendezvous, Pretoria	315
24 June 2015	Mpumalanga	Matshiding Hall, Dr JS Moroka Municipality	72
24 June 2015	Limpopo	AFM Church Hall, Polokwane	60
23 Sept 2015	Eastern Cape	Methodist Church, Booysen, Port Elizabeth	88
20 Nov 2015	Kwazulu Natal	Siphumelele Hall, KwaMakutha	70

³³ KZN only held its activity in November 2015 once tensions had dissipated as the area in which the engagement was held was one of the worst affected by the violence. The later date provided a more conducive environment for hosting a public open discussion.

It is also worth noting that despite the fact that not all provinces were affected by the latest violence, the Commission took a proactive approach to ensure continued peace, security and co-existence in possible hot spots within all provinces. The engagements were meant to celebrate humanity and also reinforce any previous or ongoing progressive stakeholder efforts aimed at fostering co-existence among different groups in society.

An assessment of the Commission's interventions highlighted deep-seated tensions that exist between nationals and non-nationals. Various underlying reasons were proffered, among them being competition for economic opportunities, lack of inter-connectedness between cultures, distrust amongst one another and misinformation of immigration trends and reasons into South Africa.

Apart from emphasizing the need to find solutions, which was necessary and needed to avert xenophobic attitudes, more effort was directed at attaining knowledge and learning about the "other" and how best the community can interconnect at a practical level.

The engagements acknowledged that the government needs to perform a very fine balancing act, on the one hand to be more accountable to its citizens by creating more opportunities and living up to its commitments to the poor and the marginalised; whilst on the other, making more focused efforts to mediate between citizens and foreign nationals, protecting non-nationals and assisting them to build new lives in South Africa.

At a broad level, the Commission reiterated and continues to advocate the implementation of the recommendations in its 2009 report entitled *"Investigation into the Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals."* Some of the key recommendations stressed the need for early warning systems, heightened protection of non-nationals through improved access to justice and awareness programs and the need for sustainable local integration of migrants. The Commission however notes with regret that to date, many of the recommendations have not been implemented and in many instances were not responded to by the relevant government departments. The Commission reiterates the same recommendations and the need for the state to implement these, as these recommendations remain relevant.

Whilst the Commission accepts the importance of interventions that seek to raise awareness or question unjust practices, these interventions are on their own insufficient in combating xenophobia and its manifestations. Durable solutions must rely on the rule of law and respect for and protection of basic human rights. A key vehicle would be the adoption and implementation of a comprehensive NAP aimed at combating inequality, discrimination and all related intolerances³⁴.

³⁴ Ibid

3.2.5 *Equality generally*

As the Commission has a mandate to promote PEPUDA, the Gauteng provincial office identified the area of Vereeniging as ideal in an effort to expand its reach. Preliminary research indicated that the Equality court in the magisterial area of Vereeniging registered 12 cases in 2014 involving discrimination based on HIV status, hate speech, disability and racial discrimination.

The office then conducted an information awareness workshop on 8 December 2015 at Vereeniging community hall. The workshop focused on the interrelated nature of the right to equality and other fundamental rights such as dignity, expression, information and access to Equality courts as well as the mandates of different bodies dealing with particular aspects of equality. The Commission is glad to note that participants were able to connect the information that was shared with them and connect this to their real lived experiences. This also points to a continued need to educate people about alternative forums which may provide support and recourse to them.



Commissioners during the equality report launch

In keeping with the constitutional values of equality and dignity to all, the Gauteng provincial office partnered with the City of Tshwane Multi-sectoral AIDS Management Unit to host a public sensitisation session in Soshanguve, in commemoration of World Aids Day that annually falls on 1 December.

The workshop established linkages with the community, was able to spread important information regarding access to medication and the importance of prevention as pillars in the fight against HIV and AIDS. It also resulted in a better understanding of the rights of recourse of people living with the disease. This local intervention contributes to the national commitment of the right to health care by taking the messages about prevention, stigmatization and support to people at community level where it is most needed. The Commission is thus seen as both a partner and leader in championing the fight against discrimination on the basis of social status.

3.2.6 Disability: promoting the right to work of persons with disabilities

Significance of theme

The rights of persons with disabilities are entrenched in the Constitution wherein a premium is placed on the values of equality and dignity. The equality clause prohibits discrimination based on listed grounds, with disability being one of those listed grounds³⁵. Complementary domestic legislation such as the Employment Equity Act 55 of 1998 and the Labour Relations Act 66 of 1995 also prohibit unjustifiable discrimination against persons with disabilities.

In 2007, South Africa became one of the first countries to ratify the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. The CRPD lays down the premise for enjoyment of human rights, including the right to work, by persons with disabilities and demands that state parties put in place proper structures and services to ensure that their human rights are promoted and protected.

Having monitored and engaged with the disability sector over a period of time, the Commission was motivated to make a business case for the employment of this category of our society. It accordingly developed and published the Disability Toolkit and Monitoring Framework to assist businesses and the private sector to understand and implement their obligations in terms of persons with disabilities. This initiative is in keeping with its mandate to spearhead and participate in transforming institutions, attitudes, practices and environments that continue to deny persons with disabilities their rights to dignity, equality and freedom.

³⁵ *Ibid*



Launch of the Disability Toolkit

The Toolkit is a resource guide aimed at promoting the rights of persons with disabilities in respect of employment whilst the supplementary Monitoring Framework spans policies, communications, framework for reasonable accommodation, budget allocations and general profiles of organisations to assist businesses to monitor and investigate their own compliance and achievement of substantive equality for their workspaces. The latter is a supportive and self- implementable measurement tool with relevant indicators to track progress in relation to the implementation of the Toolkit.



Toolkit and Monitoring Framework

Persons with disabilities face barriers that prevent them from fully enjoying their rights, which rights are critically linked with their socio economic conditions. As South Africa already has high levels of unemployment and poverty, persons with disabilities face acute challenges in securing employment and overcoming poverty as 7.5% of the total South African population constitutes persons with disabilities, with blacks making up the majority of this number ³⁶.

Some of the challenges faced by persons with disabilities in securing employment include, comparatively fewer or no academic qualifications; skills and experience to increase their viability for posts and inability to gain entry into recruitment processes as they are unable to access to information like adverts posted through traditional mediums such as newspapers and the internet.

Negative perceptions of the abilities of persons with disabilities and low or poor levels of awareness of the associated costs of reasonable accommodation and output values from potential employers and recruiters often work against persons with disabilities and contributes to their low absorption into the workforce.

The employment rates show that in the private sector in South Africa only 1.1% of the workforce comprises persons with disabilities, which falls short of national targets by a significant margin³⁷. The significant number of persons with disabilities who are unemployed increases their vulnerability and that of the state, as they become wholly dependent on the state for survival.

Contrary to popular belief, research indicates that the employment of persons with disabilities is beneficial as persons with disabilities are dedicated, hardworking and productive employees who are often more determined and resolute since they have to overcome more difficulties, and further, that retaining employees who have become ill, incapacitated or impaired is often less expensive than recruiting and training new staff.³⁸ The issue for consideration becomes the identification of reasons why South Africa continues to fare poorly in respect of the employment of persons with disabilities. The Toolkit attempts to make a business case for the employment of people with disabilities by highlighting the fact that companies are able to play an important role in creating a more inclusive society.

The Toolkit and Monitoring Framework were launched at the Commissions national office on 27 November 2015, followed by provincial launches during March, as marked by its significance of being national human rights month. In order to empower its staff, the Commission in partnership with the Office of the United Nations High Commission on Human Rights also undertook training for Chapter 9 outreach officers on the CRPD, the Toolkit and its Monitoring Framework from 24-28 February 2015. The notion of *“nothing about us without us”* was adopted during the training, to ensure inclusivity for people with disabilities and or their representative bodies are placed at the forefront. The resource documents were also produced in large print, braille and audio format to ensure accessibility by persons with disabilities and were distributed at each of the launches.

³⁶ Census 2011 report

³⁷ CEE 2014 Report

³⁸ www.fasset.org.za [accessed 29 February 2016]

Media coverage of the Disability Toolkit was low. This indicates the need for further engagement with stakeholders in the media, private sector and government to discuss how the toolkit and the monitoring framework could best be communicated in these respective environments.

The provincial launches took the form of roundtable discussions and were held as follows:

Date	Place	Province	Number of Stakeholder groups
4 March 2016	Nelspruit	Mpumalanga	36
8 March 2016	Durban	Kwazulu Natal	39
9 March 2016	Cape Town	Western Cape	20
9 March 2016	East London	Eastern Cape	32
18 March 2016	Polokwane	Limpopo	56
22 March 2016	Bloemfontein	Free State	24
23 March 2016	Johannesburg	Gauteng	16
30 March 2016	Rustenburg	North West	25
31 March 2016	Upington	Northern Cape	14

Some of the key findings from the provincial engagements were that:

- I. The private sector still struggles to achieve the 2% target of employing persons with disabilities;
- II. The private sector appeared reluctant to participate in the provincial engagements as reflected by their notable absence despite confirmation and acceptance to attend;
- III. Most workplaces are still not adapted to reasonably accommodate persons with disabilities;
- IV. Employers do not fully engage people with disabilities on assumptions that hiring persons with disabilities is expensive;
- V. Persons with disabilities are not treated equally to their counterparts as they are often remunerated less for rendering the same work;
- VI. Some employers hire people with disabilities as tokens in order to meet black economic empowerment (BEE) scores or employment equity targets, which in turn amounts to malicious compliance and
- VII. Perceptions and misconceptions of general incompetence for people with disabilities still abound.

Some of the key recommendations from the engagements were that:

- I. All legislation and policy frameworks should be guided by the principle of consultation and inclusivity with the disability sector as recorded in the phrase: “nothing about us without us”;
- II. There was need for continued and sustained engagements with employers to debunk myths around costs, productivity and attitude of businesses toward the employment of persons with disabilities to enable positive reform. Employers can consult with disability organisations to assist in the recruitment process and also with the individual directly on how to reasonably accommodate the person with a disability than making assumptions on their behalf;
- III. The Commission needs to further engage with the disability sector on best practices for monitoring compliance.
- IV. There was a need for wider multi-stakeholder awareness campaigns and sensitisation sessions for employers before undertaking the implementation of the Monitoring Framework.

The provincial launches highlighted the value of the Toolkit and also identified possible areas for improvement. One of these is that the Commission needs to further identify other strategic partners to carry out a more concerted awareness campaign. The methodology and format of such awareness sessions could, for example, be smaller intimate sessions to introduce the Toolkit and secure buy-in of employers as this may yield better results than large open settings that could be viewed as confrontational.

The need for awareness as one of the single most important factors in improving impact and accessibility of the workplace was repeatedly highlighted. Some of the few employers in attendance proffered a lack of awareness and understanding as an underlying factor to companies’ resistance of employment of persons with disabilities. Changing perceptions and mind-sets about persons with disabilities as being less productive for more money in comparison to able bodied employees is required as well as the need to sensitise co-workers to assist and reasonably accommodate persons with disabilities is required. This means that broader organisational reform is necessary and not simply change in respect to perception, compliance and employer attitudes.

Close monitoring of change was also emphasised to ensure that appropriate support is shaped to respond to the needs emanating from recruitment and hiring policies. Monitoring information should be used to shape change by acknowledging challenges and providing workable, practical solutions for the benefit of both persons with disabilities as well as employers.

CHAPTER 4

ACCESS TO JUSTICE



CHAPTER 4: ACCESS TO JUSTICE

4.1 Significance of theme

Traditionally, the phrase 'access to justice' has been used to refer to access to courts. Since the advent of the new democracy, it has acquired a broader meaning and continues to evolve as views on access to justice are closely linked to the socio-economic situation. Huge imbalances still persist in terms of poverty and inequality, with a sizable amount of the population being marginalised and excluded from a fair determination of rights. Legal problems have thus acquired a social dimension, requiring the civil justice system to play an important role in realising social justice.

The concept of access to justice is increasingly becoming a global issue, continuing to receive recognition locally, regionally and internationally. This has seen an evolution of the concept of access to justice from a narrow definition which equates access to justice to accessing legal services and other state services, to a broader definition which includes justice in the social, economic and environmental spheres.

Section 34 of our Constitution provides that "Everyone has the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum." The history of the right of access to justice was one where significant obstacles were placed in the way of qualified access to courts in the past. These included the prohibition of legal proceedings against the state and restrictive time limit and notice requirements.

Millions of people continue to live in deplorable conditions and in great poverty; with high levels of unemployment, inadequate social security and many being without access to clean water or adequate health services. At the heart of the Constitution lies a commitment to address these challenges and to transform society into one in which there will be human dignity, freedom and equality.

South Africa is a land where poverty and illiteracy abound and differences of culture and language are pronounced, and such conditions isolate people from the mainstream of the law. Most people whose rights have been violated are either unaware of or poorly informed about their legal rights and what they should do in order to enforce these and access to professional advice and assistance that they sorely need is often difficult for financial or geographical reasons³⁹. The socio-economic and historical conditions of such people affects their ability to bring a case before a court or an independent tribunal established to resolve disputes.

The Constitution does not only guarantee equal protection and benefit of the law but it also entails an enabling environment where vulnerable groups will be able to go beyond access and understand the essence of fair and equal treatment before a court of law.

³⁹ De Jure 2013

When vulnerable groups are able to bring their disputes before the courts in enforcing their rights, the capacity and potential of the law enhances the respect for the rights which directly contributes to social change.

Even though courts are a very important component of access to justice, confining the concept to courts or tribunals that adjudicate or mediate was considered to be narrow as justice is not an exclusive preserve of the courts. Various functionaries from the state, independent institutions, the private sector and civil society must take on a special responsibility for the achievement of justice. A fair and efficient system providing justice is crucial to the proper functioning of society as not only does it hold individuals, including state officials, accountable for their actions; but it also sets norms of behaviour for other citizens.⁴⁰

A broader concept of access to justice includes the three key elements of:

- a) Equality of access to legal services in ensuring that all persons, regardless of means, have access to high quality legal services or effective dispute resolution mechanisms necessary to protect their rights and interests.
- b) National equity in ensuring that all persons enjoy, as nearly as possible, equal access to legal services and to legal markets that operate consistently within the dictates of competition policy and
- c) Equality before the law in ensuring that all persons, regardless of race, ethnic origins, gender or disability, are entitled to equal opportunities in such fields as education, employment, use of community facilities and access to services.

The Special Rapporteur on Extreme Poverty and Human Rights in her report⁴¹, states that people living in extreme poverty experience major obstacles such as the cost of legal advice, administrative fees and other collateral costs thus relating directly to their lack of financial resources. Other obstacles include lack of information and lack of legal recognition is harder to identify and arises out of discrimination against the poorest and most marginalised. People living in poverty and social exclusion come into contact with criminal and administrative controls and sanctions more than any other group in society.

The Rapporteur noted that many laws are inherently biased against persons living in poverty so that when they encounter the criminal justice system, they are deprived of the means to challenge the conditions of their arrest, remand, trial, conviction, detention and release. In civil and administrative matters where legal aid is not available, people living in poverty are denied access to justice in matters involving property, welfare payments, social housing and evictions and family matters such as child custody.

Poverty thus poses a significant challenge to access to justice such as the inability to meet the costs of litigation and challenges in receiving Legal Aid⁴². Recent studies indicate that the average South African household would need to save a week's income in order to afford a one-hour consultation with an average attorney⁴³.

⁴⁰ Currie & De Waal the Bill of Rights Handbook Cape Town (2005) 704

⁴¹ The Special Rapporteur on extreme poverty and human rights at 67th session of the United Nations General Assembly 2012.

⁴² Law Society of New South Wales Access to Justice-final report, Dec 1998.

⁴³ United Nations Development Programme on Access to Justice, 2004.

One of the factors restricting the right of access to courts in South Africa is the long distances that many people have to travel in order to access the courts and related services. The courts are not located in places that can be easily accessed by aggrieved social security applicants. Only magistrate's courts are widely spread throughout the country and High Courts which adjudicate most constitutional cases are largely limited to urban areas.

An aspect of access to justice is the ability to walk to and reach the building where justice is administered. For persons with disabilities, some courts are not physically easily accessible. Knowledge of rights is a prerequisite to access to justice so that the lack thereof becomes one of the biggest challenges in accessing justice.

A major problem facing social security and other adjudication is the length of time it takes for disputes to be resolved. Studies indicate that it takes a long time for a civil case to be heard, especially in the busier courts⁴⁴. It is clear that access to justice only becomes complete when one's dispute is settled speedily.

The large majority of the population seem unaware of the existence of Equality Courts, their role as a forum for recourse and how to access these courts. The Commission's monitoring study in 2013 on Equality Courts revealed low usage of the courts, with many not functioning optimally whilst others were closed down. The study also revealed that previous awareness programmes both within the court system and at community level failed to reach many South Africans⁴⁵. There is also a need to create awareness on other statutory and constitutional bodies that also receive complaints relating to equality, including bodies such as the Commission for Conciliation, Mediation and Arbitration (CCMA) which has jurisdiction over discrimination and race based labour disputes.

4.2 Summary of Activities, Key Findings and Recommendations

Given the above, the Commission identified the issue of access to justice as one of the focus themes for its programmatic work for the 2015-16 year. The Commission launched its access to justice campaign in the form of a high level colloquium on the 10 June 2015 at the Law Faculty at the University of the Free State in Bloemfontein.

The colloquium served as a platform where academics, experts in the field and key stakeholders examined in detail the issue of access to justice. The colloquium examined the meaning of the Sustainable Development Goals; analysed the definition of access to justice in relation to South Africa as well as the progress or effectiveness that the Constitution has made in ensuring the delivery of access to justice; and identified the issues undermining the realisation of access to justice for vulnerable groups and proposed solutions on how to address these barriers.⁴⁶

⁴⁴ Cappelletti & Garth: Access to Justice: A World survey (Vol.1) (1978) 6-10

⁴⁵ SAHRC Commentaries on Equality: Race, Gender, Disability & LGBTI issues, 2012

⁴⁶ SAHRC Report on the Access to Justice Colloquium, June 2015

The colloquium endorsed the importance of human rights education and suggested models of improving access to justice amongst a broad range of stakeholders. It also mapped multifaceted and collaborative strategies of making access to justice a practical reality in the lives of ordinary people. The messages are further reinforced by the supportive promotional material in the form of a pamphlet on access to justice that the unit produced and provinces continuously distribute.

The colloquium – and access to justice - received good coverage, with opinion pieces on access to justice published in both the City Press and Mail and Guardian. The issue was also covered on radio and online on OFM news, the Bloemfontein Courant and Dumelang News, among others. This indicates that this issue has considerable currency in the public domain and could be leveraged in the Commission's media activities going forward. The Free State provincial office conducted a roundtable discussion on access to justice in Ficksburg on 23 October 2015. The office focused on Ficksburg in remembrance of the community activist Andries Tatane who died a very public death after being assaulted by police while participating in a service delivery protest in that town. His death focused national attention on the issues of human rights and public policing during community protests. During the follow up visit the office sadly noted that municipal service failures which include maintenance of the town's streets, problems with refuse collection and sewerage alongside the water provision problems, had not been sufficiently addressed, four years after Tatane's death.

Once again, some of the findings reinforced the Special Rapporteur's report on the challenges pertaining to access to justice⁴⁷. These related to delays and backlogs in the finalisation of criminal and civil cases; the high cost of legal services and challenges in receiving legal assistance from Legal Aid South Africa; high litigation costs and language as a major barrier in accessing justice as most court proceedings are conducted in English and Afrikaans which disadvantages the majority of Sotho speakers. In addition the lack of information and the denial of access of information that is held by the municipality are major concerns for most residents.

As a result, one of the key resolutions was the need for the South African Local Government Association (SALGA) to establish training platforms for municipal staff and councillors, with the Commission undertaking to conduct a workshop on the promotion of access to information for the municipality in the next financial year. The roundtable also resolved that the Commission must consider increasing its support to community based organisations and formations through capacity building workshops and collaborative outreach activities as that will ensure that information on access to justice reaches a wider audience. This commitment will go a long way in transforming our society into one in which there will be human dignity, freedom and equality. Therefore going forward, the Commission will include the aspects around access to justice and awareness on equality courts in its 2016-7 outreach activities.

As part of the medium to long term strategy of promoting awareness of human rights in policing, the Commission entered into a Memorandum of Understanding with the South African Police Service (SAPS) on 18 May 2015.

⁴⁷ *Ibid*

The MOU aims to promote the observance of, respect for and the protection of fundamental human rights amongst the population in order to dissuade the public from instigating and resorting to acts of violence during public demonstrations and protests. In particular the MOU focusses on aspects of police training to support the adoption of a rights based approach to their work.

The MoU between the Commission and SAPS generated considerable media interest with coverage across all platforms: print, online, radio, and television. The coverage reflects the larger public debates around human rights and policing and the media interest and level of engagement in the coverage indicates this is an issue that could be leveraged for broader advocacy and media interventions on the issue.



Commissioner Danny Titus and National Commissioner of the Police General Phiyega during the signing of an MoU between SAPS and SAHRC

CHAPTER 5

COMMUNICATIONS AND MEDIA



CHAPTER 5: COMMUNICATIONS AND MEDIA

5.1 Significance of theme

The importance of access to information cannot be overemphasised. Access to information empowers people to make informed decisions on issues that affect them. At the beginning of the 2015 financial year, the Commission made a strategic decision to merge the two sub-units of Advocacy and Communications. This was in recognition of the close linkages and complementarity in the work of the two sub-units which resulted in this merger taking effect from August 2015. The Communications sub unit's work reinforces its complementary and supportive role to advocacy by:

- I. Carrying out external and internal communications processes;
- II. Communicating the Commission's mandate of protecting, promoting and monitoring human rights
- III. Extending the reach of education and awareness
- IV. Using social and electronic media as an educative tool
- V. Raising awareness of the relevance of the issue
- VI. Providing the platform for media to engage with the HRC, interrogate and understand
- VII. Allowing messaging to be sustained
- VIII. To be one of the key interfaces between HRC and public
- IX. Assisting in developing a positive image of the Commission to all key stakeholders as the institution seeks to transform society, secure rights, and restore dignity.

The converse is that advocacy utilises media as a communication tool to create synergy within the different business units, in shaping the type and language of messages and as a conduit of getting the messages out to the public.

Communications work is carried out primarily at the national office of the Commission through Commissioners, and to varying extents by senior managers and provincial offices. The Communications arm further guides, coordinates and complements the interaction of all designated staff members with the media. Media support to the various programmes within the organisation and provinces is provided for all key events that the Commission undertakes, such as investigative and public hearings, round-table discussions, conferences, seminars and outreach clinics, for both head office and provincial offices.

Coverage of the SAHRC 2015-6

During the reporting period media coverage of the Commission and its work remained consistent. Media interest in the Commission also remained consistent and can be seen both in the reporting on the Commission's work, and also in the media coverage that resulted from media queries on the Commission's perspective on the issues being reported.

The following tables illustrate the top media stories for the four quarters, the headline of the story (which also indicates the issue being reported), and the media outlets that reported on the issue and the SAHRC. They are listed in order from highest number of reports to lowest.

Quarter 1 (March – May 2015)

Headline ⁴⁸	Sources/Media House
1. <i>King Zwelithini's Xenophobic remarks at Pongola</i>	IOL, News24, SABC Radio News, SABC TV News, ANN7, ENCA, Mail and Guardian, The Citizen, The Mercury, East Coast Radio, Bush Radio and EWN.
2. <i>Shocking State of ambulances in the Eastern Cape/ EMS Hearing in Eastern Cape</i>	News 24, Health E News, Dispatch Live, Algoa FM, Algoa News, SABC TV and Radio News and Times Live.
3. <i>SAHRC probing Green Cards System/Dompass in Western Cape</i>	Cape Times, SABC TV and Radio News, Cape Argus, Beeld, ENCA, PoliticsWeb, Afriforum and Zobo Online.
4. <i>South African Human Rights Day</i>	SABC Morning Live, ENCA, SABC TV and Radio, EWN, Times Live, City Press, Mail and Guardian and ANN7.
5. <i>Mines Operating without licences</i>	Mining Weekly, Engineering News, News 24, and Money Web.

Quarter 2 (June – August 2015)

Headline	Sources/Media House
1. <i>Mcebo Dlamini's remarks of Jewish people and Hitler statement</i>	IOL, News24, Sowetan Live, MSN SA, IOL, SABC Radio and TV News, EWN, ENCA and Times Live.
2. <i>Complaints on discrimination in the workplace hearing</i>	News 24, Voice of Cape, Jacaranda FM, and Zobo Online.
3. <i>Free State teacher calling pupils baboons back in class</i>	OFM, Free State Courant, Dumelang News, The New Age, IOL and The Citizen.
4. <i>Abuse against elderly people report launch</i>	SABC TV and Radio, Sowetan Live, Times Live, Health E News, The Citizen.
5. <i>Farm Killings Hearing</i>	Kyknet TV, ENCA, SABC TV and Radio, IOL, Africa News Agency, The Citizen, Beeld, Rapport, SABC Monitor.
6. <i>Bryanston High School Bullying Video</i>	GCIS, Sowetan Live, News24, Section 27, Jozi FM, Kaya FM, Power FM.
7. <i>Garnishee Orders Judgement</i>	Fin 24, News 24, Money Web, ENCA, ANN7, Africa News Agency and The Citizen.

⁴⁸ The headlines are reflected as they were reported and do not reflect the views of the SAHRC.

Quarter 3 (September – November 2015)

Headline	Sources/Media House
1. <i>Eskom receives most responsive body award by SAHRC</i>	IOL, News24, SABC Radio News, SABC TV News, ANN7, ENCA, EWN, Algoa FM, MSN SA, The Citizen.
2. <i>Sadtu violating children's rights on basic education</i>	News 24, The New Age, ANN7, SABC News and Voice of Cape.
3. <i>Government failing children with disabilities</i>	Sowetan Live, ENCA, North West FM, SABC Radio News, The Citizen, Polity.Org, EWN and We can change.com.
4. <i>Mpumalanga learners beaten daily for anything with pipes and sticks</i>	ENCA, SABC TV and Radio, Mpumalanga News, Health 24 and The New Age.
5. <i>EMS Report launch: Some elderly people in Eastern Cape have never seen how an ambulance looks like</i>	Times Live, Sowetan Live, Dispatch Live, Herald Live, Zobo Online and Drum Magazine.
6. <i>Welkom teacher using K-Word on WhatsApp</i>	Mpumalanga News, Witbank News, Review Online, SABC TV and radio News, Barberton News, and Rise FM.

Quarter 4 (December – February 2016)

Headline	Sources/Media House
1. <i>1000 learners share a toilet while teachers share two toilets</i>	Health e News, IOL, News24, SABC Radio News, SABC TV News, and ANN7.
2. <i>SAHRC Khoisan Hearings on stolen land</i>	News 24, ENCA, Cape Times, Cape Argus, Voice of Cape, Dispatch Live, Times Live and EWN.
3. <i>King Zwelithini's apartheid comments</i>	ENCA, EWN, East Coast Radio, Legal Brief, IOL, Times Live, Daily Sun, Gagasi FM and Vuma FM.
4. <i>SAHRC welcomes Motshekga and Limpopo education ruling on delivery of textbooks</i>	Radio Turf, News 24, Rapport, Limpopo Monitor, Zobo online, Polity.org, Beeld, and Sowetan Live.
5. <i>Athol Trollip's complaint on racism</i>	News 24, Polity.org, Zobo.co.za, City Press, Herald Live, Dispatch Live and Africa News Agency.
6. <i>DA to lay a complaint against EFF for petrol bomb recipe</i>	Times Live, Dispatch Live, IOL and Polity. Org.
7. <i>SAHRC concerned about University of Free State student violence</i>	OFM, The New Age, Lesedi FM, SABC TV and Radio, EWN, IOL, Mossel Bay Advertiser and ENCA.

The Communications Unit utilises various strategies to raise the profile and image of the Commission through regular hosting of press conferences, dissemination of press releases, undertaking media interviews, responding to media enquiries and publication of opinion pieces.

Press conferences allow for face to face engagement with key Commission staff on human rights related issues and strengthen relationships with the media. Press releases are an important strategy in publicising the work of the Commission, provide real-time consumable human rights information to the public, stimulate public discourse and also serve to provide talking points and trajectories for further investigation on a range of human rights issues for the media.

An internal electronic newsletter "*Pfanelo*"⁴⁹ which aims to strengthen and inculcate a human rights orientated organisational culture showcases various activities within the organisation. The Commission's presence on social media networks such as Twitter and Facebook continue to increase the visibility of the Commission as a whole and communicate key messages on topical human rights issues.

5.2 Website

For the 2015/2016 financial year the Communications arm revamped the Commission's website, making it more user friendly and interactive to external users. The website is a key entry point to anyone accessing the Commission through the internet and also provides unlimited space for the Commission to communicate its messages to its stakeholders.

The sub-unit regularly updates the information on the portal to keep the information current and relevant as it serves its stakeholders. The website communicates key messages, posts its reports, media statements, opinion pieces, presentations, speeches and any other communiqué which are uploaded immediately after release to provide the Commission with a platform to reach a wider audience and ensure maximum exposure. The site also functions as a depository for materials, tools, links and reports, which are available to the public, civil society organisations, NHRI's and other stakeholders. As a learning institution, this process of information sharing is itself a means to advocate and advance the protection of human rights. The Commission's website also carries links of other Chapter Nine institutions and select international and regional organisations such the UN and AU.

During 2015/2016, the following reports as released and published by the Commission were loaded onto the website:

- I. Investigative report on access to housing local governance and service delivery;
- II. A review of Equality and Child Rights;
- III. Annual Equality Report;
- IV. Investigative report into farm murders;
- V. Older Persons Report;
- VI. Investigative report on unregulated underground and surface mining.

⁴⁹ Translated to mean human rights in TshiVenda

5.3 Social media - Twitter and Facebook

Social media has gone mainstream worldwide and South Africa is no exception. As more people continue to have access to cell phones and smart phones, access to social networking sites has progressively increased. Developments in the social media model have given way to the social web and a new “on-the-second” way of communicating with stakeholders. Social networks such as Twitter and Facebook are tools that can be used for instant information within any organisation and the Commission has fully embraced and utilises these tools. The recent outbursts and racial exchanges are a stark example of the ease with which social media serves as a networking and communication mode.

The Commission’s Twitter page continues to grow with around 25 000 followers, which means that around 25 000 people receive the messages of the Commission as these are sent out and the page is constantly updated. The Commission’s Twitter and Facebook links have buttons created to allow for quick access to those who visit the Commission’s website. All this is in order to allow for easy access to information.



Some of the issues and events that were trending in the media during the period under review include the historic signing of a Memorandum of Understanding between the Commission and the South African Police Service on policing and human rights; investigative hearings into farm murders and the Commission’s 20 year conference on racism.



The Commission's Facebook page continues to grow, as at the end of March 2016 it had about 7000 followers liking the page. The Unit also uses Facebook on a daily basis as it provides the platform for longer more detailed messaging. Media invitations, statements, advisories and articles covered in the media continue to be posted on the Facebook page. The sub-unit actively monitors the sites, updates and manages the content posted on these social media pages to ensure the issues covered are relevant and observe social media etiquette.

5.4 Media stakeholder engagements

The Communications sub - unit has a cordial and respectful relationship with various editors and identified press clubs including the South African National Editors Forum (SANEF), journalists and fellow communicators from other Chapter Nine institutions and government agencies/ departments.

The sub-unit strives to visit and interact directly with a range of media outlets to build and maintain healthy working relationships. For the period under review, the Commission visited EWN/Radio 702; Jozi FM; Rainbow FM; Voice of the Cape; Alex FM; Daily Voice; Ground UP Media; River FM; Letlhabile FM; Radio Mafisa; The Weekly and Mosupatsela FM. It is worthy to note that this list is not restricted to mainstream media but includes community media. Provincial offices field and respond to media queries and also engage directly with community based radio stations and newspapers through talk shows.

Communities are able to engage directly with the Commission by calling in to the radio stations and in their language of their choice.

The Communications sub-unit provides media support to all the Commission's events, as the media plays an important role in informing and educating society at large on the Commission's work and human rights in general. The Commission hopes that due to the extensive listenership and high readership numbers of the media outlets that cover these events, this places it as a focal point on human rights issues in the country.

For the period under review, the media covered and showcased the following key events:

Date	Event	Key media outlets that covered the events
18 May 2015	Signing and significance of MOU with SAPS on policing and human rights	Newsflash, Jacaranda FM, Daily Sun, SABC TV and Radio, ANN7, The Star, Caxton Media and ENCA.
2 October 2015	Launch of report on Emergency Medical Services in the Eastern Cape	Health E news, Jacaranda FM, News 24, Business Day, City Press and Africa News Agency
15-17 September 2015	Site visit to Sibuyile informal settlement during the Free State provincial visit	New Age and SABC Radio News.
12-14 May 2015	Provincial visit to North West	New Age, SABC Radio News and Letlhabile FM.
25 June 2015	Launch of 2014-5 Equality report	ENCA, SABC Radio News, Sowetan and The Star
20 August 2015	Launch of Farm murders investigative hearings report	Kyk Net, ENCA, Jacaranda FM, The Star, Beeld, SABC Radio and TV News, ANN7, Africa News Agency, The Citizen, Business Day and News 24.
04 June 2015	Launch of Older Persons report	SABC Radio and TV News, Sowetan and Africa News Agency
20 August 2015	Launch of Investigative report on unregulated underground and surface mining	The Star Business Report, Beeld, SABC Radio and TV News, ANN7, Africa News Agency, The Citizen, Business Day and Eye Witness News

Date	Event	Key media outlets that covered the events
2–4 November 2015	Provincial visit to Mpumalanga including site visits to Sabie and Rob Ferreira hospitals	SABC TV and Radio News
19–22 October 2015	Provincial visit to Limpopo	
18 November 2015	Launch of Investigative Report on Access to Housing, Local Governance and Service Delivery	The Star, Beeld, SABC Radio and TV News, ANN7, Africa News Agency, The Citizen, Jacaranda News, Business Day and News 24.
9-10 December 2015	Khoisan investigative hearing in Western Cape and Gauteng	Daily Voice, News24, The Times, Daily Sun, Cape Times, ENCA, Media 24, Cape Argus, SABC Radio, SABC TV, The New Age, Caxton Media and Netwerk 24
9 February 2016	Participation in the Mining Indaba in Western Cape	
22-25 February 2016	Provincial visit to Western Cape	Voice of Cape, the Times, News 24, Daily Sun and Eye Witness News.
3 – 5 March 2016	Regional SOGIE conference	SABC Radio News, Eye Witness News, GCIS, The New Age and The Citizen
8 March 2016	Investigative hearing on discrimination in the workplace	SABC TV, SABC Radio, Business Times, Beeld, Sowetan and Africa News Agency
14-15 March 2016	SAHRC 20 years Commemorative Conference on Racism	CNBC Africa; SABC Radio News; SABC TV News; Jacaranda FM; Times Media; GCIS; The Citizen; ANN7; De Rebus-Law Society of SA; Pan African Parliament Media; Beeld; News24; EWN/702; Kaya FM; Power FM; CCTV Africa; Netwerk 24; Soweto TV; The Times Live broadcasts were done by SAFM, SABC TV, ANN7 TV News, CNBC and CCTV Africa.

5.5 Media Monitoring

The Communications sub-unit monitors coverage of the Commission through daily media monitoring and newsclipping and reporting, through Google Alerts and through MeltWater, a media monitoring service provider.

Media monitoring enables the Commission to gain an understanding of when and how the Commission is being covered in the media. To assess the sentiment and also to assess which issues have dominated media coverage and to highlight issues that need monitoring.

The Communications unit also utilises social media platforms such as Facebook and Twitter that allow for more immediate, minute-to-minute reporting, and enables us to reach a greater audience. These platforms also allow for advocacy opportunities through crafting shorter messaging. The advantage of such mediums of engagement is that immediate assessment of public sentiment through responses, sharing and re-tweeting is possible.

5.6 Monitoring and Evaluation of Coverage

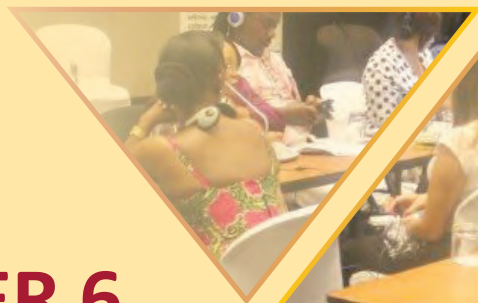
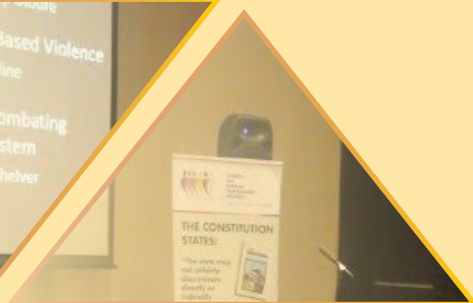
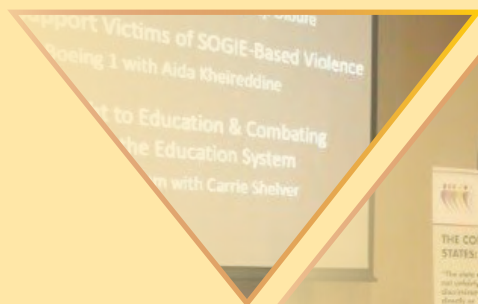
Media monitoring allows the Communications unit to monitor the volume and depth of coverage of SAHRC events and interventions and to assess the extent to which coverage takes place. In addition it allows for an assessment as to whether the media are picking up on the advocacy and human rights issues contained in our media products. In general, the media uptake is good, and even in instances where the Commission is criticised, invariably the messaging is still reported on.



All Commission articles and press releases are shared on the SAHRC's social media platforms such as Twitter and Facebook. This allows for greater dissemination and for greater engagement with the public on the pertinent issues outlined in the communications products. The public are often much less informed by the media and less constrained by media ethics in their responses, and buoyed by the anonymity of online commentary are often far more critical. These engagements allow the Communications team to direct the public to other SAHRC resources, which speak to the criticisms, where available. It also provides useful intelligence to Advocomm for use in crafting social media messaging and in identifying gaps in public knowledge.

CHAPTER 6

CONCLUSION



CHAPTER 6: CONCLUSION

The report has recorded and showcased the work of the Commission through the various stakeholder engagements in the realisation of its strategic objectives. All of the engagements carry the operational methodologies of advocacy as set out in the Commission's advocacy strategy. In keeping with the core elements of the operational methodology of the Commission's advocacy strategy, the interventions have been interactive, informative, responsive and action-oriented. Whilst the activities were grouped into three main thematic areas for ease of reporting, this should not be seen as an exhaustive reporting of all the work undertaken, as the Commission has a broad mandate. The reported advocacy activities comprise a broad narrative of only a part of its work towards the objective of deepening awareness and understanding of human rights.

An assessment of the recommendations made in the individual event reports as well as the impact of the stakeholder engagements through the post evaluation questionnaires, clearly shows that the work of the Commission has certainly informed communities about general and specific human rights. Beneficiaries of the engagements have also been made aware of the mechanisms available for redress which will enable them to assert and claim their rights. The Commission continues to make its presence felt by publicizing itself and the services it offers. It continues to make inroads by filling in the information gaps within marginalised areas and building up on the initiatives from previous years.

The report displays the inter-linkage and interconnectedness of rights through common cross cutting themes of socio-economic rights, equality and access to justice. The issue of poor service delivery in relation to socio-economic rights, especially for rural communities, remains a concern. Access to information can assist in reducing some of the anxieties among communities.

It is evident the country needs to confront and decisively deal with the issues of racism, xenophobia and hate speech which continue to plague the nation. The Commission proudly takes on the role of championing the rights of persons with disabilities in the employment sector for meaningful equality. The Commission will continue to promote the use of Equality Courts as a cheaper and easier mechanism for redress for human rights violations so as to ensure access to justice for the ordinary person.

The Commission continues to advocate on behalf of communities in need, but the task of transforming society through rights literacy and sensitization is a huge one. Thus the Commission looks to strengthening its partnerships with a broad range of stakeholders to support and assist it as it dispenses its constitutional mandate. The Commission is convinced that these efforts will go a long way in enhancing and deepening a human rights culture within the South African society, where the enjoyment of human rights is a lived reality for all who live in it.

ANNEXURE 1

MIDRAND DECLARATION AGAINST RACISM

PREAMBLE

Having met at Midrand, South Africa on 14 and 15 March 2016.

Expressing our appreciation to the South African Human Rights Commission for convening a multi-sectoral dialogue on racism.

Drawing inspiration from struggle stalwarts and their contribution to fostering non-racism and ensuring an equal society.

Recognising that twenty years after democracy racial inequalities still persist in multiple form.s

Recognising that the divisions that exist are structural and systemic requiring concerted and consistent efforts by all stakeholders to ensure transformation of South African society.

Reaffirming our commitment to the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the African Charter on Human and Peoples' Rights, the Durban Declaration against Racism.

Reaffirming our commitment to all of which contain provisions that seek to advance non-racism.

Recognising that racism has been declared a crime against humanity and forms an essential part of South Africa's National Development Plan 2030.

Recognising further that the National Action Plan against Racism, Xenophobia and Related Intolerances proposes a range of inter-sectoral approaches to address racism in South Africa.

Committed to the values of the South African Constitution which seek to eliminate the scourge of racism and advance a united nation.

Recognising that South Africa continues to experience racism and racial discrimination.

Fully aware of the efforts made by different role players including governments to address racism in South Africa.

Recognising that the structure of the South African economy continues to perpetuate social inequalities that disproportionately affect the majority of South Africans.

Rejecting the use of language, religion or culture that advance racism.

Denouncing scientific and historical interpretations that advance racism.

Noting the limitation of laws, policies and regulations to adequately deal with racism.

Encouraged by the role of the South African Human Rights Commission as a national human rights institution charged with the responsibility to advance human rights in South Africa in an effort to support democracy.

Acknowledging the need for the South African Human Rights Commission to work in close collaboration with state and non-state actors including business to foster a united, equal society free of racial discrimination.

NOW THEREFORE THE DELEGATES AT THE MIDRAND CONFERENCE AGREE AS FOLLOWS:

1. Call upon all stakeholders, state and non-state to pledge their support to the implementation of the policies and programmes outlined in the Nation Action Plan and the National Development Plan.
2. We call upon the South African government to continue to implement sound economic policies to encourage growth and equitable distribution in order to address racial inequalities in South African society.
3. Call upon the South African government and other critical role players to review the educational curriculum in order to eliminate propagation of racism through the education system.
4. Call upon the South African Human Rights Commission to convene thought dialogues to interrogate societal values in order to drive systematic and cultural change.
5. We call upon the South African Parliament to consider gaps in policy and legislation in order to improve legal responses to address overt racist conduct.
6. Call upon business to demonstrate good corporate citizenship and incorporate human rights values and non-racialism in their policies and practices.
7. Call upon civil society and media to hold the public and private sector accountable to values of human rights and non-discrimination.

Adopted on 15 March 2016

ANNEXURE 2

DECLARATION ON PRACTICAL SOLUTIONS ON ENDING VIOLENCE AND DISCRIMINATION AGAINST PERSONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

We, the undersigned, representatives from National Human Rights Institutions and civil society organisations and collectives from across the African continent as well as government officials, having assembled and engaged in dialogue at the First Regional African Seminar on Finding Practical Solutions for Addressing Violence and Discrimination Based on Sexual Orientation, and Gender Identity and Expression in Johannesburg, South Africa from 3rd to 5th March 2016, adopt the following Declaration:

Preamble

Welcoming the stance of the African Commission on Human and Peoples' Rights, in adopting Resolution 275, on *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual orientation and gender identity*.

Recalling and reaffirming our commitment to human rights made through the following provisions of the African Charter on Human and Peoples' Rights:

- Article 2 The right to freedom from discrimination
- Article 3 The right to equality before the law and equal protection of the law
- Article 4 The right to life
- Article 5 The right to dignity and prohibition of torture and cruel, inhuman and degrading treatment

Highlighting the centrality of the right to autonomy and dignity of every individual everywhere and the imperative for all state and non-state actors and institutions to advance the right to dignity and autonomy;

Recalling the obligation of states to respect, protect and fulfill the human rights of all, including of those who face violence and discrimination on the basis of sexual orientation and gender identity and expression;

Reaffirming Article 1 of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights;

Recognising that violence and discrimination based on sexual orientation, and gender identity and expression takes many forms and is perpetrated by multiple actors including both state and non-state actors;

Concerned that structural factors, particularly economic inequality and poverty and its intersections with racial and gender inequalities as well as a lack of access to healthcare services and educational opportunities, exacerbate vulnerability to violence and discrimination;

Further concerned at the deepening crises of structural, institutional, personal and interpersonal violence we all face on the continent, including growing militarism and conflict, expanding violent extremisms, a crisis in democracy, patriarchy and heteronormativity, environmental exploitation and the impacts of the global economic crisis;

Acknowledging persistent negative cultural, traditional and religious interpretations that establish and perpetuate violence and discrimination on the basis of sexual orientation and gender identity and expression amongst others, and emphasising the importance of sensitising traditional, cultural, religious leaders and communities to the rights of people who are non-conforming in terms of their gender identity and expression and their sexual orientation;

Convinced of the need to have an urgent, coordinated and sustained response that recognises and addresses growing violence and other human rights violations against persons based on sexual orientation and gender identity and expression;

Understanding the need to identify the root causes and the various manifestations of the violations in order to help states develop practical and effective responses to violence and discrimination based on sexual orientation and gender identity and expression and understanding that these same root causes also all forms of gender based violence, including violence against women;

Resolving to provide guidance that will support states in addressing and eliminating violence and discrimination on the grounds of sexual orientation and gender identity and expression, including against LGBTIQ persons;

We declare our commitment to advancing the following agenda for action amongst states across the African continent, while working with multiple sectors:

1. Violence by State Actors

States have an obligation to ensure civil and political and economic, as well as social and cultural rights. The right of every African to live in peace and dignity is central to these two sets of rights.

State actors must desist from perpetrating, promoting, condoning and ignoring violence against any person on any grounds, including sexual orientation and gender identity and expression. State actors have been and are complicit in such violence directly or indirectly, through omission and commission. This includes violence by healthcare workers, including forensic doctors, by police, prison and court officials, and by educators. The violence and rights violations take the form, amongst others, of torture, beatings, sexual assault, harassment and extortion, arbitrary arrests, illegal detention and inhuman treatment in detention settings, and forced anal testing. It also takes the form of creating impunity for non-state actors when they perpetrate violence against those with non-conforming sexual orientation and gender identity and expression, including those who identify as or who are perceived to be LGBTIQ persons.

Practical Solutions

- 1.1. States should publicly condemn violence and other human rights abuses by state actors on the grounds of sexual orientation and gender identity and expression.
- 1.2. States should create safe and confidential procedures through which survivors of state violence are able to file complaints with the police, independent monitoring bodies, such as national human rights institutions or independent policing oversight bodies. Ensure that complaints are investigated and that state actors responsible for violence and other human rights violations are held accountable, either through criminal prosecution or other disciplinary measures depending on the severity of the abuse.
- 1.3. Ban forensic anal examinations of persons accused of same-sex sexual conduct.
- 1.4. Conduct regular inspections of prisons and other places of detention to verify whether there are cases of inhuman conditions or other abuses facing persons of diverse sexualities and gender identities.
- 1.5. Take steps to end arbitrary arrest and detention on the grounds of sexual orientation and gender identity.

2. Changing Perceptions and creating awareness

Decision makers, policy makers and leaders including politicians, religious and traditional leaders have the power to influence all people's access to the rights to dignity, autonomy and equality. These stakeholders also have the power to influence others to act in violation of these rights through public utterances that establish, reinforce and sustain a hostile environment that enables different kinds of violence, stigma and discrimination, against persons with non-conforming sexual orientation and gender identity and expression, including LGBTIQ people.

The lack of information on, and awareness and understanding of gender-related rights, including women's human rights and rights related to sexual orientation and gender identity and expression, together with a lack of understanding and recognition of the realities of human sexuality, fuels misconceptions about sexual orientation and gender identity and expression and about those who are non-conforming in this regard, including LGBTIQ people.

Practical solutions

- 2.1. Create multiple opportunities for spaces that will promote dialogue in communities on human sexuality, gender and on violence and discrimination.
- 2.2. Share and generate evidence and information on violence based on sexual orientation and gender identity and expression in a systematic way.
- 2.3. Engage with the media and implement public campaigns that educate on the need to end violence and discrimination on these grounds.
- 2.4. Communicate in accessible ways and ensure that communications are in local languages.

3. Violence and discrimination in educational institutions and settings

Learners face violence and discrimination based on sexual orientation and gender identity and expression in institutions of learning. The violations include physical and sexual violence and harassment, bullying and rejection as well as exclusion from educational and related social spaces. As a result of the exclusion, learners are further excluded from the education system as a whole, from family and the community, religious institutions and the workplace, amongst other spaces. The violence and discrimination, and absence of support services and redress lead to high levels of exclusion and learner drop out, homelessness, and substance abuse. Gender non-conforming people, including LGBTIQ persons, often are unable to complete their education and their ability to find employment and to meet their basic needs is severely constrained. Learners with non-conforming gender identities and expression often face violence and discrimination in formal educational institutions, particularly in schools, where they are compelled to conform to a uniform policy and utilise sex segregated bathroom facilities or participate in sex segregated sports or other programs which are contrary to their gender identity and expression, and increases their vulnerability to further acts of violence.

Teachers and other workers within educational institutions face extortion, harassment and workplace discrimination based on their real or perceived sexual orientation and gender identity and expression.

Practical Solutions

- 3.1. Establish policies and standards to ensure access for all to comprehensive sexuality education in all education and social institutions.
- 3.2. Systematically include sexual orientation and gender identity and expression in human rights education programmes and campaigns.
- 3.3. Strengthen gender sensitivity and gender mainstreaming programmes so that they address all forms of gender-related discrimination and promote equality, dignity and freedom based on these grounds.
- 3.4. Develop, implement and monitor policies and practices that create enabling and safe learning environments for all learners, including ensuring that educational practitioners are properly equipped to meet the diverse needs of all learners.
- 3.5. Develop and implement policies that are geared towards preventing and responding to all forms of bullying, violence and discrimination in educational institutions and ensuring that survivors and victims of violence on the grounds of sexual orientation and gender identity and expression receive adequate support and redress.
- 3.6. Strengthen the understanding of the lived realities and unequal position in society of women and girls in their diversity, including lesbian and bisexual women and of the realities of all gender non-conforming individuals, including intersex and transdiverse individuals and gay men.

4. Economic Justice

Marginalisation and exclusion from participation in the economic and social life of the community contributes to reduction in individuals' capabilities to generate an income and to ensure that their basic and other needs are met. This helps to establish and fuel poverty. Being forced out of home, schools, community spaces, places of worship and the workplace is a pervasive violation experienced by those with non-conforming sexual orientation and gender identity and expression. This forcing out, marginalisation and exclusion has the consequence of forcing such individuals and groups into poverty or deepening already existing poverty. Everyone has the right to development and to fair and decent work.

Practical solutions

- 4.1. Sensitise policy makers, decision makers and leaders on the links between sexuality and gender, on the one hand, and poverty and inequality, on the other, and the need for economic participation of every African, regardless of any real or perceived status, expression or identity.
- 4.2. Ensure that national and regional efforts to implement the Sustainable Development Goals [SDGs] are fully inclusive of every African, including those with non-conforming sexual orientation and gender identity and expression so that no one is left behind.
- 4.3. Lead, invest and engage in a sustained process, including dialogue with communities and families, the private sector, religious and traditional institutions, educational institutions and policy makers about rights related to human sexuality and the links to poverty and inequality.

5. Health and Psycho-social support

Experiences of violence and discrimination based on sexual orientation and gender identity and expression often result in disproportionately high levels of fear and anxiety, acute stress disorder and posttraumatic stress disorder, depression and other forms of emotional trauma, disease and distress. Accessing psychosocial treatment is difficult due to the attitudes of service providers and the stigma with which persons who are gender non-conforming are viewed and dealt with in the health care institutions.

In addition to psycho-social health, individuals also need access to physical, including sexual and reproductive healthcare services, such as post-violence prophylaxis. The discrimination and rights violations faced by individuals when accessing sexual and reproductive healthcare or other health services is itself a form of violence.

Practical Solutions

- 5.1. Healthcare professionals and educators should meet the standard of do no harm and refrain from any reference or approach to sexual orientation and gender identity and expression as a disease or as if those who present for health care services are unworthy of access to health care. Every health care worker should focus on providing respectful, professional, competent and comprehensive care to any and all persons presenting for such services.

- 5.2. Human sexuality, including sexual orientation and gender identity and expression must be fully integrated and mainstreamed into the healthcare curriculum.
- 5.3. Counsellors, social workers and other mental health professionals must be trained and mentored so that they are competent in counselling and are sensitised to and trained on all aspects to human sexuality, including rights related to diverse sexualities, gender identities and expression and on what it means to be an LGBTIQ person.
- 5.4. States must set in place measures to ensure the rights to confidentiality of information of all persons requiring psycho-social support and broader health services and to act against those healthcare workers who fail to respect this right.
- 5.5. Professionals trained in psychological counselling must be placed in centres where all persons facing all forms of violence, including related to human sexuality and gender, including in/at health care facilities, criminal justice systems and agencies providing support to refugees and other marginalised groups and communities.
- 5.6. The state must ensure access to safe housing and shelter for survivors of violence and ensure that staff at these facilities receive training on how to create an empowering and enabling environment for all survivors of violence, including LGBTIQ persons.

6. Legal Support for survivors and victims of violence and discrimination and their families

There is a general lack of trust in and confidence by society in many state services and institutions set up to serve the public. Persons who are non-conforming on any grounds and particularly on the grounds of sexual orientation and gender identity and expression are generally not welcomed or served with dignity and are in fact, discriminated against and their rights violated in these systems.

Further violations occur when people do not report such violence and discrimination against them for fear of societal stigmatisation and secondary victimisation by services providers particularly law enforcement officers and health service providers. As a consequence, victims are often unable to access legal support and representation and health services. In instances where state authorities have failed to investigate and prosecute the violations they are often left with no recourse and unable to pursue civil remedies against the State authorities and the perpetrator. Lawyers are at times unwilling to provide representation, not adequately informed of human rights relating to sexual orientation and gender identity and expression and often charge exorbitant amounts when representing people who face violations based on sexual orientation and gender identity and expression.

Practical solutions

- 6.1. Extensive education, sensitisation and training of law enforcement agencies, the justice system including lawyers, police, prosecutors and the judiciary.
- 6.2. Provision of legal aid for survivors and families of those who have been violated, including but not limited to physical and sexual violence and murder based on sexual orientation and gender identity and expression in order to pursue legal remedies.

- 6.3. The establishment of inclusive one-stop justice units which provide comprehensive medical care, psycho-social support and police and prosecution services for all survivors and victims of gender-based violence, which is inclusive of violence against women and violence based on sexual orientation and gender identity and expression, and xenophobic violence, among others.

7. Secondary victimisation in the criminal justice system and in border control systems

Survivors of violence and discrimination based on sexual orientation and gender identity and expression often experience secondary victimisation in the criminal justice system when seeking legal recourse. They also face this kind of secondary discrimination within the systems of national border control systems when, for example, they seek asylum or refugee status in second countries. The violations include degrading treatment and ridicule by law enforcement and border control officials, lack of confidentiality and leaking of information to the public, loss of case files and dockets, blaming the victim, lengthy delays in the investigation process, perpetrators handed disproportionately lighter sentences or acquitted, invasive and insensitive questioning. The consequence and threat of these violations are that survivors and victims are deterred from seeking legal recourse when they have been violated.

Practical Solutions

- 7.1. Implement national training programs for all public service providers and border control officials (including amongst other law enforcers, legal professionals, prosecution services and the judiciary) in order to sensitise them to the rights and needs of all survivors and victims including persons on the basis of their real or imputed sexual orientation and gender identity or expression.
- 7.2. Adopt and popularise a charter that promotes the rights of all survivors and victims including the right to privacy and respect confidentiality. The charter must provide information on the recourse that is available when their rights have been violated.
- 7.3. Strengthen legal empowerment and information across the continent.

8. Accurate data on incidences of violence and discrimination based on SOGIE

The lack of data relating to acts of violence and discrimination based on sexual orientation and gender identity and expression prevents the recognition of the true scale of the crises of violence and discrimination on these grounds. It also enables policy and decision makers as well as authorities to justify their deprioritisation of the issue and failure to put in place adequate responses.

Practical Solutions

- 8.1. Ensure that data collection relating to acts of violence, discrimination and other human rights violations due to actual or imputed sexual orientation or gender identity and expression is accurate and disaggregated.
- 8.2. Conduct extensive awareness and sensitisation of the right to privacy and confidentiality of all concerned in these systems, link with the Charter and enforce these standards to address impunity.

- 8.3. Develop an online and offline tracking tool that will capture the data on all forms of violence related to gender and sexuality that will be shared with various service providers.

We express our sincere appreciation to those who continue to advocate for ending violence and discrimination against persons based on their real or perceived sexual orientation and gender identity and expression and to the protection of their human rights.

We urge African governments to take leadership on the protection of the rights of people affected by violence and discrimination based on sexual orientation and gender identity and expression, including those who identify as LGBTIQ persons.

We call on the Regional Economic Commissions, the African Union, the United Nations, civil society organizations, National Human Rights Commissions, communities and relevant stakeholders; to deepen engagement on bodily integrity and autonomy for all people and to advance rights related to human sexuality.

And finally, we call on all African States and Governments to take all necessary measures to fully implement this Declaration, in close collaboration and partnership with National Human Rights Institutions and civil society.

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