



Fanelo

"It's Your Right"

Transforming Society. Securing Rights. Restoring Dignity



Volume 07

The South African Human Rights Commission Newsletter

01 - 30 April 2013

SAHRC commemorates Human Rights Day: ...by releasing Water and Sanitation Findings



SAHRC and SA
Editors meet

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Zama Khumalo pays tribute to Westdene dam victims

SAHRC finds a church publication offensive and amounting to hate speech

SAHRC empowering communities to assert their right to social services...




Freedom Day, 27 April

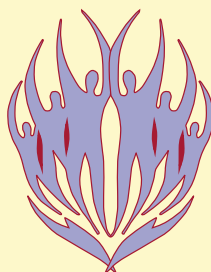
Freedom Day on 27 April is an annual celebration of South Africa's first non-racial democratic elections of 1994. It is significant because it marks the end of over three hundred years of colonialism, segregation, white minority rule. It was also the establishment of a new democratic government (led by Nelson Mandela) and a new state subject to a new Constitution. The holding of the first non racial elections was the culmination of years of struggle and a negotiated settlement, which led to the unbanning of the liberation organisations, the release of political prisoners, the return of exiles and the formal all party negotiations that drafted an interim Constitution.
<http://www.sahistory.org.za>

Quote

“When will the day come that our dignity will be fully restored, when the purpose of our lives will no longer be merely to survive until the sun rises tomorrow!”
 — Thabo Mbeki

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Kayum Ahmed – CEO, Editor in Chief

Since joining the Commission two years and eight months ago, I have not taken a single day of sick leave. I'm not a particularly healthy individual since I tend to enjoy deserts far too much and visit the gym intermittently. But I have access to excellent health care, live in a clean environment with sufficient food and water and proper sanitation. I have all of these things because of how much money I earn.

Many, if not most South Africans do not have access to adequate health care services. In the Commission's 2009 Report on Access to Health Care Services, we made various recommendations following public hearings on access to health care. On the question of whether health care had actually improved or deteriorated between 1994 and 2009, in other words, on the question of whether there had in fact been progressive realisation of the right to access health care, the report concluded

that it was difficult to assess with accuracy whether the situation regarding health care services in South Africa had improved or worsened over time, and whether there indeed was a progressive realisation of the right to access to health care services.

This finding was to some extent again recently confirmed by a report released by prominent civil society organisations Section 27 and the Treatment Action Campaign (TAC), on the state of health care in Gauteng.

The Commission has also found that the government appears to be incapable of connecting the dots: without water, there is no proper sanitation. Without sanitation, there is an increase in illness and disease. An increase in illness places a burden on health care facilities and results in a loss of productivity. The loss of productivity in the workplace has an impact on the economy and the sick child cannot go to school.

Access to health care can therefore not be considered in isolation from access to other socio-economic rights and this is what makes the progressive realisation of access to health care such a complex matter.

So despite the commendable actions being taken by the Minister of Health including the establishment of the National Health Insurance (NHI), his efforts need to be considered alongside the work of other government departments including human settlements, water and environmental affairs and basic education. If our government fails to recognise the inter-connectedness and indivisibility of human rights, if it fails to acknowledge that the right to dignity is connected to access to sufficient food and water, which in turn is connected to access to health care, we will continue to struggle to ensure the progressive realisation of socio-economic rights. **Pf**

Notice

Events Calendar

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

Friday, 31 April 2013, Commissioner Love: (4 April is International Day for Mine Awareness and Assistance in Mine Action)

SAHRC meets Chief Justice to discuss mutual challenges

By Naomi Webster
Head of Commissioners Programme



SAHRC Chair Adv Mushwana with Chief Justice Mogoeng after the meeting

Commissioners (Chairperson, Mabel L. Mushwana and Commissioner Bokamkatla Malatji) met with the Chief Justice Mogoeng Mogoeng at the Constitutional Court on 27 February 2013. The aim of the meeting was to share information with the Chief Justice on the work of the Commission and explore areas of mutual interest. Commissioners and the Chief Justice were accompanied by their respective members of their Secretariats. In addition, the Chief Justice attended the meeting with other Constitutional Court judges.

The meeting discussed three main issues;

- Information sharing on International and Regional work of the Commission
- Challenges with Equality Courts
- Training of officials on Equality matters; especially Court Clerks and Judges

Chairperson Mushwana opened the meeting by firstly, acknowledging with appreciation, the time provided by the Chief Justice for the meeting. He reflected on the work

of the Commission; in particular the important stakeholder engagements that inform its work as well its role as member of the International Community of National Human Rights Institutions. Chairperson Mushwana provided information on the role of the Commission in the Equality Review Committee.

Chairperson Mushwana and Dr Kgamadi Kometsi, provided brief reflections on the Commission's Equality Report 2012, focusing on the findings of the Monitoring project on the Equality courts. They focused on research findings on court administration (lack of resources and office space and training of court officials) as well as types of cases dealt with by the Equality court. "We will be failing the Constitution if the courts and in particular, Equality Courts, are not functioning in a way that ordinary citizens have access to courts," Adv. Mushwana.

In response, Chief Justice acknowledged some of the problems with functioning of Equality courts but reminded the meeting that the Department of Justice and Constitutional Development was responsible for Equality courts; from resources to training of court clerks. "We will explore the possibility of urging the Minister of Justice to amend legislation so that every judicial officer is recognised as a Equality Court Judge," Chief Justice Mogoeng.


Some of the key issues highlighted by Chief Justice included;

- Concern on the institutional (particularly the administrative) independence of courts: The Department of Justice and Constitutional

Development continues to manage the administrative (and financial) functioning of courts

- Accreditation process required for Judges and Magistrates for Equality Court matters
- Access to justice – issues related to accessibility in terms of language, understanding of court processes, and use of courts such as Small Claims courts, Traditional courts and Community courts
- A Court Administration Model will be presented to the President and Minister of Justice and Constitutional Development this year. This model is in line with what has been proposed in the National Development Plan 2030
- Transformation in terms of race and gender is on track but more work is required in recruiting young professionals in the legal field. One of the proposals that can address the challenge for young legal professionals in obtaining legal practice is for institutions to provide legal training during the university vacation. Law students should be encouraged to work at courts during their vacation and experience different work done in courts from interpretation to administration
- Traditional courts must be restructured to be Constitutionally compliant and well resourced

Chairperson Mushwana and Commissioner Malatji raised critical points such as;

- Importance of maintaining the independence of judiciary
- Functioning of courts and documenting "best practice courts"
- Advocacy work that is required so as to enable communities to understand court system
- Training court officials so that they can provide adequate services to court users with disabilities 

SAHRC and Moqhaka Local Municipality smoke a peace pipe

... Municipality says sorry Rammolutsi



One of the open toilets built by Moqhaka Municipality in the Free State:
Source IOL

The South African Human Rights Commission has been monitoring the implementation of its recommendations by the Moqhaka Local Municipality following our finding in 2011 against the municipality for building unenclosed toilets for the residents of Rammolutsi, Viljoenskroon, in the Free State.

It is disappointing that the Moqhaka Local Municipality reneged on its obligations to furnish the SAHRC with progress report to that effect every six months until the violation has been remedied.

The last progress report was due at the end of January 2013. But this report came late after the Commission threatened to subpoena the municipality and its leadership to appear before an inquiry.

The Municipality will be required to give evidence in respect of the following aspects:

- The Municipality's failure to furnish the Commission with progress report;
- The progressive realization of the right to water and sanitation
- Mechanisms put in place to ensure the project to enclose all toilets remains transparent and responsive;
- Public participation and ongoing consultation regarding access to basic

sanitation;

The action by the Commission was guided by Section 18 of the South African Human Rights Commission Act, 1994, which provides that any person who without just cause, refuses or fails to comply with a notice under section 9(1)(c) of the Act, ... or refuses or fails to furnish particulars or information required from him or her under that section, shall be guilty of an offence and liable on conviction to fine or to imprisonment for a period not exceeding six months.

The Moqhaka Local Municipality eventually appeared before the inquiry on 27 March 2013. The municipality has since invited the Commission on a tour of the projects.

Background

In September 2010, the residents of Rammolutsi Township near Viljoenskroon lodged a complaint with the Commission after the Moqhaka Local Municipality installed unenclosed toilets in the township.

The complaint was in light of our investigation and findings on the same situation in Makhaza in the City of Cape Town.

The complaint before the Commission was an alleged violation of a number

of rights in the Constitution based on the unenclosed toilets in the Township. The rights alleged to have been violated were: Section 10 (Human Dignity), Section 14 (Privacy), Section 24 (Environment), Section 26 (Housing) and Section 27 (1)(b) (water).


Investigations undertaken by the Commission revealed that there were indeed unenclosed toilets in the area of Rammolutsi. The provision of unenclosed toilets was not only contrary to the guidelines of the National Housing Code but a violation of the residents' right to dignity.

The Commission subsequently made a finding against the municipality in May 2011 and upheld the complaint of violations to the aforesaid rights.

The Commission accordingly recommended that:

- The Respondent (Moqhaka Local Municipality) must proceed with urgency to enclose all toilets;
- To furnish the Commission with a progress report at least every 6 months in respect of the progressive realisation of the right to water and sanitation services in the township;
- The Ministry in the Presidency in charge of Performance, Monitoring and Evaluation to provide a report to the Commission within at least three months on the quality of sanitation services delivered by local government across the country.

Initially the Moqhaka Local Municipality complied with the recommendation, forwarding two progress reports in March and July 2012 to the Commission.

The reports indicated that as of July 2012, 1831 structures in Rammolutsi have been completed, and overall reconstruction was estimated at R17 million. 

SAHRC releases Water and Sanitation findings and recommendations



Stakeholders listening as Commission present the Water and Sanitation Findings and Recommendations

The South African Human Rights Commission (SAHRC) commemorated Human Rights Month with the hosting of the National Water and Sanitation Hearing on 19 March at the Pan African Parliament in Midrand.

The purpose of the national hearing was to create an opportunity for the SAHRC to engage with the relevant government departments responsible for service delivery, and to get them to respond to some of the problems people raised during the provincial hearings that took place between August and December, 2012.

The Commission presented the Findings and Recommendations from the Provincial Hearings. The findings and recommendations will be sent to specific Ministers for responses. Subsequently a report will be released, shared with the public and Parliament.

Findings and Recommendations

A summary of findings and recommendations from the Commission's report have been extracted for this publication. The full report will be made available to government and the public once responses on the findings are received from the relevant government departments.

1. Findings

1.1. Is water viewed as a commodity or human right?

- Evidence shows that water is viewed as a commodity rather than a human right, which means that people of limited financial means will not always have access to water, which in turn, exacerbates poverty.

1.2. Access to Water and Sanitation

- Some households lack access to any infrastructure in terms of water and sanitation and have to use alternate methods

for sanitation or to gain access to water.

- Many households have access to infrastructure that was either never functional or was functional but has since broke or has not been maintained.
- Many households still use buckets and fields to meet their sanitation needs
- Water and wastewater treatment plants are in a dire state of disrepair.

1.3. Quality

- Water and sanitation infrastructure in communities is in poor condition due to poor original workmanship and a lack of maintenance.
- There were also complaints of poor water quality.

1.4. Impact on Intersecting Rights

- Communities have difficulty ensuring personal hygiene due to the lack of access to water and sanitation. This often leads to health problems, which spread very quickly in communities with poor access to services, including health care.
- There were many cases of high absenteeism in school or withdrawals from the education system due to a lack of access to water and sanitation, particularly for girls

2. Recommendations

2.1. A Human Rights-Based Approach

- A cabinet-level task team should be established to ensure cooperation between government departments: their mandate and terms of reference should specifically refer to ensuring a human rights-based approach to service delivery projects.
- All policies should be centred on the Constitution to ensure that even if officials are not trained on human rights planning and implementation, the policies ensure that all service delivery projects are framed from a human rights perspective. Policies should be amended in consultation with the Commission and other rights bodies.
- A lack of access to information and the lack of responsiveness of government departments remains a huge problem for communities. The Presidency must provide solutions to this problem or alternatives so that government can be engaged effectively.

Full findings are available on www.sahrc.org.za

SAHRC finds church publication offensive, amounting to hate speech

The South African Human Rights Commission has investigated and found against Living Hope Ministries and its lead Pastor W. Smith.

The Commission received a complaint in 2010 alleging that the Free State-based church and its pastor authored and published a racially offensive book entitled “Die Raadsplan”. The complainant further alleges that in the book, which was distributed in various Christian book stores in the country, the church and its pastor depict the white races of the world as divinely ordained to be superior race which must rule over all other races.

As part of its preliminary investigation the Commission reviewed the book and found some key extracts that, to some extent, corroborated the complainant’s assertions. The extracts, translated from Afrikaans language which is used in the book include: “To walk around naked and constantly being on the lookout for “hulk and roof” is characteristic of the African Black”; “Any reference to these Blacks in the Bible must be searched for under the word “animal” or animals of the land or animals of the earth. The Blacks and the Mongolese are never included under the term “man/human being”. The Blacks or Negroid are a totally separate creation of the Adamic man. There is not a single indication in the Bible that interracial marriage is permissible”.

He further wrote: “The Blacks are a race that destroy and have destroyed many civilizations”; “He (Black man) will never be able to maintain what he has received from the white man. The deterioration of our entire infrastructure is a testimony to this. Good fertile and prosperous farms given to them, are nothing more than shantytowns/squatter camps full of erosion. When will our nation’s eyes be opened to the truth and they will stop

giving pearls to swines and dogs”.

“Apartheid is scriptural. God does not want His people to be mixed with other people. He wants His people to remain within the boundaries He has set for them (Acts 17:26). To breach or offend this is punishable by God. The current equity and mixing policy of the Government of South Africa and the rest of the world is the spirit of the devil”.

The pastor and his church believe that they exercised their freedom of expression, freedom of religion, belief and opinion to write and make the above utterances. It is the Commission’s view that the right to freedom of expression, does not extend to advocacy of hatred that is based on race and that constitute incitement to cause harm. Section 12 of the Equality Act provides that “no person may...publish or display any advertisement or notice that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person...”

The history and social context of South Africa renders the church’s publication racially discriminatory and amounting to hate speech. In fact it is the view of the Commission that the publication has the effect of undermining and regressing the gains that South Africa has made through Constitutional values of equality and dignity. It has at its core the purpose of reverting the thoughts and ideas of congregants of the church, and those who will read the book, to pre-democratic South African values of white supremacy and black inferiority, which justified privileges and social hierarchy of white people.

The Commission concludes that such publication as “Die Raadsplan” is one that is unacceptable in a free

and democratic dispensation that espouses equality as its central theme. The Commission found that the publication of “Die Raadsplan” by the church and the pastor violates the following fundamental rights: right to Equality on the grounds of race, and the right to Human dignity.

The Commission further finds that the quoted sections of “Die Raadsplan”, both in terms of its content and its effect, can reasonably be construed to demonstrate an intention to be hurtful and to promote hatred through the dehumanization of African, Indian and Coloured people.

The publication therefore amounts to hate speech within the meaning of Section 10 of the Promotion of the Equality and the Prevention of Unfair Discrimination Act 4 of 2000, and as such the Commission rejects any possible defense available to the church and the pastor that the publication was made in exercise of the freedom of religion or freedom of expression.

The Commission therefore recommends that the Films and Publications Board should take the necessary steps to remove the offensive publication from all public channels of distribution, and to mete out appropriate administration and other sanctions in terms of the Films and Publications Act; that the Institute for Race Relations at the University of the Free State, in collaboration with the Governing Council of South African Council of Churches engage the Living Hope Ministries church and its Pastor Mr. Smith and the rest of its leadership and associate institutions, in a series of Race Relations Sensitisation Workshops, and report in writing to the Commission within six months on the progress achieved.

Pf

Meeting with Sanef provides platform to advance human rights



SAHRC and Sanef sharing experiences and ways to advance a human rights reporting culture

By Kebohlale Motseothata
Visiting Intern

The South African Human Rights Commission held a meeting with the South African National Editors Forum (SANEF) on the 5th of March. The meeting will be held annually as part of the communications stakeholder engagements.

The SAHRC Chairperson, Adv. Mushwana, made a presentation to SANEF on the Commission's participation in the International Coordinating Committee of the National Institutions for the Promotion and Protection of Human Rights (ICC), as well the impact of his role as Chairperson in South Africa and Africa. Furthermore, as Chair of the Network of African National Human Rights Institutions (NANHRI), Adv. Mushwana takes on various roles and activities of the ICC on behalf of Africa. Chairing the ICC has thus increased

the attention South Africa is given for its human rights track record.

Deputy chairperson Pregs Govender further spoke about the attainment of successful advocacy through working closely with civil society (NGOs, CBOs, FBOs) on campaigns and capacity building initiatives, as well as strengthening partnerships with government. She thus urged the media to assist in positioning the SAHRC as the focal point for Human Rights.

She spoke about the necessity of implementing systematic shifts needed on how government should address issues of water and sanitation. She mentioned that the impact of the inadequacy of water and sanitation in impoverished communities has adverse consequences for other areas of social life, and made an example of girls dropping out of school due to lack of proper water and sanitation. The inaccessibility of proper sanitation in schools serves as an inconvenience to young girls going through puberty.

The Deputy Chair also raised the need to combat issues of police brutality, rape and gender based violence.

Through the meeting, SANEF requested the Commission to investigate the issue of violence against one of their journalists who got attacked in the Eastern Cape.

The institutions then agreed to meet annually in order to strengthen their relationship in meeting and addressing issues of similar interests. **Pf**

The South African National Editors' Forum (Sanef) is a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media. Sanef is committed to championing South Africa's hard-won freedom of expression and promoting quality, ethics and diversity in the South African media.

PAIA: Empowering Communities to assert their right to social services



By Fola Adeleke, Head of PAIA

In our new Constitutional democracy, the assertion has often been made that constitutional rights are interrelated and interdependent. This point was again emphasized by the Chairperson at the National Water and Sanitation hearings where he linked the realization of the right to dignity to other socio economic rights such as right to housing and consequently, right to water and sanitation. Globally, right to information activists also share this sentiment of the interrelation of rights. The right to information has often been sold to governments in an effort to lobby the passage of freedom of information laws as a right that unlocks access to other civil and political, as well as socio-economic rights. In the late 1990s, we had to look to countries like India for the justification of this assertion that the right of access to information could enable the realization of other rights. However, in recent times, NGOs in South Africa have shown the clear linkage between making requests for information to the eventual realization of access to water for a village situated in the rolling hills of Kwa-Zulu Natal.

Encouraged by this success story, the Commission has decided to shift its strategic focus from not only assisting government officials to adequately respond to requests for information, but to also empower communities to use their constitutional right of access to information to demand accountability and responsiveness from government. The PAIA unit is driving this empowerment project through the introduction of community trainings and advocacy. Over the last 8 months, the PAIA Unit has spent considerable time and effort in partnership with the South African History Archives to train community leaders of the Phiri, Soweto on how to use the Promotion of Access to Information Act to demand information from government that will in turn lead to the realization of

other tangible rights and needs of the community.

Also, the Commission has rolled out the PAIA law clinics project where twice a month, the PAIA unit conducts awareness raising sessions on human rights broadly and the importance of access to information in the realization of these rights. The awareness raising session is followed by legal assistance offered by Wits Law clinic students to resolve various complaints lodged by members of the community. Our interventions in the Diepkloof and Rabie Ridge communities in the last two weeks have been a huge success. The Unit is excited about this project and encourages staff members of the Commission to inform us of any communities within the Johannesburg area that would benefit from this initiative.

Pf



Pic: PAIA team empowering Phiri community about their right to access to information at a community hall, Soweto.

SAHRC shares experiences with Malawi Human Rights Commission

By Naomi Webster
Head of Commissioners Programme



Pic: SAHRC Chair, Adv Mushwana; Head of Commissioners Programme, Naomi Webster with Chairperson of the HRC, Amb. Sophie Kalinde and the CEO, Grace Malera.

The Chairperson met with the Malawi Human Rights Commission (MHRC) on 20 March 2013 at National Office. The MHRC congratulated the Chairperson on his appointment as ICC Chairperson and requested support on the MHRC Re-accreditation as a A-status National Human Rights Commission. You will recall our Commission also went through Re-accreditation in September 2012 and we continue to retain our A-status. The meeting also discussed the upcoming Study Tour by MHRC Officials to the Commission. The Study tour will enable the MHRC Officials to learn more about the work of our Commission.

Some Interesting Facts about the MHRC:

- The MHRC has 9 Commissioners and 2 of these Commissioners are the Ombudsman and the Law Commissioner

- Term of office of Commissioners is seven (7) years
- Malawi does not have a Gender Commission - all Gender work is done by the MHRC
- MHRC has been in existence for fourteen (14) years
- Chairperson and CEO of MHRC are women
- MHRC has 70 staff members
- MHRC gets its funding directly from Treasury Department and they have their own Special Budget Vote
- The former Chairperson of the MHRC was accused of Treason by the Malawi President because it was rumoured that the Chairperson was going to attend an ICC meeting. The President assumed ICC was the International Criminal Court whereas it was the ICC (International Coordinating Committee of National Human Rights Institutions) meeting in Geneva

Pf

Nominations for SAHRC Commissioners

The Portfolio Committee on Justice and Constitutional Development is calling on individuals, organisations, institutions and civil society to nominate suitable people for consideration as Commissioners at SAHRC.

The South African Human Rights Commission needs two Commissioners. The nominees must be South African citizens who are fit and proper to serve on the SAHRC. They must also possess suitable qualifications, expertise and experience in the area of human rights.

In accordance with the provisions of the Human Rights Commission Act and Constitution, the National Assembly may recommend persons for appointment for a fixed term, as the President may determine at the time of such appoint-

ment, but not exceeding seven years. The persons recommended for appointment as Commissioners must promote respect for and a culture of human rights; promote the protection, development and attainment of human rights; monitor and assess the observance of human rights, including rights to information and equality and act impartially and independently, without fear, favour or prejudice, in the conduct of their duties.

Recommended persons must also actively promote public awareness and education on human rights and assist members of the public with accessing their rights; be involved in the investigation of alleged human rights abuses or violations and recommend measures for redress, and contribute to the research and reporting functions of the SAHRC.

Nominations must contain the full

name, address/email address and contact details of the person or organisation making the nomination, a signed acceptance of the nomination by the nominee and a Curriculum Vitae (CV) providing the nominee's full name, ID number and gender; contact details including physical address, telephone/cell number and email address; relevant previous experience (including relevant dates and organisations concerned), and academic qualifications.

Nominations must reach Mr Vhonani Ramano, Committee Secretary, 3rd Floor, 90 Plein Street, Cape Town 8001 / PO Box 15, Cape Town 8000 by no later than Friday, 5 April 2013 at 17h00.

For media enquiries or interviews with the Chairperson please contact:
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