



Volume 35

Phanelo

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



01 - 30 June 2015

SAHRC launches Older Persons report



Access to Justice campaign kicks off in the Freestate



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**Avalon home for the disabled
investigated**

Nelson Mandela Day, 18 July

Take Action! Inspire Change

Every year on 18 July — the day Nelson Mandela was born — the UN joins a call by the Nelson Mandela Foundation to devote 67 minutes of time to helping others, as a way to mark Nelson Mandela International Day.

For 67 years Nelson Mandela devoted his life to the service of humanity — as a human rights lawyer, a prisoner of conscience, an international peacemaker and the first democratically elected president of a free South Africa.

How the Day came about

In November 2009, the UN General Assembly declared 18 July “Nelson Mandela International Day” in recognition of the former South African President’s contribution to the culture of peace and freedom.

General Assembly resolution A/RES/64/13 recognizes Nelson Mandela’s values and his dedication to the service of humanity, in the fields of conflict resolution, race relations, the promotion and protection of human rights, reconciliation, gender equality and the rights of children and other vulnerable groups, as well as the upliftment of poor and underdeveloped communities. It acknowledges his contribution to the struggle for democracy internationally and the promotion of a culture of peace throughout the world.

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SAHRC launches report on challenges facing older persons

The South African Human Rights Commission has completed its national investigation into the challenges relating to the treatment of older persons. The purpose of the investigation was to work towards the formulation of effective responses to address the numerous human rights violations experienced by older persons.

The report focuses on systemic issues that have a direct impact on older persons, specifically in their experience of attempting to access their constitutional rights. The Commission recognises that older persons constitute a vulnerable group with unique and differing needs compared to those of other vulnerable groups, such as women, children or people with disabilities, and that they therefore deserve focused attention in order to address and resolve the rights violations currently being experienced by older persons.

Older persons continue to lack access to adequate health and basic education, suffer from gender discrimination and abuse, and are threatened with economic isolation with no prospect of securing employment.

Further, due to the country's high unemployment rate, and as recipients of state-funded social grants, many older persons have become responsible for financially supporting their family members. This situation is further exacerbated by the impact of HIV/AIDS, and the fact that so many children are left or-



Older persons require care and protection

phaned by the premature death of their parents.

The report further highlights the concerning problem faced by older persons who reside in institutionalized care facilities such as places of retirement, frail care centers and in old age homes, who are often abused by those responsible for taking care of them.

In March 2013, the South African Human Rights Commission received a complaint from the South African Older Persons Forum (SAOPF) relating to the progress and implementation of a register detailing persons convicted of abusing older persons (or any crime or offence) by the Department of Social Development.

Prior to this complaint, the Commission's approach to combating human rights abuses relating to older persons has included investigation of individual complaints,

publishing statements condemning the rights violations experienced by older persons in response to media reports detailing such incidents, attending meetings and conferences with interested stakeholders that focus on issues affecting older persons, visit homes where older persons reside, and informing the public generally about rights violations concerning older persons. Still, notwithstanding these steps taken by the Commission, older persons continue to have their rights violated.

Many of these cases are still being reported to the Commission as well as the Department of Social Development, which holds the central mandate for the welfare of older persons in the country.

It was for these reasons that the South African Human Rights Commission decided to conduct a national hearing in 2013 to address these issues affecting the elderly.

**Government given deadlines
to protect the rights
of older persons**

Several departments were identified as the most relevant in addressing the challenges surrounding the rights of older persons.

The departments that made submissions during the hearings included The Department of Social Development (DSD), The Department of Health (DoH), The Department of Public Works (DPW) The South African Police Service (SAPS), The Department of Justice and Constitutional Development (DoJCD), The Department of Trade and Industry (DTI) and external stakeholders including The South African Older Persons Forum (SAOPF), and Age in Action, among others.

After careful analysis of both written and oral submissions made by various departments and stakeholders during the hearing, the Commission made the following recommendations:

Legislative Reform

* That the National DSD must propose to Parliament the amendment of the definition of residential facilities as stated in the Act within 12 months from date of receipt of this Report.

* That the Department of Trade and Industry must, within 1 month of date of receipt of this Report, appoint a task team to investigate a new dispensation and legislation policy framework of housing of older persons that would provide protection of older persons, accreditation system code of practice and the appointment of Retirement of Housing Commissioner.

Budgetary Allocations and Fund-



Commissioner Malatji conducting an interview following the launch of the Older Persons report

ing Arrangements

* That the National DSD must, within 6 months of date of receipt of this Report, provide a circular to ensure uniformity in funding of services to older persons in all provinces. This circular should prioritize issues of safety, staffing, nutrition, medicals.

That the National DSD must ensure that in the next budget cycle special ring-fenced funding allocation is allocated to residential facilities to ensure that they comply with health and safety standards in the Older Persons Act and National Building and Occupational Health and Safety Regulations.

* That the National DSD must ensure that, in the next national budget cycle, the funding allocated for the implementation of the Act is ring-fenced for this purpose, and consideration be given to a 10% in-

flation increase on key line budget items.

* That the DOH must, within 6 months from date of receipt of this Report, undertake a costing survey covering critical pharmaceutical and medical supplies for the care of older persons, including but not limited to, oxygen supply, food supplements, and incontinence products to all older persons.

* That DOH must, within 8 months from date of receipt of this Report, consider a strategy for the supervision of care for frail older persons in communities.

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**The report is available
on www.sahrc.org.za**

SAHRC investigates Avalon home

Johannesburg - The corridor reeks of urine. Through an open door in a small single room sits a man in a wheelchair. He is blind and both his legs have been amputated.

The bandaged left stump sticks out slightly from under his shorts, hiding the raw, exposed flesh and pus that oozes from it.

Theunis Kotze arrived at the Avalon home for the disabled as a blind man about a decade ago. In December, he stopped paying his rent because he felt he was not receiving the care to which he was entitled.

Kotze said that for the past 17 months he had been buying his own food and medical supplies to care for his legs, which were amputated because of a diabetes-related infection.

"I have paid rent here until December and then I stopped paying because they don't help me here.

"It's their fault that I lost my legs and I have to care for the stumps myself," he said.

When Kotze stopped paying rent in the form of his disability grant, Avalon withdrew all services and demanded that he pay separately for each service offered, such as food and transport.

Since then, he hasn't been going to his job at a protected environment workshop for the physically disabled because he can't afford to pay for transport to and from the centre. He also can't get to his specialist to treat his septic wound.

"My biggest worry is: where to from

here? I don't have a job. Who's going to pay for all these things?" he said.

Another resident, Annatjie Desmet, said she has been victimised during the five years that she had lived in the home.

In 2013, she also stopped paying her rent and as a result, services she received were also withdrawn. She accused the home of withholding food from her and sabotaging her car.

"They've put water in the petrol, they've cut open the bonnet and messed up my carburettor. My battery was stolen and a wheelchair battery was put in."

Desmet has laid charges of assault and malicious damage to property, but most of the cases have been closed.

Spokesman for Jeppe Police station Warrant Officer Richard Munyai said that was because they either did not have sufficient leads or suspects to follow up on.

In December, Avalon won an eviction order against Desmet, which her attorney is applying for leave to appeal.

"I want my life back, because I can't carry on anymore. I've had enough," the distraught woman said.

Kotze and Desmet aren't the only residents who are unhappy with the way things are at Avalon.

Other residents have complained about mismanagement, a lack of financial transparency and hygiene concerns. They claim that when

they raise their issues, they are ignored or intimidated.

Keith Green has been a resident at Avalon since December. He refuses to remain silent when he is unhappy about something.

"I was termed 'trouble maker' because I'm vocal when there's a problem," he said.

Green and another resident, Sherry Bremner, are concerned that there is no financial transparency at Avalon.

They told The Star that there was no clarity on how donations were used, no record was kept of money kept by the association on behalf of the residents, and they believed the different rental amounts that residents paid were unfair.

"These people would make an effort to pay their rent if they were just treated in fairness and kindness," said Green of the residents who had defaulted.

Bremner has lived at Avalon for 13 years and said the management had become worse over the years.

She claimed that the board consisted mainly of members of a specific church and that residents from that church were treated more favourably than other residents.

Complaints to management fell on deaf ears, she said.

"They just don't do anything really. There's no equality. If you go to them to complain about something, they don't respond to it... it's just ignored."

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Complaints to management fell on deaf ears

Green said it was only after he spoke to the media that he was provided with diabetic meals and only after he called in the Department of Health that a faeces-filled shower was repaired.

Avalon is home to 40 residents and neither Green nor Bremner want to see it close, but they believe there needs to be a complete overhaul of the home's management.

"It's a very nice place if it's run properly," said Bremner.

"There needs to be some sort of independent mediation, and not by (the Department of) Social Development," said Green.

The Gauteng Department of Social Development said it provided Avalon with continuous support and guidance.

"It should be indicated that intervention and support by the department is ongoing to ensure that rights of residents are adhered to at all times and that their care and protection remains of paramount importance," spokesman Thebe Mohatle said.

He said the department met residents and staff after receiving questions about the residents' complaints from the media.

The South African Human Rights Commission said that in 2013, it had made a number of recommendations to Avalon after receiving a complaint about the conditions at the home.

"The Commission found that the respondent (Avalon) ought to put

in place measures to improve the general living conditions of residents and also the social dynamics among residents, between residents and the management of the respondent," said spokesman Isaac Mangena.

The Commission was in the process of confirming Avalon's compliance with its recommendations.

However, it was also investigating two additional complaints involving Avalon that had been received this year, he said.

"Following an investigation, we have various options at our disposal to resolve the complaint, including, but not limited to, issuing a report with recommendations, mediating the dispute or approaching a court for relief."

Avalon manager Nhlanhla Jordan has denied claims by residents, adding that she was the one being victimised.

"Avalon has four communication channels available to residents to lodge their complaints or seek redress on any issue. Residents have constantly been advised to utilise these channels to their benefit. However, residents chose not to make use of these platforms," Jordan said.

The social worker was appointed as manager a year ago and had high hopes of transforming the home.

But she claimed she has been faced by racism, apathy and aggressiveness.

Jordan said she recently arranged

a meeting between officials from the regional and provincial departments of Social Development and residents to address the issues which were brought to the media's attention. Although the first meeting was well attended, the second was boycotted, she said, leaving residents and management at a stalemate.

"I've tried, by bringing these meetings with the department and board, to say maybe we'll find a way. I just feel like there's a wall because (residents) said 'we want to make this place ungovernable'."

Jordan said the claims about a lack of financial transparency were "not true and are mischievous".

Avalon accountant James Fairhurst said the home was facing a dire financial situation. It cost about R3 million a year to keep the home running, but in the 2014/15 year the home was R557 000 in the red.

A subsidy from the Department of Social Development funded only a third of what was needed annually and the combination of donations and rent was not enough to make up the rest.

To make matters worse, Avalon received an unexpected water bill of R1.6m 18 months ago.

"(It's) R1.6m that we don't have and will never have. If the Joburg council comes and says that account must be paid, then we'll say: 'Well, we'll close tomorrow'."

Fairhurst said rent was worked out using a means-test based on what

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How do I protect them when I also need protection?, asks Manager

residents could afford. "We sit with families and try to structure a rental that residents and their families can handle," he said.

Many could afford to pay only R1 269 a month, 90 percent of their social security grant.

In the case of Theunis Kotze, Jordan said services would be reinstated if he paid his rent.

Avalon was a residential facility and not a 24-hour care facility, he said.

All residents were responsible for providing their own medical supplies, but a nursing sister was on hand to apply bandages and treat other problems.

"Maybe residents should tell management how much they wish

to pay as rental, so that Avalon is able to provide the resources they want," said Jordan.

"There seems to be a toxic understanding of rights and responsibilities. Residents fail to see that these rights go along with responsibilities."

Jordan and Fairhurst were unable to go into detail about Annatjie Desmet's allegations because legal proceedings around the eviction order were continuing.

"She's been very objectionable in everything we've tried to do," said Fairhurst.

He said they were unaware that Desmet had made some accusations about damage to her car.

Jordan said she had reached out

to Desmet when she was first employed at Avalon, but their relationship soon soured. She said the situation at the home had become so bad that she was ready to throw in the towel.

"I just feel that everyone wants to do something for the residents... what about us? Who's taking care of us? What about the intimidation we've got to face daily, the insults, to be told you're a black k*****."

Jordan said the care workers had also complained about how they had been treated by some residents.

"How do I protect them when I also need protection?" - Additional reporting by Eye Witness News

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WORLD ELDER ABUSE AWARENESS DAY

JUNE 15

On June 15 South Africa will be participating in World Elder Abuse Awareness Day. The purpose of this day is to sensitise and educate communities around the world to have better understanding of abuse and neglect of older persons. This is done through raising awareness of the cultural, socio-economic and demographic processes affecting elder abuse and neglect. Abuse of older persons refers to actions that can harm or put at risk the health

or welfare of older persons. Many older persons around the world are being abused in their own homes, in relatives' homes, and even in facilities responsible for their care. South Africa is not excluded, in fact, abuse is rife but there are no accurate stats because people are not reporting it. If you suspect that an older person is at risk from a neglectful or overwhelmed caregiver, or being preyed upon financially, it is important to speak up. Abuse of older persons takes many different forms – intimidation, threats, neglect, and financial deception. In addition, World Elder Abuse Awareness Day is in support of the United Nations International Plan of Action acknowledging the significance of elder abuse as a pub-

lic health and human rights issue. Communities around the world are urged to report cases of abuse or neglect. They must not hesitate to report the situation, assume that someone else will take care of it, or that the person being abused is capable of getting help if he or she really needs it. If you would like to become involved in our awareness campaigns or want to arrange one in your community, feel free to call Age-in-Action (SA Council for the Aged). If you are an older person who is being abused, neglected, or exploited, tell at least one person. Tell your doctor, a friend, or a family member whom you trust or call the Age-in-Action national toll free Care Line on 0800 333 231. Source: Age-in-action.

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Access to justice must be included in the post-2015 development agenda



The Constitution of the Republic of South Africa with its entrenched Bill of Rights has received international acclaim for being the most progressive legal instrument in securing human rights to date. Furthermore, an empirical study of the constitutions of the world, found that the South African Constitution is amongst the most influential benchmarks for modern constitution-making. This means that the Constitution is a potent weapon to deal with the threat of poverty, unemployment and inequality, which are structural consequences of the apartheid legacy. However, despite the existence of our progressive Constitution, inequalities persist, particularly in the enjoyment of socio-economic rights.

A recent report by the World Bank which compared South Africa with 11 other middle income countries found that, "... inequality in South Africa was still higher than the other 11 countries in the sample... it (South Africa) was one of the most unequal countries in the world".

To address these structural inequalities it therefore becomes imperative to make justice accessible, especially to the poor, marginalised and the vulnerable. Therefore, in the South

African context, access to justice is an indispensable right in upholding human dignity thereby, improving, facilitating and expanding individual collective access to law and justice to ensure economic and social development. The right of access to justice is linked to the developmental agenda which seeks to address the imbalances prevalent in society. Being able to access justice must therefore be seen as a sine qua non for human development. Unfortunately, due to the prohibitive costs of legal services and the dearth of free legal assistance in civil matters, access to justice remains illusory to the majority of the vulnerable, poor and marginalised people in South Africa. According to a research, the average South African household would need to save a week's income in order to afford a one-hour consultation with a legal practitioner. Lamenting on this, the Deputy Chief Justice, Mr. Justice Dikgang Moseneke, noted that more often than not, "proper access to justice is often a function of one's bank balance".

On hindsight, the Millennium Development Goals (MDGs) contributed significantly in placing key issues of development at the epicentre of the international human rights agenda. Unfortunately, the MDGs have not been able to reduce the chasm between the 'have-lots' and 'have-nots'. Those who are poor, marginalised and vulnerable, continue to be excluded from accessing justice, with those who are privileged. Therefore, the year 2015 is an opportunity to include the right of access to justice in the post- 2015 development agenda, which was a missing link in the framework of MDGs.

A specific target on access to justice

will serve as a double-edged sword to those who have hitherto been living under impoverished conditions. On the one hand, it will serve as a tool for fighting inequality and accessing all human rights, and on the other hand, it will act as a protective shield to prevent people from being marginalised and being further alienated from the system. As an institution, the South African Human Rights Commission acknowledges that being able to access justice is a fundamental right, yet non-negotiable right. The Commission recognises that the right of access to justice unlocks all the other rights in the Constitution. The right to access justice has the potential of fostering an egalitarian and transformed society where everyone's fundamental human dignity is respected and protected.

To this end, in an attempt to promote the development of human rights, especially the right of access to justice, the Commission will be launching the Access to Justice Campaign. This campaign is informed by the fact that freedom under a constitutional democracy is meaningless if people are not free from poverty, inequality, injustice, and hunger and free to exercise their rights. Along that vein, the Commission is optimistic that a stand-alone goal on access to justice must be included in the post-2015 development agenda. The reason is because not only will a stand-alone goal on access to justice tackle inequality and poverty that is prevalent but it will also have a bearing in the fulfilment of the goals and values. **Commissioner Advocate Mohamed Shafie Ameerma is responsible for Human Rights, Access to Justice and Housing.**

SAHRC launches access to justice campaign

The South African Human Rights Commission has recently launched the access to justice campaign by hosting a colloquium at the University of the Free State in Bloemfontein.

Commissioner Mohamed Ameer-mia said in his opening remarks that the campaign is aimed at informing and reminding marginalised people of their human rights and their right of access to justice.

“As part of celebrating 20 years, the Commission has done some introspection, and found that the right of access to justice which acts as a mechanism enabling the economically and politically marginalised to protect their inalienable rights, remains an ideal to most people in the country”, said Commissioner Ameer-mia.

“This is because access to economic resources is still largely defined by levels of literacy and education, corollary, those who are poor are mostly illiterate, lacking capacity to understand and enforce rights, thereby resulting in them not being able to access justice. For instance, according to research the average South African household would need to save a week’s income in order to afford a one-hour consultation with a legal practitioner”, he added.

He further indicated that the SAHRC is going to work very closely with universities, law clinics, paralegal movements and community based organisations to take the campaign to all the corners of the Free State province especially in the rural areas.

Public and constitutional law ex-



Delegates at the launch of the Access to Justice campaign.

pert Mr Jonas Ben Sibanyoni as the Keynote speaker during the launch of the colloquium highlighted that South Africa had one of the most progressive constitutions in the world and it was important for the country to ensure that the promises for equality are fulfilled so that the constitution becomes a living and practical document, he said.”

Mr Sibanyoni emphasised that the SAHRC before discussing the right of access to justice it must be noted that the right of access to justice cannot be divorced from the importance of knowledge of constitutional rights. This means that constitutional literacy is mutually supportive of the right of access to justice”, he added.

He indicated that the concept of access to justice has become a global issue and has received recognition locally, regionally, and internationally. There has been 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 service, to a broader definition which includes social justice, economic justice, and environmental justice. This means that “access to justice involves more than simply physical access to courts”, but includes: “social justice, gender justice, economic justice and environmental justice.”

He further said, “the need to launch the Access to Justice Campaign is made pertinent by the fact that the right of access to justice is the right that “unlocks” all the other rights in the Bill of Rights. Thus, by launching the Campaign the Commission attempts to assert and pursue actively the realisation of all rights in the Constitution. Freedom under a constitutional democracy is meaningless if the people are not free from poverty, inequality, injustice, and hunger and free to exercise their rights”, he Sibanyoni

SAHRC finds against Enviroserv (Pty) Ltd

The South African Human Rights Commission has found against Enviroserv for operating a regional medical waste incineration facility affecting the health of community members residing around Ferreira Avenue in Bloemfontein, thus violating their right to a clean environment.

The SAHRC conducted an investigation against Enviroserv following complaints that the company's incinerator has been bellowing out large volumes of smoke during the day and night since February 2013. As a result of the incineration the air in the area is polluted affecting the health of residents in the area.

Complainant Mr Johan De Beer and other community members including his neighbour, who was hospitalized due to the

emissions from the incinerator and a teacher at Fauna Primary School who also had experienced problems with the air pollution caused by the incinerator which had adversely affected his performance at the school due to a blocked nose.

Mr Johan De Beer complained to the Commission that Enviroserv (Pty) Ltd also known as E.C. Incinerator Services is violating his constitutional right to a clean environment by operating a medical waste incinerator near his home at Ferreira Avenue, South of Bloemfontein.

He further alleged that since he moved into the farm two and half years ago, he has been suffering from various medical conditions which includes sinusitis, swollen glands in neck and under tongue, stuffy nose, burning sensation in throat, blood coming out of nose,

burning eyes, bad bitter taste in mouth from solid present in the air which he inhales, dizziness and headaches. He indicated in the complaint that he has visited his doctor on several occasions to receive medical attention.

Findings

The South African Human Rights Commission has found that:

The E.C. Incinerator Services (Enviroserv) (Pty) Ltd failure to ensure that its medical waste incinerator reached correct temperatures at all material times and the consequent excessive black emissions which polluted air in the area violated the community's and Mr John Walde-mar De Beer constitutional right to a clean environment.

Parents discouraged from using corporal punishment

Pretoria – The Minister of Social Development Bathabile Dlamini has once more encouraged parents to use other forms of discipline as opposed to corporal punishment on their children.

"Teenagers need caring adults to help them control their behaviour and should be able to respect the parent or caregiver's authority without harsh discipline such as corporal punishment, verbal abuse and name calling," Minister Dlamini said.

She said harsh discipline was harmful to a child's self-esteem which makes it difficult for them to have respect and may condition a child

to use violence to solve their own problems.

As South Africa commemorates Child Protection Week from 31 May to 7 June, Minister Dlamini said the Children's Act discourages any form of violence against children, while the children's rights sector argues that any physical punishment is unconstitutional.

The Department of Social Development is rolling out a parenting skills programme known as Active Parenting of Teenagers, which is aimed at highlighting the challenges facing parents of teenagers.

The programme explores the stage of adolescence and its dynamics;

it assists parents in understanding their teenagers and also enables parents to better deal with the challenges of raising a teenagers as well as highlighting the support system that can be accessed by parents.

"We encourage parents to give positive attention to their children by listening to and respecting them. And if the teen does not seem to be interested in bonding, parents should keep trying," she said.

Minister Dlamini said parents could also improve their relationship with their children by allowing teens to be themselves.

Rights



Abroad

Over 70 % of NHRs in compliance with minimum standards

Speech by Adv Mushwana, Chairperson of the ICC

National human rights institutions are increasingly being recognised as important stakeholders in the advancement of human rights. Though relatively new actors in the field having only been formally recognised internationally in 1993, there was a common understanding that within each State, there was a need to establish an independent mechanism that would serve the primary purpose of advancing the promotion and protection of human rights in every aspect of society. A daunting task, yet the reality was that in the absence of a 'bridging' mechanism between the State and other actors with respect to the application of human rights, a gap existed in the effective promotion and protection of human rights.

Today there are now over 100 national human rights institutions with 72 being in compliance with the minimum standards set out by the General Assembly in 1993 and thus enjoy formal recognition and participation rights within the Human Rights Council, including the Universal Periodic Review process, the treaty body committees and other related processes in Geneva.

National human rights institutions

play a unique and instrumental role in the promotion and protection of human rights at a domestic level through: education and awareness programmes, research, advocating for compliance with human rights obligations, advising on legislation impacting on human rights and in some instances, complaints handling.

An important role of national institutions that is set out in the Paris Principles is to cooperate with the United Nations. It is in this way that NHRIs play an important role in advocating for recognition and implementation of international human rights standards at a domestic level, provide independent and credible information to UN and regional human rights bodies and assist with follow up of recommendations. It is for this reason that the United Nations recognises national institutions as their natural partner at a domestic level, creating a bridge between the international and domestic arenas.

The role that NHRIs play at the international level has been greatly influenced by their international association, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights or the

ICC. From a loose network in the early nineties the ICC has evolved to a formal organisation with over 100 members and is recognised as a key human rights actor by the UN and increasingly within other spheres such as the African Commission on Human and Peoples Rights, the Inter American system and the European Union.

One of the ICC's primary functions is to accredit national institutions under the auspices of the Office of the High Commissioner for Human Rights. The accreditation process determines compliance with the General Assembly's Paris Principles. Those national institutions that are fully compliant are awarded an A status.

The ICC also plays an important role in advocating for the recognition of NHRIs throughout the UN human rights system, including here in New York; engaging at the highest levels.

Working closely with NHRIs at the regional level are the ICC's independent regional networks which do much work in the area of capacitating NHRIs so that they can fully discharge their mandates in accordance with the Paris Principles.

Outside of recognition in Geneva, one of the biggest accolades of this role was the inclusion of NHRIs during the negotiations of the Convention of the Rights of Persons with Disabilities through the Working Group and the continued participation -though not formally- in the

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It is foreseeable that human rights will become the primary pillar of the UN alongside peace, security and development

Conference of States Parties to the CRPD.

I make specific mention of the CRPD process because this treaty was the first to create an independent monitoring mechanism compliant with the Paris Principles to ensure that the ideals espoused in the instrument become a lived experience for persons with disabilities. It recognised that without having an independent monitoring mechanism at a national level that it would be difficult to achieve the goals set out by the CRPD.

For NHRIs, the importance of sustained advocacy to ensure recognition in international human rights processes outside of what occurs in Geneva remains high on the agenda.

It is important that States recognise the importance of not only establishing independent and effective Paris Principles compliant NHRIs, but to maintain those NHRIs at a compliance level. NHRIs cannot be a buzz word, they must be seen as partners when speaking of human rights in all spheres, including in development.

National institutions are not adversaries of government, they are independent state institutions that are there to support government in the promotion and protection of human rights. This implicitly means that national institutions are beholden to speak out on matters of concern and not to merely state what governments would wish to hear.

National institutions have a clear

role to play across UN processes associated with the promotion and protection of human rights; whilst this has been increasingly accepted, the discussion now needs to move to the modalities thereof.

In its most recent NHRI Resolution, the General Assembly welcomed “the contribution of national human rights institutions compliant with the Paris Principles to the work of the United Nations” further encouraged “national human rights institutions compliant with the Paris Principles to continue to participate in and contribute to deliberations in all relevant United Nations mechanisms and processes in accordance with their respective mandates”.

The General Assembly further requested the Secretary-General to focus in his next report on the current participation of Paris Principles compliant NHRIs in the work of the GA and related processes, with a view to

- Exploring the feasibility of enabling national human rights institutions compliant with the Paris Principles to participate independently in relevant United Nations mechanisms and processes in accordance with their respective mandates and
- Based on practices and arrangements agreed upon in Assembly resolution 60/251, Human Rights Council resolutions 5/1 and 5/2 and 16/21 and Commission on Human Rights resolution 2005/74
- While ensuring their most effective contribution.

This Report is currently being prepared and will be placed before

the General assembly in September this year. There is therefore an upcoming opportunity for Member States to grapple with the modalities of NHRI participation here in New York.

This debate will take place against the backdrop of the Sustainable Development Goals being negotiated and adopted here in New York in September as well. It is yet to be determined what a monitoring and follow up mechanism to the SDGs will look like and which role players will be involved. However, National institutions are uniquely placed to independently monitor, at a country level, progress that is made in achieving these goals.

Here it should be noted that NHRIs have played a valuable role in the Universal Periodic Review (UPR) process, a human rights peer review mechanism overseen by the Human Rights Council. The participation by NHRIs by way of providing additional information and then conducting follow up on the recommendations made in country has been welcomed by states.

Human rights is often referred to as the third pillar of the United Nations. However, the way in which the UN is evolving it is foreseeable that human rights will become the primary pillar alongside peace and security and development.

The Secretary – General's Rights up Front initiative heralds a new approach by the UN in carrying out its mandate. It will be his legacy and will ensure that human rights is ultimately mainstreamed throughout the UN system.

The inextricability of human rights from all aspects of life and thereby the work of the UN is accepted. However, we are yet to get there in daily practice. It is thus a foregone

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NHRIs are not political bodies and nor do they wish to enter into the political arena

conclusion that the space for national institutions will grow within the UN system, for where human rights travel so too do NHRIs. It is only a matter of time and determining suitable and acceptable modalities for this participation that remains to be determined.

NHRIs are not political bodies and nor do they wish to enter into the political arena and processes associated with political decision making. NHRIs are state created independent human rights bodies that can provide valuable information to inform the basis upon which decisions are taken. Independent and credible information is essential for decision making and NHRIs are often the holders of this information.

NHRIs are responsible for the promotion and protection of human rights in country and what takes place within the UN is closely monitored. Where matters impact on human rights and whether these emanate from the Human Rights Council or other UN bodies, NHRIs in terms of their mandates are duty bound to create awareness, conduct advocacy and carry out follow up if these actions will support the promotion and protection of human rights.

The ICC is of the view that the General Assembly as the United Nations' principal deliberative organ has a historic opportunity this September to send out another clear indication that NHRIs are welcome to contribute in those areas of UN work that would benefit from their specific independent human rights expertise.

Already there are areas of work

that are carried out here in New York that would benefit from participation by NHRIs. For example, the Commission on the Status of Women would benefit by receiving information from NHRIs, all of whom address gender matters from a human rights perspective. NHRIs can currently participate, however as part of state delegations. This though provides a serious conflict for NHRIs as it is seriously frowned upon by the Treaty Bodies should a NHRI appear before them as a member of a state delegation.

So too, would the Conference of States Parties created in terms of the Disability Convention benefit from the participation by NHRIs. In fact, NHRIs are already participating, however on an ad hoc manner that is determined from year to year.

The Working Group on Ageing is yet to grant formal recognition to NHRIs and participation has been by way of invitation to form part and speak on Expert Panels. The process is only the poorer for not inviting all NHRIs to participate more broadly as experts in the area of human rights and ageing. The process would undoubtedly be fit from receiving expert independent human rights information from NHRIs.

The ICC is realistic and knows that change does not come quickly in the UN, even more so at the General Assembly. The ICC does not have expectations that NHRIs will be granted full participation rights on par with Member states or NGOs. NHRIs are distinct from NGOs and it is thus necessary to create different modalities of participation. However, what is certain, is that it is only a matter of time before the contribution of NHRIs will come to be welcomed, formally recognized and valued throughout the UN

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Sustainable development goals: What role for NHRIs

NHRIs have evolved to become key actors within the international human rights architecture. Their importance as a 'bridge' between the international human rights level and the application of human rights at the domestic or national level is now recognized as a distinct characteristic without which the realization of human rights would not occur effectively.

At the EU development days event for NHRIs held from 3-4 June under the auspices of the European Commission, Adv Mushwana, the SAHRC Chairperson and Chairperson of the International Coordinating Committee of national human rights institutions spoke on the role that NHRIs could play in the successful implementation of the sustainable development goals (SDGs). He identified one key area in which NHRIs could be involved in as monitoring the implementation of the SDGs while paying particular attention to the disaggregation of data to ensure that the poor and vulnerable receive tangible results of development and that their lives are transformed into tangible lived experiences.

In essence, for the SDGs to become a birdsong for the marginalised then they must be implemented through a human rights lens. But this is not without its challenges. Michel Forst the UN Special Rapporteur on the situation of human rights defenders and an ICC Bureau Member, identified some of the challenges that NHRIs faced as a result of fighting for the recognition of the link between human rights and development including the backlash from their Governments which created when they raise their voice against human rights violations occurring as a result of development.

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In the Seat

with Makutla Mojapelo
Records Manager

I find it too difficult to work or be surrounded by lazy people.....



Your position at the Commission and what it means to you?

I am working as a Records Manager. I may say this is actually my first managerial position. Though it is a junior managerial position but I am grateful and working hard daily not to disappoint all the people who felt I could run Records Management programme.

I am responsible for promoting effectiveness, efficient and accountable management of the commission's records and ensuring, by inspections or any other means, the organisational compliance with all legislations regulating records service in South Africa. It is still a challenge as the concept "records management" needs to be re-defined as some understand it in different ways. I am also responsible to compile and review records classification system for the commission and also ensuring that the system is being used by business units. I am grateful for this responsibility and looking forward to bring change to this institution by seeing to it that there is sound records management across all our provincial offices.

We are a democracy institution; the last time I checked, Information Access was, and still remains, a right as provided by PAIA. So now the question is, how can we enjoy the benefits attached to access to information? Obviously through available records. PAIA without

Tell us about Makutla in a nutshell?

What stands about me is my appetite for learning and capacity for hard work. I am partially a Christian but I have almost all the values for Christians. I find it too difficult to work or be surrounded by lazy people and I declare every opportunity as uninterrupted one.

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

The eagle (Makutla Gibson Mojapelo) had landed on the 08th day of August in the year 1989. I was born at a deep rural area called Ga-Molepo just next to Zion City Moria. The rural state of my village keeps me motivated day in and day out, not because I have managed to survive all kinds of struggles in

the midst of resource insufficiency, but because I am learning one or two indigenous activities, of which nurture me as an ordinary African. By resources I am basically referring to resources that are needed to support the educational needs of today and also to uplift our living conditions as residents.

I matriculated from Magaedissha Secondary School in 2007. It was a bit of a hustle for me to walk for a distance in order to obtain the education that I demanded. I was even turning into a laughing stock in my village because there was a secondary school located not far from my home. You know with Education, at times, accessibility is being overruled by quality.



sound records management will just be a journey without destination.

Day outside office?

“Learn without limit” is UNISA slogan which inspires me, that is why I am a registered student at UNISA doing Masters of Information Science in Archival Studies. This leaves me with no option but to make a library my secondary home, more especially on Saturday. Sunday I will just do the in-house study or watch parliamentary channel. I enjoy watching National Assembly than the rest.

What motivates and inspire me?

I gets motivated by people who declares every opportunity as uninterrupted one. We have one Christmas in a year.

Favourite activities

I’m not good in dancing but it appears to be my favourite activity. I also enjoy watching people dancing.

Any interesting thing that people don’t know about me?

Just when I made up my mind that I embark on a diet journey, that is when I realise that I have a strange appetite for pap. That’s really bad.

Favourite quotation

“To have the truth in your possession you can be found guilty, sentenced to death” by Peter Tosh. This quote appears to be similar to this “If you stand for the truth, you will stand alone” by Lucky Dube.

Passionate about

Making a tireless contribution in someone’s lives has always been and will remain my passion. I am

a founder of an organisation called Molepo Community Development Forum. Having looked at the challenges we are facing in my community, the organisation intends to bridge the gap between the residents and their future by, where possible, providing educational support in a form of advice and also helping the residents, be it adult or youth, to realize their talents and thereafter capacitate them with resources to shape their future.

My favourite book, music, chill out place, etc.

Reggae music is here for the truth and message as has been echoed by Lucky Dube. I conquer with this remarks. Reggae music is not one of my favourite but my ONLY FAVOURITE MUSIC.

Chiefs, Pirates or Polokwane City

Polokwane City



Makutla at the Strategic and team-building session at Kopanong

Why it is important to properly manage records

1. Statutory and regulatory frameworks which promotes sound records management are as follows:

1.1. The Constitution, 1996

- Section 195 of the Constitution provides for the effective and efficient use of resources.
- It further provides for the public administration to be accountable through the provision of timely, accessible and accurate information

1.2. National Archive and Records Service Act (Act. No. 43 of 1996, as amended)

- National Archives is an Agency of Department of Arts and Culture and has been charged with the responsibility to ensure proper and sound records management in South Africa.
- Section 13 of National Archives Act provides for the National Archivist to determine record keeping system which should be adopted by public entities. The act also gives the National Archives an additional powers to authorize the disposal of public records or their transfer to archival custody

1.3. Promotion of Access to Information Act (Act. No. 2 of 2000)

- SAHRC has been mandated to monitor PAIA
- The act seeks to promote transparency, accountability and good governance
- Imagine PAIA without properly organised records
- According to consolidated PAIA report (2008-2012) "Institutions that have incorporated PAIA compliance within their records management compliance framework tend to do better than those that have not"

1.4. Promotion of Administrative Justice Act (Act no. 3 of 2000)



This is not how records are supposed to be.

- Provides for Administrative action be lawful, reasonable, fair and properly documented
- Failure to provide records for administrative action taken, it could be presumed that action taken for no reason

1.5. Electronic Communication and Transaction Act (Act no. 25 of 2002)

- The act seeks to Build trust in electronic records
- Electronic data or record are legally admissible records.
- But the act further says such information must be Authentic and reliable

2. A need for records management

- As a public entity, we are obliged to Comply with legislations
- Accountability, transparency and good governance
- The relevant information at the right time (Quick access)
- Efficiency and economy are ensured by eliminating unnecessary duplication of records

- To enable effective financial management as required in terms of PFMA

3. Contribution of records management towards risk mitigation

- All organisations face a variety of risks
- Records management is in fact one of risk management tool
- Records management is important in strategic decision making, reduces cost, reduces risks from litigations and improves staff performance

4. According to Professor Mpho Ngoepe: UNISA

- Loss of revenue assets (Financial risk)
- Failure to comply with legislations (Legal Risk)
- Exposure to penalties in litigations and investigations (Legal Risk)
- Violation of the law (Compliance risk)
- Staff time wasted searching for lost or mislead document (Knowledge management risk)

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Records Management staff in front of the Registry. Back Row: Wilfred Phooko, Records Assistant; Tebogo Molema, Records Intern; and Makutla Mojapelo, Records Manager. Front Row: Pleasure Mogokong, Intern and Dineo Phushuli, Records Clerk

- Accidental access of records by unauthorised people (Security risk)

5. AGSA and NASA

- Office of the Auditor General of South Africa is working jointly with National Archives and Records Service of South Africa and the two organisations have signed a memorandum of agreement
- This was after AGSA realised that records management have impact on audit outcomes
- Proper Records management lead to positive audit outcomes (Makwetu 2014)
- As per the provisions of the memorandum, additional focus on records management in future audits will be:

"To assess whether the auditee implemented sound records management principles that ensure the proper creation, maintenance, use, and disposal of records to achieve efficient, transparent and accountable governance"

The following records management aspects will be audited:

- Policies and procedures
 - Responsibility
 - o Records manager
 - o Qualifications
 - Systems
 - o Records classification system (File plan)
 - Trainings
6. How can SAHRC achieve a proper records management?
- o Records manager
 - o Approved records classification systems
 - o Records management policy
 - o Training sessions
 - o Keep records in safe custody
 - o Register books

7. How can we measure the effec-

tiveness of our filing system?

- o Does the system ensure that all documents on a specific subject are placed together and can be made available in the quickest and most satisfactory manner
- o Does it make an effective division between ephemeral and valuable records through which a system programme can be put into place

8. Why SAHRC needs a proper filing systems

- o Filing means keeping documents in a safe place and being able to find them easily and quickly
- o Documents that are cared for will not easily tear, get lost or become dirty
- o A filing system is the central record keeping system for SAHRC
- o It helps you to be organised
- o It also helps all the people who should be able to access the information to do so easily even in your absence.
- o In case of group work, everyone who needs to use the documents should know where to get them

9. SAHRC file plan

- o Consist of 19 Main series
- o The file plan has been arranged according to the functions of the organizations
- o Such arrangement is from general to specific. When making use of the file plan, do not take the first number that you come across.
- o The file plan consist of Instructions
- o Underlined subjects in the file plan are not files

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A filing system is the central record keeping system for SAHRC, helps you to be organised and helps all the people who should be able to access the information to do so easily even in your absence.

SNIPPETS

We didn't give al-Bashir safe passage - govt

Johannesburg, 22 June 2015 - Government has "categorically denied" weekend reports that it plotted the safe passage of Sudanese president Omar al-Bashir.

"Government has noted reports in the media claiming that security cluster ministers held a secret meeting to protect and give safe passage to Sudanese President Omar al-Bashir. The report relies on nameless and faceless sources to make these allegations," Government Communication Information Services (GCIS) said in a statement.

"Government categorically denies that there was a secret meeting held by the security cluster ministers including minister in the presidency and the director-general of the presidency in Cape Town. It alleges that this meeting was to plot the safe passage of President al-Bashir during African Union Summit in Johannesburg last week.

"Government remains committed to finalise this matter through the court process. It is expected to provide the court with a report that explains how President al-Bashir left the country," the GCIS statement said.

At the weekend, media reports indicated that President Jacob Zuma and senior ministers from the security cluster had carefully planned how al-Bashir would leave the country, despite a warrant for his

arrest by the International Criminal Court (ICC), to which South Africa is a signatory.

The SA Litigation Centre (SALC) had applied for South Africa to enforce two warrants for al-Bashir's arrest issued by the ICC in 2009 and 2010 relating to alleged war crimes and genocide.

Judge Hans Fabricius then ordered the department of home affairs to ensure that all points of entry and exit be informed that al-Bashir was not allowed to leave until SALC's application was concluded.

Al-Bashir left the country while the matter was still being heard in court. **Source: News24**

SA Catholic Church adds voice to Nkandla furore

Johannesburg – President Jacob Zuma needs to show leadership and take responsibility for the spending at Nkandla, the Catholic Church said on Tuesday.

Police Minister Nathi Nhleko's finding that Zuma was not liable for any of the upgrades to his Nkandla homestead was met with dismay by the Justice and Peace Commission of the Southern African Bishops' Conference, Bishop Abel Gaba said in a statement.

While millions of people were struggling to make ends meet, it was morally unjustifiable for R246m to be spent on one man's home, for features that had nothing to do with security, said Gaba.

"We therefore appeal to the president to show ethical leadership and take some responsibility for the runaway expenditure on the Nkandla project."

Gaba said the commission was concerned the Nkandla affair would harm national efforts to end corruption and achieve moral regeneration.

"We strongly appeal to the government to make sure that the Nkandla saga does not diminish the capacity of the office of the Public Protector to fight corruption," Gaba said.

Possible court action

On Monday, Public Protector Thuli Madonsela said the matter may be taken to court if Zuma fails to implement the remedial action her office suggested in its Nkandla report.

Speaking on The Justice Factor on eNCA, Madonsela encouraged Zuma to approach the courts himself to settle the matter once and for all.

"We are now at the level of oversight, where the role players become the Public Protector, the President, Parliament and ultimately the courts.

"The best authority to take this matter to court would be the President. To just get the court to say 'What really should he do now?' and secondly, 'What should be the powers of the Public Protector?'"

She said this would ultimately improve Zuma's relationship with the Public Protector's office. **Source: News24**

Happy Birthday

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

Ms Nomawethu Mhlope (EC) 03rd Ms Thembelihle Ndala (HO) 06th

Mr Walter Nene (NW) 09th Ms Hilda Pule (HO) 14th

Ms Mpho Boikanyo (NW) 16th Ms Alufheli Nefale (MP) 18th

Ms Alucia Sekgathume (HO) 19th Ms Lindiwe Dlamini (HO) 20th

Ms Hlengiwe Mkhize (HO) 24th Mr Gregory Paulse (HO) 28th

Mr Aubrey Mdazana (EC) 30th