



# Fanelo

*"It's Your Right"*

Transforming Society. Securing Rights. Restoring Dignity.



Volume 02

The South African Human Rights Commission Newsletter

01 - 30 November 2012



## *The SAHRC Chair leads the Commission to Rustenburg*



### **Commission's powers**

The Commission as the independent national human rights institution is created to support constitutional democracy through promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.

## About the Commission

*The Commission was inaugurated on 02 October 1995 under the Human Rights Commission Act 54 of 1994 and as provided for by the Constitution of the Republic of South Africa Act 200 of 1993.*

*“Do your little bit of good where you are; it’s those little bits of good put together that overwhelm the world.”  
— Desmond Tutu*

### Did you know?

- November 11 is International day for science and peace
- November 16 is international Day for Tolerance (UNESCO)
- November 20 is international Children’s Day
- November 25 is International day for Elimination of Violence against Women

## In this issue:

**Commission goes to Mari-kana:** *No active probe until after the Farlam Commission of Inquiry...page 04*

**Commissioner Mokate addresses the launch of Child Gauge 2012:** *Long road to accessing basic education rights...page 07*

**Find out what makes the Northern Cape Provincial Manager tick:** *In the hot seat...page 11*

**A day in the City of Roses:** *Pfanelo profiles the Free State Office...page 12*

**SAHRC creates space for dialogue:** *Roundtable Discussion on Freedom of Expression and Hate Speech...page 07*

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*“Transforming Society, Securing Rights, Restoring Dignity”*



Kayum Ahmed – CEO, Editor in Chief

During the review of the Commission's second quarter performance report on 29 October 2012, it became evident that our institution was well on its way to achieving some of the strategic objectives set nearly two years ago. The Commission has become a focal point for human rights in South Africa. Commissioner Love's work on acid minedrainage, the Deputy Chairperson's water and sanitation hearings and Commissioner Mokate's development of a Charter on Basic Education, were all cited as examples of the achievements made during the first half of the 2012/13 financial year.

The Chairperson's work on the international front, particularly as Chairperson of the Network of African National Human Rights Institutions (NANHRI), Commissioner Malatji's work in the disability and older persons sector and Commissioner Titus' focus on anti-torture and police brutality, were also reflected upon during the Commissioners' meeting.

In addition, Commissioners approved various amendments to our Annual Performance Plan for 2012/13 during the mid-term review meeting held on 30 October 2012. These changes relate primarily to the increase in performance targets due to various efficiencies that have been achieved across the Commission.

These proposed changes were initially conceived during the Secretariat's strategic planning session held in early October. One of the most important components built into the Secretariat's strategic planning process was a team building session for managers. Given that fifteen out of the twenty

management posts are new appointees, it was important for the management team to begin to build strong relationships amongst ourselves. I believe that we have managed to set in motion a process that will allow us to do so.

We have begun to build relationships centered on trust, co-operation, synergy, honesty and respect. It has not been easy. But we have persevered, we have remained focused on what the Commission's mission and vision is, we have set aside our personal differences, and I believe that we are now ready to take the Commission to the next level.

The management team however recognizes that we cannot achieve our goals without the strategic direction set by Commissioners and the entire Secretariat playing its part in the implementation of our vision. We therefore need to extend the process that has been embarked upon to ensure that we build those relationships needed to strengthen the institution across the entire Commission.

Over the next few weeks and months, the management team will begin to implement the revised strategic plan that was approved by Commissioners and will hopefully also instill our new found energy and inspiration throughout the Commission. I invite you to be open and receptive to this approach and look forward to working alongside you in building and strengthening the Commission.

Warmest regards 

#### URGENT NOTICE

From the Chief Financial Officer, Peter Makaneta

Its that time of the year again when staff takes long leave to be with their families during the festive season or go on holiday.

In terms of section 3.9 of the Commission's Employee Handbook it is stated that:

3.9 Annual Closure

3.9.1 The Commission will generally close its office over the year-end period from 12h00 on 24 December or the previous working day, if the 24th December falls on a weekend, & open on the first working day in January each year at the discretion of the CEO.

3.9.2 These compulsory days leave will form part of the annual leave taken by all employees.

As 24 December 2012 will fall on a Monday, a decision has been taken to close the office on Friday 21 December 2012 at 15h00 and to re-open on 2 January 2013. This closure amounts to 4 days leave. All staff members are reminded to submit their leave applications for the end of year compulsory leave from 24 December to 31 December 2012 i.e leave days being 24, 27, 28 and 31 December 2012.





# SAHRC goes to Marikana

## No active probe Commission admitted as a party to the Farlam Commission to maintain a watching brief

*Statement by the Chairperson, Adv. Lawrence Mushwana on Marikana Investigation in relation to the Farlam Commission of Inquiry.*

### At a Press Briefing on the sidelines of the Farlam Commission, Rustenburg Civic Centre

The South African Human Rights Commission (SAHRC) shall be a participant before the Farlam Commission of Inquiry, in keeping with its constitutional mandate. The SAHRC is mandated by section 184 of the Constitution of the Republic of South Africa to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic.

The SAHRC also has the powers, as regulated by national legislation, necessary to perform its functions, including the power to investigate and report on the observance of human rights; and take steps and secure appropriate redress where human rights have been violated.



*SAHRC Chair, Advocate Lawrence Mushwana flanked by CEO, Kayum Ahmed on his right together with the Centre for Applied Legal Studies (CALs), Bonita Meyersfeld during the Marikana press briefing*

The SAHRC is further mandated by section 7(b) of the Human Rights Commission Act (54 of 1994) (“the Act”) to maintain close liaison with institutions, bodies or authorities similar to the SAHRC in order to foster common policies

and practices and to promote cooperation in relation to the handling of complaints in cases of overlapping jurisdiction.

It is important to emphasise the SAHRC has no intention at all to conduct parallel or separate investigations.

The SAHRC has received a complaint into allegations of human rights abuses relating to the incidents at Marikana. In accordance with the Act, the SAHRC is required to consider such complaints.

It is our view, however, that it is most appropriate that the Commission of Inquiry conducts and completes its investigation as the outcome of that process

*Continued to page 05*



*Journalists taking notes as chair addresses a press conference in Rustenburg*



will most likely speak to concerns raised in the complaint.

The SAHRC anticipates two roles in the Commission of Inquiry, both derived from its Constitutional responsibilities.

First, the SAHRC wishes to adopt a watching brief, monitoring the evidence as it emerges, to facilitate the SAHRC's own work in relation to the causes and consequences of the events at Marikana.

Secondly, the SAHRC would seek to represent the public interest in the promotion and observance of human rights. In that role, the SAHRC would make submissions and bring evidence on specific matters, which it appears no other party is intending to address.

At present, those matters appear to

include:

At present, those matters appear to include:

1. Corporate Responsibility of Lonmin Plc with regards to their compliance with the Environmental Regulatory System and their Social and Labour Plans.

- Compliance with the Environmental Regulatory system

- Compliance with social and labour plans

2. Police culpability with specific regard to allegations of torture and the use of force. This also encompasses aspects of psycho-social support for victims.

- Torture

- Use of force



*“A final decision of what will happen to the complaint that we received will be taken at the conclusion of the Commission of enquiry”*

## Marikana Verbatim

### – WHAT THEY SAID

*Police claiming they used “lethal force” at Marikana a last resort.*

*“This happened despite particular scenario planning by senior generals,” - advocate Ishmael Semanya representing the SAPS.*

*“Subtext of “muti” justification is that the miners acted like possessed vermin and had to be destroyed like vermin”, Adv. Dumisa Ntsebeza who is representing 21 of the victims*

*Ntsebeza: “police version is contradicted by forensic evidence, particularly post mortem reports.”*

*Ntsebeza: police conduct made miners deaths the most likely result*

*Ntsebeza: we ask this Commission to find that those who died in Marikana Massacre were unlawfully killed by SAPS*

*“What the police did on 16 August is unheard of in the whole world. We want the police to explain turning automatic weapons, the R4s, R5s, R6s, on people”, said Adv. George Bizo who represents the LRC and Bench Marks institution.*

*Bizos: Killing miners appear to be “act of revenge”. We are concerned by the statement of a police officer, who says he shot miners because they shot 2 of his colleagues.*

*“They are very serious...should further investigations be warranted, they will be conducted,” SAHRC Chair Adv. Lawrence Mushwana on police admissions that they shot at the miners...in self-defense.*



## TATANE: Police lacked training, used undue force - SAHRC

31 October 2012

The South African Human Rights Commission has completed and made a finding following its investigation into the 2011 killing of Andries Tatane, an activist from Ficksburg in the Free State Province.

The complaint was brought by the Council for the Advancement of the South African Constitution on the 15th April 2011. They alleged that members of the South African Police Services, Respondents in this matter, assaulted and/or caused the death of an unarmed civilian on the 13th April 2011 Tatane, who was one of a group of community members in Ficksburg, engaging in a public protest against poor service delivery, fraud,

The Complainant further alleges that, in the result, the actions of the police amounted to a breach of a number of human rights, including the right to life, right to assemble as protected in the Bill of Rights of the Constitution of the Republic.

This report should not be construed as making any legal conclusions on the criminal culpability or civil liability of the Respondents.

### Findings

Based on the investigation the Commission finds that:

The Respondent's members, acting in pursuance of their mandate in terms of section 205 of the Constitution, neglected provisions of RGA by using excessive force resulting in the injury and/or death of one protestor;

The Respondent's members used a degree of force that was disproportionate in the factual circumstances of the case, and in so doing, unduly limited and violated the deceased protestor's right to life in terms of section 11 of



*Commissioner Danny Titus addressing the media at the press briefing*

the Constitution and/or freedom and security of the person in terms of section 12 of the Constitution; and the protesting public and deceased protestor's right to peacefully and unarmed to assemble, demonstrate, to picket and present petitions;

The Respondent's members were not suitably equipped to quell public disorder and failed, within the circumstances, to devise a plan to regulate and monitor the gathering;

The Respondent failed to authorise a suitably qualified and experienced member to represent police at consultations or negotiations contemplated in section 4 of the RGA; If a suitably qualified person had been chosen, such member would have reasonably foreseen that the demonstration in question would degenerate into violence and prepared for that eventuality;

The Respondent failed to ensure that adequate numbers of police officers were deployed to minimize or avoid destruction of public property.

### Recommendations

The Commission recommends accordingly that:

The Respondent to improve training of police officers in managing and regulating gatherings to ensure that future police interventions in public


protests result in a more peaceful and non-violent outcome;

The Respondent to develop a training manual for the Public Riot Unit together with the Commission's Advocacy Programme; The Respondent should put more focused attention to specialised training for the Public Riot Unit;

The Respondent should actively engage in communication with communities where there are popular protests;

The Commission requires the Minister of Police and Minister of Cooperative Governance and Traditional Affairs to collectively report every six (6) months on measures it has put in place to address the phenomenon of increasingly violent community protests.

The latter Minister of Traditional Affairs should also report on measures to ameliorate systemic failures in local government that often lead to service delivery protests, and to report to the Commission on meaningful engagement on such concerns so as to avert these protests.

The respondent has the right to appeal this finding in writing within 45 days. 

## Commissioner Mokate addresses the launch of Child Gauge 2012

### *Long road to accessing basic education rights*

By Commissioner Mokate,

Thanks to the collective efforts of civil society, government, international partners, academics, human rights institutions and individuals dedicated to the cause of children, great strides have been made towards the realisation of children's rights. Practitioners in this sector are the first to admit that a significant number of those whose interests we are meant to serve have not been touched by the progress we have made.

In February last year I had the privilege of participating in the launch of a publication commissioned by the Human Sciences Research Council (HSRC) and UNICEF South Africa titled, an Audit of Government-funded Programmes and Services for Vulnerable Children. The report identified government funded statutory services and programmes offered through different departments that benefit vulnerable children, policy/legislative gaps that exist and gaps in the delivery of services to the children and families.

The importance of reliable information in monitoring the realisation of the rights of children cannot be overemphasised.

Section 184(3) of the Constitution mandates the Commission to require relevant organs of State to annually provide it with information on the measures they have taken towards the realization of the rights contained in the Bill of Rights concerning Socio-Economic rights. Children are entitled to the enjoyment of most of the rights in the Constitution,



*Commissioner Mokate engaging with stakeholders on some of the challenges in the education sector during the launch of draft Charter on Basic Education Rights*

including Socio-economic rights.

As many human rights defenders have testified in the past the issues of poverty cannot be separated from upholding human dignity and realizing the right to equality. This is why monitoring government's progress towards the realization of Economic and Social Rights as provided for in our Constitution is a key part of the Commission's mandate.

As many of you are aware, education is included in the Economic and Social Rights. One of the challenges experienced by the Commission in fulfilling this monitoring role is the lack

of a common and consolidated national statement of the scope and content of the right to basic education; or conversely, of the scope of the obligations on the government to realise the right.

The Commission, with assistance from UNICEF, South Africa, developed a Charter on Basic Education Rights. The Charter will provide a statement of what is required in law, of the State to give effect to the right to all children in South

Africa to basic education.

The Charter thus aims to provide a common, legally grounded planning, monitoring and advocacy framework for use by the Commission in fulfilling not only its monitoring, but its research, investigative and educational roles in relation to the right of children to basic education.

Ideally this should be done with all the Socio-economic rights so that there is a standard that informs our monitoring.

The existence of inequalities is usually an indication of a lack of enjoyment of human rights by



some members in a society. In many situations, especially where there is deep rooted poverty, a number of rights guaranteed by the Constitution to the citizens are not realized. The realization of human rights for all in the country is therefore central to the resolution of the challenge of seemingly deepening inequalities. Inequalities among children is of particular concern because the

We continue to have children who are impacted by multiple inequalities especially in the impoverished rural areas. These are children who live in dwellings where there is no provision for water and sanitation, schools are not accessible, no provision for transport to school, parents/guardians are unemployed, no access to health, no provision for basic nutrition. Some do not even have birth certificates because

been put in place to address gaps which resulted from South Africa's past. Inequalities lead to a lack of enjoyment of human rights. The deep-rooted poverty which many of South Africa's children are faced with impacts the realization of human rights guaranteed in the Constitution.

International discourse identifies the concepts of the permanent underclass and the 'left behind'. There is an intersection between economic inequalities and social and cultural inequalities which illustrates the serious impact of inequalities, and its recalcitrance. It is important to highlight the fact that there can be neither stability nor prosperity in a country without resolving the challenge of intersecting inequalities. It is therefore prudent that we engage in initiatives aimed at addressing the spate of inequality amongst children in South Africa.

As the custodian of human rights in South Africa, the South African Human Rights Commission supports measures aimed at closing the inequality gaps which currently exist in the country. It is therefore pertinent for the Commission to engage in projects such as the *South African Child Gauge, 2012* which focuses on one of the most vulnerable groups in our society.

Government has the primary responsibility to protect the rights of South Africa's children and ensure the realization of these rights as enshrined in our Constitution. This tool also enables the various communities in the country to participate in promoting their rights and holding government accountable for the protection of those rights. We congratulate the Children's Institute on the remarkable achievement. **Pf**

**Note:** Launch of Charter on Basic Education Rights has been postponed to a date which shall be communicated.



***The Eastern Cape Provincial team visited an area where children attend classes in mud structures***

children are the future and there can be no stability and prosperity in a country while inequalities dominate and others, especially children, are left behind.

their births were not registered. Inequality is a barrier to the realization of children's rights. It has increased in spite of progressive policies which have

***"A significant number of those whose interests we are meant to serve have not been touched by the progress we have made."***



***Pic: SAHRC Limpopo Provincial Office visited an area where learners attended classes under tree in Limpopo***



# Water and Sanitation Anger: Decisive Leadership is needed

By Kayum Ahmed



to deliver basic services, there is nothing like sitting in a town hall with hundreds of community members shouting at the local government officials addressing them. Not everyone shouts of course. In Thaba Nchu in the Free State, an elderly man talks calmly about the collapse of every single sanitation plant in the Free State. He has personally visited these sanitation plants.

In Keimoes in the Northern Cape, we are told about women that have been raped when they are forced to relieve themselves in the veld. I cannot even imagine what it must be like to go into the bushes to relieve yourself and

The one government department that appears to be getting things right is the Department of Performance Monitoring and Evaluation (DPME). Officials from DPME are consistently available to engage with the Commission and communities and have delivered on their promises to produce reports when the Commission requested these reports. Unfortunately, DPME, like all other government departments, appear not to have made the link between access to water and sanitation, and other socio-economic rights. The Commission has found that the government appears to be incapable of joining 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.

I am always surprised by the level of anger towards the government during the public hearings on water and sanitation currently being held across the country by the South African Human Rights Commission. From Bushbuckridge in Mpumalanga to Maboloka in the North West, communities are angry. They are frustrated with the lack of delivery of basic services. They are tired of the excuses provided by their municipalities for failing to provide clean drinking water. And they are angry about the corruption in awarding contracts to provide sanitation services.

While I am acutely aware of the violent protests that have erupted across parts of the country and have read many reports on the government's failure

to then be attacked and violently raped. As I listened to the community member relating the story of the rape, I could not help but think to myself: I have two toilets in my Johannesburg apartment.

The theme at all of the Human Rights Commission's water and sanitation hearings is more or less the same: the government has failed to deliver, the officials are incompetent, there is corruption in the awarding of contracts, and there is little or no engagement with communities. And the response from local government officials is more or less similar: there is insufficient funding, the water and sanitation infrastructure cannot cope with the growing population, and there is a plan in place to address these problems.

As the Commission continues to conduct the water and sanitation hearings across the country, we have been forced to ask some difficult questions: in a country with sufficient resources and one of the most progressive Constitution's in the world, why does our government continue to build toilets without enclosures, fail to provide quality education, and remain unsuccessful in reducing the infant mortality rate? South Africa appears to have all the ingredients for a successful, vibrant democracy built on principles of human rights and justice, but we seem to continuously fall short. What has gone wrong and how can the Human Rights Commission contribute to fixing things?

*Continued to page 10*

education, and remain unsuccessful in reducing the infant mortality rate? South Africa appears to have all the ingredients for a successful, vibrant democracy built on principles of human rights and justice, but we seem to continuously fall short. What has gone wrong and how can the Commission contribute to fixing things?

Many have argued that South Africa's current challenges centre on the lack of sufficient leadership. Plato's famous work, *The Republic*, written around 380 BCE, raises critical questions about what constitutes the legitimacy to rule. Plato asks the following question: "Who then are those whom we shall compel to be guardians? Surely they will be the men who are wisest about affairs of State, and by whom the State is best administered..."

Plato's argument that the wisest among us should lead forms the basis of contemporary views on political leadership and what constitutes the ideal State. However, we have also become acutely aware of the failure of leadership – particularly those leaders who claim to be the wisest among us.

Consequently, Karl Popper, in *The Paradoxes of Sovereignty* (1945), suggests that Plato asks the wrong question. He argues that the question about who should rule should be replaced by: "How can we so organize political institutions that bad or incompetent rulers can be prevented from doing too much damage?"

According to Popper, we must therefore reconsider our obsession with electing or appointing a particular leader given the inherent imperfections of our leaders. These imperfections have been clearly demonstrated at various levels within the government, most notably at local government level. Earlier this year, I accompanied our Human Rights

Commissioners to Rammalotsi in the Free State and Makhaza in the Western Cape; two communities where the Commission had made findings against municipalities for building toilets without enclosures. The Commission discovered that despite the progress that had been made to enclose open toilets in these areas following our findings against the respective municipalities, residents continued to face a number of challenges.

Disabled residents were unable to access the toilets, women and young girls were afraid to use these toilets after dark, and deaf residents indicated that they were unable to communicate with each other after dark since there were no lights in and around the toilets. While the Commission acknowledges the fact that the government has taken its recommendations seriously and has worked towards ensuring adequate sanitation in Rammalotsi and Makhaza, the government's inability to fully realise the rights of the poorest and marginalised members of our society, particularly women and the disabled, remain a serious concern for the Commission. This has again been demonstrated during the provincial hearings on water and sanitation that is currently taking place across the country.

It also appears that government has sufficient money and resources to effectively deal with the access to water and sanitation challenges in South Africa based on our reading of the Department of Performance Monitoring and Evaluation's report on sanitation developed at the request of the Commission. The problem appears to centre on how resources are coordinated at national and provincial level as well as poor management at the municipal level. Failure to sufficiently consult with residents before decisions are taken on their behalf has been consistently cited as a problem faced by communities. The

lack of public consultation speaks to the government's disregard for its citizens' views in important decision-making processes that directly affect citizens. This is further exacerbated by the government's inability to effectively coordinate the provision of basic services across the country.

While the Commission has provided a public platform for discussion and debate on access to water and sanitation and will continue to do so through provincial hearings culminating in a public hearing in March 2013, it is ultimately up to the government to effect drastic changes in the way it engages with communities and coordinates the provision of basic services.

Returning to the questions posed by Plato and Popper, it appears that South Africa requires both decisive, enlightened leadership as well as strong, efficient institutions to hold leaders accountable. The South African Human Rights Commission aims to be one of those strong, efficient institutions. I will be the first to acknowledge that we have some way to go before we can be fully effective. However, we are growing stronger by the day so that we can ensure that our government fulfils its Constitutional obligations and begins to embody the leadership expectations of its citizens.

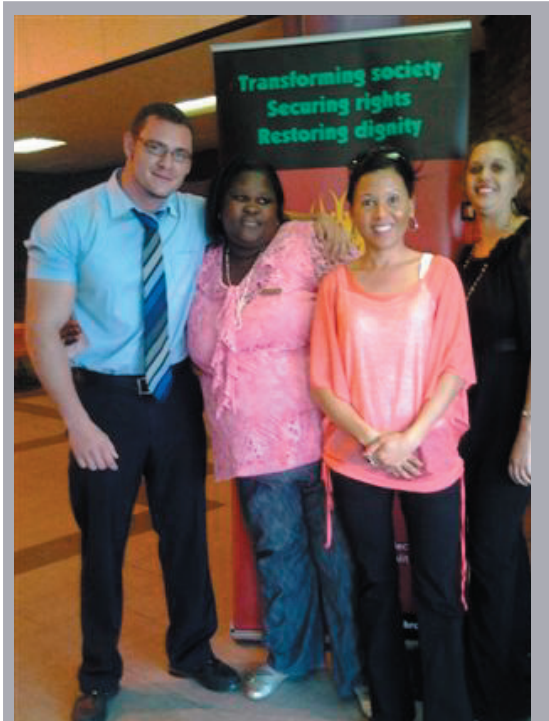
*"The lack of public consultation speaks to the government's disregard for its citizens' views in important decision-making processes that directly affect citizens."*

**Pf**



# In the seat

with **Chantelle Williams,**  
Northern Cape Provincial Manager



Chantelle Williams, second from right with stakeholders at the Water and sanitation Hearing in Keimos

■ **Describe Chantelle in a nutshell** - I am a 35 year-old committed mother of two. My son Spurgeon(15) and daughter Shannon(6) restore the balance in my life and they are my inspiration to set higher goals. I like reading John Grisham, Robert Ludlum, Biographies of leaders, Bon Jovi and Mozart.

I have LLB, B Com, Honours Labour law, Arbitration. An associate member of the SA Association of Arbitrators. Currently preparing for my Honours in Labour Relations Management exams and HR hiring practices. I have studied via Unisa and University of Johannesburg.

Would like to enroll for my LLM in human rights which I could use to broaden my skills in the work I am doing.

One of the most profound learnings of my life is this: if you want to achieve your highest aspirations

and overcome your greatest challenges, identify and apply the principle or natural law that governs the results you seek.

■ **What did you want to be when you were growing up?** - I always wanted to be a judge or in a leadership position to give direction and to inspire people to excel.

■ **Where do you see yourself in 10 years?** - Currently I want to be part of the SAHRC team and would work towards achieving the objectives of the Commission for as long as it is possible in order to bring about positive change in our country. In ten years time I want to be in labour law practice and in politics.

■ **Any secret vices?** - I have a problem with people who talk too much and actually saying nothing. I don't like it that people who claims to work in a team do not pull their weight. I believe that everyone has a purpose and should feel proud of his contribution.


■ **What makes you laugh?** - I am actually a very serious lady but my son is hilarious can be silly at times.

■ **Pet peeve/(s)?** - I don't like cats. Have a German shepherd a present from my dad. But would have preferred to own baby cheetah.

■ **Would you change anything yes, what would it be?** - I won't change anything about me and trust in my abilities and don't opinion of me. You either like me or you don't. I won't change for anyone. I am unique and believe in my abilities and potential. I'd rather be myself than any other person in the world. I won't be a copycat.

■ **Are you a saver or a spender?** - I prefer to save but I believe that I should also invest in my emotional well being.

■ **What three things can you not live without?** - I cannot live without my kids. I am not materialistic and don't cling to earthly possessions.

■ **If a genie granted you one wish, what would you wish for?** - I would wish for wisdom, courage to do what is right. 

# Welcome to the City of Roses

## Free State Office launches Office Awards

*The Free State established the following Office Awards to acknowledge best display of work ethic and best display of workplace attitude.*

The award of Best colleague goes to the employee that displays the greatest level of congeniality, positive attitude to work and to colleagues, and demonstrated the most commendable effort at uniting everyone in the office. This colleague is nominated and voted for by Office Peers. In November, this prize goes to Masego Phetlhu.

Co-workers say that Masego is “motivating, willing to listen”, “friendly and loving and able to resolve issues”, “willing to help”, “greet everyone in the morning which promotes a spirit of togetherness”

The award of Best employee goes to the employee that displayed commendable work and achievement of key performance areas. This award is determined by the Provincial Manager, after receiving nominations from staff. This month, the prize goes to Alinah Khompeli.

This is what co-workers had to say about her: “She is “industrious”, “diligent”, “humble”, “meets deadlines and commitments”, “innovative when given a new assignment”, “good prioritisation” and “scheduling skills.” *Pf*

## Meet the Free State Office Team



**Lindiwe Khumalo:** Provincial Manager; **Masego Phetlhu:** Advocacy and Education Officer; **Buang Jones :** Legal Officer; **Mathabo Mateane:** Legal Intern; **Thokozani Khumalo:** Legal Intern; **Vuyisile Mavuya:** Legal Intern; **Baneang Pitso:** Administrative Secretary; **Alinah Khompeli:** Data Capturer and Intake Officer; **Mpho Tau:** Administrative Assistant.



## IS “THE NEW SEXUAL OFFENCES ACT” PROTECTING OUR CHILDREN IN THE FREE STATE PROVINCE?

By Masego Phetlhu

The Free State Office of the South African Human Rights Commission (hereafter, the Commission) has recently been largely concerned about the alleged and ubiquitous prevalence of child trafficking and prostitution in the Free State, especially in the surrounding Bloemfontein informal residential areas.

This paper/article is informed by the general lack of knowledge amongst community members regarding the social scourges of human trafficking; child prostitution; lack of knowledge of the “New Sexual Offences Act 32 of 2007 (as amended) and the fact that this publication may be used as a platform/vehicle for obtaining complaints from the surrounding communities and stakeholders and at the same time for sensitization purposes.

The fact that there are insignificant numbers of complaints from members of the public to the police about human trafficking/child pornography or even reports in the media does not mean that it is not happening or that it is not an important human / child rights aspect. In fact, it is said that members of the public need to be informed that this in-human practice may be embedded in many sexual crimes and drug trafficking. The officer who opens a docket at the police station needs to probe questions in such a way that they can establish the presence of human / child trafficking and child prostitution as well.

The FS Office has also from time to time been requested to conduct information sessions and workshops for communities and stakeholders on human trafficking, hence the decision to write up this report. During the community information sessions it was very clear to the FS Office that communities were under-informed about this and also that these social scourges are very new to them. Around 2010/11, the Bill on Child Trafficking was still in draft form and thus it became a challenge to can really inform people with certainty that the police could utilize it to apprehend offenders since it wasn't yet criminalized. It was also was apparently a challenge for the police officers to deal with a phenomenon that was not yet legislated, yet it was a problem as they could see some of its traits in the crimes like, for example: rape; drug – trafficking, kidnapping, child pornography, etc.

While we are waiting for the legislation to be implemented within law enforcement institutions, the Commission needs to commit itself to campaign and conduct outreach programmes to educate the communities and learners about issues of human rights, human dignity, respect and equality for all. **Pf**

## Freedom of Expression Needs Breathing Space to Survive

By Buang Jones

It is a basic tenet of human rights, that for a robust, vibrant and active democratic society to exist, individuals must be given the freedom to form and express opinions and ideas without restraint.

The right of individual to express oneself is recognized and entrenched in section 16 of our Constitution. This subsection does not define what freedom of expression is but, instead, sets out the various components that make up this essential right.

However, section 16(2) sets out a number of exceptions. The effect of this subsection is that if the expression falls within one of the exceptions, it will prima facie constitute a violation of the right to freedom of expression.

Whilst artistic expression, humour and satire are central to expression in a democracy, in South Africa, such forms of expression tend to straddle the lines of hate speech and racial slurs. This terrain has become particularly contested. In the result, the exercise of this right tension between the goal of achieving freedom of expression, unfettered artistic and scientific exploration, on the one hand; and the goal of achieving mutual respect and tolerance in diversity often emerge.

Another arena that presents challenges for freedom of expression are social network communications. The phenomenon of hate speech propagated through the means of social network sites has also come under scrutiny by the Commission. A number of complaints emanating from social network platforms have been received, and currently being investigated by the respective Provincial Offices. Central to the respective investigations, will be the question whether these statements qualify as hate speech as envisaged in section 16(2) of the Constitution or section 10 of the Equality Act.

Determining where the balance lies between freedom of expression and hate speech as occupied the minds of South African Courts. Central to the determination of this balance is the task of striking an appropriate balance between the right to freedom of expression and the rights to equality, dignity and privacy under the Constitution. In recent court rulings concerning freedom of expression and the media, South African courts have articulated the crucial importance of the right to freedom of expression in an open and democratic society based on dignity, freedom and equality of all people. Without freedom of expression, openness is compromised, and freedom itself is diminished. It must also be emphasized that the right to freedom of expression is not pre-eminent and the values of human dignity and equality attract equal respect and none is superior to the other. **Pf**

# Free State Water and Sanitation Hearing

By Masego Phetlhu (Advocacy and Education Officer)

Planning and preparing for our province’s “Water and Sanitation” event started almost five months ago (June), and I didn’t quite foresee the intensity in which this process took. As Advocacy and Education Officer of the South African Human Rights Commission in the Free State Province, I think this event has been the most enriching planning experience in my working existence thus far.

The FS Event brought together a myriad of stakeholders from all sectors to discourse about such a problematic topic as the provision or lack of provision of adequate “Water & Sanitation” services.

I am actually glad to say that notwithstanding the anxiety we experienced before and on the day of the event, our event was successful. Our Chapter nine (9) partners, the designated members of the community of Thaba-nchu, stakeholders from both public and private sector boldly

took it upon themselves to use this opportunity to make valuable oral and written submissions on the theme.

It is important to stress that, an event of such a sensitive nature needs all parties from the civil society to work together to achieve the desired impetus and finally success.

To prove that this Province’s Public Hearing was not a “talk-show”, our office intends to continue engaging stakeholders further and developing lasting relationships with all partners that collaborated with us throughout this event. The Free State Provincial Office will continue to facilitate fora for healthy debates amongst all sectors of the community.

A detailed account of the public hearing will be released soon for public consumption and will be placed on the Commission’s website for easy reference. **Pf**

## Water and Sanitation Hearings in pictures



Clockwise: Commissioner Malatjie during the water and Sanitation in Limpopo; Community members came in numbers to the Northern Cape leg of hearings; A community representative airing her frustrations regarding lack access to water services

**Pf**

*“Transforming Society, Securing Rights, Restoring Dignity”*



# M<sup>id-</sup>T<sup>erm</sup>R<sup>ewind</sup>

The SAHRC management team recently participated in the Mid-term review exercise and Pfanelo team brings you a collage of behind the scene moments









# Freedom of Expression and Hate Speech Dialogue

## The Commission talks freedom of expression and hate speech



Commissioner Titus, discussion facilitator and Chair at the back listens to questions



Professor Kupe responding to questions at the roundtable discussion

*“South Africa is a diverse society but diversity is not yet practiced or lived as a sustaining strength or a virtue.”*

Freedom of Expression and Hate Speech continues to echo in our social trajectory as was evident at the Commission’s roundtable discussion on Freedom Expression and Hate Speech on 24 October 2012. The discussion was themed: “Transition blindspots: navigating the boundaries between freedom of expression and hate speech in shaping a common and shared identity, heritage and moral consensus in South Africa.” and it sought to bring to the fore the findings that emanated from the provincial hearings which were held last year.

Following complaints received by the Commission on hate speech and freedom of expression, the need for robust debate and meaningful engagement was inevitable; particularly for us as nation in transition.

It emerged from the report, which was compiled subsequent to the provincial hearings, that: “...there appears to be no uniform view on how the right to freedom of expression and hate speech should be balanced. A sector of society prefers dialogue as an add-on to court decisions while others would opt for dialogues in the first instance.”

In addition, the report further elaborates that “There appears to be a sufficient legal framework for the right to freedom of expression and the prohibition of hate speech, however, tensions exist between the right and the prohibition.”

During the discussion Professor Tawana Kupe, the keynote speaker, pointed to the fluidity of South Africa as a transitioning nation. He highlighted that “... South Africa is a diverse society but diversity is not yet practiced or lived as a sustaining strength or a virtue. Diversity is a demographic reality but not positive social reality.”

In his concluding remarks the Chairperson, Adv. ML Mushwana, emphasized “the need to teach the people the value of art. He further reiterated “the need for art and the need for artists to help with educating and inculcating the value of the arts and where they intersect with human rights in our society.”

Pf

# HUMAN RIGHTS WORLD

## IN SNIPPETS

### 1. Criminal: High Court reviews ordered to protect child offenders

The Western Cape High Court has ordered that almost all cases dealing with juvenile offenders be sent to judges for review in an effort to protect children from slipping through the system, says a report in The Herald. Judge Robert Henney wrote the judgment, which was confirmed by Judges Siraj Desai and Pat Gamble. The Community Law Centre, Centre for Child Law and the Minister of Justice and Constitutional Development were also allowed to present argument to the court. In the case before court, a boy of 15 was convicted of possessing a small quantity of dagga. He was legally represented and his mother was with him during the court case. The case was referred to the High Court for a decision after the magistrate asked the judges to interpret the Child Justice Act about sending cases involving minors for review. Henney said the Act's intention was that no child appear before court without legal representation. According to the report, he ruled that after analysing the law, they had concluded all cases involving children under the age of 16 or between 16 and 18 who had been sentenced to any form of imprisonment or a compulsory stay in a child and youth care centre had to be sent to High Court judges for review. **Pf**

### 2. Legislation: Experts push for hate crime laws

SA needs special legislation for all forms of hate crimes, a conference on crime in Sandton heard yesterday. A report in The Citizen quotes Kerry Williams, partner at law firm Webber Wentzel, who said: 'It would be helpful to have hate crime legislation because it would focus the police minds when investigating; prosecutors when prosecuting; judges when passing sentences. And the legislature could give some guidance in how to handle these crimes.' Williams told the conference on crime reduction that the perpetrators of hate crimes could be prosecuted using common law, and judges could recognise the aspect of hate when passing judgment on these cases. She said legislation would give added focus and stipulate minimum sentences for hate crimes. In hate crimes, the perpetrator selects his or her victim for some discriminatory reason such as race, nationality, gender, or sexual orientation. Juan Nel, director of the centre for applied psychology at Unisa, said hate crimes were not recognised in SA. 'Unless they become a recognised crime category, they can't be recorded at police station level.' **Pf**

### 3. General: Public Protector in two Johannesburg debt fund probes

Controversy continues over the City of Johannesburg's R2bn fund meant for offsetting future debt payments, which will now be subject to two investigations by the Public Protector, says a Business Day report. The fund, which will need to repay up to R11bn in long-term debt, has also sparked a court case over the tender process that saw its administrator reappointed. The DA is also considering court action after requests made in terms of the Promotion of Access to Information Act were unsuccessful. The administration of the 'sinking fund' has been in the spotlight this month, as questions persisted whether in 2005, Johannesburg executive mayor Parks Tau had used inappropriate influence in awarding the tender for the administration of the fund to Regiments Capital, a company allegedly linked to his wife. The report notes the DA has also written to the Public Protector requesting a probe into the fund's performance, saying that up to R1bn may have been looted from the fund in the past six years. This is based on allegations by a whistle-blower made earlier this year. **Pf**

### 4. Legislation: Parliament ignores Traditional Courts Bill submissions

Controversy is brewing with Parliament ignoring an overwhelming number of submissions from the public on the Traditional Courts Bill, says a Mail & Guardian Online report. During a meeting of the NCOP committee, it was revealed the committee would only deal with submissions made by two organisations – the SA Human Rights Commission and the Department of Women, Children and People with Disabilities. Opposition MPs and members of the NGOs present heard the other submissions were 'irrelevant'. The report notes Parliament held public hearings on the Bill last month, where 22 organisations were invited to make submissions on the Bill. Only two were supportive of the proposed law, while the rest called for its withdrawal from Parliament, claiming it was unconstitutional. The NCOP meeting started with the Justice and Constitutional Development Department presenting a summary of the input made to the parliamentary committee. The report notes this was highly unusual – as committees processing proposed laws normally draft summaries of submissions. It was their presentation that contained submissions of only two organisations. When MPs asked why the other submissions were not considered, the committee chairperson dropped the bombshell about their irrelevance to the Bill. **Pf**



# Happy Birthdays

*\* Nzalama Baloyi - 03 November*



*\* Eric Mokonyama - 02 November*



*\* Buang Jones - 09 November*



*\* Masego Phetlhu - 03 November*

*\* Pandelis Gregoriou - 11 November*

# KNOW YOUR COMMISSIONERS

Commissioner	Strategic Focus Area	Province	UN Treaty Bodies
<b>Chairperson, Commissioner M L Mushwana</b>	Asylum Seekers, Migration and Counteracting Xenophobia, Housing, Equality	Northern Cape and Mpumalanga	Convention on the Elimination of Racial Discrimination
<b>Deputy Chairperson, Commissioner P Govender</b>	Basic Services, Access to Information	Western Cape	Prevention on the Elimination of All Forms of Discrimination against Women
<b>Commissioner B Malatji</b>	Disability, Older Persons	North West and Limpopo	Convention on the Rights of persons with Disabilities
<b>Commissioner L Mokate</b>	Basic Education, Children	Free State	Convention on the Rights of the Child
<b>Commissioner J Love (part-time)</b>	Environment, Natural Resources, Rural Development	Kwa-Zulu Natal	International Covenant on Economic, Social and Cultural Rights
<b>Commissioner D Titus (part-time)</b>	Human Rights and Law Enforcement, Prevention of Torture	Gauteng	Convention against Torture Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights

## Calendar of Events

### - Water and Sanitation Hearings:

- 14 November: Eastern Cape; Alice, Nkonkobe municipality (near Fort Hare university)
- 26 November: Western Cape; Worcester Community Hall, Breede Valley municipality

### -PAIA Community Training:

- 09 November: Soweto

### - Free State Provincial Office:

- APP 3 on "Disability Rights" on the 12th November, 2012.Free State Office