



south african  
**human  
rights  
commission**

ANNUAL **20**  
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## FOREWORD BY THE CHAIRPERSON



*The preamble to the Constitution of the Republic of South Africa affirms the commitment of the South African people to building a society rooted in democratic values, social justice, fundamental rights and the achievement of equality for all. The South African Human Rights Commission ('Commission') is mandated to safeguard these aspirations and to ensure the realisation of these fundamental rights. This is certainly not an easy task considering the resource and capacity constraints within which the Commission finds itself.*

The 2016/17 Annual Report refers to the period preceding my appointment as the Chairperson of the Commission, in January 2017. Credit must therefore, be extended to the previous Commissioners, under the leadership of Adv. Lourence Mushwana – and to the Secretariat staff who supported them, for their efforts in protecting the vulnerable and their desire to strive for equality and the fulfilment of our constitutional mandate.

Despite the resource and capacity constraints faced by the Commission during the period under review, the overall performance achievement regarding planned targets was above 80 percent. Another milestone for the Commission worth highlighting is the attainment of a clean audit opinion from the Auditor-General of South Africa. This bears testimony to the commitment of the Commission to fulfilling its mandate with integrity.

The key human rights concerns for the period under review remain consistent with the preceding years. The top five complaints lodged with the Commission include rights relating to equality, health care, food, water, social security, arrested, detained, and accused people, labour relations, as well as just and administrative action.

In terms of the right to equality, the highest number of complaints received related to the issue of racism. To address this challenge, the Commission convened and hosted a national hearing on racism in the social media. This is not to say that race-related complaints deserve more attention as compared to other complaints. The indivisibility and interrelatedness of rights require an inclusive approach if the country is to progressively realise the constitutional promises.

In dealing with these issues, the Commission continued to apply its protective, promotional and monitoring interventions, which include complaints handling and resolution, strategic impact litigation, investigative hearings, court-order monitoring, public outreach engagements, collaborative engagements, media and communications liaison, as well as research and monitoring of the state of human rights in the country. The report reflects the positive outcomes realised as a result of these interventions.

It remains a concern to the Commission that schools and other infrastructure are being destroyed and damaged during service delivery protests. Notably, in an attempt at addressing the growing protest-related destruction of schools, the Commission convened a national hearing to highlight and explore the impact of protests on education and to consider ways of protecting, in particular, the right to basic education in situations of this nature. Similarly, the growing intensity of student protests and related action at various universities across the country highlighted the slow transformation progress and the underlying systemic factors perpetuating inequality and especially access to funding at our institutions of higher learning.

Jurisprudentially, the Commission has utilized its powers to litigate as one of the key mechanisms of fulfilling



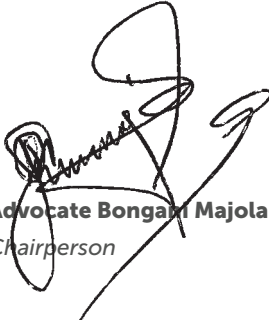
its mandate. The judgement handed down by the Pretoria High Court, in the matter of *Residents of Arthurstone Village v Amashagana Tribal Authority and Others* (17978/15) [2016] ZAGPPHC 408 highlighted the justiciability of socio-economic rights through the courts. In the Arthurstone judgment, the High Court in Pretoria found in favour of approximately 150 residents who were evicted from a piece of communal land known as the Arthurstone Farm in Bushbuckridge, Mpumalanga Province. They had been evicted and their homes demolished at the behest of their traditional council, the Amashagana Tribal Authority. The eviction and demolition of homes had a serious effect on the evicted women, children and older persons. Endemic evictions in similar cases cause trauma to the victims as a result of the loss of their homes, which renders them destitute, as well as socio-economic challenges and other serious hardships. The eviction order and the eviction process did not comply with the Prevention of Illegal Eviction from Unlawful Occupation of Land Act and section 26 (3) of the Constitution.

The decision of the Seshego Equality Court (Limpopo) deserves mentioning. The case arose from conduct by the school that amounted to humiliation and harassment based on the gender identity of a learner and created a hostile and intimidating environment for the learner. In addition to being ordered to pay compensation, the Respondent was ordered to make a written apology and also attend a programme on gender sensitivity. This case highlights one of the forms of discrimination in our society that need focused attention and the deployment of measures available to the Commission in creating awareness and a more inclusive culture.

Additionally, the Commission's role in the *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* matter contributes to the importance of judicial oversight in the granting of emoluments attachment orders (EAO). The court struck down Section 65J of the Magistrates' Court Act 32 of 1944 which permitted the attachment of a debtor's earnings and obliged employers (the garnishee) to pay out of such earnings specific instalments to the judgment creditor or his attorney.

All this would not have been possible without the able support of many stakeholders, including the members of the public, government departments, and other Chapter 9 institutions, civil society organizations who always go the extra mile, faith-based organizations and many others. The Commission wishes to express a word of gratitude to all of them.

Going forward, the ever-increasing service delivery protests referred to above, which are often accompanied by violent protest action, are an indication that greater effort must be employed and more work must be done by all stakeholders, including the Commission, towards a speedier and greater realization of access to socio-economic rights promised in the provisions of the Bill of Rights. The situation also cries out for increased effort by the Commission to improve rights education and awareness. Among others, this may mean increased cooperation with and use of the media in a responsible way to advocate for human rights and publicise the Commission's work. It also requires better coordination with local, regional and international stakeholders and striving for appropriate financial resources as envisaged in the Paris Principles. With the above-mentioned support, the Commission is optimistic of a brighter future in terms of enhancing a human rights culture in South Africa



**Advocate Bongani Majola**  
Chairperson



## OVERVIEW BY ACTING CEO



*The 2016/17 performance period marked the end of term of six of the seven Commissioners at the end of September 2016.*

*The Commission further experienced a high turn-over of senior management who are instrumental in supporting and operationalising the institutional mandate, vision and goals. In this regard, at the helm of the executive management turn-over were the resignations of the previous Chief Executive Officer and Chief Operations Officer by midyear. Despite the transitional arrangements, the Commission retained its average performance achievement of above 80%, as has been the case over the last 5 years. In addition, the Commission maintained a second consecutive clean audit, and a fourth consecutive unqualified audit. The endless effort and commitment of our staff to these achievements is highly commendable.*

Given the varied and broad nature of human rights issues facing our country, the Commission had to constantly reprioritise its work to respond to current issues of concern. One of our response mechanisms is the hosting of investigative hearings to address systemic challenges. Amongst others, we hosted and issued recommendations on transformation at public universities and impact of service delivery related protests on the right to education. Acknowledging the persistent issue of racism that remains unresolved in our country, we hosted a hearing on racism in social media. Particularly notable to this end is the Commission's contribution to the revision of the Draft Hate Speech Bill. The Commission, society, and the state have more to do to realise the vision of a non-racial, non-sexist, democratic South Africa, based on human dignity, rights and freedom.

Other forms of protection of our society against human rights abuses include effective complaints handling. A critical part of this process is the strategic impact litigation, whereby the Commission successfully presented cases in court, including Equality Courts, with favourable judgements aligned with the Commission's positions to ensure impactful outcomes. The Commission further monitors the implementation of court judgements by relevant stakeholders and respondents.

From a monitoring perspective, the Commission continues to assess and reflect on the state of human rights in South Africa, focusing on equality, economic and social rights, as well as civil and political rights. While some progress is being made, there remains a lot to be done to advance the realisation of these rights. We will increasingly focus on monitoring implementation of the recommendations made from previous research reports to ensure realisation of desired outcomes and impact.

Our strategic objective to deepen understanding and entrench a human rights culture gives effect to the promotional aspects of our mandate. Various advocacy and communications interventions were implemented to increase the reach and visibility of the Commission, as well as advocate for human rights based approaches across South African society. Engagements conducted and convened with key stakeholders strengthened our relations and collaborative work to promote understanding of human rights and empower communities.





Increasing use of varied media from international, national to local platforms, including community radio, has significantly contributed to the visibility and reach of the Commission, especially to previously disadvantaged and marginalised communities.

As an organisation we realise the need for continuous learning. We have set objectives to improve institutional effectiveness and efficiency. We ensure improved capacity of our staff through development programmes and give concerted efforts to the upgrading and improvement of systems, practices and processes in the areas of good governance, audit and risk management, Information and Communications Technology, knowledge management, and performance management.

Heading to our next performance planning cycle we will utilise the opportunity presented by our new leadership at both executive and administrative levels for further critical evaluation and strengthening our interventions and execution of our mandate.

**Peter Makeneta**

*Acting CEO*





## SAHRC COMMISSIONERS



**COMMISSIONER  
PRISCILLA JANA**  
Deputy Chairperson



**COMMISSIONER  
CHRIS NISSEN**  
Part-time Commissioner



**COMMISSIONER  
ANGIE MAKWETLA**



**COMMISSIONER  
ANDRE HURTLEY GAUM**



**COMMISSIONER  
BOKANKATLA MALATJI**



**COMMISSIONER  
MOHAMED AMEERMIA**



**COMMISSIONER  
JONAS BEN SIBANYONI**  
Part-time Commissioner



# PART A: GENERAL INFORMATION

## 1/STRATEGIC OVERVIEW

The South African Human Rights Commission's strategic intent is informed by various instruments and policy mechanisms. These include the Constitution as well as other founding and supporting legislation.

### VISION

*To transform society, secure rights, and restore dignity.*

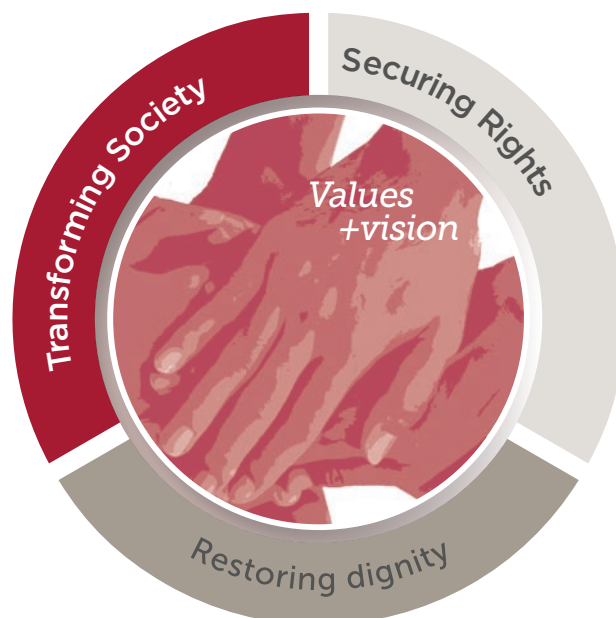
### MISSION

*The SAHRC (or Commission), as an 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.*

### VALUES

*The values of the Commission are:*

- Integrity
- Honesty
- Respect
- Objectivity
- Batho Pele principles
- Equality





## 2/LEGISLATIVE AND POLICY MANDATES

The Commission is an independent institution that supports constitutional democracy, and is established in terms of Chapter 9 of the Constitution. Its specific mandate is stipulated in Section 184 of the Constitution. The following sub-sections broadly describe the parameters of the institution.

### 2.1 Constitutional mandate

The mandate of the Commission, as contained in Section 184 of the Constitution of the Republic of South Africa, 1996, is as follows:

- a. *The South African Human Rights Commission (SAHRC) must:*
  - (i) *promote respect for human rights and a culture of human rights.*
  - (ii) *promote the protection, development, and attainment of human rights.*
  - (iii) *monitor and assess the observance of human rights in the Republic.*
- b. *The Commission has the necessary powers, as regulated by national legislation, to perform its functions, including the power:*
  - (i) *to investigate and report on the observance of human rights.*
  - (ii) *to take steps to secure appropriate redress where human rights have been violated.*
  - (iii) *to carry out research.*
  - (iv) *to educate.*
- c. *Each year, the Commission must require relevant organs of state to provide the Commission with information on the measures that it has taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education, and the environment.*
- d. *The Commission has additional powers and functions prescribed by other national legislation.*

### 2.2 Other legislative and policy mandates

The Commission has additional powers and functions prescribed by specific legislative obligations in terms of the South African Human Rights Commission Act, the Promotion of Access to Information Act and the Promotion of Equality and Prevention of Unfair Discrimination Act.

In this respect, the Commission must:

- (a) promote awareness of the statutes.
- (b) monitor compliance with the statutes
- (c) report to Parliament in relation to these statutes.
- (d) develop recommendations with regard to persisting challenges related to these statutes and any necessary reform.

#### **South African Human Rights Commission Act, 2013 (Act 40 of 2013)**

While the Commission fulfils the obligations set out in the SAHRCA, the Commission has suggested a number of amendments to bring the SAHRCA in line with the Constitution and subsequent legislation. The Commission awaits the tabling in Parliament of amendments to the (SAHRCA) occasioned by the adoption of the Constitution in 1996.



### ***Promotion of Access to Information Act (Act 2 of 2000)***

The Commission promotes compliance with the PAIA and produces an annual report in this regard, in line with Sections 83 and 84 of the PAIA. Key prescripts of the PAIA are the development of transparency frameworks and increasing institutional responsiveness to information requests, with a view to promote access to information.

### ***Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)***

The Commission continues to promote compliance with the PEPUDA, and will start producing a thematic equality report on an annual basis. Section 25 (5) (a) of the PEPUDA prescribes the submission of equality plans to the SAHRC to be dealt with in the prescribed manner, in consultation with the Commission on Gender Equality. Section 28 (2) requires the SAHRC to assess and report on the extent to which unfair discrimination on the grounds of race, gender, and disability persists in the Republic, the effects thereof, and recommendations on how best to address the problems.

### ***International and regional instruments***

The Commission is actively involved in ensuring the ratification and domestication of international and regional human rights instruments through, among others, advocacy and policy influence.

At an international level, the Commission is recognised by the United Nations Office of the High Commissioner for Human Rights as an “A” status National Human Rights Institution. The Commission has thus adhered to the Paris Principles, which are guiding principles that set out the nature and functioning of NHRIs. These principles emphasise the independent nature of NHRIs and guide the manner in which they should conduct their work.

Summarised, the principles state, among others, that national human rights institutions should:

- (a) monitor any situation of violation of human rights.
- (b) be able to advise the government, Parliament, and any other competent body on specific violations.
- (c) educate and inform on issues of human rights.
- (d) be able to use their quasi-judicial powers where these exist.

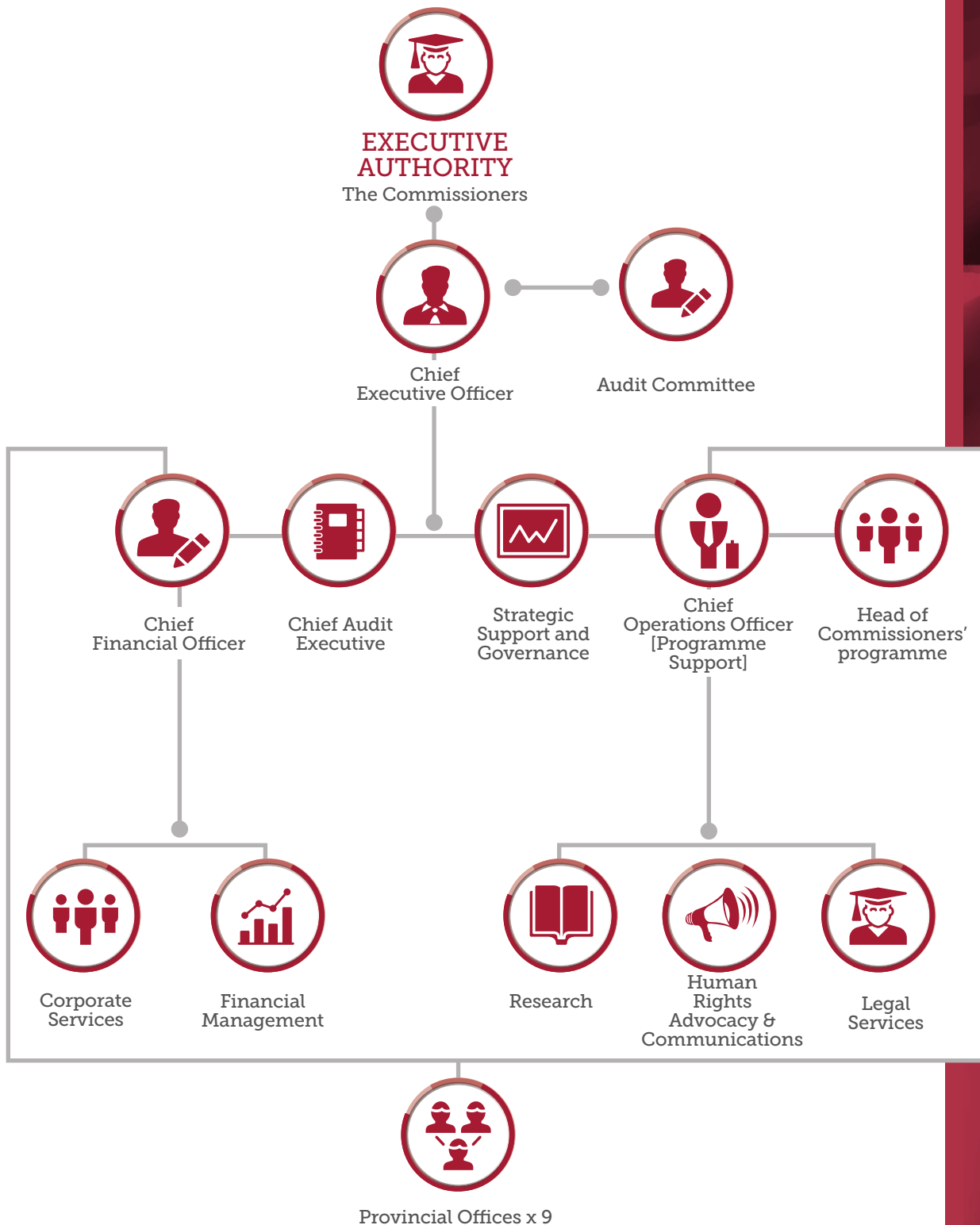
The mentioned legislation and policies form the basis on which the Commission plans its strategy and operations.



### 3/ORGANISATIONAL STRUCTURE

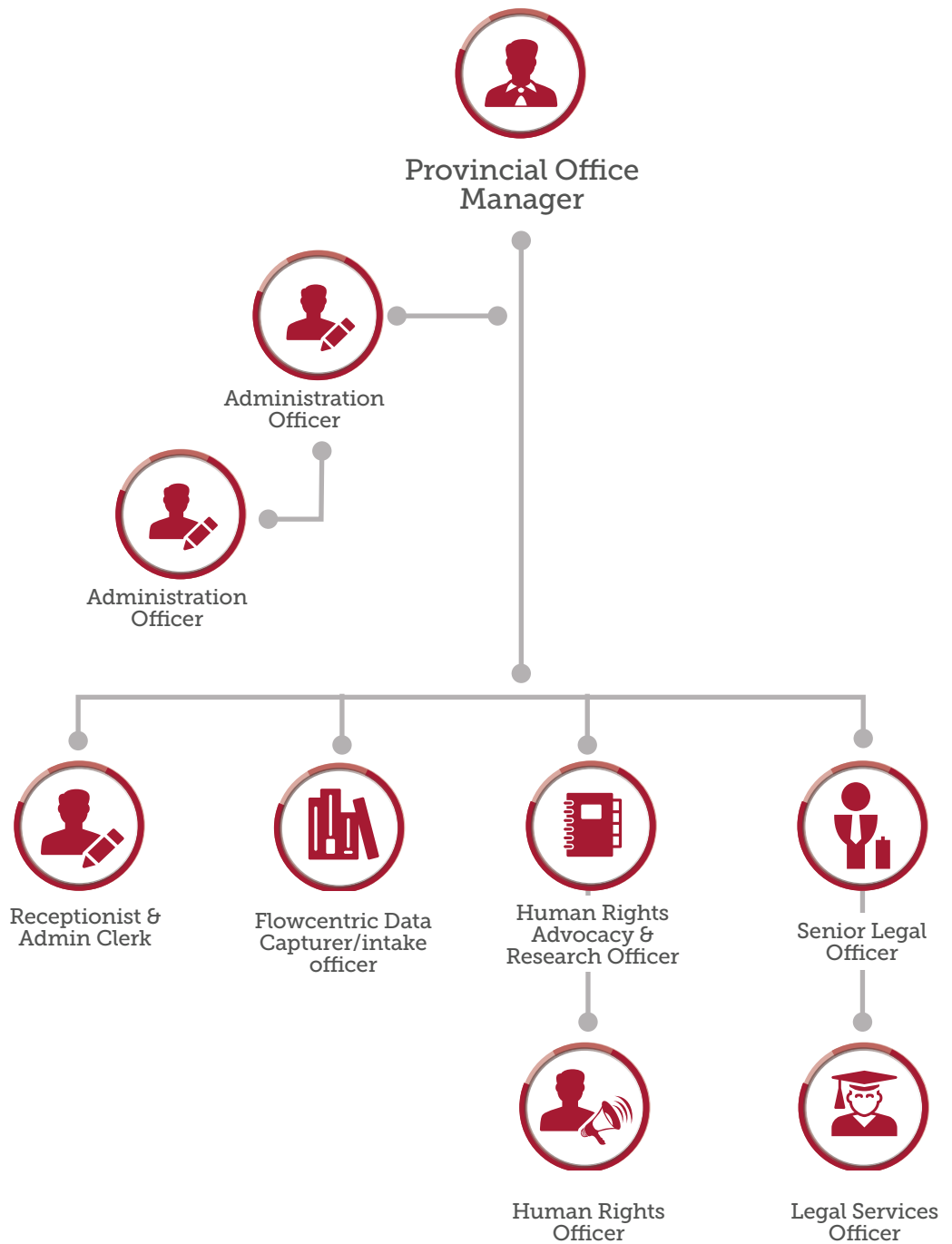
The execution of the Commission’s constitutional and legislative mandate is supported by an organisational structure constituted at the head office in Johannesburg, and supported by provincial offices across all nine provinces.

**Figure 1:** Head office structure:





**Figure 2:** Provincial level generic structure:





# PART B:

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# PERFORMANCE INFORMATION

## 1/STATEMENT OF RESPONSIBILITY FOR PERFORMANCE INFORMATION

### ***Statement of responsibility for performance information for the year ended March 31, 2017***

The Chief Executive Officer is responsible for the preparation of the institution's performance information and for the judgements made in this information.

The Chief Executive Officer is responsible for establishing and implementing a system of internal control designed to provide reasonable assurance as to the integrity and reliability of performance information.

In my opinion, the performance information fairly reflects the performance of the institution for the financial year ended March 31, 2017.

**Peter Makeneta**

*Acting Chief Executive Officer*

Date: 31 July 2017





## **1.1 Strategic focus areas and outcome-orientated goals**

### **Strategic focus areas**

In pursuit of the Commission's mandate, Commissioners adopted strategic priority focus areas, informed by the Bill of Rights as well as international, regional and national human rights instruments and obligations.

The identified strategic focus areas for the period under review included:

- (a) Access to information
- (b) Access to justice
- (c) Basic education
- (d) Basic services
- (e) Children's rights
- (f) Disability
- (g) Environment and natural resources
- (h) Equality
- (i) Health care
- (j) Housing
- (k) Human rights law enforcement and prevention of torture
- (l) Migration
- (m) Older people
- (n) Rural development

The human rights instruments for consideration included the following:

- (a) Convention on the elimination of racial discrimination
- (b) Convention on the elimination of all forms of discrimination against women
- (c) Convention on the rights of people with disabilities
- (d) Convention on the rights of the child
- (e) International convention on economic, social and cultural rights
- (f) Convention against torture and other cruel, inhumane or degrading treatment or punishment
- (g) International covenant on civil and political rights
- (h) Universal declaration on the rights of indigenous people

### **Outcome-oriented goals and strategic objectives**

The Commission's planning and internal evaluation exercises over the five-year strategic planning period, 2015 to 2020, resulted in the identification of nine key strategic outcomes,:

- (a) Using and projecting a broader Constitutional and legislative mandate
- (b) Engagement with processes of enacting legislation that promotes Constitutional human rights obligations
- (c) Enhancing understanding of international and regional issues through engagement with stakeholders
- (d) Enforcing protection of rights through alternative dispute resolutions and litigation
- (e) Intensifying advocacy as well as public and community outreach



- (f) Reclustering strategic focus area to enhance effectiveness
- (g) Strengthening key stakeholder relationships
- (h) Developing the institution as a learning organisation
- (i) Strengthening capacity that supports delivery on the mandate

To achieve these goals, the Commission set out five strategic objectives that are used to measure programme performance. A detailed narrative on the realisation of these strategic objectives will be provided under the section on “Programme performance by strategic objective”.

The Commission has reconfigured its programme structure to allow for meaningful execution and realisation of its outcome-oriented goals and strategic objectives. The Commission has three main programmes, which include:

- (a) Administration
- (b) Promotion and protection of human rights
- (c) Research, monitoring, and evaluation

These programmes have sub-programmes that are referred to as business units and includes provincial offices, which contribute towards the realisation of the outcome-oriented goals and strategic objectives.

## ***1.2 Overview of the institutional performance and organisational environment***

The overall performance achievement regarding planned targets for the 2016 to 2017 financial year is recorded at 84 percent, compared with 90 percent in the previous financial year. It must be noted that the Commission ‘obtained a fourth consecutive unqualified audit, and second consecutive clean audit opinion issued by the Auditor-General of South Africa for the year under review.

The performance environment of the Commission entailed a myriad of human rights issues, including challenges of impact assessment and the recurrence of specific topics. National crises with respect to concerns regarding equality (including a spate of xenophobic violence and hate speech on social media) continued. These matters required the Commission to respond to several individual complaints and systemic human rights concerns by conducting investigations.

Responding to the national issues with constrained capacity in terms of limited budgets was further exacerbated by high turnover at top management level, including the resignations of the Chief Executive Officer Chief Operations Officer Head of Research, and two Provincial Managers. These factors clearly had an adverse effect on the overall achievement of targets set for the financial year.

### ***Summary of key arising issues***

The key human rights concerns for the period under review remain consistent with the preceding years. The top five complaints lodged with the Commission include rights relating to equality, Section 27 (health care, food, water, and social security), arrested, detained, and accused people, labour relations, as well as just and administrative action. In terms of the right to equality, the highest number of complaints received concerned the issue of racism.

Beyond the top 5 complaints, the other concerns, from a complaints perspective, have included the rights to education and freedom of expression. In dealing with these issues, the Commission continued to apply its protective, promotional and monitoring interventions, which includes complaints handling and resolution, strategic impact litigation, investigative hearings, court-ordered monitoring, public outreach engagements, collaborative engagements, media and communications liaison, as well as research and monitoring of the state of human rights in the country. The Commission will increasingly endeavour to find mechanisms to maximise the impact of its interventions to effectively deal with these and other human rights concerns.



### ***Promote compliance with international and regional human rights related treaties***

Specific work of the Commission in relation to this objective and holding government accountable is captured through the SAHRC Annual International and Regional Human Rights Report and other key activities reported in the performance section below.

### ***Advance the realisation of human rights***

The achievements of the Commission with respect to the advancement of human rights must be contextualised within national challenges related to human rights violations. The Commission had to respond to these challenges utilising its complaints handling procedures which includes conducting investigative hearings and monitoring implementation of court orders and report recommendations. With over 9000 complaints processed during the period under review, the Commission was able to finalise 87 percent of these.

### ***Enhance and deepen the understanding of human rights to entrench a human rights culture***

Key stakeholder and public outreach engagements are critical in deepening the understanding of human rights to entrench a human rights culture. In this regard, the Commission conducted engagements and capacity-building initiatives at community level as well as community and national media engagements. The Commission also collaborated with various constitutional institution, government, civil society and academic stakeholders. The Commission's Advocacy and Communications Report reflects on the outcomes of these engagements in terms of improved institutional visibility and reach.

### ***Ensure fulfilment of constitutional and legislative mandates***

The Commission carried out its constitutional monitoring mandate to assess the state of human rights in relation to economic and social rights, as well as equality. The findings of the Commission and the implications for human rights are highlighted in the Economic and Social Rights Research Briefs and the Equality Report released during the period under review. Furthermore, the Commission completed a Civil and Political Rights report for an assessment in this area.

### ***Improve the effectiveness and efficiency of the Commission to support delivery on the mandate***

The Commission remains committed to maintenance of an unqualified opinion through ongoing monitoring of the audit, risk, and governance environment. In view of human resources, the institution developed a comprehensive human capital-management strategy driven by the strengthening of capacity building, succession planning and retention, as well as focused recruitment initiatives and processes. Fulfilling the important need to instil a high-performance culture, the Commission oriented staff to the revised enhanced performance management policy. The revision seeks to improve the management of performance while it promotes and acknowledges good performance.

## ***1.3 Key policy developments and legislative changes***

The introduction of South Africa's Information Regulator will impact on the Commission's implementation of its responsibilities in terms of the PAIA. For the period under review the Commission continued to implement its annual PAIA plan, which included its legislative responsibilities.

In terms of other legislation, the Commission made the following submissions:

- (a) Draft prevention and the Combating of Hate Crimes and Hate Speech Bill, concerned with issues of discrimination and equality
- (b) Courts of Law Amendment Bill, concerned with access to justice emolument attachment orders, and instalment of debt.



## 2/PERFORMANCE INFORMATION BASED ON STRATEGIC OBJECTIVES AND PROGRAMMES

### 2.1 *Strategic objectives, programmes, and budget expenditure by programme*

#### **Strategic objectives and programmes**

The Commission adopted five strategic objectives towards the realisation of its strategic outcome-oriented goals, which were as follows:

- (a) **Strategic Objective 1:** Promote compliance with international and regional human rights related treaties obligations;
- (b) **Strategic Objective 2:** Advance the realisation of human rights
- (c) **Strategic Objective 3:** Deepen the understanding of human rights to entrench a human rights culture
- (d) **Strategic Objective 4:** Ensure fulfilment of constitutional and legislative mandates; and
- (e) **Strategic Objective 5:** Improve the effectiveness and efficiency of the Commission to support delivery on the mandate

#### **Summary of programmes**

In support of the strategic objectives, the Commission is broadly structured into three programmes, namely, administration, The Promotion and protection of human rights, as well as research, monitoring and reporting. The Commission is made up of business units, and provincial offices responsible for core operations and institutional support function for the realisation of strategic objectives and programme outputs.

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### **PROGRAMME 1: ADMINISTRATION**

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This programme consists of the business units as follows:

#### **Office of the Chief Executive Officer**

The Chief Executive Officer is responsible for establishing and maintaining an effective and efficient corporate governance framework that ensures management accountability through improved mechanisms for controlling and directing management activities.

#### **Finance**

Finance provides effective and efficient management of the budget to allow for successful achievement of strategic objectives within limited resources. The unit also facilitates and monitors the management of identified organisational risks to minimise threats to operations.

#### **Corporate services**

This unit encompasses the functions of Administration, Supply Chain Management, Human Resources Management, and Information Communications Technology. The unit aligns the Commission's human resources objectives to its planning processes, enabling recruitment and retention of staff with the capacity to support the achievement of strategic objectives. It establishes and manages integrated supply chain management, asset management and coordination of all administrative functions of the Commission within defined regulatory frameworks. It is also responsible for ensuring effective and efficient information communications technology systems and services.

#### **Internal audit**

The Internal Audit unit assesses the adequacy and reliability of internal controls and governance processes. It identifies gaps and recommends corrective action regarding the controls and processes.



## PROGRAMME 2: PROMOTION AND PROTECTION OF HUMAN RIGHTS

This programme consists of the following business units:

### ***Commissioners' programme (Office of the Commissioners)***

The Commissioners provide leadership and guidance regarding the professional work of the Commission by facilitating the South African human rights agenda at international, regional, national, and provincial levels.

### ***Office of the Chief Operations Officer***

The Chief Operations Officer coordinates the core operations business units (Legal Services, Research, Advocacy and Communications, and provincial offices) and operational process improvements to ensure efficient delivery of the core business of the Commission.

### ***Legal services***

Legal Services is responsible for providing quality legal services in the protection of human rights in the Republic of South Africa through the efficient and effective investigation of complaints of human rights violations, the provision of quality legal advice and assistance, as well as seeking redress through the courts for victims of human rights violations.

### ***Advocacy and communications***

The Advocacy and Communications Unit promotes awareness of human rights and contributes to the development of a sustainable human rights culture in South Africa. It also serves to promote the Commission's objectives and enhance understanding through media relations and comprehensive communications.

### ***Provincial offices***

The provincial offices are responsible for carrying out the Commission's core mandate through actual operational implementation at provincial level.

## PROGRAMME 3: RESEARCH, MONITORING, AND REPORTING

This programme consists of the following business units:

### ***Research***

The unit plans, designs, conducts, and manages research on the promotion and protection of human rights aimed at monitoring, assessing, and documenting developments in human rights policy within the Republic.

### ***Strategic support and governance***

The unit is responsible for the coordination of the processes of institutional, strategic, and performance planning, monitoring, evaluation, reporting, and governance.

### ***2.2 Alignment of programme structure with strategic objectives***

The programmes of the Commission are aligned with the strategic objectives for the meaningful realisation of the Commission's outcome-oriented goals and priorities. The performance information for 2016 to 2017 is presented based on these strategic objectives. The following is a schematic presentation of alignment of programme structure of the Commission with strategic objectives.



**Table 1:** Alignment of strategic objectives with programmes

Programmes	Strategic Objective 1 (Compliance with supranational obligations)	Strategic Objective 2 (Advance realisation of rights)	Strategic Objective 3 (Deepen understanding and entrench human rights culture)	Strategic Objective 4 (Fulfil legislative mandates)	Strategic Objective 5 (Improve organisational effectiveness and efficiency)
1. Programme 1: Administration	-	-	-	Key performance indicators: 4.4 (Legislative compliance) and 4.5 (Annual report)	All key performance indicators
2. Programme 2: Promotion and protection		All key performance indicators	All key performance indicators	-	-
3. Programme 3: Research, monitoring, and reporting	All key performance indicators	Key performance indicators: 2.4 (Court orders) and 2.5 (Reports summaries)	-	All key performance indicators	Key performance indicator: 5.11 (Institutional monitoring report)

It is clear from Table 1 that most of the programme and business units' operations contribute to all of the strategic objectives, hence the presentation of performance based on its alignment with strategic objectives.

### 2.3 Organisational performance by strategic objective

The intention of this section is to report on organisational performance based on performance indicators and planned targets set for the 2016 to 2017 financial year. It covers key highlights for each strategic objective and identifies areas of under-performance. An account of actual achievements measured according to planned targets is presented in a tabular format.

The Commission achieved 84 percent (that is, 16 of 19) of its annual targets for the period under review. The breakdown of target achievement by objective is presented in Table 2 below.

**Table 2:** Summary of overall target achievement

Strategic Objective	Total Number of Targets	Targets Achieved	Not achieved	% Achievement
Promote compliance with international and regional human rights related treaties	2	2	-	100%
Advance the realisation of human rights	4	4	-	100%
Deepen the understanding of human rights to entrench a human rights culture	2	2	-	100%
Ensure fulfilment of constitutional and legislative mandates	5	5	-	100%
Improve the effectiveness and efficiency of the Commission to support delivery on the mandate	6	3	3	50%
Total	19	16	3	84%



## STRATEGIC OBJECTIVE 1: PROMOTE COMPLIANCE WITH INTERNATIONAL AND REGIONAL OBLIGATIONS

The Commission seeks to realise this objective by monitoring South Africa's implementation and compliance with international and regional human rights instruments, participating and engaging with various global human rights structures and mandate holders, the dissemination of reports to and from these structures, and strengthening engagements with broader stakeholders such as civil society, media, and academia.

The Commission achieved all the targeted activities and outputs to promote compliance with international and regional obligations. These included, the completion of the Annual International and Regional Human Rights Report and the submission of reports to international and regional bodies.

**Table 3:** Achievement based on planned targets for compliance with international and regional human rights related treaties

### Strategic Objective 1: Promote compliance with international and regional human rights related treaties

**Objective Statement:** Monitor implementation and compliance with international and regional human rights obligations within South Africa and the Commission and strengthen key stakeholder engagements.

Annual performance indicator	Actual achievement 2015 to 2016	Planned target 2016 to 2017	Actual achievement 2016 to 2017	Reasons for deviation from planned target for 2016 to 2017	Variance with 2015 to 2016 and 2016 to 2017 achievements	Comment on variances/corrective measures
Completion of SAHRC annual International and Regional Human Rights Report	1	Complete 1 report	1 report completed	Target achieved	None	None
Submission of reports to international and regional human rights treaty bodies	100%	Submit reports as required	Reports and responses submitted as required	Target achieved	None	None

### *The Annual International and Regional Human Rights Report*

As an institution established to support constitutional democracy and an internationally recognised National Human Rights Institution (NHRI), the SAHRC's 2016 Annual International and Regional Human Rights Report complements the institution's constitutional, statutory, and international mandate. The report seeks to provide a snapshot of key human rights developments at the international and regional level during 2016, and to connect these with developments at a domestic level. In doing so, the report highlights the inextricable link between South Africa's international human rights obligations and their application domestically.

The introductory chapters expand on the context, purpose, and scope of the report and positions the SAHRC within its various mandates, recognising the vital role the institution plays as an A-status accredited NHRI.

The report then provides a broad overview of the international and regional human rights system by succinctly explaining the differences between the United Nations charter and treaty-based systems and the human rights frameworks emanating from the African Charter on Human and Peoples Rights (ACHPR).

The main body of the report is structured according to human rights themes that incorporate the relevant activities of international and regional human rights bodies, which includes resolutions, general comments, and (where applicable) concluding observations or recommendations issued to the South African government.



In the chapter on civil and political rights, the report provides insight on the South African government's initial report to the Human Rights Committee as well as the government's stance on key resolutions relating to sexual orientation and gender identity. This is expanded on in the domestic sub-section of the report.

The economic, social, and cultural rights chapter details the two General Comments released by the Committee on Economic, Social, and Cultural Rights, as well as the letter addressed to the South African government inquiring about the alleged assassination of an environmental human rights defender. The chapter also expands on two resolutions regarding the right to education, issued by the CESCR and the African Commission on Human and Peoples Rights. A notable inclusion is a summary of a UN Special Rapporteur report on the relationship between the right to life and the right to adequate housing. At the domestic level, the report draws on the SAHRC's investigation of protest-related action and its impact on the right to education.

The chapter on racial discrimination addresses the South African government's review before the Committee on the Elimination of Racial Discrimination and the observations and recommendations of the CERD. The report also touches on the 15th anniversary of the Durban Declaration and Programme of Action, which sets the scene for the discussion in the domestic section of the report that relates to the National Action Plan Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

The chapter related to the elimination of discrimination against women, highlights the delays on the part of the South African government to submit information to the Committee on the Elimination of Discrimination Against Women. It also discusses General Recommendation No. 34 on the rights of rural women and provides an overview of the findings issued by the Special Rapporteur during the official mission in South Africa regarding violence against women as well as its causes and consequences. At the domestic level, the report acknowledges the revised Traditional Courts Bill and issues recommendations to Parliament to view the bill in light of the CEDAW's General Recommendation No. 34 on women's access to justice and General Recommendation No. 35 on the rights of rural women.

The chapter on torture and other cruel, inhumane or degrading treatment or punishment, highlights South Africa's overdue report under the Convention Against Torture. It also discusses the ACHPR resolution on promoting the revised Nelson Mandela Rules, as well as the thematic report of the Special Rapporteur. Linking the international and regional developments to the domestic front, the report highlights the SAHRC's 2016 reports in respect of Marikana and the Lindela Repatriation Centre, respectively. The chapter concludes by encouraging the government to ratify the Optional Protocol to the Convention Against Torture (OPCAT) and establishing a national preventative mechanism to monitor places of detention.

The chapter regarding the rights of the child discusses the South African government's review before the Committee on the Rights of the Child, as well as two General Comments issued by the CRC during 2016. It also speaks to the African Charter on the Rights and Welfare of the Child and discusses two resolutions related to children at the international and domestic level, respectively. Drawing on these developments, the domestic section of the chapter addresses the inadequate resources and infrastructure at schools as well as the challenges faced by children of non-nationals.

The chapter on the rights of persons with disabilities discusses two General Comments issued by the Committee on the Rights of Persons with Disabilities regarding the rights of women and girls with disabilities, and the right to an inclusive education, respectively. The chapter also speaks to the ACPHR resolution related to psychosocial disabilities, and the domestic section of the chapter addresses the Esidimeni tragedy as well as the UN's reaction to the incident. The chapter ultimately recommends that the South African government adheres to its obligation under the Convention on the Rights of Persons with Disabilities and establish a national monitoring mechanism.

In the chapter on migrant workers, the report points out that the South African government has not signed the International Convention on the Protection of All Migrant Workers and Members of their Families





(ICRMW). It also discusses the 2016 landmark UN summit on refugees and migrants which culminated in the adoption of the New York Declaration. Connecting these to the domestic level the report briefly discusses the Green Paper on International Migration and calls on the government to sign and ratify the ICRMW to further strengthen the human rights of migrants.

The final chapter of the report recognises all the human rights milestones of the year 2016. The chapter provides a list of broad recommendations which complement those issued by international and regional mechanisms. The chapter concludes by affirming the SAHRC's commitment to continue monitoring the government's international and regional human rights obligations.

### ***Submission of reports and responses to supranational bodies***

The Commission submitted the following reports to international and regional human rights bodies.

#### **SAHRC NHRI report to the third cycle of the UN Human Rights Council's Universal Periodic Review**

In September 2016, the SAHRC submitted the report to the United Nations Office of the High Commissioner for Human Rights (OHCHR), in preparation for the Human Rights Council's third UPR of the South African government (scheduled to take place in May 2017). In line with the guidelines for stakeholder contributions, the SAHRC's report provides a brief summary of the key human rights challenges South Africa faces.

#### **SAHRC NHRI activity report to the African Commission on Human and Peoples' Rights**

In September 2016, the SAHRC submitted a NHRI activity report to the ACHPR. The activity report provides an overview of the developments within the institution over a two-year period and contained recommendations for improving the relationship between the ACHPR, Member States and NHRIs.

#### **SAHRC NHRI report on the South African government's combined Fourth to Eight Periodic Country Report under the International Convention on the Elimination of Racial Discrimination**

In July 2016, the SAHRC submitted a NHRI Report to the UN Committee on CERD in response to the South African government's combined Fourth to Eight Periodic Country Report under the International Convention on the Elimination of Racial Discrimination. The SAHRC's report sets out the shortfalls of the state report and offered recommendations for the CERD to consider during its review of the South African government, which took place in August 2016.

#### **Response to the request from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

In June 2016, the SAHRC responded to a questionnaire from the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance. The questionnaire sought information on the role of equality bodies and - national action plans in the elimination of racism, racial discrimination, xenophobia, and related intolerance. Response to the Inter-Parliamentary Union and Global Alliance of NHRIs questionnaire on the SAHRC's relationship with Parliament

In June 2016, the SAHRC responded to a request from the GANHRI in partnership with the IPU to submit information regarding the SAHRC's relationship with Parliament. The information shall form part of an international study on the reporting relationship between various NHRIs and Parliaments.

#### **Response to questionnaire from the OHCHR regarding information on racism, racial discrimination, xenophobia, and related intolerance**

In May 2016, the SAHRC responded to a call from the OHCHR to submit brief information on the recent measures the institution has undertaken to combat racism, racial discrimination, xenophobia, and related intolerance.



## STRATEGIC OBJECTIVE 2: ADVANCE THE REALISATION OF HUMAN RIGHTS

For the Commission, advancing the realisation of rights entails responding to human rights concerns confronting the nation, conducting research and analysis of human rights complaints to establish trends and inform appropriate redress interventions, advocating for adherence to legislation that embodies human rights-based approaches, monitoring implementation of court orders, as well as report recommendations arising from investigative hearings and other investigations, research reports, and key stakeholder engagements.

The Commission achieved all four outcomes with regard to this strategic objective for the period under review.

**Table 4:** Achievements related to planned outcomes for advancing the realisation of human rights

### Strategic Objective 2: Advance the realisation of human rights

**Objective Statement:** Responsive to human rights concerns, analysing human rights complaints and trends, as well as monitoring implementation of court orders and report recommendations

Annual performance indicator	Actual achievement 2015 to 2016	Annual planned target 2016 2017	Actual achievement 2016 2017	Reasons for deviation from planned target for 2016 to 2017	Variance with 2015 to 2016 and 2016 to 2017 achievements	Comment on variances/ corrective measures
85% Finalization of complaints and enquiries	89%	85%	87%	Target exceeded due to ongoing effectiveness and efficiency considerations.	Achievement decreased by 2%	In-year resignations from management positions in provinces with the highest volume of complaints (Gauteng and Western Cape) resulted in lower finalisation rates. Prompt filling of vacancies and induction of new managers to mitigate the implicit risk.
Completion of Annual Trends Analysis Report	1	Complete 1 report	1 report completed	Target achieved	None	None
Hosting of investigative hearings	2	2	3	Being responsive to arising national human rights issues	Achievement increased by 1	The commission has to respond to arising human rights concerns on an ongoing basis within the constraints of available resources. In this instance the response was to assess impact of protest action on basic education.
Implementation of responsibilities in terms of court orders	Completed monitoring report for Lindela	Develop framework/ guidelines for monitoring court orders	Develop framework/ guidelines for Lindela court order monitoring	Target achieved	None	None



### Finalisation of cases

Financial year	Complaints	Enquiries	Total caseload	Year-on-year change	Finalised + once off enquires	% Achievement
2012 – 13	4947	3972	8919	-22%	7047	79%
2013 – 14	4980	4237	9217	3%	8550	93%
2014 – 15	3685	4494	8179	-11%	7337	90%
2015 –16	4613	4625	9238	13%	8200	89%
2016 – 17	4938	4792	9730	5%	8498	87%

The reduction of the finalisation percentage from 89 percent at the end of the 2015 to 2016 financial year to 87 percent at the end of the 2016 to 2017 financial year is due to the vacancies (which were subsequently filled) of provincial manager positions at the two high case load provincial offices, namely, Gauteng (promotion) and the Western Cape (resignation).

### Top five rights violations

Rights violated	Percentage of total
Equality	14%
Health care, food, water, and social security	13%
Arrested, detained, and accused people	9%
Labour relations	9%
Just administrative action	8%

Although equality related complaints remain the highest number of complaints received, by reflecting on the previous financial years its percentage figure is less (from 16 percent in the 2015 to 2016 financial year to 14 percent in the 2016 to 2017 financial year). Economic and social rights, however, have increased from 9 percent in the 2015 to 2016 financial year to 13 percent in the previous financial year. This may indicate that members of the public are experiencing challenges related to accessing their socioeconomic rights and frustration related to the inability to deliver equality by the state.

With regard to equality, the Commission has proceeded to host a national hearing on Racism and Social Media. Concerning economic and social rights, the Commission hosted a national investigative hearing on the Underlying Socio Economic Challenges in Mining-Affected Communities in South Africa. These hearings represent the Commission's attempt to proactively address the systemic nature of these issues over and above dealing with the individual complaints received. The remaining three complaint areas are, for the most part, referred to institutions which can more effectively and efficiently deal with such complaints.



## Alternative dispute resolutions

Province	2012 – 2013	2013 – 2014	2014 – 2015	2015 – 2016	2016 – 2017
Eastern Cape	0	2	1	2	3
Free State	4	6	2	3	8
Gauteng	3	3	11	3	5
KwaZulu-Natal	3	4	4	5	6
Limpopo	0	0	5	1	11
Mpumalanga	0	0	3	0	6
Northern Cape	0	5	0	2	3
North West	0	0	1	0	5
Western Cape	1	0	0	0	2
Totals	11	20	27	16	49

In terms of Section 14 of the SAHRC Act, “the Commission may, by mediation, conciliation or negotiation endeavour – (a) to resolve any dispute; or (b) to rectify any act or omission, emanating from or constituting a violation of or threat to any human right.” Mediation is defined in the Commission’s Complaints Handling Procedures as the process of intervention between parties by an independent person or mediator to reach an agreement, whereas conciliation is defined as the process of reconciling a matter between parties. Negotiation is defined as the process of conferring with parties to reach an agreement. Collectively, these three processes are referred to as Alternative Dispute Resolution.

The Commission has successfully resolved matters making use of ADR mechanisms in 84 percent of the interventions initiated.

### *Strategic impact litigation*

The Commission instituted the following strategic impact litigation matters during the period under review:

#### ***Frank Sout and Four Others v. Mangaung Metropolitan University (FSHC Case No.: 1424/2016)***

The Legal Services Unit (LSU) has launched an appeal on June 29, 2016, on behalf of the residents of Farm Rodenbeck 2972, Bloemspruit, Bloemfontein to the full bench of the Bloemfontein High Court., Alternatively, an appeal has been launched to the Supreme Court of Appeal against the order of his Lordship Acting Deputy Judge President K. J. Moloï in case number 1424/2016 delivered on June 2, 2016 (and brought to the notice of the applicants on June 9, 2016) in which he granted an eviction order against the applicants in the matter.

Having been advised by counsel to proceed by way of rescission of judgment as opposed to appeal, the rescission application has been served and filed in August 2016. After having filed a notice of intention to oppose the rescission application, on September 16, 2016, the Mangaung Metropolitan Municipality filed a notice in terms of Rule 35 (12) of the Uniform Rules of Court calling on our clients to provide their particulars, including identity numbers, in order to determine their eligibility for benefits under the municipality and the Free State Provincial Government’s housing policies. On October 18, 2016, the Commission furnished the information requested in terms of the Rule 35 (12) Notice.

On January 23, 2017, the Mangaung Metropolitan Municipality filed its answering affidavit. However, the papers failed to include all annexures, and the Commission has proceeded to request that the Mangaung Metropolitan Municipality provides a complete answering affidavit. Once provided, the Commission shall then proceed to prepare a replying affidavit.



***Nedbank Limited v. Julia Mampuru Thobejane and other related matters (GPPHC Case No.: 84041/2015 and Others)***

On receipt of correspondence from Mr Aslam Moosajee on July 5, 2016 from Norton Rose Fulbright South Africa Incorporated (Norton Rose Fulbright), the Commission was made aware of the proceedings regarding the numerous matters launched by Nedbank and consolidated. The High Court of South Africa, Gauteng Division, Pretoria (High Court) had postponed these actions instituted by Nedbank and directed that a notice in terms of Rule 16A of the Uniform Rules of Court be served to several institutions, including the Commission. Mr Moosajee, who was also served and received by email a copy of the practice directive and the notice in terms of Rule 16A as required by the Practice Directive. The LSU had assessed the contents of the papers and successfully convinced the Commission to intervene as amicus curiae in the consolidated matter. The Commission determined that this action is in accordance with its constitutional mandate and that it would be in the public interest to to intervene as amicus curiae.

A formal application has been submitted in early August 2016, and the Commission hopes to intervene as amicus curiae in this matter given that all the parties consented to the Commission's intervention. On August 1, 2016, the Commission filed a substantive application to intervene as amicus curiae in order to avoid any uncertainty regarding its intervention in the matter. None of the parties have opposed the application to intervene as amicus.

By November 11, 2016, all four banks had filed their supplementary affidavits, and the parties, including the Commission, are arranging dates for the filing of heads of argument and the hearing of the matter. The provisional date for filing heads of argument is August 31, 2017. The matter will be heard on October 9, 2017.

***Geneva Claasen and Two Others v. The MEC for Transport and Public Works, Western Cape Provincial Department and Other (WCHC Case No.: 23595/2015)***

The complaint about evictions involving women and children who were removed from the Geneva House (a shelter or place of safety for destitute women) was received on May 8, 2016, from former Western Cape Premier and City of Cape Town Mayor, Peter Marais. Marais originally contacted Commissioner Titus who brought the matter to the attention of the Western Cape Provincial Office. The evictions affected more than 70 people, the majority of whom were women and children. While the evictions followed a court process, no alternative accommodation was provided and allegations exist regarding possible misrepresentations being made before the court. On May 9, 2016, the Commission conducted a site inspection and obtained further information confirming that the actual eviction had taken place on the May 5, 2016, and that the application for eviction had not been opposed before the Western Cape High Court.

The Commission entered into proceedings and the matter was heard on September 16, 2016. The Legal Resources Centre (LRC) filed heads of argument on behalf of the Commission which concerned various breaches of accepted law relating to evictions of communities. Judgment was handed down on November 11, 2016. The court ordered that the application for rescission of the judgment had to be set aside based on the failure of the court a quo to properly discharge the onerous duties imposed by the Constitution in matters relating to evictions. On Friday December 2, 2016 the Department of Transport and Public Works filed an application for leave to appeal. In the interim, the court had granted the applicants (residents of Geneva House) relief which included the right to remain on the property pending the occurrence of certain interventions and the identification by December 9, 2016 of appropriate alternative accommodation.

The attorneys for the Commission have advised that the Commission should abide by the decision of the court regarding the application for leave to appeal. It is the assessment of the that the prospect of success for leave to appeal is minimal, since the court fairly considered every aspect of the matters so no grounds for appeal could be identified.



***Women's Legal Centre Trust v. The President and Five Others (WCHC Case No.: 22481/2014)***

On September 19, 2016, Desai, J. at the Cape Town High Court, ruled that the Commission is entitled to join as a respondent in the matter following argument regarding the matter discussed above. The court's, judgment stated that comment from the Commission "is not only significant but vital. It is vital because if there is merit in the serious allegation that the country has failed in its human rights obligations then to some extent the Human Rights Commission is accountable for that and one has to hear what they have to say about it." The court made a similar reference to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission). The court accordingly expressed its wish to obtain clarity on the position of whether or not the country is in fact in violation of its international obligations, and there are arguments on both sides which the Commission may be able to clarify for the benefit of the decision which the court is being tasked with making.

It is important to note that while the court is of the view that the Commission shares some responsibility for the country potentially being in violation of its international obligations, firstly, such responsibility is shared between other institutions more appropriately tasked with monitoring gender obligations and, secondly, the Commission further notes the confusion regarding whether or not the international obligations can be said to exist since this has never been authoritatively determined.. Therefore, while the existence of obligations specifically in terms of the CEDAW is supported by the Commission, only a court would be in a position to make this determination, and this is one of the important aspects which needs to be ruled on by the court.

The Commission has proceeded to file its papers to intervene in the matter on December 19, 2016 and made its submissions as follows,:

- (a) An explanation of how it monitors the implementation of South Africa's international human rights obligations.
- (b) Information for the court on South Africa's international law obligations in relation to the recognition of Muslim marriages concluded according to Sharia law.

The Commission has set out the obligations that the parties to the application have with regard to the recognition of Muslim marriages and the protection of women's rights (as contained in international law instruments to which South Africa is a party and that South Africa has incorporated into its domestic law). The Commission aligns itself with the relief sought by the Women's Legal Centre (WLC), but refrained from engaging the merits of Sharia law, the extent to which it is compatible with the rights contained in Chapter 2 of the Constitution, and whether the Muslim Marriages Bill in its current form adequately caters for Muslim marriages.

On March 9, 2017 the Commission was informed that on the instruction of the Judge President, a meeting was convened early that week in relation to the Esau matter where the WLC is an amicus. The Esau matter was set down for a hearing before his Lordship Justice Saldanha.

The Judge President indicated the following:

- (a) He ordered that the Esau matter be consolidated with the Faro and WLC matters. He would inform both Judges Desai and Saldanha of this order.
- (b) He indicated that the WLC and Faro matters must be removed from the roll on March 20, 2017.
- (c) He determined that a suitable date would have to be ascertained for the joint hearing of the matters and that it would be set down for four days from a Monday to Thursday.
- (d) He intended to allocate two judges to the further hearing of the matter and would revert in this regard.
- (e) He instructed the counsel in the Esau matter to prepare an order.

A directions hearing has taken place on March 20, 2017 where it was determined that the matter would be heard from August 28, to September 8, 2017 before Judges Desai, Salie-Hlophe and Boqwana.



***SAHRC & 19 Others v. Madibeng Municipality, MEC for Local Government and Human Settlement, Minister of Water and Sanitation and Minister of Health (NGHC Case No.: 21099/17)***

The Commission's North West Provincial Office (NWPO) received a complaint from George Mkhwanazi on behalf of the residents of Klipgat C against the Madibeng Local Municipality where it was alleged that the water provided to residents in the Klipgat C area was inadequate, and that residents had been without water supply for a period of five weeks at the time the complaint was lodged. Despite having brought the plight of the community to the attention of the Madibeng Municipality and having liaised with the municipality on a number of occasions with a view to resolving the water crisis, the situation remained unchanged and the respondent failed and/or refused to provide residents with information on steps taken to address the water supply challenges.

On this basis, an application was launched in the North Gauteng High Court on March 24, 2017. The application concerns the provision of water services to Klipgat C in the North West Province, and arises from the fact that the residents of Klipgat C have no access to a reliable or sufficient supply of safe water.

**The application consists in two parts:**

**In Part A**, the Commission seeks urgent interim relief to protect the position of the residents pending the determination of Part B. This urgent interim relief is premised on the written undertaking already provided by the municipality, which stated that it would increase the number of water deliveries to Klipgat C to three times a week in order to meet the required volumes (translating into four truckloads three times a week), and that it would disinfect the water trucks and jojo tanks on site once a month. The municipality is bound by that undertaking, but has breached it in its entirety. In Part A, the Commission seeks to do no more than enforce that part of the undertaking, pending the determination of Part B.

**In Part B**, which will be determined expeditiously, but which will be dealt with on the basis of ordinary time-periods, the Commission seeks more wide-ranging and long-term relief. This will include relief designed to declare that the first, third and fourth respondents are in breach of their constitutional and statutory obligations and, furthermore, to direct them to remedy this in a manner that is in accordance with the rights of residents concerned.

Part A of the application has been set down for a hearing on May 9, 2017. The respondents had until March 31, 2017 to oppose the application. The only notice of intention to oppose that was received to date is that of the fourth respondent, namely, the Minister of Water and Sanitation, despite the fact that no relief is sought from the fourth respondent in Part A of the application. The fourth respondent has until April 12, 2017 to file an answering affidavit.

Part B of the application will be set down for a hearing on a date to be arranged with the Registrar.

In terms of the notice of motion, the municipality has until April 10, 2017 to oppose Part B of the application, noting that the papers were served on March 27, 2017. The municipality's answering affidavit will be due 15 days after receipt of the notice of intention to oppose.

***Investigative reports: (File Ref No.: FS/1415/0253)***

The complainant alleged that the respondent posted a photograph depicting the lynching of black men by the Ku Klux Klan on a Facebook group called "Ngwathe Online", with a caption that stated: "Unless we want this under a white man's rule AGAIN". According to the complainant, the picture seeks to wrongly "portray the attitude of white people in South Africa". The complainant alleged that Section 10, 12, and 16 (Human Dignity, Freedom and Security of the Person and Freedom of Expression) of the Constitution were violated.

Based on the preliminary assessment of the complaint, the Provisional Office of the Free State concluded that the reported complaint constituted a prima facie violation of the human rights of the complainant and the white community as a whole. More specifically, Section 9 and 10 (Right to Equality and Human



Dignity) of the Constitution had prima facie been violated. Thus, the complaint fell within the mandate and jurisdiction of the SAHRC and the complaint was investigated.

An allegation letter was sent to the respondent on the March 6, 2015. On the March 31, 2015 the provincial office received a response from the respondent, which was as follows:

- (a) His participation in the post was in defence of the democratic system which is constantly under attack.
- (b) He posted the photograph after a racially offensive post had been made by someone on the same Facebook page.
- (c) The post was not intended to cause any harm to white individuals or denote that white individuals should be feared or violate the rights of any fellow residents, nor make other citizens feel uncomfortable.
- (d) The post merely served as a reminder about South Africa's divided past.
- (e) The post was meant to provoke debate. Furthermore, his authoritative position as a municipality employee allowed him to engage in robust discussions with the intention of correcting narrow mind-sets.
- (f) He wished to engage with the complainant further to understand her thinking regarding the matter and acquire a clear picture of how she would have handled the situation.

Thereafter, on the April 20, 2015, the provisional office received the complainant's comments to the respondent's response, which were as follows:

- (a) White people in South Africa are directly attacked on a daily basis (evidence of recent racial attacks was provided).
- (b) The respondent's post can under no circumstances be justified.
- (c) The post is not related to South Africa.
- (d) Colour cannot continue to be used as an excuse for intolerance.
- (e) Being in a position of authority gives no person the right to spread false information and abuse such powers.
- (f) It cannot in any way be denied that the respondent's remark is misleading as it did not take place in South Africa and, therefore, amounts to deliberate deception.

After a thorough analysis of the matter and a thorough consideration of both parties' submissions, the following findings were made by the Commission:

- (a) The respondent's Facebook post violates both the i Right to Equality on the ground of race and the Right to Human Dignity.
- (b) The respondent's Facebook post and its accompanying caption are discriminatory and undermine the dignity of the complainant and white South Africans.
- (c) The Facebook post does not constitute hate speech.

In view of the findings, the following recommendations were made:

- (a) The respondent was directed to remove the offending post from the Facebook page within a period of three months from the date of the finding.
- (b) The respondent was directed to post an unequivocal and unconditional apology to the complainant and all white South Africans on the Ngwathe Online Facebook page within a period of three months from the date of the finding.
- (c) The respondent was directed to attend a human rights- sensitisation programme regarding race relations in South Africa at the Ahmed Kathrada Foundation within a period of twelve months from the date of the finding.



***Investigative reports: (File Ref No.: GP/1415/0554)***

In December 2014, the respondent posted racist comments on the Facebook page following a prize-giving function at a lower primary school. The respondent's son did not win a prize and the the respondent took to Facebook to pose a racist rant against the school and black people in general.

In applying the law to the facts (including the respondent's admission that he posted the comments on Facebook), the Commission found that the comments amount to hate speech under the PEPUDA.

The complainant and the school endorsed the provisional report and the recommendation by the Commission that the respondent submit an unequivocal apology and a commitment to desist from such behaviour in future.

The respondent, after receiving the provisional report, submitted a lengthy and sincere apology to all involved.

The recommendations in the provisional report have been complied with, save for the respondent's attendance to race sensitisation training at the Commission.

***Investigative reports: (File Ref No.: GP/1415/0202)***

On July 4, 2014, the complainant was turned away from a hair dressing salon in Midrand due to the fact that the salon does not cut "ethnic hair".

In applying the law to the facts (including the respondent's admission that the complainant was indeed turned away and refused services at the hair salon), the Commission finds that the first respondent contravened Section 9 (4) of the Constitution and Section 7 (b) of PEPUDA in turning away the complainant.

The Commission finds that the first respondent's actions were indirectly based on race, a prohibited ground under PEPUDA in that the respondent's conduct promoted exclusivity based on race. The Commission also finds that the conduct contravened Section 9 (4) of the Constitution.

The respondent:

- (a) Apologised unequivocally to the complainant "for allegedly discriminating against him."
- (b) Indicated that the white male who turned away the complainant is no longer in the employ of the respondent.
- (c) Agreed not to turn away any customers based on race.
- (d) Claimed not have the budget to "provide training on ethnic hair styling."

Recommendations made included that:

- (a) The first respondent unequivocally communicate a formal apology to the complainant in writing within five days of the release of the report and send a copy of the apology to the Commission.
- (b) The first respondent agree not to turn customers away on the basis of race, either directly or indirectly, in the conduct and operation of its business.

The complainant was dissatisfied with the respondent's response and wants the Commission to take the matter further. The Commission has been unable to take the matter further as the final report has not been issued. On the issuing of the final report, the Commission will consider further steps against the respondent should the apology remain unsatisfactory.

***Monitoring implementation of court orders***

The SAHRC instituted proceedings before the High Court of South Africa, Gauteng Local Division in Johannesburg relating to the systemic and persistent practices of unlawful detention of undocumented



migrants at the Lindela Repatriation Centre. In terms of the court order by Tsoka, J. on August 28, 2014 in the case *South African Human Rights Commission v. Minister of Home Affairs*,<sup>1</sup> the court held the following:

- (a) The actions and/or practices of the Minister of Home Affairs and the Director General of Home Affairs are unlawful and unconstitutional insofar as they allow for detaining people for a period exceeding 30 calendar days from the date on which that person was first arrested and detained, pending his or her removal from the country, in the absence of a valid and lawful warrant issued by a Magistrates' Court on good and reasonable grounds for a period not exceeding 90 calendar days in terms of Section 34 (1) (d) of the Immigration Act, 13 of 2002.
- (b) The Minister of Home Affairs and the Director General of Home Affairs Exercised their powers and functions on the basis of a miscalculation of the period referred to in Section 34 (1) (d) of the act, insofar as the 30 day period of detainment commenced with the arrival of the person at the Lindela Repatriation Centre, instead of applying the section on the correct basis that the 30 day period commences on the date when the person is first arrested and detained under Section 34 (1), or when the period for detention under Section 41 permitted by Section 34 (2) expires, and includes the period of detention prior to the person arriving at the Lindela Repatriation Centre.
- (c) The Minister of Home Affairs and the Director General of Home Affairs obtained and enforced a warrant for detention after the 30-day period as articulated in Section 34 (1) (d) of the act without following a fair procedure as previously required by regulation 28 of the regulations promulgated under the act (GN R616 in GG 27725 of June 27, 2005), and now required by regulation 33 of the regulations promulgated under the act (GN R413 in GG 37679 of 22 May 2014). They failed to serve the relevant detainee a copy of the prescribed notice thus affording the detainee a fair opportunity to make submissions in relation to the proposed extension of his or her detention. They also failed to ensure that these representations were conveyed to the magistrate for the purposes of proper consideration prior to making a decision about whether or not to issue the warrant for further detention.
- (d) The Minister of Home Affairs and the Director General of Home Affairs detained people for a period exceeding 120 days.

On that basis, the court directed as follows:

The Minister of Home Affairs, the Director General of Home Affairs, and Bosasa (Pty) Ltd must take all steps reasonably necessary or appropriate, without delay, to ensure that the practices referred to in paragraphs a) to f) below are terminated forthwith, and in particular to ensure that:

- (a) No person is detained for a period exceeding 30 calendar days from the date on which that person was first arrested and detained, pending his or her removal from the country, in the absence of a valid and lawful warrant issued by a magistrate's court on good and reasonable grounds for a period not exceeding 90 calendar days in terms of the act.
- (b) Their powers and functions are exercised on the basis of the period referred to in Section 34 (1) (d) of the act, on the basis that the 30- day period commences on the date when the person is first arrested and detained under Section 34 (1), or when the period of detention under Section 41 permitted by Section 34 (2) expires, and includes the period of detention prior to the person arriving at the Lindela Repatriation Centre.
- (c) A warrant is obtained for detention after the 30- day period as articulated in Section 34 (1) (d) of the act by following a fair procedure as required by regulation 33 of the regulations promulgated under the act (GN R413 in GG 37679 of May 22, 2014), and in particular to serve the relevant detainee

<sup>1</sup> *South African Human Rights Commission and 40 Others v. Minister of Home Affairs and 4 Others*, Case No.: 41571/12 (SAHRC v. Minister of Home Affairs).



a copy of the prescribed notice, as well as affording the detainee a fair opportunity to make submissions in relation to the proposed extension of his or her detention. Additionally, to ensure that these representations are conveyed to the magistrate for the purposes of proper consideration prior to making a decision about whether or not to issue the warrant for further detention.

- (d) No person is detained for a period exceeding 120 days.
- (e) To provide the SAHRC, on a regular and at least quarterly basis, with a written report (including any information being furnished to the Commission).
- (f) The Minister of Home Affairs and Bosasa (Pty) Ltd are directed to provide the Commission, on a regular and at least quarterly basis, with access to the Lindela Repatriation Centre and detainees.

### Initial observations

- (a) It is important to note the collegial and receptive working relationship that has been established between the SAHRC and the Department of Home Affairs (DHA). It is recommended that this relationship be preserved and encouraged at all times.
- (b) Despite minor challenges, the SAHRC further records that it has been able to fulfil its constitutional mandate of monitoring and assessing the observance of human rights unhindered.<sup>2</sup> This is in light of its unrestricted access to the detention facility, officials, and detainees.
- (c) The reports, previously submitted on a quarterly basis, are now consistently submitted on a weekly basis in line with the court judgment dated August 28, 2014.<sup>3</sup> The earlier periodical reports submitted did not enable the sampling of undocumented migrants who had already been deported or released. Consistent and timely submission of these reports enables the effective realisation of the SAHRC's monitoring function at the repatriation facility.
- (d) The SAHRC is mindful of the capacity challenges that may be faced by the DHA within the available resources of the state, and similarly mindful of its own mandate. Therefore, the SAHRC does not seek or propose to usurp the DHA's policy-making obligations in terms of the Immigration Act, specifically regarding the arrest and detention of undocumented migrants. Both the SAHRC and DHA acknowledged the need, in principle, to work in a cooperative and less adversarial manner which ensures the comprehensive implementation of the court order.

### Summary of the SAHRC's observations at Lindela

In executing the monitoring and oversight mandate, the Commission has been focused on the issue of the unlawful detention of undocumented migrants at Lindela. In undertaking this task, it necessitated the acknowledgment that a multi-pronged approach needed to be adopted for the purposes of monitoring in terms of the SAHRC mandate. Hence, other potential human rights violations were monitored.

In this regard, the following issues were observed:

- (a) There is a persistent occurrence of arrest and detention of unaccompanied minors at police stations (whether classified as places of detention or not) and Lindela.
- (b) There have been deaths of detainees at Lindela which have not been reported to the Commission.
- (c) There is continued unlawful detention of undocumented migrants for periods beyond those prescribed by the law.
- (d) There is a lack of, or an inadequate, conflict management framework at the facility. In this case, the Commission observed the existence and use of specific rooms as isolation cells or units for detainees considered to be contravening the rules and regulations of the detention facility.

<sup>2</sup> Section 184 of the Constitution of the Republic of South Africa, 1996 broadly outlines the functions of the Commission.

<sup>3</sup> *SAHRC v. Minister of Home Affairs*.



- (e) There is an insufficient provision of access to adequate healthcare, including but not limited to, the absence and/or inadequate provision of prophylactics, evidence of rapid outbreaks of infectious diseases, and insufficient treatment of illnesses at the detention centre.
- (f) Non-responsiveness to the Commission's requests for certain information is noted with concern, as this non-cooperation hinders the fulfilment of the Commission's constitutional and legislative mandate.
- (g) Broadly, there have been persistent allegations of corruption, bribery, and unnecessary as well as disproportionate use of force levelled against Bosasa security officials.
- (h) Concerns relating to the general cleanliness and hygiene at the facility;
- (i) Limitations or interruption of access to water.
- (j) General disregard and/or lack of awareness of the procedural rights available to detainees, such as the right to make submissions, access to free legal counsel, and access to information in a language best understood by detainees.
- (k) In the absence of legal representation and interpretation services, detained migrants often feel intimidated and obliged to sign documents without understanding their content and implications.
- (l) There is no provision for an independent complaints mechanism at Lindela.

### Summary of key recommendations

The recommendations put forward in this report are not only addressed to the DHA in its capacity as the administrator of the Immigration Act, 13 of 2002, the Refugees Act and the accompanying regulations, but also other entities such as Bosasa as the service provider contracted to manage the daily operations at Lindela, the Department of Justice and Correctional Services (DoJCS), the Department of Health (DoH), and the Department of Social Development (DSD) insofar as these departments are in a position to provide key services in terms of inter-departmental service-level agreements or their respective responsibilities.

Recommendations, therefore, include:

- (a) As a point of departure, the stakeholder framework set up by the Commission, following the court judgment, needs to be broadened to include not only Civil Society Organisations (CSOs) already engaged, but other actors such as government departments who should actively participate and engage on issues of collective interest and responsibility.
- (b) The DHA and/or Bosasa are urged to co-operate with the Commission in all its efforts to fulfil its constitutional mandate, including the provision of timely and accurate information in response to enquiries by the Commission.
- (c) All unlawful detentions at Lindela must cease with immediate effect.
- (d) The detention of unaccompanied minors must be discontinued as a matter of urgency. Care must be taken when arresting and admitting persons at Lindela, which includes thorough screening to prevent the detention of unaccompanied minors.
- (e) Medical staff at Lindela must be sensitised to ensure treatment of detainees who are ill are treated with the dignity inherent in human beings despite their legal status in the country.
- (f) The DHA is a key stakeholder in ensuring the continued training and capacitation of the medical staff at Lindela. The clinic is understaffed and attends to huge numbers of people at Lindela without thorough examinations.
- (g) The DOJCD should ensure that undocumented migrants are not charged and sentenced in terms of repealed legislation and that legal prescripts are uniformly applied.
- (h) The South African Police Service (SAPS) should ensure that the detention of undocumented migrants at police stations, which have been classified as immigration detention centres, comply with the minimum standards of detention, the provisions of the Immigration Act and the abovementioned court order.



- (i) Detained undocumented migrants must be served with notices of deportation as provided by the Immigration Act and the accompanying regulations insofar as the time limits and procedure are concerned.

### **National hearings: report on the impact of protest- related action on basic education**

This report contains findings and recommendations of a national investigative hearing held by the SAHRC into protest-related action and its impact on the right to basic education in South Africa. The hearing was held in terms of Section 13 and 15 of the SAHRCA, 40 of 2013.

The fact that South Africa experiences high rates of public protest that have an impact on the rights of children to enjoy a basic education necessitated the investigation. Monitoring over a period of five years indicates that protest-related action manifests in many forms, including the burning of educational infrastructure, and the barring of learners from accessing school premises and other sites of learning. Recent incidents in the Limpopo Province drew heightened attention to the extent and nature of the impact that protest-related action has on children's right to basic education.

The Commission is a constitutional body that is empowered to investigate human rights violations, and to make suitable findings and recommendations to the state on measures to be taken in redress. Where violations are widespread and systemic in nature, the Commission is enjoined to institute a national public hearing.

Such a process assists in identifying the underlying factors that lead to such violations, as well as the policy and institutional mechanisms that the state and others may put in place to prevent violations, or generally promote the human rights of children. The national hearing with regard to the impact of protest- related action on the right to basic education is part of a wider response by the Commission to promote and protect this right.

The following key questions formed the basis of the investigation of the Commission:

- (a) To what extent has protest-related action affected the right to basic education?
- (b) Are policy measures at local, provincial, and national levels adequate in detecting and preventing public protests from disrupting schooling?
- (c) Are there early warning mechanisms in place to ensure that schools are secure and that learning is not disrupted?
- (d) Are there measures in place to monitor the impact of protest-related action on the right to basic education?
- (e) Are there measures (such as codes and guidelines) in place to ensure that stakeholders such as communities, leaders, and school governing bodies fulfil their responsibility in the context of protests?

It is worth noting that a crucial question that the Commission has not explored fully in this hearing is the question of why schools are so often the target of protest-related action aimed at expressing frustration over unrelated social discontent. While this question was not a focus, various stakeholders put forward reasons for this phenomenon during their presentations. The Commission has taken note of these reasons and will consider them as a focus for future investigation.

From the outset, the Commission acknowledges the importance of the right to assemble, peacefully and unarmed, at national, regional and international level. The need to protect and respect the right to protest is accepted, but at the same time acknowledges the need to ensure a careful balance when the right to protest is exercised. A brief overview is provided of protest-related actions that affected basic education in South Africa during the last five years, and which have been monitored by the Commission.



The methodology employed during the hearing was inquisitorial in nature. Stakeholders, including government departments at national and provincial levels, trade unions and non-governmental organizations, school principals, and community leaders were invited to make submissions.

Arising from its enquiry, the Commission made the following key findings:

- a) The extent to which protest-related action has affected the right to a basic education:
  - (i) *The Commission finds that the right to basic education is affected by protest-related action arising from causes that, in most cases, may be unrelated to the provision of basic education. Protesters who deny access to education are violating the right of basic education of the affected learners. No specific measures have been taken to create awareness of the importance of basic education.*
  - (ii) *The Commission further finds that learners are disadvantaged by certain protest-related action in that they are consequentially (a) physically barred or intimidated from attending school, and (b) infrastructure on which learners rely to access education is damaged or destroyed.*
- b) Whether policy measures at local, provincial and national levels are adequate in detecting and preventing public protests from disrupting schooling?
  - (i) *The Commission finds that both the Department of Basic Education (DBE) and the SAPS response has, in some cases, been slow, and it appears that no uniform policy or approach in dealing with such incidents is in place.*
  - (ii) *The lack of proper and efficient communication between authorities and affected communities has resulted in communities seeking ways to draw attention to their plight and targeting schools, even though by targeting schools, children's right to basic education is undermined.*
- c) Whether early warning mechanisms are in place to ensure that schools are secure and that learning is not disrupted:
  - (i) *The Commission finds that the responsibility to ensure the safety of learners, educators, and schools does not rest with one department, as it was unclear which department took the lead in cases where protest-related action targeted schools.*
  - (ii) *In some instances, the breakdown of leadership at the local government level had a negative effect on efforts to address problems that arise, thereby undermining the right to a basic education.*
  - (iii) *No evidence of adequate early warning systems could be established.*
- d) Whether measures are in place to monitor the impact of protest-related action on the right to a basic education:
  - (i) *The Commission finds that no reported action has been taken against people who deliberately interfere with the right to basic education.*
  - (ii) *The Commission further finds that there is a slow or inadequate response by government departments to incidents that affect schools, which in turn affects the recovery process.*
- e) Whether measures (such as codes and guidelines) are in place to ensure that stakeholders, such as communities, leaders, and school governing bodies fulfil their responsibility in the context of protests:
  - (i) *There is a need for government departments, especially at the local level, to better engage with communities on important community matters. There is also a need to encourage people to find new ways of expressing their concerns so that their actions do not result in a negative impact on other rights, such as the right to basic education.*



From these findings, the report makes the following recommendations with a view to addressing key-identified challenges:

- a) The DBE should constitute an interdepartmental National Public Protest Response Team (National Response Team). This national body should include relevant government departments, particularly the SAPS and the Department of Cooperative Governance and Traditional Affairs (CoGTA), and other relevant stakeholders.
- b) The National Response Team should develop guidelines that:
  - (i) *Set out clearly the roles and responsibilities of the various government departments within the context of school disruptions.*
  - (ii) *Establish early warning systems and responses to be implemented in the event of school disruptions due to protest action.*
  - (iii) *Include information on the relationship between the National Response Team and the SAPS Safety Priority Committees. The guidelines should also provide for procedures and/or protocols on how public protest information can be shared in order that the SAPS receives as much information as possible about planned school disruptions due to public protests.*
  - (iv) *Indicate that the SAPS will prioritise the investigation and prosecution of actions that result in the disruption of basic education taking place or damage to state school property at schools.*
  - (v) *Set out the actions, to be taken in circumstances where learners have been deprived of education due to protest action while taking budgetary considerations into account in order that the necessary catch up is achieved.*
  - (vi) *Set out clearly the responsibilities, which include budgetary responsibilities of different government departments where school infrastructure and buildings have been damaged or destroyed, thus ensuring that the situation is normalised and education can continue.*
  - (vii) *Include contribution from CoGTA, indicating its role and responsibilities in engaging with traditional leadership structures to create awareness about the impact of public protest action on the right to basic education. CoGTA should encourage traditional leaders to assist in preventing school disruptions from occurring.*
  - (viii) *Provide a reporting mechanism in order that information and statistics on all school disruptions due to protest actions are recorded at a national level. This will allow for greater information sharing and analysis of the current phenomenon where protest actions disrupt schools thereby violating the right to basic education.*
  - (ix) *Provide guidance on awareness-raising strategies and programmes that can be implemented among government departments that engage with, or are affected by, public protests that disrupt education. These awareness-raising strategies should include information on the right to protest and the role of the SAPS and other government departments. The SAPS should report back to the National Response Team on measures that it has taken to train its members in areas of conflict prevention in communities.*
- c) The National Response Team should share its report and information with the National Planning Commission in order that the impact of public protests on the realisation of the right to basic education can be considered in the ongoing review of the National Development Plan (NDP).
- d) The National Response Team should consider Section 3 of the South African Schools Act (SASA) and determine whether the criminal provisions contained therein are sufficient to be used to prosecute people engaged in public protests who deny learners access to education. Furthermore, the National Response Team must make a determination as to whether the statutory criminal sanctions are a sufficient deterrent. Should it be determined by the National Response Team that amendments to SASA are necessary, the DBE should initiate the process to bring about the necessary amendments to the legislation.



- e) The National Response Team should develop a community awareness programme that can be rolled out at the provincial level. This programme should clearly articulate that the Constitution guarantees the right to protest where this is done lawfully and peacefully. Any protest action that falls outside of this, such as damaging or destroying schools and denying access to education during public protests, is not constitutionally protected. In fact, in many instances, these actions may amount to a criminal offence.
- f) The structure of the National Response Team should be replicated at the provincial level and, where necessary, the local level. These provincial and local response teams can tailor the national guidelines to local conditions. This will ensure that planning and responses take into consideration local factors. It will also allow for a faster reaction by the appropriate authorities when public protests threaten access to basic education. The DBE, SAPS, and CoGTA should indicate within a period of three months which recommendations are rejected. Complete written reasons should be provided for those recommendations that are rejected.
- g) The DBE should provide a report within nine months on activities of the National Response Team. This report should include the guidelines referred to above and set out the progress that has been made in implementing these recommendations at the national and provincial level.

The DBE should provide a further report on the activities of the National Response Team one year thereafter indicating progress that has been made. This report should provide the guidelines at the national and provincial level. At this stage, the Commission will determine whether further progress reports are necessary.

#### **National hearings: hearing on the underlying socioeconomic challenges of mining- affected communities in South Africa**

Growing discontent among miners, trade unions, and mining communities over low wages and poor living conditions have sparked a wave of strike and protest action across the sector over the past few years, which has resulted in a decline of the country's GDP and shaken investor confidence. Lengthy strikes have also had a devastating impact on communities, with local businesses struggling to survive and strikers having to obtain loans, often at high interest rates through unregulated and/or unlawful mechanisms. The effect of this is that miners are driven even deeper into poverty as the repayment of loans may be unaffordable despite any wage increase which may have ensued.<sup>4</sup>

In 2014 the SAHRC hosted a National Hearing on Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa (the 2014 Hearing). Although not forming the main component of the 2014 Hearing, issues relating to Sustainable Leadership Presentation Series (SLPs) were raised, particularly with regard to the failure of mining companies to meaningfully consult with communities directly affected, the lack of attention to non-national miners which are subsequently made redundant, and, importantly, the non-public nature of SLPs and annual reporting documents. With regard to the latter, the SAHRC found that "...[t]he withholding of information results in creating inequity and disadvantages for poorer people by obliging them to engage in lengthy legal processes unnecessarily. The lack of information disempowers them from being able to monitor compliance with legal obligations and various undertakings."<sup>5</sup>

The SAHRC further noted that "... systemic, institutionalized inequality also cannot be reversed overnight" and recommended that SLPs must be closely aligned to municipal Internally Displaced Persons (IDPs). In addition, adequate processes must be in place to monitor the adherence to the undertakings and obligations that exist in terms of such plans.

<sup>4</sup> Following from the strike along the platinum belt during 2014, it is estimated that the average miner's accumulated debt had increased and they were paying back 5 000 rand per month. Miners lost 45 percent of their annual income, and it would take them roughly 2.5 years to recoup it through the recently negotiated wage increase (<http://www.sahistory.org.za/article/2014-south-african-platinum-strike-longest-wage-strike-south-africa#sthash.FQXZHVNF.dpuf>).

<sup>5</sup> Report of the SAHRC Investigative Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa (2015), p 62.





In sum, communities faced with a history of exploitation in the mining sector, poverty and rising levels inequality, inadequate access to basic services, persisting social issues and a lack of participation, as well as access to information regarding plans which directly impact on their daily lived experiences continue to feel marginalised and neglected.

### *Rationale for the investigation*

It is clear that the mining industry, state departments, and communities affected by mining operations continue to face a number of social, economic, cultural, and political challenges. Despite a number of regulatory mechanisms in place aimed at achieving sustainable transformation and development in the industry, significant levels of poverty, inequality, and poor service delivery in local communities persist, creating the perception that communities and mine workers continue to receive inequitable benefits from mining operations in the country.

While many of these challenges were identified as forming part of the underlying causes which led to the unfortunate and tragic events at Marikana in August 2012, the Marikana Commission of Inquiry ultimately did not examine these in sufficient detail and was, therefore, unable to address systemic challenges facing mining communities across the country. The Commission further did not evaluate the role and conduct of other stakeholders, such as the Department of Mineral Resources (DMR) and other government departments, as a result of the deletion of paragraph 1.5 from its terms of reference. In recognising the broad mandate of the Marikana Commission of Inquiry, and the many complex issues it was required to deal with, it is acknowledged that the Marikana Commission of Inquiry faced particular difficulties in its ability to deal with all the issues in depth, leading to the decision to amend the terms of reference. However, the amendment of the terms of reference led to a missed opportunity to address the deeper, underlying causes.

As highlighted above, the manner and extent to which mining companies deliver on SLP commitments have significant implications for the overall quality of life and ability to promote the progressive realisation of rights in some of the poorest and most marginalised communities in South Africa. Moreover, an in-depth consideration of transformation in the mining industry and the progressive realisation of socioeconomic rights of mining-affected communities, in particular, is required. The SAHRC's involvement in the Marikana Commission of Inquiry, particularly phase two, as well as additional issues relating to SLPs and the resultant impact on the daily lives of communities, which were identified in the SAHRC's 2014 Hearing, have illustrated the need to conduct an in-depth analysis on these systemic issues.

Through various initiatives, a number of complex and wide-ranging challenges faced by mining-affected communities have been raised with the Commission, which include, but are not limited to, the following:

- (a) Challenges with regard to housing and local service delivery around the mines
- (b) The practice of micro-lending to and debt-collection from mine workers
- (c) Benefits from mining operations for communities
- (d) Transparency and access to information
- (e) Education and skills development
- (f) Social impact of the mines on mining-affected communities
- (g) Sustainable development and environmental management
- (h) Socioeconomic impact of mine closures;
- (i) Challenges relating to the cooperation and/or collaboration between various stakeholders, including mining companies, traditional authorities, community members, and local government
- (j) Non-compliance by mining-rights holders with regulatory requirements and corporate social obligations



A hearing provides an opportunity to engage with all relevant stakeholders. It would be conducted in an inquisitorial manner, as opposed to accusatorial or adversarial, with a view of obtaining information to establish a deeper understanding of the complex challenges the mining industry and affected communities, in particular, face. Further, it will analyse and identify the extent to which the current regulatory regime is adequate to provide for, and to enforce, the corporate social responsibilities of mining companies in South Africa. The Commission will aim to develop practical and sustainable solutions aimed at addressing challenges, gaps, and opportunities identified during the process. In this way, the Commission will contribute to the progressive realisation of rights. A report based on the hearing of proceedings will be released during the 2017 to 2018 financial year.

### **National hearing on racism and social media**

Complaints based on alleged violations of the right to equality have consistently been the most significant basis of grievances made to the SAHRC since its inception. In the previous financial year, 2015 to 2016, 16 percent of the total complaints received alleged a violation of the right to equality. This figure must be understood in context, given that the second highest category of complaints (labour relations) constituted just 10 percent of the total number of complaints. A closer consideration of complaint trends reveals that even in respect of labour-related complaints (referred to bodies like the Commission for Conciliation, Mediation and Arbitration), arise from racism in the workplace.

Of the total equality-related complaints received, 505 complaints (or two thirds of the complaints) are classified as race-related discrimination, lodged during the 2015 to 2016 financial year.

Recent incidents of racism on social media platforms and outbreaks of violence against non-nationals illustrate the urgent need for intervention and leadership by the SAHRC in confronting discrimination and issues related to the right to equality.

Along with the dominance of race-related complaints and cases of violence committed against non-nationals reported over the past financial year, the SAHRC's Midrand conference, and recent investigative hearings into issues of transformation in higher education and discrimination in the workplace, have highlighted the need for new approaches to dealing with race relations in South Africa.

In light of the subject matter that would form the content of the 2014 Hearing, and the proposed relaxation of hearing formalities (as articulated in the SAHRC Complaints Handling Procedures), the 2014 Hearing report is confined to making recommendations only in line with the goals articulated in the NDP, rather than specific findings that address allegations of specific rights violations. The 2014 Hearing report would take the form of a guide that is accessible to the public (and which can also be submitted to Parliament) as a means of making a substantive contribution toward achieving the overarching objectives of nationbuilding and social cohesion. The 2014 Hearing report will be prepared during the 2017 to 2018 financial year.

### **Monitoring implementation of report recommendations**

The Commission followed up on the implementation of recommendations made in its reports during the previous financial years, 2014 to 2015 and 2015 to 2016. The reports in question included the following:

- (a) National investigative hearing of Safety and Security Challenges in Farming Communities
- (b) Annual Equality Report
- (c) National investigative hearing of Systematic Complaints Relating to the Treatment of Older Persons
- (d) Business and Human Rights Report
- (e) Annual International and Regional Human Rights Report
- (f) National Hearing of Issues and Challenges in Relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa, 2015



- (g) Access to housing, local governance and service delivery
- (h) Investigative Hearing Report on Emergency Medical Services in the Eastern Cape
- (i) Hearing report on Transformation at Public Universities (released in 2016 to 2017)
- (j) SAHRC report on the matter between SAHRC (on behalf of Bokamoso Residents, Qwaqwa) and Maluti-A-Phofung Local Municipality, 2014 (assessed through a provincial visit engagement)

### ***Review of responses to the recommendations***

All written responses to the follow up on the recommendations were regarded as an accurate reflection of progress made by the respondent without any further verification at this stage. As the monitoring and evaluation function is strengthened in the future, the SAHRC will include verification processes to validate the responses.

Some of the responses received were too general and made reference to documents (that is, existing plans and strategies as well as newly developed ones) that cover the recommendations without highlighting content that is the same. This may partly be due to the fact that some of the recommendations made were lacking the "SMART" principle (which stands for specific, measurable, achievable, realistic, and time-bound). For this reason, the Strategic Support and Governance Unit has developed guidelines for the development of recommendations to be considered for all future recommendations. While other responses were more substantial, they lacked clear plans of action to ensure practical implementation and adequate monitoring. Only one of the responses had substantial input with clear time frames.

The process of follow up and the responses received were generally found to be relevant as they covered the issues raised. They were all based on human rights concerns dealt with by the Commission through investigations and hearing of complaints.

The fact that there were responses to the correspondence on the implementation of recommendations indicates the effectiveness of the monitoring processes and the work of the Commission. The effectiveness and impact will be determined further based on future assessment of the progress made in terms of the responses provided.

All respondent stakeholders expressed support and commitment to working with the SAHRC in ensuring that all relevant recommendations were implemented.

A lot of work was being done to address some of the broad areas relating to the SAHRC recommendations. However, the reported work was not always focused directly on the specific recommendations made and not all recommendations made were addressed in all instances.

The SAHRC will ensure greater coordination and structuring of the work to ensure alignment with the recommendations and, ultimately, impact.

### ***Response on housing, local governance, and service delivery***

The National Department of Human Settlements (NDHS) and the South African Local Government Association (SALGA) responded to the report recommendations on housing, local governance, and service delivery.

#### **SAHRC report recommendations**

Broadly, the recommendations made by the SAHRC to the NDHS cover issues in relation to:

- (a) Emergency and temporary accommodation
- (b) Low income rental accommodation
- (c) Upgrading of informal settlements
- (d) Free basic services



- (e) Budgeting, planning, monitoring, and evaluation
- (f) Local governance
- (g) Security of tenure and evictions
- (h) Private property owners and private contractors
- (i) Community participation and protest action
- (j) Access to justice
- (k) Apartheid spatial planning

### **Response by the NDHS**

The National Investigative Report on Access to Housing, Local Government, and Service Delivery contained 45 recommendations. Commendably, the NDHS provided detailed responses covering all the recommendations and supported a significant number of them. It appears from the responses that a lot of work was being done with respect to the recommendations made by the SAHRC.

In a meeting initiated by the NDHS in response to the report during February 2017, various platforms of engagement were identified that could enhance implementation of the recommendations and progress in terms of monitoring and reporting on these implementations. These platforms include:

- (a) Performance dialogues hosted by the Department of Planning, Monitoring, and Evaluation.
- (b) Quarterly progress reports by the NDHS to the DPME.
- (c) SAHRC channelling findings and recommendations to the NDHS before approval of provincial business plans;.
- (d) Engagements three times a year between the NDHS and the SAHRC to review progress made with respect to the recommendations, and reflect on other information requirements for the broader economic and social rights reports.

The response of the NDHS was also discussed with the SAHRC Advisory (Section 11) Committee on Housing. The Committee found that:

- (a) The NDHS appeared to adopt a blanket acceptance of the recommendations.
- (b) The responses lacked a clear plan of action to deal with the concerns raised by the Commission.
- (c) The responses were biased in light of policy and as such lacked operational practicality.
- (d) There are gaps in some of the responses.

### **Response by the South African Local Government Association**

The SALGA responded to recommendations in relation to accreditation and assignment of the housing function, supporting municipalities on evictions and unauthorised land occupation, as well as municipal leadership and accountability. SALGA indicated that:

- (a) It was involved in a comprehensive process supporting housing accreditation and assignment of the housing function.
- (b) There was a strategy to support municipalities with respect to evictions.
- (c) It was executing a councillor induction programme following the local government elections of 2016.
- (d) It was committed to supporting the recommendations as well as further engagement to assist in enhancing implementation of the recommendations by municipalities.

### ***Response on safety and security in farming communities***

The National Investigative Report on Safety and Security Challenges of Farming Communities included 14 broad recommendations.



### SAHRC report recommendations

In summary, the SAHRC recommendations on safety and security challenges in farming communities include:

- (a) Involvement of all relevant role players in dialogues facilitated by the SAHRC.
- (b) Increased law enforcement efforts to combat crime against farming communities.
- (c) The proposed dialogues to give attention to race relations in farming communities.
- (d) Awareness raising to address stereotypes on farming in South Africa.
- (e) Continued research on safety and security challenges in farming communities.
- (f) Establishment of housing specification standards for farm workers and dwellers, and a policy brief on the status of land tenure by the Department of Rural Development and Land Reform (DRDLR)
- (g) Several recommendations relating to the justice system and the circumstances of farming communities.
- (h) A review of the Rural Safety Strategy by the SAPS.
- (i) Strengthening the roles of community policing forums and Rural Safety Priority Committees.
- (j) Multi-pronged social cohesion and service delivery strategies to reduce violence and enhance a human rights -based culture in farming areas.
- (k) SAHRC engagement to promote the roles and collaboration of COGTA with the SAPS, as well as empowerment of traditional leaders on safety and security challenges in farming communities.
- (l) The SAHRC must alert the Department of Labour to note the report.
- (m) Establishment of a Justice Crime Prevention and Security Cluster sub-committee to develop and monitor implementation of action plan addressing the issues raised, and engage with the community, which includes SAHRC participation.
- (n) Provision of sufficient detail by the South African Institute for Judicial Education on court processes and the judicial system improvements towards addressing impunity in farming communities.

### Response by the SAPS

In its response, the SAPS indicated that a task team had been established and processes were underway for the development of an action plan, as well as revision of the Rural Safety Strategy, which both cover the issues raised in the report recommendations. To this end, the SAPS was also planning a Rural Safety Summit. The SAPS committed to further reporting on progress following implementation of the approved action plan.

At a meeting held between the Commission and the SAPS in February 2017 to introduce the new Commissioners and discuss the xenophobic violence, the issue of violence in farming communities was also briefly highlighted. The meeting identified a need to hold further engagements on the issue.

It is also worth noting that the meeting agreed to a review of an existing Memorandum of Understanding (MoU) that was coming to an end by March 2017. An opportunity exists to incorporate some of the recommendations in the revised MoU for implementation.

### *Response on emergency medical services in the Eastern Cape*

The Commission made recommendations based on a hearing conducted in the Eastern Cape on emergency medical services. The recommendations made by the SAHRC broadly related to:

- (a) Legislative and policy framework, which includes national standards, demographics, policy formulation and awareness, and definitions.
- (b) The adequacy, suitability, and equipment of ambulances.
- (c) Planned patient transportation services.



- (d) Response times, data management and staff awareness, as well as accountability.
- (e) Planning, recruitment and retention, as well as empowerment regarding human resources.
- (f) Accessibility of emergency medical services.
- (g) The alignment, relevance of indicators, as well as human rights and gendered approaches regarding planning and policy development.
- (h) Community engagement and awareness.
- (i) Inter-governmental coordination and collaboration for social transformation.

#### **Response by the Eastern Cape Department of Health**

The Eastern Cape Department of Health (ECDoH) provided very detailed and specific responses to the SAHRC recommendations that are indicative of substantial work done to address the issues raised. There were time frames attached to the responses, making it easier to align with a monitoring system. Most of the 54 recommendations were reportedly “completed” or “due by end March 2017”.

#### ***Response on issues in relation to unregulated artisanal mining activities***

The Department of Justice and Constitutional Development (DOJ&CD) responded to the SAHRC follow up correspondence on this report.

#### **SAHRC report recommendations**

The SAHRC findings and recommendations focused on the extent of illegality in the mining industry and improvements. The recommendations highlight the need for:

- (a) Strategic research into artisanal mining.
- (b) A holistic, collaborative approach to addressing the identified challenges and exploring opportunities within unregulated artisanal mining.
- (c) An appropriate, consistent, and transparent policy and regulatory framework that focuses on facilitation and management of artisanal mining, and not just on criminalisation.
- (d) A recognition of the potential value in fostered relationships and partnerships between large-scale miners and artisanal miners;
- (e) Programmes for artisanal mining communities to raise awareness about the dangers of unsafe artisanal mining and mercury usage.

#### **Response by the DOJ&CD**

It should be noted that the report does not contain any recommendations for which the DOJ&CD is directly responsible, but has a broader role from the Justice, Crime Prevention and Security Cluster perspective. A more substantive response in this regard should be expected from the Department of Mineral Resources (DMR).

The DOJ&CD expressed commitment and support in taking any steps necessary towards addressing the issues and challenges identified in the report. In the first instance, the DOJ&CD has distributed the report to the Subcommittee on Legislative Reform, which was established to oversee, coordinate, and monitor legislative reform relating to metal theft and illicit mining. The subcommittee is chaired by the DOJ&CD and consists of the DMR, the SAPS, the National Prosecuting Authority, and the Department of Environmental Affairs.

To this end, the DOJ&CD also indicated proposed legislative amendments, which primarily involve security interventions and enforcement in respect of illicit mining activities. As such, the amendments do not cover consideration of legalising the informal and illegal elements in artisanal mining, but relate to a few of the SAHRC report recommendations. Furthermore, the implementation of the report recommendations may imply some legislative amendments, and thus a role and scope for the subcommittee. It is for this reason that the subcommittee discussed the report at its meeting of September 2016. The DOJ&CD also alerted



the SAHRC to a specific recommendation requiring the attention of the SAPS regarding the training of officials tasked with illegal mining sting operations, but the report has not been distributed accordingly.

### ***Response on transformation at public universities***

The Ministry of Higher Education and Training responded to the SAHRC follow up correspondence on this report.

#### **SAHRC report recommendations**

The SAHRC recommendations related to the broad areas which included transformation policies, human resources policies, support for previously disadvantaged students, language and sports, initiation practices, orientation programmes, university curricula, accommodation and residences, governance, monitoring and accountability, complaints handling, funding, and collaboration.

#### **Response by the Ministry of Higher Education and Training**

The ministry indicated that the issues of transformation in the higher education sector were receiving continuous attention to ensure acceleration. The slow pace of transformation is also highlighted as a concern in the White Paper on Post-School Education and Training.

The Higher Education Transformation Summit held in October 2015 discussed issues relating to transformation, institutional autonomy and funding. The summit culminated in a range of discussion papers that would inform debates and strategies to advance transformation, as well as a declaration with resolutions and priorities. The Ministry indicated that these resolutions would be enacted through implementation of a system-side plan being developed by the department, as well as the National Plan for Post School Education and Training at all levels. An established Transformation Oversight Committee would prepare an analytic report on institutional plans and submissions in this regard. The report recommendations have also been incorporated into the committee's operational plan for the next three years.

The ministry further indicated that the SAHRC report was distributed to all vice-chancellors for consideration and response by their councils, taking cognisance of coherence with their summit resolutions implementation plans. Based on this, the councils were requested to submit revised plans to the ministry within three months. In response, the ministry undertook to act on the recommendations and report to the Commission within one year.

### ***Response on housing evictions in the Free State***

The SAHRC conducted a provincial visit engagement to assess the state of the implementation of recommendations arising from an investigative report,

#### **SAHRC report recommendations**

The SAHRC recommendations included:

- (a) Provision of adequate alternative accommodation with access to basic services within three months.
- (b) Provision of a relocation plan to the Commission, highlighting special arrangements for all vulnerable and marginalised groups.
- (c) Enhancing community participation and transparency through quarterly feedback sessions.
- (d) Application for the emergency housing fund from the NDHS.
- (e) Social impact assessment conducted by the provincial Department of Cooperative Governance, Traditional Affairs, and Human Settlements (COGTAHS)
- (f) Reporting to the Commission for review of progress.
- (g) Development of a human rights- based approach to evictions as well as a human rights-based plan by the COGTAHS to guide municipalities within a year.



### Response by the Free State COGTAHS and NDHS

Having engaged with one of the affected municipalities without a tangible response at the time, the SAHRC engaged with the Member of the Executive Council for COGTAHS, who committed:

- a) In the case of the Mangaung Metropolitan Municipality, to:
  - (i) Engage with the municipality for application of the resettlement strategy, the housing subsidy system, and additional water and sanitation facilities to service the informal settlement.
  - (ii) Undertake unannounced visits to assess the situation.
- b) In the case of the Maluti-A-Phofung Municipality, to:
  - (i) Provide a status update to the SAHRC
  - (ii) Solicit funding for additional taps, and dedicated water tankers.
  - (iii) Conduct a socioeconomic impact analysis.
  - (iv) Engage on the housing subsidy system applications.
- c) Overall, the SAHRC engagement with the MEC resolved that:
  - (i) The SAHRC and COGTAHS develop province-wide guidelines on human rights- based evictions.
  - (ii) The SAHRC participates in the Forum for Mayors and Municipal Managers and the Technical Team (including the NDHS and House of Traditional Leaders).

## STRATEGIC OBJECTIVE 3: ENHANCE AND DEEPEN THE UNDERSTANDING OF HUMAN RIGHTS TO ENTRENCH A HUMAN RIGHTS CULTURE

The strategic objective entails effective advocacy for the adoption of human rights-based positions and approaches, the intensification of human rights and people-based capacity building, as well as education and awareness-raising initiatives through public outreach engagements at community levels to empower people to effectively realise their rights. The objective also serves to ensure accessibility of human rights educational material in different formats and languages, as well as comprehensive communications strategies, which include all media.

**Table 5:** Achievements based on planned targets for deepening the understanding of human rights to entrench a human rights culture

### Strategic Objective 3: Deepen the understanding of human rights to entrench a human rights culture

**Objective Statement:** Effective advocacy for the adoption of human rights- based positions and approaches, intensify capacity building, public education and awareness- raising initiatives through public outreach engagements at community levels to empower people to effectively realise their rights, ensure accessibility of human rights educational material in different formats and languages, as well as comprehensive communications strategies which include all media.

Annual performance indicator	Actual achievement 2015 to 2016	Annual planned target 2016 to 2017	Actual achievement 2016 to 2017	Reasons for deviation from planned target for 2016 to 2017	Variance with 2015 to 2016 and 2016 to 2017 achievement	Comment on variances/ corrective measures
Submission of thematic policy briefs	New target	Submit 8 briefs	8 briefs submitted	Target achieved	None	None
Completion of advocacy and communication report	1	Complete 1 report	1 report completed	Target achieved	None	None





### *Thematic policy briefs*

The Commission identified policy gaps in respect of specific thematic human rights focus areas, with the main objective of influencing and lobbying for policy reform on these issues. The areas identified include the following:

- (a) Undocumented parolees in the South African Criminal Justice System
- (b) The right to protest: application of Section 3 and 4 of the Regulations Gathering Act 205 of 1993
- (c) Upholding and implementing the Older Persons Act through the registration of all residential facilities
- (d) Submission to the Competition Commission with respect to the Private Health Care Market Inquiry
- (e) Ensuring that every child should read fluently in their mother tongue by the age of 10
- (f) The need for schools to develop codes of conduct which are consistent with the foundational values of the South African Constitution
- (g) Creating sufficient and adequate safeguards in the processes regulating the sale in execution of residential property
- (h) Issues and challenges relating to the re-opening of the land restitution process

Some of the provincial engagements focused on these areas for policy interventions, and intended to facilitate community awareness and participation to inform action and implementation by policy makers.

#### **Ensuring that every child should read fluently in their mother tongue by the age of 10**

Since 1994, South Africa has made major strides in realising the right to basic education for a substantial part of its population. The Constitution guarantees the right to basic education and the state has expended substantial resources in the education sector. Despite this, a number of challenges still persist, which affect the realisation of the right to basic education. This impacts on many children, particularly those from poor backgrounds, as high levels of poverty have resulted in some children facing social exclusion.

The Commission, in collaboration with the United Nations Children Education Fund (UNICEF) and the Human Sciences Research Council (HSRC) conducted a study on poverty and social exclusion<sup>6</sup>. The study revealed that there is currently no policy that requires children to read by a certain age (which the study suggested should be set at nine), so this is one of the areas that needs urgent attention. The inability to read by the age of nine is vital for children to be on track to claim other rights and disproportionately affects children from poor backgrounds. Thus, the need to adopt measures to enable children to read fluently in their mother tongue by the age of nine is crucial.

The provincial engagements proposed practical measures that were directed to the DBE, which must:

- (a) Undertake a national survey on the prevalence of the problem and pay special attention to the most affected areas of the country.
- (b) Design programmes to address the six areas of concern, which are lack of perceptual skills, language dissonance, second language learning, critical cognitive skills, early reading development, and teacher development.
- (c) Develop common tools, especially in all the South African languages, to assess children's cognitive development from the early childhood development (ECD) stage and Grade R in order to track progress in learning outcomes and monitor progress through regular testing.
- (d) Pay special attention to the development of educators through in-service and pre-service teacher training to ensure that they are equipped to support affected children, and for educators to teach and encourage reading in the mother tongue.

<sup>6</sup> SAHRC Poverty traps and social exclusion among children in South Africa (2014) ([www.unicef.org/South Africa/](http://www.unicef.org/South Africa/)  
<http://www.sahrc.org.za>)



- (e) Ensure that the size of classes in the earlier grades is manageable to enable better interaction between educators and learners.
- (f) Design appropriate story books, textbooks, workbooks, and other learning materials, as well as ensuring their promotion and availability during the foundation phase in the appropriate indigenous languages.
- (g) Tirelessly monitor and eradicate the recurrent challenges regarding the continued late delivery of textbooks and learning material, and provide additional support in the form of financial, material and human resources.

In addition, schools must seek parental support through regular campaigns to educate parents about the importance of early reading and child development generally:

- (a) The Department of Social Development should support the DBE by expanding preschool coverage, ECD and consider re-introducing pecuniary and non-pecuniary incentives to attract and retain good ECD practitioners who can strengthen cognitive and social development of children from an early stage.
- (b) The Western Cape engagement further proposed that the age at which children should be able to read fluently could be moved to ten as this is the age that would have covered the Foundation Phase of Grades R to 3.

### **Upholding and implementing the Older Persons Act through the registration of all residential facilities for older people**

The Commission identified unregistered residential facilities for older people as a systemic issue of concern in the realisation of their constitutionally guaranteed rights. In accordance with the Older Persons Act 13 of 2006, the Department of Social Development (DSD) is obliged to ensure that all residential facilities are registered. According to the act, a residential facility is a building or other structure used primarily to provide accommodation and a 24-hour service to older people. The Commission's 2014 Older Persons Report<sup>7</sup> acknowledged that the definition also applies to frail care. Furthermore, the inclusion of the words "24-hour service" has resulted in a grey area, as there are currently residential facilities that only provide accommodation without any services, which thus cannot be regulated under the act.

The report noted that this grey area might result in unscrupulous providers exploiting the gap and entering into lessor-lessee agreements with older people without having to register or comply with regulations. The Commission has observed, through complaints received and stakeholder engagements, that there are numerous residential care facilities that are unregistered and are accommodating older people in environments that are detrimental to their health, dignity, and well-being. The Commission recognises that older people constitute a vulnerable group with unique and differing needs, and deserve focused attention in order to address and resolve the rights violations being experienced by older people.

The provincial engagements on the policy brief regarding the registration of facilities for older people raised concerns and made practical recommendations that were mainly directed to the DSD and DoH, as follows:

- (a) Both departments must ensure that the issuance of registration certificates is streamlined and is a quicker process, as delays impacted on the timely receipt of funding or in raising donations. The DoH called on facilities to escalate any delays to its district directors and the DSD was urged to identify similar focal people within its district offices who can assist with the registration process.
- (b) Participants further recommended that the two departments should consider entering into a Memorandum of Understanding that spells out tasks, responsibilities, and time frames in order to simplify and speed up the registration processes.

<sup>7</sup> SAHRC Investigative Hearing into Systemic Complaints Relating to the Treatment of Older Persons (2015)



- (c) The departments must conduct regular monitoring of residential facilities. Participants were extremely concerned about the rapid rate at which unregistered facilities were being established, which in turn is exacerbating a situation that is already dire.
- (d) The DoH must consider subsidising a post for a qualified nurse at each residential facility, as well as standardizing the subsidy amounts for all facilities nationwide so as to avoid disparities across provinces.
- (e) The DoH indicated that it is open to the idea of subsidisation of nursing posts and encouraged facilities to make written submissions or proposals through the district directors.
- (f) The DSD must ensure that its central database is accessible to owners and managers of residential facilities so as to assist in the screening process when employing staff, and residential facilities are encouraged to have a code of conduct for their staff. The DSD in turn indicated that it is still working on an electronic database.

### **Undocumented parolees in the criminal justice system**

During its regular monitoring of the Lindela Repatriation Centre, the Commission observed that undocumented migrants who had been released on parole by the Department of Correctional Services were being detained for periods exceeding 120 days in contravention of the Immigration Act 13 of 2002. Eventually these undocumented migrants on parole would then be readmitted to correctional facilities to serve the remainder of their sentences, which is arguably a violation of their right to equality, dignity, and inhumane treatment. This state of affairs must be addressed to avoid discriminating against undocumented migrant parolees.

The provincial stakeholder engagements on the policy brief on undocumented parolees in the criminal justice system noted key concerns and made practical recommendations that were mainly directed to the Department of Home Affairs and Department of Correctional Services as follows:

- (a) The two departments seem to hold contrasting viewpoints regarding the deportation process, which in turn leads to the two operating in complete silos on one matter regarding the same individual.
- (b) The DHA maintains that the Lindela Repatriation Centre is not mandated to house and detain parolees but operates to facilitate the deportation of undocumented migrants. The DCS must, therefore, only refer those undocumented migrants who are ready for deportation so that the DHA can carry out the required deportation. The DHA maintains that the DCS must, upon incarceration of a foreign offender, make arrangements with the respective embassy on the issuance of the required travel documents to their nationals.

Civil society participants proposed that the DCS must lobby the Department of Justice for a special dispensation on the practicalities of how the parole process regarding undocumented migrants must unfold, as the granting of parole becomes a fallacy if foreign parolees cannot make use of it. Some participants proposed an amendment to the Immigration Act and its regulations to allow for the granting of a special type of visa for parolees to enable them to serve their sentences under correctional supervision in South Africa, as the immigration status of a parolee should not be used as a basis for denying an offender parole. However, the DHA maintains that there is no need to amend the law since the immigration status of such a parolee is already provided for in the Immigration Act, namely, that of being an undocumented migrant.

Other participants proposed an amendment to the Correctional Services Act to provide for the transfer of undocumented parolees to their countries of origin, where they can serve the remainder of their sentences under the correctional supervision of the authorities in their countries of origin, but this would have to be subject to a prisoner transfer agreement between South Africa and the parolees' countries of origin. Regardless of whichever proposal could be adopted, the current gap remains on how best to cater for undocumented parolees within the criminal justice system.



In summary, the stakeholder engagements on the respective policy briefs correctly identified the practical challenges associated with the topic at hand. However, it appears that there were differing views on whether these can be termed as gaps within the legislative policy framework, as some participants maintain that the gaps relate to the practical implementation of existing policies and the lack of inter-governmental cooperation. Thus, while there is still a need for reform, the Commission needs to emphasise the issues, challenges and gaps that exist in the implementation of policy.

### ***Provincial visit engagements***

The provincial visits engagements were conducted to promote the work of the Commission with a view to realising the strategic objectives of deepening understanding to entrench a human rights culture, and advance the realisation of human rights. Specific objectives of the engagements were to:

- (a) Strengthen stakeholder relations to promote awareness, collaboration, and implementation of recommendations towards attainment of human rights in the province;.
- (b) Conduct socioeconomic analyses of service delivery and progress made with recommendations through inspections at selected communities and facilities;.
- (c) Assess provincial office progress and challenges with a view to enhance improvements.

The engagements were found to be relevant and effective in that there were:

- (a) Generally positive responses to the engagements and Commission initiatives.
- (b) Relevant responses to the actual issues raised.
- (c) Progress with some of the issues and resolution of certain challenges previously identified.
- (d) Secured commitments to the resolution of outstanding issues.
- (e) Strengthened relations and open communication channels through greater participation in stakeholder forums to ensure responsiveness and acceleration of the resolution to matters.
- (f) Provision of opportunities for stakeholder collaborations and partnerships;.
- (g) Alignment with the Advisory Committee discussions, especially regarding the children and basic education, in terms of issues arising in schools, housing and local governance, as well as the treatment of older people.

The positive responses and high level of effectiveness provide a good opportunity for greater efficiency: improved relations are likely to lead to accelerated responsiveness and the resolution of matters. In a few instances, the conclusions of the engagements were not always clearly stated. This practice should be improved so that monitoring may be enhanced.

### ***Provincial visit to the Eastern Cape***

The provincial visit was conducted from September 19 to 22, 2016.

#### **Engagement with Masizakhe Children's Home**

The home provides care to 72 children. The key challenges highlighted included:

- a) The lack of subsidies for children above the age of 18
  - (i) *The late start of the children at school due to their social circumstances adversely affected children by the age ceiling of 18 years.*
  - (ii) *The lack of alternative living arrangements for the children beyond this age.*
- b) The Home being denied indigent status by the municipality, thus creating further debt relating to municipal utilities.

The Commission committed to bringing the identified challenges to the attention of the relevant government departments for resolution and action.



### **Engagement with the Commission for Gender Equality**

The engagement identified and proposed the following areas of collaboration:

- (a) Forum for Institutions Supporting Democracy collaboration with universities and law clinics to create greater and more informed focus on public interest law and strategic impact litigation.
- (b) FISO provincial collaborative activity has largely been limited to the Commission for Gender Equality, the Public Protector, and, lately, the Public Service Commission. Interaction with the Independent Electoral Commission is often restricted to the election period.

The institutions agreed to consider collaboration on the following:

- (a) Marketing and branding schemes to highlight the prominence of the two institutions
- (b) Legal outreach clinics across the province
- (c) Subpoenas following lack of government responsiveness as experienced by both institutions

### **Engagement with the Department of Education**

The engagement was held with the provincial Member of Executive Council (MEC) for education, and intended to forge structured relations to enhance delivery on the constitutional mandate through improved departmental responsiveness on issues pertaining to the rights of children and the right to education. The Commission committed to:

- (a) The Development of clearer channels of communication between the Commission and the DoE. To this effect, correspondence should be directed to the Chief of Staff within the office of the MEC.
- (b) Furthermore, the MEC committed to respond to issues raised in a summary report submitted by the Commission to the department within 30 days (October 20, 2016).

### **Engagement with tertiary institutions**

The engagement was held with the Deans of law and the law clinics of the Universities of Fort Hare, Rhodes, and the Nelson Mandela Metropolitan. The main purpose was to explore opportunities for collaborative work and the sharing of resources on public interest matters, community outreach, strategic impact litigation, research, and human rights education and training.

Further engagements would be conducted with the relevant faculties and law clinics to discuss a path towards effecting these considerations.

### **Engagement with the Public Service Accountability Monitor**

The engagement was intended to propose collaboration on empirical research and taking it forward to Parliament and government. The Public Service Accountability Monitor was agreeable to the proposal.

The Commission should communicate its strategies, plans, and investigations to the public and civil society to enable the alignment of civil society with the Commission's work in dealing with government weaknesses.

### **Engagement with Zanoxolo Primary School**

The participants at this engagement included the school management, school governing body, and the DoE. The engagement was a follow up based on an inspection report previously released by the Commission on water and sanitation challenges at the school. The DoE indicated that an investigation into the matter had been carried out and referred for the necessary repairs.

The stakeholders agreed to further engagements among themselves to ensure the resolution of the challenges. The SAHRC will closely monitor progress.

### **Engagement with the Executive Mayor: Nelson Mandela Metropolitan Municipality**

The engagement was to address accountability with respect to service delivery at the local level. It is a follow up on a previous inspection report released by the SAHRC on sanitation issues at Walmer Township in Port Elizabeth.



The Mayor committed to the eradication of all bucket system toilets by the end of 2017 and to replace them with a dignified sanitation infrastructure. The engagement also agreed on strengthening the relationship between the municipality and the SAHRC to ensure the quick resolution of complaints. This was to be achieved through SAHRC access to municipal meetings and engagement with municipal leadership.

### ***Provincial visit to KwaZulu-Natal***

The provincial visit to KwaZulu-Natal was conducted from August 15 to 19, 2016.

#### **Engagement with the KZN Department of Health**

The engagement was intended to follow up on the department initiative of assessing public health care standards in KZN hospitals. The SAHRC also raised issues generally faced by patients at provincial health facilities. The DoH responded by indicating what was being done and projects that were underway to deal with the identified challenges.

There was no clear indication of the commitments made at this engagement, except for the discussion of the issues as tabled.

#### **Engagement with Isizinda Secondary School**

The engagement was an assessment of how the school was doing to ensure that the right to basic education is fulfilled. The challenges cited include:

- (a) Inadequate facilities such as a computer lab that was not optimally utilised
- (b) Socioeconomic challenges of poverty, unemployment, child-headed households, drug abuse, and violence

These challenges were mitigated by the school through the community policing forum and feeding scheme.

The overall intentions of the Commission were to assess the situation at the school, with a view to engage with the MEC for education to deal with the identified challenges.

#### **Engagement with Charles Hlengwa High: Durban South Coast**

The school failed to produce matriculants for five consecutive years. The SAHRC sought to assist by bringing the matter to the attention of the MEC.

The challenges highlighted by the school include:

- (a) Lack of funds to purchase learning material
- (b) Learner behaviour
- (c) Lack of parental support and participation

The interventions in place included the DoE sending subjects advisors to assess teacher management of the syllabus and identify challenges. The school indicated a need for tutoring and increased funding.

#### **Engagement with MEC for education**

The engagement was meant to strengthen relations with the provincial DoE. It was used to bring the challenges identified through the school visit, and other challenges arising in schools, to the attention of the MEC.

The key issues tabled with the MEC include:

- (a) Rape in schools where the KZN statistics are the highest
- (b) Corporal punishment that led to the disabling of learners and death
- (c) Fragmented interventions by the DoC and DSD to assist child-headed household



- (d) Poverty and unemployment of parents
- (e) Inadequate infrastructure in schools

The MEC responded that the DoE :

- (a) Had partnerships with the media to expose cases of abuse and rape, and to create awareness.
- (b) Was committed to the speedy resolution of investigations, suspensions, appeals, and dismissals

The engagement agreed on:

- (a) The DoE collaboration with the South African Council of Educators to blacklist offenders.
- (b) The MEC following up on the identified schools and work with the SAHRC.
- (c) The SAHRC raising matters directly with the office of the MEC.

### ***Provincial visit to the Free State***

The provincial visit to Free State was conducted from May 23 to 25, 2016.

#### **Engagement with community advice offices**

The purpose of the engagement was to discuss a memorandum of understanding for paralegals and community advice offices. The SAHRC committed to the development of a human rights training programme for paralegals and community advice offices. Both the SAHRC and the community advice officers engaged to develop a funding proposal to Humanist Institute for Cooperation (HIVOS) for a housing campaign to address housing programs.

#### **Engagement with the Office of the Executive Mayor of Maluti-A-Phofung (Qwaqwa)**

The SAHRC expressed displeasure at the non-responsiveness and non-implementation of its recommendations relating to an investigative report, namely, SAHRC in the Matter Between the SAHRC (on behalf of Bokamoso residents) and the Maluti-A-Phofung Local Municipality, released on 8 September 2014, following an eviction of Snake Park and Kgabisi communities in June 2014.

There has been no tangible progress on the implementation of the recommendations despite the plan of action adopted by the Commission and municipality. The SAHRC indicated that it would approach the courts to seek recourse for the affected communities. The Office of the Mayor requested 14 days to respond (June 6, 2016). The Commission agreed to avoid the costly court route.

#### **Site visit to the Snake Park and Kgabisi communities**

The SAHRC conducted site visits to assess the situation at the affected informal settlements, following their eviction in June 2014, and to assess the report recommendations of September of the same year. The findings and recommendations of the SAHRC are summarised in section 2.1.6 on monitoring implementation of recommendations.

The site visit revealed that, despite several engagements with the Maluti-A-Phofung municipality, there was no tangible progress made with respect to the SAHRC recommendations. There was still no alternative accommodation provided for some of the evictees, there was inadequate access to basic services, and there was no security of tenure and social facilities for those who had been relocated.

The Commission undertook to engage with the authorities to resolve the plight of the affected communities.

#### **Engagement with the MEC for COGTAHS**

The Commission met with the MEC for COGTAHS to seek support for the implementation of the SAHRC report recommendations by the Mangaung Metropolitan and Maluti-A-Phofung Municipalities, respectively.

With respect to the former, the intervention of the SAHRC resulted in improved water and sanitation services delivery. However, the relocation of the informal settlement was still outstanding.



Regarding the latter, the SAHRC indicated its disappointment at the non-committal attitude of the municipal leadership. Consequently, the scheduled SAHRC visit to the municipality did not yield any tangible conclusions.

The MEC committed to engage with the affected municipalities and ensure that the recommendations were attended to. Specific commitments were made for the MEC's intervention to ameliorate the situation.

#### **Engagement with the academia at the University of the Free State**

The engagement was conducted to strengthen relations and explore collaboration with the University of the Free State, Law Faculty and Street Law South Africa.

The stakeholders resolved to consider the following opportunities for collaboration:

- a) Proposals for the Advisory Board members and research topics for the newly established Centre for Human Rights at the university
- b) Partnerships on access to justice in the province:
  - (i) *Joint law clinics, conducting human rights education and community outreach*
  - (ii) *Joint strategic impact litigation*
- c) Joint proposals with Street Law SA, the University of the Free State, Law Clinic, Free State Department of Education to be submitted to the South African Services Sector Education and Training Authority (SASSETA) to teach in-service teachers on human rights education
- d) Train-the-Trainer programme with Street Law SA, focusing on human rights education targeted towards public officials and paralegals

#### **Engagement with the Director-General: Free State Office of the Premier**

The engagement was for the purposes of discussing how the Office of the Premier could intervene to enhance responsiveness to implementation of the SAHRC recommendations by the Free State provincial government.

Several proposals were made to strengthen relations, collaboration, and open communication channels with the Office of the Premier, including:

- (a) Involvement of the SAHRC at political and technical level structures of the provincial government (such as the Forum for Heads of Departments)
- (b) Collaboration on human rights training for public officials and traditional leaders
- (c) Collaboration to facilitate the development of human rights-oriented guidelines on evictions by the provincial NDHS
- (d) SAHRC participation in quarterly meetings between the provincial government and Constitutional Chapter 9 institutions

#### ***Provincial visit to the North West and Western Cape***

The provincial visit to these provinces was conducted from July 11 to 15, 2016 in the Western Cape, and August 8 to 11, 2016 in the North West.

#### **Inspection site visits to old age homes**

**(North West: Khayelitsha in Potchefstroom, Klipgat, and Lethlabile)**

**(Western Cape: Monte Rosa, as well as Ikhaya Frail and Aged)**

The inspection was conducted as a general response to complaints received by the SAHRC relating to issues affecting older people. The complaints are often largely based on access to social security, health care, poor residential facilities, and abuse.





In 2015, the Commission conducted a hearing of and released a report regarding the treatment of older people, with recommendations summarised, among other things, as follows:

- (a) That the DSD ring-fences funds to ensure that all residential facilities comply with legislated health and safety standards, as well as national building, occupational health, and safety regulations
- (b) That all old and newly funded residential care facilities are registered.

The Commission found a depressing state of affairs in terms of the following:

- (a) Dilapidated, non-compliant facilities that impinge on the right of access to basic services for older people where, for example, the Klipgat facility was located near an animal kraal
- (b) Older people that were abandoned by their families
- (c) A lack of government subsidies and inadequate state funding
- (d) Inaccessible medical services where the hospital was too far and there was a lack of medical personnel at frail care facilities
- (e) A shortage of emergency vehicles to the hospitals with the consequence that patients incurred exorbitant transport costs, and no ambulances at the clinic to transport ill patients
- (f) A lack of municipal support to the centres
- (g) A shortage of proper equipment

The SAHRC committed to intervene to ensure that the situation is ameliorated.

### **Collaborative stakeholder engagements**

The Commission is acutely aware of its broad mandate as well as the limitations on its geographical reach. It also readily acknowledges that it must forge partnerships with a broad range of both state and non-state actors in fulfilling its mandate. The Commission thus supports, collaborates, and partners with other role players in creating and enhancing society's understanding of human rights through awareness programmes. The AdvoComm unit engages a range of entities that advance human rights, including government departments and agencies, international, regional and local organisations, civil society that encompasses non-governmental, community and faith based organisations, other institutions supporting democracy, traditional and community leaders, academia, the private sector, and social justice activists. The latter are key strategic partners as their work complements and reinforces the Commission's educational mandate.

Stakeholder engagements provide the Commission with opportunities to strengthen relationships with key stakeholders and to collaborate with stakeholders in the context of limited resources, thereby multiplying reach and impact despite its operational environment. In the course of such engagements, stakeholders also derive benefits by expanding their visibility, resource base, and networks.

It is noted that the advocacy and communications work of the Commission, although determined through careful planning, is not limited to planned activities. During the reporting period, the Commission conducted a range of collaborative stakeholder engagements which, although unplanned, lent support to the advocacy and communications work being undertaken by stakeholders. These interventions, in virtue of their sheer statistical magnitude, vastly widen the reach for human rights awareness.

During the 2016 to 2017 financial year, the Commission participated in 484 collaborative educational activities in all nine provinces through Advocomm, thereby reaching approximately 51 759 people across the country.

Some of the notable collaborative activities included partnering with government departments in commemorating key human rights calendar days as a means of taking human rights messages and services directly to communities. The Commission participated in the provincial preparatory planning meetings and showcased its work through exhibitions, provided advice to queries, and registered complaints on human rights violations.



The Commission's collaborative stakeholder engagements, particularly those focusing on vulnerable groups and the systemic issues that impact them, is intended to raise awareness of these adverse impacts as part of its constitutional mandate to monitor and protect the attainment of human rights of these groups.

2016 was a challenging academic year for institutions of higher learning, given that students embarked on protests as participants in the #feesmustfall movement whereby students voiced their frustrations at the cost of higher education fees. This led to arrests and injuries of many students and forced some universities to postpone their final end-of-year examinations. The Commission recognises that access to affordable and quality higher education remains a challenge for thousands of South African households, particularly those who were previously disadvantaged. As such, the Commission participated in various public discussions with students, parents, and role players in the higher education sector in an effort to find solutions to the crisis. In December 2016, the Commission released its Report on Transformation at Public Universities in South Africa.

A noteworthy mechanism employed by the Commission in strengthening stakeholder relations and carrying out its promotional mandate that is progressively gaining credibility, is the use of the Forum for Institutions Supporting Democracy (FISD). Provincial Chapter 9 to 10 bodies meet regularly to strategically plan and implement activities, as well as support each other in undertaking their respective mandates. This mechanism has been successfully employed in public outreach engagements and the Commission will continue along this path for the rest of the financial year. The Commission's provincial offices supported the Good Governance Week initiated by the Public Protector of South Africa, held from October 4 to 8, 2016, through the FISD collaboration. The provincial FISD reinforces the ideal of strengthening and enhancing working relationships, maximises the pooling of scarce resources, and promotes the sharing of knowledge and best practices among bodies with a common purpose.

#### **Media stakeholder engagements:**

In line with responsibility for managing relations with the media as a key stakeholder the Commission convened a range of engagements with media bodies during the reporting period.

#### **Provincial media engagements**

During the reporting period, the Commission's nine provincial offices each held media engagements with the provincial media. These engagements were intended to cement relationships already established with the local and community media, to inform the media about the mandate and provincial activities of the Commission, and to explore further collaborative efforts.

#### **Engagements with the South African National Editors' Forum and the Cape Town Press Club**

The interventions at community or local level were expanded at the national level through a meeting with the SANEF and a meeting with the Cape Town Press Club.

The timing of the engagements was opportune by coming at the beginning of the second month in office of the newly appointed Board of Commissioners. The engagement afforded the Commission an opportunity to introduce the new Commissioners to senior editors and journalists, to outline the highlights of its accomplishments in the 2015 to 2016 year, and to solicit input and feedback from senior editors on the work of the Commission and how best to improve communication with the media.

#### **Media and communications outcomes:**

The Commission utilises a range of approaches in seeking to raise its profile and position itself as a lead human rights institution. These include media engagements via interviews, queries, media statements, press briefings, social media postings, and advertorials.

In the 2016 to 2017 financial year the Commission released 93 media statements, conducted at least 596 media queries or interviews, published 16 opinion pieces, and 2 advertorials. During the period, the Commission was mentioned in 5 213 online news articles and in 19 977 social media posts.



### Consolidated list of top news stories/issues on human rights for 2016 to 2017<sup>8</sup>

	Human rights issue/news story	Total
1	Online hate speech	304
2	Equality and race	255
3	Right to basic education and protest action	115
4	The SAHRC investigations and public expressions of concern	101
5	Xenophobia	81
6	Homophobia	80
7	Right to health care, disability esidimeni	79
8	Nkandla judgment: implications for the SAHRC and Chapter 9s	74
9	Hate crimes and Hate speech	69
10	Appointment of the SAHRC Commissioners	48

The media issues listed above do not reflect an exhaustive list of all the stories published on these issues. They are a consolidated list of the top five stories published online during the period under review, in which the SAHRC is reported on, or mentioned, in relation to the rights or violations of the rights mentioned.

Other noteworthy media stories reported online, which mentioned the SAHRC and human rights, for the 2016 to 2017 financial year include:

(a) Desecration of a mosque	(28 reports)
(b) The right to dignity in relation to the woman on the back of bakkie	(22 reports)
(c) A visit by Canadian Minister of Justice and Attorney General	(21 reports)
(d) Policing and human rights	(19 reports)
(e) Farm murders: the SAHRC report	(14 reports)
(f) Appointment of the former SAHRC to the IEC	(11 reports)
(g) The Valhalla Mosque	(10 reports)
(h) An offensive painting of President Zuma by Ayanda Mabulu	(8 reports)
(i) The right to water	(2 reports)

#### Media statements during 2016 to 2017

The Commission released 79 media statements in 2016 to 2017. The Commission's media statements are meant to increase visibility, express opinion, respond to issues, and inform the media about events. They are also intended to disseminate human rights-advocacy messaging intended to inform the media and deepen understanding of human rights as they relate to topical issues in the public domain.

The uptake of the Commission's media statements is high and is reflected in the list of top stories listed above. The statements generated substantial coverage and engagement on social media.

#### Social media reach 2016 to 2017

The table below provides a comparison of social media engagement and coverage across Twitter and Facebook. The SAHRC's Facebook and Twitter following represent the potential audience for messages and information from the Commission based on the number of people who have actively "liked" or "followed" the SAHRC.

Each time a follower engages with a post or tweet from, or about, the Commission it is delivered to their followers too. "Impressions" represent the overall potential reach of users seeing SAHRC posts and tweets.

<sup>8</sup> Compiled from the top five stories each month (April 2016 to March 2017) on human rights or the SAHRC online data compiled by MeltWater Media Monitoring.



Platform	Followers	Posts and tweets	New followers	Impressions
Twitter	35 568	1 152	6 650	1 381 800
Facebook	9 308	369	1 664	766 743

During the 2016 to 2017 financial year, the Commission contributed significantly to social conversations on human rights, which included public debates on policing, the impact of protest action on the right to basic education, the underlying socioeconomic challenges of mining affected communities, xenophobia, and racism on social media. Social media exposure and engagement has grown exponentially over the course of the reporting period, with increases in followers and increased engagement with posts, or through mentions of the SAHRC.

The social media exposure and engagement enabled the dissemination of key advocacy messages around human rights that provide information and context. Social media engagement is a crucial part of the Commission's strategic imperative to inform and educate people on human rights, and to build a culture of human rights through advocacy messages such as:

- (a) "Burning schools undermine children's rights to basic education"
- (b) "Human rights watchdog concerned about impact of protests on schooling"
- (c) "Equality courts' best option to take up racism incidents"
- (d) "Media freedom is as important and fundamental as other human rights"
- (e) SAHRC institutes equality court proceedings on behalf of a transgendered learner in Limpopo
- (f) "Albinism: and persons with disabilities are equal participants in shaping a sustainable future"
- (g) SAHRC deeply concerned about incidents of xenophobic violence
- (h) SAHRC hosts National Investigative Hearing on Racism and Social Media
- (i) Take the SAHRC anti-racism pledge
- (j) The Seshego Equality Court to hand down judgment in matter involving rights of transgendered learner – successful intervention
- (k) Social security is a basic human right

The Commission has significantly increased its utilisation of social media as an advocacy tool. While harnessing this new power to communicate, the Commission has also taken on board the counsel of experts and is attempting to fully implement its advocacy and communications strategy in the short term by strengthening its internal capacities.

### Opinion pieces

The Commission published 16 opinion pieces in various publications. Given the wide ambit of its work and the depth of institutional knowledge within the organisation, opinion pieces are perhaps one of the strongest tools the SAHRC could use to catalyse and inform public debates on human rights and to communicate its position on issues. Opinion pieces also carry opportunities to highlight the important programmatic work of the Commission through commentary on its investigations, reports, or hearings.

### Advertorials

Advertorials enable the Commission to publish copy-driven messages on human rights to target audiences, which include a mixture of text and graphics to illustrate the SAHRC's execution of its mandate. During 2016 to 2017, the Commission published two advertorials utilising a mixture of copy and information graphics. The format allows for publication of both analysis and statistics, and optimises the use of space. The two advertorials were on the "Human rights day December 10, 2016" and the "Human rights month 2017".



### Reach and visibility of the SAHRC

During 2016 to 2017, the Commission significantly improved its reach and visibility nationally as well as provincially through 484 collaborative educational activities in all nine provinces (reaching approximately 51 759 people across the country), through at least 596 media interviews with print, broadcast and online media, through the release of 93 media statements generating substantial coverage of the Commission's "boots on the ground" work and the Commission's stances on key human rights matters, as well as through opinion pieces providing authoritative analyses of significant Commission events and human rights issues.

### Reach and visibility – key metrics for 2016 to 2017

21 485 343	Potential audience reached via Facebook and Twitter combined
2 801 000	Potential combined readership of two advertorials
9 685 000	Potential audience reached through community radio
51 759	People reached through advocacy initiatives across all provinces
19 977	Social media mentions
5 213	Online news articles

These figures reflect a wide reach and high visibility. Additionally, much of this engagement has involved substantial interaction with various kinds of human rights messages and products across several media, which included advocacy messaging and information on Commission activities, as well as reported action undertaken by the Commission, including media reports on successes and short-comings. The SAHRC has consistently maintained a public profile throughout the 2016 to 2017 financial year and contributed substantially to public conversations on human rights-related matters. This reach provides a solid foundation from which the Commission can conduct future impact evaluation studies.

### Public outreach engagements and capacity building

The Commission utilises public outreach engagements as a strategy to stimulate direct contact with communities. The Commission introduced public outreach engagements in an effort to extend its outreach programs to rural and peri-urban communities. This was mainly informed by empirical research<sup>9</sup>, which clearly reflected that due to the geographical location of the Commission's provincial offices in the provincial capital many rural communities continue to experience challenges relating to access to justice and access to information. The poor road infrastructure and the high cost of transport also makes it difficult for rural communities to access the Commission. Thus, the public outreach engagements are one of the means of taking the Commission, and its services, to the people.

The engagements have multiple aims, which include creating awareness on human rights, the entrenchment of constitutional democracy through the mandate of the Commission and other bodies, expanding the Commission's footprint across the country, as well as bring the Commission's services directly to communities. Through the engagements, communities get the opportunity to lodge complaints of human rights violations and, where relevant, and the Commission is able to make referrals to the bodies that are ideally suited to resolve other complaints that may not necessarily reside within the Commission's mandate. In this way, communities get to know of the Commission as an independent and impartial body outside of government and courts that they are able to request assistance from when their rights are violated. In this role, the Commission acts as a link between the state and society by bridging the gap between the enjoyment of rights on paper and in reality.

<sup>9</sup> AJCCR baseline survey on awareness of attitude and access to constitutional rights, Foundation for Human Rights, (2014) and An overview of HRE in SA, Council for the Advancement of the SA Constitution, (2016)



### Summary of public outreach engagement activities

The Commission continues to refine the design of the public outreach engagements so that they serve the needs of communities in the best way possible. Each provincial office conducts a thorough needs assessment of an identified area that the Commission has not visited before to determine the core human rights issues that are relevant to the particular area or community. This scoping exercise is conducted in partnership with community gatekeepers such as traditional authorities, community leaders or representatives, and social justice activists who have the interests of the community at heart. An awareness program that is a combination of various activities, which are undertaken over a defined period, is then designed and the community is mobilized to attend and participate in the activities. The range of outreach activities can include door to door campaigns, focus group discussions, public information sessions, site inspections, exhibitions, and the distribution of educational materials.

For the period under review, the Commission has expanded its stakeholder base to include other Chapter 9 and 10 bodies as well as relevant government departments that provide services directly to the community during the outreach. Another key improvement in the methodology of the engagement is that the provincial FSD are now involved in both the planning, as well as the implementation, of engagements. The engagements also address issues of core human rights violations through the registration of complaints with those departments or agencies directly or indirectly implicated. This affords members of the community an opportunity to get clarity on matters of concern, and for government departments and agencies to resolve the easier matters on the spot.

Each of the public outreach engagements generally reached an average of one thousand people over its three- day duration. An analysis of the attendance registers and observations of the advocacy officers indicates that in general the participants were mostly women and the elderly as active participants. However, the attendance of male youths was very low. It is for this reason that the peri-urban engagements in provinces like Gauteng are ensuring the inclusion of the National Youth Development Agency (NYDA) as it can empower the youth in business ventures, which is slowly resulting in the improved participation levels of male youths. Young female participants tended to direct their queries to the Legal Aid Board regarding issues of spousal maintenance, and the South African Social Security Agency (SASSA) regarding access to child care grants.

### The Commission conducted 27 public outreach engagements as follows:

Date	Province	Areas	Number of stakeholders in attendance
July 26 – 27, 2016	Mpumalanga	Kabokweni and Louisville	149
July 27–29, 2016	Northern Cape	eMthanjeni and De Aar	100
August 15 –17, 2016	Gauteng	Zandspruit and Cosmo City	164
August 16 –18, 2016	Limpopo	Giyani	200
August 16 –19, 2016	Free State	Zastron, Wepener, Rouxville, and Van Standerer in Xhariep District	310
August 16 –19, 2016	Northern Cape	Nomakhoi and Springbok	100
August 23 –24, 2016	North West	Choseng and Tseng villages	135
August 30 – 31, 2016	Eastern Cape	Graaf Reinet	30
September 12 – 14, 2016	Limpopo	Senwabarwana	200
September 13 –14, 2016	Western Cape	Lamberts Bay	76
September 13 – 15, 2016	Gauteng	eKangala, Rethabiseng, and Zithobeni	235



Date	Province	Areas	Number of stakeholders in attendance
September 20 – 21, 2016	Eastern Cape	Mount Fletcher	35
September 21 – 23, 2016	North West	Lethlakane, Swartruggens, and Rustenburg	216
September 27 – 28, 2016	Western Cape	Bedadsorp	76
September 28 – 30, 2016	KwaZulu Natal	Eshowe, Matimatolo, and Mgome	456
October 3 – 5, 2016	Free State	Cornelia, Vriede, and Memel	257
October 25 – 26, 2016	Mpumalanga	Ogies and Springs Valley	100
November 15 – 17, 2016	KwaZulu Natal	Mahlungulu and Manguzi	174
November 15 – 17, 2016	Free State	Jacobsdal, Koffiefontein, and Petrusberg	167
November 16 – 17, 2016	Mpumalanga	Bushbuckridge and Barberton	62
November 22 – 24, 2016	Gauteng	Tarlton and Magaliesburg	137
November 23 – 25, 2016	KwaZulu Natal	Edumbe, Ebilanyoni, and Slangspruit	291
November 28 – 29, 2016	Limpopo	Vingerkraal and Klipspringer	180
November 29, 2016	Mpumalanga	Dullstroom	62
March 13 – 15, 2016	KwaZulu Natal	Pietermaritzburg and Elandskop	250
March 21 – 23, 2017	Eastern Cape	Louterwater and Jansenville	39
March 27 – 29, 2017	Eastern Cape	Fish River, Rosemead, Middleburg, and Cradock	39
<b>Total:</b>			<b>4 240</b>

During 2016 to 2017, the Commission reached a total of 4 240 people through public outreach engagements in remote-rural and peri-urban communities. Significantly, in fulfilment of its commitment to improving its reach and footprint in remote communities, all 27 public outreach engagements listed above were conducted in towns and communities which the Commission had never visited before.

#### **Capacity building workshops : Train-the-Trainers**

As a public institution, the Commission must be accessible to the public that it is set up to serve. In line with its outreach objectives, during 2016 to 2017 the Commission introduced a pilot project on the training of community trainers. This project aims at building the capacity of focal points within communities as well as establishing and enhancing sustainable working relationships with community structures. Each of the Commission's provincial offices identified key people who have access to, are part of, or have a keen interest in human rights and social justice, and have the interests of their community at heart. The Commission capacitated the identified people through a basic training program on human rights.

It is envisaged that, going forward, the trainers will assist the Commission in identifying the human rights needs of the broader community, render assistance in the design, planning and implementation of community engagements, as well as assist in the mobilization of communities so as to increase the levels of community participation in human rights outreach activities.

The project prepared and supplied the focal points with the necessary tools and skills to present information about the mandate of the Commission, render basic advice, respond to queries, lead activities that reinforce human rights education, execute referrals of possible human rights violations to the Commission, direct communities to appropriate institutions should the need arise, and enable them to continue with the work of raising awareness in their respective communities.



Through this project, the Commission can create and maintain long-term and mutually beneficial relationships with the trainers in the respective provinces, where the trainers are the “ears and eyes” of the Commission within communities, and assist in spreading the human rights message to a wider audience.

The provincial offices relied on the provincial demographics to inform the choice of organisations that would be responsible for the training to ensure that trainers are spread throughout the provinces. Selection was also based on the influence the trainers have in their respective communities, as well as their interest and direct involvement in human rights-related issues.

The stakeholders that were trained during the capacity building workshops included faith and community-based non-governmental organisations, community development workers, traditional authorities (such as chiefs and headmen), ward councillors and ward committee representatives, community advice and paralegal offices, as well as youth coordinators.

**The Commission conducted 20 Train-the-Trainers capacity-building workshops as follows:**

Date	Province	Area	Number of stakeholders in attendance
February 16, 2017	Mpumalanga	Embalenhle, Secunda	10
February 21, 2017	Gauteng	Thokoza, Ekurhuleni	14
February 23, 2017	Mpumalanga	Mhluzi, Middelburg	12
February 28, 2017	Limpopo	Mohlaletse, Fetakgomo	20
March 1 – 2, 2017	Limpopo	Mmela Clinic and Conrad Disability Centre, Tubatse	100
March 1 and 3, 2017	Eastern Cape	Lusikisiki and Flagstaff	60
March 4, 2017	Western Cape	Phillipi	10
March 7 and 9, 2017	KwaZulu Natal	Ulundi and Durban	69
March 8, 2017	Eastern Cape	Uitenhage	18
March 9, 2017	Free State	Zastron	40
March 9, 2017	Gauteng	Soshanguve	25
March 2017	Mpumalanga	White River and Tonga	26
March 9 and 13, 2017	Western Cape	Robertson	10
March 14 – 15, 2017	Northern Cape	Pampierstad	19
March 15, 2017	North West	Rustenburg	32
March 16, 2017	Free State	Bethlehem	38
March 24, 2017	Western Cape	Cape Town	15
March 15, 2017	Gauteng	Dube, Soweto	25
<b>Total:</b>			<b>543</b>

During 2016 to 2017, the Commission’s pilot project on the training of community trainers capacitated a total of 531 people with human rights knowledge to enable them to become focal points within their communities. These individuals are crucial conduits for the Commission to relevant community structures, and their participation in the Commission’s basic training program on human rights is part of the strategy to deepen the understanding of human rights in remote areas of the country.





## STRATEGIC OBJECTIVE 4: ENSURE FULFILMENT OF CONSTITUTIONAL AND LEGISLATIVE MANDATES

The objective to fulfil constitutional and legislative mandates is to ensure compliance with prescripts contained in the Constitution and other key relevant legislation. It further strengthens the mandate monitoring role for the assessment of the state of human rights in the country through the assessment of economic and social rights, the right to equality, and civil and political rights. All five targets that were set for the financial year in this regard were achieved.

**Table 6:** Achievements against planned targets for fulfilling constitutional and legislative mandates

### Strategic Objective 4: Ensure fulfilment of constitutional and legislative mandates

**Objective Statement:** Fulfil the Commission's legislative obligations in relation to economic and social rights, the right to equality, civil and political rights, and any other relevant legislative mandates

Annual performance indicator	Actual achievement 2015 to 2016	Annual planned target 2016 2017	Actual achievement 2016 to 2017	Reasons for deviation from planned target for 2016 2017	Variance with 2015 to 2016 and 2016 2017 achievements	Comment on variances/ corrective measures
Completion of SAHRC S184(3) Economic and Social Rights (ESR) Report	1 ESR report	3 ESR briefs	3 ESR briefs	Target achieved	None	None
Completion of SAHRC Annual Equality Report	1	1	1	Target achieved	None	None
Completion of Civil and Political Rights Report	1	1	1	Target achieved	None	None
Compliance with PFMA requirements	100%	100%	100%	Target achieved	None	None
Submission of SAHRC Annual Report to Parliament	Report submitted	Submit report by end of September	Report submitted by end of September	Target achieved	None	None

### Assessment of the state of equality

The SAHRC Equality Report assesses the extent to which unfair discrimination and inequality persists in South Africa. Despite a number of considerable gains in the policy and legislative frameworks over the past 20 years, it is found that inequality in South Africa continues to persist along racial lines, with previously disadvantaged groups (particularly black people) earning, on average, less income, are less educated, and have less access to basic services. Consequently, the plight of people living in South Africa, particularly those in the lower income brackets, those who participate in the informal economy, those who are unemployed, and foreign nationals, require urgent attention from the government.

Hate speech, hate crimes, and xenophobia continue to be issues of concern that affect all who live in the country. Furthermore, this report finds that educational institutions are in great need of transformation, given the role that they play in upskilling and socialising the public.

The right to equality for persons with disabilities remains an ideal and the progressive realisation of the rights of this group of people remains challenging. Numerous complex and inter-related factors often combine to perpetuate the marginalisation of people with disabilities. These factors stem from South Africa's history of inequality, from stigma often rooted in misconceptions, and from social and institutional barriers which continue to form part of the obstacle to integration for people with disabilities. Disabled South Africans are guaranteed equality in terms of the law, but programmes to educate and integrate them have been inadequate.



Although South Africa has good laws, when it comes to protecting and promoting the rights of women, girls and LGBTI people, structural and social inequalities still persist. Economic inequalities continue unabated where structural gender divisions of labour (both paid and unpaid), which lie at the heart of many cultural and social practices, further subjugate women by placing them in dependent positions. Women become responsible for securing basic services such as water, sustenance, and education, which, in a country struggling to provide basic services for all, means that they often bear an insurmountable burden. In addition, poverty remains a persistent contributing factor to gender inequality, particularly for women residing within rural areas of South Africa. A significant amount of work remains to be done on the subject of addressing attitudes towards women and sexual minorities that might be in conflict with the Constitution. The challenges, occurrences, and complaints that have been presented above, indicate the dire need for targeted interventions in the country aimed at transformation.

### **Key findings on the state of equality**

a) General:

- (i) *The use of equality courts has declined significantly (that is, by 286 cases) in the last financial year, raising concerns about the accessibility and awareness of the courts, as well as public confidence in the courts.*

b) Race:

- (i) *Hate speech continues to be the most pervasive form of discrimination in the country, particularly on the basis of race.*
- (ii) *Economic inequalities persist along racial lines, with black households earning the smallest income annually of all the racial groups and white households earning roughly 4.5 times more.*
- (iii) *Unemployment is particularly rife among the black population, where a large majority of those people have a matric qualification but lack a tertiary degree.*
- (iv) *The labour market shows definitive signs of being racially segregated where the private sector is the biggest employer for white and Indian groups, while the public sector is the main employer of black people.*
- (v) *Not only does inequality exist in the labour market, but upskilling and training at top levels indicate that it is mostly the white population that is being empowered to be active at decision-making levels which is evident in the public sector.*
- (vi) *Attaining a tertiary degree is particularly challenging for the black population due to financial constraints as a result of the rising cost of education (which has been rising faster than the average price of the CPI basket of goods and services before 2016), as well as the rising cost of living.*
- (vii) *A large proportion of universities are fairly exclusionary environments due to discriminatory policies, in some instances, and the continued employment of white staff in the majority of universities.*

c) Gender:

- (i) *The labour market is still not employing enough women, and employed women earn almost half of what men earn in the workplace.*

d) Disability:

- (i) *Among people with no schooling, close to 20 percent had a disability, while close to 29 percent of those with only pre-school education had a disability.*
- (ii) *Statistics indicate that the employment of people with disabilities is currently decreasing, particularly at the top two levels of management (which is Top Management and Senior Management), suggesting that reasonable accommodation is not occurring at the top levels.*



## **Research briefs on the state of economic and social rights**

### **Right to food brief**

This research brief on the right to access nutritious food in South Africa was developed to assess whether the National Policy on Food and Nutrition Security (NFNSP) is adequate to ensure food security at a household level, and to identify problems with current policies and implementation, which might result in a lack of real access to nutritious food for families, particularly children, in South Africa. The brief dealt solely with aspects of access to food, including the quality of food insofar as it extends to access of nutritious food.

Following a literature review, including an appraisal of the SAHRC's 2014 strategic focus area report on the right to food and the NFNSP, an interview guide for discussions with relevant state departments and civil society organisations was developed (see annexure). Interviews were conducted between January and February 2017.

According to the South African National Health and Nutrition Examination Survey (SANHANES-1) study conducted by the Human Science Research Council (HSRC), approximately 26 percent of all South Africans are food vulnerable, which amounts to just under 14 million people who are mainly black and living in rural- formal households or urban- informal households. Access to food was closely linked to poverty and unemployment, and those lacking access to a disposable income, employment or social grants, were more likely to be food insecure. Due to both a proliferation of fast food outlets or difficult access to healthy food in South Africa as well as the lack of sufficient funds to purchase healthy food, people were making unhealthy food choices. This impacted on their health and wellbeing and overburdened the public health system in South Africa. Household agriculture in South Africa has decreased and a lack of awareness regarding healthy and nutritious eating also affected food choices. It was recommended that the state rethink the food systems in its entirety through:

- (a) The development of comprehensive legislation which speaks to the entire food system
- (b) The limitation of media and advertising of unhealthy food, while space for advertising must be given to state departments for social and apolitical messaging
- (c) The menu of the school nutrition programme must be designed by the DoH and implemented by the DoE.
- (d) Household agriculture must be encouraged and supported through social development programmes.

### **Right to housing brief**

This research policy brief was completed in fulfilment of Section 184 (3) of the Constitution, which requires the SAHRC to monitor and assess the realisation of economic and social rights (ESRs) in the country. The policy brief contains the findings and recommendations of a research project conducted between July 2016 and March 2017 on the provision of capital funding to build and/or renovate and extend facilities housing persons with special needs to further the realisation of their constitutional right to adequate housing.

Between March and December 2016, 94 mental health care users and/or patients died in 16 non-governmental organisations (NGOs) and three hospitals. Based on initial reports of the deaths, the Minister of Health requested the Office of Health Standards Compliance (OHSC)/Health Ombudsman to investigate "[t]he circumstances surrounding the deaths of mentally ill patients in? Gauteng Province and advise on the way forward". Among many others, the most concerning finding was the inadequacy of NGOs to provide for the special needs of people with mental disabilities. The Health Ombudsman also found that none of the 27 NGOs to which patients were transferred operated under valid licenses, that most NGOs lacked appropriate infrastructure, and that some were in the process of renovating buildings while patients were



being transferred, whereas others discontinued the building and/or renovation of facilities even though such renovations were identified as necessary for the transfer of patients into those facilities. A recurring issue in the Health Ombudsman's report was the insufficiency of funding transferred by the Gauteng Provincial Department of Health (GDoH) to NGOs to deliver housing that caters for the special needs of patients and the operational costs (financed with state subsidies) that are associated with effectively running a facility of this nature.

The argument in respect of insufficient and inadequate infrastructure, and insufficient government assistance to develop and build housing, may be extended to the provision of housing for other categories of special needs. Although the state has taken steps to provide housing to vulnerable people, particularly for people with disabilities and the aged, a range of other vulnerable people who require special needs housing (SNH) struggle to access state assistance. SNH is any form of housing for individuals who, due to their specific vulnerabilities, require adjustments to their housing or who are unable to live independently and require care in state-funded or state-assisted housing. SNH refers to housing provided for individuals who, due to various vulnerabilities and/or special needs, have limited or no capacity to fulfil their rights of access to housing. Categories of special need include and are not limited to: people with physical, intellectual and psychiatric disabilities, the elderly, victims of domestic abuse, orphans, homeless, people undergoing substance rehabilitation, as well as parolees, ex-offenders and juvenile offenders.

Challenges in accessing state-assisted housing for people with special needs are mainly due to a lack of provision for capital funding for SNH in the national housing policy and other relevant policies. The result of inadequate provision has been that NGOs and non-profit organisations (NPOs) who are primarily responding to the need for SNH, and are severely hamstrung by a lack of financial resources, are unable to access state assistance and/or capital funding to build new infrastructure. The unfortunate result of this gap in the national policy framework is that society's most vulnerable, namely, those who are unable to independently see to their own wellbeing, are left destitute and unable to access their right to housing.

In trying to meet this policy gap, the NDHS developed a policy regarding SNH, namely, the Special Housing Needs Policy and Programme (SHNP) during June 2015. Despite the desperate need for a policy that provides clear direction for the provision of housing to special needs people, to date, the SHNP has not yet been finalised and, therefore, has not been implemented.

The purpose of this research policy brief is:

- (a) To highlight the plight of people with special needs regarding their specific housing needs. In this regard, this policy brief investigated the need for a national policy that provides capital funding to build facilities for people with special needs. Subsequently, the policy brief assessed the extent to which the draft of the SHNP responds to this gap and, further, the extent to which it inculcates a humanrights-based approach.
- (b) Having established the need, the research brief sought to advocate for the speedy finalisation of this much-needed policy and its subsequent implementation. Consequently, the research project sought to understand the reasons for the delay in the finalisation and implementation of the SHNP.
- (c) The ultimate goal of the policy brief is to provide recommendations to government about possible steps that can be taken to ensure that people with special needs are able to exercise their right to adequate housing.



A qualitative methodology was applied in the research study and tools of data collection included face-to-face and telephonic interviews with relevant government departments, experts on SNH and academia, as well as a literature review. Based on thematic analysis of the information collected, the Commission made the following key recommendations:

- a) In the short term:
  - (i) *A clear and unequivocal national policy framework on the provision of SNH is paramount.*
  - (ii) *The SAHRC recommends that the DHS must assume primary responsibility for the implementation of the SHNP, and work towards its speedy finalisation*
  - (iii) *The DHS must submit a reasonable timeline to the SAHRC which reflects a requisite sense of urgency that will result in the finalisation of this policy development process, at a minimum, within three months of receipt of this research policy brief.*
  - (iv) *The national DHS must issue a directive that would enable all provinces to utilise the institutional subsidy to access capital grants to build new or extend and renovate existing infrastructure. The SAHRC recommends that the DHS issue such a directive within six months of receipt of this research policy brief.*
  - (v) *Officials who have experience from provinces that have already implemented a variation of the institutional subsidy may be seconded to provinces that have no experience in implementing this policy on a temporary basis.*
- b) In the medium and long-term:
  - (i) *The DHS, in consultation with oversight departments, must develop and submit to the SAHRC a detailed implementation plan. The implementation plans must set specific timelines, measurable targets, and indicate who and/or which unit within the departments will be responsible for the implementation and can be held accountable for successes or failures in this regard. The SAHRC must receive the implementation plan within year of the date of finalisation (which must be approved by cabinet).*
  - (ii) *The National Treasury must allocate a budget, starting in the financial year immediately following finalisation of the SHNP, to the DHS which the SAHRC recommends should be primarily responsible for implementing the SHNP and, thereby, the disbursement of funds to successful applicants. National departments must ensure that their provincial and local (where applicable) counterparts receive the required budget allocation for effective implementation. How the proportion of the budget that will be allocated to provincial and local municipalities will be determined must be included in the implementation plans.*
  - (iii) *The leading department and oversight authorities must clearly outline how provinces and municipalities will be trained to implement this policy in their implementation plans, noting specific methodologies, timelines, and how they will measure the extent to which skills were transferred during workshops.*
  - (iv) *Training and workshops on the SHNP must also be extended to CSOs, particularly since NGOs and/or NPOs will initiate the application process, and they are the intended beneficiaries of the SHNP.*
  - (v) *To ensure effective interdepartmental cooperation, communication and commitment (at national, provincial and local levels), the DHS must establish a focal person and/or desk that would be responsible for coordinating the plans and activities of the various different departments involved in the implementation of the SHNP.*



- (vi) *Each provincial head of the DHS on this policy must conduct or commission a provincial situational analysis to assess the need in regard to SNH and, consequently, where best to intervene. Funding and resources must be made available for this purpose.*
- (vii) *The DSD, DoH and Department of Correctional Services (DCS) must provide ongoing monitoring, management and oversight of funded NPOs. Existing policies, as well as norms and standards that set out the principles, roles and responsibilities of the departments in relation to facilities, must be reviewed to ensure that it caters to all the vulnerable groups and different housing typologies, as identified in the SHNP, that are relevant to a department. The methodology to conduct these reviews must be submitted to the Commission as a part of the implementation plan.*
- (viii) *Evidence of the review above must be submitted to the SAHRC within one year following the finalisation of the implementation.*

### **Economic and social rights related complaints brief**

This research brief provides an analysis of the complaints related to economic and social rights received by the Commission during the 2015 to 2016 financial year. Despite the wealth of information held within the Legal Unit and Advocacy Unit at the Commission, trends are not often analysed and this research was intended to inform a more strategic approach to future ESR-related interventions.

The ESR sub-unit within the Research Unit collected information on ESR-related complaints between September 2016 and January 2017. Approximately 18 percent of all complaints received by the Commission during the studied financial year were ESR-related. The complainants were mostly black males, mainly from Gauteng, Limpopo and the North West province. Most complaints related to the right to water, basic education, housing and health care. A large amount of information, such as the race and age of the complainant, was not captured by provinces for various reasons.

The recommendations of the brief include:

- (a) The Research Unit should work with the Legal Services Unit to ensure that complaint forms are concise and effectively designed to capture all the relevant information.
- (b) Cross cutting complaints should be listed in all categories that it covers.
- (c) The Commission should begin to consider the possibility of mobile units or satellite offices to ensure that it is reaching its intended target audience in large rural provinces, provided that the location of provincial offices is found to be an inhibiting factor for laying complaints.
- (d) The Research Unit should also include an analysis of the number of resolved complaints and adherence to the recommendations of the complaint findings.

Despite the value of the information presented below, at this stage this document will be used only as an internal brief, where recommendations can be implemented and lessons learned for similar research in the future. Noting the benefits of this analysis, it is essential to state that these benefits can be maximised further with comprehensive and accurate information to ensure that interventions are more targeted and that resources are optimally utilised.

### **Assessment of the state of civil and political rights**

The Commission completed a report to capture the current state of affairs with regard to civil and political rights in South Africa, which serves as a reflection piece or gap analysis. The report provides a snapshot of current developments in legislation, policy, and jurisprudence around civil and political rights in South Africa, highlights the work of the SAHRC on a number of rights-related issues and projects, gathers and monitors data related to civil and political rights enjoyed in South Africa, and compiles recommendations for state institutions, civil society, and the Commission related to key issues.



The report examines key developments regarding civil and political rights in South Africa during 2016 to 2017. Over the past year, the country has witnessed civil and political rights violations in relation to the following: use of excessive force during protests, overcrowding in correctional centres and violation of prisoners' rights, threats to media freedom, hate crimes against LGBTI people and foreign nationals, hate speech, privacy violations, censorship, political violence related to the local government elections, and the heavy-handed policing of #feesmustfall student protests. There are also currently numerous contested legal developments underway in South Africa that relate to hate speech and hate crimes, privacy of personal information, traditional courts, protected disclosures (whistleblowing), correctional centre oversight, and immigration detention.

While the South African government has pledged itself to the protection and realisation of civil and political rights in terms of domestic, regional, and international law, challenges remain in terms of implementation and political will. The SAHRC is concerned that the crucial oversight and monitoring mechanisms and institutions in place to protect civil and political rights in South Africa are not able to fulfil their role due to budget limitations, lack of institutional independence from government departments, and limited mandates and powers. Further, the SAHRC is concerned that new legislation and policy that is being developed is rolling back some of the gains made in implementing civil and political rights, and do not comply with the Constitution or regional and international human rights law.

South Africa is a party to regional and international treaty instruments focusing on the protection and expansion of civil and political rights, including the UN International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). Over the past 18 months, the government participated in reporting processes under both these treaties in terms of its civil and political rights obligations. This has given the Commission an opportunity to engage in an analysis of the implementation of civil and political rights in South Africa, as well as compliance with domestic, African, and international human rights obligations. An important recommendation from the report is that the government needs to be clear about the status of the ICCPR in the South African legal system, and that much more needs to be done to promote awareness of the ICCPR and other international and regional human rights law among government officials, policymakers, and parliamentarians.

The report makes numerous findings regarding the implementation of civil and political rights in South Africa, particularly as the implementation relates to legislation and policy, as well as concerning the oversight and monitoring institutions and mechanisms in place to protect and fulfil the rights contained in the Constitution. The report provides a discussion of key developments as they relate to the following: right to life and human dignity (specifically, Life Esidimeni deaths, deaths in police custody during police action or in correctional facilities, and assisted dying), freedom and security of the person (specifically, corporal punishment in schools and in the home), freedom from slavery and forced labour (specifically, human trafficking in South Africa), the right to privacy and access to information (specifically, challenges with accessing information through PAIA, communication surveillance practices, establishment of the Information Regulator, and the appointment of the Inspector-General of Intelligence), freedom of expression and protection from unfair discrimination (specifically, the Prevention and Combating of Hate Crimes and Hate Speech Bill, hate crimes against LGBTI people, whistleblowing, and media freedom and censorship), protest (specifically, student protests on university campuses and the Marikana Commission), political rights (specifically, political party funding, as well as political intimidation and violence), just administrative action, access to the courts (specifically, the Traditional Courts Bill and the International Criminal Court withdrawal), and rights of arrested, detained and accused people (specifically, the independence and capacity of the Judicial Inspectorate for Correctional Services, overcrowding and poor conditions in correctional centres, children in the criminal justice system, and the monitoring of unlawful detention at Lindela Repatriation Centre).



## STRATEGIC OBJECTIVE 5: IMPROVE THE EFFECTIVENESS AND EFFICIENCY OF THE COMMISSION TO SUPPORT DELIVERY ON THE MANDATE

In order to continuously improve effectiveness and efficiency, the Commission focuses on a review and the enhancement of the governance framework and structures, including the risk and audit elements, support and review of administrative systems, policies, and processes, comprehensive human resources planning, as well as a comprehensive monitoring and evaluation system.

**Table 7:** Achievements based on planned targets to improve the effectiveness and efficiency of the Commission

### Strategic Objective 5: Improve the effectiveness and efficiency of the Commission to support delivery on the mandate

**Objective Statement:** Review governance framework and institutional policies, systems and processes, ensure comprehensive human resources planning, and comprehensive monitoring and evaluation

Annual performance indicator	Actual achievement 2015 to 2016	Annual planned target 2016 to 2017	Actual achievement 2016 to 2017	Deviation from planned target for 2016 to 2017	Variance 2015 to 2016 with 2016 to 2017	Comment on variances/ corrective measures
Compliance with institutional governance, risk, and audit framework	Unqualified audit opinion, implemented risk treatment plans, 74% resolution of audit findings Internal audit plan implemented, revised governance framework, knowledge and record management plans implemented	Full compliance	Not achieved (70% of audit findings resolved)	30% less on resolution of audit findings	Less by 4%	Not achieved due to only 70% resolution of audit findings, mainly as a result of capacity constraints
Compliance with institutional policies	100%	100%	90%	Target not achieved	10% less	Not achieved due to Corporate Services Charter elements requiring automated reporting
Implementation of human resources management strategy and plan	Achieved	Develop strategy and 85% implementation of capacity development plan	Strategy developed, 61% implementation of capacity development plan	Target not achieved	24% less	Not achieved due to budget constraints
Completion of institutional monitoring and evaluation report	1	Completed 1 report	Completed 1 report	Target achieved	None	None
Revision of monitoring and evaluation framework	New indicator	Revised framework	Revised framework	Target achieved	None	None
Completion of Exit Handover Report	New indicator	Completed 1 report	Completed 1 report	Target achieved	None	None





### ***Governance, risk and audit***

The Risk Management Committee was tasked with the responsibility of monitoring the Commission's risks. Ultimately, a strategic risk register regarding treatment plans was approved and is being implemented. Progress on the treatment plans will be reported on a quarterly basis through the Audit Committee and Executive Management Committee (EXCO) to ensure effective risk management oversight. This is an area that has room for greater improvement, and a training programme has been identified and planned for the risk management committee.

The Information, Communication Technologies (ICT) Steering Committee was duly constituted and its main task for the period under review was the ICT Strategic Plan and Framework. The ICT Strategic Plan and Framework identified five key strategic areas for improvement. These were governance, ICT infrastructure, software and licence agreements, business continuity, maintenance, enhancements, and service- level agreements. The Committee's action plan includes changes to areas such as the improvement of the quality of service as well as cost-cutting measures.

### ***Compliance with institutional policies***

During the period under review the following institutional policies were reviewed:

- (a) Supply chain management
- (b) IT policies
- (c) Finance policies
- (d) Employee handbook which covers all policies related to staff
- (e) Records management policies in support of knowledge management

The revised policies will ensure greater efficiency in service delivery and will be implemented from April 1, 2017. On-going staff training with regard to Commission policies is paramount in the new financial year to ensure effective implementation of the policies. Standard operating procedures for the policies have been drafted.

### ***Human resources strategy and plan***

The Commission made use of its own internal resources to develop a 3- year HR strategy and plan. This plan has now been approved and will be implemented from 2017. The plan includes elements related to staff performance management, succession planning and retention, HR planning, capacity development, and training.

During the year under review, capacity development and training initiatives that were undertaken were in line with the training plan as approved by EXCO. These included training on supply chain management for public service, bid committees, mediation training for the legal staff, training of occupational health, and safety representatives. In addition, 14 bursaries were awarded to the staff.

The Commission's Employment Equity Plan is in its third year and its implementation is being continuously monitored through the Transformation and Employment Equity Consultative Committee (TEECC).

The overall workforce representation in terms of gender, as at the end of the reporting period, was at 66 percent for females and 34 percent for males. Four people with disabilities were reported, which represents 2 percent of the workforce. The gender representation at senior management level (levels 13 to 16), including commissioners, reflects 68 percent male and 32 percent female employees in the Commission. The high staff turnover among female employees at these levels (eight females compared to five males) contributed to the widening of the gap between the two groups. The recruitment drive to fill vacant positions in the Commission has yielded 24 appointments. Efforts to fill all vacant positions are still underway.



### ***Monitoring and evaluation framework and report***

The revised strategic plan of the Commission identifies a need to develop and strengthen an integrated and comprehensive monitoring and evaluation system. The Commission subsequently developed an institutional monitoring and evaluation planning framework, with the following key elements:

- (a) Implementation of recommendations
- (b) Implementation of court orders
- (c) Executive Authority stakeholder engagements
- (d) Participation in government engagement forums
- (e) Monitoring instruments

The framework further makes provision for the Commission, in the long term, to make use of surveys and evaluation studies to measure the achievement of outcomes and the realisation of the desired impact. Aspects of the framework have been applied to assess the relevance, effectiveness, efficiency, and impact of identified Commission processes, which includes the implementation of recommendations, provincial visit engagements, advisory committee engagements, and legislative submissions. Some of these elements have been reported on in various relevant sections of this annual report.

### ***Strategies to deal with areas of under-performance***

The following planned performance targets were not achieved for the 2016 to 2017 financial year:

- (a) The full implementation of governance risk and the audit framework.

*The reason for non-achievement of this target was that the audit findings were only resolved at 70 percent as a result of inadequate capacity.*

*The institution has introduced the issue of including the resolution of all due audit findings into the performance contracts of all relevant employees to ensure improved performance.*

- (b) Compliance with institutional policies.

*Reporting on the Corporate Services Charter was incomplete due to the lack of an automated system that captures turnaround times to identified areas. Plans to acquire and install automated systems are underway.*

- (c) 85 percent implementation of the capacity development plan.

*The capacity development plan was implemented up to 61 percent due to budget constraints. The planned budget for the training also had to cover books and stationery related to the training.*



# PART C:

## CORPORATE GOVERNANCE

### 1/EXECUTIVE AUTHORITY: THE COMMISSIONERS

The Commissioners provide leadership and guidance concerning the professional work of the Commission by facilitating the South African human rights agenda at the international, regional, national, and provincial levels. The Commissioners are committed to business integrity, transparency, and professionalism in all activities. As part of this commitment, the Commissioners support the highest standards of corporate governance and the ongoing development of best practice.

The members of the Executive Authority for the year under review include:

**Table 8:** Members of Executive Authority 2016 to 2017

	Name	Appointment status
1.	Adv. B. C. Majola	Chairperson
2.	Ms. D. P. Jana	Deputy Chairperson
3.	Adv. A. H. Gaum	Full time – appointed January 3, 2017
4.	Adv. M. S. Ameermia	Full time – appointed February 3, 2014
5.	Ms. M. A. Makwetla	Full time – appointed January 3, 2017
6.	Adv. J. B. Malatji	Full time – appointed January 3, 2017
7.	Mr. A. C. Nissen	Part time – appointed January 3, 2017
8.	Mr. J. Sibanyoni	Part time – appointed January 3, 2017
9.	Adv. M. L. Mushwana	Term ended in October 2016
10.	L. Mokate	Term ended in September 2016
11.	D. Titus	Term ended in September 2016
12.	J. Love	Resigned in June 2016

### 2/RISK MANAGEMENT

Legislating the implementation of risk management in public sector institutions is part of a macro strategy of the government to ensure the achievement of public sector institutional goals and objectives. For the Commission, this mandate can be found in Section 77 of the Public Finance Management Act (Act 1 of 1999 as amended by Act 29 of 1999, Treasury Regulations TR3.1.10, and Treasury Regulations TR3.1.13). Risk management, therefore, forms an integral part of the Commission's plan to deliver effectively and efficiently on its mandate.

The Commission continues to recognise the importance of risk management to ensure the realisation of objectives and, therefore, endeavors to comply with the requisite legislation as it pertains to risk management. The Chief Financial Officer is responsible for the risk management processes in the Commission, and facilitates the development and review of a risk register while also monitoring the implementation of a risk management plan. The register and plan capture institutional strategic risks and mitigating actions, and are reviewed for progress on a quarterly basis.



## 3/COMPLIANCE WITH LAWS AND REGULATIONS

The function of legislative and regulatory compliance has been delegated to the heads of units to ensure compliance with the relevant legislation and statutes pertaining to their programmes. Compliance in relation to core operations is the responsibility of the Chief Operations Officer, while corporate and financial- related compliance issues are the responsibility of the Chief Financial Officer. The Chief Executive Officer has the ultimate responsibility to monitor and ensure institutional and financial compliance as the accounting officer. The Chairperson as Executive Authority is responsible for overall strategic and governance oversight.





# PART D:

## HUMAN RESOURCES MANAGEMENT

### 1/HUMAN RESOURCES MANAGEMENT

#### *Expenditure*

The following tables summarise final audited expenditure by programme (Table 9) and by salary bands (Table 10). In particular, these tables provide an indication of the amount spent on personnel costs in terms of each programme or salary band within the department.

**Table 9** : Personnel costs by programme for 2016 to 2017

Programme	Total expenditure (R'000)	Personnel expenditure (R'000)	Training expenditure (R'000)	Professional and special services (R'000)	Personnel cost as a percentage of total expenditure	Average personnel cost per employee (R'000)
Chief Executive Officer	11,289	7,997	8	3,284	71%	800
Commissioners	16,450	12,392	-	4,058	75%	775
Corporate and financial support services	59,199	20,489	1,429	37,281	35%	585
Programme support	71,616	62,371	226	9,019	87%	611
<b>Total</b>	<b>158,555</b>	<b>103,250</b>	<b>1,663</b>	<b>53,642</b>	<b>65%</b>	<b>633</b>

**Table 10** : Personnel costs by salary bands for 2016 to 2017

Salary bands	Personnel expenditure (R'000)	% of total personnel cost	Average personnel cost per employee (R'000)
Lower skilled (levels 1- – 2)	-	-	-
Skilled (levels 3-5)	3,448	3%	575
Highly skilled production (levels 6-8)	24,713	24%	374
Highly skilled supervision (levels 9-12)	47,706	46%	723
Senior management (levels 13-16)	27,383	27%	1,095
<b>Total</b>	<b>103,250</b>	<b>100%</b>	<b>637</b>

The following tables provide a summary per programme (Table 11) and salary bands (Table 12), of expenditure incurred as a result of salaries, overtime, home owners' allowance, and medical assistance. In each case, the table provides an indication of the percentage of personnel budget used for these items.



**Table 11 :** Salaries, overtime, home owners allowance, and medical assistance by programme for 2016 to 2017

Programme	Salaries		Overtime		Home owners' allowance		Medical assistance	
	Amount (R'000)	Salaries as a % of personnel cost	Amount (R'000)	Overtime as a % of personnel cost	Amount (R'000)	HOA as a % of personnel cost	Amount (R'000)	Medical assistance as a % of personnel cost
Chief Executive Officer	7,997	8%	70	1%	50	1%	232	3%
Commissioners	12,392	12%	8	-	218	2%	224	2%
Corporate and financial support services	20,489	20%	17	-	570	3%	931	5%
Programme support	62,371	60%	50	-	1,202	2%	1,943	3%
<b>Total</b>	<b>103,250</b>	<b>100%</b>	<b>145</b>	<b>0%</b>	<b>2,040</b>	<b>2%</b>	<b>3,331</b>	<b>3%</b>

**Table 12 :** Salaries, overtime, home owners allowance, and medical assistance by salary bands for 2016 to 2017

Salary bands	Salaries		Overtime		Home owners' allowance		Medical assistance	
	Amount (R'000)	Salaries as a % of personnel cost	Amount (R'000)	Overtime as a % of personnel cost	Amount (R'000)	HOA as a % of personnel cost	Amount (R'000)	Medical assistance as a % of personnel cost
Lower skilled (levels 1-2)	-	-	-	-	-	-	-	-
Skilled (levels 3-5)	3,448	3%	16	0.5%	86	3%	173	5%
Highly skilled production (levels 6-8)	24,713	24%	36	0.1%	842	3%	1,336	5%
Highly skilled supervision (levels 9-12)	47,706	46%	84	0.2%	717	1%	1,385	3%
Senior management (levels 13-16)	27,383	27%	10	0%	395	1%	438	2%
<b>Total</b>	<b>103,250</b>	<b>100%</b>	<b>146</b>	<b>0.14%</b>	<b>2,040</b>	<b>2%</b>	<b>3,331</b>	<b>3%</b>

## Employment and vacancies

The following tables summarise the number of posts on establishment of the Commission, the number of employees, the vacancy rate, and whether there are any staff additional to those on establishment. This information is presented in terms of three key variables: programme (Table 16), salary band (Table 17), and critical occupations (Table 18). Departments have identified critical occupations that need to be monitored. Table 18 provides establishment and vacancy information for the key critical occupations of the department.

**Table 13** : Employment and vacancies by programme at March 31, 2017

Programme	Number of posts	Number of posts filled	Vacancy rate	Number of posts filled additional to the establishment
Chief Executive Officer	12	10	17%	-
Commissioners	24	16	33%	-
Corporate and financial support services	37	35	5%	-
Programme support	115	102	12%	-
Total	188	163	14%	-

**Table 14** : Employment and vacancies by salary bands at March 31, 2017

Salary band	Number of posts	Number of posts filled	Vacancy rate	Number of posts filled additional to the establishment
Lower skilled (levels 1-2)	-	-	-	-
Skilled (levels 3-5)	6	6	0%	-
Highly skilled production (levels 6-8)	77	66	14%	-
Highly skilled supervision (levels 9-12)	76	66	13%	-
Senior management (Levels 13-16)	29	25	14%	-
Total	188	163	13%	-

**Table 15** : Employment and vacancies by critical occupation for March 31, 2017

Critical occupations	Number of posts	Number of posts filled	Vacancy rate	Number of posts filled additional to the establishment
Legal	55	52	5%	-
Training	24	15	38%	-
Research	16	9	44%	-
Total	95	76	20%	-

The information in each case reflects the situation as at March 31, 2017. For an indication of changes in staffing patterns over the year under review, please refer to Section 5 of this report.

### *Job evaluation*

The Public Service Regulations 1999, introduced job evaluation as a way of ensuring that work of equal value is remunerated equally. Within a nationally determined framework, executing authorities may evaluate or re-evaluate any job in an organisation. In terms of the regulations, all vacancies on salary levels nine and higher must be evaluated before they are filled.

The following table (Table 19) summarises the number of jobs evaluated during the year under review. The table also provides statistics on the posts that were upgraded or downgraded.



**Table 16** : Job evaluation for April 1, 2016 to March 31, 2017 (including vacant positions)

Salary band	Number of posts	Number of jobs evaluated	% of posts evaluated by salary bands	Posts upgraded		Posts downgraded	
				Number	% of posts evaluated	Number	% of posts evaluated
Lower skilled (levels 1-2)	-	-	-	-	-	-	-
Skilled (levels 3-5)	-	-	-	-	-	-	-
Highly skilled production (levels 6-8)	65	1	-	-	-	-	-
Highly skilled supervision (levels 9-12)	66	9	-	-	-	-	-
Senior management service, band A	-	-	-	-	-	-	-
Senior management service, band B	-	-	-	-	-	-	-
Senior management service, band C	-	-	-	-	-	-	-
Senior management service, band D	-	-	-	-	-	-	-
<b>Total</b>	<b>131</b>	<b>10</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

The following table provides a summary of the number of employees whose salary positions were upgraded because their posts were upgraded. The number of employees may differ from the number of posts upgraded since not all employees are automatically absorbed into new posts and some upgraded posts may be vacant.

**Table 17** : Profile of employees whose salary positions were upgraded because their posts were upgraded from April 1, 2016 to March 31, 2017 (excluding vacant positions)

Beneficiaries	African	Asian	Coloured	White	Total
Female	-	-	-	-	-
Male	-	-	-	-	-
Total	-	-	-	-	-
Employees with a disability	-	-	-	-	-

## Employment changes

This section provides information on changes in employment over the financial year. Turnover rates provide an indication of trends in the employment profile of the department. The following tables provide a summary of turnover rates by salary band (Table 5.1) and by critical occupations (Table 5.2). These "critical occupations" should be the same as those listed in Table 3.3.



**Table 18** : Annual turnover rates by salary band for April 1, 2016 to March 31, 2017

Salary band	Number of employees per band at April 1, 2016	Appointments and transfers into the department	Terminations and transfers out of the department	Turnover rate
Lower skilled (levels 1-2)	-	-	-	-
Skilled (levels 3-5)	6	-	-	-
Highly skilled production (levels 6-8)	72	6	4	6%
Highly skilled supervision (levels 9-12)	63	8	8	13%
Senior management service, band A (level 13)	17	9	9	53%
Senior management service, band B (level 14)	2	2	2	-
Senior management service, band C (level 15)	2	1	1	50%
Total	162	26	24	15%

**Table 19** : Annual turnover rates by critical occupation for April 1, 2016 to March 31, 2017

Occupation	Number of employees per occupation at April 1, 2015	Appointments and transfers into the department	Terminations and transfers out of the department	Turnover rate
Legal services	55	13	9	16%
Training	24	2	1	4%
Research	16	1	2	13%
Total	95	16	12	13%

**Table 20** : Reasons why staff are leaving the department

Termination type	
Death	1
Resignation	15
Retrenchment	-
Expiry of contract	7
Dismissal – operational changes	-
Dismissal – misconduct	-
Dismissal – inefficiency	-
Discharged due to illhealth	-
Retirement	1
Transfers to other public service departments	-
Other (voluntary separation package)	-
Total	24
Total number of employees who left as a % of the total employment	8%



**Table 21** : Promotions by critical occupation

Occupation	Employees at April 1, 2016	Promotions to another salary level	Salary level promotions as a % of employees by occupation	Progressions to another notch within a salary level	Notch progressions as a % of employees by occupation
Legal services	55	4	7%	44	80%
Education	24	-	-	9	38%
Research	16	-	-	6	38%
Total	95	4	4%	59	62%

**Table 22** : Promotions by salary band

Salary band	Employees at April 1, 2016	Promotions to another salary level	Salary bands promotions as a % of employees by salary level	Progressions to another notch within a salary level	Notch progressions as a % of employees by salary band
Lower skilled (levels 1-2)	-	-	-	-	-
Skilled (levels 3-5)	6	-	-	6	100%
Highly skilled production (levels 6-8)	72	-	-	62	86%
Highly skilled supervision (levels 9-12)	63	3	-	48	76%
Senior management (levels 13-16)	21	1	-	11	52%
Total	162	4	0%	127	78%

## Employment equity

The tables in this section are based on the formats prescribed by the Employment Equity Act, 55 of 1998.

**Table 23** : Total number of employees in each of the following occupational bands at March 31, 2017 (including part-time Commissioners)

Occupational bands	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management	4	1	1	1	1	0	2	0	10
Senior management	7	1	0	1	2	2	1	1	15
Professionally qualified and experienced specialists and mid-management	22	3	0	2	23	5	3	3	61
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	5	0	1	0	30	3	1	3	43
Semi-skilled and discretionary decision-making	6	0	0	1	21	1	0	0	29
Unskilled and defined decision-making	3	0	0	0	2	0	0	0	5
Total	47	5	2	5	79	11	7	7	163

**Table 24** : Recruitment (including employees with disabilities and research associates) for April 1, 2016 to March 31, 2017.

Occupational bands	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management	3	1	0	1	1	0	1	0	7
Senior management	2	0	0	0	0	2	0	1	5
Professionally qualified and experienced specialists and mid-management	4	1	0	0	3	0	0	1	9
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	0	0	0	0	0	0	1	0	1
Semi-skilled and discretionary decision-making	1	0	0	1	2	0	0	0	4
Unskilled and defined decision-making	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>10</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>26</b>
Employees with disabilities	-	-	-	-	-	-	-	-	-

**Table 25** : Promotions (including employees with disabilities) for April 1, 2016 to March 31, 2017

Occupational bands	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management	-	-	-	-	-	-	1	-	1
Senior management	-	-	-	-	1	-	-	1	2
Professionally qualified and experienced specialists and mid-management	-	-	-	-	1	-	-	-	1
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	-	-	-	-	-	-	-	-	-
Semi-skilled and discretionary decision-making	-	-	-	-	-	-	-	-	-
Unskilled and defined decision-making	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>4</b>
Employees with disabilities	-	-	-	-	-	-	-	-	-



**Table 26** : Terminations (including employees with disabilities, interns, and contractors) for April 1, 2016 to March 31, 2017

Occupational bands	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management	2	1	0	0	2	1	0	0	6
Senior management	1	0	1	0	1	1	0	1	5
Professionally qualified and experienced specialists and mid-management	3	0	2	0	0	0	1	1	7
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	0	0	0	0	0	0	0	1	1
Semi-skilled and discretionary decision-making	1	0	0	0	3	0	0	0	4
Unskilled and defined decision-making	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>7</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>24</b>
Employees with disabilities	0	0	0	0	0	0	0	0	0

**Table 27** : Disciplinary action for April 1, 2016 to March 31, 2017

Disciplinary action	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Disciplinary action	-	-	-	-	-	-	-	-	-

**Table 28** : Skills development for April 1, 2016 to March 31, 2017

Occupational categories	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Legislators, senior officials, and managers	3	0	1	0	1	1	3	0	9
Professionals	3	2	0	0	2	0	0	1	8
Technicians and associate professionals	15	1	0	1	21	1	1	2	42
Clerks	3	0	0	1	19	0	0	0	23
Elementary occupations	2	0	0	0	0	0	0	0	2
<b>Total</b>	<b>26</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>43</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>83</b>
Employees with disabilities	1	0	0	0	0	0	0	0	1



## Performance rewards

To encourage good performance, the department has granted the following performance rewards during the year under review. The information is presented in terms of race, gender, and disability (Table 29), salary bands (Table 30) and major occupation (Table 33).

**Table 29** : Performance rewards by race, gender, and disability for April 1, 2016 to March 31, 2017

	Beneficiary profile			Cost	
	Number of beneficiaries	Total number of employees in group	% of total within group	Cost (R'000)	Average cost per employee
Total African	102	128	80%	4155	40
Male	29	46	63%	1297	44
Female	73	82	89%	2858	39
Total Asian	5	11	45%	330	66
Male	1	5	20%	35	35
Female	4	6	67%	295	73
Total Coloured	12	15	80%	615	51
Male	3	4	75%	175	58
Female	9	11	82%	440	48
Total White	7	15	47%	380	54
Male	2	4	50%	138	69
Female	5	11	45%	241	48
Employees with a disability	1	2	50%	55	55
Total	127	171	74%	5535	32

**Table 30** : Performance rewards by salary bands for personnel below senior management service for April 1, 2015 to March 31, 2016

Salary bands	Beneficiary profile			Cost		Total cost as a % of the total personnel expenditure
	Number of beneficiaries	Number of employees	% of total within salary bands	Total cost (R'000)	Average cost per employee	
Lower skilled (levels 1-2)	0	0	0%	0	0	0.0%
Skilled (levels 3-5)	5	17	29%	102	20	3%
Highly- skilled production (levels 6-8)	7	60	12%	257	36	1%
Highly skilled supervision (levels 9-12)	18	41	44%	906	50	2%
Total	30	118	25%	1,265	106	2%



**Table 31** : Performance-related rewards (cash bonus) by salary band for senior management service

Salary band	Beneficiary profile			Total cost (R'000)	Average cost per employee	Total cost as a % of the total personnel expenditure
	Number of beneficiaries	Number of employees	% of total within band			
Band A	5	20	25%	370	74	27%
Band B	1	2	50%	66	66	38%
Band C	0	2	0%	0	0	0%
Band D	0	0	0%	0	0	0%
<b>Total</b>	<b>6</b>	<b>24</b>	<b>38%</b>	<b>436</b>	<b>140</b>	<b>24%</b>

### Foreign workers

The tables below summarise the employment of foreign nationals in the department in terms of salary bands and by major occupation. The tables also summarise changes in the total number of foreign workers in each salary band and by each major occupation.

**Table 32** : Foreign workers for April 1, 2016 to March 31, 2017 by salary band

Salary band	April 1, 2016		March 31, 2017		Change	
	Number	% of total	Number	% of total	Number	% change
Lower skilled (levels 1-2)	-	-	-	-	-	-
Skilled (levels 3-5)	-	-	-	-	-	-
Highly- skilled production (levels 6-8)	6	50%	1	14%	5	83%
Highly- skilled supervision (levels 9-12)	4	33%	4	57%	-	0%
Senior management (levels 13-16)	2	17%	2	29%	-	0%
<b>Total</b>	<b>12</b>	<b>100%</b>	<b>7</b>	<b>100%</b>	<b>5</b>	<b>42%</b>

**Table 33** : Foreign workers for April 1, 2016 to March 31, 2017 by major occupation

Major occupation	April 1, 2016		March 2 31, 2017		Change	
	Number	% of total	Number	% of total	Number	% change
Legal	2	22%	2	33%	0	0%
Education	0	0	0	0	0	0
Research	7	78%	4	67%	3	43%
<b>Total</b>	<b>9</b>	<b>100%</b>	<b>6</b>	<b>100%</b>	<b>3</b>	<b>67%</b>

### Leave utilisation for January 1, 2016 to March 31, 2017

The Public Service Commission identified the need for careful monitoring of sick leave within the public service. The following tables provide an indication of the use of sick leave (Table 34) and annual leave (Table 35). In both cases, the estimated cost of the leave is also provided.

**Table 34** : Sick leave for January 1, 2016 to March 31,2017

Salary band	Total days	% days with medical certification	Number of employees using sick leave	% of total employees using sick leave	Average days per employee
Lower skilled (levels 1-2)	-	-	-	-	-
Skilled (levels 3-5)	20	-	4	67%	5.0
Highly- skilled production (levels 6-8)	386	-	53	80%	7.3
Highly- skilled supervision (levels 9-12)	314	-	48	73%	6.5
Senior management (levels 13-16)	63	-	18	72%	3.5
<b>Total</b>	<b>783</b>	<b>-</b>	<b>123</b>	<b>75%</b>	<b>6.4</b>

Table 35 summarises the use of annual leave. The wage agreement (concluded with trade unions in the Public Service Commission Bargaining Council (PSCBC) in 2000), requires management to take annual leave to prevent high levels of accrued leave being paid at the time of termination of service.

**Table 35** : Annual leave for January 1,2016 to March 31,2017

Salary bands	Total days taken	Average per employee
Lower skilled (levels 1-2)	-	-
Skilled (levels 3-5)	181	30
Highly- skilled production (levels 6-8)	1 461	22
Highly- skilled supervision (levels 9-12)	1 584	24
Senior management (levels 13-16)	563	23
<b>Total</b>	<b>3 789</b>	<b>23</b>

The following table summarises payments made to employees as a result of leave that was not taken.

**Table 36** : Leave pay-outs for April 1,2016 to March 31,2017

Reason	Total amount (R'000)	Number of employees	Average payment per employee (R'000)
Leave pay-out for 2016 to 2017 for the non-use of leave in previous cycle	-	-	-
Capped leave pay-outs on termination of service for 2016 to 2017	-	-	-
Current leave pay-out on termination of service for 2016 to 2017	380	25	15
<b>Total</b>	<b>380</b>	<b>25</b>	<b>15</b>

## *HIV/AIDS and health promotion programmes*

**Table 37** : Steps taken to reduce the risk of occupational exposure

Units/categories of employees identified to be at high risk of contracting HIV/AIDS and related diseases (if any)	Key steps taken to reduce the risk
None. Independent Counselling and Advisory Services (ICAS) has a full-fledged HIV unit that the Commission's staff members may access 24 hours a day, 7 days a week. Contact details are readily available to staff	An HIV/AIDS and health awareness workshop was held on December 2, 2016



**Table 38** : Details of health promotion and HIV/AIDS programmes (tick the applicable boxes and provide the required information)

Question	Yes	No	Details, if yes
1 Has the department designated a member of the Senior Management Service (SMS) to implement the provisions contained in Part VI, section? E of Chapter 1 of the Public Service Regulations, 2001? If so, provide the name and position.		X	Not applicable to the SAHRC
2 Does the department have a dedicated unit or has it designated specific staff members to promote the health and well-being of employees? If so, indicate the number of employees involved in this task and the annual budget available for this purpose.	X		Five members (R90 000)
3 Has the department introduced an employee assistance or health promotion programme for employees? If so, indicate the key elements and/or services of this programme.	X		ICAS counselling, wellness, health advice, and financial advice
4 Has the department established (a) committee(s) as contemplated in Part VI, Section E.5 (e) of Chapter 1 of the Public Service Regulations, 2001? If so, please provide the names of the members of the committee and the stakeholder(s) they represent.		X	Not applicable to the SAHRC
5 Has the department reviewed its employment policies and practices to ensure that these do not unfairly discriminate against employees on the basis of their HIV status? If so, list the employment policies and/or practices so reviewed.	X		Performance management policy and procedures.
6 Has the department introduced measures to protect HIV-positive employees or those perceived to be HIV-positive from discrimination? If so, list the key elements of these measures.	X		Wellness day, health education, and voluntary screening
7 Does the department encourage its employees to undergo voluntary counselling and testing? If so, list the results achieved.	X		Employees were given time to undertake VCT and interact with the health officials.
8 Has the department developed measures and/or indicators to monitor and evaluate the impact of its health promotion programme? If so, list these measures and/or indicators.		X	Health promotion is done through ICAS services. Quarterly reports are provided and analysed.

Table 39 summarises the outcome of disciplinary hearings conducted within the department for the year under review.

**Table 39** : Misconduct and disciplinary hearings finalised for April 1, 2016 to March 31, 2017

Outcomes of disciplinary hearings	Number	% of total
Correctional counselling	-	-
Verbal warning	-	-
Written warning	2	67%
Final written warning	-	-
Suspended without pay	-	-
Fine	-	-
Demotion	-	-
Dismissal	-	-
Not guilty	-	-
Case withdrawn	1	33%
Total	3	100%



**Table 40** : Types of misconduct addressed at disciplinary hearings

Type of misconduct	Number	% of total
Insolence and disobedience	-	-
Poor performance termination	-	-
Total	-	-

**Table 41** : Grievances lodged for April 1, 2016 to March 31, 2017

	Number	% of total
Number of grievances resolved	4	100%
Number of grievances not resolved	0	-
Total number of grievances lodged	4	100%

## Skills development

This section highlights the efforts of the department with regard to skills development.

**Table 42** : Training needs identified for April 1, 2016 to March 31, 2017

Occupational categories	Gender	Number of employees at April 1, 2016	Training needs identified at start of reporting period			Total
			Learnerships	Skills programmes and other short courses	Other forms of training	
Legislators, senior officials, and managers (levels 13-16)	Female	8	-	8	-	8
	Male	11	-	11	-	11
Professionals (levels 11-12)	Female	5	-	5	-	5
	Male	7	-	5	2	7
Technicians and associate professionals (levels 8-10)	Female	31	-	25	6	31
	Male	20	-	17	3	20
Clerks (levels 4-7)	Female	21	-	18	3	21
	Male	4	-	4	-	4
Service and sales workers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Skilled agriculture and fishery workers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Craft and related trades workers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Plant and machine operators and assemblers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Elementary occupations (levels 1-3)	Female	0	-	0	-	0
	Male	2	-	2	-	2
Sub Total	Female	65	-	56	9	65
	Male	44	-	39	5	44
Total		109		95	14	109



**Table 43** : Training provided for April 1, 2016 to March 31, 2017

Occupational categories	Gender	Number of employees at April 1, 2016	Training provided within the reporting period			Total
			Leaverships	Skills programmes and other short courses	Other forms of training	
Legislators, senior officials, and managers	Female	4	-	4	-	4
	Male	4	-	4	-	4
Professionals	Female	3	-	3	-	3
	Male	7	-	5	2	7
Technicians and associate professionals	Female	31	-	25	6	31
	Male	21	-	18	3	21
Clerks	Female	22	-	19	3	22
	Male	4	-	4	-	4
Service and sales workers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Skilled agriculture and fishery workers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Craft and related trades workers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Plant and machine operators and assemblers	Female	-	-	-	-	-
	Male	-	-	-	-	-
Elementary occupations	Female	-	-	-	-	-
	Male	2	-	2	-	2
Sub Total	Female	60	-	51	9	60
	Male	38	-	33	5	38
Total		98	-	84	14	98

## Injury on duty

The following tables provide basic information on injury on duty.

**Table 44** : Injury on duty for April 1, 2016 to March 31, 2017

Nature of injury on duty	Number	% of total
Required basic medical attention only	2	100%
Temporary total disablement	-	-
Permanent disablement	-	-
Fatal	-	-
Total	2	100%



## Utilisation of consultants

**Table 45** : Report on consultant appointments using appropriated funds

Project title	Total number of consultants that worked on the project	Duration: work days	Contract value in Rand
N/A	N/A	N/A	N/A
<hr/>			
Total number of projects	Total individual consultants	Total duration: work days	Total contract value in Rand
N/A	N/A	N/A	N/A

**Table 46** : Analysis of consultant appointments using appropriated funds in terms of historically disadvantaged individuals

Project title	Percentage ownership by HDI groups	Percentage management by HDI groups	Number of consultants from HDI groups that worked on the project
None	None	None	None

**Table 47** : Report on consultant appointments using donor funds

Project title	Total number of consultants that worked on the project	Duration: work days	Donor and contract value in Rand
N/A	N/A	N/A	N/A
<hr/>			
Total number of projects	Total individual consultants	Total duration: work days	Total contract value in Rand
N/A	N/A	N/A	N/A

**Table 48** : Analysis of consultant appointments using donor funds in terms of historically disadvantaged individuals

Project title	Percentage ownership by HDI groups	Percentage management by HDI groups	Number of consultants from HDI groups that worked on the project
N/A	N/A	N/A	N/A



# Annual Financial Statements

for the year ended March 31, 2017

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## GENERAL INFORMATION

<b>COUNTRY OF INCORPORATION AND DOMICILE</b>	South Africa	<b>BUSINESS ADDRESS</b>	33 Hoofd Street Braampark Forum III Braamfontein 2017
<b>MEMBERS</b>	Adv BC Majola Ms DP S Jana Adv. AH Gaum Adv MS Ameermia Ms MA Makwetla Adv. JB Malatji Mr AC Nissen Mr J Sibanyoni Adv L Mushwana Ms L Mokate Ms J Love Dr D Titus	<b>POSTAL ADDRESS</b>	Private Bag x2700 Houghton 2041
<b>REGISTERED OFFICE</b>	33 Hoofd Street Braampark Forum III Braamfontein 2017	<b>BANKERS</b>	First National Bank
		<b>AUDITORS</b>	Auditor General South Africa Registered Auditors

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# AUDIT COMMITTEE REPORT

The Audit Committee is pleased to present its report for the financial year ended 31 March 2017.

## *Audit Committee members and attendance*

The Audit Committee consists of the members listed hereunder and should meet four times per annum as per its approved terms of reference and makes provision for two (2) extra special audit committee meetings as might be required. During the current year six (6) meetings were held.

Name of member	Number of meetings
Mr W Hattingh	6
Ms PC Motsielwa	6
Ms M Malope	5
Mr G Matthee	4

## *Audit Committee Responsibility*

The Audit Committee reports that it has complied with its responsibilities arising from Section 77 of the Public Finance Management Act and Treasury Regulation 3.1.13. The Audit Committee also reports that it has adopted appropriate formal terms of reference as its Audit Committee Charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein, except that it has not reviewed changes in accounting policies and practices.

## *The Effectiveness of Internal Control*

The Audit Committee's review of the findings of the Internal Audit work, which was based on the risk assessments conducted in the Commission, revealed certain weaknesses, which were then raised with the Commission.

The following internal audit work was completed during the year under review:

- Performance Management Review
- Fraud & Risk Management Review
- Complaints Management Review
- Human Rights Advocacy Review
- Research Review
- Purchases and Payables Review
- Asset Management Review
- Cash Management Review
- Human Resources Review
- IT Governance Review
- Follow-up & Adhoc Management Requests

The following concerns were highlighted by Internal Audit during the year under review:

- Non-compliance with complaints handling procedures relating to prescribed timelines and communication with complainants.
- Complaints Management system not effectively utilised
- Incorrect or incomplete complaint reports.
- Research tools, such as questionnaires, and the research analysis performed are not independently reviewed.



- Lack of integration between the library system and the fixed asset register.
- Inadequate and Ineffective Monitoring & Evaluation (M&E) procedures.
- Delays in implementing the Commissions IT Governance framework as well as the government-wide CGICT framework.
- Audit trail of payroll and banking system not adequately designed to identify the specific changes effected on the system.
- Certain control weaknesses and areas for improvement around the risk management processes were identified.
- Supplier contracts are not being vetted before signoff; monitored; and tracked.
- Audit findings raised not timeously resolved.

The following, although also identified as areas of concern during the 2016/2017 financial year, have been addressed by 31 March 2017.

- Policies and procedures of the Commission not been updated on a regular basis
- The Human Rights Advocacy procedure manual not been adequately designed and implemented.
- The impact of the findings and recommendations made by the Commission not being monitored and evaluated.
- The National Treasury Central Supplier Database not being utilised.

### *In-Year Management and Monthly/Quarterly Reports*

The Audit Committee has noted and is satisfied with the content and quality of the Quarterly Reports prepared and issued by the Accounting Officer during the year under review.

### *Evaluation of Financial Statements*

The Audit Committee has:

- Reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor-General and the auditors;
- Reviewed the Auditor-General of South Africa's management letter and management's response thereto;
- Reviewed changes in accounting policies and practices;
- Reviewed the entities compliance with legal and regulatory provisions;
- Reviewed significant adjustments resulting from the audit.

### *Auditor's Report*

The Audit Committee has reviewed the Commission's implementation plan for audit issues raised in the prior year and is satisfied that the matters have been adequately resolved.

The Audit Committee concurs and accepts the conclusions of the external auditor on the annual financial statements and is of the opinion that the audited annual financial statements be accepted and read together with the report of the auditor

**Waldo Hattingh**

*Chairperson of the Audit Committee*

South African Human Rights Commission Date: 31 July 2017



# REPORT OF THE AUDITOR-GENERAL

## Report on the audit of the financial statements

### *Opinion*

1. I have audited the financial statements of the South African Human Rights Commission set out on pages 98 to 125, which comprise the statement of financial position as at 31 March 2017, and the statement of financial performance, statement of changes in net assets, cash flow statement the statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly; in all material respects, the financial position of the South African Human Rights Commission as at 31 March 2017, and its financial performance and cash flows for the year then ended in accordance with Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

### *Basis for opinion*

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of my report.
4. I am independent of the constitutional institution in accordance with the International Ethics Standards Board for Accountants Code of ethics for professional accountants (IESBA code) together with the ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### *Responsibilities of the accounting officer for the financial statements*

6. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with Standards of GRAP and the requirements of the PFMA and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
7. In preparing the financial statements, the accounting officer is responsible for assessing the South Africa Human Rights Commission's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless there is an intention either to liquidate the constitutional institution or to cease operations, or there is no realistic alternative but to do so.

### *Auditor-general's responsibilities for the audit of the financial statements*

8. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.
9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to the auditor's report.





# Report on the audit of the annual performance report

## Introduction and scope

10. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof I have a responsibility to report material findings on the reported performance information against predetermined objectives for selected strategic objectives presented in the annual performance report. I performed procedures to identify findings but not to gather evidence to express assurance.
11. My procedures address the reported performance information, which must be based on the approved performance planning documents of the constitutional institution. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures also did not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
12. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected strategic objectives presented in the annual performance report of the constitutional institution for the year, ended 31 March 2017:

Objectives	Pages in the annual performance report
Strategic Objective 1 - Promote compliance with international and regional obligations	19 - 21
Strategic Objective 2 - Advance the realisation of human rights	22 - 44
Strategic Objective 3 - Enhance and deepen the understanding of human rights to entrench a human rights culture	44 - 60
Strategic Objective 4 - Ensure fulfilment of constitutional and legislative mandates	61 - 67
Strategic Objective 5 - Improve the effectiveness and efficiency of the Commission to support delivery on the mandate	68 - 70

13. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
14. I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected strategic objectives.

## Other matter

15. I draw attention to the matter below. My opinion is not modified in respect of this matter.

## Achievement of planned targets

16. Refer to the annual performance report on pages 19 to 70 for information on the achievement of planned targets for the year.



## Report on audit of compliance with legislation

### *Introduction and scope*

17. In accordance with the PAA and the general notice issued in terms thereof I have a responsibility to report material findings on the compliance of the constitutional institution with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance. I did not identify any instances of material noncompliance with specific matters in key legislation, as set out in the general notice issued in terms of the PAA.

### Other information

18. The South African Human Rights Commission's accounting officer is responsible for the other information. The other information does not include the financial statements, the auditor's report thereon and those selected strategic objectives presented in the annual performance report that have been specifically reported on in the auditor's report.

19. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.

20. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected strategic objectives presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work I have performed on the other information obtained prior to the date of this auditor's report, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.

### Internal control deficiencies

21. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance thereon. I did not identify any significant deficiencies in internal control.

**The Auditor-General**

Pretoria

31 July 2017



AUDITOR-GENERAL  
SOUTH AFRICA

*Auditing to build public confidence*



## Annexure - Auditor-general's responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements, and the procedures performed on reported performance information for selected strategic objectives and on the constitutional institution's compliance with respect to the selected subject matters.

### *Financial statements*

2. In addition to my responsibility for the audit of the financial statements as described in the auditor's report, I also:
  - identify and assess the risks of material misstatement of the financial statements whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that 'is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
  - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the constitutional institution's internal control.
  - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting officer.
  - conclude on the appropriateness of the accounting officer's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the South African Human Rights Commission's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. My conclusions are based on the information available to me at the date of the auditor's report. However, future events or conditions may cause a constitutional institution to cease to continue as a going concern.
  - evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

### *Communication with those charged with governance*

3. I communicate with the accounting officer regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also confirm to the accounting officer that I have complied with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on my independence and here applicable, related safeguards.



# CHIEF EXECUTIVE OFFICER'S REPORT

The members submit their report for the year ended 31 March 2017.

## 1. Incorporation

The entity was incorporated on March 1, 1996 and obtained its certificate to commence business on the same day.

## 2. Going concern

We draw attention to the fact that at 31 March 2017, the entity had accumulated surplus of R11,371 million and that the entity's total assets exceeded its liabilities by R11,371 million.

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business for the next 12 months.

## 3. Members

Below are the members of executive authority during the year under review:

Name	Nationality	Appointment date	Term ended
Adv BC Majola	South Africa	01/01/2017	
Ms DP S Jana	South Africa	01/01/2017	
Adv. AH Gaum	South Africa	01/01/2017	
Adv MS Ameermia	South Africa	03/02/2014	
Ms MA Makwetla	South Africa	01/01/2017	
Adv. JB Malatji	South Africa	01/01/2017	30/09/2016
Mr AC Nissen	South Africa	01/01/2017	
Mr J Sibanyoni	South Africa	01/01/2017	
Adv L Mushwana	South Africa		
Ms L Mokate	South Africa		30/09/2016
Ms J Love	South Africa		30/06/2016
Dr D Titus	South Africa		30/09/2016

## 4. Corporate governance

### General

The Commissioners are committed to business integrity, transparency and professionalism in all its activities. As part of this commitment, the members support the highest standards of corporate governance and the ongoing development of best practice.

The entity confirms and acknowledges its responsibility to total compliance with the Code of Corporate Practices and Conduct ("the Code") laid out in the King III Report on Corporate Governance for South Africa. The members have adopted King III principles and have developed a corporate governance framework to implement those principles.

### Functioning of the Audit Committee

The SAHRC Audit Committee continues to function and has met six times during the period under review. The Audit Committee is responsible for improving management by providing oversight over the audit functions, internal controls and the financing process.

### Internal audit

In line with the PFMA requirements, the internal audit activity provides the Audit Committee and management assurance that the internal controls are appropriate and effective. This is achieved by means of objective appraisal and evaluation



of the risk management process, internal control and governance processes. The audit plan is responsive to the Commission's risk profile. For the year under review Internal Audit executed 100% of the approved plan.

The Internal Audit activity is fully supported by management, the Commissioners and the Audit Committee, and has full unrestricted access to all organisational activities records, property and personnel.

### *Internal controls*

The Commission has the ultimate responsibility for establishing a framework for internal controls, including an appropriate procurement and provisioning system. The controls throughout the Commission focus on those critical risk areas identified by operational risk management, confirmed by management and assessed by the auditors. The controls are designed to provide cost-effective assurance that assets are safeguarded and that the available working capital is managed efficiently and economically.

Organisational policies, procedures and the delegation of authority provide direction, accountability and division of responsibilities, and contain self-monitoring mechanism. The designed internal controls are closely monitored by both management and Internal Audit, and action is taken to correct any deficiencies identified.

## **5. Auditors**

Auditor General South Africa will continue in office for the next financial period.

## **6. Risk Management**

The legislating of the implementation of risk management in the public sector institutions is part of a macro strategy of the South Africa government towards ensuring the achievement of public sector institutional goals and objectives. For the Commission, this mandate can be found in Section 77 of the Public Finance Management Act (Act 1 of 1999 as amended by Act 29 of 1999; Treasury Regulation 3.1.10 and Treasury Regulations 3.1.13) Risk management therefore forms an integral part of the Commission's plan to deliver effectively and efficiently on its mandate.

The Commission continues to recognise the importance of risk management in ensuring its objectives and therefore endeavours to comply with the requisite legislation as it pertains risk management.

The risk management process is facilitated by the Chief Financial Officer who is also responsible for chairing the Risk Management Committee.

## **7. Approval of finances**

The financial statements fairly represent the state of affairs of the Commission as at 31 March 2017. The statements are the responsibility of the Commission while the auditors are responsible for reporting on the fair presentation of these financial statements. The annual financial statements reflect appropriate accounting policies and adhere to applicable accounting standards.

The annual financial statements for the year ended 31 March 2017 were submitted to the Audit Committee for review. The Executive Authority has approved these financial statements on 31 July 2017, in terms of section 40(1)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended.

The annual financial statements set out on page 98 to 125, which have been prepared on the going concern basis, were approved by the members on 31 July 2017 and were signed on its behalf by:

**Mr P Makaneta**  
*Acting Chief Executive Officer*



## STATEMENT OF FINANCIAL POSITION as at 31 March 2017

	Note(s)	2017 R '000	2016 R '000
<b>Assets</b>			
<b>Current Assets</b>			
Inventories	6	196	249
Operating lease asset	4	20	10
Receivables from exchange transactions	7	48	909
Prepayments	5	560	82
Cash and cash equivalents	8	8 289	11 287
		<b>9 113</b>	<b>12 537</b>
<b>Non-Current Assets</b>			
Property, plant and equipment	2	15 571	15 232
Intangible assets	3	651	532
		<b>16 222</b>	<b>15 764</b>
Non-Current Assets		16 222	15 764
Current Assets		9 113	12 537
<b>Total Assets</b>		<b>25 335</b>	<b>28 301</b>
<b>Liabilities</b>			
<b>Current Liabilities</b>			
Finance lease obligation	9	2 015	2 553
Operating lease liability	4	87	106
Payables from exchange transactions	11	2 335	5 205
Provision on employee benefit	10	1 032	1 020
Provision for leave	10	4 679	3 684
		<b>10 148</b>	<b>12 568</b>
<b>Non-Current Liabilities</b>			
Finance lease obligation	9	1 722	1 157
Operating lease liability	4	2 094	-
		<b>3 816</b>	<b>1 157</b>
Non-Current Liabilities		3 816	1 157
Current Liabilities		10 148	12 568
<b>Total Liabilities</b>		<b>13 964</b>	<b>13 725</b>
Assets		25 335	28 301
Liabilities		(13 964)	(13 725)
<b>Net Assets</b>		<b>11 371</b>	<b>14 576</b>
Accumulated surplus		11 371	14 576



# STATEMENT OF FINANCIAL PERFORMANCE

	Note(s)	2017 R '000	2016 R '000
<b>Revenue</b>			
<b>Revenue from exchange transactions</b>			
Administrative fees		472	92
Interest on outstanding debts		-	1
Interest received - investment		960	1 032
<b>Total revenue from exchange transactions</b>		<b>1 432</b>	<b>1 125</b>
<b>Revenue from non-exchange transactions</b>			
<b>Transfer revenue</b>			
Government grants & subsidies	13	153 487	146 411
		1 432	1 125
		153 487	146 411
<b>Total revenue</b>	12	<b>154 919</b>	<b>147 536</b>
<b>Expenditure</b>			
Employee related costs	14	(103 250)	(98 400)
Depreciation and amortisation		(4 483)	(3 791)
Finance costs	15	(415)	(429)
Lease rentals on operating lease		(19 850)	(14 781)
Debt Impairment	16	(623)	(44)
Repairs and maintenance		(623)	(671)
General Expenses	17	(28 826)	(34 622)
<b>Total expenditure</b>		<b>(158 070)</b>	<b>(152 738)</b>
Total revenue		154 919	147 536
Total expenditure		(158 070)	(152 738)
<b>Operating deficit</b>		<b>(3 151)</b>	<b>(5 202)</b>
Loss on disposal of assets and liabilities		(53)	(341)
Deficit before taxation		(3 204)	(5 543)
Taxation		-	-
<b>Deficit for the year</b>		<b>(3 204)</b>	<b>(5 543)</b>



## STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus R '000	Total net assets R '000
<b>Balance at 01 April 2015</b>	<b>20 119</b>	<b>20 119</b>
Changes in net assets		
Surplus (loss) for the year	(5 543)	(5 543)
Total changes	(5 543)	(5 543)
<b>Balance at 01 April 2016</b>	<b>14 575</b>	<b>14 575</b>
Changes in net assets		
Deficit for the year	(3 204)	(3 204)
Total changes	(3 204)	(3 204)
<b>Balance at 31 March 2017</b>	<b>11 371</b>	<b>11 371</b>

Note(s)





# CASH FLOW STATEMENT

	Note(s)	2017 R '000	2016 R '000
<b>Cash flows from operating activities</b>			
<b>Receipts</b>			
Non exchange revenue- Government grant		153 487	146 411
Administrative fees		472	92
Interest income		960	1 032
		154 919	147 535
<b>Payments</b>			
Employee costs		(102 243)	(95 689)
Suppliers		(50 226)	(52 604)
Finance costs		(415)	(429)
		(152 884)	(148 722)
Total receipts		154 919	147 535
Total payments		(152 884)	(148 722)
<b>Net cash flows from operating activities</b>	19	<b>2 035</b>	<b>(1 187)</b>
<b>Cash flows from investing activities</b>			
Purchase of property, plant and equipment	2	(1 609)	(2 693)
Purchase of other intangible assets	3	(209)	(199)
<b>Net cash flows from investing activities</b>		<b>(1 818)</b>	<b>(2 892)</b>
<b>Cash flows from financing activities</b>			
<b>Finance lease payments</b>		<b>(3 215)</b>	<b>(1 364)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>(2 998)</b>	<b>(5 443)</b>
Cash and cash equivalents at the beginning of the year		11 287	16 730
<b>Cash and cash equivalents at the end of the year</b>	8	<b>8 289</b>	<b>11 287</b>



## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

### Budget on Accrual Basis

	Approved budget R '000	Adjustments R '000	Final Budget R '000	Actual amounts on comparable basis R '000	Difference between final budget and actual R '000	Reference
<b>Statement of Financial Performance Revenue</b>						
<b>Revenue from exchange transactions</b>						
Administrative fees	-	-	-	472	472	
Interest received - investment	-	-	-	960	960	
<b>Total revenue from exchange transactions</b>	-	-	-	<b>1 432</b>	<b>1 432</b>	
<b>Revenue from non-exchange transactions</b>						
<b>Transfer revenue</b>						
Government grants & subsidies	153 487	-	153 487	153 487	-	
'Total revenue from exchange transactions'	-	-	-	1 432	1 432	
'Total revenue from non-exchange transactions'	153 487	-	153 487	153 487	-	
<b>Total revenue</b>	<b>153 487</b>	<b>-</b>	<b>153 487</b>	<b>154 919</b>	<b>1 432</b>	
<b>Expenditure</b>						
Personnel	(96 250)	-	(96 250)	(103 250)	(7 000)	(i)
Depreciation and amortisation	(2 600)	-	(2 600)	(4 483)	(1 883)	
Finance costs	-	-	-	(415)	(415)	
Lease rentals on operating lease	(16 061)	-	(16 061)	(19 850)	(3 789)	(ii)
Bad debts written off	-	-	-	(623)	(623)	
Repairs and maintenance	(280)	-	(280)	(623)	(343)	
General Expenses	(33 581)	-	(33 581)	(28 825)	4 756	(iii)
<b>Total expenditure</b>	<b>(148 772)</b>	<b>-</b>	<b>(148 772)</b>	<b>(158 069)</b>	<b>(9 297)</b>	
	153 487	-	153 487	154 919	1 432	
	(148 772)	-	(148 772)	(158 069)	(9 297)	
<b>Operating deficit</b>	<b>4 715</b>	<b>-</b>	<b>4 715</b>	<b>(3 150)</b>	<b>(7 865)</b>	
Loss on disposal of assets and liabilities	-	-	-	(53)	(53)	
	4 715	-	4 715	(3 150)	(7 865)	
	-	-	-	(53)	(53)	
<b>Deficit before taxation</b>	<b>4 715</b>	<b>-</b>	<b>4 715</b>	<b>(3 203)</b>	<b>(7 918)</b>	
Surplus before taxation	4 715	-	4 715	(3 203)	(7 918)	
Taxation	-	-	-	-	-	
<b>Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement</b>	<b>4 715</b>	<b>-</b>	<b>4 715</b>	<b>(3 203)</b>	<b>(7 918)</b>	

The accounting policies on pages 103 to 112 and the notes on pages 113 to 125 form an integral part of the annual financial statements.



# ACCOUNTING POLICIES

## *1. Presentation of Annual Financial Statements*

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP), including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 91(1) of the Public Finance Management Act (Act 1 of 1999).

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise. They are presented in South African Rand and rounded to R'000.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

### *1.1 Significant judgements and sources of estimation uncertainty*

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgements include property plant and equipment and interest.

### *1.2 Property, plant and equipment*

Property, plant and equipment are tangible non-current assets (including infrastructure assets) that are held for use in the production or supply of goods or services, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at date of acquisition.

Where an item of property, plant and equipment is acquired in exchange for a non-monetary asset or monetary assets, or a combination of monetary and non-monetary assets, the asset acquired is initially measured at fair value (the cost). If the acquired item's fair value was not determinable, it's deemed cost is the carrying amount of the asset(s) given up.

Costs include costs incurred initially to acquire or construct an item of property, plant and equipment and costs incurred subsequently to add to, replace part of, or service it. If a replacement cost is recognised in the carrying amount of an item of property, plant and equipment, the carrying amount of the replaced part is derecognised. The cost of day to day servicing are recognised in the surplus or deficit as incurred.

Recognition of costs in the carrying amount of an item of property, plant and equipment ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management.



Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.

Property, plant and equipment are depreciated on the straight line basis over their expected useful lives to their estimated residual value.

The useful lives of items of property, plant and equipment for the current and comparative period have been assessed as follows:

Class	Depreciation method	Estimated useful life in years
Computer Equipment	Straight line	
• Laptops and desktops		10 years
• Servers and switches		17 years
Office equipment	Straight line	
• Printers and Fridges etc		17 years
• Audiovisual and equipment and conferencing		17 years
Leasehold improvements	Straight line	5 years
Furniture and Fittings	Straight line	
• Furniture and Fittings		20 years
• Gazebo, Flags, Banners and Accessories		17 years
Library Materials	Straight line	20 years
Motor Vehicles	Straight line	12 years
Finance Lease	Straight line	3 years (over lease term)

The residual value on motor vehicles, and the useful life and depreciation method of each asset are reviewed at the end of each reporting date. If the expectations differ from previous estimates, the change is accounted for as a change in accounting estimate.

Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item is depreciated separately.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

### 1.3 Intangible assets

An asset is identified as an intangible asset when it:

- is separable, i.e. is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable assets or liability, regardless of whether the entity intends to do so; or
- arises from binding arrangements (including rights from contracts), regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.



A binding arrangement describes an arrangement that confers similar rights and obligations on the parties to it as if it were in the form of a contract.

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

The entity assesses the probability of expected future economic benefits or service potential using reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the useful life of the asset.

Intangible assets are initially recognised at cost.

Where an intangible asset is acquired in exchange for a non-monetary asset or monetary assets, or a combination of monetary and non-monetary assets, the asset acquired is initially measured at fair value (the cost). If the acquired item's fair value was not determinable, it's deemed cost is the carrying amount of the asset(s) given up.

Expenditure on research (or on the research phase of an internal project) is recognised as an expense when it is incurred. An intangible asset arising from development (or from the development phase of an internal project) is recognised when:

- it is technically feasible to complete the asset so that it will be available for use or sale.
- there is an intention to complete and use or sell it.
- there is an ability to use or sell it.
- it will generate probable future economic benefits or service potential.
- there are available technical, financial and other resources to complete the development and to use or sell the asset.
- the expenditure attributable to the asset during its development can be measured reliably.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Amortisation is provided to write down the intangible assets, on a straight line basis for the current and comparative periods, to their residual values as follows:

Item	Useful life
Patents, trademarks and other rights	13 years

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

The gain or loss is the difference between the net disposal proceeds, if any, and the carrying amount. It is recognised in surplus or deficit when the asset is derecognised.

#### 1.4 Financial instruments

##### Classification

The entity classifies financial assets and financial liabilities into the following categories:

- Financial assets measured at amortised cost;
- Financial liabilities measured at amortised cost;

Classification depends on the characteristics and nature for which the financial instruments were obtained/incurred and takes place at initial recognition. Classification is re-assessed on the annual basis.



### **Initial recognition and measurement**

Financial instruments are recognised initially when the entity becomes a party to the contractual provisions of the instruments.

The entity recognises a financial instruments or their component parts, on initial recognition as a financial assets, financial liability or an equity in accordance with the substance of the contractual arrangements in its statement of financial position when the entity becomes a party to the contractual provisions of the instrument.

Financial instruments are measured initially at fair value.

For financial instruments which are not at fair value through surplus or deficit, transaction costs are included in the initial measurement of the instrument, except for equity investments for which a fair value is not determinable, which are measured at cost and are classified as available-for-sale financial assets.

Transaction costs on financial instruments at fair value through surplus or deficit are recognised in surplus or deficit.

### **Subsequent measurement**

Loans and receivables are subsequently measured at amortised cost using the effective interest method less accumulated impairment losses.

Financial instruments at fair value through surplus or deficit are subsequently measured at fair value, with gains and losses arising from changes in fair values being included in surplus or deficit for the period.

Net gains and losses on the financial instruments at fair value through the surplus or deficit dividends and interest. Financial liabilities are subsequently measured at amortised cost using the effective interest method.

Financial assets and liabilities are offset and the net amount presented in the statement of financial position when, and only when, the entity has a legal right to offset the amounts and intends either to settle on a net basis or to realise asset and settle the liability simultaneously.

### **Fair value measurement consideration before subsequent measurement**

The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, the entity establishes fair value by using a valuation technique. The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal operating considerations. Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models. If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual market transactions, the entity uses that technique.

The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments.

Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (i.e. without modification or repackaging) or based on any available observable market data.

Short-term receivables and payables are not discounted where the initial credit period granted or received is consistent with terms used in the public sector, either through established practices or legislation.



### **Fair value determination**

The fair values of quoted investments are based on current bid prices. If the market for a financial asset is not active (and for unlisted securities), the entity establishes fair value by using valuation techniques. These include the use of recent arm's length transactions, reference to other instruments that are substantially the same, discounted cash flow analysis, and option pricing models making maximum use of market inputs and relying as little as possible on entity specific inputs.

### **1.5 Leases**

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

When a lease includes both land and buildings elements, the entity assesses the classification of each element separately.

#### **Finance leases - lessee**

Finance leases are recognised as assets and liabilities in the statement of financial position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation.

The discount rate used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease

Minimum lease payments are apportioned between the finance charge and reduction of the outstanding liability. The finance charge is allocated to each period during the lease term so as to produce a constant periodic rate of on the remaining balance of the liability.

#### **Operating leases - lessor**

Operating lease revenue is recognised as revenue on a straight-line basis over the lease term.

Initial direct costs incurred in negotiating and arranging operating leases are added to the carrying amount of the leased asset and recognised as an expense over the lease term on the same basis as the lease revenue.

The aggregate cost of incentives is recognised as a reduction of rental revenue over the lease term on a straight-line basis. The aggregate benefit of incentives is recognised as a reduction of rental expense over the lease term on a straight-line basis. Income for leases is disclosed under revenue in statement of financial performance.

#### **Operating leases - lessee**

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

### **1.6 Inventories**

Inventories are initially measured at cost except where inventories are acquired through a non-exchange transaction, then their costs are their fair value as at the date of acquisition. Cost generally refers to the purchase price, plus taxes, transport costs and any other costs in bringing inventories to their current location and condition.

Subsequently inventories are measured at the lower of cost and current replacement cost. Current replacement cost is the cost the entity incurs to acquire the asset on the reporting date.

The carrying amounts of those inventories are recognised as an expense in the period in which the related revenue is recognised. If there is no related revenue, the expenses are recognised when the goods are distributed, or related services are rendered. The amount of any write-down of inventories to net realisable value or current replacement



cost and all losses of inventories are recognised as an expense in the period the write-down or loss occurs. The amount of any reversal of any write-down of inventories, arising from an increase in net realisable value or current replacement cost, are recognised as a reduction in the amount of inventories recognised as an expense in the period in which the reversal occurs.

### **1.7 Impairment of cash-generating assets**

Cash-generating assets are those assets held by the entity with the primary objective of generating a commercial return. When an asset is deployed in a manner consistent with that adopted by a profit-orientated entity, it generates a commercial return.

Non-cash generating assets are assets other than cash-generating assets.

#### **Recognition and measurement (individual asset)**

At the end of each reporting period, the carrying amount of the non-cash generating assets are reviewed to determine whether there is an indication of impairment or reversal of impairment. If there is any such indication exist, the recoverable service amount of the asset is estimated in order to determine the extent of the impairment loss (if any).

Where the recoverable service amount is less than the carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. This reduction is an impairment loss. An impairment loss is recognised immediately in the statement of financial performance.

#### **Reversal of impairment loss**

The entity assess at each reporting date whether there is any indication that an impairment loss recognised in prior periods for a cash-generating asset may no longer exist or may have decreased. If any such indication exists, the entity estimates the recoverable amount of that asset.

An impairment loss recognised in prior periods for a cash-generating asset is reversed if there has been a change in the estimates used to determine the asset's recoverable amount since the last impairment loss was recognised. The carrying amount of the asset is increased to its recoverable amount. The increase is a reversal of an impairment loss. The increased carrying amount of an asset attributable to a reversal of an impairment loss does not exceed the carrying amount that would have been determined (net of depreciation or amortisation) had no impairment loss been recognised for the asset in prior periods.

A reversal of an impairment loss for a cash-generating asset is recognised immediately in statement of financial performance.

After a reversal of an impairment loss is recognised, the depreciation (amortisation) charge for the cash-generating asset is adjusted in future periods to allocate the cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

### **1.8 Share capital / contributed capital**

An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities.





## 1.9 Provisions and contingencies

### Provisions are recognised when:

- the entity has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense in the statement of financial performance.

A provision is used only for expenditures for which the provision was originally recognised.

A constructive obligation to restructure arises only when an entity:

- has a detailed formal plan for the restructuring, identifying at least:
  - *the activity/operating unit or part of a activity/operating unit concerned;*
  - *the principal locations affected;*
  - *the location, function, and approximate number of employees who will be compensated for services being terminated;*
  - *the expenditures that will be undertaken; and*
  - *when the plan will be implemented; and*
- has raised a valid expectation in those affected that it will carry out the restructuring by starting to implement that plan or announcing its main features to those affected by it.

A restructuring provision includes only the direct expenditures arising from the restructuring, which are those that are both:

- necessarily entailed by the restructuring; and
- not associated with the ongoing activities of the entity

A contingent liability is a possible obligation that arises from the past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events that are beyond the control of the entity, alternatively, a contingent liability is a present obligation that arises from the past events but is not recognised because of the following

- it is not probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation
- the amount of the obligation cannot be measured with sufficient reliability

Contingent assets and liability are not recognised in the statement of financial position other than disclosed.



### **1.10 Commitments**

Items are classified as commitments when an entity has committed itself to future transactions that will normally result in the outflow of cash.

Disclosures are required in respect of unrecognised contractual commitments.

Commitments for which disclosure is necessary to achieve a fair presentation should be disclosed in a note to the financial statements, if both the following criteria are met:

- Contracts should be non-cancellable or only cancellable at significant cost (for example, contracts for computer or building maintenance services); and
- Contracts should relate to something other than the routine, steady, state business of the entity – therefore salary commitments relating to employment contracts or social security benefit commitments are excluded.

### **1.11 Revenue from exchange transactions**

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets.

An exchange transaction is one in which the public entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

#### **Measurement**

Revenue is measured at the fair value of the consideration received or receivable.

#### **Interest and administrative fees**

Interest is recognised, in surplus or deficit, using the effective interest rate method.

Administrative fees is recognised as revenue over the period during which the service is performed.

### **1.12 Unauthorised expenditure**

Unauthorised expenditure means:

- overspending of a vote or a main division within a vote; and
- expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division.

All expenditure relating to unauthorised expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.



### ***1.13 Fruitless and wasteful expenditure***

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

### ***1.14 Irregular expenditure***

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- (a) this Act; or
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) any provincial legislation providing for procurement procedures in that provincial government.

National Treasury practice note no. 4 of 2008/2009 which was issued in terms of sections 76(1) to 76(4) of the PFMA requires the following (effective from 1 April 2008):

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned.

### ***1.15 Budget information***

Entity are typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting, an entity shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts



### **1.16 Related parties**

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the entity.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.

### **1.17 Events after reporting date**

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the reporting date (non-adjusting events after the reporting date).

The entity will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The entity will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

### **1.18 Effects of new standards**

The following GRAP standards and interpretations have been approved but are not yet effective:

The Commission evaluated the standards listed below and noted that they do not have any impact on the annual financial statements for the period under review.

- GRAP 20 Related Party Disclosures.
- GRAP 32 Service Concession Arrangements: Grantor.
- GRAP 108 Statutory receivables.
- GRAP 109 Accounting by Principals and Agents.
- IGRAP 17 Service Concession Arrangements Where a Grantor Controls a Significant Residual Interest in an Asset



# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

2017  
R '000

2016  
R '000

## 2. Property, plant and equipment

	2017			2016		
	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Finance lease	10 087	(6 525)	3 562	8 247	(4 844)	3 403
Furniture and fixtures	4 365	(2 177)	2 188	4 411	(2 032)	2 379
Motor vehicles	5 601	(1 887)	3 714	5 611	(1 428)	4 183
Office equipment	1 612	(461)	1 151	1 518	(379)	1 139
IT equipment	4 777	(1 213)	3 564	3 835	(1 038)	2 797
Leasehold improvements	728	(282)	446	506	(140)	366
Library Materials	1 450	(504)	946	1 398	(433)	965
<b>Total</b>	<b>28 620</b>	<b>(13 049)</b>	<b>15 571</b>	<b>25 526</b>	<b>(10 294)</b>	<b>15 232</b>

### Reconciliation of property, plant and equipment - 2017

	Opening balance	Additions	Disposals	Depreciation	Total
Finance lease	3 403	3 288	(28)	(3 101)	3 562
Furniture and fixtures	2 379	48	(17)	(222)	2 188
Motor vehicles	4 183	-	-	(469)	3 714
Office equipment	1 139	122	(16)	(94)	1 151
IT equipment	2 797	1 164	(102)	(295)	3 564
Leasehold improvements	366	222	-	(142)	446
Library Materials	965	52	-	(71)	946
	<b>15 232</b>	<b>4 896</b>	<b>(163)</b>	<b>(4 394)</b>	<b>15 571</b>

### Reconciliation of property, plant and equipment - 2016

	Opening balance	Additions	Disposals	Depreciation	Total
Finance lease	4 287	1 728	(75)	(2 537)	3 403
Furniture and fixtures	2 155	464	(21)	(219)	2 379
Motor vehicles	4 159	645	(148)	(473)	4 183
Office equipment	936	362	(72)	(87)	1 139
IT equipment	2 308	834	(83)	(262)	2 797
Leasehold improvements	137	311	-	(82)	366
Library Materials	956	77	-	(68)	965
	<b>14 938</b>	<b>4 421</b>	<b>(399)</b>	<b>(3 728)</b>	<b>15 232</b>



2017  
R '000

2016  
R '000

#### Assets with zero book value

As at 31 March 2017, two components within the fixed assets register contained assets at zero book value.

In the Finance Lease component, was a contract for laptops that had expired in Q4 2016/17. It was decided to only renew this contract in Q1 2017/18, when another laptop contract was to expire, and then combine these two contracts into one renewal.

In the Intangible Assets component, is the Flowcentric programme. A project is underway to decide whether to continue using the Flowcentric programme or to replace it with a new programme. To this end, for the 2017/18 year, the Flowcentric license has also only been renewed for the next six months in order to accommodate the current project.

### 3. Intangible assets

	2017			2016		
	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Computer software	1 295	(644)	651	1 087	(555)	532

#### Reconciliation of intangible assets - 2017

	Opening balance	Additions	Amortisation	Total
Computer software	532	209	(90)	651

#### Reconciliation of intangible assets - 2016

	Opening balance	Additions	Amortisation	Total
Computer software	396	199	(63)	532

### 4. Operating lease asset (accrual)

Current assets	20	10
Non-current liabilities	(2 094)	-
Current liabilities	(87)	(106)
	(2 161)	(96)
Operating lease represents the rentals paid by the commission for the office building for Head Office and Provincial Offices.	13 254	12 687

#### Terms and conditions

- (i) All the leases are operating for an agreed period. i.e 12, 36, 60 months, within an option of renew.
- (ii) All operating leases excluding Telkom ( VPN) are subjected to an escalation ranging between 7% and 10%.

The head office building rental expired at 31 March 2016, this office constitutes the highest portion of rental paid and explains the significant change on the deferred operating lease at year end.



At the reporting date the Commission had outstanding commitments under the operating leases which fall due as follows.

	2017 R '000	2016 R '000
Due within one year	14 251	1 056
Due within two to five years	46 943	754
	<b>61 194</b>	<b>1 810</b>

#### 5. Prepayments

	2017 R '000	2016 R '000
Pro forma invoice	114	30
Subscription	446	52
	<b>560</b>	<b>82</b>

#### 6. Inventories

	2017 R '000	2016 R '000
Consumable stores	196	249

#### 7. Receivables from exchange transactions

	2017 R '000	2016 R '000
Trade debtors	48	909

##### Trade and other receivables impaired

As of 31 March 2017, trade and other receivables of R 48 406 (2016: R 909 242) were provided for.

The amount of the provision was R nil as of 31 March 2017 (2016: R nil).

The ageing of these loans is as follows:

3 to 6 months	48	902
Over 6 months	-	7

#### 8. Cash and cash equivalents

Cash and cash equivalents consist of:

Cash on hand	47	53
Bank balances	512	230
Short-term deposits	7 730	11 003
	<b>8 289</b>	<b>11 286</b>



## 9. Finance lease obligation

	2017 R '000	2016 R '000
<b>Minimum lease payments due</b>		
- within one year	2 294	2 784
- in second to fifth year inclusive	1 849	1 219
	4 143	4 003
less: future finance charges	(406)	(293)
<b>Present value of minimum lease payments</b>	<b>3 737</b>	<b>3 710</b>
<b>Present value of minimum lease payments due</b>		
- within one year	2 015	2 553
- in second to fifth year inclusive	1 722	1 157
	3 737	3 710
Non-current liabilities	1 722	1 157
Current liabilities	2 015	2 553
	3 737	3 710

It is entity policy to lease certain equipment under finance leases.

The average lease term was 3 years and the average effective borrowing rate was 11% (2016: 10%).

Interest rates are linked to prime at the contract date. All leases have fixed repayments and no arrangements have been entered into for contingent rent.

The entity's obligations under finance leases are secured by the lessor's charge over the leased assets.

### Terms and conditions

- (i) all the leases are for agreed period i.e. 12, 24, or 36 months with an option to renew
- (ii) the unit is installed (and the installation fees paid) and then the contract will continue on a monthly basis until SAHRC decides to terminate the contract with one months written notice.
- (iii) The contract will be renewed for a period of one year if the SAHRC does not give written notice of cancellation of the contract.

## 10. Provisions

### Reconciliation of provisions - 2017

	Opening Balance	Additions	Utilised during the year	Total
Provision on employee benefit	1 020	4 933	(4 921)	1 032
Provision for leave	3 684	5 584	(4 589)	4 679
	4 704	10 517	(9 510)	5 711

### Reconciliation of provisions - 2016

	Opening Balance	Additions	Utilised during the year	Total
Provision on employee benefit	885	3 840	(3 705)	1 020
Provision for leave	1 108	4 176	(1 600)	3 684
	1 993	8 016	(5 305)	4 704





	2017 R '000	2016 R '000
<b>11. Payables from exchange transactions</b>		
Trade payables	1 775	3 843
Accrued expense	560	1 362
	<b>2 335</b>	<b>5 205</b>
<b>12. Revenue</b>		
Administrative fees	472	92
Interest on outstanding debts	-	1
Interest received - investment	960	1 032
Government grants & subsidies	153 487	146 411
	<b>154 919</b>	<b>147 536</b>
<b>The amount included in revenue arising from exchanges of goods or services are as follows:</b>		
Administrative fees	472	92
Interest on outstanding debts	-	1
Interest received - investment	960	1 032
	<b>1 432</b>	<b>1 125</b>
<b>The amount included in revenue arising from non-exchange transactions is as follows:</b>		
<b>Taxation revenue</b>		
<b>Transfer revenue</b>		
Government grants & subsidies	153 487	146 411
<b>13. Government grants and subsidies</b>		
<b>Operating grants</b>		
Government grant	153 487	146 411
	<b>153 487</b>	<b>146 411</b>
<b>14. Employee related costs</b>		
Basic Salary	68 331	64 030
Performance Bonus	5 588	3 892
Medical aid - company contributions	3 313	3 036
Unemployment Insurance Fund (UIF)	324	329
Pension Fund contributions	7 128	6 361
Non-pensionable contribution	7 601	6 436
Other short term benefit	3 408	4 033
13 <sup>th</sup> Cheques	4 163	3 982
Car allowance	697	851
Housing benefits and allowances	2 040	1 967
Voluntary S Package	657	3 485
	<b>103 250</b>	<b>98 400</b>
<b>15. Finance costs</b>		
Finance leases	415	429

Total interest expense, calculated using the effective interest rate, on financial instruments not at fair value through surplus amounted to R 414 534 (2016: R 429,097).



	2017 R '000	2016 R '000
<b>16. Debt impairment</b>		
Bad debts written off	623	44
<b>17. General expenses</b>		
Advertising	428	628
Auditors remuneration	2 458	2 603
Bank charges	56	72
Cleaning	278	213
Computer expenses	21	284
Consulting and professional fees	972	2 140
Hire	273	334
Insurance	366	362
Conferences and seminars	1 432	2 006
Levies	-	96
Motor vehicle expenses	142	137
Motor vehicles expenses (Fuel)	445	363
Placement fees	1 265	869
Postage and courier	519	113
Printing and stationery	1 005	1 209
Security	1 176	873
Staff welfare	173	97
Subscriptions and membership fees	681	591
Telephone and fax	3 648	3 432
Office Relocation cost	232	263
Training	1 543	1 904
Electricity	102	98
Workmens Compensation	-	520
Operating Expenses	11 610	15 415
	<b>28 826</b>	<b>34 622</b>
<b>18. Auditors' remuneration</b>		
Fees	2 458	2 603
<b>19. Cash generated from (used in) operations</b>		
Deficit	(3 205)	(5 543)
<b>Adjustments for:</b>		
Depreciation and amortisation	4 483	3 791
Loss on disposal of assets	53	341
Debt impairment	623	44
Movements in operating lease assets	2 514	(13)
<b>Changes in working capital:</b>		
Inventories	53	(14)
Receivables from exchange transactions	861	(853)
Prepayments	(477)	1 036
Payables from exchange transactions	(2 870)	64
Unspent conditional grants and receipts	-	(40)
	<b>2 035</b>	<b>(1 187)</b>



	2017 R '000	2016 R '000
<b>20. Financial instruments disclosure</b>		
<b>Categories of financial instruments</b>		
<b>2017</b>		
<b>Financial assets</b>		
	<b>At fair value</b>	<b>Total</b>
Receivables from exchange transactions	48	48
Cash and cash equivalents	8 289	8 289
	<b>8 337</b>	<b>8 337</b>
<b>Financial liabilities</b>		
	<b>At fair value</b>	<b>Total</b>
Payables from exchange transactions	2 335	2 335
Employee benefits due	5 711	5 711
Finance lease obligation	2 015	2 015
	<b>10 061</b>	<b>10 061</b>
<b>2016</b>		
<b>Financial assets</b>		
	<b>At fair value</b>	<b>Total</b>
Receivables from exchange transactions	909	909
Cash and cash equivalents	11 287	11 287
	<b>12 196</b>	<b>12 196</b>
<b>Financial liabilities</b>		
	<b>At fair value</b>	<b>Total</b>
Payables from exchange transactions	5 205	5 205
Finance lease obligations	2 553	2 553
Employee benefits due	4 704	4 704
	<b>12 462</b>	<b>12 462</b>



## 21. Commitments

	2017 R '000	2016 R '000
<b>Authorised operational expenditure</b>		
<b>Purchase order issued</b>		
Goods and services	4 860	6 407
<b>Total operational commitments</b>		
Already contracted for but not provided for	4 860	6 407
<b>Total commitments</b>		
<b>Total commitments</b>		
Authorised operational expenditure	4 860	6 407

This committed expenditure relates to open purchase orders issued to suppliers for goods and services not yet received as at 31 March 2017 and will be financed by available funds.

### Operating leases - as lessee (expense)

Operating lease payments represent rentals payable by the entity for certain of its office properties. Leases are negotiated for an average term of seven years and rentals are fixed for an average of three years. No contingent rent is payable.

## 22. Contingencies

	2017 R '000	2016 R '000
Categories of contingent liability		
Guarantee issued by First National Bank	685	685
Dismissed Senior Manager	-	910
Subtotal	685	1 595
	685	1 595

At year end the Commission was uncertain as to the timing of any outflow and the responsibility of any reimbursement relating to the contingent liability.

The Senior Manager listed above was dismissed after his probation was not confirmed due to poor performance. As at 31 March 2016 the Commission has been served with legal papers wherein the dismissed staff member is challenging his dismissal at the Labour Court. The matter has been settled and liability has been recognised in the year under review.

## 23. Related parties

No related party for the year under review.



Figures in Rand thousand

24. Members' and prescribed officer's emoluments

Executive  
2017

	Salary	Bonuses and performance payments	Expense allowance	Provident contributions	Termination leave paid out and backpay	Acting allowance	3G and cell allowance	Total
Chief Executive Officer: L Khumalo	501	155	230	63	204	-	17	1 170
Chief Operation Officer : Ms S.E.Motara	166	-	91	20	34	-	8	319
Chief Financial Officer: P Makaneta (ACEO 01 OCT 2016)	687	125	315	86	32	156	29	1 430
Head of Corporate Services: A Price	625	61	348	78	62	-	24	1 198
Head of Parliamentary: J Cohen	212	25	97	27	60	-	9	430
Head SS&G: S Giyose	573	106	263	72	36	-	24	1 074
Head of Research: Dr. RPD Mjamingi	86	-	47	11	9	-	-	153
Chief Audit Executive: G Paulse	578	103	313	72	43	-	24	1 133
Head Legal Service (LSP) P Gregoriou	581	149	266	73	43	-	24	1 136
PM: KZN T Munno	540	100	248	68	34	-	24	1 014
PM MPL: E Mokonyama	575	104	263	72	36	-	24	1 074
Chief Operation Officer (COO): Ms.C Kisoona	616	155	282	77	30	-	24	1 184
Provincial Manager WC: Mr.K.Singh	307	-	166	38	100	-	13	624
PM LP: V Mavhidula	565	105	259	71	36	-	24	1 060
PM NC: C Williams	541	98	248	68	34	-	24	1 013
Provincial Manager FS: Mr.B.Jones	401	95	184	50	12	-	11	753
Strategic support and Governance: Ms.N Webster	549	102	261	69	34	-	24	1 039
Head: Human rights Advocacy & Communications : Ms.G Smith	531	-	276	66	15	-	-	888
Operations Manager: Dr.Ms U Lottering	140	-	76	18	15	-	-	249
Head of Commissioners: Ms. CL Duma	408	42	187	51	63	-	-	751
Head of Research: Dr. O Adeleke	135	-	73	17	4	-	-	229
Senior Manager Operation: Kathleen Hardy	225	-	122	28	-	-	-	375
Operations Manager: Dr.MS Nsibirwa	531	-	287	66	23	-	26	933
Provincial Manager E.C: Mr.A.Sipondo	401	22	184	50	6	-	-	663
Provincial Manager N.W.: Ms M.Boikanyo	315	45	144	39	-	-	-	543
	10 789	1 592	5 230	1 350	965	156	353	20 435



Figures in Rand thousand

24. Members' and prescribed officer's emoluments (continued)

2016

	Salary	Bonuses and performance payments	Expense allowance	Provident contributions	Termination leave paid out and backpay	Acting allowance	3G and cell allowance	Total
Chief Accounting Officer: L Khumalo	815	125	373	102	69	-	33	1 517
Chief Operating Officer :Ms S.E Motara	209	-	113	26	-	-	2	350
Chief Financial Officer: P Makaneta	648	116	297	81	27	-	29	1 198
Head of Corporate Services: A Price	596	56	324	79	25	-	24	1 104
Head of Parliamentary: J Cohen	353	29	162	44	10	-	15	613
Head SS&G: S Giyose	537	96	246	67	22	36	24	1 028
Head of Research and Documentation: Dr. K Moyo	255	-	138	32	42	-	-	467
Head Legal Service (LSP) P Gregoriou	536	96	246	67	24	-	24	993
PM KZN: T Munno	509	43	234	64	15	-	24	889
PM MPL: E Mokonyama	536	96	246	67	24	-	24	993
PM GP: C Kisson	536	96	246	67	24	22	24	1 015
PM WC: Mr K Singh	528	19	286	66	15	-	24	938
PM LP: V Mavhidula	522	127	239	65	15	-	24	992
PM NC: C Williams	509	43	234	64	15	-	24	889
Strategic support and Governance: Ms. N Webster	515	44	236	64	19	-	24	902
Head Human rights Advocacy and Communications: Ms. Diale	259	-	140	32	-	-	-	431
Head Chief Audit Executive: G Paulse	537	51	291	67	22	-	24	992
Operations Manager: Dr. MS Nsibirwa	428	-	232	53	8	-	-	721
Head of Commissioners: Ms CL Duma	110	-	52	14	-	-	-	176
Head of Research: Dr. RPD Miamingji	106	-	58	13	-	-	-	177
	9 044	1 037	4 393	1 134	376	58	343	16 385

2017  
R '0002016  
R '000

## 24. Members' and prescribed officer's emoluments (continued)

Non-executive  
2017

	Salary	Bonuses and performance payments	Provident contributions	Other benefit	Total
Adv BC Majola	188	-	-	134	322
Ms DP S Jana	160	-	-	100	260
Adv. AH Gaum	147	-	6	98	251
Adv MS Ameerma	577	48	72	340	1 037
Ms MA Makwetla	147	-	-	92	239
Adv. JB Malatji	433	36	36	480	985
Mr AC Nissen	146	-	-	4	150
Mr J Sibanyoni	82	-	-	4	86
Adv L Mushwana	396	-	-	535	931
Ms L Mokate	286	36	36	291	649
Ms J Love	168	-	-	12	180
Dr D Titus	-	-	-	7	7
	2 730	120	150	2 097	5 097

## 2016

	Salary	Bonuses and performance payments	Provident contributions	Other benefit	Total
Adv L Mushwana	716	-	-	586	1 302
Ms P Govender	429	52	54	317	852
Ms L Mokate	557	48	70	310	985
Adv B Malatji	557	48	70	310	985
Adv MS Ameerma	557	48	70	310	985
Ms J Love	120	-	-	8	128
Dr D Titus	41	-	-	14	55
	2 977	196	264	1 855	5 292

Audit Committee members remunerations  
2017

	Emoluments	Travel expenses	Total
Mr W Hattingh	46	4	50
Ms PC Motsielwa	32	5	37
Ms M Malope	24	3	27
Mr G Mathee	16	16	32
	118	28	146

## 2016

	Emoluments	Travel expenses	Total
D Coovadia ( resigned October 15)	46	2	48
G Mathee	18	1	19
M Malope	21	2	23
P Motsielwa	20	-	20
W Hattingh	23	1	24
	128	6	134



## 25. Risk management

### Financial risk management

#### Liquidity risk

The entity's risk to liquidity is a result of the funds available to cover future commitments. The entity manages liquidity risk through an ongoing review of future commitments and credit facilities.

#### Credit risk

Credit risk consists mainly of cash deposits, cash equivalents, derivative financial instruments and trade debtors. The entity only deposits cash with major banks with high quality credit standing and limits exposure to any one counter-party.

Financial assets exposed to credit risk at year end were as follows:

Financial instrument	2017 R '000	2016 R '000
Receivables from exchange transactions	48	909
Prepayments	560	82
Cash and cash equivalents	8 289	11 287

## 26. Events after the reporting date

There were no events that occurred after the reporting date for the year under review.

## 27. Fruitless and wasteful expenditure

	2017 R '000	2016 R '000
Travel arrangements	53	11
Telkom interest	6	-
	59	11

Fruitless and wasteful expenditure to the value of R 59,002.58 (2016: R 10,621) was incurred in the current year. Fruitless and wasteful expenditure emanating mainly from expenses attached to changes in travel arrangements. No action taken as the cause for travel expenditure was deemed necessary.

## 28. Irregular expenditure

	2017 R '000	2016 R '000
Opening balance	1 348	1 348
Add: Irregular Expenditure - current year	-	-
	1 348	1 348

Irregular expenditure to the value of R nil (2016: R nil) was incurred in the current year. Irregular expenditure emanates from non-compliance with National Treasury Note 8 of 2007 and Treasury Regulation 16A 9.1 (d) and 16A 6.3 (b.)

The Commission has written to National Treasury requesting condonation of the irregular expenditure reflected above and is still awaiting a response therefore none of the expenditure had been condoned as at year end. No disciplinary proceedings had been taken, since the irregular expenditure did not warrant such action.





## 29. Budget differences

### Differences between budget and actual amounts basis of preparation and presentation

The budget and the accounting bases differ. The annual financial statements for the entity are prepared on the accrual basis using a classification based on the nature of expenses in the statement of financial performance. The annual financial statements are for the fiscal period from 2016/04/01 to 2017/03/31. The annual financial statements differ from the budget, which is approved on the cash basis.

#### (i) Personnel expenditure

The increase in the personnel expenditure is attributable to the following:

- Vacant posts that were filled during the current financial year.
- Cost of living adjustment which came higher than budgeted amount.
- Paying of performance bonuses for contract workers due to policy changes.

#### (ii) Lease rentals on operating lease

For operating costs, to note that a new lease was entered into for Head Office at an increased value from March 2016.

#### (iii) General expenses

A reduction in general expenditure is due to the following:

- IT spend which could not be effected in the financial year.
- Reduced spending due to Commissioner's term of office which ended in September 2016.







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