



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Combined ninth to eleventh reports submitted by South
Africa under article 9 of the Convention, due in 2020* ****

[Date received: 27 May 2021]

* The present document is being issued without formal editing.
** The annexes to the present report may be accessed from the web page of the Committee.



Part 1

Introduction

1. In accordance with Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) the Republic of South Africa hereby submits for consideration by the Committee on the Elimination of Racial Discrimination (the Committee), its combined ninth to eleventh periodic reports on the implementation of the specific rights provided for under Articles 1 to 7 of the Convention.¹

2. In particular, the report describes the measures put in place by South Africa to address the suggestions and recommendations made by the Committee in its concluding observations² following the consideration of South Africa's combined fourth to eighth periodic reports in August 2016, as well as providing information on progress in the implementation of the Convention up to the end of 2019. It should be noted that this report was initially due in January 2020 but, an extension was first granted to the end of April 2020 and a second extension was also granted due to the global Covid-19 pandemic and the accompanying state of national disaster having been proclaimed in South Africa in March 2020. The second extension was without a specific deadline, with the understanding that South Africa will submit the report to the Committee as soon as it has concluded domestic consultations on the report and after it has been sanctioned by the relevant authorities.

3. In 2017 South Africa also provided the Committee with the information – as requested in terms of paragraph 36 of the concluding observations – pertaining to information on its implementation of the recommendations contained in paragraphs 9 and 13 of said concluding observations.³ A copy of the reply is attached as Annexure A.

4. Government was particularly mindful in preparing this report, following the direction provided by the Committee in paragraph 37 of the concluding observations, to provide detailed information on the concrete measures taken to implement particular recommendations of fundamental importance. The answers to the concluding recommendation and observations are discussed with the information provided in specific articles below. The report also responds to the recommendations issued by the South African Human Rights Commission (SAHRC) in its 2017/ 2018 Equality Report.

5. The report is divided into three parts. The introduction is the first part, while the second part aims to provide responses to the concluding observations and further discusses the implementation of Articles 1 to 7 of the Convention. The discussion seeks to address all the substantive issues raised by the Committee with respect to each specific article, while also presenting the progress that South Africa has made in fulfilling the Convention's goals since the last report. The third part provides general concluding remarks on the implementation of and the state of enjoyment by all people in South Africa of the rights protected by the Convention.

6. With regards to a general overview of South Africa, an updated Common Core Document was deposited with the United Nations in 2019.⁴ The Common Core Document presents detailed statistics and information on the social, political, cultural and economic conditions of the country and is complemented by this report with treaty specific information. The Committee will note that the economic and social indicators which it requested in its concluding observations have been specifically included in the updated Common Core Document.

¹ South Africa's combined fourth to eighth periodic reports were submitted in one document to the Committee on 26 November 2014 and were considered by the Committee in August 2016. That combined report built on the detailed information provided in the initial to the third combined reports submitted in December 2004 and considered in 2006.

² CERD/C/ZAF/CO/4-8.

³ Paragraph 9 pertains to the South African Human Rights Commission and paragraph 13 pertains to the Prevention and Combating of Hate Crimes and Hate Speech Bill.

⁴ HRI/CORE/ZAF/2019.

Part 2

General measures of implementation and recommendations of the Committee

Article 1: Application of the Convention and special measures

7. Article 1(4) of the Convention recognises that special measures, taken for the sole purpose of securing the advancement of certain racial and ethnic groups, are necessary in order to ensure such groups or individuals the equal enjoyment of human rights and fundamental freedoms, and shall not be deemed racial discriminations, provided that such measures do not lead to the maintenance of separate rights for different racial groups; and that they shall not be continued after the objectives for which they were taken, have been achieved.

8. Special measures are therefore not an exception to the principle of non-discrimination but are integral to its meaning and essential to the Convention's aim of eliminating racial discrimination and advancing human dignity and substantive equality.

9. The founding provisions of the Constitution recognise that South Africa is founded upon the values of human dignity, the achievement of equality, the advancement of human rights and freedoms and non-racialism and non-sexism. Section 9 of the Constitution recognises that everyone is equal before the law and has the right to equal protection and benefit of the law. Section 9(2) can be seen as a domestic version of article 1(4) of the Convention.⁵

10. South Africa submits that the legislative measures taken in terms of the Employment Equity Act, 1995⁶ ("the EEA") and Broad-Based Black Economic Empowerment Act, 2003⁷ constitute special measures within the meaning of the Convention. The overarching purpose of the EEA is two-fold: (1) a general purpose which aims to achieve equity and (2) a specific and targeted purpose which aims to address the wrongs caused by apartheid. In this way, section 2 of the EEA mirrors the scheme of section 9 of the Constitution which in one part prohibits unfair discrimination and in another seeks to address the wrongs of the past. It is the legislative measure foreshadowed by section 9(2) for the purpose of ensuring equitable representation of designated groups in all occupational levels in the workforce by:

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination, and
- Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.

11. South Africa's first democratic government had a clear mandate to redress the inequalities of the past in every sphere: political, social and economic. Since then, Government has embarked on a comprehensive programme to provide a legislative framework for the transformation of South Africa's economy. In 2003, the Broad-Based Black Economic Empowerment (B-BBEE) Strategy was published as a precursor to the B-BBEE Act, 2003. The fundamental objective of the Act is to advance economic transformation and enhance the economic participation of black people⁸ in the South African

⁵ "Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality legislative and other measures designed to protect or advance persons, categories of persons, disadvantaged by unfair discrimination may be taken."

⁶ Act No. 55 of 1998.

⁷ Act No. 53 of 2003.

⁸ The B-BBEE Act refers to black people as a generic term which means Africans, Coloureds and Indians.

Who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalization before 27 April 2014; or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date.

economy. The Act provides a legislative framework for the promotion of BEE, empowering the Minister of Trade and Industry to issue Codes of Good Practice and publish Transformation Charters, and paving the way for the establishment of the B-BBEE Advisory Council. The Broad-Based Black Economic Empowerment Amendment Act, 2013⁹ came into operation in October 2014.

12. With regards to B-BBEE procurement and transformation, section 217 of the Constitution states that when an organ of state or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Furthermore, it stipulates the need to implement a Procurement Policy that will provide for categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination. The Preferential Procurement Policy Framework Act (PPPFA) was enacted as a result and amended Preferential Procurement Regulations were gazetted in 2017. A BBBEE Commission was established in terms of Act 46 of 2013.

13. In the case of *National Coalition for Gay and Lesbian Equality v Minister of Justice*¹⁰ the Constitutional Court affirmed the importance of remedial measures to achieve substantive equality:

“It is insufficient for the Constitution, merely to ensure, through its Bill of Rights, that statutory provisions which have caused such unfair discrimination in the past are eliminated. Past unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes are eliminated, and unless remedied, may continue for substantial time and even indefinitely. Like justice, equality delayed is equality denied. ... One could refer to such equality as remedial or restitutionary equality”.¹¹

14. The EEA prescribes:

- The identification by analysis of the extent by which people from designated groups may be under-represented;
- The setting of numerical targets with a view to achieving the equitable representation of suitably qualified people from designated groups in each occupational level in the workforce;
- The timeframe within which it is to be achieved; and
- The strategies intended to achieve those targets.

15. In order to eradicate disparities in employment, the legislature has chosen to use “equitable representation in all occupational levels in the workforce” as a measure. The numerical targets are used as a measure of representivity and are not inflexible quotas as alluded to in the SAHRC 2017/2018 Equality Report. The application of employment equity and related practices is aimed at redressing the structural inequalities inherited from apartheid. The application of these policies is aimed at benefitting certain groups. The fact that individual exceptional cases will arise should not undermine the entire scheme. The Constitutional Court has affirmed this principle when it held that:

“The starting point of equality analysis is almost always a comparison between affected classes. However, often it is difficult, impractical or undesirable to devise a legislative scheme with ‘pure’ differentiation demarcating precisely affected cases. Within each class...there may indeed be exceptional or hard cases or windfall beneficiaries. That however is not sufficient to undermine the legal efficacy of the

On 18 June 2008, the Chinese Association of South Africa approached the High Court with a request that South African Chinese people be included in the definition of “black people”. This relief was granted and, as such, “black people” for purposes of Broad-Based Black Economic Empowerment (B-BBEE) now refers to Africans, Coloureds, Indians and Chinese people.

⁹ Act No. 46 of 2013.

¹⁰ 1999 (1) SA 6 (CC).

¹¹ Paras. 60 and 61.

scheme. The distinction must be measured against the majority and not the exceptional and difficult minority to which it applies”.¹²

16. South African equality jurisprudence does not allow the exclusion of one group to advance another and that targets may not be quotas. The Constitutional Court pointed out that “the primary distinction between numerical targets and quotas lies in the flexibility of the standard. Quotas amount to job reservation and are properly prohibited by section 15(3) of the Act. The same section endorses numerical goals in pursuit of workplace representivity and equity. They serve as a flexible employment guideline to a designated employer.”¹³

17. Transformation is a process. The Constitutional Court recognised in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* that the legislative and other measures designed to :

“...bring about transformation will inevitably affect some members of the society adversely, particularly those coming from the previously advantaged communities. It may well be that other considerations have to yield in favour of achieving the goals we fashioned for ourselves in the Constitution. What is required, though, is that the process of transformation must be carried out in accordance with the Constitution”.¹⁴

18. We submit that “special measures” do not amount to discrimination when taken for the sole purpose of ensuring equal enjoyment of human rights and fundamental freedoms. The notion of “adequate advancement” in Article 1 implies goal-directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms. The limitation to these measures in terms of the Convention is that they should not lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they have been taken have been achieved.

19. With specific regard to the impact of special measures in terms of employment and in support of the contention that the special measures embodied in the legislation are still necessary, we include the latest available unemployment rates per population group in Table 1 annexed hereto.¹⁵ It is noticeable that the unemployment rate is the highest amongst Black/African South Africans (32,8 %) and the lowest amongst white South Africans (7,4%).

20. Reports from the Commission for Employment Equity (CEE)¹⁶ provide information on the representation of designated groups¹⁷ in South African workplaces. The latest report from the CEE continues to paint a picture of a very slow, but steady pace of transformation especially at the top four occupational levels. Annexure B sets out the racial and gender breakdown at different levels of the workforce.¹⁸

21. The National Development Plan (NDP) serves as the country’s long-term blueprint for development. The NDP sets two overarching objectives, namely the eradication of poverty below the Lower-bound Poverty Line and the reduction of income inequality as measured by the Gini coefficient. The NDP prioritises reducing inequality as one of its key objectives to tackling South Africa’s significantly high inequality challenges. One of the

¹² *Minister of Finance v Van Heerden*, 2004 (6) SA 121 (CC) at [39].

¹³ *South African Police Service v Solidarity obo Barnard*, 2014 (6) SA 123 (CC) [54].

¹⁴ 2004 (4) SA 490 (CC) [74].

¹⁵ Q3 2018 compared to Q3 2019, as set out in the Quarterly Labour Force Survey, Statistics SA, October 2019.

¹⁶ The CEE is a statutory body established in terms of section 28 of the EEA. The functions of the CEE is to advise the Minister of Labour on Codes and Good practice and regulations made by the Minister, policy and any other matters concerning the EEA. The CEE in addition, may make awards recognizing achievements of employers in furthering the purpose of the EEA; research and report to the Minister relating to the application of the EEA, including appropriate and well researched norms and benchmarks for the setting of numerical goals in various sectors and perform any other prescribed functions.

¹⁷ “Designated groups” mean black people, women and people with disabilities.

¹⁸ See

<http://www.labour.gov.za/DocumentCenter/Reports/Annual%20Reports/Employment%20Equity/2018-2019/19th%20Commission%20for%20Employment%20Equity%20Report%202018-%202019.pdf>.

NDP targets is to reduce income inequality (measured by the Gini coefficient) from 0,70 to 0,60 by 2030.

22. Poverty is still race-based. A 2019 report¹⁹ released by Statistics SA measures inequality trends over time (2006, 2009, 2011 and 2015). Set out in Table 2 annexed hereto, are the inequality measures based on *per capita* expenditure by population group (2006, 2009, 2011 & 2015):

23. The report shows the distribution of real annual mean and median expenditure by sex of household head and population group over time (in 2006, 2009, 2011 and 2015)²⁰ It shows that the white population group had the highest annual mean and median expenditure compared to other population groups across all four years measured; while black Africans had the least. Black Africans had an annual median expenditure of only R6 009 in 2006 and R9 186 in 2015. The white population group had their annual median expenditure sitting at R77 308 in 2006 which increased to R100 205 in 2015. The annual median expenditure for whites was more than ten times higher than that of black Africans across all four years. The white population group had more than nine times the annual mean expenditure of black Africans in 2006; although, this ratio declined to more than seven times in 2015.

24. South Africa makes use of self-identification when it comes to racial classification. Statistics SA, when collating racial data for purposes of a census, also makes use of self-classification. For example, the questionnaire which was used by Statistics SA does indeed make use of self-identification as the question²¹ clearly states that “How would (name) describe him/herself in terms of population group?”

25. Because this is the form of self-identification/self-classification used by Statistics SA in the census, government departments make use of the same system. As explained above, the use of such racial demographics and “designated groups” (as is used in the Employment Equity Act, for example) is required to measure equity and redress.

26. Government is of the view that special measures are indeed still necessary. We view these special measures as integral and essential to the Convention’s aim of eliminating racial discrimination and advancing human dignity and effective equality, as well as being vital to our own Constitution’s aim of substantive equality. In order to address historical disadvantage our equality clause permits legislative and other measures to achieve equality. Special measures are needed until such time as equality can be said to have been achieved. There is no explicit “sunset clause” in any of the legislative provisions, and it will therefore remain in force and effect until such time as government policy determines that these measures are no longer needed.²²

27. Because the objectives of the special measures have not yet been achieved it cannot be said that these measures are leading to the maintenance of separate rights for separate racial groups.

28. With regards to special measures in education, all children within South Africa – including non-nationals – have a right to basic education and the Bill of Rights in our

¹⁹ “Inequality Trends in South Africa, a multidimensional diagnostic of inequality,” Report No. 03-10-19, Statistics South Africa (2019).

²⁰ “Inequality Trends in South Africa, a multidimensional diagnostic of inequality,” Report No. 03-10-19, Statistics South Africa (2019).

²¹ Question P-05 Population Group.

²² The appropriateness of restitutionary measures is a debate which can rightly only take place once a more equal society has been achieved. It is perhaps best explained in the words of former Deputy Chief Justice Moseneke when he said that the Constitution:

“...clearly permits legislative and other measures to promote the achievement of equality. The measures must be designed to protect, or advance persons disadvantaged by unfair discrimination.

The measures may not amount to quotas. They must be applied rationally and only to procure a more equal society. In the second 20 years of our democracy we will have to think carefully whether the measures continue to be justified. This is so because fewer and fewer people will be able to claim legitimately that they have been disadvantaged by unfair discrimination of the past.

For now, the measures would enjoy constitutional protection because the Constitution permits restitutionary measures in so many words.”

Constitution obliges government to progressively make education available and accessible through reasonable measures. Human resources constitute the ultimate basis for the wealth of a nation, and it is therefore vital that a country develops the skills and knowledge of its residents for the greater benefit of all.

29. By 2018 there were approximately 14,2 million learners at school. Participation in education institutions was virtually universal (97,4%) by the age of 15 years (the last compulsory school age) and approximately three-quarters (74,5%) of learners were still in school by the age of 18 which usually represents the age at which learners exit grade 12.²³ The percentage of learners that attended no-fee schools increased to 67,2% by 2018.²⁴ While two-thirds of learners attend no-fee schools, lack of money still contributes to drop-out rates. Almost one-quarter (24,2%) of learners who have dropped out of school before the age of 18 years, however, put forward a lack of money as the main reason.²⁵

30. Educational attainment continues to improve. There is almost universal school attendance in the age group 7–15 years. Advances have been made in the proportion of girl children and women in the education system with parity being achieved in almost all spheres. With regards to the percentage distribution of student participation rates for individuals aged 18 to 29 years by population group, even though most students were black African, the education participation rate of this population group remained proportionally low in comparison with the Indian/Asian and white population groups.

31. The percentage of literate persons over the age of 20 years increased from 91,9% in 2010 to 94,5% in 2018. The percentage of individuals aged 20 years and older who did not have any education decreased to 4,5% in 2018²⁶ while those with at least a grade 12 qualification increased to 45,2%.²⁷ While 57,8% of South Africans over the age of 60 years did not, at least, complete a grade 7 qualification, this figure dropped to only 4,4% for those aged 20–39 years of age. Less than six per cent (5,5%) of adults over the age of 20 years were considered illiterate. For further educational data, please see Annexure C.

32. With regards to housing, section 25 of the Constitution provides that everyone has the right to have access to adequate housing. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. It further provides that no one may be evicted from their home, or have their home demolished, without an order of court. Within the context of the constitutional provision outlined above, the Housing Act, 1997²⁸ is available as a legislative measure to ensure the realisation of the right to housing, privileges the poor in housing development. The Act provides, among others, that the national, provincial and local spheres of government must give priority to the needs of the poor in respect of housing development, provide as wide a choice of housing and tenure options as is reasonably possible based on integrated development planning and administer in a transparent, accountable and equitable manner, promote measures to prohibit unfair discrimination on the ground of gender and other forms of unfair discrimination by all actors in the housing development process, and promote the meeting of special housing needs of marginalised women and other groups disadvantaged by unfair discrimination.

33. Over and above the statutory provisions there are specific policy interventions with special policy programmes which enable the application of the national housing policy as defined in the Housing Act. These include financial, incremental, rural, social and rental interventions.²⁹ By March 2020, the state had provided more than five million housing

²³ General Household Survey (GHS) 2018, published by Statistics SA in May 2019, Statistical Release P0318.

²⁴ From 21,4% in 2007.

²⁵ Other reasons included poor academic performance (22,9%), family commitments (7,9%) and a “feeling that education is useless” (7,5%).

²⁶ From 11,4% in 2002.

²⁷ From 30,5% in 2002.

²⁸ Act 107 of 1997.

²⁹ The summary of the qualification criteria provides that a person only qualifies for a housing subsidy if he or she is:

Resident: he or she is lawfully resident in South Africa (i.e. citizen of the Republic of South Africa or in possession of a permanent residence permit. Certified copies of the relevant documents must be submitted with the application.

Competent to contract: he or she is legally competent to contract (i.e. 18 years) of age or older, legally married or legally divorced and of sound mind).

Not yet benefited from government assistance: neither that person nor his or her spouse has previously derived benefits from the housing subsidy scheme, or any other state funded or assisted housing subsidy scheme which conferred benefits of ownership, leasehold or deed of grant or the right to convert the title obtained to either ownership, leasehold or deed of grant. Such previous beneficiaries may, however, qualify for the purchase of a vacant serviced site. In the case of a divorced applicant who previously derived benefits from the housing subsidy scheme, or any other state funded or assisted housing subsidy scheme which conferred benefits of ownership, leasehold or deed of grant or the right to convert the title obtained to either ownership, leasehold or deed of grant, the terms of the divorce order will determine such an applicant's eligibility for any further benefits under this Programme. Divorced applicants who acquired ownership of a residential property or who derived a financial benefit from the sale of a residential property as part of the dissolution of the joint estate, will be disqualified from accessing any further housing subsidy, except that such an applicant may purchase a serviced stand developed as part of a project financed from any of the National Housing Programmes.

Previously owned a fixed residential property: such a person may only qualify for the purchase of a vacant serviced site. However, if a person has obtained a residential property without government assistance and the property does not comply with the National Norms and Standards for the construction of standalone dwellings, such a person still qualifies for a housing subsidy. The property so acquired must be in possession and registered in the name of the potential beneficiary, with the Registrar of Deeds.

Additional requirements: These provide that, any applicant must also satisfy the following criteria, as linked to the benefits of the Programme:

Married or cohabiting: he or she is married (in terms of the Civil Law or in terms of a Customary Marriage) or habitually cohabits with any other person. The word spouse includes any partner with whom a prospective beneficiary habitually cohabits. Where an application is made for a subsidy on the basis of a legal marriage or cohabitation arrangement, it is required that the property must be registered in the names of both spouses in the Deeds Office. Documentary proof of the marriage and affidavits from both spouses in respect of cohabiting arrangements and customary marriages must be provided. Applicants who satisfy the above criteria may qualify for the purchase of a serviced site and/or a housing subsidy for the construction of a top structure.

Single with Financial Dependents: he or she has proven financial dependents. A financial dependent refers to any person who is financially dependent on the subsidy applicant and who resides permanently with the housing subsidy applicant. Financial dependents include any or a combination of the following proven financially dependent persons of, and residing permanently with, the subsidy applicant: biological parents or parents-in-law; biological grandparents or grandparents-in-law; brothers/sisters under the age of eighteen (18) years or, if older, who are proven financially dependent on the applicant; children under the age of eighteen (18) years, i.e. grandchildren; adopted children; foster children; biological children; any of the above persons over the age of eighteen (18) years who are still studying and who are financially dependent on the applicant; and v) extended family members who are permanently residing with the applicant due, for example, to health problems and who are therefore proven financially dependent on the housing subsidy applicant.

Special Provision: it is a requirement that in cases where housing subsidy applications are submitted by single persons with financial dependents that the particulars from the identification document of such dependents must be recorded on the application form, and the information must be captured in the Housing Subsidy System. The following documents amongst others, must accompany an application for a housing subsidy: Certified copies of: birth certificates, bearing the thirteen digit identity number for children who do not have bar coded identity documents; bar coded identity documents of all persons who are claimed as part of the household; divorce settlement documentation (to prove custody of children) where relevant; affidavits and/or sworn statements for unions solemnised in terms of SA Civil Law to prove the authenticity of the relationship to the applicants, where applicable; and court orders or, orders issued by the Commissioner of Child Welfare to prove guardianship for foster children, where relevant. Applicants who satisfy the above criteria may qualify for the purchase of a service site and/or a housing subsidy for the construction of a top structure.

Single persons without financial dependents: Applicants falling within this category may apply for the purchase of a serviced site in project linked approved projects. Once this person satisfies the other

opportunities to the qualifying beneficiaries. Whilst this is considerably high the housing backlog continues to grow as the population grows and household formation decreases. Government continues to provide housing benefits to the qualifying beneficiaries without discriminating against any racial groups.

34. In October 2019, government enacted the Property Practitioners Act, 2019³⁰ which brings about a very important era in the history of the South African real estate sector. The legislation provides priority obligations and critical initiatives that are aimed at ensuring that there is transformation in the real estate sector.³¹ This legislation also provides for setting up of the Transformation Fund which will enable implementation of transformation policy intervention programmes.

Article 2: Policies and legislation to combat racial discrimination and special measures to develop and protect certain racial groups or individuals

The National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance

35. In addition to the various laws, policies and programmes mentioned in previous reports, South Africa is pleased to inform the Committee that Cabinet approved the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP)³² on 27 February 2019. A copy of the NAP was deposited with the UN in 2019.

36. The NAP is based on the collective conviction of our people that, given that the ills of unfair discrimination and inequality are human made; we have the means to completely eradicate these ills from our country. The NAP was developed through a comprehensive consultation process involving government, various institutions supporting constitutional democracy and civil society, and is informed by general principles of universality, interdependence and indivisibility of human rights, participation and inclusion, progressive realisation, accountability, equality and non-discrimination. It commits all sectors of our society to the promotion and protection of human rights, and to raising awareness of anti-

qualification criteria of that Programme, he or she may apply for a housing subsidy for the construction of a top structure. Single persons may also apply for rental accommodation.

Monthly household income: in cases where the gross monthly household income of his or her household does not exceed the maximum income limit as approved by the Minister from time to time, he or she may qualify for a housing subsidy for the construction of a top structure. In instances where the income exceeds the amount of R3 500,00 but is not more than R22 000,00, he or she may qualify to apply for a Finance Linked Individual Subsidy (FLISP) for the construction of a house. A prospective beneficiary will be required to submit adequate proof of income, and, in the case of income received through self-employment, must sign an affidavit stating the amount earned.

Persons classified as aged: Aged persons who are single without financial dependents may also apply for subsidization. Aged persons can be classified as male and female persons who have attained the minimum age set to qualify for government's old age social grant.

Persons classified as disabled: Persons who are classified as disabled, whether single, married or co-habiting or single with financial dependents, may apply for housing subsidies. In addition, the Member of the Executive Council responsible for Housing in Provinces (MEC) may in his/her discretion decide to award the beneficiary the variation of the subsidy. Furthermore, if a person who has already received state funding for housing and/or who already owns or owned a residential property, is or becomes disabled, or if his or her dependent(s) is/are or become disabled and that person satisfies the other qualification criteria, the MEC may at his/her discretion decide to award the beneficiary the variation of the subsidy. The variation of the subsidy amount for purposes of improvements to the dwellings for disabled persons is contained in the Variation Manual, included in the technical and general guidelines of the National Housing Code.

³⁰ Act 22 of 2019.

³¹ The estate agency sector as an important arm of the housing and human settlements was regarded as one of the sectors that lacked transformation were even observed in a number of incidents of racial discrimination. The annual report highlighted that the number of previously disadvantaged groups were lower than those of their white estate counterparts.

³² See <https://www.justice.gov.za/docs/other-docs/NAP/NAP-20190313.pdf>.

racism, equality and anti-discrimination issues. It calls for a partnership in implementing anti-racist and anti-discrimination education.

37. Further actions include the collection of data regarding racism and discrimination in order that we may combat these problems and improve such interventions as the prosecution of offenders and psychosocial support for victims.

38. It also makes provision for the identification of legislation that needs to be amended or adopted with a view to improving the protection of victims, the building of a more equal society, and strengthening of the rule of law and democracy. The NAP also has an indicative five-year Implementation Plan for the period 2019/2020–2023/2024.³³

39. As a government policy framework, the NAP will inform future development of domestic legislation to combat racism, racial discrimination, xenophobia and related intolerance.

40. The main focus of the NAP is to specifically address the issue of racism, which is an acknowledgement by government that South Africa still remains a very racially divided country 25 years into democracy. In addition to existing measures, the NAP is also intended to combat xenophobia and related intolerance and to:

- Promote human dignity through the promotion and protection of human rights;
- Raise awareness of anti-racism, equality and anti-discrimination issues among public officials, civil society and the general public, mobilising support from a wide range of people and addressing the need to prevent, combat and address racism;
- Encourage the collection of data regarding racism, racial discrimination, xenophobia and related intolerance and allow for a more comprehensive assessment of their needs to effectively combat it;
- Ensure that the concerns of individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance are more effectively addressed;
- Increase the effectiveness and coherence of measures against racism, racial discrimination, xenophobia and related intolerance including financial and human resources;
- Engender a commitment to eliminating racism, racial discrimination, xenophobia and related intolerance through appropriate programmes aimed at reaching achievable targets;
- Strengthen programmes for individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance in education, health, employment, housing, food security, social services and access to justice including where necessary through appropriate remedies;
- Facilitate the identification of legislation that needs to be amended and or adopted with a view to improving the protection of victims, and
- Build a more equal society and strengthen the rule of law and democracy.

41. The NAP also prioritises groups of individuals who, besides being victims of racial discrimination, face multiple forms of discrimination, such as:

- Rural and urban poor;
- Farm workers and farm dwellers;
- Persons in extreme poverty;
- Women and girls;
- Children and youth;
- Stateless persons;

³³ See <https://www.justice.gov.za/docs/other-docs/NAP/NAP-20190313-ImplementationPlan.pdf>.

- Domestic workers;
- Persons with HIV/AIDS;
- Persons with disabilities;
- Older persons;
- Persons deprived of their liberty;
- Lesbian, gay, bisexual, transgender and intersex persons;
- Persons affected by armed conflict or natural disasters.

Women

42. The majority of black South African women were the most oppressed section of the population, suffering under a triple yoke of race, gender and class oppression. The liberation of women had been, and still remains, central to the struggle for freedom.

43. The empowerment of women and the achievement of gender equality in South Africa also involves dealing with the legacy of apartheid and the transformation of society, particularly the transformation of power relations between women, men, institutions and laws. It is about addressing gender oppression, patriarchy, sexism, ageism, and structural oppression, and creating an environment that is conducive to women taking control of their lives. Government is committed to ensuring equal rights for women and men. The Constitution guarantees equality between men and women and prohibits discrimination on a number of listed grounds.

44. In line with its commitment to gender equality, South Africa developed its National Policy Framework for Women's Empowerment and Gender Equality, which has been the guiding beacon for the development and advancement of women and girls in the country. Government also developed a Gender Policy Framework for Local Government, as well as the National Strategic Framework for Women's Economic Empowerment, among other sectoral policies and strategies guiding the mainstreaming of gender considerations across the work of government.

45. The Constitution acts as the normative foundation for the advancement of women's rights in South Africa and several pieces of legislation provide the building blocks. In terms of the legislative framework, virtually all statutes that discriminated against women before 1994 have been repealed. The Recognition of Customary Marriages Act, 1998 for instance, repealed the provisions of the Black Administration Act, 1927 which condemned African women to a legal status of perpetual minors. It enacts formal equality between women and men in customary marriages. The Act provides for the equal status and capacity of spouses who concluded a customary marriage and it enacts a wife's capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have at customary law.

46. South Africa has also made a number of key commitments at the sub-regional, continental and international levels which promote women's empowerment and the achievement gender equality. South Africa's commitment to stamping out discrimination against women is further reflected in its accession to the Convention on the Elimination of all Forms of Discrimination against Women without reservations.

47. South Africa also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women without reservations and submitted its initial report under the Convention in 1998. Government has further committed itself through the SADC Protocol on Gender and Development and the Beijing Platform of Action to undertake activities to promote the human rights of women.

48. The Committee is referred to South Africa's 5th Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³⁴ which was submitted in 2019 and South Africa's latest Periodic Report

³⁴ CEDAW/C/ZAF/5.

on its compliance with the Convention on the Rights of the Child (CRC)³⁵ for detailed information on the promotion of human rights enjoyed by women and children, respectively, in South Africa.

49. Considerable progress has been noted in the participation of women in various sectors such as political, public service and the judiciary. After the 2019 elections 46% of the Members of Parliament in the National Assembly are female and 50% of the cabinet is female. All the speakers in the national and provincial legislatures are women. Table 3 annexed hereto, provides a comparative view of women in political life from 2004 to 2019.³⁶

50. In the 2019 national and provincial elections, of the 26.74 million registered voters, 14,716,879 are women (55%) which is four percent of the above demographic split of the South African population according to Statistics South Africa, based on 2018 Midyear Population Estimates.³⁷

51. More than half of our country's population is female and therefore it is important that the composition of our judicial officers in our courts reflects this. We have made significant progress in terms of gender transformation over the last two decades. With regards to the number of women in the judiciary, in 2019 some 38,8% of the permanent judges were female. Table 4, annexed hereto, sets out the racial and gender of the 250 permanent judges.

52. At the dawn of democracy in 1994 magistrates were part of the public service and were employed by the then Departments of Justice in the various homelands, the TBVC States and the rest of South Africa. An amalgamation process to bring them all under one department was led by the then Minister of Justice and in 1998 there were a total of 284 female magistrates countrywide.

53. In June 2019 there were 758 female magistrates nationally. This equates to an increase of 166,9% in the number of female magistrates from December 1998 to June 2019. In November 2019, some 207 further appointments were made to the magistracy. The new appointments further strengthen gender transformation as more than half of the new incumbents (105) are female, thus bringing the total number of female magistrates to 863 (out of a total of 1,803 magistrates). This means that at the end of 2019, a total of 47,8% of our magistracy were female.

54. With regards to inequality as experienced by the sex of the household head, a report released by Stats SA in 2019 shows the various inequality measures based on per capita expenditure by sex of household head (2006, 2009, 2011 & 2015)³⁸ and as annexed in Table 5.

55. According to nearly all the inequality measures presented individuals living in male-headed households seem to be more unequal as compared to those living in female-headed households.³⁹

LGBTI persons

56. The establishment of a National Task Team (NTT) on LGBTI Rights in 2011 was intended to counter the continued discrimination based on sexual orientation and gender identity against members of the LGBTI community. The NTT is a good example of a very successful partnership between government and civil society and was named in a 2016 report by the UN's Office of the High Commission on Human Rights as a best practice model and international case study of government and civil society co-operation. The NTT continues its

³⁵ CRC/C/ZAF/2.

³⁶ Gender Links (GL) Gender Audit of the 2019 South Africa elections, see <https://genderlinks.org.za/what-we-do/governance/advocacy/south-africa-gender-and-elections/>.

³⁷ See <https://www.elections.org.za/content/About-Us/News/Voters--Roll-Certified-for-National-and-Provincial-Elections-2019/>.

³⁸ "Inequality Trends in South Africa, a multidimensional diagnostic of inequality," Report No. 03-10-19, Statistics South Africa (2019).

³⁹ Over the years, the Atkinson index shows a similar trend like the Gini coefficient for individuals living in both male- and female-headed households. The Palma ratio corroborates with the Gini coefficient in that there is more inequality among individuals living in male-headed households compared to those living in female-headed households.

efforts to counter the continued discrimination based on sexual orientation and gender identity against members of the LGBTI community.

57. In this regard the development of a National Intervention Strategy, the establishment of a national Rapid Response Team which meets on a quarterly basis to discuss progress made on pending cases, and the establishment of Provincial Task Teams and Rapid Response Teams led by the provincial Department of Justice and Constitutional Development (DOJCD) offices are some of the achievements. In addition to the work of the NTT, government is also engaging with civil society on the rights of intersex persons.

58. A survey of attitudes towards homosexuality and gender non-conformity in South Africa, produced by The Other Foundation and the Human Sciences Research Council (HSRC)⁴⁰ found that 55% of South Africans indicated that they will accept a gay family member, but only 27% have a friend or family member whom they know is homosexual; 51% believe that gay people should have the same human rights as other people, even though 72% hold the view that same-sex activity is “morally wrong”.

59. It also finds that between 2012 and 2015, there has been a tenfold increase in the number of South Africans who “strongly agree” with allowing same-sex marriage. Eight out of 10 people said they have not – nor would they ever consider – verbally or physically abusing someone who was gender non-conforming.

60. A more recent study undertaken by the Foundation for Human Rights (“FHR”)⁴¹ indicates that two-thirds (68%) of all respondents agreed or strongly agreed that people in South Africa are free to choose and express their sexual orientation without fear or judgement. Almost three quarters (74%) of respondents disagreed or strongly disagreed that being gay or lesbian was against the values of their community. This finding was consistent across Indian/Asian (72%), black African (73%), white (77%) and coloured (77%) respondents as well as both male (73%) and female (74%) respondents.

Albinism

61. As part of our interactions with the Committee on the deliberations of South Africa’s Country Report on the ICESCR, the Committee recommended that we intensify our efforts to eliminate discrimination and violence against persons with albinism. In September 2019, we met with Ms. Ikponwosa Ero, the UN Independent Expert on the enjoyment of human rights by persons with albinism, see her report as A/HRC/43/42/Add.1.⁴² On the 26th and 27 November 2019 the DOJCD hosted the first National Colloquium on Access to Justice for Persons with Albinism in Kempton Park.

62. The Committee is referred to the report prepared by Government in preparation for the IE visit which provides detailed information relating to the realisation of the human rights of persons with Albinism and measures taken by Government, Chapter 9 institutions and civil society organisations to protect persons with Albinism from violence, abductions, discrimination and stigmatization. The report is annexed as Annexure D. The report also contains detailed information pertaining to equality and non-discrimination, the right to health care and education, adequate standard of living and social protection of persons living with albinism.

63. Government also provides support to the Albinism Society of South Africa (ASSA) in order to provide social protection services and lead Government efforts to forge

⁴⁰ “Progressive Prudes - A survey of attitudes towards homosexuality & gender non-conformity in South Africa”, 2016. See https://theotherfoundation.org/wp-content/uploads/2016/09/ProgPrudes_Report_d5.pdf.

⁴¹ Socio-Economic Justice for All Baseline Survey on Access, Awareness and Attitude to Rights, 2017.

⁴² Report of the Independent Expert on the enjoyment of human rights by persons with albinism in South Africa.

partnerships through which vulnerable individuals, groups and communities become capable and self-reliant participants in their own development.⁴³

64. Persons with albinism also benefit from legislation such as PEPUDA and the EEA. South Africa has also signed the African Union Protocol on the Rights of Persons with Disabilities which specifically mentions persons with albinism and the NAP also provides for the protection of people with albinism.

65. The draft Bill on the Prevention and Combating of Hate Crimes and Hate Speech intends to specifically criminalise hate speech against persons with albinism among other vulnerable groups. South Africa is also working towards domesticating the Convention on the Rights of Persons with Disabilities into national law and its Witchcraft Suppression Act⁴⁴ is undergoing law reform.

Non-nationals

66. It is important to highlight that the Constitution's Bill of Rights states that the majority of rights are guaranteed to "everyone" – i.e. not only to South Africans, but also to foreign nationals within our borders, only 4 sections apply to citizens.⁴⁵ Therefore foreign nationals do enjoy the same rights to healthcare, education and social security as citizens do.

67. In a case where asylum seekers, refugees and migrants are arrested, the South African Police Service will inform the Department of Home Affairs of the arrests to assist in determining whether such arrested person/s are legally residing in the country so that their status can be determined and where required they can be accordingly released for the processes for deportation.

68. Asylum seekers are only detained at the Lindela Facility once their applications for refugee status have been proved to be manifestly unfounded and they are bound to be deported.

69. With regards to health care at Lindela, a rigorous health pre-admission process is implemented.⁴⁶ The clinic is operated on a 24-hour basis by nurses and a doctor for those in need of medical services.⁴⁷ If a patient is treated more than three times for the same condition without any improvement, they must be referred to a secondary health facility. The Department of Health provides guidelines for the management of communicable diseases to the clinic at Lindela and conducts periodic inspections.⁴⁸ The International Committee of the Red Cross (ICRC) also conducts regular oversight visits to assist deportees with basic needs such as telephone contact with family members all over the world, as well as inspections of the Lindela clinic during which interviews are conducted with the deportees.⁴⁹ Lindela was

⁴³ The Department of Social Development, through the programme: Services to Persons with disabilities, funded the national ASSA Organisation from 2014/15 - 2018/19 for the following Targeted programmes:

Equitable distribution of services between rural and urban areas;

Accessibility of services to persons with Albinism;

Establishment and restructuring of Albinism Organisations at provincial level, focusing on the provision of capacity and empowerment to affiliated structures;

Co-ordination of advocacy programme in the promotion awareness on Albinism.

⁴⁴ Act 3 of 1957.

⁴⁵ Rights afforded to "citizens" only are: S 19 – political rights, S 20 – citizenship, S21 – the right to enter and remain in and reside anywhere in South Africa and the right to a passport, S 22 – the right to choose their trade, occupation or profession.

⁴⁶ This includes a screening questionnaire to determine existing medical conditions such as diabetes and high blood pressure. Mandatory testing for pregnancy is also conducted.

⁴⁷ Any medication which is dispensed is strictly for consumption at the clinic and cannot be taken into the detention rooms, to prevent non-adherence to the treatment regime. The clinic porters conduct inspections in the rooms to ensure that there are no deportees who are incapacitated and are unable to go out for meals or recreation outside.

⁴⁸ On their monthly visits to the clinic, the health officials focus on isolation, detention rooms, kitchen, water and sanitation and pest control.

⁴⁹ The ICRC provides feedback to the DHA.

found to be compliant with the Nelson Mandela Rules for detention standards during an evaluation by the Department of Correctional Services (DCS).

70. Migrants, refugees and asylum seekers all have access to adequate health care in provincial and local hospitals and clinics.

71. The Minister for Home Affairs has not appointed a specific judge to exercise independent oversight of Lindela, however various judges and magistrates have visited and continue to visit Lindela and have issued reports on the outcomes of their visits.⁵⁰ The Department of Home Affairs and the SAHRC have a standing monitoring arrangement regarding Lindela, which includes unscheduled inspections and the submission of monthly reports.

72. As at mid-2019, the Department of Home Affairs received on average approximately 5000 applications for asylum per quarter, and an average of 20 000 asylum applications per year. Adjudication of applications takes up to 5 days to finalise, however, some applications require more time due to their complexity. South Africa, as at mid-2019, had a total of 82 823 active refugees and a total of 184 976 active asylum seekers cases. In terms of domestic legislation, the Minister of Home Affairs is empowered to establish Refugee Reception Centers, and this is in line with South Africa's White Paper on International Migration. South Africa does not practice or intend to introduce a refugee encampment system. However, in order to ensure efficiency in rendering services and enhancing the protection of Asylum Seekers and Refugees, South Africa is considering the introduction of dedicated Refugees Centers in areas close to ports of entry.

73. Furthermore, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subjected to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country.

74. South Africa signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2000 and ratified it in 2008 and signed the OPCAT in September 2006 and ratified it on 20 June 2019. In accordance with Article 17 of the OPCAT, one of the obligations imposed on State Parties is to establish domestic mechanisms for the prevention of torture known as the National Preventive Mechanism (NPM). The South African Government decided to adopt a multi-body NPM which envisages the SAHRC playing a coordinating role together with other oversight bodies such as the Judicial Inspectorate for Correctional Services (JICS), the Military Ombudsman, Health Ombudsman and the Independent Police Investigative Directorate (IPID).

Indigenous people

75. Debates around the understanding of the term "indigenous peoples" continue to be sensitive, particularly in the African context, and that both Khoi and San peoples as well as other African communities, including Nguni, Sotho, Tswana, Venda and Tsonga-speakers may be considered to be indigenous. For the purpose of this report, however, the term "indigenous peoples" will refer to Khoi and San peoples specifically. In March 2018, the SAHRC released its Report on the National Hearing on the Human Rights Situation of the Khoi and San peoples in South Africa. The Report followed investigative hearings into the human rights of Khoi-San communities conducted by the SAHRC in the Gauteng, the Western Cape and the Northern Cape provinces between 2015 and 2017.

76. The report raises the issue regarding the recognition of indigenous communities as a distinct group in employment and recruitment opportunities, particularly under the

⁵⁰ Justice Edwin Cameron conducted an inspection at Lindela in July 2012 and issued a report. Thereafter an unannounced visit was undertaken by Deputy Chief Justice Moseneke in April 2014 and he also issued a report.

affirmative action framework and suggests that the Khoi-San, as a political minority in South Africa, may be marginalised from gaining access to employment opportunities due to their classification as “Coloured”.

77. In essence, the SAHRC found that South Africa stands as one of the few countries on the continent that has embarked on ambitious efforts aimed at redressing the problems of its indigenous peoples, including legislative, policy and judicial interventions. However, it identifies a “delay and/or lack of effective implementation of policies and programmes designed to uplift indigenous peoples and facilitate the achievement of their rights.”

78. In November 2019 the President signed into law the Traditional and Khoi-San Leadership Act, 2019⁵¹ which constitutes the nation’s unprecedented statutory recognition of the Khoi-San communities, leaders and structures. The Act seeks to transform traditional and Khoi-San institutions in line with constitutional imperatives, such as the Bill of Rights and restore the integrity and legitimacy of the institutions of traditional and Khoi-San leadership in line with customary law and practices. It also provides for the protection and promotion of the institutions of traditional and Khoi-San leadership.

79. Furthermore, the Act directs that the kingship or queenship, principal traditional community, headmanship, headwomanship and Khoi-San communities must transform and adopt customary law and customs in a manner that is consistent with the principles contained in the Bill of Rights of the Constitution. While certain traditional structures and leadership positions have been recognised by law in compliance with Constitutional prescripts, there has never before been statutory recognition of the Khoisan. To this end, the formal recognition of the Khoi-San communities, leaders and structures required enabling legislation, to which the President has now assented. In March 2019 President Ramaphosa also officiated the land handover of the first successful claim of indigenous Khoi community.⁵²

80. The President has also assented to the Traditional Leadership and Governance Framework Amendment Act, 2019⁵³ which, in the main, seeks to address failures to reconstitute the tribal authorities and traditional councils within the prescribed time, including aligning the term of office of the re-constituted tribal authorities and traditional councils with the terms of the National House of Traditional Leaders (NHTL).

Article 3: Eradication of racial segregation, apartheid and practices

Attacks against Foreign Nationals

81. Government, through collaborative partnerships between the DOJCD, DSD, SAPS and various other key role-players, continues to conduct a number of anti-xenophobia campaigns and related activities in collaboration with key stakeholders to address the root causes of sporadic attacks against foreign nationals. A National Anti-Xenophobia Task Team (NTT) was established in 2017 to focus on developing a programme that will facilitate ending attacks foreign nationals.⁵⁴ Furthermore, Government is a member of the United Nations

⁵¹ Act 3 of 2019.

⁵² President Ramaphosa handed over title deeds to more than 50 households of Ebenhaeser, Beeswater in the Western Cape Province. The title deeds pertain to 3990 hectares of commercial farmland. The beneficiaries are the direct descendants of the Griqua Community that established themselves on the farm since 1926. The community entered into a lease agreement with the then landowner in 1938-1940 but due to racial laws and practices, did not have the necessary permit to purchase the land. The community of Beeswater was forcibly removed in 1960 and eventually relocated to the Coloured Area of Vredendal. The Beeswater Communal Property Association have indicated their desire to resuscitate livestock and or game farming, possible agricultural activities as the first claim settled in the Western Cape to direct descendants of the indigenous Khoi community a cultural village and ultimately to resettle their community to the land that is rich in cultural history.

⁵³ Act 2 of 2019.

⁵⁴ The NTT has, for example, identified Atteridgeville in the Tshwane metro as one of the hot spots in the continuous outbreaks of xenophobic attacks. Government is therefore piloting a visible and sustainable anti-xenophobia campaign in Atteridgeville. The campaign addresses the root causes of xenophobia and different social ills as identified by the community - focussing on changing attitudes and the behaviour of community members, leaders and businesses. Community members are directly

Protection Working Group (UNPWG).⁵⁵ The UNPWG's focus is on ensuring the promotion of social cohesion in our communities whilst ensuring that communities are safe for all inhabitants, both citizens and foreign nationals including refugees and asylum seekers alike. The UNPWG drafted Standard Operating Procedures (SOPs) in response to violence against foreign nationals in South Africa. The overall objective of these SOPs is to ensure that proper standards are met in order to enhance efficiency and effectiveness of the UNPWG in the case of responding to attacks of foreign nationals including refugees and asylum seekers, and also other issues related to protection.

82. Specifically, the SOPs provide a detailed outline of all emergency response processes from information sharing, convening a meeting, sharing the response plan with government, field/scoping mission, convening a follow-up meeting, implementation of action and review and reflection on lessons learnt from the response. The SOPs are intended to serve as guidelines and outline responsibilities for members involved in the functions of the UNPWG. The UNPWG Advisory Group has been formed to oversee the emergency response by both government and all relevant role-players during the sporadic attacks on foreign nationals.

83. In addition, Government has collaborated with several civil society organisations to conduct activities within communities including both citizens and foreign nationals, for example, to commemorate Africa Month during May 2019 and Refugee Day on 20 June 2019. These ongoing collaborative efforts were in the form of awareness campaigns; celebrations of culture and heritage; community dialogues and stakeholder engagements between government, Chapter 9 Institutions and civil society organisations which include organisations such as the African Diaspora forum. Government also disseminates human rights education material in the form of copies of the Constitution, NAP booklets and related material at all events and activities that it participates in.

84. As part of the implementation of the NAP 5-year Implementation Plan there is a specific focus on the development of an Early Warning System with regard to xenophobia and a Rapid Response Mechanism to such incidents. The DOJCD as the focal agency responsible for coordinating the implementation of the NAP, will during the initial five year cycle of implementation, engage continuously with relevant departments and other role-players to ensure that the commitments made in the NAP, inter alia, relating to developing and implementing anti-discrimination programmes, conducting community dialogues and public engagement on combating all forms of discrimination, and the promotion of constitutional and human rights awareness, are achieved.

Harmful cultural practices

85. In its original form ukuthwala did not involve children and rape was not permitted.⁵⁶ In 2009, government was made aware of the misuse of the ukuthwala practice, where young girls between the ages of 12 and 15 years were being abducted. Meetings took place among traditional leaders, provincial government departments, women, men and children in the affected localities in order to establish the extent of the problem. Awareness raising Indabas were conducted by members of the executive. Pamphlets to raise awareness were created which outlined the laws that prohibit this practice, its impact on the country and also information on services available.

involved and plan interventions according to the challenges identified in the Atteridgeville community. A number of interventions have been implemented with the collaboration of the local community: including an intensive change management framework exercise conducted in March 2019.

⁵⁵ The UNPWG structure comprises the UNHCR; UNICEF; UNODC; UNDP; UN Women; UNFPA; UNAIDS; UNESCO; UNOHCHR; IOM; DIRCO; DOJ&CD; NPA; DHA, SAPS, COGTA; DSD; DAC; Presidency; local government; SAHRC and civil society organisations such as Lawyers for Human Rights; Amnesty International; faith based organisations; Red Cross; Future Families; Freedom House; Zoe life; Action Support Centre; MSF; HURISA; CSV; OXFAM; CORMSA and academia.

⁵⁶ An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa, 2011 by Commissioned by Save the Children Sweden Southern Africa Regional Office.

86. Section 28 of the Constitution states that a child's best interests are of paramount importance in every matter concerning the child and that a "child" means a person under the age of 18 years. Therefore custom, cultural or religious rights cannot undermine the rights of children. South Africa regards the abuse of ukuthwala as a criminal and harmful practice that robs children of their childhood and impacts negatively on their health, development and gender equality. The practices that are dehumanising to young girls and women are regarded as unfair discrimination and rights espoused in PEPUDA can be enforced in the Equality Courts.

87. Section 17 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007⁵⁷ prohibits the sexual exploitation of children by their parents and others. Parents, relatives or others who collude in, or aid and abet, the unacceptable practice of ukuthwala of a girl child commit the crime of the sexual exploitation of children. These parents and relatives also face being charged with Trafficking in Persons, under section 71 of this Act.

88. With regards to ukuthwala there are a number of programmes and interventions.⁵⁸ The work of government in this area includes social transformation and awareness on ukuthwala. Government, through an integrated, interdepartmental partnership between the National Prosecuting Authority; South African Police Service; Departments of Justice, Social Development and other role-players, has implemented an ukuthwala campaign. The goal of the campaign is to create awareness against the practise of ukuthwala. Various outreach campaigns against ukuthwala custom and practices have been implemented between 2014 and 2016 targeting schools; reaching out to learners; training community members and leaders; and educating women about trafficking and ukuthwala custom. Government also utilises its "Access to Justice Week" in August annually to interact with communities, especially rural communities that still practices traditional customs. The aim is to empower communities on harmful cultural practices. Various other campaigns in the form of public education and awareness-raising, human rights and information dissemination, especially in provinces with high incidences of ukuthwala were implemented. Government also has various publications, such as a booklet called "Let's stop stolen Childhoods" and various leaflets which explain what ukuthwala is, how it can be avoided, and spells out the rights of individuals as well as what laws are applicable in such cases.

89. The South African Law Reform Commission ("SALRC") published a Discussion Paper 132: The practice of ukuthwala (Project 138), which set out the preliminary recommendation for law reform relating to the practice of ukuthwala. The Discussion Paper was published on 01 September 2014 and was distributed as widely as possible. The SALRC thereafter published the Revised Discussion Paper, which includes a chapter on public consultations and a Draft Prohibition of Forced Marriage and Child Marriage Bill. The Revised Discussion Paper 138 was published on 30 October 2015. The SALRC's investigation focused mainly on the distortion of the practice of ukuthwala. The main recommendation was the enactment of a new legislation called the Prohibition of Forced Marriage and Regulation of Related Matters Bill. The matter is still under consideration.

90. An important judgment by the Western Cape High Court in *Jezile v S*⁵⁹ held that ukuthwala was not a defence to charges of rape, human trafficking and assault. Perpetrators, parents and community members who aid, support or participate in forced marriage rituals could now face criminal prosecution under the Prevention and Combating of Trafficking in

⁵⁷ Act 32 of 2007.

⁵⁸ For example, the National Prosecuting Authority's Sexual Offences and Community Affairs (SOCA) Unit participated in several public awareness and community projects on gender-based violence, human trafficking and relevant legislation nationally in line with the "365 National Action Plan of no violence against women and children". This intervention entailed a combination of public awareness campaigns with relevant stakeholders but also radio interviews / discussions, focussing inter alia on the following topics: the essence of gender based violence, TCC-services, influence of drugs and alcohol at schools, child pornography, reporting of GBV-matters, LGBTI-cases, sexual violence / abuse at schools and tertiary institutions, importance of forensic medical examinations and post-trauma consequences of GBV, ukuthwala-practices, existence of sexual harassment and what it entails, human trafficking specifically for sexual exploitation and etc.

⁵⁹ 2016 (2) SA 62 (WCC).

Persons Act, 2013⁶⁰ and can no longer hide behind antiquated customs. The decision to prioritise inalienable human rights above oppressive cultural liberties indicates an important realisation that culture must evolve to reflect and support the spirit of the times that we live in.⁶¹

Social cohesion and reconciliation

91. Statistics SA conducted a survey on, amongst other themes, discrimination and social cohesion in South Africa from April 2018 to March 2019. This baseline report named the Governance, Public Safety and Justice Survey (GPSJS) was released on 14 August 2019 and annexed hereto as Annexure E. It provides data on themes such as the Constitution, Human Rights, Discrimination, Disputes, and Access to Justice, Accountability, Institutions, and Political Participation in South Africa. The chapter on discrimination and social cohesion provides estimates on the perceptions of discrimination and social cohesion for people living in South Africa. The report shows that racial discrimination is the biggest concern of people, as the greatest proportion of the population (over 59%) believed that it exists in South Africa. This is followed by discrimination based on nationality at just over 40%.

92. Table 6 annexed hereto, indicates the number and proportion of the population of who think specific types of discrimination exists.

93. As indicated in Table 7 annexed hereto, about 2 in every 5 South Africans think that discrimination based on nationality exists in the country; while more than half of the people of other nationalities think that such discrimination exists. The gap between nationals and non-nationals is narrower in metropolitan areas.

94. The report further estimates that about 13% of the population experienced one or more types of discrimination during the past 2 years. Table 8 annexed hereto, sets out the number and proportion of the population who experienced specific types of discrimination.

95. Table 9 annexed hereto, sets out the number and proportion of the population who experienced discrimination on the basis of race.

Article 4: Condemnation and criminalisation of propaganda based on racial discrimination

96. The Prevention and Combating of Hate Crimes and Hate Speech Bill is before Parliament for consideration. The current wording of the Bill says that a hate crime is an offence recognised under any law, the commission of which is motivated on the basis of that person's prejudice, bias or intolerance towards the victim of the hate crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member: Race; gender; sex, which includes intersex; ethnic or social origin; colour; sexual orientation; religion; belief culture; language; birth; disability; HIV status; nationality; gender identity; albinism; or occupation or trade.

97. Nationality, gender identity, HIV status, albinism, intersex and occupation or trade are not mentioned in section 9 (3) of the Constitution, but it has been argued that they should be included in the Bill because of the hate crimes that have been committed on the basis of these grounds.

98. Developing specific legislation on hate crimes will have a number of advantages. It will help create a shared definition of hate crime amongst all those involved in the criminal justice system; will send a clear public message that hate crimes will not be tolerated in South

⁶⁰ Act 7 of 2013.

⁶¹ In February 2014, the Wynberg Regional Court convicted a man found guilty of *ukuthwala* on three counts of rape, human trafficking and assault and sentenced him to 22 years behind bars. In addition, court ordered that his name be included in the National Register for Sexual Offenders in accordance with Section 50(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (the Sexual Offences Act). He appealed the conviction and sentence at the Western Cape High Court but on 23 March 2015, the full bench of the High Court rejected his appeal and confirmed the decision of the court a quo.

Africa; will provide additional tools to investigators and prosecutors to hold hate crimes perpetrators accountable; will provide a means to monitor efforts and trends in addressing hate crimes; and will allow for effective coordination between government service providers to reduce the impact of secondary victimisation on hate crimes victims. Secondary victimisation takes place where victims are subjected to further insensitive or inappropriate behaviour or comments by police, health care officials or justice officials.

99. The Bill aims to provide for the offence of hate crime and the offence of hate speech and:

- Give effect to the Republic's obligations in terms of the Constitution and international human rights instruments concerning racism, racial discrimination, xenophobia and related intolerance, in accordance with international law obligations;
- Provide for the offence of hate crime and the offence of hate speech and the prosecution of persons who commit those offences;
- Provide for appropriate sentences that may be imposed on persons who commit hate crime and hate speech offences;
- Provide for the prevention of hate crimes and hate speech;
- Provide for the reporting on the implementation, application and administration of this Act; and
- Effect consequential amendments to certain Acts of Parliament; and to provide for matters connected therewith.

100. The Bill provides that a person who is convicted of a hate crime is subject to the penalties set out in section 276 or 297 of the Criminal Procedure Act⁶² ("CPA"), subject to the penal jurisdiction of the particular court, (whether it be the High Court or the regional court). Section 276 of the CPA, provides the sentencing options which courts may impose, including imprisonment, periodical imprisonment, a fine and correctional supervision. Section 297 of the CPA provides for the conditional or unconditional postponement or suspension of sentences, cautions and reprimands.

101. The Bill further provides that if a person is convicted of a hate crime which is not subject to the obligatory minimum sentencing regime as provided for in section 51 of the Criminal Law Amendment Act⁶³, and in the case of any damage, injury or loss of income or support, the court must regard the fact that the person has been convicted of a hate crime as an aggravating circumstance. The Bill further provides for penalties applicable in the case of hate speech, namely a fine or imprisonment for a period not exceeding 3 years in the case of a first conviction or a fine or imprisonment for a period not exceeding 5 years in the case of a subsequent conviction.

102. The Bill provides for the Minister responsible for the administration of Justice to prescribe information that must be collected and collated by the South African Police Service and the National Prosecution Authority. The information is intended to enable effective monitoring, analysis of trends and interventions and to provide quantitative and qualitative data, in respect of the prevention and combating of hate crimes and hate speech. The Bill requires this information to be made available to:

- Parliament;
- The SAHRC;
- The Commission for Gender Equality (CGE); and
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

⁶² Act 51 of 1977.

⁶³ Act 32 of 2007.

Equality Courts

103. The South African Constitution⁶⁴ guarantees for everyone living in South Africa the right to equal access to courts. Because it can be expensive to approach an ordinary Magistrate or High Court, Equality Courts were created under the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA), to deal with cases of “unfair discrimination”, “harassment” and “hate speech”. Equality Courts are special courts situated at the existing court buildings and are specially designated to hear matters relating to “unfair discrimination”, “hate speech” and “harassment”. All High Courts and all Magistrate Courts serve as Equality Courts in their area of jurisdiction in South Africa. A distinguishing feature of these courts is that they have a designated specialist presiding officer as well as a designated specialist trained clerk or registrar who has received appropriate training to address disputes on equality. The Equality Courts make it easy and inexpensive for people to bring their complaints relating to unfair discrimination, hate speech and harassment to court and people do not need the services of a lawyer to bring a complaint to the Equality Court as the Clerk of the Court assists complainants when needed.

104. Persons needing assistance when approaching the Equality Court are usually assisted by the clerk of the Equality Court or the SAHRC and the Commission for Gender Equality (CGE), as the need may be. Although the Equality Court is a formal court sitting, the rules and procedures are more relaxed than in traditional courts. In order to institute proceedings in the Equality Court it is not a requirement that one must have legal representation. The Equality Courts are free of charge, so the complainant does not have to pay any court fees. Concerns have been raised in the past that Equality Courts were under-utilised.

Article 5: Guarantee to everyone the right to equality before the law

Legal Aid and access to justice

105. Legal aid mechanisms⁶⁵ for all persons in South Africa (inclusive of foreign nationals) and specific vulnerable groups have been strengthened through Legal Aid regulations by e.g. providing that legal aid may also be provided for maintenance, domestic violence and harassment cases. Legal aid may further be provided to asylum seekers and in Hague Convention cases, also to children in civil proceedings involving the child.⁶⁶ Legal Aid SA may undertake or fund litigation or other legal work which has the potential to positively affect the lives of a larger number of indigent persons. In the 2018/2019 financial year, Legal Aid SA took on a total of 416,203 new matters, of which 362,213 were criminal matters and 53,990 civil matters. The provision of legal advice, in order to empower communities on their legal rights and responsibilities, benefitted 308,050 people, via its national footprint of Local and Satellite Offices, the Legal Aid Advice Line and consultations with remand detainees. In total, 724,253 persons were assisted by the organisation in 2018/19.

106. The Legal Aid Regulations were amended and gazetted and became operational in March 2019. The amendments increased the parameters of the Legal Aid SA Means Test, the threshold income limit to qualify for legal aid services, which will enable access to legal services to a wider group of people. The 2018 Legal Aid Manual came into operation on 29 November 2018.

107. In the 2018/2019 financial year, Legal Aid SA had a combined budget cut and shortfall of 8.9% which amounted to R164 million. The Department of Justice and Constitutional Development mitigated this by allocating R30 million to Legal Aid SA from its own funds.

108. In delivering on its constitutional and legislative mandates to provide legal aid to qualifying clients, assist civil clients within available capacity and provide general legal

⁶⁴ Section 34.

⁶⁵ The current Legal Aid South Africa Act, 2014 (Act 39 of 2014), has brought legal aid provisions in line with the Constitution.

⁶⁶ Section 28(1)(h) of the Constitution provides that a child has the right to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.

advice at all offices, in order to make access to justice a concrete reality, Legal Aid SA provided legal services in 362,213 (87%) new criminal matters, and finalised 359,075 (also 87%) criminal matters. The District Court coverage achieved was 84%, while the Regional Court coverage achieved was 94%. In High Courts, representation was provided in all matters that required legal aid. A total of 53,990 (13%) new civil matters were taken on by Legal Aid SA and 51,321 (also 13%) civil matters were finalised. A success rate of 89% was achieved in the 19 impact litigation matters finalised during the financial year.

109. Matters involving children continue to receive priority. Legal Aid SA assisted a total of 16,173 children; 9,486 (59%) being children in conflict with the law and 6,687 (41%) children involved in civil matters. Legal Aid SA is committed to timeously providing legal representation to all children in conflict with the law, including the individual tracking of children who are incarcerated for periods in excess of one month in correctional facilities.

110. Legal Aid SA remains involved in raising legal rights awareness through community outreach, advertising and other marketing activities. Community outreach programmes educating the public on their constitutional rights and obligations, with the aim of improving awareness of Legal Aid SA and legal issues to enable members of communities to make informed choices about their legal rights were conducted at local community events as well as at key government service points.

111. The GPSJS report, further indicates that about 70% of people who went to court represented themselves as compared to about 18% who were represented by a Legal Aid SA lawyer, 16% who were represented by a private lawyer and about 2% who were represented by a paralegal official. The report shows that those who were represented by Legal Aid lawyers had the greatest percentage (89%) of people who were satisfied with the service as compared to those who used private lawyers and those who represented themselves; in both cases about 86% were satisfied.

Article 6: Effective protection and remedies against any acts of racial discrimination

The South African Human Rights Commission (SAHRC)

112. The South African Human Rights Commission was 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. The mandate of the SAHRC is contained in section 184 of the Constitution. At an international level, the SAHRC is recognised by the United Nations Office of the High Commissioner for Human Rights as an 'A' status National Human Rights Institution (NHRI), and thus the SAHRC has adhered to the Paris Principles which emphasise the independent nature of NHRIs and the manner in which the SAHRC must conduct its work. In addition to its national office, the SAHRC has nine provincial offices which implement the mandate of the Commission at a provincial level. The South African Human Rights Commission Act, 2013⁶⁷ was enacted to provide for the composition, powers, functions and functioning of the South African Human Rights Commission and repeals the Human Rights Commission Act, 1994.

113. The budgetary resources of the SAHRC are set out in Table 10 annexed hereto.

114. Government recognises that the budget allocated to the SAHRC may not be sufficient to enable the institution to carry out all its constitutional obligations. However, this allocation should be seen within the context of other competing government needs and the shrinking national fiscus. The increase set out above in SAHRC allocation over the 2019/20, 2020/21 and 2021/22 Medium Term Expenditure Framework (MTEF) period albeit insignificant, shows Government's confidence in the role that the SAHRC has played over the past 25 years of its existence in assisting Government to entrench the culture of human rights, constitutionalism, the rule of law and advancement of our international obligations. Despite its limited resources, the Commission continues producing outstanding research outputs and reports on South Africa's human rights landscape. One such report is the *Equality Report*

⁶⁷ Act 40 of 2013.

2017/2018 which its findings reminds Government of the huge disjuncture between what the Constitution promises and the lived reality of many of the South African people. Government continues implementing corrective measures recommended by the SAHRC through various legislative frameworks and pro poor policies that are designed to advance the historically disadvantaged people. The report recognises this imperative when it states that “the right to equality, although not explicitly guaranteeing economic equality, empowers government to implement affirmative action, or special measures, in order to advance persons or groups subject to persistent patterns of discrimination”.

115. The Equality Report raises a number of recommendations which Government is continuing to act upon guided by its policy objectives and available resources. For example, following the increase of the Value-Added Tax (VAT) rate from 14% to 15% on 01 April 2018 the Commission recommended measures that Government should adopt to alleviate the unintended consequences on poor people and low-income households. The Minister of Finance, through the Davis Tax Committee (DTC), appointed a panel of experts to consider and review the list of zero-rated food items; consider the inclusion of additional food items, and other mitigating measures. During his 2018 mid-term budget speech, the Minister of Finance announced that the VAT-exempt list would be expanded to include three more items from 1 April 2019, namely, 1. sanitary pads, 2. bread flour and 3. cake flour. Also, of fundamental significance, Government continue to increase social grants at rates above inflation on annual basis as another measure to mitigate the impact of VAT increase on the poor people.

116. The other important recommendation in the Equality Report is about the need to measure the impact of various affirmative action measures disaggregated on the basis of the needy and vulnerable groups such as people with disabilities and indigenous people. This is particularly important in the context of South Africa’s high inequality rate. The Common Core Document which relies on various data tools from Statistics South Africa (Stats SA) such as Census, presents detailed statistics and information on the social, political, cultural and economic conditions of the country. As such the Common Core Document is an attempt at providing disaggregated data about the population and the socio-economic dynamics in the country. Stats SA Community Survey 2016 Report focused on disaggregated data on people living with disabilities (Annexure). This report released in 2018 titled *Profiling Socio Economic Status and Living Arrangement of Persons with Disabilities in South Africa* provides part of the required indicators on the disability prevalence, socioeconomic status of persons with disabilities as well as their living arrangements. The statistics on people living with disabilities are disaggregated to inform planning and decision making to improve the lives of people living with disabilities by incorporating their needs in South Africa’s development agenda.

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA)

117. South Africa’s jurisprudence on non-discrimination and equality makes a distinction between fair discrimination and unfair discrimination. Only the latter is prohibited. Unfair discrimination is held to have an unfair impact that impairs to a significant extent the fundamental dignity of the complainant. It is discrimination based on one of the grounds listed in section 9 of the Constitution and includes race, gender, sex, ethnic or social origin, sexual orientation, disability, religion, culture and language. In effect, where the discriminatory law or action is designed to achieve a worthy and important societal goal, it may make fair what would otherwise be unfair. Government passed the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (“PEPUDA”) which prohibits unfair discrimination on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. The Act provides for the legislative framework for the implementation of section 9 of the Constitution.

118. In this regard, the Act provides for the designation of Equality Courts. The purpose of Equality Courts is to adjudicate matters specifically relating to infringements of the right to equality, unfair discrimination and hate speech, with a view toward eradicating the ever-present post-apartheid spectre which essentially divided the country along racial, gender and monetary related lines. The Act stipulates that all High Courts are automatically designated

as Equality Courts, but more importantly affords the bulk of adjudicative powers relating to equality matters to the Magistrates' Courts. Regulations for Equality Courts were promulgated and, in 2009, all Magistrates' Courts were designated as Equality Courts. All High Courts also sit as Equality Courts. This has improved access to justice as the public can now lodge complaints of unfair discrimination at the Magistrates' Court nearest to their community.

119. The SAHRC Equality Report referred to above recommended that the promotional aspects enshrined in Chapter 5 of PEPUDA be urgently brought into operation by proclamation as required by the Act. The DoJ&CD is in the process of amending Chapter 5 due to limitations identified in the Act. Once Parliament has approved the amendments to the Act, the regulations can be finalised and then the amended Chapter 5 can be put into operation by the President through proclamation. The SAHRC has provided inputs on the draft Bill. The Bill will be submitted to Cabinet for consideration and approval and then finalised in consultation with the public through the Parliamentary processes.

The Truth and Reconciliation Commission (TRC)

120. Regarding the implementation of the TRC recommendations to prosecute persons who were refused amnesty for apartheid crimes, the lack of progress in relation to these cases, due to exceptional circumstances, is receiving due attention by the NPA. Taking on these complex historical cases present many challenges. Steps are being taken to involve the NPA researchers in these cases in order to enable their expeditious processing.

121. In April 2019, the then Minister of Justice and Correctional Services authorised an application by the NPA for the reopening of an inquest in relation to the death in detention of anti-apartheid activist Dr Neil Aggett. The NPA requested the South African Police Service to initiate an investigation into the matter upon receipt of representations from former colleagues of Dr Aggett. The SAPS investigation revealed several new facts which raise important questions about the findings of the magistrate who conducted the first inquest. The State is committed to ensuring that perpetrators of apartheid-era crimes who have not been granted amnesty by the TRC, or who never applied for amnesty, are brought to book. Government owes it to the families of activists like Dr Aggett to get to the bottom of the circumstances under which they died as well as to ensure that their killers have their day in court.

122. With regards to post-TRC reparations and exhumations and reburials – In total, five handover ceremonies were successfully conducted during the 2018/19 financial year. During those ceremonies, 20 remains were handed over to the families for subsequent and decent reburial.⁶⁸ With regards to education assistance, the number of applications verified for victim status (or rightful next-of-kin in the case of deceased victims) by the TRC Unit under

⁶⁸ Under the category of missing persons, the department successfully coordinated the handover ceremony of the remains of former MK member (Thabo Rammutle) in Pretoria on 16 March 2019, including the remains of Priscilla Mosoue (Kuki Zwane).

In respect of judicial executions category, the following handover ceremonies took place during the 2018/19 financial year:

The remains of two Pan Africanist Congress (PAC) members (Jabavu Mzondi and Gqibile Hans) who were killed for politically motivated offences that took place around Paarl, were handed over on 27 October 2018;

The remains of four Krugersdorp PAC members who were executed hanged in 1964, were handed over to their families by the Minister of Justice and Correctional Services on 16 March 2019 in Pretoria;

The remains of six PAC Cofimvaba and three Rwantana activists were also hanged on death row in handed over in 1963 and 1961 respectively, were handed over in the Eastern Cape on 23 March 2019;

Under special category of exhumations, handover and reburial of the remains, Government; coordinated the handover ceremony of the exhumed remains of two former Umkhonto weSizwe (MK) members (Mfaniseni Mdlalose and Mandla Mjwara) in Kwazulu-Natal on 18 August 2018 and the Minister of Justice and Correctional Services handed over the remains of ex-Deputy Chief of Staff of the Angolan Armed Forces General Arlindo Chenda Pena to his family on 13 September 2018 at Waterkloof Military Base in Pretoria.

basic education for the academic year 2018 are 1353. The number of learners, who met the criteria as set out in the relevant regulations are 999. The number of applications verified for victim status (or rightful next-of-kin in the case of deceased victims) by the TRC Unit under Higher Education and Training for the academic year 2018 are 457. The number of students, who met the criteria as set out in the relevant regulations for funding are 438. As far as the 2019 academic year is concerned, 1837 applications for basic education assistance were verified in terms of victim status, and 472 applications for higher education and training assistance.

123. Awareness raising roadshows on education assistance reparation commenced in May 2019 and were concluded in September 2019. The finalisation of the housing guidelines for internal approval will give effect to the collaboration by the Department with the Department of Human Settlements, Water and Sanitation to implement housing reparations. These processes above will bring us closer to the full implementation of TRC reparations.

124. With regards to the provision of housing opportunities, Government has drafted housing guidelines for TRC victims. The draft guidelines are awaiting further consultation with the housing and human settlements sector and other internal approval processes. Once these are approved, they will serve as a policy foundation for drafting regulations and be enforced by the Provincial Departments of Human Settlements who have the role and responsibility for implementing housing development. The above signals an important milestone in the history of South Africa. The above processes will bring South Africa closer to the full implementation of TRC reparations process.

125. With regards to the finalisation of regulations for Community Rehabilitation, a third draft of regulations to implement community rehabilitation is being subjected to a consultation process with civil society. Work has also been done on the establishment of Multi-Stakeholder Project Teams (MPT) in line with the draft regulations on community rehabilitation with a view to ensure maximum participation by affected communities and relevant stakeholders with a view to finalise the sign-off of five community projects.

126. The Gallows Exhumation Project was launched in March 2016 to commence with the exhumation of the remains of deceased victims who were hanged on death row. There are currently 24 remains left to be exhumed.

OPCAT and the NPM

127. South Africa signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in January 1993 and ratified it in December 1998. Our Prevention and Combating of Torture of Persons Act gives effect to South Africa's international treaty obligations, provides for the offence of torture of persons, prevents and combats the torture of persons within or across the borders of South Africa, and imposes a maximum penalty of R100 million or life imprisonment, or both, in the case of a conviction.

128. In September 2006 South Africa signed the Optional Protocol to the Convention against Torture (OPCAT) and there had been mounting pressure on South Africa, both at international and national levels, to ratify OPCAT. The National Assembly and the National Council of Provinces approved the ratification of OPCAT on 19 March and 28 March 2019, respectively, and thereafter we deposited the instrument of accession with the Secretary-General of the UN as required by Article 27 of OPCAT.

129. In terms of Article 28, OPCAT enters into force on the 30th day after the date of deposit of its own instrument of ratification or accession, being 20 July 2019. OPCAT can only work if we have a strong and independent National Preventive Mechanism (NPM). A lot of preparatory work has gone into the establishment of the NPM. The SAHRC along with government undertook an extensive process of revising and re-conceptualising the proposed NPM model. The model had to take into account certain factors, such as the fact that OPCAT is a preventive treaty which introduces a system of regular visits to places of detention, by means of the establishment of a mechanism, the NPM.

130. Article 3 of OPCAT requires that an NPM be established to carry out site visits, thus the NPM is a body specifically set up with a mandate to prevent torture in places of detention. It is to be noted that OPCAT does not give a boundless mandate to the NPM to undertake

visits to all places where people are detained. OPCAT limits the visits of the NPM to places of detention where persons are deprived of their liberty by public authorities, or by a court order or State sanction. Even where the NPM is authorised to undertake visits to, for example, a psychiatric hospital they would only be undertaking the visit to oversee the conditions of detention of patients who are detained by virtue of a court order.

131. A significant consideration in setting up our NPM was the fact that South Africa already has a number of institutions which have an oversight mandate over places of detention and as such these institutions already carry out many of the functions required by the NPM in terms of their respective mandates. Therefore, the following institutions will all be able to contribute to the work of the NPM, subject to legislative amendments to their enabling legislation and/or the conclusion of a memorandum of agreement:

- The Judicial Inspectorate for Correctional Services (JICS);
- The Independent Police Investigative Directorate (IPID);
- The Military Ombud;
- The Health Ombud;
- The Compliance Inspectorate of the Office of Health Standards Compliance (OHSC);
- The Department of Social Development's secure care and Child and Youth Care Centres' monitoring mechanism; and
- Mental Health Review Boards.

132. From a human rights perspective, the NPM is vital, as the NPM is to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. The NPM is also to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty. It has to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations and our Constitution, as well as submitting proposals and observations concerning existing or draft legislation.

Other treaties

133. South Africa is actively working towards the ratification of the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention for the Protection of All Persons from Enforced Disappearance; Violence and Harassment Convention, 2019 (no. 190); Convention on Occupational Health Services (no. 161), 1985; Labour Inspection (agriculture) Convention, 1969 (no. 129); Employment Services Convention, 1948 (no. 88); Private Employment Agencies Convention, 1997 (no. 181); Migration for Employment Convention, 1949 (no. 97); Migrant Workers (supplementary provisions) Convention, 1975 (no. 143) and Seafarers' Identity Documents Convention (revised), 2003 (no. 185). Consultations are under way within government to ratify these legal instruments. South Africa deems the ratifications of international human rights instruments as an act that supports our fundamental constitutional values and contribute to the country's stature in promoting respect for human rights around the world. The country continues improving its record in terms of honouring international obligations arising out these core human rights treaties.

134. The South African Government remains committed to facilitating and ensuring a successful visit by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.⁶⁹ Due to unforeseen and unavoidable circumstances, the South Africa Government has regrettably not been able to facilitate the visit by the Special Rapporteur. The Government is however exploring the possibilities of actualising the visit in the foreseeable future.

⁶⁹ Concluding Observations, para. 28.

Constitutional and human rights awareness and education

135. Knowledge is key in the attainment of human rights. Apart from the various human rights awareness programmes and projects carried out by the various state institutions supporting constitutional democracy, government, in partnership with the Foundation for Human Rights (FHR), is implementing a multi-year programme called the Socio Economic Justice for All (SEJA) Programme popularly referred to as “Amarightza”. The SEJA Programme focuses on improving awareness of rights with an emphasis on socio-economic rights, enhancing participatory democracy through policy dialogues, providing support to community advice offices, conducting research on socio-economic rights and jurisprudence, sector co-ordination, and engagement and participation of civil society organisations. The SEJA Programme is aimed at achieving 6 key result areas including, improved awareness of constitutional rights with an emphasis on socio-economic rights.

136. Another vehicle to assist communities in the attainment and protection of their human rights is Community Advice Offices (CAOs). These offices are small, non-profit organisations that offer free legal and human rights information, advice and services. In addition to rights-based information, CAOs educate communities on how and where to access services offered by government departments and agencies. Today community advice offices provide services that contribute to social justice and facilitate access to government services for the poor and marginalised. Community-based paralegals working within these offices to provide the support and front-line assistance to many who do not have the means to access other forms of legal services. Over the years, CAOs have provided much needed services to millions of poor and marginalised South Africans.

137. Government continues to develop and implement policies that bring about improved access to justice and making people aware of their rights. As much as our Constitution has been lauded across the globe as being a highly progressive and transformative one, a progressive Constitution alone will not realise rights if the people living within our country do not understand what it entails. It is imperative for us to ensure that every person within our borders knows and understands the Constitution. Many people in South Africa are poor and live in rural areas of the country and are often the most vulnerable - with women, children, people with disabilities, the elderly and lesbian, bisexual, gay, transgender and intersex persons being exposed to violence and related harm. Whilst efforts have been made by government, in collaboration with civil society organisations, to educate people about their rights and responsibilities, much still remains to be done.

138. In 2017/18 government together with its implementing partner, FHR, launched a well-received report – Baseline Survey on Access, Awareness and Attitude to Rights including socio-economic rights. The survey was conducted across the country involving 24000 households under the SEJA Programme. The SEJA Baseline Survey’s final sample consisted of 24 897 interviews and provides us with very useful information in order to assess where we stand on constitutional and human rights awareness. Respondents were asked if they had heard of the Constitution of South Africa and if they had heard of the Bill of Rights in Chapter 2 of the Constitution. Slightly more than half (51%) of respondents had heard of either. Male respondents were more likely (55%) than their female counterparts (47%) to have heard of either the Constitution or the Bill of Rights. With regards to the race of respondents, whites were the most likely (68%) to have heard of either, followed by Indian/Asian respondents (61%). While the majority (56%) of coloureds had heard of either the Constitution or the Bill of Rights, less than half (48%) of black African respondents had heard of either. What this tells us is that there is still an enormous task ahead of us in raising levels of constitutional and human rights awareness.

139. In order to enhance human rights awareness and education in schools, government together with the University of Pretoria, the SAHRC and the FHR annually organises the National Schools Moot Court Competition (NSMCC). Learners from all schools in the country are invited to participate, first by submitting essays, after which the ten strongest teams are selected to oral provincial rounds. The finals are held in Johannesburg at the Constitutional Court where the teams present their case in front of judges of the Constitutional Court.

Article 7: Measures in the fields of teaching, education, culture and information to combat racial discrimination

Education

140. Government seeks to provide access to education to all learners, which is a basic right enshrined in the South African Constitution. Public schools include those entirely funded by government and others partially funded by the school governing body. Often there is a great variance in terms of teacher-learner ratios, facilities, resources and affordability between the different types of schools.

141. The South African Schools Act, 1996⁷⁰ (SASA) makes it compulsory for any public school to admit learners and to serve their education requirements without unfairly discriminating against them in any way.

142. Access to basic education in South Africa has improved. The number of Grade R learners aged 5 and 6 increased from 87.2% and 95.9% in 2014 and to 88% and 96.6% in 2018 respectively. Access to Grade R is almost universal. Since 2009, more than 90% of learners in Grade 1 have previously attended Grade R. The General Household Survey indicates that the percentage of children between the ages of 0 and 4 participating in ECD programmes has increased from 8% in 2002 to 42% in 2017.

143. Despite these dramatic improvements in early learning, quality and access limitations remain. Grade R for poor children has shown to have little effect on learning, indicating a problem in quality. Below Grade R, coverage is uneven; and the poorest and most vulnerable are often excluded. Stronger policy, implementation and leadership is necessary.⁷¹ ECD policy must be further refined in terms of entitlement of citizens, composition of the package of services, financing, oversight and delivery responsibility. Legislation is needed to firmly establish the policy to guide the responsible institutions and to provide clarity for monitoring and accountability.

144. Near universal school coverage has been achieved, with school attendance by children aged 7 to 15 at about 99%. The implementation of the National School Nutrition Programme is now benefiting 9 million learners. Education outcomes have improved with National Senior Certificate passes reaching 78.2% in 2018.

145. The performance of learners with special needs has also improved. Learners with special needs who obtained Bachelor passes increased from 443 in 2015 to 1,669 in 2018. The number of special needs learners writing Grade 12 exams has increased from 1,691 to 3,591.

146. The Funza Lushaka Programme for teacher development has supported 120,511 beneficiary teachers at a cost of R7.2 billion. Government has invested in improving access to skills development in post-school education, as evidenced by a consistent increase in enrolments at secondary and post-school levels, due in part to government's support through no-fee schools and the National Student Financial Aid Scheme. This has changed the profile of the student population.

147. Education remains the largest spending area in terms of government's budget.⁷² Institutions of state, particularly schools, universities and colleges, have not transformed enough. Educational outcomes are skewed, reflecting the inequality between poor township schools and well-resourced private suburban schools.

148. According to the Department of Basic Education's 25 Year Review, 99% of 7 to 15-year-olds were attending educational institutions in 2017 (an increase from about 96% in 2002). Among 16- to 18-year-olds, the participation rate decreases to 86%, indicating a

⁷⁰ Act 84 of 1996.

⁷¹ Medium Term Strategic Framework 2019–2024.

⁷² The DBE has over the 2016/17 year spent R 233 054 081. During the 2017/18 financial year it spent R 248 091 755. The budget for the 2018/ 2019 financial year was R 262 151 293 and the total budget for the 2019/2020 year is R 277 682 821.

reversal in gains made in reaching universal access for learners aged 7 to 15, with some dropping out and others taking longer to reach Grade 12.

149. While South Africa lags behind other countries in terms of quality of education, recent standardised international assessments show that levels of learning in South African schools have been improving. The challenge is to sustain these improvements and reduce the dropout rate, to ensure higher flows into, and successful completion of, further education.

150. The Constitution of the Republic of South Africa prohibits unfair discrimination based on language. It recognizes the use of 11 official languages without discrimination. The Language Policy Framework (2002) promotes the use of African languages to ensure redress in the light of historical discrimination and the recognition of and respect for language diversity, language variety and language choice. According to the Language in Education Policy, all 11 Languages are used as the language of learning and teaching (LOLT) in the Foundation phase (Grade 1–3) and in the higher grades (4–12), the 11 languages are taught as a subject, while English and Afrikaans are also used as the LOLT. The decision on which languages to offer as a subject in school is a decision made by the School Governing Body. History is offered as an elective subject in Grades 10–12, and in the intermediate and senior phase (4–9) history is offered as a compulsory subject as part of Social Studies. History is taught using a lens of multi-perspectives. It is also taught as a source-based question.

151. South Africa still faces challenges of racism and inequality at schools and institutions of higher learning. One of the biggest challenges is that schools and institutions of higher learning are not fully integrated. We need to address the legacy of segregated education and to address attitudes and prejudices responsible for the persistence and continued existence of racism. We also need to address distortions and biases in the way in which history has been presented and promote tolerance and respect for racial, cultural and religious diversity. It is imperative to integrate anti-racism training and education into the curriculum, particularly the values and democracy components and to develop curricula that deal honestly, objectively and truthfully with our painful past and to promote greater integration of schools. We need to ensure that schools are not only desegregated but also integrated. Schools must reflect the demography, diversity and richness of our country's cultural heritage.

152. Government is implementing human rights education in schools to promote the Constitutional values through Oral History, National School Moot Court, Heritage, Citizenship and Nation Building Programmes.⁷³ The current Curriculum and Assessment

⁷³ Some of the highlights include the following:

Care and Support for Teaching Learning (CSTL) as the 'Centre hold' of protecting children and ensure they receive proper services that enhances their well-being. The CSTL Programme is a Southern African Development Community (SADC) initiative that was adopted by Education Ministers in 2008. The goal of the CSTL Programme is to realize the educational rights of all children, including those who are most vulnerable, through schools becoming inclusive centres of learning, care and support.

Participation in International School Moot Court. The National School Moot Court which is a Constitutional Literacy Program exposing learners to human rights education, offer learners an opportunity to show case their knowledge and understanding of the National and International Human Rights and legal frameworks and case laws that relate to access to education, the rights to education and health, cultural rights and crime against humanity. In 2018 the South African Team participated in the fourth International School Moot Court and a learner from Eastern Cape was nominated as the best orator.

Jamboree for Future Choices is a service delivery platform seeking to promote socially cohesive and inclusive schools. The platform addresses barriers related to social welfare, life skills and career development services for marginalised groups. Through this platform schooling communities can have access to a range of services aimed developing socially inclusive practices focused on addressing the inequities of the past. This "platform" augments the deliverable highlighted by the CAPS in its intent of equipping learners, irrespective of their socio-economic background, race, gender, physical ability or intellectual ability, with the knowledge towards skills acquisition, values, self-fulfilment and a meaningful participation in society.

A Ministerial Committee to evaluate a broad sample of existing textbooks and learning materials to develop a textbook policy towards the promotion of diversity was established during 2016 for the purpose of undertaking a mini evaluation of a sample of school textbooks and the Learning and

Policy Statements (CAPS) are underpinned by the values of the Constitution and human rights principles.

153. Government has several programmes that provide a comprehensive response to gender-based violence in schools. These programmes have been institutionalized in the Curriculum and Assessment Policy Statements in the Life Orientation Curriculum across all grades and bands. The programmes include the following:

- *The Bill of Responsibilities (BOR)*: Building a culture of humanity and accountability in schools. This programme which is captured as Rights & Responsibilities in the LO Curriculum includes gender rights. It is supported by a Bill of Responsibilities that is premised on the Bill of Rights that each right comes with a corresponding responsibility. The programme is further supported by a teacher training manual that provides the content and activities for teachers to teach about Rights & Responsibilities. Thus far all provinces received training in the BOR;
- *Values in Action*: A training manual in constitutional values and school governance for school governing bodies and representative council of learners in South African schools. School Governing Bodies and Representative Council of Learners are the champions of the ethos and policies of schools. The manual provides valuable information on the constitutional rights and responsibilities of learners including dedicated chapters on 'Gender and Sexual Orientation', Sexual violence and Harassment. The manual has been used in the social cohesion training programme and to train SGBs and RCLs;
- *Opening Our Eyes*: This is a manual for educators on addressing GBV in schools. It comprises of eight chapters that focuses on understanding GBV, its implications, legislative framework that governs GBV as well as issue on protecting learner's wellbeing;
- *Workbook Programmes*: DBE has also provided scripted lesson plans and messaging on GBV and CSE in the LO workbooks. Developmentally appropriate messaging and information has been included for grades 4 - 12. The project supports the right based approach to CSTL programme, which includes support for teacher training through Teaching for All;
- *Protocol on Management and Reporting of Sexual Abuse and Harassment in Schools*: The purpose of the Protocol is to provide schools, districts and provinces with standard operating procedures for addressing allegations, and to specifically detail how schools must respond to reports of sexual abuse and harassment perpetrated against learners, educators and other school staff. The protocol therefore serves to ensure a safe, caring and enabling environment for learning and teaching, both inside and outside of the classroom;
- *A School Safety Summit was convened by DBE late last year*. Key to the summit resolution was the establishment of the National School Safety Steering Committee;
- *Gender Empowerment Programmes*: Although the basic education sector has achieved gender parity and overwhelming access to education, the performance of girls in traditionally male dominated subject continues to lag behind their male counterparts. DBE has therefore partnered with other departments and external partners to support the TechnoGirl programme. The Programme specifically targets young girls in the field of Science, Technology, Economics and Maths. DBE also supports a UNICEF sponsored programme that targets the empowerment of girls and boys. The GEMBEM movement provides learners with the opportunity to harness their social capital as peers to positively impact on themselves and their communities. Part of the programme includes the Jamboree for Future Choices that provide information on careers and life skills which have a strong gender bias;

teaching support materials (LTSMs) which indicated that, although a screening process is conducted, textbooks still contain discriminatory content. Therefore, the Department established a Ministerial Committee to evaluate a broad sample of existing textbooks and Learning and Teaching Support Material (LTSM) aimed at the development of a textbook policy which promotes diversity.

- *Advocacy*: DBE also utilises advocacy programmes to address GBV. “Speak out against Abuse” has been developed as an advocacy programme for learners that informs them of their rights and the course of action if they are sexually harassed or raped. It is supported by a comprehensive and learner friendly handbook entitled ‘Speak Out’- a handbook for learners on how to prevent sexual abuse in schools. The programme utilises school dialogues and role playing to address GBV. The booklet has been distributed to schools;
- *Prevent Violence in Schools*: is a programme in which a learner is capacitated in taking the lead in working to end the problem of violence in our schools. The focus is about rights and responsibilities so that a learner can be able to defend and protect human rights that are threatened by violence in schools. It emphasises working together with other learners as well as all other relevant stakeholders;
- *Curriculum transformation has begun*: DBE has a responsibility to promote equality and appreciation of diversity by ensuring that textbooks are free from bias in terms of race, sex, gender, language, family status, sexuality, religion and other forms of discrimination. Textbooks can potentially undermine respect for diversity and tolerance if they are not inclusive or fail to represent minority cultures and groups.

154. Corporal or physical punishment has been prohibited in South African schools since 1996. South Africa’s ratification of international conventions such as the United Nations Convention on the Rights of the Child and regional charters such as the African Charter on the Rights and Welfare of the Child has further cemented the country’s commitment to protecting children from violence.

155. Chapter 9 of the National Development Plan envisages a country where all children can access and benefit from a high-quality education. There are still challenges facing education. Government is committed to ensuring that all children regardless of their race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth etc. have access to basic education. As such, Government takes incidences of racial tensions and school disruptions very seriously. All cases of alleged racial hatred or incitement to racial discrimination or acts of violence are referred to the SAHRC for adjudication.

156. Subject to the South African Schools Act and any applicable provincial law, a governing body of a public school must adopt a code of conduct for learners to establish a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process. It is non-negotiable that the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person or incitement to racial discrimination or acts of violence against any race or group of persons of another colour or ethnic group is not only serious misconduct, but also a direct malicious and destructive act in establishing a disciplined school environment. According to section 9(1) of the SASA, a learner who is suspected of serious misconduct may be suspended from attending school by the governing body, on reasonable grounds and as a precautionary measure. However, the SASA states that such suspension may only be enforced as a last resort after a learner has been granted a reasonable opportunity to make representations to it in relation to such suspension. Then a governing body will conduct a disciplinary proceeding against a learner within seven school days after the suspension of such a learner.

Transformation in Institutions of Higher Learning

157. The Policy Framework for the Realisation of Social Inclusion in the Post School Education and Training (PSET) System (2016) was developed and approved with the aim of combating all forms of discrimination, including lack of tolerance of diverse views in the PSET System. It advocates for the democratisation of governance structures, mixed residences, recognition of the needs of students and staff with disabilities, democratisation of teaching and learning, recognition of different knowledge systems and gender rights as human rights. This policy framework is one of the responses to the recommendations of the Report of the Ministerial Committee on Transformation and Social Cohesion and the

Elimination of Discrimination in Public Higher Education Institutions.⁷⁴ This policy framework serves as a guide to PSET institutions (colleges of all types and universities) to develop their own internal policies.

158. This over-arching Policy Framework has formed the basis of the two other Policy Frameworks; the Strategic Policy Framework on Disability in the PSET System (2018) and the Draft Policy Framework to Combat Gender-Based Violence in the PSET System (published in the Government Gazette for public comment in May 2019).

159. Structural obstacles to the achievement of the right to education do exist. Research has consistently shown that the strongest determinant of educational outcomes in South Africa is socio-economic status. Given the history of South Africa, there is an overlap of poverty, race and historical disadvantage. Although education and economic policies are designed to be pro-poor the negative effect of home background factors cannot be completely eradicated. The pace of social and economic development in the country is therefore a long-term obstacle to full realisation of the right to education.

Part 3

General issues

160. The issue of land ownership in South Africa is an emotive one, predominantly due to the legacy of laws of dispossession such as the Native Land Act of 1913.

161. South Africa's total land area is 121.9 million hectares, but not all of it is registered. Government's 2017 land audit found 7.7 million hectares of unregistered land in the Eastern Cape and Limpopo provinces, held in trust by the state. The land audit looked at South Africa's 114.2 million hectares of registered land (i.e. 94% of the total land) and found that just over 77% (94 million hectares) of the total land is privately owned. Individuals own close to a third (30% or 37 million hectares) of total land. The land audit only provided a breakdown by race and sex for private land owned by individuals.

162. When it comes to farms and agricultural holdings owned by individuals: 26,663,144 ha or 72% of landowners are Whites; followed by Coloured at 5,371,383 ha or 15%; Indians at 2,031,790 ha or 5%; Africans at 1,314,873 ha or 4%. Individuals with land ownership by race in hectares is set out in Table 11 annexed hereto.

163. The Land Claims Court was established in 1996 to address disputes that arose out of laws that underpin South Africa's land reform initiative. The Land Claims Court has the same status as any High Court. Any appeal against a decision of the Land Claims Court lies with the Supreme Court of Appeal, and if appropriate, to the Constitutional Court. The Land Claims Court was established in 1996 by way of the Restitution of Land Rights Act, 1994.⁷⁵ Its primary focus is dealing with land restitution/ land claims cases. The court also deals with the Extension of Security Tenure Act, 1997⁷⁶ and the Land Reform (Labour Tenants) Act, 1996. These two acts were enacted by parliament to protect farm dwellers/workers from ill treatment and illegal evictions.⁷⁷

164. The Commission on Restitution of Land Rights in its drive to provide equitable redress to victims of racially motivated land dispossession, in line with the provisions of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), is responsible for investigating and processing restitution claims. The restitution process is implemented in line with the provisions of Section 25 of the Constitution of South Africa, which places an emphasis on

⁷⁴ The Soudien Report, November 2008.

⁷⁵ Act 22 of 1994.

⁷⁶ Act 62 of 1997.

⁷⁷ The Land Claims Court was conferred with the jurisdiction thereof. However, the various magistrate courts around the country also have jurisdiction in terms of the Extension of Security Tenure Act although their orders pertaining evictions are subject to automatic reviews by this court. Primarily, the court has to ensure that the rights of farm workers/dwellers are protected in that all evictions are done within the framework of the aforementioned legislation.

equitable redress. Since inception the Commission has settled 81,782 land claims benefiting 435,572 households and 2,179,108 people. A total of 166,207 beneficiaries were from female headed households and 1,133 were people with disabilities. In addition, R16,669,247,388,12 was spent on financial compensation for beneficiaries.

165. Government is in the process of introducing the Land Court Bill including establishing a Land Court, which will replace the Land Claims Court in the current system. Under this bill, the Land Court will have the jurisdiction to deal with certain identified national laws which have a bearing on land and also promote and provide for alternative dispute resolution mechanisms.

Land Redistribution and Land Tenure Statistics since April 2015

March 2020

166. Table 12 annexed hereto indicates that a total of 504,950 hectares of land that were acquired and transferred to 4,261 beneficiaries between April 2015 and March 2020. Of these beneficiaries 1,310 (38%) are women, 897 (21%) are youth people and 6 are people with disabilities.

167. Table 13⁷⁸ annexed hereto, indicates that 428,975 hectares of land were allocated to 292,877 beneficiaries in the same period of which 153,986 (36%) were women, 134,313 (31%) and People 4,578 (1%) people with disability.

168. In order to accelerate land reform, in 2018 His Excellency, President Cyril Ramaphosa established an Inter-Ministerial Committee (IMC) on Land Reform. The IMC provides political oversight and oversee the implementation of measures to accelerate the redistribution of land in urban and rural areas and serve as a catalyst to fast-track land restitution and redistribution. The focus is on the following areas:

- Overseeing progress on legislative processes intended to conclude current and pending bills;
- Development and implementation of packages for post settlement support to enhance production and economic growth;
- Massifying production in communal areas including the provision of intensified support before the planting season starts;
- Ensuring security of tenure for farm dwellers on land already occupied by these households without negatively affecting production;
- Accelerating urban land redistribution to decisively change the apartheid geography of the cities and towns and unlock economic value in townships, villages and small towns.

Preparation of the report and inputs from civil society

169. In order to facilitate consultations and inputs from civil society a consultative workshop between government and civil society had been scheduled for March 2020. However, due to the outbreak of Covid-19 a national state of disaster was declared on 15 March 2020 and a period of national lockdown followed. This resulted in the planned consultative workshop having to be cancelled. Despite the cancellation of the workshop, drafts of the report were sent to civil society role-players and a number of issues were raised. These can be summarised as follows:

- A lack of statistical data on education for undocumented foreign nationals;
- The length of time to process applications for asylum and a backlog of claims;
- Concerns about the process of applying for refugee status becoming more onerous;

⁷⁸ All tables annexed in the report are contained in Annexure F.

- Inconsistent participation of some government representatives on the United Nations Protection Working Group (UNPWG).

170. In order to further facilitate civil society discussion and dialogue in the report, Government convened a virtual workshop with the civil society on 02 September 2020. The Deputy Minister of Justice, Mr John Jeffrey provided a keynote address at the workshop and members of the CSOs were afforded an opportunity to raise questions to the Deputy Minister on different aspects of the country report and how the Government was implementing the ICERD objectives. Some of the pertinent issues, comments and inputs from members of the CSOs included amongst others:

- Insufficient information on the matters affecting the LGBTI community in the country report;
- Responses to issues raised in the SAHRC Equality Report 2017/2018;
- Implications of the Qwelane homophobic hate speech case on the Hate Crime and Hate Speech Bill and PEPUDA;
- Combatting xenophobia and eradication of statelessness in South Africa;
- Training of the NGO sector on the application of the law relating to gender-based violence.

171. Government wants to confirm that the issues, comments and inputs raised at the consultative report were incorporated in the final country report. The consultative workshop was appreciated by the CSO and some suggested this to be an ongoing process for example a quarterly consultative workshop between Government and CSOs relating to specific themes such as – Human Rights – Gender Based Violence – Races and Discrimination – Constitutional Values. Government commits to entrench this participatory democracy in compiling all country reports as the protection of human rights cannot be a function of Government alone but a concerted effort between Government and civil society.

Concluding remarks

172. This periodic Report seeks to share with the Committee the extent to which South Africa has implemented the provisions of the CERD. The work that must be done to address the inequalities which have resulted from years of apartheid rule is substantial. Dismantling the edifice of apartheid involves much more than the repeal of apartheid legislation and its replacement with legislation based on equality and the rule of law.

173. The achievement of substantive equality requires a much more determined effort. Policy formulation requires the careful balancing of interests, with the goal of enhancing the dignity of all of our people whose everyday lived experiences still in many ways reflect the legacy of apartheid. As Government, all of our work is directed towards redressing the inequalities of the past.
