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South Africa*

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I. General information

1. This document contains information of both a general and specific nature relating to the implementation of the treaties to which South Africa is party, and which may be of relevance to all, or several, treaty bodies. It endeavours to provide information relevant to the appreciation of South Africa's obligations under the various UN treaties that it is a party to, and must be read together with the treaty-specific reports that South Africa has submitted under each of the treaties. The document has been prepared in line with the harmonised guidelines of the Human Rights Committee regarding the form and content of periodic reports to be submitted by State Parties.

A. Demographic, economic, social and cultural characteristics

2. South Africa is located at the southern tip of Africa and shares its borders with Namibia, Botswana, Zimbabwe, Mozambique and Swaziland. Lesotho is completely enclosed by South Africa. South Africa occupies 1 220 813 square kilometres. The land area of South Africa is constituted of land areas of nine provinces and, at July 2018, the estimated population of South Africa is 57,7 million people¹ with just over 51% (approximately 29,5 million) of the population being female.² The demographic profile of the population is set out in the table below.

Table 1
Demographic profile (July 2018)³

Population	
Percentage of females in population	51,4%
Percentage of males in population	48,6%
Population younger than 15	29,5%
Population, 60 or older	8,5%
Life expectancy at birth	
Male	61,1 years
Female	67,3 years
Crude birth rate	21,6
Fertility rate (2016–2021)	2,54
Population growth (2017–2018)	1,55%
Religion	Christian 86%, No religion 5.2%, Islam 1.9%, Hinduism 0.9%, Other faith 0.6%, African traditional churches 5,2%, Judaism 0.2%
Language	11 official languages

3. South Africa has adopted a process of self-identification/self-classification in the analysis of its racial demography. The use of racial demographics and “designated groups” (as is used in the Employment Equity Act, 1998⁴ for example) is required to measure equity

¹ Mid-year population estimates, 2018, Statistics South Africa, Statistical Release P0302, released July 2018.

² See note 1.

³ See note 1.

⁴ Act 55 of 1998.

and redress. The mid-year population estimates for South Africa by population group and sex for 2018 are as set out in the table below.

Table 2
Mid-year population estimates for South Africa by population group and sex (July 2018)⁵

<i>Population Group</i>	<i>Male</i>		<i>Female</i>		<i>Total</i>	
	<i>Number</i>	<i>% of total Male Population</i>	<i>Number</i>	<i>% of total Female Population</i>	<i>Number</i>	<i>% of total Population</i>
Black African	22 786 200	80,9	23 896 700	80,9	46 682 900	80,9
Coloured	2 459 500	8,7	2 614 800	8,9	5 074 300	8,8
Indian/Asian	740 200	2,6	708 100	2,4	1 448 300	2,5
White	2 194 200	7,8	2 325 900	7,9	4 520 100	7,8
Total	28 180 100	100,0	29 545 500	100,0	57 725 600	11,0

4. There are a total 16,9 million households with an average household size of 3,3.⁶ Female-headed households had a higher average household size of 3,36 compared to male-headed households, which had an average size of 3,25. The same general pattern is observed across all settlement types. Female-headed households in traditional areas had the highest average household size of 4,36, while male-headed households in urban informal areas had the smallest average household size of 2,71.⁷ Data shows that women, children, black Africans, those living in rural areas, and those with low levels of education, are the most poor in South Africa. Fertility is higher among non-urban women than among urban women. Consistent with this observation, age-specific fertility rates are higher in non-urban areas than urban areas across all age groups. Details of fertility rates are set out in the table below.

Table 3
Fertility rates (2016)⁸ Age specific and total fertility rates, general fertility rates, and the crude birth rate for the 3 years preceding the survey, according to residence

<i>Age group</i>	<i>Residence</i>		<i>Total</i>
	<i>Urban</i>	<i>Non-urban</i>	
15–19	62	86	71
20–24	125	150	133
25–29	131	156	139
30–34	94	107	98
35–39	52	87	62
40–44	21	29	23
45–49	1	4	2
TFR (15–49)	2.4	3.1	2.6
GFR (15–44)	87	109	94
GFR (15–49)	80	101	87
CBR	21,9	23.1	22.3

Notes: Age-specific fertility rate are per 1,000 women. Rates for age group 45–49 may be slightly biased due to truncation. Rates are for the period 1–36 months prior to interview.

⁵ See note 1.

⁶ Sustainable Development Goals: Baseline Report 2017, Statistics SA.

⁷ Living Conditions of Households in South Africa, An analysis of household expenditure and income data using the LCS 2014/2015, Statistical Release P0310, released 27 January 2017.

⁸ South Africa Demographic and Health Survey 2016: Key Indicator Report, Statistics South Africa.

TFR: Total fertility rate expressed per woman

GFR: General fertility rate expressed per 1,000 women age 15–44 or per 1,000 women age 15–49

CBR: Crude birth rate, expressed per 1,000 population

5. The National Development Plan (NDP) adopted by South Africa envisions a life expectancy of at least 70 years, a largely HIV-free population below 20 years, 28% reduction in non-communicable diseases, 50% reduction in injuries, accidents and violence, infant mortality rate less than 20 per 1 000 live births, under-five mortality rate less than 30 per 1 000 live births, maternal mortality rate less than 100 per 100 000 live births and combating the tuberculosis and HIV/AIDS epidemics by 2030.⁹ ‘Health care for all’ is one of the key development objectives outlined in the NDP amid commitments to achieve universal health coverage. South Africa adopted the United Nations Sustainable Development Goals (SDGs) that are also founded on leaving no one behind in health. South Africa is making significant progress in achieving the targets set out in the NDP pertaining to life expectancy, under 5 mortality, neonatal and infant mortality and maternal mortality rates. The full demographic indicators from 2002 to 2017 are set out in the table below.

Table 4
Demographic indicators, 2002–2017¹⁰

Year	Crude Birth Rate	Life Expectancy			Infant Mortality Rate	Under 5 Mortality Rate	Crude Death Rate	Rate of Natural Increase (%)
		Male	Female	Total				
2002	21,7	52,9	56,6	54,9	48,1	71,3	13,4	0,83
2003	21,7	52,5	55,8	54,2	48,1	71,6	14,0	0,77
2004	22,7	52,2	55,3	53,8	48,7	71,8	14,4	0,83
2005	23,4	52,1	54,8	53,5	49,1	72,5	14,8	0,86
2006	24,1	52,3	54,7	53,5	48,7	71,7	14,8	0,93
2007	24,8	53,3	56,1	54,7	47,8	70,1	14,0	1,08
2008	24,8	54,3	57,9	56,1	46,6	67,6	13,0	1,18
2009	24,4	55,0	58,7	56,9	42,8	63,3	12,6	1,18
2010	23,9	56,4	60,6	58,5	41,1	58,4	11,6	1,23
2011	23,5	57,6	62,7	60,2	39,9	54,4	10,7	1,28
2012	23,3	58,5	63,6	61,1	38,8	51,5	10,2	1,31
2013	23,0	59,2	64,6	61,9	37,4	49,1	9,8	1,32
2014	22,7	59,7	65,1	62,5	36,0	47,1	9,6	1,31
2015	22,2	60,0	65,5	62,8	34,0	44,7	9,5	1,27
2016	21,7	60,6	66,1	63,4	33,5	43,6	9,2	1,25
2017	21,3	61,2	66,7	64,0	32,8	42,4	9,0	1,23

6. The estimated annual population growth rate from 2002 to 2017 is set in the table below:

⁹ Mortality and causes of death in South Africa, 2016, Statistical Release P0309.3, March 2018.

¹⁰ Mid-year population estimates, 2017, Statistics South Africa, Statistical Release P0302, released July 2017.

Table 5
Estimated annual population growth rate (2002–2017)¹¹

Period	Children 0-14	Youth 15-34	Elderly 60+	Total
2002–2003	-0,85	2,48	1,34	1,17
2003–2004	-0,50	2,35	1,45	1,20
2004–2005	-0,16	2,18	1,60	1,23
2005–2006	0,21	1,96	1,74	1,26
2006–2007	0,45	1,73	1,87	1,29
2007–2008	0,58	1,61	2,11	1,32
2008–2009	0,74	1,49	2,30	1,35
2009–2010	0,84	1,36	2,46	1,38
2010–2011	0,94	1,24	2,59	1,41
2011–2012	1,23	1,02	2,69	1,45
2012–2013	1,39	0,87	2,75	1,48
2013–2014	1,46	0,78	2,90	1,51
2014–2015	1,44	0,68	2,95	1,54
2015–2016	1,54	0,32	2,98	1,58
2016–2017	1,56	0,18	2,99	1,61

7. The ten leading underlying natural causes of death, 2014–2016, are set out in the table below.

Table 6
Ten leading underlying natural causes of death, 2014–2016¹²

Causes of Death (based on ICD-10)	2014			2015			2016		
	Rank	Number	%	Rank	Number	%	Rank	Number	%
Tuberculosis (A15-A19)	1	39 695	8,3	1	34 042	7,2	1	29 513	6,5
Diabetes mellitus (E10-E14)	3	24 092	5,1	2	25 774	5,4	2	25 255	5,5
Other forms of heart disease (I30-I52)	4	23 009	4,8	4	23 299	4,9	3	23 515	5,1
Cerebrovascular diseases (I60-I69)	2	24 258	5,1	3	23 505	5,0	4	23 137	5,1
Intestinal infectious diseases (A00-A09)	6	22 866	4,8	5	22 557	4,8	5	21 830	4,8
Human immunodeficiency virus [HIV] disease (B20-B24)	7	18 416	3,9	7	19 845	4,2	6	19 960	4,4
Hypertensive diseases (I10-I15)	5	22 878	4,8	6	21 001	4,4	7	19 638	4,3
Influenza and pneumonia (J09-J18)	9	14 574	3,1	8	16 475	3,5	8	16 577	3,6
Other viral diseases (B25-B34)	..	..	..	10	12 714	2,7	9	12 883	2,8
Ischaemic heart diseases (I20-I25)	..	..	..	..	..	..	..	..	..

¹¹ See note 10.

¹² See note 9.

<i>Causes of Death (based on ICD-10)</i>	2014			2015			2016		
	<i>Rank</i>	<i>Number</i>	<i>%</i>	<i>Rank</i>	<i>Number</i>	<i>%</i>	<i>Rank</i>	<i>Number</i>	<i>%</i>
Chronic lower respiratory diseases (J40-J47)	10	12 793	2,7	9	13 006	2,7	10	12 659	2,8
Intestinal infectious diseases (A00-A09)	8	14 834	3,1	..	..	..	..	..	..
Other natural causes		208 537	43,7		207 820	43,9		200 403	43,9
Non-natural causes		50 939	10,7		53 228	11,2		51 242	11,2
All causes		476 891	100,0		473 266	100,0		456 612	100,0

8. The National Strategic Plan for HIV, TB and STIs, 2017–2022 provides a comprehensive review of the state of the HIV epidemic as well as plans to curb new infections and mitigate stigma and discrimination. Currently there are 7.1 million people living with HIV and 4.2 million on ARV treatment. The intention is to add another 2 million people on ARVs by December 2020 to reach the UNAIDS 90-90-90 targets. In terms of preventing mother to child transmission of HIV, transmission at 6 weeks postpartum has reduced from 8% in 2008 to 1.4% in 2017. The HIV prevalence figures are set out in the table below.

Table 7
HIV prevalence (2014–2017)¹³

<i>Year</i>	<i>Prevalence</i>			<i>Incidence Rate % 15–49</i>	<i>HIV population (millions)</i>
	<i>Women 15–49</i>	<i>Adult 15–49</i>	<i>Total pop</i>		
2014	21,40	18,25	12,46	0,97	6,67
2015	21,34	18,17	12,50	1,01	8,80
2016	21,29	18,10	12,55	1,00	6,93
2017	21,17	17,98	12,57	0,91	7,06

9. About seven in every ten (71,2%) households reported that they made use of public clinics, hospitals or other public institutions as their first point of access when household members fell ill or were injured. By comparison, a quarter 27,4% of households indicated that they would go to private doctors, private clinics or hospitals. Nearly a quarter (23,3%) of South African households had at least one member who belonged to a medical aid scheme. However, a relatively small percentage of individuals in South Africa (17,1%) belonged to a medical aid scheme in 2017.¹⁴

10. The number of children aged between 7 and 17 years in South Africa has increased from 11,1 million in 2010 to 11,2 million in 2015, an increase of around 127 000. The proportion of children was equally distributed across both sexes in 2015. In 2015, the majority of children (74,8%) aged 7–17 years had both parents alive while 7,3% of them had neither of their parents alive. The proportion of children whose parents were not members of the household in 2015 was higher among black African children (28,3%) compared to other population groups. It is observed that in 2015, the number of children whose parents were not household members lived with at least one grandparent in a household decreased to 52,9% from 56,5%. About (98,4%) of children were attending school in 2015. In 2015, children who had no parents alive were more likely not to attend school compared to those whose mother or father was the only parent alive. Children who stayed with both parents or were staying with their mothers were more likely to attend school.¹⁵

¹³ See note 10.

¹⁴ General Household Survey, Statistics SA, Statistical Release, P0318, released June 2018.

¹⁵ Survey of Activities of Young People, 2015, Statistics SA, Statistical Release, P0212, released March 2017.

11. With regards to **education**, section 29 of the Constitution of the Republic of South Africa, 1996¹⁶ (“the Constitution”) provides for the right to education. Legislation was enacted making schooling compulsory for children from the year in which a child turns 7 up to 15 years (or 9th grade, whichever occurs first) in order to compel parents and provincial education departments to take all necessary initiatives to ensure that children receive basic education. To facilitate this, further legislative steps were taken to allow for the declaration of schools in poverty-stricken areas to be declared “no-fee schools”, thus providing support to children from poor families as well as orphans. About 9 million learners in 20 965 public schools benefitted from the “no-fee schools” policy. This represents 87,1% of public schools being classified as “no-fee schools” thus benefitting 71,8% of learners in those schools.¹⁷

12. Research confirms that addressing the early childhood development needs of those aged 0–4 years pays significant dividends. South Africa has, in this regard, made access to comprehensive early childhood development (ECD) programmes a very important educational priority. The ECD programmes are offered at day-care centres, crèches, playgroups, nursery schools and in pre-primary schools. Approximately 42,8% of South African children aged 0–4 years attended day-care or educational facilities outside their homes. Approximately 87,5% of South African individuals above the age of five years who attended educational institutions, attended school, while a further 4,5% attended tertiary institutions. By comparison, only 2,1% of individuals attended Technical Vocational Education and Training (TVET) colleges. Whilst the percentage in this broad age group has not changed, at peak ages of 7–15 years, attendance is almost universal.¹⁸

13. The percentage of learners who reported that they were exempted from paying tuition fees increased from 0,4% in 2002 to 66,0% in 2017. Provincially, 91,4% of learners in Limpopo and 76,6% of learners in Eastern Cape attended no-fee schools, compared to 48,8% of learners in Western Cape and 48,5% of learners in Gauteng.

14. There were approximately 14 million learners at school in 2017, of which 5,9% attended private schools. Three-quarters (77,3%) of learners who attended public schools benefitted from school feeding schemes. Furthermore, 68,1% of learners walked to school, while 8,2% used private vehicles. Approximately 686 000 students were enrolled at higher educational institutions during 2017. More than two-thirds (66,4%) of these students were black African. However, proportionally this group is still under-represented.¹⁹

15. Educational attainment outcomes continue to improve with improved access to educational facilities and services. Among individuals aged 20 years and older, the percentage who attained Grade 12 as their highest level of education increased from 30,7% in 2002 to 43,6% in 2017. Furthermore, the percentage of individuals with tertiary qualifications improved from 9,2% to 13,9%. The percentage of individuals without any schooling decreased from 11,4% in 2002 to 4,7% in 2017. Although results show that there were declines in percentages of persons who had no formal schooling in all the provinces over the period 2002 to 2017. Whilst functional illiteracy declined from 27,3% in 2002 to 13,7% in 2017, improved access to schooling has led to a significant decline in the percentage of functionally illiterate individuals in the 20–39 age group.

16. Between 2002 and 2017, the prevalence of functional illiteracy in the age group 20–39 years declined noticeably for both men (17,1% to 6,0%) and women (15,8% to 3,5%).

¹⁶ Act 108 of 1996.

¹⁷ Education Series Volume III Education Enrolment and Achievement, 2016, Statistics SA Report 92-01-03.

¹⁸ Just over a fifth (21,8%) of premature school leavers in this age group mention ‘a lack of money’ as the reason for not studying, while 18,9% reportedly fell out due to poor academic performance. Although 9,7% of individuals left their studies as a result of family commitments (i.e. getting married, minding children and pregnancy), it is noticeable that a larger percentage of females than males offered this as a reason (18,5% compared to 0,4%). Whilst this observation is accurate, the data also suggest that the ‘No fee’ school system and other funding initiatives are beginning to show improved results. *See note 17.*

¹⁹ Only 3,4% of black Africans aged 18 to 29 years were studying as opposed to 13,8% of Indian/Asian individuals and 18% of the white population in this age group. Only 3,5% of the coloured population was studying during 2017.

The adult literacy rate, however, lagged behind the national average (94,3%) in provinces such as Northern Cape (89,5%), North West (89,6%) and Limpopo (89,9%).

17. Having achieved almost universal access to primary education, South Africa is now focusing on improving the quality of the education, expanding the provision of infrastructure, facilities and learning resources, and strengthening the capacity of the educator cadre to deliver an enhanced range and quality of basic education. The Annual National Assessments (ANA) were introduced in 2010 with the aim of improving the quality of education. Government is also committed to eradicating mud schools and providing water, sanitation and electricity through the Accelerated School Infrastructure Delivery Initiative (ASIDI) programme and the provincial infrastructure programme. Good progress has been achieved in providing basic services (water, sanitation and power supply), new schools and the maintaining of existing schools. The complementary Provincial Schools Build Programme (PSBP) is implemented by provinces and targets the provision of basic services, new schools, additions to existing schools, new and upgrading of services and maintenance, while ASIDI, is a programme driven by the DBE to address schools infrastructure backlog in all schools that do not meet the basic safety norms and standards. The purpose of the programme is for the eradication of schools made entirely of inappropriate structures and the provision of basic level of water, sanitation and electricity to schools. Through ASIDI, 173 inappropriate structures have been eradicated, 615 schools have been provided with water, 425 with sanitation and 307 with electricity. The two programmes are jointly responsible for improved infrastructure which has resulted in a higher proportion of younger children accessing schoolroom facilities.

18. There are various mechanisms to monitor progress toward the full realisation of the right to education. 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.

Economic indicators

19. With regards to economic indicators and government spending, the budget deficit is projected to narrow from an estimated 4.3% of GDP in 2017/18 to 3.5% in 2020/21. Although net debt is projected to stabilise at 53.2% in 2023/24, debt continues to rise over the medium term, as do debt-service costs. The nominal GDP is estimated at R1,184 trillion for Q1 2018, R24 billion less than in Q4 2017. South Africa's gross domestic product (GDP) fell by 2,2% in the first quarter of 2018. Expenditure on real gross domestic product fell by 2,5% in the first quarter of 2018. Household final consumption expenditure increased by 1,5% in the first quarter, contributing 0,9 of a percentage point to total growth. Key statistics as at December 2017 are set out in the table below:

Table 8

Key statistics (Dec 2017)

CPI: December 2017 (<i>headline</i>)	4,6%
PPI: December 2017 (<i>headline</i>)	5,1%
PPI: December 2017 (<i>intermediate manufacturing</i>)	4,1%
PPI: December 2017 (<i>agriculture</i>)	6,78%
GDP (4th quarter 2017)	2% q/q
GNI (2017)	R 308 5606 billion ZAR

20. Statistics South Africa's *Financial statistics of national government* report, shows that national government spent a total of R1,33 trillion in 2016/17.²⁰ This is 4% higher than the R1,28 trillion spent in 2015/16. The biggest spending item was financial grants. Not to be

²⁰ Financial statistics of national government 2016/2017, Statistics SA, Statistical Release P9119.3, released June 2018.

confused with social grants, financial grants are transfers from one government unit to another government unit, or to an international organisation. Grants are the financial fuel that keeps the wheels of government turning. In 2016/17, national government transferred R764 billion (57% of total spending) in the form of grants to other levels of government and international organisations. Provincial government received the bulk of grants in 2016/17, almost two-thirds of the R764 billion. This was 6% more than the amount received in 2015/16. This is expected, as the nine provinces are responsible for administering some of the core functions of government (for example, education and health). About 14% of the financial grants were transferred to the 257 municipalities. Just over 11% (or R87 billion) was paid to South Africa's 252 extra-budgetary accounts and funds (8% more than in 2015/16). R46 billion (6%) was paid to foreign organisations and international institutions. R39 billion of this amount was paid to the Southern African Customs Union (SACU), of which South Africa is a member. The New Development Bank (NDB), established by countries belonging to the BRICS group (Brazil, Russia, India, China and South Africa), received R3,5 billion. South Africa's 26 higher education institutions received R28 billion (4%) of national government grant transfers in 2016/17.

21. The proportion of the public revenue that is financed through taxes is set out in the table below.

Table 9
Public revenue financed through taxes (2006–2019)

<i>Fiscal year</i>	<i>Proportion of public revenue funded by taxes</i>
2006/07	97.75%
2007/08	97.74%
2008/09	97.93%
2009/10	98.47%
2010/11	97.55%
2011/12	96.73%
2012/13	96.44%
2013/14	96.54%
2014/15	96.80%
2015/16	94.68%
2016/17	97.08%
2017/18*	97.22%
2018/19*	98.15%

* Estimated.

22. The rates of taxes levied on corporate profits and on personal incomes, the VAT rate (exclusive of VAT on luxury items, tobacco/alcohol or sugary drinks/snacks, and gasoline), respectively; and the percentage of total revenues from personal income taxes that are collected from the richest decile of the population are set out in the table below:

Table 10
Taxation (2006–2019)

<i>Fiscal year</i>	<i>Corporate income tax rate</i>	<i>Lowest personal income tax rate</i>	<i>Highest personal income tax rate</i>	<i>Standard VAT rate</i>	<i>% of PIT revenue collected from top decile**</i>
2006/07	29.0%	18.0%	40.0%	14.0%	
2007/08	29.0%	18.0%	40.0%	14.0%	
2008/09	28.0%	18.0%	40.0%	14.0%	

<i>Fiscal year</i>	<i>Corporate income tax rate</i>	<i>Lowest personal income tax rate</i>	<i>Highest personal income tax rate</i>	<i>Standard VAT rate</i>	<i>% of PIT revenue collected from top decile**</i>
2009/10	28.0%	18.0%	40.0%	14.0%	
2010/11	28.0%	18.0%	40.0%	14.0%	
2011/12	28.0%	18.0%	40.0%	14.0%	
2012/13	28.0%	18.0%	40.0%	14.0%	
2013/14	28.0%	18.0%	40.0%	14.0%	
2014/15	28.0%	18.0%	40.0%	14.0%	
2015/16	28.0%	18.0%	41.0%	14.0%	
2016/17	28.0%	18.0%	41.0%	14.0%	
2017/18	28.0%	18.0%	45.0%	14.0%	
2018/19*	28.0%	18.0%	45.0%	15.0%	

* Tax proposals in Budget 2018, and estimates published in Budget Review 2018.

23. Public expenses as a percentage of gross domestic product and, within total public expenses, the proportion of the public budget that is dedicated to social priorities (education, food, health, water and sanitation and housing) are set out in the table below:

Table 11
Public expenses as a percentage of GDP (2007–2018)

<i>Social priorities (social protection, education, health, housing and community amenities)</i>	<i>Total Consolidated Government Expenditure % GDP</i>	<i>Social Priorities% GDP</i>
2007/08	27.2%	14.9%
2008/09	29.4%	16.1%
2009/10	32.3%	17.5%
2010/11	31.1%	17.7%
2011/12	30.9%	18.1%
2012/13	31.4%	18.3%
2013/14	31.6%	18.4%
2014/15	31.9%	18.2%
2015/16	33.1%	18.7%
2016/17	32.7%	18.8%
2017/18*	33.2%	19.2%

24. Inflation-adjusted absolute levels of spending on those social priorities are set out in the table below:

Table 12
Inflation-adjusted absolute levels of spending on those social priorities (2007–2018)

<i>Social priorities (social protection, education, health, housing and community amenities)</i>	<i>Total consolidated expenditure (Real)</i>	<i>Total Social Priorities (Real)</i>
2007/08	1 006 360	551 858
2008/09	1 097 015	599 165
2009/10	1 198 630	648 060
2010/11	1 232 851	701 112

<i>Social priorities (social protection, education, health, housing and community amenities)</i>	<i>Total consolidated expenditure (Real)</i>	<i>Total Social Priorities (Real)</i>
2011/12	1 264 127	739 361
2012/13	1 312 357	764 349
2013/14	1 359 059	788 628
2014/15	1 389 707	792 592
2015/16	1 461 881	827 057
2016/17	1 451 332	835 410
2017/18*	1 495 201	864 845

25. The budget deficit is projected to narrow from 4.3 per cent of GDP in 2017/18 to 3.5% in 2020/21. Main budget non-interest expenditure is projected to remain stable at 26.6% of GDP between 2017/18 and 2020/21. Net debt is expected to stabilise at 53.2% of GDP in 2023/24. Proposed tax measures will raise an additional R36 billion in 2018/19. The fiscal framework reflects two major changes: medium-term expenditure cuts identified by a Cabinet subcommittee amounting to R85 billion, and an additional allocation of R57 billion for fee-free higher education and training. Contingency reserves have been revised upwards to R26 billion over the next three years. Real growth in non-interest expenditure will average 1.8 per cent over the next three years. Post-school education and training is the fastest-growing category.

26. The consolidated government expenditure by function is set out in the table below:

Table 13

Consolidated government expenditure by function (2017–2020)

	2017/18	2018/19	2019/20	2020/21	2017/18 – 2020/21
R billion	Revised estimate	Medium-term estimates			Average annual growth
Learning and culture	323.1	351.1	385.4	413.1	8.5%
Health	191.7	205.4	222.0	240.3	7.8%
Social development	234.9	259.4	281.8	305.8	9.2%
Community development	183.5	196.3	210.5	227.1	7.4%
Economic Development	183.5	200.1	211.9	227.1	7.4%
Peace and security	195.7	200.8	213.6	227.7	5.2%
General public services	62.1	64.0	65.9	70.5	4.3%
Payments for financial assets	20.4	6.0	6.2	6.6	
Allocated expenditure	1 394.8	1 483.1	1 597.3	1 718.1	7.2%
Debt-service costs	163.2	180.1	197.7	213.9	9.4%
Contingency reserve	–	8.0	8.0	10.0	
Consolidated expenditure	1 558.0	1 671.2	1 803.0	1 941.9	7.6%

27. Over the next three years, government will spend:
- R528.4 billion on social grants;
 - In total, R324 billion is provided for higher education and training, including R57 billion of new allocations for fee-free higher education and training;
 - R792 billion on basic education, including R35 billion for infrastructure, and R15.3 billion for learner and teacher support materials, including ICT;
 - R667.8 billion on health, with R66.4 billion on the HIV, AIDS and TB conditional grant;
 - R123.3 billion on subsidised public housing;
 - R125.8 billion on water infrastructure and services;
 - R207.4 billion on transfers of the local government equitable share to provide basic services to poor households;
 - R129.2 billion to support affordable public transport.

28. With regards to economic and social characteristics, South Africa still bears the scars of more than 3 decades of colonialism and apartheid. Despite the fact that many of the apartheid laws were removed from the statute books, the social and economic consequences of such laws and policies continue to define the South African landscape. Racially-based economic and social inequalities remain part of the South African life. The legacy of apartheid has entrenched tremendous economic inequality within the country and has resulted in South Africa being one of the most unequal countries in the world.²¹ The NDP aims to reduce inequality as measured by the GINI coefficient based on income per capita (including salaries, wages and social grants) from 0,7 in 2010 to 0,6 by 2030.

29. The proportion of the population living in poverty declined from 66,6% (31,6 million persons) in 2006 to 53,2% (27,3 million) in 2011, but increased to 55,5% (30,4 million) in 2015. The number of persons living in extreme poverty (i.e. persons living below the 2015 Food Poverty Line of R441 per person per month) in South Africa increased by 2,8 million, from 11 million in 2011 to 13,8 million in 2015. However, this is lower than in 2009 when persons living in extreme poverty were 16,7 million.²² The most vulnerable to poverty in our society are children (aged 17 or younger), females, Black Africans, people living in rural areas, those residing in Eastern Cape and Limpopo, and persons with little or no education.

30. The income per capita Gini coefficient (income inequality) has declined from 0,72% in 2006 to 0,68% in 2015; however, there are notable variations amongst various population groups. Black Africans have the highest income inequality with a Gini coefficient of 0,65 in 2015, increasing from 0,64 in 2006. Income inequality amongst whites declined from 0,56 in 2006 to 0,51 in 2015. The Gini coefficient amongst Coloured persons declined from 0,60 in 2006 to 0,58 in 2015. Despite having experienced declines in income inequality in 2009 (0,53) and 2011 (0,50), the Gini coefficient for Indian/Asians was 0,56 for 2006 and 2015.

31. Unemployment remains one of South Africa's biggest challenges and thus forms an integral part of our National Development Plan ("NDP"). A comparative of our labour force surveys is set out in the table below.

²¹ Sulla, Victor; Zikhali, Precious. 2018. *Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities (English)*. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/530481521735906534/Overcoming-Poverty-and-Inequality-in-South-Africa-An-Assessment-of-Drivers-Constraints-and-Opportunities>.

²² Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015 report, released by Statistics South Africa, August 2017.

Table 14
Quarterly labour force survey comparisons (2013–2017)²³

<i>Both sexes</i>	<i>QLFS 2013 Thousand</i>	<i>QLFS 2014 Thousand</i>	<i>QLFS 2015 Thousand</i>	<i>QLFS 2016 Thousand</i>	<i>QLFS 2017 Thousand</i>
Population 15–64 yrs	34 790	35 410	36 035	36 669	37 294
Labour Force	19 752	20 216	21 085	21 533	22 289
Employed	14 866	15 146	15 741	15 780	16 169
Formal sector (Non-agricultural)	10 524	10 822	10 935	11 021	11 288
Informal sector (Non-agricultural)	2 366	2 393	2 637	2 602	2 735
Agriculture	740	702	880	874	843
Private households	1 236	1 230	1 288	1 283	1 303
Unemployed	4 886	5 070	5 344	5 753	6 120
Not economically active	15 038	15 194	14 950	15 136	15 005
Discouraged work-seekers	2 331	2 422	2 334	2 386	2 403
Other(not economically active)	12 708	12 771	12 616	12 750	12 602
Rates (%)					
Unemployment rate	24,7	25,1	25,3	26,7	27,5
Employed / population ratio (Absorption)	42,7	42,8	43,7	43,0	43,4
Labour force participation rate	56,8	57,1	58,5	58,7	59,8
Women					
Population 15–64 yrs	17 702	17 986	18 273	18 567	18 865
Labour Force	8 920	9 115	9 522	9 701	10 104
Employed	6 539	6 634	6 882	6 874	7 114
Formal sector (Non-agricultural)	4 369	4 514	4 577	4 657	4 797
Informal sector (Non-agricultural)	954	937	1 007	968	1 047
Agriculture	230	213	293	267	265
Private households	987	969	1 006	982	1 004
Unemployed	2 381	2 482	2 640	2 827	2 990
Not economically active	8 782	8 871	8 751	8 866	8 761
Discouraged work-seekers	1 270	1 285	1 309	1 316	1 323
Other(not economically active)	7 512	7 586	7 443	7 550	7 438
Rates (%)					
Unemployment rate	26,7	27,2	27,7	29,1	29,6
Employed / population ratio (Absorption)	36,9	36,9	37,7	37,0	37,7
Labour force participation rate	50,4	50,7	52,1	52,3	53,6
Men					
Population 15–64 yrs	17 088	17 424	17 762	18 102	18 429
Labour Force	10 832	11 101	11 563	11 832	12 185
Employed	8 327	8 513	8 859	8 906	9 055
Informal sector (Non-agricultural)	1 412	1 455	1 630	1 634	1 688
Agriculture	510	488	587	607	577
Private households	249	261	283	301	299
Unemployed	2 505	2 589	2 704	2 926	3 130
Not economically active	6 256	6 323	6 199	6 270	6 245

²³ Quarterly Labour Force Surveys, released by Statistics SA.

<i>Both sexes</i>	<i>QLFS 2013 Thousand</i>	<i>QLFS 2014 Thousand</i>	<i>QLFS 2015 Thousand</i>	<i>QLFS 2016 Thousand</i>	<i>QLFS 2017 Thousand</i>
Discouraged work-seekers	1 061	1 137	1 025	1 069	1 080
Other(not economically active)	5 195	5 186	5 174	5 201	5 165
Rates (%)					
Unemployment rate	23,1	23,3	23,4	24,7	25,7
Employed / population ratio (Absorption)	48,7	48,9	49,9	49,2	49,1
Labour force participation rate	63,4	63,7	65,1	65,4	66,1

32. Most households in South Africa continued to rely on incomes from salaries. Nationally, salaries (65,4%) and grants (44,6%) were received by the highest percentages of households. Provincially, the largest percentage of households that earned salaries were found in Western Cape (79,0%) and Gauteng (73,3%). Grants were more prevalent than salaries as a source of income in Eastern Cape (59,3%) and Limpopo (57,4%).

33. Section 27 of the Constitution guarantees everyone the right to have access to social security and, if they are unable to support themselves and their dependants, appropriate social assistance. The state is duty-bound to take reasonable measures, within its available resources, to achieve the progressive realization of this right. The Social Assistance Act, 2004²⁴ provides a national legislative framework for the provision of different types of social grants, social relief of distress, the delivery of social assistance grants by a national Agency and the establishment of an Inspectorate for Social Assistance. The South African Social Security Agency Act, 2004²⁵ provides for the establishment of public entity.²⁶ Grants are generally means-tested and do not discriminate on the basis of race or gender. This was however not always the case for old age grants as men formerly only became eligible to be considered for grants at the age of 65 years compared to 60 years. Different types of social grants include grants-in-aid (“GIA”), child support grants (“CSG”), foster child grants (“FCG”), care dependency grants (“CDG”), war veteran’s grants (“WVG”), disability grants (“DG”) and grants for older persons (“OAG”). The social security coverage in the form of non-contributory benefits (social assistance) has increased tremendously over the years making the programme government most effective poverty alleviation machinery. The programme provides non-contributory benefits to vulnerable groups in the form of older persons grant, disability grant, child support grant, foster child grant, care dependency grant, war veterans’ grant, grant-in-aid and social relief of distress. The benefit amounts are adjusted annually in keeping with economic changes and in the current financial year (2018/2019) consideration was on the inflation and vat increase. The coverage and take-up rate for different provisions as at March 2018 are set out in the table below.

Table 15
Take-up rates, social security (March 2018)²⁷

Older persons grant	3 423 337
War veterans grant	134
Disability grant	1 061 866
Child support grant	12 269 084

²⁴ Act 13 of 2004.

²⁵ Act 9 of 2004.

²⁶ The principle aim of the Act is to provide for the establishment of the South African Social Security Agency as an agent for the administration and payment of social assistance; to provide for the prospective administration and payment of social security by the Agency and the provision of services related thereto. Social assistance in South Africa is fundamentally designed to assist children, disabled individuals and older persons and it can therefore be expected that significant proportions of grant beneficiaries would be found amongst children and older people.

²⁷ Information supplied by the Department of Social Development and set out in South Africa’s List of Issues to the ICESCR, 2018.

Foster child grant	416 016
Care dependency grant	147 467
Grant-in-aid	192 091
Social relief of distress	573 195

34. The results of Statistics South Africa's latest Living Conditions Survey (2014/2015) show that the total annual household consumption expenditure between October 2014 and October 2015 was estimated at R1,72 trillion. The average South African household spent approximately R103 293 during the survey year, with the main components of that expenditure coming from housing and utilities, transport, food, and miscellaneous goods and services. When combined, the top four consumption expenditure groups (namely housing and utilities, transport, miscellaneous goods and services, and food and non-alcoholic beverages) account for approximately three-quarters (76,4%) of all consumption expenditure in the country. Essentially, three out of every four rand spent by South African households goes towards these four key areas, as shown in the table below.²⁸

Table 16
Total and average annual household consumption expenditure by main expenditure group for 2015²⁹

<i>Main expenditure group</i>	<i>Rand</i>		<i>Percentage</i>
	<i>Total (in millions)</i>	<i>Average</i>	<i>Contribution</i>
Food and non-alcoholic beverages	220 891	13 292	12,9
Alcoholic beverages and tobacco	15 132	911	0,9
Clothing and footwear	82 072	4 939	4,8
Housing, water, electricity, gas and other fuels	558 799	33 625	32,6
Furnishings, household equipment and routine maintenance of the dwelling	89 599	5 391	5,2
Health	15 533	935	0,9
Transport	279 623	16 826	16,3
Communication	58 322	3 509	3,4
Recreation and culture	65 361	3 933	3,8
Education	42 070	2 531	2,5
Restaurants and hotels	36 238	2 181	2,1
Miscellaneous goods and services	252 050	15 167	14,7
Unclassified items	906	55	0,1
Total	1 716 595	103 293	100,0

35. As indicated, the average annual consumption expenditure for South African households was R103 293 in 2015. However, the median expenditure for the country was just R42 522 per annum; this highlights the continued presence of the inequality that exists across households. Male-headed households accounted for just under 70% of all household expenditure in the country and spent on average about R121 363 in 2015. Female-headed household spent only about two-thirds (approximately R77 671) of what their male-headed counterparts spent in 2015, and accounted for just over 30% of all consumption expenditure in South Africa.³⁰

²⁸ Living Conditions of Households in South Africa, An analysis of household expenditure and income data using the LCS 2014/2015, Statistical Release P0310, released 27 January 2017.

²⁹ See note 28.

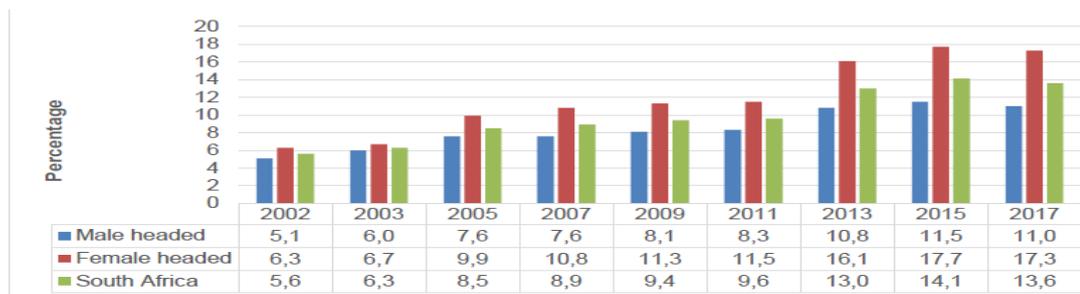
³⁰ See note 28.

36. Black African-headed households accounted for over half (52,8%) of all household consumption expenditure in 2015 and spent on average R67 828 during the survey year. Despite having a larger demographic share, coloured-headed households only accounted for 8,7% of total household expenditure, while white-headed households had the second largest share at 34,1%. When examining the median household consumption expenditure by population group, white-headed households remain rather well off with R256 159, which unlike other groups is not half their average. This points to lower levels of inequality across white-headed households, as their median and average figures are more closely aligned. This is similar to the situation of Indian/Asian-headed households. In black African and coloured-headed households, the median was close to half the average figure, thus indicating greater disparity.³¹

37. With regards to housing, the percentage of households that received some form of government housing subsidy increased from 5,6% in 2002 to 13,6% in 2017. A slightly higher percentage of female-headed households (17,3%) than male-headed household (11,0%) received subsidies. This is in line with government policies that give preference to households headed by individuals from vulnerable groups, including females, and individuals with disabilities. The percentage of households that received a government housing subsidy by sex of the household head, 2002–2017, is set out in the figure below.

Figure 17

Percentage of households that received a government housing subsidy by sex of the household head, 2002–2017



38. With regards to cultural characteristics, unity in diversity is the motto on the National Coat of Arms that is drawn from the /Xam expression *!ke e: /xarra //ke* which literally means *diverse people unite*. It is a call to all citizens to unite in a sense of belonging and pride. In so far as it speaks directly and in an ancient South African language and culture deeply woven into the fabric of many indigenous languages and cultures, it highlights and celebrates the interconnections of the people, the languages, the cultures and the histories.

39. Nationally, just under a quarter (24,7%) of households spoke isiZulu at home, while 15,6% of households spoke isiXhosa, and 12,1% of households spoke Afrikaans. English was spoken by 8,4% of individuals at home, making it the sixth most common home language in South Africa. English is, however, the second most commonly spoken language outside the household (17,6%) after isiZulu (24,7%), and preceding isiXhosa (13,0%). It is notable that the use of most languages outside the household declined, with the notable exceptions of isiZulu and Setswana. The Indian/Asian population group was the most homolingual with 91,5% who spoke English at home. More than three-quarters (76,3%) of coloureds spoke Afrikaans at home, and 21,8% spoke English, while 57,9% of Whites spoke Afrikaans and 39,2% English. By comparison, black Africans were much more multi-lingual. Although 30,5% of individuals spoke isiZulu, followed by 19,2% who spoke isiXhosa, five different languages were spoken by approximately 10% of more of users.³²

40. With regards to religious affiliation and observance, the vast majority (86,0%) of South Africans described their religious affiliation as 'Christian' while a further 5,2% said that they were not affiliated to any religion in particular. More than five per cent of

³¹ See note 28.

³² General Household Survey 2017, Statistics SA, Statistical Release, P0318, released June 2018.

individuals subscribed to religions that were described as, ‘ancestral, tribal, animist or other traditional African religions’. Muslims, who comprised 1,9% of the total, were predominantly found in Western Cape, Gauteng and KwaZulu-Natal. Hindus comprised about 0,9% of the population of South Africa, however 3,3% of the population of KwaZulu-Natal were Hindus.³³

B. Constitutional, political and legal structure

The Constitution

41. South Africa underwent a radical transition from the oppressive apartheid regime (a system founded on parliamentary sovereignty) to a constitutional democracy committed to the creation of a society based on democratic values, social justice and fundamental human rights. Our Constitution reflects our unique history and our quest for freedom and democracy. Given South Africa’s past, it’s not surprising that our Constitution frequently stresses the need to create a society that is “open and democratic”, and that it emphasizes dignity, justice and equality.

42. The Constitution proudly declares South Africa as a sovereign, democratic State guided by the following basic principles; constitutionalism, the rule of law, democracy and accountability, separation of powers and checks and balances, cooperative government and devolution of power. It emphasises human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism. The Constitution is the supreme law of the Republic, against which all laws drafted and interpreted by the courts. The common law is developed in line with the Constitution.

43. The Constitution is further based on universal adult suffrage, a national common voters’ roll, regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness. The Constitution provides that every person over 18 years of age has the right to vote and provides for one voters roll for all adult citizens, regular elections and a multi-party system of government. It explains how Parliament and other legislatures work, how national and provincial executives are chosen and how the courts work. The Constitution also establishes various independent state institutions to support democracy.

44. Chapter 2 of the Constitution contains South Africa’s Bill of Rights. These provisions deal with the rights to equality, human dignity, life and privacy, among others, as well as the freedom of religion and expression. The Bill of Rights acknowledges that human rights are inter-connected and indivisible and therefor guarantees both civil-political as well as justiciable socio-economic rights. Various legislative, policy and other measures have been implemented to ensure the substantive realisation of civil and political rights as well as socio-economic and cultural rights. In addition, our courts continue to deliver judgments and develop case law to enhance and protect these rights and to provide guidance on the interpretation of these rights. As compared to ordinary legislation, amending the Constitution is subjected to a higher threshold. Section 74(2) states that bills amending the Constitution require a two-thirds majority in the National Assembly as well as a supporting vote of six of the nine provinces represented in the National Council of Provinces.

45. The Constitution guarantees judicial independence and explicitly recognises the separation of powers between the Executive, Legislature and the Judiciary. Structurally government is arranged at three levels namely, the national, provincial and local government. The country is divided into nine provinces each with its own provincial legislature. It is important to emphasise that all structures of government derive their authority from the Constitution. No law or government action can supersede or violate the provisions of the Constitution.

³³ General Household Survey 2015, Statistics SA, Statistical Release, P0318, released June 2016.

Elections

46. South Africa's national and provincial elections take place every five years. Voters vote for a political party, not individuals. The political party then gets a share of seats in Parliament in direct proportion to the number of votes it received in the election. Each party then decides on members to fill the seats it has won. This is called a proportional representation (PR) voting system.

47. Municipal elections take place every five years. A mixed or hybrid system, making use of both the ward system and the proportional representation (PR) system, is used for municipal elections. There are 3 types of Municipal Councils in South Africa, namely Category A: Metropolitan Councils; Category B: Local Councils; and Category C: District Councils (DC). For metropolitan municipalities, there are 2 types of elections in each ward, namely Metropolitan council ward, and Metropolitan proportional representation. In all local municipalities other than metropolitan municipalities, there are 3 types of elections in each ward, namely Local council ward; Local council proportional representation; and District council proportional representation. By-elections take place within 90 days after a municipal ward council seat becomes vacant due to death, expulsion or resignation of a ward councillor.

48. The Constitution also established the Electoral Commission (IEC) to manage elections of national, provincial and municipal legislative bodies; to ensure that those elections are free and fair; declare the results of those elections; and compile and maintain a voters' roll.

49. South Africa's constitutional democracy has progressed remarkably since the dawn of democracy. The enthusiasm with which multi-partyism is being embraced in South Africa is a noteworthy development. In the 2014 national and provincial elections, the total number of valid votes was 18,402,497; there were 252,274 spoilt votes. The total number of votes cast was 18,654,771 and voter turnout was 73.48%, of a registered population of 25,388,082 people. A total of 29 political parties contested the national elections with 25 of these also standing for the provincial elections, 12 political parties contested the provincial elections only. The voter turnout of 73.48% represented a decrease in voter participation since the 2009 national and provincial elections. This is however, still a high number compared to international standards. The percentage of spoilt votes stood at 1.29%, which is the lowest it has ever been for national and provincial elections. The results of the 2014 national and provincial elections were announced well within the period of seven days prescribed by law. Like all elections since 1994, these elections were declared free, fair and credible.

50. In the 2016 Municipal Elections there was a voter turnout of 15,290,820, which translates to 57.94% of all voters.

The Executive

51. The Executive consists of the President, the Deputy President and the Cabinet Ministers at national level, and the Premier and Members of the Executive Councils (MECs) at provincial level. The President is Head of State and is the head of the national Executive, also referred to as Cabinet. Ministers are responsible for different government departments as per their portfolios. As head of the Executive, the President is the Commander-in-Chief of the defence force. The President is elected by the National Assembly during the first sitting of the Assembly. Once elected as President, she/he ceases to be a Member of Parliament and must be sworn into office within five days.

52. The Executive in each province is called the Executive Council and is headed by the respective nine Premiers. Members of Executive Councils (MECs) are accountable to their Legislatures in the same way as the Cabinet is accountable to Parliament. The Premier is elected by the Members of that Provincial Legislature (MPLs) from amongst themselves at the first sitting of that legislature after the election. MECs are accountable to their Premiers. Like Ministers, MECs are responsible for departments. The competencies or matters over which provincial departments have exclusive control in some areas and joint control (with national government) in others, is clearly set out in Schedules to the Constitution. Schedule 4 provides for the functional areas of concurrent national and provincial legislative competence, whilst Schedule 5 provides for the functional areas of exclusive provincial legislative competence.

The legislature

53. The legislative authority of the national sphere of government is vested in Parliament. Parliament consists of the two houses – the National Assembly (NA) and the National Council of Provincial (NCOP). The national legislative authority, as vested in Parliament, confers on the NA the power to, inter alia, amend the Constitution and to pass legislation with regard to any matter. The Constitution provides, in as far as constitutional amendments are concerned, special majorities for the passage of a bill amending the Constitution.

54. The NA is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, providing a national forum for public consideration of issues, passing legislation and scrutinizing and overseeing Executive action (its oversight role). The NA must have a maximum of 400 Members and a minimum of 350 Members of Parliament (MPs). The distribution of seats in the National Assembly per political party after the 2014 elections, is set out in the table below.

Table 18
distribution of seats in the National Assembly per political party, 2014–current

<i>Political Party 2014</i>	<i>Number of seats 2014</i>	<i>%</i>
African National Congress	249	62,3
Democratic Alliance	89	22,3
Economic Freedom Fighters	25	6,3
Inkatha Freedom Party	10	2
National Freedom Party	6	1
United Democratic Movement	4	1
Freedom Front+	4	1
African Christian Democratic Party	3	0,75
African Independent Congress	3	0,45
AGANG	2	0,5
African Peoples' Convention	1	0,25
Total	400	100

55. The NCOP ensures that the nine provinces and local government have a direct voice in Parliament when laws are made. The NCOP represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and providing a national forum for public consideration of issues affecting the provinces. The NCOP also has an important role to play in promoting national unity and good working relations between national, provincial and local government. While the delegates in the NCOP represent their political parties, they also have the important duty of representing their provinces as a whole. Each province has ten delegates, no matter how big or small the province, thus guaranteeing a balance of interests among the provinces. There are six permanent and four “special” non-permanent delegates in each delegation. Each is headed by the Premier (as one of the special delegates) or a substitute for him/her when the Premier is not available. The delegation must reflect the proportional strength of the various parties in the province.

56. Each province has a legislature, the size of which varies depending on the population levels in the province. According to the Constitution the minimum size of a Legislature is 30 members and the maximum size is 80 members. Members are elected from provincial lists on the basis of the number of votes received by a political party. A provincial legislature is responsible for passing the laws for its province as defined in the Constitution. These laws only apply in that particular province. Parliament may intervene and change these laws under certain conditions, for example, if they undermine national security, economic unity, national standards or the interests of another province. Like Parliament, provincial legislatures have the responsibility of calling their Members of their Executive to account for their actions.

The judiciary

57. The doctrine of separation of powers, the independence of the judiciary and the supremacy of the Constitution lie at the heart of South Africa's constitutional democracy. The doctrine of separation of powers constitutes one of the 34 Constitutional Principles which became the building blocks of the Constitution.³⁴ The principle of an **independent judiciary** derives from the basic principles of the rule of law and the separation of powers. Judicial independence is recognised and protected in the Constitution in section 165.³⁵ Judicial independence is internationally recognised through various declarations and international instruments such as the UN Basic Principles on the Independence of the Judiciary³⁶ and the African Charter on Human and Peoples Rights.³⁷

58. Since the advent of democracy, government has embarked on a process to transform and strengthen the independence of the judiciary. The Constitution Seventeenth Amendment Act of 2012, provides for a single High Court of South Africa and makes the Constitutional Court the apex court of the Republic. The Superior Courts Act, 2013³⁸ assented to by the President on 13 August 2013, seeks to rationalise the structure and functioning of the Superior Courts with a view to advancing their effectiveness.

59. The Judicial Service Commission ("JSC") was established in terms of section 178 of the Constitution and consists of 23 members. In terms of section 178 (5) of the Constitution, the JSC is entitled to advise the national government on any matters relating to the Judiciary or administration of justice. Additionally it performs the following functions: interviewing candidates for judicial posts and making recommendations for appointment to the bench; and dealing with complaints brought against Judges. The first function is handled by the JSC as a whole and the second is handled by a smaller group of 13 commissioners. Complaints against judges who contravene the Code of Judicial Conduct must first be reported to the JSC Secretariat which is located within the Office of the Chief Justice. The Code of Judicial Conduct provides for ethical and professional standards required of every judge.

60. The President after consulting the JSC and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice, and after consulting the JSC, appoints the President and the Deputy President of the Supreme Court of Appeal. The other judges of the Constitutional Court are appointed by the President, after consulting the Chief Justice and the leaders of parties represented in the National Assembly, after perusing a list of nominees submitted by the JSC. The President appoints all other judges of the high courts on the advice of the JSC.

61. The appointment of Magistrates of lower courts are by the Minister of Justice and Correctional Services in terms of the Magistrates' Act, 1993³⁹ after consulting the Magistrates' Commission. The Magistrate's Commission is a statutory body established in terms of the Magistrate's Act. The Commission is chaired by a judge, designated by the President in consultation with the Chief Justice. The objects of the Commission are amongst

³⁴ Constitutional Principles VI: There shall be a separation of powers between the legislature, executive and the judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness".

³⁵ "(1) The judicial authority of the Republic is vested in the courts.

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

(3) No person or organ of state may interfere with the functioning of the courts.

(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

(5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

(6) The Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts".

³⁶ Adopted in 1985.

³⁷ Adopted in 1981 and ratified by South Africa in 1996.

³⁸ Act 10 of 2013.

³⁹ Act 90 of 1993.

others, to compile a code of conduct for judicial officers in the lower courts (District and Regional Courts) and to advise the Minister of Justice regarding the appointment of magistrates. It also advises or makes recommendations to, or reports to the Minister, for information of Parliament regarding any matter which is of interest for the independence in the dispensing of justice and the efficiency of the administration of justice in the Magistrates' Courts. It also carries out investigations and make recommendations to the Minister regarding the suspension and removal from office of magistrates. Any conduct by a magistrate that is alleged to be improper may be reported to the Judicial Head of the Court wherein the magistrate concerned presides. The South African Judicial Education Institute Act, 2008⁴⁰ established a Judicial Education Institute in order to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts by providing judicial training for all judicial officers (judges and magistrates). The Judicial Education Institute is governed by a Council comprising of 20 persons chaired by the Chief Justice.

62. Government and the judiciary have made significant efforts to transform the bench for it to broadly reflect the demographics of our country. Of the 250 permanent judges in our country, as at 28 February 2018, the race and gender are set out in the table and below.

Table 19
Race and gender of permanent judges as at February 2018

Post class	Afr male	Afr female	Col male	Col female	Indian male	Indian female	White male	White female
Judges	69	44	16	11	14	10	61	25

63. With regards to the race and gender breakdown of the magistracy, a comparative from 1998 to February 2018 is set out in the table below.

Table 20
Race and gender of magistrates as at February 2018

POST CLASS	African Male		African Female		Indian Male		Indian Female		Coloured Male		Coloured Female		White Male		White Female		Total		
	1998	2018	1998	2018	1998	2018	1998	2018	1998	2018	1998	2018	1998	2018	1998	2018	1998	2018	
Regional Court President	2	5	0	1	0	0	0	0	0	0	0	0	1	5	0	0	1	7	8
Regional Magistrate	15	92	1	72	1	13	4	25	0	17	0	11	144	83	8	46	173	359	
Chief Magistrate	20	3	1	7	0	1	0	1	1	1	0	1	7	2	1	1	30	17	
Senior Magistrate	78	37	4	21	2	5	1	8	0	5	0	5	67	15	4	17	156	113	
Magistrate	318	452	56	371	15	74	14	92	29	78	5	94	527	299	185	218	1149	1678	
Grand Total	433	589	62	472	18	93	19	126	30	101	5	112	750	399	198	283	1515	2175	
Percentage change		36,0%		661,3%		416,7%		563,2%		236,7%		2140,0%		-46,8%		42,9%		43,6%	

Courts

64. The courts are the Constitutional Court,⁴¹ the Supreme Court of Appeal,⁴² the High Courts, including any high court of appeal that may be established by an Act of Parliament

⁴⁰ Act 14 of 2008.

⁴¹ Provided for in section 167 of the Constitution.

⁴² Section 168.

to hear appeals from High Courts,⁴³ the Magistrates' Courts;⁴⁴ and any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts. In line herewith, through legislation, the following courts have been created: Special Income Tax Courts, Labour Appeal Court, Labour Court, Land Claims Court, Competition Appeal Court, Electoral Court, Divorce Courts, Consumer Courts and "Military Courts". Equality Courts have been designated in terms of section 9 of the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.⁴⁵

65. There are also Tribunals relating to the Investigation Units; Veterinary Council Tribunals, Water "Courts"/tribunals, etc. (These tribunals are established in terms of specific legislation.) There are furthermore Chiefs' Courts, which have limited jurisdiction in applying customary law. There are also specialised courts that are part of our normal courts, but which focus on specific areas.⁴⁶

66. Traditional courts are an indispensable part of the administration of justice. Chapter 12 of the Constitution recognises the institution, status and role of traditional leadership according to customary law, subject to the Constitution. Schedule 6 of the Constitution recognises the existence of traditional courts. The Constitution recognises customary law and legislation must thus provide for it. Traditional courts exist - it is therefore a constitutional imperative that they be transformed to suit our constitutional dispensation. Parliament is currently dealing with the Traditional Courts Bill. This is to ensure we deal with traditional justice concepts appropriately.

67. It is also envisaged that community courts should be used to help deal with restorative justice as part of the CJS. The aim is to ensure that we deal with less serious crimes through diversion programmes instead of prison sentences. The Department of Justice is currently developing a policy framework regarding community courts. The aim is to develop a concept of Community Court Model suited for the South African constitutional democracy taking into consideration the transformation imperative underpinned by the Constitution. The Community Court concept embraces elements of restorative justice which lay emphasis on restitution, rehabilitation, victim-offender reconciliation, community crime prevention, and volunteer based services for offenders and victims. As part of the policy development, the

⁴³ Section 169.

⁴⁴ Section 170.

⁴⁵ Act 4 of 2000.

⁴⁶ Commercial Crime Courts: These are also ordinary criminal courts (on a regional court level) set up in conjunction with the National Directorate of Public Prosecutions to focus on fraud and complex commercial type cases.

Sexual Offences Courts: These are ordinary criminal courts (on a regional court level) focussing on specific types of cases. There are 75 at present. They are being set up in conjunction with the NDPP and the Judiciary and have as aim to deal with sexual offences in a dedicated and sensitive manner.

Environmental courts: These are ordinary criminal courts focussing on the activities of poaching syndicates and fast tracking the trials of environmental offenders, particularly abalone poachers/ rhino horn trafficking etc.

Children's Courts: all magistrates' courts are children's courts; they are there to protect neglected, abused and exploited children and remove them from abusive situations.

Child Justice Courts: to divert children in trouble with the law, as much as possible from the mainstream criminal justice system. One Stop Child Justice Centres are in the process of being established, of which there are three (3) at the moment.

Maintenance Courts: to obtain and enforce maintenance orders for children in terms of the Maintenance Act, 1998.

Domestic Violence Courts: to obtain protection orders for women and children and the elderly in terms of the Domestic Violence Act, 1998.

Small Claims Courts: established in order to expeditiously, quickly and inexpensively hear small claims less than R15 000, for which attorneys are not needed.

"Municipal courts": though called municipal courts these courts are normal magistrate district courts set up in conjunction with municipalities and metro's to deal with municipal by-laws and traffic cases to assist the normal criminal courts to focus on more serious matters.

South African Law Reform Commission has been requested to add research on community courts to their research agenda.

68. Other officers of the courts that are important in ensuring the protection of human rights include the Office of the Family Advocate which must be consulted on all matters involving children, as the High Court is the upper guardian of all children in South Africa. The Office of the Family Advocate also deals with disputes between parents or family members over the parental responsibility and rights of children. The functions of the Family Advocate have been extended by the Children's Act, 2005.⁴⁷ The Family Advocate is the Central Authority for the RSA in International Child Abduction, whereby children are protected from the harmful effects of abduction to a foreign country by their parents or caregivers. The Hague Convention on the Civil Aspects of International Child Abduction, which South Africa acceded to on the 1st October 1996, now forms part of the laws of our country in terms of the Children's Act, 2005. Our country's participation in this international instrument makes it possible to secure the prompt return of children taken to or from South Africa and/or to secure to their right of contact with the left-behind parent. During 2016 our country accepted the accession of an additional 34 countries in order to increase the number of States that we are contracted with to 83 – this is in the interests of expanding our child protection work.

69. The Master of the High Court is there to serve the public in respect of Deceased Estates, Liquidations (Insolvent Estates), Registration of Trusts, Tutors and Curators, as well as the Administration of the Guardian's Fund (minors and mentally challenged persons).

70. Section 179 of the Constitution created a single National Prosecution Authority (NPA). The Office of the National Director of Public Prosecutions was established on 1 August 1998. The NPA comprises of the National Director, who is the head of the Office and manages the Office; Deputy National Directors of Public Prosecutions; Directors of Public Prosecutions and Special Directors; other members of the prosecuting authority appointed at or assigned to the Office; and members of the administrative staff at the Office. Legislation governing the prosecuting authority is the National Prosecuting Authority Act, 1998.⁴⁸ The Constitution, read with the said Act, provides the prosecuting authority with the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings. In a constitutional state such as South Africa, all citizens have a right to enjoy a better quality of life – a life free from fear and free from crime. As a key partner in the criminal justice system, the NPA plays a critical role in ensuring that perpetrators of crime are charged and held responsible for their criminal actions. The NPA also assists to ensure public confidence in the criminal justice system.

Law enforcement and the Administration of justice

71. To ensure the safety of all in South Africa, the law enforcement agencies, together with the DOJ&CD, the NPA, the Department of Correctional Services (DCS), Social Development (DSD) and other departments, work together to achieve the NDP goal that "*All people in SA are and feel safe.*" To deal with this in a focused manner across the value chain, the Justice, Crime Prevention and Security (JCPS) Cluster was established at a Cabinet level. The focus of the JCPS Cluster is the fight against crime and corruption, to enable an integrated and coordinated approach to policy formulation and coordination, and to drive the implementation of the government's Programmes of Action as mandated by Cabinet and informed by the NDP.

72. Chapter 11 of the Constitution stipulates the South African Police Service has a responsibility to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property; and uphold and enforce the law. The SAPS must create a safe and secure environment for all people in South Africa, prevent anything that may threaten the safety or security of any community, must investigate any crimes that threaten the safety or security of any community, ensure criminals are brought to justice; and participate in efforts to address the causes of crime. The South African Police

⁴⁷ Act 38 of 2005.

⁴⁸ Act 32 of 1998.

Service Act, 1995⁴⁹ provides for the establishment, organisation, regulation and control of the SAPS. The number of reported serious crimes in South Africa, for the period 2013 – 2017 are set out in the table below.⁵⁰

Table 21
Reported serious crimes in South Africa, 2013–2017⁵¹

<i>Crime Category</i>	<i>April–March 2013/14</i>	<i>April–March 2014/15</i>	<i>April–March 2015/16</i>	<i>April–March 2016/17</i>	<i>Case Diff</i>	<i>% Change</i>
<i>Contact Crimes (Crimes against the person)</i>						
Murder	17 023	17 805	18 673	19 016	343	1.8
Sexual Offences	56 680	53 617	51 895	49 660	-2 235	-4.3
Attempted Murder	16 989	17 537	18 127	18 205	78	0.4
Assault with the intent to inflict grievous bodily harm	182 333	182 556	182 933	170 616	-12 317	-6.7
Common assault	166 081	161 486	164 958	156 450	-8 508	-5.2
Common robbery	53 505	54 927	54 110	53 418	-692	-1.3
Robbery with aggravating circumstances	118 963	129 045	132 527	140 956	8 429	6.4
Contact Crimes	611 574	616 973	623 223	608 321	-14 902	-2.4
<i>Ratio: Contact Crimes (Crimes against the person)</i>						
Murder	31.9	32.9	34.0	34.1	0.1	
Attempted murder	31.9	32.4	33.0	32.6	-0.4	
Assault with the intent to inflict grievous bodily harm	342.1	337.3	332.8	305.5	-27.3	
Common assault	311.6	298.4	300.1	280.2	-20.0	
Common robbery	100.4	101.5	98.4	95.7	-2.8	
<i>Sexual Offences</i>						
Rape	45 349	43 195	41 503	39 828	-1 675	-4.0
Sexual Assault	6 597	6 087	6 212	6 271	59	0.9
Attempted sexual offences	2 913	2 641	2 573	2 073	-500	-19.4
Contact sexual offences	1 821	1 694	1 607	1 488	-119	-7.4
Sexual Offences	56 680	53 617	51 895	49 660	-2 235	-4.3
<i>Ratio: Sexual Offences</i>						
Rape	85.1	79.8	75.5	71.3	-4.2	
Sexual Assault	12.4	11.2	11.3	11.2	-0.1	
Attempted sexual offences	5.5	4.9	4.7	3.7	-1.0	
Contact sexual offences	3.4	3.1	2.9	2.7	-0.3	
<i>Subcategories of aggravated assault</i>						
Carjacking	11 180	12 773	14 602	16 717	2 115	14.5
Truck hijacking	991	1 279	1 184	1 183	-1	-0.1
Robbery of cash in transit	145	119	137	152	15	10.9
Bank robbery	21	17	6	3	-3	-50.0
Robbery at residential premises	19 284	20 281	20 820	22 343	1 523	7.3

⁴⁹ Act 68 of 1995.

⁵⁰ Annual Crime Statistics, available at <https://www.saps.gov.za/services/crimestats.php>.

⁵¹ See note 49.

<i>Crime Category</i>	<i>April–March 2013/14</i>	<i>April–March 2014/15</i>	<i>April–March 2015/16</i>	<i>April–March 2016/17</i>	<i>Case Diff</i>	<i>% Change</i>
Robbery at non-residential premises	18 573	19 170	19 698	20 680	982	5.0
Trio crimes	49 037	52 224	55 120	59 740	4 620	8.4
Subcategories of Aggravated Robbery	50 194	53 639	56 447	61 078	4 631	8.2
Arson	5 458	5 127	4 903	4 321	-582	-11.9
Malicious damage to property	117 983	120 662	119 901	116 409	-3 492	-2.9
Contact-Related Crimes	123 441	125 789	124 804	120 730	-4 074	-3.3
<i>Property-Related Crimes</i>						
Burglary at non-residential premises	73 464	74 358	75 008	75 618	610	0.8
Burglary at residential premises	259 784	253 716	250 606	246 654	-3 952	-1.6
Theft of motor vehicle and motorcycle	56 645	55 090	53 809	53 307	-502	-0.9
Theft out of or from motor vehicle	143 801	145 358	139 386	138 172	-1 214	-0.9
Stock theft	24 534	24 965	24 715	26 902	2 187	8.8
Property-Related Crimes	558 228	553 487	543 524	540 653	-2 871	-0.5
<i>Other Serious Crimes</i>						
All theft not mentioned elsewhere	362 517	360 541	340 372	328 272	-12 100	-3.6
Commercial crime	76 744	67 830	69 917	73 550	3 633	5.2
Shoplifting	70 487	71 327	68 786	67 454	-1 332	-1.9
Other Serious Crimes	510 748	499 698	479 075	469 276	-9 799	-2.0
<i>Other Serious Crimes</i>						
17 Community-Reported Serious Crimes	1 803 991	1 795 947	1 770 626	1 738 980	-31 646	-1.8
<i>Crime Detected As A Result Of Police Action</i>						
Illegal possession of firearms and ammunition	15 362	15 116	14 772	16 134	1 362	9.2
Drug-related crime	260 596	266 902	259 165	292 689	33 524	12.9
Driving under the influence of alcohol or drugs	69 725	68 561	76 159	75 034	-1 125	-1.5
Sexual offences	4 720	6 340	5 830	6 164	334	5.7
Crime Detected As a Result of Police Action	350 403	356 919	355 926	390 021	34 095	9.6

73. On the issue of criminal justice, significant progress has been made on the Review of the Criminal Justice System and on the modernisation of the Criminal Justice System through the Integrated Criminal Justice System Programme. An Integrated Criminal Justice System which will address challenges and shortcomings across the criminal justice value chain. It is geared towards strengthening the cooperation and integration of law enforcement agencies in realising the strategic objective of the National Development Plan – of building safer communities and creating a resilient Criminal Justice System.

74. South Africa has also implemented, and is continuing to promote, a special focus on victim empowerment and ensuring that victims and witnesses are treated fairly and are fully supported through, amongst others, our Charter on the Rights of Victims. In the fight against crime victim surveys are used to monitor the perception of crime and user satisfaction with police and court services. The Victims of Crime Survey (VOCS) is an annual household-

based survey that aims to provide information about the dynamics of crime. The survey explores public perceptions of the activities of the police, prosecutors, courts and correctional services in the prevention of crime and victimisation. The VOCS also serves as a complementary data source on the levels of crime in South Africa. The 2016/17 VOCS⁵² highlighted that households' confidence in police services and courts has been gradually eroding over the years. Households that held negative attitudes about the police felt that the police could not recover stolen goods (59%), whereas those that were disgruntled with court services said that courts were too lenient towards criminals.

Legal Aid

75. The Constitution provides for every child, everyone requiring to resolve a dispute before a court or tribunal, every accused, detained, including every sentenced prisoner, to be provided with legal representation at state expense where substantial injustice would otherwise result. The Legal Aid South Africa Act, 2014⁵³ establishes Legal Aid South Africa, as a national public entity, to fulfil such constitutional obligations.⁵⁴ Section 34 of the Constitution guarantees access to courts and the right to a fair public hearing.⁵⁵ In line with the requirements placed on it by the Constitution and its enabling Act, Legal Aid South Africa has identified the following priorities in relation to the provision of legal aid to:

- Children in civil matters affecting them where substantial justice would otherwise result;
- Every detained person (including sentenced prisoners);
- Every person who is accused of a crime;
- Those who wish to appeal or review a decision of court in a higher court;
- Women; particularly in divorces, maintenance, and domestic violence cases;
- The landless, especially with regards to evictions.

76. In terms of the enabling legislation, Legal Aid SA is also mandated to render or make available legal aid and legal advice, provide legal representation to persons at state expense and to provide education and information concerning legal rights and obligations.⁵⁶ Legal Aid SA is funded by the national fiscus.⁵⁷ With regards to the provision of legal aid to poor and vulnerable persons, the delivery statistics for 2017/18 are as follows:

- Assisted a total of 731,856 clients with legal assistance in criminal and civil legal matters as well as legal advice matters;
- Provided legal representation in 426,617 legal matters;

⁵² Victims of Crime Survey 2016/2017, Statistics SA, Statistical Release P0341, released September 2017.

⁵³ Act 39 of 2014.

⁵⁴ It is governed by a Board of Directors, is accountable to the Minister of Justice and Correctional Services as well as to Parliament, but remains independent with regard to its operational activities.

⁵⁵ Section 34 of the Constitution of the Republic, 1996 provides that: "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or where appropriate, and independent and impartial tribunal or forum."

Dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum".

⁵⁶ Section 3 of the Legal Aid SA Act, 39 of 2014 provides that "The Objects of Legal Aid South Africa are to :

- (a) Render or make available legal aid and legal advice;
- (b) Provide legal representation to persons at state expense; and
- (c) Provide education and information concerning legal rights and obligations, as envisaged in the Constitution and this Act".

⁵⁷ Funding allocations are provided as part of the medium term expenditure framework which covers a period of three years. The total government grant in 2017/18 was ZAR 1,754,394,000 (USD140 million).

- 371,202 (87%) clients were assisted in criminal matters whilst 55,415 (13%) clients were assisted in civil matters;
- 25 impact litigation matters;
- Assisted in 1,774 appeal matters where the judgment/sentence was appealed to a higher court;
- 34% (46,726) of clients in criminal matters were in custody in correctional centres, while awaiting trial;
- Assisted 16,350 children with 62% (10,141) being children in conflict with the law and 38% (6,209) being children needing assistance with civil legal matters;
- Provided legal advice to 305,239 clients.

77. With regards to the accessibility of legal aid programmes by migrants, refugees and asylum-seekers, 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.⁵⁸ Legal aid is therefore available to anyone who lives in South Africa if the case:

- Is criminal;
- Involves children;
- Asylum seekers – Legal Aid is available to Asylum seekers applying or intending to apply for Asylum under Chapters 3 and 4 of the Refugees Act, 1998;⁵⁹
- Has the potential to positively affect the lives of a larger number of indigent persons or has the potential to positively affect the lives of a larger number of indigent other than the person/s to whom legal services are rendered directly.

78. In terms of the Regulations to the Legal Aid SA Act, legal aid in criminal matters may be provided to any accused person charged before a South African court provided such a person qualifies for legal aid in terms of the regulations,⁶⁰ and legal aid services are available to natural persons for advice and for legal representation.⁶¹ Asylum seekers, migrants and refugees will be eligible for criminal legal aid if they are charged with an offence as they would fall within the definition of accused persons⁶² and would qualify to be provided with legal advice as they are natural persons. In terms of Regulation 19, legal aid may be granted to legal aid applicants who seek asylum in the Republic or who intends to apply for asylum under Chapter 3 or 4 of the Refugees Act, 1998.⁶³ In terms of regulation 10(1) legal aid may be provided for the protection of constitutional rights. Constitutional rights refer to the rights as contemplated in the Bill of Rights which includes the right to language and culture, the protection of cultural, religious and linguistic communities as well as socio-economic rights. In providing legal aid in the protection of constitutional rights, Legal Aid SA is guided by certain factors before legal aid is provided.⁶⁴ Legal Aid SA may undertake or fund litigation

⁵⁸ 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.

⁵⁹ Act 130 of 1998.

⁶⁰ Regulation 2(1) to the Legal Aid SA Act, 34 of 2014 provides that: "Legal Aid South Africa may provide legal aid in a criminal case to any accused person charged before a South African court who qualifies for legal aid in terms of these regulations".

⁶¹ Regulation 2(2) to the Legal Aid SA Act, 34 of 2014 provides that: "Legal Aid is only available to natural persons for advice and for legal representation".

⁶² In 2016/2017 3 refugee children were assisted and 3,067 clients were assisted with immigration related offences where Legal Aid SA were engaged in in defending the rights of migrants.

⁶³ Act 130 of 1998.

⁶⁴ Regulation 10(2) to the Legal Aid SA Act provides that: "In deciding whether a person may receive legal aid for a civil case as contemplated in sub-regulation (1), Legal Aid South Africa must consider the following criteria:

- (a) The seriousness of the implications for the legal aid applicant;
- (b) The complexity of the relevant law and procedure;

or other legal work which has the potential to positively affect the lives of a larger number of indigent persons.⁶⁵ In promoting and protecting rights for asylum seekers Legal Aid SA was involved in a number of impact matters in ensuring that the rights of non-citizens are protected.⁶⁶

79. Legal Aid SA is involved in the promotion and protection of socio-economic rights focusing on poor and vulnerable group of our society. Many of the matters involved the right of access to adequate housing.⁶⁷ With regards to the protection of cultural rights, Legal Aid SA undertook litigation in the matter of *Mphephu Maria Ngwenya v Modjaji Florah Mayelane* on behalf of a female client to protect and advance the rights of women married in accordance with customary law and tradition.⁶⁸

IPID and JICS

80. The Independent Police Investigative Directorate Act, 2011⁶⁹ establishes the Independent Police and Investigative Directorate (“IPID”). The IPID replaces the

(c) The ability of the legal aid applicant to represent himself/herself effectively;

(d) The financial means of the applicant;

(e) The legal aid applicant chances of success in the case;

(f) Whether the legal aid applicant has a substantial disadvantage compared to the other party in the case; and

(g) Whether the other requirements of these regulations are met.

⁶⁵ Impact Litigation matters are matters which may establish a legal precedent, jurisprudence, have the potential of resolving large number of disputes or potential disputes or may improve the lives of a group of persons or a sizeable portion of a group. The major focus of litigating impact matters is the protection of fundamental human rights as provided for in the Constitution including, socio-economic, cultural, religious and linguistic communities thus ensuring that the Constitution becomes a reality to poor and vulnerable communities.

⁶⁶ During 2013 funding was provided for a matter of *Pontsho Doreen Motswagae and 14 Others/ Rustenburg Local Municipality and Others* which raised interesting issues relating to the security of tenure of black women occupying homes in their own name and whether the municipality could circumvent the provisions of section 26(3) of the Constitution that no one may be evicted from their home without a Court order. Legal Aid SA was involved in a matter of *Dohnavin Arthur Wilsnach v Reagan Gilmore and Others*, which highlighted the growing issue of predatory lending and fraudulent scheming sparked by the financial crisis. Loan companies and mortgage lenders engaged in such activities prey on the vulnerabilities of indigent citizens in order to take away their assets, i.e. homes. Recognising the threat that this poses to one’s fundamental right to housing Legal Aid SA successfully prevented the eviction of the plaintiff from his home.

During 2014/2015, Legal Aid SA funded the matter of *Lawyers for Human Rights v Minister of Home Affairs* to put an end to the unlawful detention especially of migrant women and children who suffer untold hardships whilst in detention. Section 34(1)(d) of the Immigration Act, 2002 (Act 13 of 2002) provides that an illegal foreign national may not be detained for more than 30 calendar days without a warrant of a court extending the detention period on good and reasonable grounds for a period not exceeding 90 calendar days. The Act did not afford a detainee an automatic right to challenge the lawfulness of his or her arrest. The provision was declared unconstitutional and invalid. In the same financial period Legal Aid SA funded the matter of *CORMSA v President of the Republic of South Africa* to challenge the application brought by the Consortium for Refugees and Migrants (CORMSA) to review the judicial decision to grant Mr Faustin Kayumba Nyanwasa refugee status.

During 2015/2016 Legal Aid SA was involved in the protection of socio-economic rights, in the matter of *Helgard Petrus Honiball and Premier of the Eastern Cape and Others* where the High Court granted an interim court order in terms of which the respondents undertook to move the communities to an area where they would be given access to flushing toilets and clean drinking water. Furthermore, a slab would be put in place to allow the families to build a temporary structure until such time that proper housing could be built.

⁶⁷ For example, in 2012 Legal Aid SA funded a matter involving *Schubart Park Residents v City of Tshwane Metropolitan Municipality* where the court clarified an eviction process and established the precedent that a municipality must bring a proper application to effect an eviction and provided clarity on section 26(3) of the Constitution.

⁶⁸ Case no 474/11 2012 3 ALL SA 408 (SCA).

⁶⁹ Act 1 of 2011.

Independent Complaints Directorate (“ICD”). The South African Police Service Act, 1995⁷⁰ provided for the powers and functions of the ICD. Section 206 (6) of the Constitution makes provision for the establishment of an independent police complaints body. It operates independently from the SAPS and the municipal police services (MPS). The mandate of the IPID is to conduct independent and impartial investigations of specified criminality committed by members of the South African Police Service (SAPS) Municipal Police Services (MPS). The IPID must, amongst others, investigate the following matters: any deaths in police custody; deaths as a result of police actions; any complaint relating to the discharge of an official firearm by any police officer; rape by a police officer, whether the police officer is on or off duty; rape of any person while that person is in police custody; any complaint of torture or assault against a police officer in the execution of his or her duties. In the 2016/2017 period, IPID finalised 3 449 investigations, representing 49% of all cases received. Some of the cases included: 140 deaths in custody, 115 deaths as a result of police action, 61 rapes alleged to have been committed by police; 5 rapes while in police custody; and 66 cases of police corruption. IPID, further, conducted a total of 98 awareness campaigns across all provinces and communication materials were distributed to community members.⁷¹

81. The Correctional Services Act, 1998⁷² embodies the Constitutional guarantee of the right to humane treatment of persons deprived of their liberty, this includes the right not to be tortured. The Correctional Services Amendment Act, 2008⁷³ abolished the concept and practice of solitary confinement in all South African correctional facilities and also obligates all correctional officers to immediately report all instances where inmates have been placed under mechanical restraint i.e. handcuffs or leg irons. The legislation provides a mechanism for detecting and punishing all acts of torture in correctional facilities. Any individual who alleges that he or she has been subjected to torture may complain to the South African Police Service, the IPID, the Judicial Inspectorate for Correctional Services, the Public Protector or the South African Human Rights Commission. In addition, South Africa ascribes to the Nelson Mandela Rules which it helped promote at the United Nations. The South African Cabinet approved these Rules in March 2018. The Rules are a set of universally acknowledged minimum standards guiding the treatment of prisoners to which member states of the United Nations re-committed themselves in December 2017. The Nelson Mandela Rules outline, amongst others, that there shall be no discrimination; that the religious beliefs and moral precepts of prisoners shall be respected; and that legal representation and protection are mandated in regard to vulnerable groups within the prison population.

82. The Prevention and Combating of Torture of Persons Act, 2013⁷⁴ gives legislative effect to the obligations that South Africa has undertaken under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. South Africa signed the Convention on 29 January 1993 and ratified the Convention on 10 December 1998.

83. The Prevention and Combating of Torture of Persons Act, in its Preamble, provides that, mindful of a shameful history of gross human rights abuses including torture, the Republic of South Africa is committed, since 1994, to prevent and combat torture of persons. Furthermore, the Act gives recognition to the equal and inalienable rights of all persons as the foundation of freedom, dignity, justice and peace in the world. It recognises that the promotion of universal respect for human rights and the protection of human dignity are paramount; and seeks to ensure that no one is subjected to acts of torture.

84. The Act provides for the prosecution of persons who commit offences of torture as well as setting out the appropriate penalties, which include life imprisonment. The Act further provides for the prohibition and the combating of torture; measures aimed at the prevention of torture; and also for the training of persons, who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment. Another preventative measure is the development of programmes to promote public awareness about torture and the measures to combat it. Prior to the promulgation of

⁷⁰ Act 68 of 1995.

⁷¹ IPID Annual Report 2016/2017, p 26.

⁷² Act 111 of 1998.

⁷³ Act 25 of 2008.

⁷⁴ Act 13 of 2013.

the Prevention and Combating of Torture of Persons Act, 2013, a number of legislative and other measures were put in place to deal with other forms of cruel, inhumane or degrading treatment or punishment of persons. These include measures such as the Correctional Services Amendment Act, 2008.⁷⁵

85. The Judicial Inspectorate for Correctional Services (“JICS”) is a vital watchdog body that seeks to ensure that inmates’ rights, as contained in the Constitution and relevant legislation and policy, are respected, protected, promoted and fulfilled. Section 85(1) of the Correctional Services Act, 1998⁷⁶ provides for the establishment of an independent office, the JICS, under the control of an Inspecting Judge. The object of the JICS is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres.

Prisons

86. Overcrowding in our correctional facilities remains a challenge. An eight-pronged strategy which include the following elements is implemented:

- Managing levels of Remand Detainees through the Integrated Justice System Case Management Task Team, Inter-sectoral Committee on Child Justice, Provincial Efficiency Enhancement Committees (PEECs), National Efficiency Enhancement Committee and the National Operation Committee (NOC);
- Managing levels of sentenced inmates through improving effective & appropriate use of conversion of sentence to community correctional supervision, release on parole, & transfers between correctional centres to attempt to establish some degree of evenness of overcrowding;
- Ensuring progress with DCS capital works programme to upgrade correctional facilities & to build new correctional centres that are both cost effective & rehabilitation oriented; and
- Encouraging debate in South Africa about reason for incarceration as a sentence & encouraging an approach to appropriate sentencing that is focused on facilitating rehabilitation;

87. The total number of inmates in correctional centres as at 31 March 2018 is set out in the table below.

Table 22
Inmates in correctional centres (31 March 2018)

<i>Region</i>	<i>Approved bed space</i>	<i>Unsentenced</i>	<i>Sentenced</i>	<i>Total</i>	<i>Occupancy %</i>
Gauteng	25 421	11 117	26 000	37 117	146.01%
Western Cape	20 509	12 000	18 157	30 157	147.04%
KwaZulu-Natal	20 054	6 220	21 712	27 932	139.28%
FSNC	20 550	5 052	18 125	23 177	112.78%
Eastern Cape	13 081	5 290	15 547	20 837	159.29%
LMN	18 296	6 576	18 339	24 915	136.18%
National	117 911	46 255	117 880	164 135	137.77%

Table 23
Number of sentenced offenders per crime categories (offence type), 31 December 2017

<i>Number of sentenced offenders per crime categories (offence type) as on 31 December 2017</i>	
<i>Crime Categories</i>	<i>Total</i>
Aggressive	64 795

⁷⁵ Act 25 of 2008.

⁷⁶ Act 111 of 1998.

<i>Number of sentenced offenders per crime categories (offence type) as on 31 December 2017</i>		
Economic		22 415
Narcotics		2 804
Sexual		21 364
Other		61 34
Total		117 512

<i>Number of offenders per sentence categories</i>		
<i>Sentence Categories</i>	<i>Totals 2016</i>	<i>Totals 2017</i>
0–6 months	4 594	4 278
> 6–12 months	3 041	2 871
> 12– < 24 months	2 775	2 650
2 years	Included at >2–3 years	1 771
> 2–3 years	8 584	7 655
> 3–5 years	12 030	11 288
> 5–7 years	8 636	8 146
> 7–10 years	16 849	16 585
> 10–15 years	22 966	21 973
> 15–20 years	13 584	13 120
> 20 years	10 689	11 433
Habitual criminal	Included at >10–15 years	181
Life sentence	13 820	15 539
Ordered by court as dangerous	Included at >10–15 years	22
Total	117 568	117 512

88. As at June 2017 some 11,842 non-nationals were being held in South African correctional facilities. Of these 7,345 had been sentenced and 4,497 were awaiting trial, with 1,380 being prosecuted for being in the country illegally.

89. Most deaths in correctional centers are due to natural causes; however, there are those deaths in custody which occur due to unnatural causes. Unnatural deaths generally fall into three categories: homicide, accidents, and suicides. In the 2015/2016 period, 62 unnatural deaths in incarceration were reported and 52 during the period April 2016/April 2017, and, 61 during the 2017/2018 period.

Child justice

90. The Child Justice Act, 2008⁷⁷ came into operation in 2010 to establish a child justice system which protects the rights of children who are in conflict with the law, in accordance with the values underpinning the Constitution. It includes the promotion of the spirit of Ubuntu in the child justice system by fostering children's sense of dignity and worth, reinforcing children's respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interests of victims and the community.

91. Reconciliation by means of restorative justice responses is supported and the involvement of parents, families, victims and where appropriate, community members affected by the crime, are encouraged to promote the reintegration of children back into their families and communities. The implementation of the Act and the monitoring of the progress made towards the implementation of the Act require inter-sectoral cooperation and

⁷⁷ Act 75 of 2008.

collaboration from a number of departments and institutions – such as the Department of Justice and Constitutional Development, the National Prosecuting Authority, the South African Police Service, the Department of Correctional Services, the Department of Social Development, the Department of Basic Education and the Department of Health. Legal Aid SA also plays an essential part in the implementation of the Act through the protection of the rights of children in conflict with the law.

92. In terms of the Act, there is a National Policy Framework to ensure a uniform, coordinated and co-operative approach by all government departments, organs of state and institutions and to promote cooperation with the non-governmental sector and civil society to ensure effective partnerships for the strengthening of the child justice system. The first National Policy Framework was adopted in 2010 and the Act requires that the Minister review the National Policy Framework within 3 years of its publication and at least once every 5 years thereafter. The Amended National Policy Framework, 2018 was tabled in May 2018. It includes guidelines for key priority areas such as, amongst others, building capacity in the sector, securing the attendance of children at preliminary inquiries, ensuring the assessment of children, awaiting trial, bail and placement, trials, sentencing and diversion services, as well as guidelines on the management of One Stop Child Justice Centers, child and youth care centers (also referred to as secure care centers) and correctional facilities accommodating children.

93. The number of sentenced children being held in correctional centers in 2018 are set out in the table below:

Table 24

Number of sentenced children being held in correctional centers (May 2018)

<i>Region</i>	<i>Average March 2018 baseline</i>	<i>Apr 2018</i>	<i>May 2018</i>
Gauteng	7	6	5
Western Cape	12	10	10
KwaZulu-Natal	46	49	51
Free State, Northern Cape	39	42	41
Eastern Cape	11	12	10
Limpopo, Mpumalanga, North-West	6	6	7
National Average Sentenced	121	125	124
Average monthly population of sentenced	118 067	117788	
All inmates	164 111	163518	
% of sentenced children to all sentenced offenders	0,10	0,11	
% of sentenced children to all inmates	0,07	0,08	

State institutions supporting Constitutional Democracy

94. Chapter 9 of the Constitution refers to the following state institutions created to strengthen constitutional democracy in South Africa. These are the Public Protector, the South Africa Human Rights' Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, the Electoral Commission and Independent Communications Authority of South Africa. The Constitution provides that these institutions are independent and subject only to the Constitution and the law. In terms of section 181 (2) of the Constitution, such institutions are empowered to act impartially and without fear, favour or prejudice. No person or organ of state may interfere with the functioning of these institutions and these institutions are accountable to the National Assembly.

95. 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 as 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 the 2017/2018 year, the SAHRC responded to complaints received of human rights violations, the top five rights violations being: Equality (14%); Health care, food, water and social security (9%); Just administrative action (9%); Labour Relations (8%); and, Human Dignity (8%). The SAHRC has also been pivotal in instituting strategic impact litigation.⁷⁸

96. The SAHRC also undertook various investigations on alleged violations of equality, dignity and hate speech,⁷⁹ and on 20 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 2017.⁸⁰ The SAHRC has undertaken a number of National and Provincial Hearings in specific areas of concern: 14–15 November 2017, National Investigative Hearing into the status of mental health care in South Africa; 7–8 February 2018, National Investigative Hearing into social cohesion, xenophobia and migration; 19–20 March 2018, Provincial Hearing in the North West Province on the lack of security measures in special needs schools in the province; and, 28 March 2018, High Level Public Inquiry into Land and the impact of rural land use and ownership patterns on human rights on the basis that rural land reform is also a key component of the progressive realisation of human rights.

97. The Commission for Gender Equality (CGE) was established in terms of section 187 of the Constitution in order to promote respect for gender equality and the protection, development and attainment of gender equality. The CGE's mandate is to promote respect for gender equality and the protection, development and attainment of gender equality and it must therefore, monitor, investigate, research, educate, lobby, advise Parliament and report on issues concerning gender equality, and, monitor compliance with Regional and International Conventions. The CGE further draws its mandate from the Equality Act, 2000⁸¹ which enables the CGE to assist complainants in instituting proceedings in the Equality Court and to conduct investigations and make recommendations regarding persistent contraventions of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).⁸²

98. In 2016/2017 the CGE undertook one investigative report on gender transformation in private sector institutions, held Gender Transformation Hearings with the Universities of Kwa-Zulu Natal, Cape Town and the Witwatersrand, produced a status report on gender policies and practices using the gender barometer and focusing on the mining sector; gave input on 16 submissions; and, conducted assessment reports on women's representation in political parties in local government, the implementation of the National Action Plan of

⁷⁸ Amongst others, the case of *Residents of Arthursstone Village v Amashagana Tribal Authority and Others*,⁷⁸ and the case of *SAHRC & 19 Others v Madibeng Municipality, MEC for Local Government and Human Settlement, Minister of Water and Sanitation and Minister of Health*,⁷⁸ which highlighted the justiciability of socio-economic rights through the courts. In *South African Human Rights Commission v Oscar Peter Bougardt* EC 13/2018 the Commission secured a contempt of court order in the Equality Court against a respondent who failed to comply with the provisions of a mediation agreement interdicting the respondent from publishing statements that are discriminatory or incite hatred on the grounds of sexual orientation. The Court handed down a suspended custodial sentence on 18 May 2018.

⁷⁹ File Ref No: FS/1415/0253 (the Klu Klux Klan image case), File Ref No: GP/1415/0554 (the racist school prize-giving rant case); and File Ref No: GP/1415/0202 (the ethnic hair/hairdresser case), SAHRC Annual Report 2017.

⁸⁰ Accessible on sahrc.org.za.

⁸¹ Act 4 of 2000.

⁸² Act 4 of 2000.

Gender-Based Violence, the implementation of the Victims' Charter.⁸³ The CGE, in the same period, dealt with 756 complaints of gender equality violations and conducted a total of 136 outreach, advocacy and legal advice clinics across the country. It also conducted investigations which focused on the transformation of the judiciary, maternal health, decriminalisation of sex work and gender transformation in the mining sector. The CGE also took part in joint coordinated programmes with the LGBTI sector and other institutions supporting constitutional democracy.

99. Section 185 of the Constitution provides that the primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) are to promote respect for the rights of cultural, religious and linguistic communities, to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa. The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities. The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation. The Commission has the additional powers and functions prescribed by national legislation. In the 2016/2017 year, the CRL released its report on Commercialisation of Religion & Abuse of People's Belief System which was presented to a Parliamentary Committee. The Report's reception invoked various concerns and the CRL is awaiting the decision of the Constitutional Court on the constitutionality of the CRL's recommendations.

100. Section 182 provides for the establishment of the Public Protector. The Public Protector has the power, as regulated by national legislation to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice, to report on that conduct; and to take appropriate remedial action. The Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector may not investigate court decisions. The Public Protector must be accessible to all persons and communities.

101. The Public Protector is appointed by the President, on the recommendation of the NA. The high profile nature of the investigations it conducts has drawn many legal challenges for example the State of Capture Report which delved into allegations of state corruption. In the period of 2016/2017, the Office of the Public Protector finalised 10 787 of the 16 397 cases lodged. Of those finalised, 606 fell outside the mandate of the Public Protector while 929 were referred to other competent institutions for resolution. Findings in favour to the complainant were made in 49% of the cases finalised. Seventeen investigation reports were issued which involved issues such as: the victimisation of whistle-blowers, problems with workmen's compensation, governance matters plaguing local government and the plight of small business.

Other important role-players (media and civil society)

102. Civil society is considered to be an important stakeholder in any country that seeks to deepen its democracy. Defined as operating outside of the state and independent of the market, it is often referred to as the third sector. Civil society organisations (CSOs) are varied in their character and in their purpose. But there is a common thread that holds them together, which is that they exist in public life to promote public good. In fact, the strength of a country's civil society is often used as a measure to determine the strength of its democracy. CSOs are defined as organised civil society and can come in many forms, some informal and some as formal entities such as non-governmental organisations (NGOs), CBOs, faith-based organisations (FBOs), among many others. This is when a group of individuals come together

⁸³ Commission for Gender Equality 2016–2017.

for a common purpose, as in to fulfil a particular mandate driven by need. South Africa has dynamic and vibrant civil society organisations across various sectors.

103. Freedom of expression in South Africa is enshrined in section 16 of the Constitution. As a general rule, any law that seeks to restrict freedom of expression must be in conformity with section 36 of the Constitution (limitations clause), and in particular, it must not make inroads which are far too extensive as to render the right a nullity. The media is a principal mechanism concerned with the popularization of human rights, identifying violations and violators and generally advancing the cause of human rights. South African media, inclusive of social media, is very active and communicates on various human rights, including socio-economic and cultural rights aspects on a daily basis.⁸⁴

104. There are three types of radio stations: Public radio stations; Private commercial radio stations; and, Community radio stations. The radio industry is dominated by the South African Broadcasting Corporation (SABC) in terms of number of radio stations. The SABC has 19 radio stations.⁸⁵ Increased indigenous language programming, particularly in the community radio space, has spurred on industry growth. According to the AMPS 2015, community radio accounted for 25,6% of the total radio market share. In 2013, ICASA reported that there were 193 community licenses in South Africa, but that only about 164 were still in operation. There are 11.1 million TV households in South Africa and 3 kinds of television stations: public television stations; private commercial television stations; and, community television radio stations. The SABC has three terrestrial television channels (SABC1, 2 and 3) with total audience accounting for a viewership of 33 472 000 which translates to 69.3% of the total television audience. E.tv is the only privately owned free-to-air commercial terrestrial television station with audience of 26 073 000 people, representing 22.3% of the total viewing audience. MultiChoice is the main provider of pay TV and satellite broadcasting services, it owns M-Net (Pty) Ltd which broadcasts terrestrially an M-Net premium channel and the Community Services Network (CSN) which targets special interest communities and sports; and the digital satellite bouquet on DSTV. The current audience for M-Net is 1.97 million and for DSTV it is 4.76 million people. There are five licensed community television stations in South Africa: Soweto TV (2 774 000 viewers); 1KZNTV (806 000); Tshwane TV (518 000); Bay TV (449 000); and, CTV (299 000).

105. In terms of the newspapers and magazine titles owned, the print industry is dominated by a few large companies who own and control a large number of national newspapers, local newspapers and magazines across the country. There are several independently-owned newspapers. However, the majority are owned by 4 large publishing groups: Tiso Blackstar Group, Naspers (Media 24), Independent News and Media and Caxton/CTP. The national newspaper reader is 17.5 million and the magazine readership now stands at 18.1 million.

II. General framework for the promotion and protection of human rights

A. Acceptance of International Human Rights Norms

106. South Africa is party to most major UN human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the

⁸⁴ The Media Development and Diversity Agency (MDDA) was established by legislation to promote media development and diversity, media freedom, the right to freedom of expression and freedom to receive or impart ideas or information. Media ethics are important within the context of press freedom and freedom of expression. The Press Council of South Africa, the Ombudsman and the Appeals Panel thereof are an independent co-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications.

⁸⁵ 15 Public Broadcasting Service (PBS) stations, three Public Commercial Service (PCS) stations and Channel Africa. The organisation broadcasts in 11 official languages and stations with national coverage broadcast in either English or Afrikaans.

Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).

107. South Africa also has international obligations to report to treaty bodies in terms of various multilateral agreements.

108. The Constitution provides for international agreements the negotiating and signing of which being the responsibility of the national executive.⁸⁶ In order for the international agreement to become law in the Republic of South Africa, it has to be enacted into law by national legislation, in other words, domesticated into national law. The Constitution further provides that customary international law is law in the Republic of South Africa unless it is inconsistent with the Constitution or Act of Parliament, and courts are directed that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.⁸⁷

109. South Africa regularly reviews its reservations and/or declarations to the central UN human rights instruments. A list of the main international human rights conventions and protocols are set out in the table below.

Table 25

Main international human rights conventions and protocols with reservations/declarations

<i>Convention</i>	<i>Ratification</i>	<i>Reservations (R)/Declarations (D)</i>
International Covenant on Civil and Political Rights (ICCPR)	10/12/1998	(D) Article 41: “The Republic of South Africa declares that it recognises, for the purposes of article 41 of the Covenant, the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.”
First and Second Optional Protocols to the ICCPR	10/12/1998	NA
International Convention on the Elimination of all Forms of Racial Discrimination	10/12/1998	(D) “The Republic of South Africa: (a) declares that, for the purposes of paragraph 1 of Article 14 of the Convention, it recognises the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within the Republic’s jurisdiction claiming to be victims of a violation by the Republic in any of the rights set forth in the Convention after having exhausted all domestic remedies; and (b) indicates that, for the purposes of paragraph 2 of article 14 of the Convention, the SAHRC is the body within the Republic’s national legal order which shall be competent to receive and consider petitions from individuals or groups of individuals within the Republic’s jurisdiction who claim to be victims of any of the rights set forth in the Convention.”

⁸⁶ Section 231.

⁸⁷ Section 233.

<i>Convention</i>	<i>Ratification</i>	<i>Reservations (R)/Declarations (D)</i>
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	15/12/1995	NA
Optional Protocol to the CEDAW	06/05/2002	NA
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10/12/1998	(D) <p>“[The Republic of South Africa declares that] it recognises, for the purposes of article 30 of the Convention, the competence of the International Court of Justice to settle a dispute between two or more State Parties regarding the interpretation or application of the Convention, respectively.”</p> <p>Declarations re: articles 21 and 22</p> <p>“The Republic of South Africa declares that:</p> <ul style="list-style-type: none"> • it recognises, for the purposes of article 21 of the Convention, the competence of the Committee Against Torture to receive and consider communications that a State Party claims that another State Party is not fulfilling its obligations under the Convention; • it recognises, for the purposes of article 22 of the Convention, the competence of the Committee Against Torture to receive and consider communications from, or on behalf of individuals who claim to be victims of torture by a State Party.”
Convention on the Rights of the Child (UNCRC)	16/06/1998	NA
Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography	30/06/2003 24/09/2009	(D) to CRC: <p>“a) The South African National Defence Force (SANDF) is a voluntary force and therefore there is no compulsory conscription into the SANDF;</p> <p>b) The process of recruitment in the SANDF is initiated through advertisement in the national newspapers and the minimum age limit of 18 years is stipulated by law as a requirement;</p> <p>c) The indication of all recruits is conducted in public;</p> <p>d) All recruits are required to present a national identity document which states their date of birth and where appropriate, their educational records; and</p> <p>e) All recruits undergo a rigorous medical examination in terms of which pre-pubescence would be noticed, and any recruit determined to be underage is routinely declined from recruitment.”</p>
The Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflicts		
Convention on the Rights of Persons with Disabilities	30 Nov 2007	NA
Optional Protocol to the Convention on the Rights	30 Nov 2007	NA

<i>Convention</i>	<i>Ratification</i>	<i>Reservations (R)/Declarations (D)</i>
of Persons with Disabilities		
International Covenant on Economic, Social and Cultural Rights	12/01/2015	(D) Articles 13 & 14: South Africa will give progressive effect to the right to education as provided for in Article 13(2)(a) and Article 14, within the framework of its National Education Policy and available resources.
International Convention on the Protection of all Rights of All Migrant Workers and Members of Their Families (ICMW)	NA	NA
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)	The ratification process in progress with an envisaged conclusion in 2018/2019	NA

110. South Africa as a member of the ILO has ratified 27 ILO Conventions, of which 25 are in force and 2 conventions have been denounced.

B. Legal framework for the protection of human rights at the national level

111. Because of our history South Africa has a firm commitment towards the protection and promotion of human rights, not only within the country, but also on our continent and the world over. It is of particular importance to South Africa that it plays an active role in the promotion of global human rights. This is confirmed by the central objective of our foreign policy which is aimed at creating a better South Africa in a better Africa, and a better and safer world. Our dedication to the promotion of human rights is entrenched in our Constitution, in the Bill of Rights, and informs our commitment to promoting peace, justice, human rights and the rule of law.

112. Government is committed to the advancement of the rule of law in order to ensure the realisation of the rights enshrined in the Constitution. Our courts ensure the nurturing of South Africa's founding values such as human dignity, equality and supremacy of the Constitution. South Africa has made significant progress in the protection and promotion of civil and political rights as well as economic and social rights since the advent of democracy. Since 1994, South Africa has demonstrated its commitment to world peace, security and justice. In addressing the legacy of our past, South Africa has adopted a number of positive measures to heal the divisions of the past and has established a society based on the democratic values, social justice and fundamental human rights.

113. Various legislative, policy and other measures have been implemented to ensure the substantive realisation of civil and political rights as well as socio-economic and cultural rights. In addition, our courts continue to deliver judgments and develop case law to enhance and protect these rights and to provide guidance on the interpretation of these rights. South Africa has advances in pushing back the three main pillars in the legacy of apartheid – inequality, unemployment and poverty. Government followed a transformation approach to ensure full enjoyment of all rights enshrined in the United Nations Bill of Rights and the Constitution of the Republic of South Africa, in particular.

114. Within this broad transformation framework, the key issues are the building of a new nation underpinned by the founding values of the Constitution, being human dignity, the

achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism, supremacy of the Constitution and the rule of law.

115. The development of previously disadvantaged groups has received particular attention, as well as the fulfillment of constitutionally justiciable socio-economic rights. The delivery of a comprehensive social security package, including housing, water, sanitation and electricity to those who were previously excluded, has been a priority. In addition, the provision of primary healthcare, education and social assistance to millions of our people has been equally important. South Africa has passed a number of laws to give effect to the Constitution.⁸⁸

116. Chapter 2 of our Constitution contains South Africa's Bill of Rights. It is this part of the Constitution that has attracted the greatest interest – and has had the greatest impact on South Africans – in the past few years. The right to equality and to be protected from discrimination is firmly entrenched in section 9 of our Constitution.⁸⁹ Section 9 is an equality clause, which prohibits unfair discrimination on certain “listed grounds”. This means that discrimination on the basis of one of the grounds listed in s 9(3) is presumed to be unfair discrimination, until the contrary is proved. The listed grounds are race, colour, ethnic origin, gender, sex, pregnancy, sexual orientation, marital status, age, disability, religion, conscience and belief, culture and language, birth and social origin.

117. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. A provision of the Bill of Rights binds a natural person or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.⁹⁰ When interpreting the Bill of Rights, a court, tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom, it must consider international law and may consider foreign law. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill of Rights.⁹¹

118. The Bill of Rights guarantees both civil-political rights and socio-economic rights. With regards to the positive obligations imposed on the state regarding socio-economic rights, the positive obligation is qualified by the use of the phrase – in s26(2) and s27(2) – obliging the state to take only those steps “within its available resources, to achieve the progressive realisation of the right.” The positive dimension of the socio-economic right is realised/fulfilled through state action over a period of time (i.e. progressively). This does not diminish the obligation on the state to take those steps that are within its power immediately and other steps as soon as possible. The onus is thus on the state to show that it is making progress towards the full realisation of the right. Socio-economic rights are further limited by the qualification that they are only available to the extent that state resources permit. An important aspect of the right is that the state must be able to adequately justify its use of

⁸⁸ During the first 20 years of democracy, more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination were promulgated. Whilst considerable progress has been made in implementing these pieces of transformative legislation, more still needs to be done.

⁸⁹ S 9

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) 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, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

⁹⁰ Section 8 of the Constitution.

⁹¹ Section 39 of the Constitution.

resources. It is important to stress that resource scarcity does not relieve the state of its duty to fulfil the rights based on a standard of reasonableness.

119. It is important to stress 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.⁹²

120. The growing body of constitutional jurisprudence in South Africa is a testament to the judiciary's exercise of their mandate to promote and protect human rights. The Constitutional Court has handed down many ground-breaking judgments, in both the areas of civil-political and socio-economic rights. In *S v Makwanyane*⁹³ which dealt with the constitutionality of the death penalty, the Court described the right to life and dignity as the "most important of all human rights, and the source of all other personal rights" in the Bill of Rights.⁹⁴ In *Ferreira v Levin NO*⁹⁵ the Court dealt with the right to freedom and security of the person. In *Bernstein v Bester NO*⁹⁶ it examined the right to privacy. In *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs*⁹⁷ the Constitutional Court held that same-sex couples had a right to enjoy the same immigration benefits accorded to married couples. Landmark judgments pertaining to socio-economic rights include cases such as *Government of the Republic of South Africa v Grootboom*,⁹⁸ *Soobramoney v Minister of Health, KwaZulu-Natal*,⁹⁹ *Minister of Health v Treatment Action Campaign*¹⁰⁰ and *Khosa v Minister of Social Development*¹⁰¹ and many others.

121. When finding that a human right has been infringed, the courts have the power to impose various remedies such as declaring the infringing law, policy or conduct invalid, granting a structural interdict (which directs the violator to take steps to rectify the violation under the court's supervision) or declaratory relief.

122. Other important pieces of legislation include the three "human rights" acts, namely the Promotion of Access to Information Act (PAIA);¹⁰² Promotion of Administrative Justice Act (PAJA)¹⁰³ and PEPUDA. All three human rights legislation mandated by the Constitution and give effect to the constitutional rights to administrative justice, access to information and equality.

C. Framework within which human rights are promoted at the national level

123. With the advent of democracy in South Africa in 1994, a human rights culture was made the cornerstone of the new constitutional dispensation and a wide-ranging set of human rights, including socio-economic rights, was inscribed in a Bill of Rights and incorporated and repeated in the final Constitution of 1996.¹⁰⁴ The inclusion of civil-political rights as well as fully justiciable socio-economic rights in our Constitution was the most critical factor in the attainment of freedom, dignity and equality.

124. Besides the Constitution, government policies are geared to give expression to the provisions of the overarching approach contained in the National Development Plan (NDP), which was developed and launched in 2013, to offer a long-term perspective to eliminate

⁹² 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.

⁹³ 1995 (3) SA 391 (CC).

⁹⁴ Paras 144, 146.

⁹⁵ 1996 (1) SA 984 (CC).

⁹⁶ 1996 (2) SA 751 (CC).

⁹⁷ 2000 (2) SA 1 (CC).

⁹⁸ 2001 (1) SA 46.

⁹⁹ 1998 (1) SA 765 (CC).

¹⁰⁰ 2002 (5) SA 721.

¹⁰¹ 2004(6) BCLR 569 (CC).

¹⁰² Act 2 of 2000.

¹⁰³ Act 3 of 2000.

¹⁰⁴ The Interim Constitution of 1993 only included a very limited list of socio-economic rights.

poverty and reduce inequality by 2030. The attainment of socio-economic rights forms a vital part of the NDP. The current 2014 to 2019 Medium Term Strategic Framework (MTSF) is the first five-year implementation phase of the NDP.

125. The MTSF is structured around 14 priority outcomes which cover the focus areas identified in the NDP and Government's electoral mandate: education, health, safety and security, economic growth and employment, skills development, infrastructure, rural development, human settlements, local government, environment, international relations, public sector, social protection, nation-building and social cohesion.

126. Specific focus is drawn to the following human rights areas:

Migrants

127. The Refugees Act, 1998¹⁰⁵ provides for the reception into South Africa, and the rights and obligations of refugees and asylum seekers. While they are being processed and hold a valid asylum seeker visa, asylum seekers can move freely and have the right to work and study, as well as access to basic health services. Refugees are entitled to apply for birth certificates for their children born in South Africa, identity documents and travel documents that are limited only by not allowing travel to countries of origin. An asylum seeker, is further entitled to the following whilst within the territory of South Africa: a formal written recognition as an asylum seeker, pending finalization of his or her application for asylum; the right to remain in South Africa pending the finalization of his or her application for asylum; the right not to be unlawfully arrested or detained; and the rights contained in the Constitution in so far as those rights apply to an asylum seeker.

Children

128. The Child Justice Act, 2008¹⁰⁶ and the Regulations issued in pursuance thereof, both underpin the principle of the best interests of the child and therefore singles children out for special protection. These protective guidelines and procedures aim to guarantee the best interests of the child when children are in conflict with the law. The dignity and well-being of the child must be protected at all times during an arrest, during the preliminary stages before the matter is referred to court, as well as during the period when the matter is at court and during trial. It entrenches the notion of restorative justice in the criminal justice system.¹⁰⁷

129. In order to, inter alia, afford greater protection to children, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007¹⁰⁸ was passed in 2007. This Act provides for expanded definitions of crimes, such as rape, and provides greater protection for children. A number of new policy frameworks were also introduced and implemented, including the Child Justice National Policy Framework, the Restorative Justice National Policy Framework (including forming linkages with traditional justice), the Social Crime Prevention Strategy and the Diversion Accreditation Framework. Government has also adopted a Plan of Action to combat violence against women and children. Furthermore, the Criminal Law (Sentencing) Amendment Act, 2007¹⁰⁹ aims to regulate the imposition of discretionary minimum sentences for certain serious offences and also to provide that certain circumstances shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence when a sentence must be imposed in respect of the offence of rape.

¹⁰⁵ Act No. 130 of 1998.

¹⁰⁶ Act No. 75 of 2008.

¹⁰⁷ In this regard, the Act provides that where a child is charged with a minor offence, the matter may be diverted away from the criminal justice system. For example, if a child has committed a petty offence the child could be diverted by the prosecutor at court. Diversion options include options such as releasing the child into the care of a parent or appropriate adult or guardian or attendance of certain program, and so forth.

¹⁰⁸ Act 32 of 2007.

¹⁰⁹ Act 38 of 2007.

Trafficking in persons

130. In recognition of the fact that human trafficking is a transnational crime, South Africa has ratified international and regional instruments that facilitate trans-national collaborative measures aimed at combating trafficking in women and children.¹¹⁰ The Prevention and Combating of Trafficking in Persons Act, 2013¹¹¹ is a comprehensive law dealing with the issue of trafficking, which was previously dealt with in various pieces of legislation. In addition to creating very specific offences criminalising trafficking in persons, the Act also focus on the plight of victims, by allowing for those convicted of trafficking to be forced to pay compensation to a victim for damages, injuries, both physical and psychological harm suffered and loss of income, amongst others. The Act is forward-looking in that it satisfies modern developments in terms of human rights law, such as that the law should not only serve to prosecute offenders and prevent re-offending, but it should also look at the reparative needs of the victim. This is incidentally also in-line with the spirit and aim of the General Comment on Torture, issued by the Committee against Torture, which states that redress has five key elements which ought not to be overlooked, that is: restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.¹¹² The Act deals comprehensively with human trafficking in all its various forms and in particular provides for the protection of and assistance to victims of trafficking.¹¹³

Gender equality

131. The empowerment of women and the achievement of gender equality in South Africa also involve dealing with the legacy of apartheid and about 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. 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.

132. 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. It also had the effect of repealing sections 22 and 27(3) of the KwaZulu Act on the Code of Zulu Law which entrenched the

¹¹⁰ These instruments are: the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the UN Convention against Trans-national Organized Crime. South Africa is also in the process of concluding memoranda of understanding on cooperation to combat trafficking in persons and assisting victims of trafficking with the following countries: Angola, Brazil, Indonesia, Malaysia, Mozambique, Nigeria, and Thailand.

¹¹¹ Act 7 of 2013.

¹¹² Committee against Torture, General Comment No.3 (2012).

¹¹³ The Act provides for social service professionals to play a role in the reporting, identification and assessment of a person who is a victim of trafficking. Once this is confirmed the victim is entitled to be placed under an approved programme and child victims are to be placed in temporary safe care. Such programmes will offer accommodation, counselling and rehabilitation services as well as aim to reintegrate the victim back into their families and communities. The programme also offers education and skills development training for adults. A draft Trafficking in Persons National Policy Framework has also been developed.

notion that in that province, a man in a marriage was not only the head of the family but he/she was also the holder of the marital power. The Constitution acts as the normative foundation for the advancement of women's rights in South Africa, several pieces of legislation provide the building blocks.

133. South Africa has also made a number of key commitments at the sub-regional, continental and international levels on promoting women's empowerment and achieving 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. 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.

134. Following elections in May 2014, the President pronounced on a self-standing, dedicated Ministry for Women to be located in the Presidency. The mandate of this Ministry is to promote the socio-economic empowerment of women and the advancement of gender equality. In addition, there has been a steady increase in the number of women ministers and deputy ministers in Cabinet since 1994. A minimum of 25% women representation in Parliament has also been maintained. Government has been committed to ensuring that women are increasingly recruited to the middle and senior management echelons of the public sector, where affirmative action programmes have also been introduced.

135. The courts have also played an instrumental role in striking down discriminatory laws and customary practices. For instance, in *Bhe v the Magistrate, Khayelitsha Shibi v Sithole and Others; SA Human Rights Commission v President of the Republic of South Africa*,¹¹⁴ the rule of male primogeniture, which provided that only male heirs could inherit, was invalidated on the grounds that it violated the right to equality of female heirs. Until the 1999 Supreme Court of Appeal decision in *Amod v Multilateral Motor Vehicle Accidents Fund*¹¹⁵ a marriage contracted according to Islamic law was null and void. This decision recognized a monogamous Islamic marriage for the purposes of support. In *Daniels v Campbell NO*¹¹⁶ the Constitutional Court held that spouses party to monogamous traditional Islamic marriages are to be considered spouses for the purposes of the Intestate Succession Act and the Maintenance of Surviving Spouses Act. The High Court extended this recognition to include monogamous traditional Hindu marriages in *Govender v Ragavayah NO*.¹¹⁷

Gender-based violence

136. In 2008, Government, in conjunction with the judiciary, launched a set of guidelines for handling domestic violence cases. The guidelines have been circulated widely. In 2009, a review of the implementation of the Domestic Violence Act, 1998¹¹⁸ was finalised. The Ndabezitha Project seeks to train traditional leaders, prosecutors and court clerks on domestic violence matters in rural areas. Government has also been running awareness campaigns (through the media, booklets, pamphlets) aimed at sensitising communities about domestic violence services.

137. The Domestic Violence Act, 1998¹¹⁹ is widely recognized for its notable features that seek to provide care and support to victims when engaging with our courts. Section 11 of this Act allows court proceedings to be held *in camera*. It further entitles the victim to bring to court not more than 3 support persons so as to ease anxiety whilst testifying. It is also an Act that prohibits direct cross-examination of the victim by an undefended abuser, mainly to save the victim from any possible intimidation. It is further recognized as the very first legislation in the global sphere to recognize same-sex partners as falling within the classification of

¹¹⁴ 2005 (1) SA 580 (CC).

¹¹⁵ 1999 (4) SA 1319 (SCA).

¹¹⁶ 2003 (9) BCLR 969 (C).

¹¹⁷ 2009 (3) SA 178 (D).

¹¹⁸ Act 116 of 1998.

¹¹⁹ Act 116 of 1998.

domestic relationships. In terms of this Act, minors can also apply for a Protection Order (assisted or unassisted). It further allows persons who have a material interest in the well-being of the victim to apply for the protection order on behalf of the victim with the written consent of such victim. In this way, the Act gives teachers/ lecturers, health care workers, police officials, social workers, employers, family members, and even neighbours, the right to act against domestic violence.

138. A major component of our fight against sexual violence is the Thuthuzela Care Centers (TCCs), which embody a coordinated approach in the way we effectively manage sexual offences. The TCC-model is an integrated approach to deal with rape care, aimed at providing comfort, restoring dignity and ensuring justice for victims of sexual violence. The success of the TCCs is based upon effective and efficient stakeholder cooperation particularly between the Departments of Justice, Health, Social Development, the SAPS and designated civil society organisations. The TCC-model is specifically focussed on a victim-friendly and court directed approach with prosecutor-guided investigations and stakeholder cooperation. The ultimate goal is to minimise secondary victimization, reduce the cycle period for the finalisation of cases and to increase the conviction rates of these cases. When reporting a crime, the victim is removed from an environment such as a police station, to a more victim-friendly environment before being transported by police or an ambulance to the Thuthuzela Care Centre at the hospital. The person also receives counseling. If the medical examination happens within 72 hours of the incident, post-exposure prophylaxis is given. The investigating officer on call at the center will take the person's statement. There are currently 55 Thuthuzela Care Centres country-wide.

139. Government has also re-established the sexual offences courts. These courts promote the victim-centric justice system in that they provide a basket of support services to victims of sexual offences which include accessible information services, court preparation services, pre-trial and post-trial emotional containment services, private testifying services, intermediary services, and witness fee services. As at 31 March 2018, 74 sexual offences courts have been established at areas with high sexual offending rate. The Regulations for the Establishment and Management of Sexual Offences Courts were recently published for public comment and are now at the final stages of development. The Regulations are, among other things, intended to guide the shared resource contributions and management by the different stakeholders participating in the operation of these courts.

140. In 2014, the former President of the Republic issued a directive to the Minister in the Presidency Responsible for Women to extend the 16 Days Campaign into a 365 Days Campaign to raise awareness and to mobilise individuals to be counted in and promote collective responsibility in the fight against violence through year-long activism, the #365Days for No Violence Against Women and Children and #CountMeIn campaigns. In the quest to eradicate violence against women and children, Government rolled out National Dialogues on Violence Against Women and Children around the country, talking to women and men from all spheres of life including youth and children. Government also established an Inter-Ministerial Committee on violence against women to investigate the root causes of violence against women and to develop national plans to prevent and respond to violence against women in a coordinated manner. Various initiatives have been implemented, these include the 24-hour Gender-Based Violence Command Centre (GBVCC), dedicated at providing support and counselling to victims of gender based violence. The centre has been named the Best Technology Innovation – Small Centre of the world at the Global Best Contact Centre Awards in 2015.

141. A number of Ministerial Dialogues Against Sexual and Gender-Based Violence (GBV) were held during the 2016/17 and 2017/18 financial years in Gauteng, KwaZulu-Natal, Mpumalanga and Western Cape, as part of public awareness and engagement with victims in an effort to understand their needs. The Men's Dialogues Against Intimate Femicide, are now being rolled out, parallel to the development of an Anti-Femicide Strategy for South Africa.

142. In May 2017 the Department of Justice and Constitutional Development commenced with the Project of establishing the Femicide Watch, in partnership with Tshwaranang and other relevant government stakeholders. The Project has set out different work streams which include research, identification and collection of data sources, data verification, public

outreach, etc. The Femicide Watch is established in the country to respond to the report compiled by the UN Special Rapporteur on Violence against Women, its Causes and Consequences after her visit in South Africa in December 2015. In her report (2016), the UN Special Rapporteur made reference to femicide or gender-related femicide cases, and criticized the country of its poor response to these cases. She raised the poor data collection system on these cases as a concern, and recommended that SA establishes the Femicide Watch. It must be noted that the Special Rapporteur had not made this call to South Africa only. On 25 November 2015, in her report to the General Assembly (A/71/398), the Special Rapporteur considered the data collection and analysis on femicide as a global challenge, and requested all state parties to establish a Femicide Watch to address this gap.

LGBTI rights

143. In 2012 in submitting its National Report to the Universal Periodic Mechanism of the United Nations Human Rights Council, South Africa was commended by UN Member States for its commitment to human rights and improving the lives of its citizens, the delivery of basic services such as housing, health and education as well as South Africa's leading role in the United National Human Rights Council, especially regarding the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. Equally, South Africa was also urged to develop urgent measures to deal with violence against LGBTI persons.

144. The establishment of a National Task Team (NTT) in 2011 was intended to counter the continued discrimination based on sexual orientation and gender identity against members of the LGBTI community. The Department of Justice and Constitutional Development launched the National LGBTI Programme, endorsing the government's commitment and issued terms of reference for a National Intervention Strategy to address gender and sexual orientation based violence as well as the terms of reference for the rapid response team to fast track cases in the criminal justice system. 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.

145. The NTT continues its efforts to counter the continued discrimination based on sexual orientation and gender identity against members of the LGBTI community. 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 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.¹²⁰

D. Reporting process at the national level

146. The reporting procedure at national level should contribute to encouraging popular participation and provide an opportunity for public scrutiny of government policies. Important to this entire process is engaging with civil society to build a platform for constructive engagement as we work together in our shared goal of advancing the enjoyment of all rights by those who live within our borders.

147. There are nine core United Nations human rights treaties. If a Member State is party to all nine and their optional protocols, they have to submit more than 22 country reports over a 10-year period. And this does not take into account other reporting obligations under the ILO, UNESCO etc. The reporting burden is substantial which even states that have the technical capacity struggle under, irrespective of the level of commitment the state may have towards fulfilling the realisation of human rights.

¹²⁰ The Department of Justice and Constitutional Development co-hosted the National Engagement on the Promotion and Protection of the Human Rights of Intersex Persons, with Iranti-org and the Foundation for Human Rights in December 2017 and the full report can be accessed at <http://www.iranti-org.co.za/content/Resources/National-Intersex/National-Intersex-Meeting-Report.html>.

148. In 2012, the Department of Justice and Constitutional Development established, together with the SAHRC, the Interdepartmental Committee on International Treaty Obligations (IDC), to deal with the increased number of Country Reports to be submitted to the various treaty bodies. With its membership coming from all government departments, the IDC was intended to facilitate the data gathering, drafting and consultation processes required for the finalisation of a country report. It did not operate ideally, thus various *ad hoc* processes were developed to finalise individual reports. For example, for the drafting and finalisation of the ICESCR country report in 2017, a data group, independent of the IDC was established and consultations with all stakeholders, including NGO's and CSO's took place through workshops rather than through the auspices of the IDC.

149. The Department of Justice and Constitutional Development has embarked upon a process to develop a National Mechanism for Reporting and Follow-Up on South Africa's Human Rights Treaty Obligations (NMRF) which will be in line with OHCHR recommendations. This process should be completed during the 2018/2019 period. In the absence of an NMRF, currently the IDC operates to gather data, to consider draft reports before the draft reports are consulted on with NGOs and CSOs, and through to the approval processes of government, up to the level of Cabinet.

150. Recommendations received from the various Treaty bodies are taken for noting by Cabinet. Government departments are notified of recommendations through the IDC and through workshops held to publicise the recommendations and the implementation and planning needed in light thereof. It is envisaged that the publicising, implementing, planning and follow-up required of recommendations will be more efficiently dealt with once a NMRF is fully established and operational.

E. Other related human rights information

151. The Constitution with its Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. Limitations on rights must comply with the stipulations of section 36 of the Constitution. The state is furthermore compelled to respect, protect, promote and fulfil the range of human rights as a matter of obligation.

152. As mentioned, the NDP forms the cornerstone of South Africa's economic and socio-economic development strategy and policies. No political democracy can survive and flourish if the mass of our people remain in poverty, without land, without tangible prospects for a better life. Attacking poverty and deprivation must therefore be the first priority of a democratic government.¹²¹ Former President Zuma appointed the National Planning Commission in May 2010 to draft a vision and national development plan. The Commission is an advisory body consisting of 26 people drawn largely from outside government, chosen for their expertise in key areas. The Commission's Diagnostic Report, released in June 2011, set out South Africa's achievements and shortcomings since 1994. It identified a failure to implement policies and an absence of broad partnerships as the main reasons for slow progress, and set out nine primary challenges:

- Too few people work;
- The quality of school education for black people is poor;
- Infrastructure is poorly located, inadequate and under-maintained;
- Spatial divides hobble inclusive development;
- The economy is unsustainably resource intensive;
- The public health system cannot meet demand or sustain quality;
- Public services are uneven and often of poor quality;
- Corruption levels are high;

¹²¹ Reconstruction and Development Programme 1994.

- South Africa remains a divided society.

153. South Africans from all walks of life welcomed the diagnostic as a frank, constructive assessment. The final NDP 2030 was released in 2013 and states that two decades into democracy, South Africa remains a highly unequal society where too many people live in poverty and too few work. The quality of school education for most black learners is poor. The apartheid spatial divide continues to dominate the landscape. A large proportion of young people feel that the odds are stacked against them. And the legacy of apartheid continues to determine the life opportunities for the vast majority. These immense challenges can only be addressed through a step change in the country's performance. To accelerate progress, deepen democracy and build a more inclusive society, South Africa must translate political emancipation into economic wellbeing for all. The NDP provides the framework for achieving the radical socio-economic change. Following the adoption of the NDP, Cabinet decided in 2013 that the 2014–2019 MTSF should form the first five-year implementation phase of the NDP and mandated work to begin on aligning the plans of national and provincial departments, municipalities and public entities with the NDP vision and goals. The MTSF is structured around 14 priority outcomes which cover the focus areas identified in the NDP and Government's electoral mandate. The 14 outcomes are:

- Outcome 1: Quality basic education;
- Outcome 2: A long and health life;
- Outcome 3: All people are and feel safe;
- Outcome 4: Decent employment through inclusive growth;
- Outcome 5: A skilled and capable workforce to support an inclusive growth path;
- Outcome 6: An efficient, competitive and responsive economic infrastructure network;
- Outcome 7: Vibrant, equitable, sustainable rural communities contributing towards food security for all;
- Outcome 8: Sustainable human settlements and improved quality of household life;
- Outcome 9: Responsive, accountable, effective and efficient local government;
- Outcome 10: Protect and enhance our environmental assets and natural resources;
- Outcome 11: Create a better South Africa and contribute to a better Africa and a better world;
- Outcome 12: An efficient, effective and development-oriented public service;
- Outcome 13: A comprehensive, responsive and sustainable social protection system;
- Outcome 14: A diverse, socially cohesive society with a common national identity.

154. Government has spearheaded the development of a draft National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, in collaboration with various other role-players which include civil society. The draft will inform a plan which provides the basis for the development of a comprehensive public policy against racial discrimination, xenophobia and related intolerance. The process relating to the development of a NAP for South Africa emanated from the Durban Declaration and Programme of Action (DDPA) adopted at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Extensive public consultations across all provinces were conducted during 2016. Inputs and comments obtained are currently being incorporated into a revised NAP, where appropriate.

155. A Prevention and Combating of Hate Crimes and Hate Speech Bill has been tabled in Parliament. The Bill creates the offences of hate crimes and hate speech and seeks to put in place measures to prevent and combat these offences. Laws against hate speech will serve a dual purpose. It protects the rights of the victim and the target group and also ensures that society is informed that hate speech is neither tolerated, nor sanctioned. The revised Bill was approved by Cabinet in March 2018. After the Bill was published in the Gazette for public comments, some 75 854 submissions were received from institutions and individuals. The

overwhelming public response to the Bill, as well as the revised Bill, which now addresses most of the concerns raised, is proof of a participatory democracy at work. The qualifying criteria for hate speech is a clear intention to be harmful or to incite harm or promote or propagate hatred on the basis of age, albinism, birth, colour, culture, disability, ethnic or social origin, gender or gender identity, HIV status, language, nationality, migrant or refugee status, race, religion, or sex, which includes intersex or sexual orientation. The Bill specifically excludes anything done in good faith in the course of engagement in any bona fide artistic creativity, performance or other form of expression, academic or scientific inquiry or fair and accurate reporting or commentary in the public interest, in so far as it does not advocate hatred that constitutes incitement to cause harm, from the ambit of hate speech. It also excludes the bona fide interpretation and proselytising or espousing of any religious tenet, belief, teaching, doctrine or writings, to the extent that such interpretation and proselytisation does not advocate hatred that constitutes incitement to cause harm, from the ambit of hate speech. These exclusions also find resonance with section 16 of our Constitution.

III. Information on non-discrimination, equality and effective remedies

156. A wide range of provisions in the Constitution provide for non-discrimination and equality and are supported further by an array of legislation providing, in greater detail, the normative and institutional framework for the protection of this right in South Africa. South Africa has a strong equality and anti-discrimination legal framework. Section 7(2) of the Constitution requires the State to respect, protect, promote and fulfil the rights in the Bill of Rights with the state having the primary responsibility to guarantee that every individual can exercise their rights. In this regard, Government has passed a number of laws to give effect to its constitutional goals of achieving equality, human dignity and the advancement of human rights and freedoms. The right to equality and to be protected from discrimination features prominently in our Constitution. South Africa has enacted various pieces of legislation to rule out discrimination and ensure equality across a variety of areas.

157. 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. 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.

158. Government passed the 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 framework for the implementation of section 9 of the Constitution. 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 promulgated¹²² 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.

159. The various State institutions supporting Constitutional Democracy were established in the Constitution itself and in national legislation, the purpose of which was to strengthen constitutional democracy in South Africa by the active promotion of a culture of human rights

¹²² Government Notice No R764 of 13 June 2003 (Government Gazette 25065).

and the protection, development and attainment of those rights, including monitoring and assessing their implementation and observance. Each of the institutions was meant to focus on a particular sector of society where the need for transformation was felt to be greatest. Reflecting government's determination to achieve this transformation, these institutions uniquely were made independent of government so that they could exercise their powers and perform their vital functions without fear, favour or prejudice.

160. Various remedies are available in instances of a violation of such rights: our various courts, commissions of inquiry, bodies such as housing tribunals, the National Economic Development and Labour Council (NEDLAC), state institutions supporting constitutional democracy, various administrative appeals in terms of legislation, and the provisions of the Promotion of Access to Information Act (PAIA)¹²³ and the Promotion of Administrative Justice Act (PAJA).¹²⁴ In order to exercise one's rights, one needs information, therefore section 32 of the Constitution provides that everyone has the right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights. In addition PAIA gives effect to the right to have access to records held by the state, government institutions and private bodies. Among others, public and private bodies must compile a manual that explains to members of the public how to lodge an application for access to information that the body holds; and appoint an information officer to consider requests for access to information held by the body.¹²⁵ PAJA is a pioneering legislation that intended changing the way Government interacts with the people it serves. It creates ways of enforcing the right to be treated fairly in administrative actions. The Act seeks to protect the public from unlawful, unreasonable and procedurally unfair administrative decisions. It is a law that gives those affected by administrative decisions the right to be informed that a decision is to be taken, to be given reasons for decisions and to have decisions reviewed.

161. Constitutional and human rights awareness and education 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.¹²⁶

162. 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 provide the support and front-line assistance to many who do not have the means to access

¹²³ Act No 2 of 2000.

¹²⁴ Act No 3 of 2000.

¹²⁵ The Act also sets out the rules and guidelines that administrators must follow when making decisions; requires administrators to inform people about their right to review or appeal and their right to request reasons; requires administrators to give reasons for their decisions; and gives members of the public the right to challenge the decisions of administrators in court.

¹²⁶ In the 2017/18 the annual target of 2 million people reached by programmes to raise awareness and knowledge of the constitution was exceeded in that more than 7 900 million people were reached. The total number of people reached was attained through the use of the following mediums: Social Media (Facebook and Twitter) = 659,337, Women's Month = 814,000, Human Rights Awareness Month 2018 = 1,467,208 and Big Debate Series = 4,959,717.

other forms of legal services. Over the years, CAOs have provided much needed services to millions of poor and marginalised South Africans.

163. Government continues developing and implementing 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.

164. In 2017/18 government together with its implementing partner, FHR, launched a much received report Baseline Survey on Access, Awareness and Attitude to Rights including socio-economic rights. The survey was conducted across the country involving 24 000 households under the SEJA Programme. The Socio-Economic Justice for All (“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.

165. 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.
