



# **International Covenant on Civil and Political Rights**

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## **Human Rights Committee**

**116th session**

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Item 5 of the provisional agenda

**Consideration of reports submitted by States parties  
under article 40 of the Covenant**

## **List of issues in relation to the initial report of South Africa**

**Addendum**

## **Replies of South Africa to the list of issues\***

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\* The present document is being issued without formal editing.



**Constitutional and legal framework within which the Covenant is implemented  
(art. 2)**

1. The Constitution of the Republic of South Africa is founded on a number of values, which include human dignity, the achievement of equality and the advancement of human rights and freedoms, and non-racialism and non-sexism. Section 9(2) of the Constitution provides for the right to equality and adoption of legislative and other measures to protect or advance persons, or categories of persons disadvantaged by unfair discrimination. Equality also includes equality before the law and the right to equal protection and benefit of the law. Except political rights, the right to equality and other rights in the Constitution cover non-nationals.

2. A number of legal frameworks have been adopted to give effect to article 2 of the Covenant. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (hereinafter referred to as the Equality Act) provides the framework for implementing section 9(4) of the Constitution. It seeks to promote the achievement of equality and prevents and prohibits unfair discrimination on a number of grounds, which include race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

3. The Employment Equity Act, 1998 (Act No. 55 of 1998) (EE Act) provides for equality in the workplace, and serves as the framework for implementing affirmative action measures to redress the disadvantages in employment experienced by blacks, women and people with disabilities. The EE Act establishes the Commission for Employment Equity, which advises the Minister of Labour on the Codes of Good Practice issued in terms of the EE Act; the application of the EE Act and any policy matter relating to the EE Act. The Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) seeks to protect labour rights, including those that are specific to women workers. Another innovation is the inclusion of family responsibility leave extended to a father of his newly born child. The Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) provides a framework for preferential treatment of historically disadvantaged groups, including women.

4. The Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) recognises and protects women in customary marriages, including those in polygamous marriages. The Civil Union Act, 2006 (Act No. 17 of 2006) provides for the registration of same sex relationships. The Children's Act, 2005 (Act No. 55 of 2005) provides a broad framework for the protection of children's rights, including those of the girl child. The Choice of Termination of Pregnancy Act, 1996 (act No. 92 of 1996) provides for the circumstances and conditions under which a pregnancy may be terminated.

5. South Africa, through the Department of Justice and Constitutional Development, the Department of Basic Education, the Department of Arts and Culture and the South African Human Rights Commission and the Commission for Gender Equality, have continued to roll out programmes that aim at raising awareness on rights and freedoms which individuals are entitled to under the UN Bill of Rights, the African Charter on Human and People's Rights and the Constitution of the Republic of South Africa. These programmes include public awareness campaigns on nation-building and social cohesion run by the Department of Arts and Culture in particular. Each year, as is now customary, South Africa celebrates National Human Rights Day on 21 March. March has been declared human rights month in South Africa, where celebrations and public awareness campaigns are held throughout the country, culminating into National Human Rights Day on 21 March. South Africa also celebrates and raises public awareness on human rights on 10 December of each year. These programmes include awareness of public officials of the judiciary.

**Non-discrimination, equality between men and women, prohibition of advocacy of national, racial and religious hatred (arts. 2,3,20 and 26)**

6. As already indicated above, the Promotion of Equality and Prevention of Unfair discrimination Act, 2000 (Equality Act) is the main legal framework to combat unfair discrimination on the grounds of race, gender and disability, hate speech, harassment; and dissemination and publication of unfair discriminatory information that unfairly discriminates. Furthermore, this Act provides for the designation of Equality Courts. 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. The Equality Act does not criminalise racism, nor hate crime; the relevant law is still to be promulgated. Conversely, this Act provides that unfair discrimination and hate speech are aggravating factors for purposes of sentencing in criminal matters.

7. In 2013/14 there was a total of 638 cases before the Equality Courts. This is an increase of 3.24% from 2013. Although an increase in cases enrolled at these courts has been witnessed, it is nonetheless a matter of concern to Government that the Equality Courts are underutilised. Of the 638 cases, hate speech and unfair discrimination were the leading complaints in 2013/14 with 255 and 217 cases, respectively. While there was a 4% decrease in hate speech complaints, unfair discrimination cases increased by 40%.

8. The Department of Home Affairs participates in outcome 14, under Government's Programme of Action, which is led by Department of Arts and Culture in which various Departments provide input to planning and activities and implement the plans in promoting respect for dignity, non-violence and social inclusion of all migrants. Department of Home Affairs participates in the UN Protection Working Group in which all the relevant government departments, NGO's are represented. The UN Protection Working Group make joints plans and implement those plans in response to issues affecting asylum seekers, refugees and other migrants in South Africa and in promotion of respect for diversity, non-violence and social inclusion of all migrants. Interventions of the PWG include technical support and capacity building for social cohesion and emergency response. The UN Protection Working Group was formed in direct response to the 2008 xenophobic violence, the UN Protection Working Group (PWG) emerged in early 2009 to bring about a more coordinated response to the increased protection needs of refugees, asylum seekers, migrants and members of host communities in South Africa.

**Chatsworth (Durban) 2015 incident**

9. Further to the work of the UN-SA PWG, following the outbreak of violence in Kwa-Zulu Natal and Gauteng in April 2015, the UN formed a Task Team to spearhead a response plan to respond to the attacks with a coordinated response. The UN-SA PWG Response plan was developed based on a rapid needs assessment undertaken by its members and covered the immediate, medium and long-term interventions. The immediate intervention included donations of non-food items and some 200 family tents in KZN and Gauteng. In addition to the Protection response and monitoring by members of the UN-SA PWG and partners, UNHCR deployed a Senior Field Officer in Durban for a period of six months to support the response. The mid-term interventions included the contribution of package of rent, food and psychosocial counseling to aid the reintegration of refugees and asylum seekers affected by the violence. The Department of Home Affairs deployed its Durban based Refugee Reception Office and Inspectorate to assist issue documentation to those in need of documentation.

10. The challenge in South Africa is that unlike many countries, South Africa acceded to 1951 UN Convention on Refugees without any reservation and in this regard refugees and asylum seekers are not kept in camps and they are allowed to integrate themselves into the

communities which results in competition for services, job opportunities and other opportunities between locals and foreigners and which manifest in criminal elements of attacks against both locals and foreigners. In this regard the UN Protection Working Group responded collectively to the recent attacks on foreigners which erupted in 2015 and the Department of Home Affairs is currently in the process of drafting an integration strategy to ensure refugees are properly integrated into society in a coordinated manner to assist in preventing the recent attacks on foreigners. The Department of Home Affairs is also contributing to the national framework of integration policy for all foreign nationals which is spearheaded by COGTA. The Department of Home Affairs is also reviewing the migration policy.

#### **Marikana Commission of Inquiry**

11. The Ministry of Police has established a Panel of International Experts to consider the recommendations of the Farlam Commission of Inquiry (the Commission). The Ministry further established a task team responsible for the transformation of the South African Police Service with special focus on public order policing. The Ministry, through IPID, is also investigating cases relating to the deaths of miners with a view to prosecute police officials who may be found to have acted outside the law. The legal teams of the South African Police Service and the Department of Justice and Correctional Services are busy processing claims from the victims of the Marikana tragedy. These activities are being managed jointly by the Ministries of Police and Justice and Correctional Services together with other Ministries in the Cluster. As recommended by the Commission, the President has established a Board of Inquiry to investigate National Commissioner of Police regarding the Marikana incidents and her fitness to hold office.

12. South Africa has developed a comprehensive policy framework on combating hate crimes, hate speech and unfair discrimination. This policy framework is a result of intense research and will provide for the development of measures to combat hate crimes, hate speech and unfair discrimination. There is currently a first working draft of a Prevention and Combating of Hate Crimes Bill. The Bill is based on recommendations contained in the developed policy framework. It is noted that earlier version of the Prohibition of Racism, Hate Speech, Xenophobia and Related Intolerance Bill has been discontinued on the basis that, like any Bill, it must be preceded by a policy; hence the development of the policy framework on combating hate crimes, hate speech and unfair discrimination. It is anticipated that the Prevention and Combating of Hate Crimes Bill will be submitted to Parliament during the 2016 session of Parliament, probably in the second half of 2016, after a comprehensive consultation process on the Bill. The Bill is intended to address discrimination in the form of hate crimes in all spheres. It will target direct, indirect and multiple discrimination and contain a comprehensive list of grounds for discrimination, including national origin, sexual orientation and gender identity, among others. It will also provide for adequate sanctions to be imposed by our courts of law.

13. Government is responding with a far-reaching reform plan to revitalise and restructure the South African health care system, which includes fast-tracking the implementation of a National Health Insurance Scheme (NHI) aimed at covering all South Africans in a long term, and strengthening the fight against HIV and TB. The South Africa National AIDS Council (SANAC), a multi-sectoral body chaired by the Deputy President of South Africa, was launched in May 2007 to coordinate responses to HIV and AIDS in South Africa. As outlined in the HIV and STI Strategic Plans for South Africa 2007-2011, South Africa has adopted a multi-sectoral approach to respond to the challenge of HIV and AIDS. During 2011 a collaborative effort was undertaken by SANAC (comprising of government, business, labour and civil society) to review the implementation of these strategic plans and to develop the next five year plan (for the period 2012-2016). There is in place a comprehensive prevention, care and treatment programme. Key components of the

programme include voluntary counselling and testing (VCT), prevention of mother to child transmission (PMTCT), antiretroviral therapy, condom distribution, and awareness education. Since the inception of SANAC and HIV and STI Strategic Plans, we have witnessed a stabilisation of the number of people living with HIV and AIDS awareness education has been a major component of the strategy to address the pandemic in South Africa. Despite the progress made, stigma and discrimination continue to present challenges in the management of HIV and AIDS.

14. Harmful practices, which negatively affect the fundamental rights of women and girls, are prohibited in South Africa. Section 8(d) of the Equality Act prohibits unfair discrimination on the ground of gender, including “any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child”. “Ukuthwala” is a form of abduction that involves the kidnapping of a girl or young woman by a man and his friends or peers with the intention of compelling the girl or young woman’s family to endorse marriage negotiations. The Commission for Gender Equality (CGE) commissioned a study on “Ukuthwala in KwaZulu-Natal: an investigation into state prevention and responses” in 2012. The CGE, in its concluding remarks, commended the Office of the Premier for initiating research into the extent of harmful traditional practices in the province, as well as the Department of Social Development’s outreach and awareness interventions, including their responses to individual cases and support for victims of Ukuthwala. In February 2012, a man was brought before the Wynberg Regional Court, in the Western Cape, and charged with rape, human trafficking and assault because of an Ukuthwala kidnapping. This case was finalised in early 2014 and the judgement recognises this practice as being harmful to women and young girls. A 22 year sentence of imprisonment was handed down, demonstrating that the country will no longer tolerate such adverse practices that violate women’s rights and dignity. The DOJCD issued an educational booklet on the practice of Ukuthwala in 2015. This booklet highlights the practice of Ukuthwala and informs the general public as to where they may seek assistance. The South African Law Reform Commission is also conducting an investigation into the practice of Ukuthwala, from a law reform perspective. It has published a revised discussion paper for broader consultation and intends to hold workshops between January and March 2016.

15. Polygamy is a form customary marriage whereby a man marries more than one woman this traditional marriage has been in existence for centuries in South Africa. However, customary marriages were not fully recognised as valid marriages during the Apartheid regime. The Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) provides for the recognition and registration of customary marriages. Furthermore, this Act put customary marriages on an equal footing, with civil marriages. This is a radical departure from the past, during which a wife in a customary marriage was regarded as a perpetual minor. Another development is that the Act recognises polygamous customary marriages. Women in polygamous marriages have equal status with their spouses, the capacity to acquire assets and dispose of them, enter into contracts and litigate and the right to all legal entitlements, upon the dissolution of the marriage. A husband in a customary marriage who wishes to enter into a further customary marriage with another woman must make an application to the court to approve a written contract which will regulate the future matrimonial property system of his marriages.

16. Witchcraft, as in other parts of early and current civilisations in the world, exists in South Africa. The Witchcraft Suppression Act, 1957 (Act No. 3 of 1957), modelled on the UK Witchcraft Act of 1735, prohibits various activities related to witchcraft witch smelling and witch-hunting. In 1996 the Government of Limpopo Province appointed a “Commission of Enquiry into Witchcraft Violence and Ritual Murders”. This Commission recommended that the 1957 Act should be repealed and replaced by a Witchcraft Control

Act which would specifically criminalise the actual practice of witchcraft, unlike the current legislation which focuses on accusations and pretended witchcraft. In 1998 the Conference held by the CGE called for the repeal of the Act and introduction of new legislation to deal with witchcraft and witch-hunts. In October 2014, the South African Law Reform Commission published an issue paper calling for responses to various issues pertaining to the investigation into law reform in this area. A discussion paper is currently being prepared.

**Violence against women, children and LGBTI, including domestic violence  
(arts. 2, 7 and 24)**

17. Given the high level of sexual and gender-based violence, Government has prioritised the fight against this scourge. Key amongst a number of legal frameworks adopted with a view to addressing sexual and gender-based violence are the Criminal Law Amendment (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); the Protection from Harassment Act, 2011 (Act No. 17 of 2011); the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013); the Children's Act, 2005 (Act No. 38 of 2005); and the Domestic Violence Act, 1998 (Act No. 116 of 1998). The Criminal Law (Sentencing) Amendment Act, 2007 (Act No. 38 of 2007) provides 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. The Older Persons Act, 2006 (Act No. 13 of 2006) provides for the protection of older persons from violence of all forms, including from intimate partners, as well as abuse and neglect. Even our bail laws, which were amended in 1996, cater for situations involving violence against women, children and LGBTI, including domestic violence. Section 60 of the Criminal Procedure Act, 1977, sets out criteria for the granting of bail which must be considered by the judicial officers in bail applications. Some of the criteria have a direct bearing on gender and family violence, for instance the degree of violence towards others implicit in the charge against the accused; any threat of violence which the accused may have made to any person; any resentment the accused is alleged to harbour against any person; any disposition to violence on the part of the accused, as is evident from his or her past conduct; the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried; the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her; whether the witnesses have already made statements and agreed to testify; whether the investigation against the accused has already been completed; and the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated.

18. South Africa has adopted an integrated approach to the management of violence against women and children. In 2005 Government established an Inter-departmental Management Team (IDMT), which is a multi-disciplinary expert team, to design and implement programmes aimed at addressing gender-based violence. The Sexual Offences and Community Affairs (SOCA) Unit was established within the National Prosecuting Authority in 1999. SOCA focuses primarily on sexual offences, domestic violence, trafficking in persons, managing of young offenders and other issues involving the victimization of women and children (including women with disabilities). Since 2008, SOCA has organised an Annual Sexual Offences Indaba. This is a Conference that brings together stakeholders that are involved in the prevention and management of sexual offences. SOCA, on its own initiative and through the Annual Conference, encourages victims to report gender-based violence. It has established Thuthuzela Care Centres (TTCs), 24-hour one-stop centres, which assist victims of sexual offences by offering a victim-friendly environment that helps eliminate secondary victimization. At these centres rape victims have access to all services such as police, counselling, doctors, court preparation

and prosecution. The TCCs have been and continue to be the model used by a number of countries across the world. The Sexual Offences Courts (SOC's) have been re-established, the 1<sup>st</sup> SOC having been re-established in August 2013. During the 2013/14 financial year the TCC-cases per accused and per offence, which resulted in convictions included 151 sentences of life imprisonment, 132 sentences of 20-25 years imprisonment and 455 sentences of between 10 and less than 20 years imprisonment.

19. Other roles of SOCA Unit include capacity building, increasing sensitisation and providing scientific and functional training of officials who prosecute these crimes. It also facilitates research and training on prosecuting sexual offences, domestic violence and managing young offenders; as well as developing and implementing community awareness programmes and plans for the participation of NGOs in these processes and procedures. As already indicated, the Annual Conference convened by SOCA Unit serves, amongst others, as a Forum for awareness raising and prevention. In 2010/11 there was an increase in capacitation of prosecutors with a total of 102 prosecutors trained on integrated Domestic Violence Skills; 70 prosecutors trained on human trafficking related subjects; and 1,117 police officers trained on Sexual Offences First Respondents Course, which include community service centre personnel, emergency police service personnel and detectives.

20. The above measures are aimed at ensuring, amongst others, that victims of gender-based and sexual violence have urgent and long-term means of redress, protection and rehabilitation. Although these measures cover LGBTIs, Government has adopted special measures to cover this vulnerable group. The National Task Team on Gender and Sexual Orientation Based Violence Perpetrated Against LGBTI Persons (NTT), after its establishment in 2013, undertook to strengthen Government's ability to respond to LGBTI needs and to strengthen the capacity of civil society to deliver related services. Further, it sought to improve the management of cases by relevant role-players in the criminal justice system. The NTT has finalised the National Intervention Strategy aimed at preventing and responding to gender and sexual orientation-based violence, including the Inter-Sectoral Implementation Plan for the Strategy. In its current form, the NTT is widely representative of Government, Chapter 9 Human Rights Institutions and civil society.

21. As to progress to date, the NTT has finalised and launched its Terms of Reference, National Intervention Strategy, Strategic Work Plan, Terms of Reference of the Rapid Response Team and LGBTI Communication Outreach Plan. The NTT has established Provincial Task Teams (PTTs) in all the nine provinces of South Africa to coordinate the implementation of the National Intervention Strategy; and preparations are afoot to establish the last KwaZulu-Natal PTT. A series of provincial workshops was conducted in 2014 with the objective of increasing representativity on the NTT, building solidarity and network with other sectors to address violence against LGBTI persons, and keeping updates on cases handled by the rapid response task team. A television advert was produced, in consultation with stake-holders, so as to reach the public about LGBTI related issues. SABC and ETV were able to reach 13 and 10 million people, respectively; while the community radio stations reached 6.118 million people. A study on existing LGBTI awareness and training material is underway; this will result in the development of standardised awareness and training material for law enforcement agencies at service points.

22. The Rapid Response Team, comprising the Department of Justice and Constitutional Development, the National Prosecuting Authority (NPA), the South African Police Service (SAPS) and nominated representatives from civil society organisations, attend to pending and reported cases on hate crimes perpetrated against LGBTI persons. It meets quarterly to discuss, amongst others, updates regarding pending cases received from the SAPS and the NPA. The total number of cases on the list in 2014/15 was 45:

- 8 cases resulted in sentences of imprisonment of 30 years, 22 years, 10 years, 6 years, 15 years, 19 years, 20 years and 15 years, respectively
- Of the two accused persons facing murder and robbery charges, one was sentenced to 20 years for murder and the other sentenced to life imprisonment for murder plus 13 years for robbery
- 11 cases were withdrawn for various reasons, including reluctant witnesses and tracing of perpetrators and victims
- 2 cases resulted in acquittals

23. SAPS is currently recalling and reviewing “withdrawn” and “undetected” cases which were taken before these cases were deemed to be “withdrawn” and “undetected”.

24. Female genital mutilation and virginity testing is expressly prohibited and regarded as a form of gender discrimination in terms of the Equality Act, 2000 and Children’s Act. The Children’s Act prohibits virginity testing of children under the age of 16. For children older than 16, virginity testing is conditional (the child is to consent and testing is to be conducted in a prescribed manner). The Abolition of Corporal Punishment Act, 1997 (Act No. 33 of 1997) is a general law outlawing corporal punishment.

**Prohibition of torture and cruel, inhuman or degrading treatment and treatment of persons deprived of their liberty (arts. 7, 9 and 10)**

25. Before the promulgation of the Torture Act, SAPS were informed by jurisprudence of our courts, based on the interpretation of the Convention Against Torture, to refrain from torture and ill-treatment of persons and inmates when conducting their policing and correction services, respectively. The SAPS have developed a Policy on the Prevention of Torture and Treatment of Persons in Custody which sets out a system of checks and balances to protect persons in the custody of Police from acts of torture, cruel, inhumane or degrading treatment by members of the Police Service, and also guidelines that must be followed when a person in custody is being interviewed. A number of Standing Orders of the Police Service were promulgated in 1999, in terms of these orders no member of the Police Service may torture any person, permit anyone else to do so or tolerate torture of another by anyone.

26. DCS is currently training Regional and Management Area officials on the implementation of the Act aimed at the prevention and combating torture within Correctional Centres. DCS officials working in the Correctional Centres are informed of the prohibition against torture in the performance of their security duties, while at the same time respecting the dignity of inmates. This training and awareness forms an important part of the Department’s strategies to ensure a safe and secure environment where the humane dignity of all persons are respected. During training and awareness, Correctional Officials are informed of the offences and penalties in terms of the Act. The training includes case scenarios, video, presentation and Q&A sessions. Strategies to enhance the safety and security in Correctional Centres are continuously revised and improved and there is a firm commitment to work towards an environment that is safe and secure for both inmates and staff whilst protecting the public.

27. The Independent Complaints Directorate (IDC) with a mandate to investigate complaints against police has been replaced by the Independent Police Investigation Directorate (IPID). Strategies for the prevention of torture include training of all members of the SAPS in accordance with the National Human Rights Programme, which has now been incorporated in the Basic Training Programme and the Detective Learning Programme of the Police. The IDC (replaced by the IPID), which investigated cases of misconduct against police officers. *Attached is a document of IPID with additional statistics of*



*complaints against police lodged in the last five years (2010-11-2014/15) as indicated in the list of issues.*

28. The Department of Public Service and Administration is assisting the Judicial Inspectorate to restructure its current model to a government component, which is a form of service delivery model.

#### **Investigation, prosecution and discipline of perpetrators of the Mangaung Correctional Centre (MCC) abuses**

29. The investigation into alleged human rights abuses is continuing. Matters of contract are dealt with in terms of the contract between the Government and the Private Prison. Matters of discipline are dealt with by the Contractor as the officials employed at MCC are not employees of DCS. However, where there is a *prima facie* case of criminal acts, these have been referred to the South African Police Service for their investigation as the DCS does not have a mandate for criminal investigations. The SAPS will be obliged to follow standard processes in terms of whether there is sufficient proof for a prosecution and refer such matters to the National Prosecuting Authority for prosecution. Once such prosecution is complete, the DCS will withdraw the certification of any official found to have been involved in such incidences, which would result in that official not being able to be employed to work within the MCC. The DCS accepts that, although the operation of the facility is outsourced, it cannot outsource its constitutional obligations. Where allegations of such a nature are made, the DCS will investigate fully. The DCS does not condone any actions which constitute human rights violations. It also takes seriously the need for thorough investigations.

#### **Contract managed correctional facilities**

30. Clause 30.2 of the PPP Contracts provides that Contractors shall at all times operate the Correctional Centres in accordance with all relevant provisions of legislation, including but not limited to the Correctional Services Act, No. 8 of 1959 and No. 111 of 1998. In terms of Clause 106(1) the National Commissioner of the Department of Correctional Services appoints Controllers for the PPP Correctional Centres to monitor the daily operations of the PPP Correctional Centres including, compliance with all relevant legislations and policies of the Department. The Controllers are assisted in this task by the Controller Staff and the Directorate Contract Management in Head Office. The latter Directorate and the respective Regions have, in addition to their monitoring roles, oversight responsibilities on the operation of the PPP Centres.

31. Section 7 of the Prevention and Combating of Torture of Persons Act, 2013 provides for civil liability of persons convicted of torture; it states “Nothing contained in this Act affects any liability which a person may incur under common law or any other law”. This provision is wide enough to include redress and remedy for victims of torture. This Act was enacted after the adoption of the Victim’s Charter. The specific protection of victims of torture is not expressly provided for in the Charter. However, the Charter is aimed at protecting all victims of crime, and it is aimed at setting standards of care for relevant public service departments which come into contact with the victim (of whatever crime). The Charter complements the legal framework in South Africa relating to the rights of and services provided to victims of crime. It seeks to ensure, amongst others, that victims remain central to the criminal justice system and eliminate secondary victimisation. The victim’s rights contained in the Charter includes the right to compensation and the right to restitution.

**Elimination of slavery and servitude (arts. 8, 24)**

32. The Prevention and Combating of Trafficking in Persons Act, 2013 was put into operation on 9 August 2015, Women's Day in South Africa. As already indicated the SOCA Unit under the National Prosecuting Authority have implemented, together with the Police, the Criminal Law Amendment Act (Sexual Offences and Related Matters) Act, 2007 embodying some elements of trafficking of persons over the years. They are to build on this experience to implement the Prevention and Combating of Trafficking in Persons Act, 2013; and develop policies and other measures. The Thuthuzela Centres referred to already cater for victims of trafficking, which includes identification and referral system, as they are one stop centres. The SAPS' specialised Family Violence, Child Protection and Sexual Offences (FCS) Units have been reintroduced across the country. These measures are complemented by the Integrated National Policy Guidelines for Victim Empowerment (VEP Policy Guidelines) adopted in 2007. The VEP Policy Guidelines seek to create a society in which rights and needs of victims of crime and violence are acknowledged and effectively addressed within a restorative justice approach. The priority target group for victim empowerment under the Policy Guidelines includes victims of human trafficking. Government has established shelters for abused women and developed a Shelter Strategy that serves as a guideline for service providers rendering services to abused women. The Thuthuzela Centres and Shelters for victims also cover male victims to an extent provided by other relevant laws. There are still ongoing discussions to outlaw and prosecute labour brokers. The Labour Relations Amendment act, 2014 (Act No. 6 of 2014) provides greater protection for workers placed in temporary employment service; this include workers who are employed through labour brokers' service. Part-time employers are to be treated in the same manner as those doing work comparable to them, they are to be capacitated and given an opportunity to apply for permanent work. This provision is to apply to migrant workers.

**Treatment of migrants and asylum seekers (arts. 6, 7, 9, 10, 13, 14)**

33. Asylum seekers and refugees have protection as the Republic of South Africa (RSA) is a signatory to various international human rights conventions, including, *the 1951 United Nations Convention Related to the Status of Refugees and the 1969 OAU Convention Governing Specific Aspects of Refugees' Problems in Africa*. These legal instruments enjoin the country to formally recognize and provide protection to people classified as refugees. These have been translated into national legislation — notably the Refugees Act, 130 of 1998 — on the protection of the human rights of all asylum seekers and refugees. The Refugees Act 130 of 1998 clearly stipulates the process of asylum application, including the appeal and review process which the asylum seekers are entitled to when they apply for asylum. There are no implications on the right of equality of asylum seekers and refugees enshrined in the Constitution and Refugees Act, 1998.

34. The Department of Home Affairs is currently processing existing asylum seeker applications prior to the closure of PE and Cape Town. The asylum seeker applications from Johannesburg are currently being processed in TIRRO and Marabastad. The Department is currently negotiating the establishment of a Refugee Reception Office in Lebombo in line with its policy of establishing RRO next to the Port Of Entries.

**Right to life, liberty and security of person and treatment of persons deprived of their liberty (arts. 6, 9, 10, 14, 23)***Overcrowding*

35. Section 49G of the Correctional Services Act, which sets a maximum length of detention for courts to consider the release of a remand detainee, came into operation on 1 July 2013. Section 49G determines that a remand detainee may not be detained for a

period exceeding two years without such matter having been brought to the attention of the court concerned. This initiative is aimed at decreasing the period of detention and to ensure speedy finalization of cases by courts. The number of remand detainees has been consistently reduced and is at its lowest level since the Department of Correctional Services began recording numbers. The dramatic increase in the inmate population, from 95,070 during 1991/92 to 185,501 during 2004/05 (95% increase) compelled the Department to revisit its strategy to alleviate overcrowding. Consequently, a multi-pronged strategy was developed and implemented from 2006.

36. This strategy consists, among others, of the following dimensions:

- Managing levels of Remand Detainees through Integrated Justice System (IJS), Case Management Task Team and Inter-sectoral Committee on Child Justice;
- Managing levels of sentenced offenders by improving effective and appropriate use of conversion of sentence to community correctional supervision, release on parole and transfers between correctional centres
- Ensuring progress with DCS capital works programme to upgrade correctional facilities & to build new correctional centres that are both cost effective and rehabilitation oriented;
- Improving correction and development programmes within DCS to ensure enhanced facilitation of rehabilitation that targets offending behaviour;
- Encouraging improvement of first and second levels of correction in family and social institutions and social and economic sector government departments respectively to decrease rate of entry into criminal justice system; and
- Encouraging community involvement in social reintegration of offenders back into their community in order to assist in reducing levels of repeat offending.

37. The average overcrowding level during 2014/15 was 32% (157,141 inmates against approved accommodation of 119,134 beds). On 30 October 2015, the population level at Groenpunt Maximum Correctional Centre was 129% (1,830/1,418).

#### **Equality before the law and access to a fair trial (arts. 14, 23, 26)**

38. As enjoined by the Constitution of the Republic of South Africa of 1996, laws ought to be made available in all official languages. However, Government has adopted an incremental approach regarding official languages used in making laws in the three spheres of Government. English is used to make laws as is widely written and spoken, and other official language(s) predominately used and spoken at national, provincial, or local level. There is a gradual move from making use of Afrikaans on an equal footing with English as was the case during the Apartheid era. This incremental approach takes into account the huge human, financial and other relevant resources to be used if all official languages were to be used in making all laws.

39. Legal Aid South Africa has a mandate, arising from the Constitution of the Republic of South Africa, to provide legal aid paid at State expense. Section 35(2)(c) of the Constitution provides that every detained person has the right to have a legal practitioner assigned to him or her by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly. In terms of section 82 of the Child Justice Act, 2008 (Act No. 75 of 2008), children to be provided with legal representation at State expense in certain instances. A new Legal Aid South Africa Act, (Act No. 39 of 2014) was enacted in 2014. This Act repeals the outdated 1969 Legal Aid Act and replaces it with an entirely new statute, the purpose of which is to bring the legislative framework in this regard into line with prevailing circumstances and the new

constitutional dispensation. This Act establishes Legal Aid South Africa as a national public entity and which is governed by a Board of Directors. One of the objects of the new Act is to strengthen the current governance structures of the institution providing legal aid to enable it to deliver its mandate more efficiently and effectively. A means test is used to determine as to whether applicant for legal aid qualifies, or not. The new Act, in section 23, requires the Minister to make regulations relating to:

(a) The types of matters, both civil and criminal, in respect of which Legal Aid South Africa:

- (i) Provides legal aid;
- (ii) Does not provide legal aid; and
- (iii) Provides limited legal aid and the circumstances in which it does so;

(b) The requirement or criteria that an applicant must comply with in order to qualify for legal aid, as well as the terms and conditions on which such legal aid is made available; and

(c) The policy relating to the approval or refusal of legal aid, the termination of legal aid and appeals against such refusal or termination of legal aid.

40. Previously, under the repealed Act, the means test determining whether a person qualifies for legal aid, was set out in a Legal Aid Guide which does not have the force of law. Regulations having the force of law will in future regulate who qualifies for legal aid. Some people, for instance those who receive a state grant or an old age pension qualify automatically for legal aid. They only need to show official documents that prove they receive a State grant or a pension. Legal aid is available to anyone who lives in South Africa, including foreign nationals. Legal aid is provided in respect of criminal cases. Legal aid in civil cases is limited.

#### **Juvenile Justice (arts. 9, 10, 14, 24)**

41. The Child Justice Act, 2008 (Act No. 75 of 2008) (“CJA”) provides for, in the main, a criminal justice system for children under the age of 18 years and diversion from the formal criminal justice system in appropriate cases. In essence the detention and imprisonment of children should be used as measure of last resort. The CJA seeks to protect the dignity and well-being of the child at all stages from arrest leading up to the trial. It entrenches the notion of restorative justice. If a child has committed a petty offence, the matter may be diverted from the formal criminal justice system. Diversion options include options such as releasing the child into the care of a parent or guardian or the attendance of certain programmes, among others. It is noted that the Act also provides for, in exceptional circumstances, the diversion of children who have committed serious offences; however, in such instances authorization must be obtained from the relevant Director of Public Prosecutions. In circumstances where a matter is inappropriate for diversion, the CJA provides for the trial of such case in a Child Justice Court. The CJA requires that children must be kept separately from adults while in detention. Section 28 provides that a child who is in detention in police custody must be detained separately from adults, and boys must be held separately from girls, and must be detained in conditions which take into account their particular vulnerability and will reduce the risk of harm to that child, including the risk of harm caused by other children. Incarceration of a child must be used as a measure of last resort and the Child Justice Act provides for children to be detained in child and youth care centres rather than in correctional facilities (prisons) or police lock-ups.

### **Separation of Offenders**

42. Section 7 of the Correctional Services Act No. 111 of 1998 provides that inmates must be held in cells, which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity.

- Children (under 18 years) are detained separately from older inmates.
- Juvenile offenders between the ages of 18 and 21 years are detained separately from offenders who are over the age of 21 years.

### **Protection of Human Rights Defenders (arts. 2(3), 9, 19)**

43. Human Rights defenders, like any person in South Africa, enjoy the right to life and freedom and security of the person, and protection thereof as enshrined in sections 11 and 12 of the Constitution of the Republic of South Africa. Government and its State organs such as law enforcement agencies respect and ensure protection of Human Rights defenders as stated above. There are a number of laws in this regard, for instance the Protection from Harassment Act, 2011.

### **Right to Private Communication (arts. 17, 19)**

44. The passing of Regulation of Interception of Communications and Provision of Communication-related information Act (Act No. 70 of 2002) (RICA) is a response, like in a number of jurisdiction, to modern day criminality committed through modern communication devices such as cellular phone, electronic communication system and internet. Embedded in RICA are safeguards related to interception, in exceptional cases, of real-time and archived communications. In essence, RICA prohibits interception of communications; interception occurs in exceptional cases and there safeguards regarding the protection of the right to privacy. There are interception centres and Office for Interception Centres as well as storage facilities. Chapter 3 of RICA provides for a procedure for applications for and issuing of directions and entry warrants for purposes of interception overseen by a Judge, who grants, or refuses such applications.

45. The Protection of Personal Information Act, 2013 (Act 4 of 2013) (“the PPI Act”), aims to promote the protection of personal information processed by public and private bodies by, among others, introducing certain conditions for the lawful processing of personal information so as to establish minimum requirements for the processing of such information. The PPI Act further aims to establish an Information Regulator (“the Regulator”) to exercise certain powers and to perform certain duties and functions in terms of the Act and the Promotion of Access to Information Act, 2000 (Act 2 of 2000) (“the Information Act”). Section 1 (definitions), Part A of Chapter 5 (establishment of the Information Regulator) and sections 112 and 113 (Regulations and procedure for making Regulations, respectively) were implemented on 11 April 2014. The reason why only these provisions were implemented is that the remaining provisions of the Act, namely Chapters 1 to 4 and 6 to 12, can only be implemented once the Regulator has been established and has reached a stage of operational readiness. Section 41 of the Act provides that the President must appoint the Chairperson and members on recommendation of the National Assembly. This process is now receiving the necessary attention by the National Assembly. It is therefore difficult to say exactly when the remaining provisions of the Act will be operationalised but it is anticipated that it will be during the latter part of 2016.

**Right to participate in public life and rights of minorities (arts. 25, 27)**

46. In line with the right to equality entrenched in the Constitution, the Independent Electoral Commission (IEC) has a mandate to ensure that everyone exercises their universal right to participate in the electoral processes, including persons with disabilities. The IEC has a dedicated project to provide a comprehensive civic and voter education programme for the disability sector. In collaboration with DeafSA, workshops were held with the South African Sign Language Interpreters (SASLI) in preparation for the 2014 general elections.

47. Since the attainment of a new constitutional and democratic order on the 27<sup>th</sup> April 1994, racially discriminatory laws or practices have been rendered obsolete and unconstitutional by the Constitution of the Republic of South Africa, 1996; and the Constitutional Court have developed jurisprudence in this regard. To this end, South Africa's point of departure is the principle of inclusiveness, non-discrimination and equality before the law. South Africa treats people on the basis of citizenship, dignity and equality, and not on racial and ethnic grounds as enshrined in the Preamble of our Constitution. In order to address the marginalisation and the under-development of indigenous languages, section 6 of the Constitution provides for the recognition of eleven official languages. Section 6 further recognises the historically diminished use and status of the indigenous languages and obliges the State to take practical and positive measures to elevate the status and advance the use of these languages. However, it is noted that the official status of indigenous languages does not apply to languages spoken by, for instance, the Khoi-San communities. Nevertheless, the Constitution provides for the establishment of the Pan South African Language Board that has a constitutional mandate to, amongst others, to promote, and create conditions for the development and use of Khoi, Nama and San languages. Most of the rights in the Bill of Rights are for the benefit of "everyone" (including indigenous people who are made up of the African people and the Khoi and San).

48. In terms of section 19(1) every citizen is free to make political choices, whilst section 19(3) provides that every adult citizen has the right, amongst others, to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret. Section 25(1) provides that no-one may be deprived of property except in terms of a law of general application, and no law may permit arbitrary deprivation of property. In section 25(2), provision is made that property may be expropriated only in terms of a law of general application for a public purpose or in the public interest and subject to compensation. Section 25(7) provides that a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress. In order to give effect to these rights the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), was enacted and the Commission on Restitution of Land Rights and the Land Claims Court were established.

49. The Government of South Africa has developed the Traditional and Khoi-San Leadership Bill which was introduced into Parliament on 23 September 2015 as Bill No. 23 of 2015. This Bill makes provision for the recognition of Khoi-San communities and leaders, provided they meet the criteria stipulated in the Bill. Provision is also made for the establishment of a Khoi-San councils for each of the recognised Khoi-San communities (similar to traditional councils that are established for traditional communities). Furthermore, provision is made for recognised Khoi-San leaders to become members of the houses of traditional leaders, which in future will be known as houses of traditional and Khoi-San leaders. At the local level, the Bill determines that all recognised traditional and Khoi-San leaders within a local, district or metropolitan municipal area will be members of the local houses of traditional and Khoi-San leaders. At the provincial level, membership is to be determined by provincial legislation. However, the Bill stipulates that the membership

of Khoi-San leaders in provincial houses should substantially be the same proportion as they are represented in local houses. As far as the National House is concerned, the Bill determines that if a provincial house has Khoi-San leaders, then at least one of the provincial representatives to the National House has to be a recognised Khoi-San leader.

50. As already stated, the Restitution of Land Rights Act, 1994 (“the Act”) regulates the processing of land claims for the affected persons and communities. The Act previously required that all land claims had to be lodged by 31 December 1998. However, the Act was amended in 2014 to re-open the lodgement of land claims for a period of five years, calculated from 1 July 2014 to 30 June 2019. The re-opening of lodgement of land claims enables those persons and communities that did not lodge claims before 31 December 1998 to do so. The reopening of the land claims process affects every South African citizen and communities (Black and White) who were affected by the past racially discriminatory laws or practices. In addition to this legislative development, the Government of South Africa is also developing a policy and legislation on exceptions to the 19 June 1913 cut-off date, to accommodate the descendants of the Khoi and San, heritage sites and historical landmarks.

**Dissemination of information relating to the Covenant and the Optional Protocol  
(art. 2)**

51. The public awareness on information relating to the Covenant is raised through Government, Chapter 9 Institutions and civil society organisations (refer to information under paragraph 5 above).

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