



Pfanelo

Celebrating 20 years of the SAHRC: 02 October 1995 - October 2015

Transforming Society. Securing Rights. Restoring Dignity.

The South African Human Rights Commission Newsletter



Volume 45

01 - 31 May 2016

Dialogue on human rights and policing; more attention needed to transform the police



Racism in
the spotlight

Business and Human Rights dialogue



25 May: Africa Day

Africa Day is the annual commemoration of the 1963 founding of the Organisation of African Unity (OAU), presently recognized as the Africa Union (AU). The African Union, comprised of 53 member states, has brought together the continent of Africa to collectively address the challenges it has faced, such as armed conflict, climate change, and poverty.

Source: Africadayinfo

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Pre-detention day: More than 97 000 people are currently awaiting their rights to a fair trial

The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ('the Luanda Guidelines') were officially launched by the African Commission on Human and Peoples' Rights ('ACHPR') during its 56th Ordinary Session in Banjul, Gambia on 25 April 2015.

The Luanda Guidelines were adopted at the 55th Ordinary Session of the ACHPR in Luanda, Angola in 2014 to provide guidance to policy makers and criminal justice practitioners with the aim to strengthen the day-to-day practice of arrest, police custody and pre-trial detention. The Guidelines are an authoritative interpretation of the African Charter on Human and Peoples' Rights ('the African Charter') and offer specific detail on the measures States Parties to the Charter need to take to uphold, protect and promote the rights of people in the criminal justice system. Source: achpr.



By Dr Danny Titus

25 April 2016 marks the inaugural African Pre-Trial Detention Day, providing an opportunity for much needed reflection and insight into the plight of those in extended incarceration without trial.

The South African Human Rights Commission (SAHRC) has a mandate to promote, protect, and monitor human

rights in the country, and is an active supporter of the ACHPR. The SAHRC welcomes the adoption of the "Luanda Guidelines" and the inaugural day of African Pre-Trial detention. The Luanda Guidelines focuses on arrests, police custody, decisions on pre-trial detention, registers, deaths and serious human rights violations in custody, conditions of detention, the rights of vulnerable groups, accountability and remedy measures, and implementation. The adoption and subsequent implementation of the Luanda Guidelines in South Africa provides a blueprint for how to deal with the issues of excessive and arbitrary pre-trial detention, and broadly strengthen the criminal justice system.

While pre-trial detention is important in particular cases, for example, the collecting of evidence, it should be used cautiously and as an exception. Pre-trial detention must follow the principle of innocent until proven guilty and the human rights standard of the rights to a fair trial. Pre-trial detention is not to be used as a punishment for suspicions or allegations of having committed a crime.

In Southern Africa, more than 97 000

people are currently awaiting their rights to a fair trial. In South Africa, great strides have been achieved by the Department of Justice and Correctional Services in reducing the number of pre-trial detainees. Unfortunately, despite the attempt at the reduction of pre-trial detainees, South Africa still has a large number of persons awaiting trial. According to the Department of Correctional Services annual report for 2014/2015, there was an average of 42 077 (1048 are females and 155 children) persons awaiting trial. A problematic area of concern is in arresting and presenting the detainees before a court initially. In some cases, detainees are arrested on a Thursday, but only presented to a court on a Monday. These detainees will spend an undue amount of time in police cells. In some police stations, the holding cells are not adequate in regarding to food, water, and sanitation. In addition, some police stations are still awaiting an infrastructure upgrade so that children, women, and men can be housed separately, as dictated by legislation.

Extensive pre-trial detention can have a lasting negative economic and psychological impact. Regrettably, there



SAHRC Chair Adv. Lourence Mushwana during his visit to the Pollsmoor prison following reports of rights violations

In South Africa, a strong case can be made for the use to alternatives of pre-trial detention

are many reports regarding the state of correctional centres and the effects on detainees thereof, including overcrowding, poor sanitary conditions, inadequate health care, and poor nutrition. Conditions of detention should be humane and follow a human rights based approach. In addition, the redundant and arbitrary use of pre-trial detention can provide for greater opportunities for corruption within the

criminal justice system. Currently, in South Africa, pre-trial detainees are the responsibility of the South African Police Services (SAPS), but are housed and cared for by the Department of Justice and Correctional Services. A noticed shortfall is that no programmes run by correctional centres are available to awaiting trial detainees, which further increases the negative impact on their well-being.

In South Africa, a strong case can be made for the use of alternatives of pre-trial detention. It is not uncommon to hear about persons awaiting trial who could be out on bail, but due to economic reasons cannot afford the bail, sometimes as little as R200. Other alternatives to pre-trial detention include house arrest, police bail,

regular reporting to a police station, surrendering of travel documents and orders to stay away from victims or witnesses.

The SAHRC, grounded in its constitutional mandate continues to support the rights to fair trials for all persons in South Africa. As such, the SAHRC will join the African continent and the ACHPR's in observing the inaugural day for pre-trial detention in Africa on the 25 April 2016.

Pf

ENDS

Commissioner Titus is responsible for areas of Human Rights and Law Enforcement, and Prevention of Torture.

All police recruits receiving training in human rights

THE police service is so committed to the protection of human rights it is giving new officers human rights training.

Deputy National Police Commissioner Fannie Masemola said this on Thursday when he spoke at the South African Human Rights Commission's (SAHRC) dialogue on human rights and policing in Johannesburg.

Masemola was speaking on behalf of Acting National Police Commissioner Khomotso Phahlane.

He said the event was a good platform for the police to tell their own stories about their daily duties and the protection of human rights,

and he raised concerns about the high number of police officers who are killed on duty.

"The number of police killings since 1995 has escalated astronomically," he said.



Minister of police Nkosinathi Nhleko delivering the keynote address at the dialogue.

Continues to next page

The SAPS remained committed to upholding human rights

In spite of this, the South African Police Services (SAPS) remained committed to upholding human rights and was now giving new recruits to the force basic training in human rights issues, Masemola said.

“In addition, a human rights policing programme has also been conducted in all nine provinces as part of in-service training,” he said. This programme was constantly updated by the police’s legal and policy division, according to new legal developments.

Masemola also said it was important that all officers respect the constitutional rights of suspects to secure convictions.

“The SAPS is sensitive to this, not only because of its legal obligation, but in view of the fact that long hours of work is nullified when a suspect is set free by the court (due to a human rights violation),” he said.

SAHRC commissioner Danny Titus said the rights of police officers and citizens must be balanced.

Titus said that, in the SAHRC’s engagements with the SAPS, officers said they felt their challenges were not understood by the human rights advocacy groups.

“There is a resistance from police officers who say ‘You don’t understand me’,” he said.

Source: TMG Digital



From left to right: Western Cape Police Ombudsman, Adv Vusi Pikoli; Civil Society Police Expert, Mr Eldred de Klerk and Commissioner Danny Titus discuss policing during break.



From Left to right: SAHRC Commissioner Mohamed Ameerma, Minister of Police Nathi Nhleko, SAHRC Commissioner Danny Titus and European Union Ambassador to South Africa, Ambassador Marcus Cornaro.

Did you know?

Policing dialogue trended on Twitter. On 28 April, #Policingdialogue was the second most discussed on Twitter.



Did you know?

The Commission is available on social media

Twitter: @SAHRCommission

Facebook: SA Human Rights Commission

YouTube: @SAHRC1

Goedgedacht Forum | @GGD_Forum Apr 29

Thanks @SAHRCommission and @APCOF for convening the #policingdialogue. Hoping to be part of future conversations.

Andrew Faull | @AGFaull Apr 29

Former police Chief disagrees with Mkhwanazi: better to teach decision making than skill: WHEN to shoot, not HOW to shoot. #PolicingDialogue

The Citizen News | @TheCitizen_News Apr 29

#PolicingDialogue #yj #Pikoli: We want a situation where you look for a cop, and don't run away from a cop.

Yadhana Jadoo @Yadhana Apr 29

#PolicingDialogue #yj Q&A: Because bad news sells we don't talk enough about the police officers who are doing well - IPID

Best Tweet

Mr. Big | @gaptooth28 May 1

@justin_fenton @baltimoresun Take their weapons away. Let them police with smiles, hugs, and candy. #PolicingDialogue

Why human rights is integral in business decisions



By Adv. Mohamed Shafie Ameermia

As recent as September 2015, the United Nations General Assembly adopted the Sustainable Development Goals (SDGs) where the leaders linked the concept of development with the notion that effective measures which ensure access to justice to all people and at all levels should be in place. The South African Human Rights Commission (SAHRC) on Wednesday 20 April 2016 hosted a roundtable discussion on business and human rights under the theme of “access to justice: creating access to effective remedies for victims of business related human rights violations”.

This roundtable discussion was rendered timeous by the fact that it coincides with the time when the whole country is celebrating the 20th anniversary of the existence of the Constitution of the Republic of South Africa. Our Constitution has been lauded the world-over for its progressiveness. An empirical study of the constitutions of the world, found that the South African Constitution is among the leading influential benchmarks for modern constitution-making. One of the leading legal scholars Cass Sunstein has expressed that our Constitution is ‘the most admirable Constitution in the history of the world. This means that the Constitution is a potent weapon to deal with the threat of pover-

ty, unemployment and inequality, which are besetting our nation.

The question we have to ask ourselves is why is the right to access to justice important, especially to the poor? The concept of access to justice has become a fundamental human right and been recognized as an essential guarantee of the rule of law. The importance of the right of access to justice is further reinforced by the fact that this right serves as a dual role. Firstly, it is a leveraging right which unlocks all the other rights in the Constitution. Secondly, the right of access to justice serves as a protective shield for those who have hitherto not enjoyed this right from further deprivation and also serves as an enforcement mechanism for those whose rights have been violated.

At the international level, in 2011 following the ground-breaking work undertaken by Professor John Ruggie during his tenure as the United Nations’ Secretary-General’s Representative on Business and Human

Rights where he developed the UN Guiding Principles on Business and Human Right (“the Ruggie Principles”), the United Nations Human Rights Council adopted Resolution 17/4. This resolution established a Working Group on the issue of human rights and transnational corporations and other business enterprises. The working group was amongst others, tasked with promoting the effective and comprehensive dissemination and implementation of the Ruggie Principles, and assist States with developing domestic legislation and policies relating to business and human rights in their jurisdictions.

In 2014, the United Nations Human Rights Council adopted Resolution 26/9 establishing an “open ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights” with the mandate to “elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transna-



Delegates at Business and Human Rights Roundtable on access to remedies for victims of business related rights violations

tional corporations and other business enterprises". Resolution 26/9 stresses that the obligation and primary responsibility to promote and protect human rights and fundamental freedoms lies with the State, and that States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including transnational corporations. While the obligation of States to regulate business activities within their territorial jurisdiction is clear, on the other hand States' obligations regarding corporate conduct acting abroad remain unclear.

The SAHRC as a National Human Rights Institution (NHRI) adopted the programmatic theme of business and human rights as its key strategic focus area in the 2014/15 financial year. Since then, the Commission has undertaken several capacity building programmes in an attempt to ensure that adequate legal frameworks in respect of human rights in business activities exist.

In March 2015, the Commission launched a Human Rights and Business Country Guide on South Africa to sensitise business to key human rights shortcomings in South Africa. The Human Rights and Business Country Guide canvasses challenges in the security and conflict area, which impacts on, *inter alia*, the right to life and labour protests that, at times, turn violent. The Country Guide makes reference to, and reflects on, many cases the Commission is involved with and further makes important recommendations to government and other stakeholders on issues including business, such as setting a minimum wage in sectors such as agriculture; improving monitoring of employment contracts; enforcing environmental obligations; and providing decent housing amongst others.

The significance of the role that NHRIs can play on business and hu-

man rights was noted by Professor John Ruggie when he commented that, "The actual and potential importance of these institutions cannot be overstated. Where NHRIs are able to address grievances involving companies, they can provide a means to hold business accountable.... NHRIs are particularly well – positioned to provide processes... that are culturally appropriate, accessible, and expeditious... [and] can provide information and advice on other avenues of recourse to those seeking remedy."

The Commission notes and appreciate the instrumental work that the government of South Africa together with its international partners has played around the process of an international binding treaty on business and human rights at the United Nations. However, the South African government is urged to complement this role by following other States which have openly expressed support of the Ruggie Principles and have begun developing National Action Plans on Business and Human Rights. After all, the Report on behalf of the Inter-Governmental Working Group by the Chair Rapporteur, María Fernanda Espinosa Garcés, Permanent Representative of Ecuador, presented at the 31st regular session of the Human Rights Council noted that all States convened at the first meeting of the Inter-Governmental Working Group from 6 – 10 July 2015 agreed that the two processes are not mutually exclusive, but rather, they complement each other and the adoption of a legally binding treaty could help to protect the most vulnerable.

The Commission also commends those companies in South Africa, which are in various sectors, such as, mining, agriculture, finance and agriculture for showing support of the Ruggie Principles and for joining together in sectorial initiatives to address human rights issues. The Commission applauds the Non-gov-

ernmental organisations, local community groups and advocates across the country for the critical work they are doing on business and human rights.

The roundtable intervention held by the SAHRC this week sought to build on the findings in the Human Rights and Business Country Guide on South Africa and on the other capacity building and community engagement exercises focusing on business and human rights which the Commission has undertaken, which reveals that an asymmetry between rights and obligations of businesses exists.

In fact, a "Shadow" National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks which was recently launched by the University of Pretoria's Centre for Human Rights in collaboration with International Corporate accountability roundtable found that victims of corporate human rights abuse in South Africa face numerous barriers to access remedies. Examples of these barriers include difficulties in piercing the corporate veil, exorbitant legal costs with relatively little financial aid, which is exacerbated by the "loser pays" principle, as well the relatively unfriendly legal environment that is not very conducive to successful class-action lawsuits. Further, there is lack of sufficient and effective remedies for victims of business related human rights violations.

The roundtable had three broad objectives which were to share with stakeholders the process taking place at an international level in adopting an international binding legal framework to protect human rights abuse by business and to provide access to remedy for victims; to solicit input from stakeholders on the limitations of the binding treaty as it is currently being conceptualized, and to hold discussions around what an effective mechanism of this kind should

The SAHRC will continue to create platforms to enhance awareness and capacity on business and human rights

look like; and to explore ways in which greater access to effective remedy for victims of business related human rights abuse can be cemented. These avenues relate to both the use of judicial and non-judicial mechanisms by the State and business in improving access

to remedies for victims.

The SAHRC will continue to create these platforms to enhance awareness and capacity on business and human rights, and building better public knowledge and awareness on the Ruggie Principles. Engagements such as these roundtables will be used by the SAHRC to contribute to the discourse on business and human rights.

At the SAHRC, we believe these roundtable will present multi-

ple stakeholder platforms where stakeholders will share experiences on how effective remedies on business and human rights-related challenges can be achieved. After all, human rights are not timeworn adages or hollow shibboleths, but they are living attainments which are inherent to every human being. **Pf**

Commissioner Mohamed Shafie Ameermia is responsible for Access to Justice and Housing.

Questions and Answers with Pitso Montwedi, Department of International Relations Chief Director for Human Rights

What are prevalent issues with regards to business and human rights?

What is disturbing is that members of the United Nations are divided on the issue of business and human rights. Regions that have been on the forefront on the need to protect human rights victims are silent when it relates to business and human rights. NGOs are the ones at the forefront of fighting for the rights of victims. The governments where these multinational companies are headquartered don't seem to be talking the same language when it comes to business and human rights.

In SA, what are the more challenging issues?

Nedlac process in terms of framework and structure is not delivering. There is a growing perception that government is colluding with business against the rights of workers rightfully or wrongfully. We have seen the atrocities of Marika-

na where people say Government has colluded with business at the expense of the rights of workers.

What can the Commission do?

Chapter 9 institutions are doing quite well. The Commission is doing well in terms of defending the rights of the vulnerable. The constraints I would imagine have come from lack of institutional support by relevant minister in government to give adequate support to institutions such as the commission to be able represent victims to court to get remedies.

What are next project regarding business and human rights to take to the UN?

Government has already started the process of making sure that

businesses registered in SA have an obligation to uphold human rights not only in SA but wherever they are doing business. The notion of extra territorial jurisdiction will apply. We will bring those companies home and punish them in our court system. We need to strengthen it and make sure that it works effectively.

Going to the UN, we are working with everyone to make sure that we strengthen national position because the working group dealing with binding treaties will be meeting in October. Starting from 2017 going forward Ecuador and SA have resolved that we begin the process of negotiating the binding instrument. **Pf**



De Lille calls on SAHRC to probe racist Facebook rant

Cape Town – Mayor Patricia de Lille on Tuesday called on the SA Human Rights Commission to investigate the “utterly despicable racist comments” made by Matthew Theunissen on Facebook.

She condemned the city resident’s remarks and said racism would not be tolerated.

“Matt Theunissen has to understand that racism is hurtful and we live in a democracy where we are all equal and no one can discriminate, disrespect or infringe on anyone’s rights or dignity.


“We cannot allow people to get away with making these derogatory remarks as there are laws and processes to ensure that racists are brought to book.”

SAHRC spokesperson Isaac Mangena said they had received a complaint from De Lille’s office.

In a post on his Facebook account at the weekend, Theunissen wrote: “So no more sporting events for South Africa... I’ve never been more proud than to say our government are a bunch of KxxxxxS... yes I said

it so go fuck yourselves you black fucking cxxxxs”.

It was not immediately clear when he had written the post as his Facebook profile was no longer active.

Sports Minister Fikile Mbalula announced on April 25 that he had banned the country’s cricket, rugby, netball and athletics bodies from bidding for, or hosting, major sporting events due to a lack of transformation. The decision would be reviewed next year. 

Source: News24

Outcry over ‘Govt k....rs, black f-ing c....s’

A NOORDHOEK resident’s racist Facebook post, in which he went off on Sports and Recreation Minister Fikile Mbalula’s “ban” on three sporting codes hosting international tournaments, has landed him in hot water.

Matthew Theunissen’s early morning post on Facebook was screen-grabbed and quickly went viral on Twitter, where it was shared, and propelled #MattTheunissen to the number one position among the social network’s trending topics.

Theunissen posted on Facebook: “So no more sporting events for South Africa... I’ve never been more

proud than to say our government are a bunch of KxxxxxS...yes, I said it so go and f#\$k yourselves you black fxxxxg cxxxxs.”

Theunissen’s racist rant comes days after Rhodes Must Fall activist Ntokozo Qwabe, who is also a Rhodes Scholar at Oxford University, was criticised for his post on Facebook in which he described how he and his fellow activists had refused to tip a white waitress, writing instead on the receipt: “WE WILL GIVE TIP WHEN YOU RETURN THE LAND”.

Yesterday, the Western Cape ANC condemned Qwabe’s post, with

provincial spokesperson Yonela Diko saying: “Ntokozo Qwabe’s behaviour is as much borderline criminal behaviour as it is helplessly foolish.”

Last week, Mbalula released a damning report on the progress of transformation in sport, which showed that the SA Rugby Union, Cricket South Africa and Athletics South Africa had done very little to meet their own targets.

This prompted Mbalula to ban the sporting bodies from hosting international competitions. The ban will be reviewed next year.

Continues to next page

Racism in the spotlight

Commenting on the matter on his Twitter page, Mbalula said: “The playing field is not the same, historically. That is the recognition that white people must understand, some of them... We’re seeking to level the playing field and integrate our society because our strength is in our diversity and that is what is important.

“What we cannot undo is those who are racist and believe that another race is superior than the other (sic).”


He said failing to deal with transformation now would “catch up” with South Africa in the future.

Yesterday, mayor Patricia de Lille said: “These comments and that kind of language is totally and utterly despicable.

“My office will look into this and we will make contact with Matt to address this because he clearly does not understand how hurtful racism is and that we now live in a democracy where we are all equal, and no one can |discriminate, disrespect or infringe on anyone’s rights |or dignity.”

DA national spokesperson Phumzile van Damme said Theunissen’s comments were appalling.

“There’s absolutely no space in South Africa for racism, the espousing of racist views,” said Van Damme.

“We see that the matter has already been reported to the South African Human Rights Commission and we trust that swift action will be taken against him.” 

Source: Capetimes
02 May 2016

School cuts ties with racist Free State teacher

Bloemfontein – Trompsburg Primary School in the Free State on Friday said it had cut ties with a teacher who was declared unsuitable to work with children.

“The governing body and a teacher at the school, Lenard Mac Kay, have reached a mutual agreement that it will be in the best interest of the school to end his employment,” the school’s governing body chairperson Willem Grobbelaar said.

The school employed Mac Kay in April, despite a recommendation by the SA Human Rights Commission (SAHRC) that he never work with children again.

He lost his job at Wilgehof Primary School in Bloemfontein in 2013

after he used the word “k****r” and displayed a picture in his classroom of Economic Freedom Fighters leader Julius Malema alongside that of a monkey.

The SAHRC conducted an on-site inspection of the school following a complaint from a parent. In October that year, the SAHRC found him guilty of racism and hate speech.

On July 1, 2015, he got a job at the Dr CF Visser Primary School. He left after the education department objected and asked the school’s governing body not to employ him.

When Mac Kay started working at Trompsburg Primary School, the SAHRC called for the provincial education department to intervene.

Grobbelaar said they acted in accordance with the School’s Act in appointing him. However, political parties in the province had threatened to remove Mac Kay forcefully if the school did not do so.

He said they had also received information that political parties had organised a march to the school to protest against Mac Kay’s appointment.

“We have to put the safety of the learners, teachers and parents first,” said Grobbelaar.

Mac Kay declined to comment.

Source: News24 2016-04-22 

Privacy isn't dead yet: Reflections on UN HRC's findings on South Africa

On 23rd March the United Nations Human Rights Committee released its assessment on South Africa's compliance with the International Covenant on Civil and Political Rights (ICCPR). The report includes a blistering attack on the Government for failing to respect the privacy of the communications of users and makes recommendations to reform the laws and practice of surveillance in the country.

The Committee's findings repudiated the Government's claims that its surveillance practices, based on the Regulation of Interception of Communications and Provision of Communications-related Information Act (or, RICA, as it's commonly called in South Africa), are justifiable, given the country's extremely high crime rate and the global terrorist threat.

RICA makes it illegal to intercept communications without a warrant from a designated judge (the "RICA" judge). Law enforcement and intelligence agencies are authorised to use the Act to assist investigations, providing they follow the procedures in the Act.

South Africa's Parliament passed RICA into law along with other anti-terrorist laws in the wake of the September 11, 2001 attacks on the US. The world was in shock at the brutality of the attacks, and in South Africa, citizens were also crime-weary after a massive crime spike in the late 1990's. As a result, many were more open to rights-reducing laws like RICA. But more people are realising that, in their freedom, they may have given an important element of their free-

dom away, namely the privacy of their communications.

In the past, when there has been political ferment in the ruling party, different factions have abused their access to the communications surveillance capacities of the state to spy on their perceived opponents. The full extent of these problems came to light in 2008 when a ministerial report into these abuses was leaked to the press (known as the Matthews Commission report).

The Matthews Commission proposed wide-ranging reforms to prevent similar abuses from occurring again. However, there is little reason to believe that these reforms have been implemented. One of the practices the Matthews Commission criticised was that mass surveillance did not fall under RICA. The UN Committee has amplified this criticism in its report.

There are two interception centres in South Africa: The Office for Interception Centres (OIC), which is established by RICA to undertake communication interception, and The National Communications Centre (NCC), which undertakes mass surveillance, and which isn't established or regulated by any law. This lack of regulation and oversight renders such mass surveillance unlawful and unconstitutional. After the Matthews Commission report was released, the-then Ministry of Intelligence developed two Bills to regulate the activities of the NCC. However, once the Jacob Zuma Presidency assumed office, both Bills were shelved.

This means that the most powerful mass surveillance machine of the

state is the one that is least regulated: an issue that should concern South Africans greatly, as the Government has a track record of abusing such power.

Other abuses have come to light, despite of the lack of transparency around government spying. Sunday Times journalist Mzikazi wa Afrika, had his communications intercepted by members of the Crime Intelligence Division of the police, on suspicion that his frequent trips to neighbouring Mozambique meant that he was gun-running. Yet, in fact, he was pursuing a story for the paper.

Perversely, the Inspector-General of Intelligence - tasked with oversight of South Africa's intelligence services - declared the interception of wa Afrika's communications legal, as the police had followed the RICA process. This situation arose because the grounds for the issuing of interception warrants in RICA are vague and speculative. This was another concern in the UN Committee report.

The Committee also expressed concern over weak safeguards, lack of oversight, and lack of remedies against unlawful interference. The RICA judge marks his or her own homework, in that s/he signs off on interception applications, while also being the sole party responsible to report on such decisions in an annual report to Parliament's intelligence committee.

The Committee also noted that RICA is also weak on metadata protections. RICA requires communications service providers to retain

Continues to next page

RICA is also weak on metadata protections

all metadata (or what it calls communications-related information) for 3 to 5 years.

Blanket retention of metadata has become a hugely controversial issue. In 2014, the European Court of Justice struck down the European Union Data Retention Directive saying such retention was disproportionate to the aim it sought to achieve. South Africa remains out of step with this important development, and blanket retention of metadata persists.

Another controversial feature of RICA is the requirement of Subscriber Information Module (SIM) card registration. This is a de-facto violation of privacy because it lim-

its the ability of mobile phone users to communicate anonymously. A growing body of international research also suggests that this measure is useless as a crime-fighting tool, which raises the question of why such a requirement persists in South Africa. More worrying, mass surveillance technologies can also be bolted onto the SIM registration database.

While the Committee did not pronounce on all issues of concerns, such as South Africa's possible use of IMSI Catchers, and RICA's lack of user notification, the Committee's recommendations are a major advancement in the struggle for privacy of communications in South Africa. It is now up to civil society and popular movements to pick up the cudgels and ensure that abuses - to the extent that they exist - are stopped.

Many have argued that in the age of the internet of everything, privacy is dead. Those who make this argument, including in South Africa, appear not to be aware that the struggle for privacy is, in fact, alive and well, and even gaining ground. Happily, the Committee's report on South Africa shows that reports on the death of privacy are greatly exaggerated, to paraphrase Mark Twain. **Pf**

Source: South Africa Digital Rights

This statement was originally published on privacyinternational.org on 19 April 2016.

This is a guest post by Jane Duncan who is a member the Right 2 Know Campaign, a South African campaigns group that is a member of the Privacy International Network.

Plight of KhoiSan people worries SAHRC

Monday 18 April 2016 12:21

Commissioner of the South African Human Rights Commission (SAHRC), Dr Danny Titus says KhoiSan people feel they are excluded by the constitution.

Titus says this is one of the grievances raised by KhoiSan people at public hearings held by SAHRC since last year.

Other grievances include a lack of service delivery and lack of access to land.

Titus says the public hearings were held to avoid the tedious task of attending to each individual complaint.



Indigenous people came in their numbers to raise frustrations regarding violations of their rights at the SAHRC hearing
Pic: Lesego Raphalalane

The last leg of the public hearings was in the Northern Cape but the commission has received complaints from other provinces with a small KhoiSan presence and it may

attend to these as well.

All submissions will be compiled in a report that the SAHRC will recommend to parliament. **Pf**

Source: SABC

SAHRC investigates the City of Joburg

The South African Human Rights Commission (SAHRC) is being cagey about confirming the announcement by the Democratic Alliance (DA) that the party was delighted by the commission's decision to investigate the City of Johannesburg for rights abuses across the city.

This follows the DA's complaint lodged in late March regarding living conditions in, among others, Zandspruit, Kwa Mai Mai in Marshalltown and hostels in Alexandra. DA mayoral candidate for Johannesburg Herman Mashaba said the complaint was sought to hold Mayor Parks Tau and his administration, "... who have for too long ignored the plight of Joburg's poorest and most vulnerable, to account."

However, in his response SAHRC spokesperson Isaac Mangena said, "I can confirm that we have a complaint regarding the living conditions in a number of areas in the City of Johannesburg. I can also confirm that three of the matters the complainant refers to have been addressed by the SAHRC. These include the situation at Alex Women's Hostel where we have completed an investigation into this and released a report.

"We are currently waiting for responses from the City on compliance with our recommendations."

Mangena added that the other two matters referred to by the complainant are currently under investigation – the Kwa Mai Mai settlement will be inspected soon, and others are still under investigation by the commission. **Pf**

Source: Fourwaysreview
April 15, 2016

White resort owner who allegedly asked black child to leave pool signs conciliation agreement

The owner of a holiday resort in Modimolle in Limpopo who allegedly asked a black teenager to leave a swimming pool "out of respect for other people" has agreed to enter into a conciliation agreement with the South African Human Rights Commission (SAHRC).

The SAHRC said Johan Gresse, owner of the Klipspringer Guest House and Caravan Park, signed the agreement with the human rights watchdog on Friday.

The incident allegedly happened in December while the 15-year-old teenager was visiting the resort with his white foster parents.

was alerted through media reports that Mr Johan Gresse called out a black child from a swimming pool at Klipspringer Guest House and Caravan Park on the basis that the child is 'black'.

"It was further alleged that Mr Gresse's decision was influenced by racial discrimination against the child as he was the only black child in the swimming pool amongst white children," the SAHRC said.

"During the Commission's process of investigations, the relevant parties agreed to enter into a conciliation agreement, in order to address the matter," it added. **Pf**

"In January 2016, the Commission

Source: TMG 14 April



Back: Respondent's Attorney and Limpopo Provincial Manager, Victor Mavhulida. **Front:** The victim's foster parent Andrie van Rheede, Commissioner Bokankatla Malatji and Johan Gresse, the owner of the holiday resort. **Pic:** Thembi Madalane, Limpopo Legal Officer

South Africa celebrates national celebration of Freedom Day

Government thanks all South Africans for the inspiring way in which we celebrated Freedom Day. This demonstration of active citizenship and patriotism displayed by countless South Africans was truly inspirational.

The profound impact of what freedom means to ordinary South Africans reverberated in the thousands of people from all walks of life who filled the Giyani Stadium in Limpopo to listen to President Jacob Zuma's Freedom Day address.

President Zuma reassured those in attendance that the democratic government would not rest until all households in our country live in dignity and obtain basic services.

"We will continue to work with all communities towards this end, together building better communities and improving the functioning of municipalities so that they can better provide these services. Remember that local government is everybody's business. So we have to work together to bring about a better life for all," he said.

Similar sentiments of the need for all South Africans to work together were reflected in the thousands of conversations on social media about the meaning of freedom.

It found voice in the discussions on radio phone in programmes, where opinion formers and ordinary South Africans shared their thoughts and experiences.

These conversations across society reaffirm that we have come a long way in transforming our nation. However,



Social Cohesion: Freedom provided opportunities for different races to dance to the same tune. Pic: GCIS

government knows that more must still be done. We therefore call on all South Africans to join us in building the nation of our collective dreams.


Together we can build a society where every child is free to pursue their dreams through hard work and dedication. We can ensure a country where opportunities are available for all, and where all South Africans are afforded a chance to better their lives.

Government would also like to congratulate security agencies and other government departments for their hard work and dedication in support of Freedom Day celebrations.

Freedom Day is the apex of our

Freedom Month celebrations which recall the historic occasion in 1994 when our nation achieved freedom and democracy. During this month we celebrate our first democratic election on 27 April 1994, and the democratic dividend of our freedom.

Freedom Day is also an opportunity to reflect on our freedom. It allows all of us to take stock of our achievements and the progress we have made over the past 22 years.

Acting Director-General of GCIS Donald Liphoko said: "The 2016 celebration of Freedom Day was another positive milestone in our country's democratic history. We appreciate South Africans for keeping our democracy strong and vibrant on this Freedom Day." 

Freedom day achievements should be embedded in our hearts

What do you do with a 22 year old who is filled with a wealth of potential, but seems to have a dark cloud hanging over them? How do you help them? How do you make them realise the beauty they still have to offer? How do you heal their trauma and make them realise that as much as the past hurts, the future awaits with countless possibilities?

Looking back at how far our country has come, it is not difficult to see why we should appreciate our Freedom despite its many complexities. Freedom is not always peachy, sometimes it is accompanied by weeds and thorns that need to be removed in order to feel the beauty of our struggle. The question is, when will these weeds and thorns be removed and how will we remove them when we have immersed ourselves in so much pain?

This Freedom day, the idea of how truly liberated I felt crossed my mind and I was left confused. Am I really free? What defines me and how do I find my place in this young democracy? I realised that I am living at the mercy of a 22 year old who, despite having accomplished a lot, has left me feeling lost and despondent.

This country has suffered a lot of trauma and it is time we dealt with the psychological effects of apartheid. These are the same effects that leave me feeling sad whenever I walk past the crowded spaces of inner city Johannesburg. I don't feel free because I am usually terrified by the pain accompanied by the energies I feel whenever I walk past my people and their suffering. How can I feel free when I am surrounded by so much poverty, sickness and defeat? How can I walk around freely when I know that



these people's living conditions are a result of a system that was designed to keep them in this very position? How can I consider myself free amid this intense lack of transformation?

This is the time for us to deal with the trauma caused by the many years of Apartheid. Many people who directly suffered the evils of oppression are still alive and many are running dysfunctional households. It is in this dysfunction that the brutality of rape culture is still widely prevalent. It is in this dysfunction that our crime statistics are at their prime. What else are people left to do when they are poor, uneducated and desperate for survival? How are we free when we are living in constant fear of being attacked by our own? Many have picked themselves up, acquired an education and are working tirelessly to create a better life for themselves, but how free are we if we can't even enjoy the fruits of our hard work?

This Freedom Day I asked myself why I still have to deal with the hatred of people like Penny Sparrow, Justin Van Vuuren, Matt Theunissen and many others who remain racist behind closed doors. How free do I think I am to believe that 22



By Kebo Motseothata
External Contributor

years is enough to erase the many years taken to instill apartheid and its legacy? How free am I to think that I am living in a rainbow nation when I don't see other races learning my language when I tirelessly bend over backwards to learn and perfect my English? How am I free when I'm constantly deemed racist for bringing forth the question of land as well as asking why corporate South Africa refuses to share the majority of the country's wealth? I have heard that "there is nothing equal about treating an unequal society equally" and I still don't feel free to even explore this topic further.

South Africa is a young democracy and we have a long way to go until we can fully call ourselves free. My views are one sided, and are inadequate in any attempts to fully explore the complex dynamics of this country. I will not be free until I see this nation coming together as one to deal with the legacy created by a system that only sought to separate us. I cannot allow myself to be free until I witness our genuine empathy and kindness towards each other's struggles as a nation. This Freedom Day, I wept for my precious 22-year-old country, she is young and full of potential, but remains broken. When will she heal?

In the Seat

with Wisani Baloyi,
Communications Officer



Tell us about Wisani in a nutshell?

Those in my inner circle have described me as a family man and a ruralitarian. I am an open book and as such I associate with different personalities, maybe it's because I am a Gemini.

Where were you born and how was it for you growing up?

I was born in Masia, Limpopo (the area currently in the news for refusing to be part of Malamulele municipality). I am the third of six boys. My dear mother hoped so much for a girl that she conceded after the birth of the sixth child that her wish was not going to materialise.

As a young boy my friends and I used to look after the cattle grazing in the mountains, while enjoying

natural fruits. The feeling of learning to whistle and swim in deep rivers before most of my friends was like a trophy. Strange enough Musa Mchunu, the Internal Security Officer mocks me saying (Umtwana ka ma'm) that I am not hard-core, that I grew up in a semi-rural area eating burgers, cornflakes etc.

Around the age of 16 eating fruit and swimming was no longer interesting, I hated the fact that I had this monkey on my shoulder of having to look after the cattle while my friends whose parents did not have livestock had an opportunity to roam around the streets. Imagine, there I was running after cattle wearing old clothes while my friends were dressed to the nines. I now appreciate the responsibilities I had because somehow I believe that that played a role in shaping my character.

I don't recall us sleeping without knowing where the next meal would be coming from and for that I give credit to my parents. My father was a hero to me, and I imagined him seeing me grow and be able to fend for myself. Unfortunately God's plan was not in synch with mine. My father passed away in 1998.

At first I asked God so many questions but found solace in prayer. However, my dear mother who took the baton of raising six boys on her own. Looking at how we turned out I believe that she excelled. Because of the role that my mother played, I grew up appreciating and respecting women.

After passing matric I enrolled for National Diploma in Journalism, and later B.Tech at Tshwane University of Technology. I dreamt of travelling the world sharing stories of Africans excelling in the sporting fraternity during mega events such as the Olympics and Soccer World Cups. Now you have an idea of I am heading when I tender resignation.

Describe your position at the Commission and explain what it means to you?

I joined the Commission as an intern at Media and Communications. I had little knowledge about the importance of this institution. For me it was the much awaited opportunity to achieve some of the material things I longed for. There I was thinking I needed to work hard so that I could become permanent, and buy Golf 5 to reward myself. Six months down the line I was permanent, but priorities had shifted, I felt the need to do final touches to my mother's house back home. Indeed this was one of the smartest decision I've ever taken. Whenever I go home I feel proud that I was able to bring a big smile on my dear mother's face.

In time I moved from Communications Assistance to Internal Communications Officer. My position as an Internal Communications Officer means that I am able to interact with different people, travel the country during hearings and inspections, seeing first hand some of the socio economic challenges. I am the first to concede that much has been done to redress the injustices.



tices of the past but I believe that more could have been achieved.

The memories of how women of Bushbuckridge (who were nearly bitten by a crocodile while wanting to fetch water), Marikana (who lost their providers during the police shooting) and Rammulotsi who had no other plan but to relieve themselves at night in an open toilet) are able to carry on as business as usual, astonishes me.

My work is never standard, one minute I am working on *Pfanelo* production, another on branding, taking pictures, videos, twitter, Facebook, YouTube etc. Sometimes I come having a schedule of activities but forced to re-align due to urgent requests.

Working at the Commission is special. When I joined the Commission as an intern I did not know what to expect but I found an organisation with lots of friendly people. I found mother figures, sisters and brothers who I blended well with.

Being employee of the year runner-up is a big deal to me.

At first when Alucia Sekgathume said she would nominate me for employee of the year, I thought she was biased because we work together, but when more people said so I couldn't believe it. For me it meant a lot that a good number of people saw something in me. Being a runner-up obviously I did not get a chance to say anything but would like to thank everyone who voted for me. I was happy that I casted my vote on the winner, Lerick.

Life outside the office?

I do not have too many friends so most of my interesting days are spent with my wife and my child. I think I managed to blend traditional practices with modern ones, I do wash dishes and iron. When my son Kulani was born in 2013 so much changed for me. I learned to change nappies, feed and bath him. Words cannot explain the feeling of seeing him learn to crawl and later walk.

Saturday mornings are dedicated to exercising. When I am in the mood, I run for about 2 hours. For me running is equivalent to people needing coffee or cigarette to function better.

What motivates and inspires you?

I am motivated and inspired by hard work. When I read biographies of people who made it irrespective of difficult circumstances, selfless people like the late Nelson Mandela I feel the need to do more to make a difference to others. The first time I ran for more than 15 kilometres was on 16 December 2013, when the country was still mourning the passing of President Nelson Mandela on the 5th. I took the decision to have my own dedication to Tata. After that run I was so tired that I slept for 4 hours (LOL). But it was worth it.

My friends and I have started the project of donating sporting equipments for our former primary school Munwai back at home. Our grade 2 teacher couldn't believe that after so many years having left the school we remembered to give back. When I went there to deliver the goodies I was like a celebrity.

Any interesting thing that people don't know about you?

That I used to be hooked into Virtual DJ. I used to mix house songs around the 16 December in preparation for the holiday. As a bachelor I had all the opportunity to perfect it and the end product was worth playing on a radio. Some of my friends initially thought I was taking credit for someone else's work until I did it in their presence.

My favourite quotation

Practice what you preach. I rather not say anything contrary if my actions would turn out differently.

Tell us about your passion

Having not participated in sporting activities, surprisingly I am a big fan of sport. I can discuss soccer, athletics, have inputs here and there on tennis and cricket. This is a special year for me because the Olympics, a combination of most of my favourite sporting codes will be taking place in Rio, Brazil.

My favourite book, music, and place to chill out.

I don't really have a favourite book but have interest in biographies.

My love for music started around the age of 17 and found RnB fascinating. I listened to greats and just pictured myself living the lyrics one day. I am happy that my belief in love has paid off. (LOL.)

Also love watching romantic comedies and gladiator movies. **Pf**

SNIPPETS

Press statement: LHR Disappointed by Flawed Arms Deal Commission Investigation

21 April 2016

Lawyers for Human Rights (LHR) is disappointed by the findings of the Arms Procurement Commission that there was no evidence of wrongdoing within the 1999 Arms Deal.

LHR represented three critics before the Commission, Andrew Feinstein, Paul Holden, and Hennie Van Vuuren, until August 2014 when they were compelled to withdraw from the Commission. This was as a result of barriers put in place by the Commission.

These barriers occurred within the context of the resignation of key officials and concerns that the public would have no confidence in the outcome. Some of the concerns that erected barriers was around the Key evidence which was prevented from being presented to the Commission. Critical voices were also simply excluded from the hearings and investigations.

- Documents and statements were only provided to legal teams at the last minute, sometimes only the morning of a witness's testimony. Requests for further time to study documents and statements were either denied or were met with hostility by the Commissioners;
- Legal teams were not allowed to refer to documents which had not already been admitted into evidence, by evidence leaders or persons themselves accused of wrong-

doing, during cross-examination of witnesses;

- Witnesses were not allowed to refer to documents of which they were not the author;
- Evidence leaders were not allowed to be critical and cross-examine witnesses before the Commission.

LHR is disappointed by this missed opportunity to hold a thorough investigation into what is one of the most important series of events in post-apartheid South Africa. This process and ultimate findings could have restored confidence and provided an important precedent on how to conduct investigations that can garner public support and instil public confidence. Unfortunately, in this era of allegations of state capture and attacks on key institutions of democracy, this investigation fell far short of that promise.

Source: LRC

Decision to drop Zuma corruption charges 'irrational', set aside

2016-04-29

The High Court in Pretoria has said the decision taken by former NPA head Mokotedi Mpshe to drop corruption charges against President Jacob Zuma in 2009 was irrational.

Judge Aubrey Ledwaba found three contradictions in Mr Mpshe's affidavits explaining his decision to withdraw the charges against President Zuma.

Mr Mpshe should have followed the legal processes on emergence

of the "spy tapes" and allow the courts to decide if the charges should have been withdrawn.

He acted "alone and impulsively", and therefore his decision was "irrational".

The decision from 2009 has been set aside.

The NPA and its head Shaun Abrahams must now decide if it will re-charge President Jacob Zuma with the original 783 counts of corruption.

Source: News24


President announces date for 2016 Municipal elections

PRETORIA – The 2016 Local Government Elections will be held on 3 August 2016, President Jacob Zuma announced on Wednesday 06 April.

South Africans will have the opportunity to elect leaders who will serve for a period of five years at municipal government level, mainly councillors and mayors.

The final opportunity for voter registrations will be on 9-10 April 2016. Zuma has encouraged citizens in particular the youth who will be voting for the first time to utilise the opportunity to resister.

"We urge all those who are eligible to vote register to vote and those who have not checked their names to do so... so that together we continue to re-affirm and deepen our democracy," said President Zuma.

Source: ENCA 

Appointments

NAME & SURNAME

POSITION

OFFICE

Ms Yonela Yolisa Diko

Admin Assistant- LSU

HEAD OFFICE

Ms Kathleen Hardy

Senior Legal Officer: High Profile Complaints- LSU

HEAD OFFICE

Mr Katiso Molati

IT Intern

HEAD OFFICE

Mr Thabelo Rasekutuma

IT Intern

HEAD OFFICE

Happy Birthday

The following colleagues are celebrating their birthdays in May . Please join us in wishing them well.



2nd

Robert Tyrell
(HO)



5th

Judy Hollenbach
(HO)



13th

Kebalepile Modise
(HO)



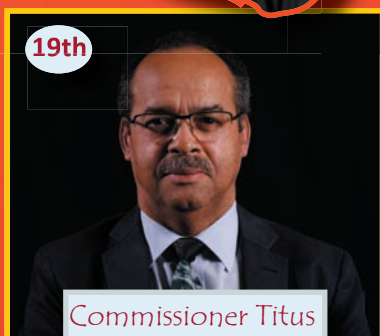
14th

Matthew Duplessis
(GP)



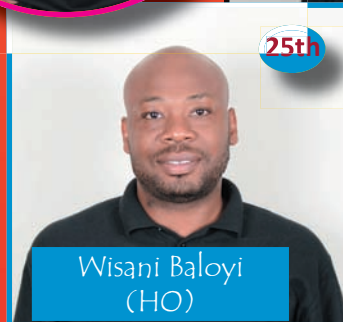
8th

Osmond Mngomezulu
(HO)



19th

Commissioner Titus



25th

Wisani Baloyi
(HO)



25th

Shafeeqah Salie
(WC)

Shirley Mlombo (HO) 2nd

Kathleen Boyce (KZN) 4th

Abraham Mojapelo (NC) 5th

Jackson Mzila (MP) 8th

Karam Singh (WC) 12th

Danzel Van Zyl (GP) 16th