

SOUTH AFRICA'S COUNTRY REPORT TO THE HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW MECHANISM: 15 APRIL 2008

A) INTRODUCTION

1. This report is being submitted pursuant to Operative Paragraph 5(e) of the United Nations General Assembly Resolution 60/251 of 15 March 2006, which created the United Nations Human Rights Council and broadly provided a general framework for its fair, equitable and transparent operations. True to the letter and spirit of the General Assembly resolution creating the Human Rights Council, South Africa and indeed, all South Africans are yearning for a global order in which human rights and fundamental freedoms including the enjoyment of the right to development can be a practical reality for all. South Africa is also submitting this report on the basis of its innermost conviction that all the members of the United Nations share a common vision as to the objectives and purposes of the Universal Periodic Review Mechanism (UPR). South Africa's understanding is that this mechanism is primarily intended to assess and determine the extent of the practical enjoyment of all human rights and fundamental freedoms in each country consistent with the principles of non-discrimination, non-racialism and non-sexism for the achievement of human dignity and equality.
2. Experience reveals that the mere existence of institutions and processes aimed at supporting democratic order such as:
i) Regular free and fair elections; ii) Independent Electoral Commissions; iii) National Institutions for the promotion and protection of human rights and fundamental freedoms; iv) Gender, Youth and Disability Commissions and v) Vibrant civil society formations, do not in themselves provide the necessary guarantees for the practical enjoyment of human rights and fundamental freedoms in any given situation. In the contemporary world it has been proven more and more that even the most mature of democracies still have their own serious challenges when it comes to the fundamental issues of human dignity and substantive equality as well as non-discrimination in the provision of essential social services such as education, housing and public health care. These institutions and processes have to be underpinned by a political commitment rooted in a national culture that ensures respect for, promotion, protection and, most importantly, fulfilment of all human rights and fundamental freedoms. South Africa fully subscribes to the principle of progressive realization of all human rights aimed at the constant improvement of the quality of life of all and within the available resources.

B) BACKGROUND

3. South Africa has a unique history that still impacts greatly on its efforts to build its new democracy on a foundation of human rights. Both the colonial and apartheid systems had left the legacy of a deeply fractured state and society and the need for massive socio-economic redress and development. Since 1994 the drive is to transform the state and deploy resources to give all citizens equal access to rights and provide services of equality to all. Many gains have been made in spite of the huge challenges faced by the government and communities.
4. With the advent of democracy in 1994, the South African government created a political space for all the rights enumerated in the Constitution to be practically enjoyed. In this regard, the political vision of the democratic government in South Africa is predicated on a fundamental principle which affirms the inextricability between economic, social and cultural rights and the enjoyment of the right to development on the one hand, and the civil and political rights on the other. Also consistent with the fundamentals of the international human rights law, South Africa strongly upholds the notion of i) promotion, ii) protection and iii) fulfilment of all human rights and fundamental freedoms. In essence the Republic of South Africa Constitution Act No. 108 of 1996 constitutionally guarantees all human rights and fundamental freedoms and also internalises all the core provisions of the International Bill of Human Rights.
5. The Constitution further creates independent institutions such as the Public Protector; South African Human Rights Commission; Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; Auditor-General; Commission on Gender Equality; Independent Electoral Commission with the aim of supporting the democratic order. The above autonomous institutions play an oversight role and are accountable to the Legislature.
6. The South African Constitutional imperatives call for the enactment of enabling legislation in substantiation of all the rights enumerated in the Constitution in order to ensure substantive equality and non-discrimination. To this end, Parliament has already passed the following fundamental legislation:

- i. The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000
- ii. The Employment Equity Act, No. 55 of 1998
- iii. The National Education Policy Act, 1996
- iv. The South African Schools Act,
- v. The South African Citizenship Act,
- vi. The National Health Act,
- vii. The National Housing Act, 1997
- viii. The Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1998
- ix. The Rental Housing Amendment Act, 2008
- x. The Promotion of Access to Information Act of 2000,
- xi. The Public Service Act of 1994, (Proclamation 103 of 1994)
- xii. The Labour Relations Act of 1995,
- xiii. The Promotion of National Unity and Reconciliation Act, No. 34 of 1995,
- xiv. The Immigration Act of 2002,
- xv. The Protection of Constitutional Democracy Against Terrorist and Related Activities Act No. 33 of 2004,
- xvi. The Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006,
- xvii. The National Economic Development and Labour Council Act, No. 35 of 1994,
- xviii. The Land Reform Act,
- xix. The Security of Land Tenure Act.
- xx. The Domestic Violence Act,
- xxi. The Films and Publications Act,
- xxii. The Financial and Fiscal Act.

7. In addition to the above legislative measures, the South African Constitutional Court has produced several significant adjudications providing new international momentum to the notion of justiciability of economic, social and cultural rights. The Government has also, in its commitment to the practical achievement of all human rights entered into a social compact / contract with civil society, corporate sector, and organized labour in a public private partnership to generate the requisite domestic capital as well as reinvigorate the economy to make this goal realisable.

8. Following the first democratic elections in 1994, the South African Government adopted a nation-wide macro-economic development framework known as the Reconstruction and Development Programme whose primary objective was to achieve a better life for all, address historical legacies of inequalities occasioned by centuries of oppression through colonialism and apartheid.

9. The main focus of the Reconstruction and Development Programme was to create a macro-economic development framework to ensure an integrated service delivery and improvement of the quality of life of all South Africans. In order to accelerate the achievement of this objective, the Government subsequently introduced complementary underpinning economic and developmental frameworks such as Growth, Employment and Redistribution (GEAR), Accelerated Shared Growth Initiatives of South Africa (ASGISA) and Joint Initiative on Priority Skills Acquisition (JIPSA) with the view to overcome the challenges of extreme poverty and hunger, underdevelopment, unemployment and lack of priority skills, etc.

10. In the relatively short period of South Africa's constitutional democracy the following international human rights instruments have been ratified or acceded to:

- i. The International Covenant on Civil and Political Rights (ICCPR),
- ii. The Rome Statute of the International Criminal Court (ICC),
- iii. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), iv.
- iv. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
- v. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

- vi. The Convention on the Rights of the Child (CRC),
- vii. Optional Protocol to the ICCPR,
- viii. Second Optional Protocol to the ICCPR,
- ix. Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution,
- ix. Optional Protocol to the CEDAW,
- x. 1951 Convention Relating to the Status of Refugees,
- xi. The Convention on the Rights of Persons with Disabilities
- xii. Optional Protocol to the Convention on the rights of Persons with Disabilities;
- xiii. Convention on the Prevention and Punishment of the Crime of Genocide.

11. South Africa is in the process of signing and ratifying the following core human rights instruments:

- i. Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- ii. The International Convention for the Protection of All Persons From Enforced Disappearance;
- iii. The International Covenant on Economic, Social and Cultural Rights
- iv. Optional Protocol to the CRC on the Use of Children in Armed Conflict.

12. In its compliance with the International Treaty obligations, South Africa has presented its country reports to the following United Nations Human Rights Treaty Monitoring Bodies:

- i. The Committee on the Rights of a Child,
- ii. The Committee on the Elimination of All forms of Discrimination Against Women,
- iii. The Committee on the Elimination of Racial Discrimination;
- iv. The Committee Against Torture; and

13. On 30 October 2002, the South African Cabinet issued an open invitation to all the Special Procedures of the Human Rights Council to visit the country and undertake enquiries on the status of the enjoyment of human rights consistent with their respective mandates. In this regard several Special Procedures of the Human Rights Council visited South Africa. These included:

- a) Special Rapporteur on the sale of children, child prostitution and child pornography, b) Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples,
- c) Special Rapporteur on adequate housing as a component of the right to an adequate standard of living,
- d) Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and
- e) Working Group on Arbitrary Detention. The Government is currently working on a collective programme to ensure implementation of the recommendations emanating from the visits of these Special Procedures, including those of Treaty Bodies.

14. Additional to the above, South Africa has ratified the under-listed Regional Human Rights Instruments:

- i. The African Charter on Human and Peoples' Rights,
- ii. The African Charter on the Rights and Welfare of the Child,
- iii. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa,
- iv. The African Court on Human and Peoples Rights,
- v. Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights,
- vi. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa and
- vii. Protocol of the African Court of Justice of the African Union.

15. In regard to the above continental instruments South Africa also submitted the following reports as part of its compliance with these regional mechanisms;
- i. Country report to the Southern African Development Community on the Declaration on Gender and Development (August 1997;
 - ii. Country report to the African Union on the Solemn Declaration on Gender Equality in Africa (January 2008); and
 - iii. Country report on the African Charter on the Welfare and Rights of the Child (November 2007).
16. South Africa received the visit of the Special Rapporteur of the African Commission on Human and Peoples Rights on the Conditions of Prisons and Detentions in Africa, Dr Chirwa, who visited the country in 2004.
17. South Africa believes that it plays a leading role in the international fora. This is not only evident by the number of treaties, conventions and protocols the Government has ratified or acceded to, but also South Africa's ever higher commitment and involvement in the peaceful settlement of disputes, peacekeeping and peacemaking operations. The International Humanitarian Law (IHL) instruments South Africa has signed/ratified/acceded to include:
- i. Geneva Conventions of 1949;
 - ii. The two Additional Protocols to the Geneva Conventions;
 - iii. 1925 Geneva Protocol Prohibiting the use of poisonous gasses and bacteriological methods of warfare;
 - iv. 1972 Convention that prohibits the production and stockpiling of bacteriological weapons (supplants the 1925 convention);
 - v. 1963 Treaty Banning Nuclear Weapons Tests in the Atmosphere, Outer Space and under Water;
 - vi. 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and the Subsoil thereof;
 - vii. 1980 Conventional Weapons Convention and Additional Protocols II, IV and amended protocol II;
 - viii. 1993 Chemical Weapons Convention;
 - ix. 1995 Convention on the Rights of the Child;
 - ix. 1997 Ottawa Convention;
 - xi. 1998 Statute of the International Criminal Court; and
 - xii. 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (Signed by South Africa).
18. Most of the above mentioned instruments have either been domesticated through specific domestic legislation, or through already enacted legislation that accommodates the principles contained in the instruments. South Africa is also in the process of finalizing domestic legislation specific to the Certain Conventional Weapons Convention and the Geneva Conventions. It is envisaged that these to Bills will be promulgated and implemented during 2008.
19. Furthermore, South Africa has made one of the most direct attempts in the world to regulate South African private military and security companies and personnel operating in conflict zones. South Africa has promulgated in 2006 the "The Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an Area of Armed Conflict Act" (Act 27 of 2006). This Act in essence has the same objectives as the 1997 Act on the "Regulation of Foreign Military Assistance" which it replaces. The 2006 Act however regulates the actions by South African companies, citizens and permanent residents much more than the 1997 Act in respect of the mentioned entities' actions in conflict zones. Both Acts, in essence, however: Prohibits Private Military Companies and Services in any way as they are seen as mercenaries; and ensures the proper registration, regulation and accountability of entities/people operating in conflict zones. The 2006 Act's implementation has been delayed due until the regulations to the Act has been promulgated.
20. South Africa has also implemented the "South African Red Cross and protection of certain emblems" Act during 2007. The Act affords specific legal protection to the South African Red Cross Society and its emblems.

C. PRACTICAL ENJOYMENT OF INDIVIDUAL RIGHTS

21. Despite progress made thus far, the South African Government believes that much still needs to be done to make the practical enjoyment of human rights a reality for all South Africans. Some of the biggest challenges facing our society relate to the question of a racially divided economy inherited from the colonial and apartheid systems which impedes the transformation of our society as well as the attainment of the noble goal of building a uniquely South African national identity and social cohesion.
22. Notwithstanding the above challenges, South Africa is firmly on a path to consolidating its constitutional democracy and given the limited resources the country has at its disposal, it has made satisfactory progress with regard to the delivery of rights encapsulated in the Constitution of the Republic and those rights include the following:

RIGHT TO ADEQUATE HOUSING

23. The Republic of South Africa supports the protection of economic, social and cultural rights. This protection is provided for in the Constitution. Section 26 affirms all citizen's right to adequate housing, and it makes three fundamental principles as follows: *"Everyone has the right to adequate housing... the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right...no one may be evicted from their home, or have their home demolished, without an order of the court made after considering all the relevant circumstances"*.
24. In order to action these Constitutional principles, the South African Government has enacted the National Housing Act, 1997, which provides a policy framework within which houses shall be provided to the citizens. The Act allocates roles and responsibilities to all three spheres of Government as follows: National (to develop housing policy and national housing programmes), Provincial (to implement housing programmes through projects and funding disbursement) and Local government (assist province with implementation of projects and allocation of houses to citizens). In order to actualise this Act, the National Housing Code simplifies the Act by further expanding on the roles, the housing programmes which offer various tenure options to the citizens.
25. The South African Parliament has passed several housing related Acts. The most notable is the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (the PIE Act), which protect citizens mostly the poor who are living in precarious conditions from being evicted without an order of court made after considering all the relevant circumstances.
26. In addition Parliament is considering the Social Housing Bill, 2008 which makes provision for a statutory social housing rental regime. The main purpose of the Bill is to establish a Social Housing Regulatory Authority which will regulate the establishment of housing stock which will allow poor people to access below market related housing, thereby providing additional housing stock for those who cannot or do not wish to access a housing subsidy for ownership of the property.
27. The Rental Housing Amendment Bill, 2008, is shortly to be proclaimed as an Act of Parliament. This piece of legislation strengthens the occupational rights of the tenants, in addition to clearing confusion on the interpretation and implementation of certain provision of the Rental Housing Act, 1999.
28. As the consequence of these principles and statutory frameworks, the South African Government has between 1994 and December 2007 constructed in excess of 2.4 million houses which were all allocated free of charge to the poor people, with over 3 million housing subsidies approved. The introduction of the New Sustainable Human Settlements Plan, also referred to as "Breaking New Grounds" (BNG), the Housing Ministry has managed to transform housing delivery into a new level, wherein emphasis is placed on creating sustainable and integrated human settlements, with the poor being integrated into the first economy of the inner cities (affluent suburbs), residing in 'inclusionary housing' alongside their higher income fellow countrymen. Annual State-funded housing delivery has increased to over 270 000 new units per annum.

INTERNATIONAL HUMANITARIAN LAW

29. During 2006 South Africa established and operationalised an inter-departmental IHL Committee. The primary

membership of the Committee includes the Departments of Arts and Culture, Defence, Education, Foreign Affairs, Health Justice and Constitutional Development and the SA Police Service. The main function of the Committee is to advise and assist government in taking appropriate and co-ordinated measures in order to ratify, implement and disseminate the rules of IHL.

30. It is, therefore, also important that people, especially government officials are properly trained in the aspects of IHL. Government has, with the assistance from the ICRC, embarked upon an EHL (Education in IHL) programme in selected schools and tertiary institutions. The aim of this programme is to instil a general knowledge of IHL in future generations (specifically the schools programme) but to also educate people in IHL. In line with the continued educational processes IHL has also been incorporated into the Code of Conduct for uniformed members of the SANDF and every member deployed on operations, specifically peacekeeping missions is mandated to have undergone training in IHL as stipulated by the Minister of Defence, since 2003.

ROLE OF THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

31. The Department of Public Service and Administration in terms of its Employee Health and Wellness programmes, focus as follows on the improvement of issues pertaining to human rights:
- i. DPSA is currently developing a plan to improve the working environment where the public access service delivery. The areas of improvement include the ergonomics and occupational health and safety conditions of the frontline offices where administrative justice and legal services are rendered.
 - ii. DPSA is coordinating the Government's response to the National Strategic Plan 2007-2011 on HIV&AIDS. In this regard, 250 government officials have been trained on Mainstreaming of HIV&AIDS as according to the UNDP curriculum on HIV&AIDS Mainstreaming. All Government departments will be updating their HIV&AIDS plans to be mainstreamed, costed, and monitored and evaluated.
 - iii. DPSA has introduced a progressive medical AIDS Scheme that is 100% subsidized for the lowest 5 levels of employees in the Public Service. This is a voluntary extension of the social security for the poorest and most vulnerable workers employed by Government.
 - iv. DPSA has a Policy and Procedure on Ill-health Retirement (PILIR) where Government employees who have exhausted their normal sick leave may among others, have benefits of extended sick leave as an additional social security measure beyond their normal benefits as part of their conditions of service.
 - v. The DPSA is improving the capacity of government departments to Cost, Mainstream, Monitor and Evaluate HIV&AIDS policies and programmes.
 - vi. The "DPSA costing model" is innovative, developed under the guidance of International Health Economics experts and is the first of its kind in the world.
 - vii. Capacity development plans are also in place for the area of Environmental Health Risk Assessments in the work place.
32. The Employment Equity Act, 55 of 1998 and the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 both give effect to the value of equality which lies at the heart of the Constitution. To actualize this equality within the workplace, a particular emphasis is focused on women and people with disabilities as targeted groups. The stated objectives of these legal frameworks are to give effect to the values of non-racism and non-sexism. The Employment Equity Act also gives recognition to affirmative action measures to redress past inequitable balances and states that it is *"not unfair to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination of the past."*
33. The Presidency has developed the National Policy Framework for Women's Empowerment and Gender Equality (1999), which outlines the policy for all stakeholders in the country. This policy framework outlines South Africa's vision for gender equality and how it intends to realise this ideal. Like other generic policy documents which are transsectoral, it

details the overarching principles, which are integrated by all sectors into their own sectoral policies, practices and programmes.

34. The UN Convention on the Rights of Persons with Disabilities was ratified by South Africa on 30 March 2007, together with its Optional Protocol. Currently, the Presidency is reviewing the National Disability Policy Framework.
35. There are key processes and mechanisms that must be adopted to affirm vibrant national programmes towards advancing women's empowerment, gender equality and the advancement and development of persons with disabilities. At an operational level, focal points within departments are critical for driving the effective implementation of legislative requirements and policies.
36. All departments are expected to establish dedicated Units or Focal Points to assist in the formulation and implementation of effective action plans to promote women's empowerment, gender equality and the advancement of people with disabilities. These focal points should be at the appropriate rank and location to facilitate decision-making and compliance.
37. There are major opportunities for improving the compliance by the Public Service with regards to establishing appropriate institutional mechanisms. This is in keeping with the findings of a rapid survey conducted by the Office on the Status of Women in the Presidency in June 2006, as well as the findings of the Public Service Commission as published in their findings titled "Gender Mainstreaming Initiatives in the Public Service", November 2006.
38. The White Paper on Public Service Training and Education (WPPSTE, 1998) recommended the development of a coherent and coordinated Human Resource Development Strategy for the Public Service. This established the foundation of a new and more vigorous approach to building the capacity of people to perform within the public service, taking its cue from the National Human Resource Development Strategy (NHRDS) pioneered by the National Department of Education. The NHRDS has a national appeal with an emphasis on reversing past discriminatory practices in educational provision to an era of people empowerment.
39. The first HRD Strategy (HRDS) for the Public Service was prepared and launched in April 2002 to cover the period 2002-2006. Its intent was to initiate and support a more holistic approach to HRD, and to establish the foundation for a more responsive and cohesive approach to building capacity in the Public Service. Since the year 2006 marked the end of this initial effort, it was necessary to initiate yet another phase of strategic intervention in order to enhance HRD in the Public Service. A thorough initiative to revise the existing HRD Strategy was therefore undertaken.
40. The entire thrust of the HRD Strategy is rooted in a human rights culture that intends to ensure that the wellbeing of the people of the Republic of South Africa is enhanced. An overall judgment as to whether this has been accomplished lies in the extent to which the Public Service has created the society envisioned in the Constitution - a society rooted in the principles of justice, equality and fairness. The Public Service, therefore, is the instrument through which the Government fulfils its promises to the people. It is also the means through which significant public resources are allocated to promote development and to advance the general welfare. The effective performance of public officials and the capacity of departments to deliver are both critical to all aspects of Government's agenda for transformation and development. These Government departments are indeed central in the role of creating a new society based on constitutional principles of justice and the realization of human rights. A Human Resource Development (HRD) Strategic Framework for the Public Service is seen as central to building this capacity, and is embraced as fundamental to the agenda of enhancing service delivery.
41. The importance of the HRD Strategic Framework for the Public Service is justified, not only by the inherited culture of training in the Public Service, but by a legacy of inferior education provided to most of the population, by the complexity of the policy framework which governs activities in the Public Service, by the high level of backlogs in service delivery, by the slow pace of policy implementation, and, among others, by the urgency of the Government's development agenda as it is reflected in the Accelerated Shared Growth Initiative of South Africa (ASGISA), Joint Initiative on Priority Skills Acquisition (JIPSA) and in the numerous Provincial Growth and Development initiatives. An effective Public Service must depend on the capacity of its people. But in order to build this capacity, our approach to training must change. It must be less fragmented, less prescriptive and less supply driven. It must be more practice-oriented, more logically sequenced and more responsive to the changing structures, needs and requirements in the environment in which we serve.

42. The HRD Strategic Framework for the Public Service has thus been designed and implemented as a blue print for action over the next 8 years (ending 2015). It has been generated through the considered input of many stakeholders who willingly share the responsibility for the development of an effective and efficient Public Service. The strategy represents the collective wisdom and input of those who care about and hope for a Public Service that truly works for the benefit of all, in realizing a human rights culture in South Africa. Government is determined to ensure that these ideas bear fruit in the transformed Public Service that will emerge over the next 8 years.
43. Overall, there is a sense that HRD in the Public Sector has moved significantly forward. Practitioners in the field are generally more capable; HRD planning and management are more needs-based and outcomes-oriented, but not sufficiently so; the policy framework is more thorough and facilitative of transformation, and, among others, there is a wider range of training options and more access to training. The extent to which education and training leads to improved performance and enhanced service delivery is still subject to question. In essence, there is a general view that despite progress in the field capacity building in the Public Service has only just begun to make in-roads on performance and service delivery. The limited progress observed has resulted from some of the traditional challenges in HRD which still persist. These challenges will be reviewed in terms of the typical areas in which these challenges have traditionally arisen.

ROLE OF THE DEPARTMENT OF STATISTICS SOUTH AFRICA

44. Financial and Fiscal Commission Act 25 of 2003, as amended: The Financial and Fiscal Commission acts as a consultative body for, and makes recommendations and gives advice to, organs of state in the national, provincial and local spheres of government on equitable share of financial and fiscal matters for progressive realisation as enshrined in Section 214 of the Constitution of the Republic of South Africa.
45. One of the pillars of Human Rights is the ability of the state to put in place checks and balances that evaluate and monitor whether its policies are working. In South Africa, we have a national statistics agency, Statistics South Africa, which independently measures output and outcomes. The decision on what gets measured remains with policy-makers, while the methods of how to measure remain with Statistics South Africa. The Statistics Act, Act No. 6 of 1999, makes provisions which restrict interference in the functions and powers of the Statistician-General, who is head of Statistics South Africa. The Act also provides for the Statistics Council which advises on matters statistics to both the political executive (in this case, Minister of Finance) and Statistics South Africa.
46. In the advent of democracy since 1994, all Statistics South Africa's sample surveys and censuses have ensured that citizens and non-citizens (legal or illegal) enjoy substantive equality in the collection, production and dissemination of official statistics. While some surveys enquire on where the respondents would have been living in previous years, Statistics South Africa ensures that there is no discrimination based on race, class, country of origin or legal status of citizenship. Some of Statistics South Africa's surveys bear direct relevance to the progressive realisation and sustenance of Human Rights, especially those that report on service delivery. Statistics South Africa has conducted two censuses in the democratic order, that is, in 1996 and in 2001. In February 2007, Statistics South Africa conducted a Community Survey, which is a large scale sample survey of about 284 000 Households. The Community Survey, when compared to the two censuses, has shown remarkable improvements in the area of service delivery.

RIGHT TO HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY

47. The Department of Health (DOH) is not in a position to provide a comprehensive picture relation to this right but data from the Stats SA Community Survey as well as inputs from the DSD could be considered for completeness of this section.
48. A range of equity promoting policies and strategies for implementation thereof have been developed and initiated. Although there still remains a major challenge relating to equity of healthcare delivery and access, a lot of progress has been made to address these inequities. The ANC National Health Plan of 1994 stresses the centrality of social and economic development, provisioning of housing, clean water, sanitation and electricity as the most sustainable approach to improving the health outcomes in the country. It is the health sector contribution to the Reconstruction and

Development Programme of the ruling party. Flowing from these is the White Paper for the Transformation of the National health System for South Africa (1997) which mapped out the proposed direction and programme of the action of transformation of the health sector in South Africa. Equity and social justice is the central theme of the White Paper. The White Paper was used as a basis for the drafting of the National Health Act No 61 of 2003 (NHA). The preamble of the Act refers in a clear manner to the socio-economic injustices, imbalances and inequalities of health services of the past and the need to heal divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights. The NHA is regarded as the most progressive legislation globally, entrenches values of equity and social justice, and lays the basis for the legal environment to promote equity.

49. The most important human rights challenge in the health sector relates to equity in health service delivery and financing, both of which are the critical elements in the ensuring access to health care - an individual human right. Redistributing public sector health care resources between and within provinces, increasing access to primary health care and utilisation of such services for the currently disadvantaged groups, addressing the private/public mix and the development of policies and programmes targeting vulnerable groups and disease of poverty underpin the Health Department's response to the promotion of equity.
50. Regarding redistribution of public health care funding, the Department of Health introduced a resource allocation formula aimed at addressing the massive inequities that existed between provinces which was implemented with a top-heavy phasing strategy - major shifts occurring in the early years of phasing. When this approach proved impractical, a new budgeting system was introduced whereby the National Treasury determined divisions of revenue between different spheres of Government. This is the current working financing formula which includes the Vertical Split (divisions between national functions and provincial functions, and more recently to local government functions), and the Horizontal Split (division of revenue for provincial functions between provinces and also recently between local governments -commonly referred to as the equitable share, and is an conditional allocation of revenue to each province to cover all provincial functions). Although there has been a general increase in public health expenditure nationally, there are still great inequalities in levels of expenditure in provinces, with the Gauteng and Western Cape Provinces spending more than double per uninsured person whilst the previously disadvantaged and the more rural provinces of Mpumalanga, North West, and Limpopo, Eastern Cape and are significantly below the National average. Inequities with respect to per capita health expenditure still exist.
51. Health care expenditure in South Africa is about 8.7% of the GDP, and compares favourably with many other countries in these terms. However, regarding the public private mix, the key challenge facing the national health system is not one of inadequate resources but inefficient application of resources resulting in inadequate access to many. Medical schemes spent R8 800 per annum per beneficiary in 2003/05 whilst the figure is approximately R1 050 for persons who were not members of medical schemes. It is small minority of South Africans (15 to 20 percent) who are members of medical schemes and therefore have better access to health services. The latest figures indicate that the state spends some R33.2 billion on health care for 38 million people while the private sector spends some R43 billion servicing 7 million people.
52. The most significant challenge facing the South African health system is to provide an equitable distribution of resources between the public and private health care sectors, urban and rural and across and within provinces relative to the population served by each. The public-private mix is the greatest equity challenge facing the South African health system.
53. Social Health Insurance (SHI) was identified both within the 1994 ANC Health Plan and the White Paper in 1997 as an important policy issue to address the health financing challenges in South Africa. The DOH has finalised the model of SHI required as part of health systems reform. It consists of three broad components, viz., a mechanism for achieving risk related cross subsidies through a risk equalisation fund; a mechanism for achieving income across subsidies; and ultimately mandatory membership of medical schemes. The first component had been broadly accepted by stakeholders and the Medical Schemes Bill has been published for public comment. Discussions are underway with the National Treasury on an approach to the other two components of SHI.
54. Government also initiated a process to develop a Health Sector Charter. This is an agreement between the public, private and NGO sector to transform the health sector in South Africa. The charter has four pillars, viz.,
 - i. Access to health services
 - ii. Equality in health care

- iii. Quality of Health Services
- iv. Broad based economic empowerment.

55. The charter is in its final stage of completion. The negotiation team comprises representatives from the private health industry and private sector organisations, government, the nongovernmental sector and organised labour. An innovative strategy in the Charter is the implementation of the Public Health Enhancement Fund which sees the private sector contributing a percentage of their funds to strengthen public health. All parties are committed to ensuring that the Charter is effective.

Other strategies to increase economic access to health care include;

- i. Modernisation of Tertiary Services (to ensure that tertiary services are optimally reconfigured to provide equitable access to efficient, high quality and cost effective care). The National Treasury is still to commit resources to this project.
- ii. Introduction of User Fees. Tariffs increased by up to 300% by 2005 and the DON subsequently decreased tariffs on Unified Patient schedule and increased them by CPlx. Some countries have been advocating for the abolishment of the user fees
- iii. Medicine Pricing Regulations - promulgated in 2004 to increase affordability to medicines in the private sector. The entire system was challenged in the courts and the courts have upheld the system. The interventions implemented to date have resulted in a 15-20% reduction in medicine prices at the factory gate. The consumer, however, is yet to appreciate this reduction because of the attached dispensing fee. Also, a National Drug Policy (NDP) was developed in order to make medicine affordable. The key components of this policy are generic substitution, a transparent pricing system and licensing for dispensing. A concept of a single exit price (SEP) was introduced. Through SEP, manufacturers must sell at one price to all purchasers (irrespective of volumes purchased). A dispensing fee has been fixed. The DOH has been taken to court on the dispensing fee and the pricing committee is reviewing the fee in the light of a court judgement in this regard. Access to affordable medicines is being realised despite the many legal challenges in this area. Lay ownership of retail pharmacies has been introduced to promote development of rural pharmacies. This has for various reasons not achieved the intended objective - mainly because of the monopoly of chain stores with a tendency of setting shop in over-serviced urban areas.

56. The public health system is based on a District Health System as the vehicle for the delivery of Primary Health Care. Policies on free care for pregnant women and children under the age of six, free primary care services for all South Africans, a by-pass fee for those who chose to access hospital care without first using PHC facility have been implemented for the past decade. The NHA of 2003 saw the introduction of policies of free health for people with disabilities.

57. In order to pursue the government's objective of equity and equality of outcomes in human capital a range of health programmes have been designed and implemented by the DOH since 1994, viz.,

- i. Free health care for children under six and for pregnant and lactating women at public clinics and health centres
Provision of essential drugs in all PHC facilities based on the Essential Drug List (EDL) Maternal and child health services through access to quality antenatal, delivery and postnatal services for all women is offered free at the point of delivery
- iv. Integrated Management for Childhood Illnesses is implemented in all provinces
- v. An Expanded Programme of Immunisation to reduce vaccine preventable diseases
- vi. Integrated Nutrition Programme including Primary School Nutrition Programme
- vii. Various measures to reduce substance abuse and improve the accessibility to mental health support and counselling services, particularly for survivors of rape and child abuse and those affected by domestic violence and other forms of violence
- viii. A comprehensive National HIV&AIDS and STI Programme which includes mass education, the ABC campaign, condom distribution, Voluntary Counselling and Testing, Home base care, nutritional education and support, treatment of opportunistic infections, Prevention of Mother to Child Transmission, vaccine development initiative, and antiretroviral treatment
- ix. The National TB Control Programme which introduced Directly Observed Treatment Short Course (DOTS) in 1996 to prevent, treat, and control tuberculosis

- x. Treatment of cancer of the cervix, hypertension and diabetes
 - xi. The promotion of healthy lifestyles
 - xii. A national human resources strategy, and
 - xiii. Patient Rights' Charter premised on constitutional imperatives to promote, protect and monitor the proper implementation of the right of access to health care services.
58. The first four years of the new government saw a sustained process of budget reprioritisation in favour of primary care. Output data provided by provinces suggest that increased PHC funding led to improved access to health services. Visits to health care facilities have increased from 81, 9 million in 2000/01 to 101, 8 million in 2005/06. Utilisation rates were up to 2, 5 visits per capita by each uninsured person, bringing the rate closer to the national target of 3,5. There are still disparities in expenditure across districts, with expenditure ranging from R300 per person per year at the top end to less than R50 per person per year at the bottom.
59. The Clinic Upgrading and Building Programme (CUBP) has been underway since 1994. Over a ten year period, more than 1300 clinics and health centres were built or upgraded, which vastly improved access to primary care services. District Health Plans (DHPs) were introduced by the DOH in 2003. The DHPs are in line with the Integrated Development Plans (IDPs) and are prepared by the districts for each financial year. They are aligned to health priority programmes and targets are set. These include plans to address environmental health issues like sanitation, water supply in health facilities as part of PHC. A process is underway to address backlogs in this regard.
60. The norm for PHC facility is 1: 10 000 of the population within a 5km radius for PHC services. There is a challenge of inequity in the distribution of health facilities as a legacy of the previous apartheid regime. The Integrated Sustainable Development Programme (ISRDP) and Urban Renewal Programme (URP) are implemented over a period of 10 years with an aim of eradicating poverty and reaching vulnerable communities. The Rural Transport Strategy has been developed in order to address challenges with bad roads and the cost of private transport. Traditional Medicine is seen as an important complementary approach to the Western approach. The DOH has established a Directorate for development and policies and programmes. Partnerships with community-based-organisations within the Districts are funded by the DOH through a European Union Funded project which will be operational until 2011.
61. Providing physical infrastructure is not enough to ensure the health of communities. Good hygiene and adequate sanitation are critical barriers to the transmission of diseases. The management of health care waste (medical waste - HCW) in health care facilities has always been a challenge worldwide. This poses a health risk not only to patients but also to health workers and visitors when they come into contact with contaminated waste. The DOH in partnership with DEAT embarked on a programme to address challenges with respect to generation, segregation, storage, transportation, treatment, and disposal of health care waste. A model for programme implementation has been developed for Zeerust District Municipality. A National Health and Hygiene Education Strategy document has been developed and is being implemented in provinces and Municipalities.
62. Major challenges relate to high turnover of staff as well as getting clients to take appropriate responsibility for their health.
63. The DOH is currently developing a revised model for primary health care, based on the integrated Health Planning Framework, in order to ensure greater access and improved efficiency within the system.
64. Regarding implementation of programmes targeting vulnerable groups and diseases of poverty especially to respond to the MDGs, progress has been made in the area of Maternal, Child and Woman's Health, TB control and the response to HIV&AIDS. Through the Free PHC services that includes for women the disabled and children under 6 years old, a range of programmes are implemented. Vitamin A supplementation is given to mothers and babies, nutritional meal supplements and micronutrients are given to all in need - the most beneficiaries being pregnant women, TB patients, malnourished children from birth to fourteen years, HIV positive children and adults. In October 2003, regulations came into effect for mandatory fortification of maize meal and white and brown bread. Also, fortification with iodine of food grade.
65. Immunisation services are provided on a daily basis and the Reach Every District (RED) immunisation programme is implemented to increase coverage. Services that were introduced in order to improve women's health under the Choice on Termination of Pregnancy Act are now available in about 65% of tertiary and secondary level hospitals. There are still challenges regarding this services, especially in rural provinces like Mpumalanga and the Northern Cape. Cervical cancer services have reached numbers of women.

66. Sexual violence has been identified as a priority. A National Policy on Sexual Assault and Management Guidelines for Sexual Assault Care for holistic sexual assault services have been developed and are implemented with vigour. All of these initiatives have strong community involvement component.

RIGHT TO EDUCATION

67. The Department of Education has taken numerous steps since 1994 to secure the rights to education. Many of these rights are established in legislation, and are supported by various policies and regulations.

There are six areas to report on, namely

- i. the right of access to education;
 - ii. the right of children with special needs;
 - iii. gender equity in education;
 - iv. Initiatives to protect indigenous marginalized groups' educational rights;
 - v. human rights challenges in schools; and
 - vi. Inculcating a culture of human rights.
68. The South African Constitution guarantees the right to basic education, including Adult Basic Education, as well as further education, which the state, through reasonable measures, must make progressively available and accessible"
69. This is dealt with through the South African Schools Act 84 of 1996, which provides that children may attend the school of their choice, without discrimination. In keeping with the Refugee Act, No.130 of 1998, the Department of Education also ensures full access to education for children of asylum seekers by extending to them the same rights, privileges and benefits to which South African are entitled. The South African Schools Act further provides that schools may determine fee payments, which, if agreed to by the parents of the school, will be compulsory for all learners. However, in those instances where the parent is unable to pay the fees (as calculated by a formula); they are entitled to a partial or full exemption from the payment of such fees. In this way we have been able to ensure that schooling is indeed free for the poor, and that no child may be excluded from a school of their choice because of an inability to pay fees.
70. This system has been further strengthened by the declaration of 40% of all schools (which accommodate nearly 50% of all learners) as "no fee schools". These schools do not have the right to levy school fees, and are subsidised at an adequate level by the state. These schools are the poorest 40% of schools, in which the fee income levels had been low enough to be absorbed by the state.
71. These provisions are applicable to all school grades; no distinction is made between primary and secondary schools. A poor learner should be able to complete 12 or 13 years of schooling without any payments. A recent report on retention has shown that South Africa retains almost all its children in school until at least the 9th Grade; after that there is a drop-out problem which is being addressed. It might also be noted that over 97% of South African children are in public schools.
72. Attendance at Further Education and Training (Vocational) Colleges requires fee payments, but these have been capped at low levels to ensure affordability. In addition, some R600 million per annum (2008) has been allocated for full cost bursaries for deserving students.
73. University education is also fee paying, but once again poor students are assisted through the National Student Financial Aid Scheme (NSFAS), which dispenses over R1 billion annually. These loans are subject to a means test, and repayment commences only once the graduate is employed. With good performance, a portion of the loan can be converted into a grant. It is our view that no deserving student is excluded from entry to higher education due to financial constraints. In keeping with the SADC Protocol on Education and Training, South African universities and other tertiary institutions of learning have admission and tuition fee policies that ensure that students from the SADC countries are treated the same as South African students in terms of payment for tuition and accommodation. Higher Education Institutions reserve 5% of admission space to students from SADC countries. An enabling environment conducive to the mobility of students and staff from SADC region underlines the linkages and collaborations that are evolving between South African institutions and their SADC counterparts.

74. The policy of the Ministry of Education is one of inclusion, with children with special needs being accommodated, where appropriate, in full-service, mainstream schools. Such schools are provided with additional staff, infrastructure and assistive devices. In addition, there are Special Schools where children with severe disabilities attend, with specialised staff (including therapists). A system of screening and identification has been put in place to ensure that the most deserving children receive these benefits.
75. South Africa has achieved gender parity in education, and is now faced with a converse problem of lower enrolment and success rates among boys. This is a common problem in developing countries, and is cause for concern.
76. There are currently an estimated 10 000 members of the indigenous San community living in South Africa. They belong to a number of groups: the !Xu, the Khwe, the !Xam, the ||Ng!u, the !'Auni, the Khatea, the Njamani and the Khomani (the most populous of the groups). They live mostly in the southern Kalahari, the northern parts of Gordonia, at Witdraai, Ashkam, Welkom, Rietfontein and surrounding areas. A small group of San, estimated to be between 30 and 100 adults live in Mpumalanga around Lakes Banager and Chrissie and on the outskirts of the towns of Lothair and Carolina. Most San speak Khoekhoegowap and/or Afrikaans as the primary language.
77. San children are schooled with the children of other communities in ordinary public schools. The challenge in education is related to the major paradox on the rights of indigenous peoples i.e. on the one hand their right to preserve their way of life, traditions and culture, and on the other their great need for development and modernisation. The Department of Education has done the following to manage this tension:
- i. In May 2001 the Department was represented at the First Regional San Education Conference in Namibia. This conference explored issues of early childhood development, mother tongue education, materials development, cultural issues and alternative education methodologies.
 - ii. The Northern Cape Department of Education hosted a follow-up conference in March 2002, which led to the establishment of the Southern African San Education Forum (SASEF). A major challenge for schools attended by San children relates to the integration of children from indigenous backgrounds into the school environment and the formal curriculum.
 - iii. The Northern Cape Department of Education is currently exploring to use the standard orthography of the San to develop learning and teaching support material for use in primary schools.
 - iv. Limited dictionaries in two San dialects, !XUN and Khwedam, have been developed and are being piloted in one school in the Northern Cape.
 - v. The orthography of the major San group the Khomani-San has now been recorded, with generous assistance from the Department of Education. Plans are underway to develop learning and teaching support materials in the N!U language, spoken by the Khomani-San.
 - vi. Six schools in the Northern Cape now offer Nama from Grades 3 to 8 as a subject.
 - vii. The Northern Cape Department of Education is also supporting initiatives to standardise the San languages due to the numerous dialects that are spoken. This issue is sensitively approached so as not to offend the culture and languages of the various groups.
 - viii. The Departments of Education, Arts and Culture and Science and Technology have also indicated support for the development of a Southern African Rock Art Museum at the University of the Witwatersrand that seeks to promote the art, culture, history and lifestyle of the indigenous inhabitants of Southern Africa.
78. The major challenges we have in terms of human rights is the daily experience of many children at school. Many of our schools have experienced incidents of violence and abuse, especially on gender-based violence targeting girls. These are often related to broader social issues such as drug abuse, but it is critical that children feel safe in schools, and in too many instances this is not the case. Whilst various steps are being taken to ensure safe schools, the problem is symptomatic of a broader social malaise - the resolution of which requires a societal response.
79. Corporal punishment has been outlawed, but we are aware that it is still used in many schools, especially in rural areas.

More needs to be done to enforce this provision.

80. South African schooling promotes a rights-based approach to education that includes:
- i. *Human rights through education*: The Department has infused human rights and values into the National Curriculum Statement from Grades 1-12. The curriculum promotes child-centred learning and fosters equal opportunity, diversity and non-discrimination. The Department has also introduced an Advanced Certificate in Human Rights and Values Education in 2006, offered by seven universities, to ensure that teachers teach in a manner that promotes human rights in the classroom. Also, the Department of Education has launched various initiatives to ensure that appropriate human rights learning and teaching support materials are provided to schools.
 - ii. *Human rights in education*: The Department of Education has taken steps to ensure the rights of all in the education system are protected. The Racial Integration Strategy, the Religion in Education Policy and the Sexual Harassment Guidelines for Schools are examples of policy interventions that aim to ensure that no one is unfairly discriminated against in the education system. The Department actively promotes the Bill of Rights in schools and has recently introduced a Bill of Responsibilities to encourage young people to accept the responsibilities that flow from the rights that they enjoy.

CITIZENSHIP RIGHTS

81. In terms of section 3 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996): i. All citizens are equally entitled to the rights, privileges and benefits of citizenship and are equally subject to the duties and responsibilities of citizenship.
- ii. National legislation must provide for the acquisition, loss and restoration of citizenship. In this regard the South African Citizenship Act, 1995 (Act No. 88 of 1995) applies.
82. The South African Citizenship Act, 1995, encompasses the constitutional principles on citizenship (section 5) of the Interim Constitution of 1993 (Act No. 200 of 1993) and is in line with the Constitution of 1996.
83. Section 28(1) of the Constitution of 1996 provides that every child has the right to a name and a nationality from birth. The South African Citizenship Act, 1995, provides for acquisition of South African citizenship by birth, descent and naturalization.
84. In terms of section 9(1) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) a birth must be reported within 30 days after the birth. Section 9(6) stipulates that no person's birth shall be registered unless a forename and surname have been assigned to the person.
85. South Africa is also a signatory to the Convention on the Nationality of Married Women, 1957. The objects of the Convention are to recognise that conflict in law and practice with reference to nationality arises as a result of provisions concerning the loss and acquisition of nationality by women as a result of marriage, of its dissolution, or of the change of nationality of the husband during marriage, and to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex.

PROTECTION OF RIGHTS OF REFUGEES

86. The post-apartheid context has seen South Africa signing a number of international conventions as part of the international community of nations. South Africa is now a signatory to the international legal framework on refugee protection, such as the 1951 UN Convention Relating to the Status of Refugees, and the 1967 Protocol thereto, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. These have been further translated and find expression in our domestic legislation through the Refugees Act 130 of 1998.

87. The Department of Home Affairs in South Africa, has established a Directorate dealing specifically with refugee matters. This Directorate is tasked with the administration of refugees and asylum seekers in the Republic of South Africa and has been at the forefront in ensuring that refugees and asylum seekers are properly documented to ensure their effective protection. The Department of Home Affairs, as the department mandated through the Refugees Act in dealing with documentation of foreign nationals, has five (5) Refugee Reception Offices assisting refugees in the country.
88. When a person is granted refugee status, he/she is given a formal recognition of refugee status in terms of section 24 of the Act. He/she is then advised to apply for a refugee identity document within 14 days of receipt of refugee status. This is a positive identity document allowing a person to integrate into all the spheres of life in the country. In terms of section 27 of the Refugees Act, refugees are also entitled to free basic education and health services at the same rate as South African citizens.
89. In terms of South Africa's Refugees Act, 1998 (Act No 130 of 1998), no proceedings may be instituted against any person in respect of his or her unlawful entry into or presence within the Republic if such entry and residence is to seek asylum. This is in compliance with the Universal Declaration on Human Rights, which provides that every person has a right to seek asylum. Therefore, the Department of Home Affairs does not detain asylum seekers. Illegal foreigners detained are dealt with in terms of the Immigration Act.
90. Department of Home Affairs has developed a Refugee Integration Strategy to facilitate this integration nationally. The implementation of this strategy was piloted with the Eastern Cape Province. Civil society places a very important role in the integration of refugees. The objectives of this strategy are:
- i. To promote and facilitate the integration of refugees into the local communities, educational institutions and labour market,
 - ii. To promote and protect the human rights of all refugees in the country through education and advocacy programmes,
 - iii. To counter xenophobia and discrimination
 - iv. To create a climate that refugees are enabled to contribute positively both in skills and energies to the development of the country,
 - v. To educate refugees about their rights and responsibilities
91. The Government of South Africa is committed under the 1951 UN Convention, 1967 UN Protocol, 1969 OAU Convention and our own Refugees Act 130 of 1998 to the granting of asylum to refugees; to provide them protection; and to search for solutions in line with our obligations and responsibilities which we assumed under the International Law, as well as by incorporating a number of basic principles and standards in the Constitution.
92. The government is obliged to provide legal protection for refugees in South Africa under international law, which also include the rights as enshrined in the Bill of Rights (Chapter 2) as set out in the Constitution (except for those rights from which non-citizens have been expressly excluded). In particular:-
- i. South Africa has a duty of non-refoulement, which requires that refugees may not be returned, directly or indirectly, to countries where they risk persecution.
 - ii. Refugees shall not be prosecuted on account of their illegal entry into or presence in South Africa provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
 - iii. Refugees shall not be expelled from South Africa except on-grounds of national security or public order,
 - iv. Refugees shall be afforded basic security rights, protection from the abuse of state power, such as wrongful arrest and detention and protection against physical attack,
 - v. Refugees shall be afforded basic human dignity rights such as protection against discrimination, the right to family unity, freedom of movement and association and freedom of religion,
 - vi. Refugees shall be afforded self-sufficiency rights, such as the right to work and to

education.

93. As a country we have towards asylum seekers the following obligations:
- i. Ensure legal protection to all
 - ii. Ensure the dignity of all
 - iii. Ensure non-refoulement, which requires that refugees may not be returned, directly or indirectly, to countries where they risk persecution,
 - iv. Asylum seekers shall not be prosecuted on account of their illegal entry into or presence in South Africa provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence,
 - v. Ensure their right to administrative action during the process of refugee status determination.
94. As stated above, this is another level which is governed by its own legal and decision making principles and criteria, and under different legislative and institutional arrangements. The main regulatory policy here is the Immigration Act, 2002, as amended, which provides for different permits under which migrants can reside in South Africa. The main migrants found under this policy, though not limited to, are within the category of Temporary and Permanent Residence Permits which include the following permits:
- i. Work permit
 - ii. Business permit
 - iii. Study permit
 - iv. Visitor's permit
 - v. Corporate permit
 - vi. Diplomatic permit
 - vii. Relative's permit etc.
95. The South African government is party to an agreement signed between it, the government of Angola and UNHCR. This agreement promotes voluntary repatriation of Angolan refugees to Angola. The South African Government is currently negotiating the signing of a Tripartite Agreement with Rwanda and the UNHCR for the voluntary repatriation of Rwandan refugees to Rwanda.
96. Department of Home Affairs has created a Counter Xenophobia Unit to facilitate and work with other stakeholders in the fight against Xenophobia. The Counter Xenophobia Unit derives its mandate and operates within the realm of the Immigration Amendment Act 2004, the Constitution of the Republic of South Africa and other International instruments e.g. the International Convention of Elimination of All Forms of Discrimination.
97. The Unit has done the following to counter acts of xenophobia:
- i. The Counter Xenophobia Unit, realizing the enormity and negative impact of xenophobia, engaged stakeholders within government and non-governmental actors,
 - ii. The Counter Xenophobia Strategy was developed to challenge and ultimately eradicate xenophobia,
 - iii. The Unit further participated in educational programmes on television as well as radio programmes,
 - iv. The Unit further produced and distributed educational materials to the communities on xenophobia and its implications for the country,
 - v. The other activities, which aimed at raising awareness about the importance of peace, tolerance and integration, included door to door campaigns and public participation meetings.
98. The Department of Home Affairs works in conjunction with the South African Police Service and other law enforcement

agencies on matters of irregular migration. The Department's role is to establish the residential status of a person arrested on suspicion of being in the Republic in contravention of the Immigration Act, 2002 (Act No 13 of 2002), as amended. The Act also places the responsibility on the Department to assist the individual to verify their status in the country. As soon as a person is arrested, his or her permit is investigated and verified against the Movement Control System (MCS) and the Refugee System. The training programmes for immigration officers includes awareness on countering Xenophobia.

99. Lawyers for Human Rights, Legal Resource Centre and other NGO's conduct weekly monitoring and consultation with illegal foreigners who are detained at the Deportation Facility. Any claim that these individuals may have regarding their treatment, conduct of officials, security and matters of law are monitored by these organizations.
100. People are taken through the medical pre-screening process when they are taken to the facility to ensure that those who require medical attention are attended to. People detained are also allowed free movement within the facility. They are not confined to one area. These are efforts taken to ensure that the detention facility meets international standards.

D) CONCLUSION

101. The South African Government believes that as a young democracy it has made great strides in redressing the inequities of the past and in creating a future for its people based on hope and filled with opportunities. Much though still needs to be done to make the practical enjoyment of all human rights a reality for all South Africans without distinction. In this regard, the South African Government remains firmly committed to the progressive realisation of economic, social and cultural rights within the State's available resources. It will therefore continue innovating and constructing concrete policies and programmes in support of building a uniquely, prosperous and cohesive South Africa society.
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