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## **National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21\***

### **South Africa**

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



## **I. Methodological approach: process for the development of the report**

1. South Africa is honoured to present its 4th cycle Universal Periodic Review (UPR) country report. The report highlights significant milestones, achievements and challenges faced in responding to and implementing the 243 recommendations issued during the consideration of the 3rd cycle review report in 2017. South Africa accepted 187 recommendations and thereafter compiled a composite document setting out concrete responses thereto compiled based on verified data or information drawn from various Government departments and comments received through an inter-institutional consultative process with State institutions supporting democracy/national human rights institutions and civil society organisations. The drafting of the report and the consultation were led by the Department of Justice and Constitutional Development (DoJ&CD) as the process to establish a standing coordinating body for the implementation and reporting, i.e. the national mechanism for implementation, reporting, and follow-up (NMIRF) is underway.

## **II. Developments since the previous review**

2. South Africa is a constitutional democracy. The Constitution of the Republic of South Africa, 1996 remains the overarching normative framework to transform the South African society. The year 2022, marks 25 years of entry into force of the Constitution. The information on the developments since the last review in terms of the legislative, policy and administrative measures to improve the enjoyment of human rights is provided for in the responses to the 243 recommendations in a table attached as **Annexure A**. This annexure indicates which recommendations are fully implemented, partially implemented, and not implemented. It also provides responses or information on the implementation of noted recommendations.

## **III. Implementation of accepted/supported recommendations**

3. Due to the words limit restrictions, the below information focuses on responding to recommendations that the government supported or accepted in its last review. See **Annexure A** for responses on noted recommendations.

## **IV. Civil and political rights**

### **Recommendation 139.115 & 139.116**

4. Legal aid is available in all criminal and civil cases to everyone who lives in South Africa who meets certain requirements which are outlined in the Constitution and specific Regulations issued under section 23(1) of the Legal Aid South Africa Act 39 of 2014. The current Legal Aid South Africa Act brought legal aid provisions in line with the Constitution. Section 28(1)(h) of the Constitution provides that a child has the right to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.

5. Section 35 (2) (b) of the Constitution state that everyone who is detained, including every sentenced prisoner, has the right to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly. See **Table 1** detailing the number of people assisted between 2017 and 2020 (see **Annexure B list of tables**).

6. Legal aid provision to all people (inclusive of foreign nationals) and specific vulnerable groups have been strengthened through Legal Aid regulations. The Regulations were amended, gazetted and became operational in March 2019. The amendments increased the parameters of the Legal Aid SA Means Test, the threshold income limit to qualify for legal aid services, which will enable access to legal services to a wider group of people. Legal

aid may also be provided for maintenance, domestic violence and harassment cases. Legal aid may further be provided to asylum seekers and in Hague Convention cases, also to children in civil proceedings involving the child. The 2018 Legal Aid Manual came into operation on 29 November 2018. In the 2018/2019 financial year, Legal Aid South Africa had a combined budget cut and shortfall of 8.9% which amounted to R164 million. The DoJ&CD mitigated this by allocating R30 million to Legal Aid SA from its own funds.

7. The baseline report entitled the *Governance, Public Safety and Justice Survey* (“GPSJS”) produced by Statistics South Africa, attached as **Annexure C** indicates that about 18% of people were represented by a Legal Aid South Africa lawyer and 89% of people were satisfied with the service rendered by the Legal Aid South Africa lawyer.

8. The Traditional and Khoi-San Leadership Act 3 of 2019 is fully aligned with the South African Constitution and international human rights instruments obligations. Constitutional principles such as those contained in the Bill of Rights are promoted and emphasised throughout the Act. The Act provides an enabling legislation for formal recognition of the Khoi-San leaders, communities, and structures which is unprecedented in the history of South Africa. The Act deals with matters of traditional leadership and institutions as referred to in sections 211 and 212 of the Constitution. The Act promotes the democratic governance and the values of an open and democratic society; advance gender equality within the institutions of traditional and Khoi-San leadership; promote freedom, human dignity and the achievement of equality and non-sexism; strive to enhance tradition and culture; promote nation building and harmony and peace amongst people and promote the principles of co-operative governance in their interaction with all spheres of government and organs of state.

### **Recommendations 139.112 & 139.113**

9. The Department of Correctional services (DCS) developed an Overcrowding Reduction Strategy which was approved in March 2021. In 2019, Special Remission was granted by the President, which led to the release of 15 911 low risk inmates into community corrections during the 2019/2020 financial year. Through this process overcrowding was reduced by 28%. The inmate population for 2019/2020 was recorded at 154 449 against the approved bedspace total of 120 567. Overall, during the period under review, the overcrowding in DCS facilities decreased, although it is important to note that the implementation of 2019 Special Remission of Sentence and 2020 Covid-19 Special Parole Dispensation are not the final solution to overcrowding, but it provided some relief. **Table 2** presents the number of inmates in correctional centres as at 31 March 2021.

10. South Africa remains committed in upholding and promoting the Nelson Mandela Rules both domestically and internationally. Furthermore, the Correctional Services Act 111 of 1998 embodies the Constitutional guarantee of the right to humane treatment of persons deprived of their liberty which includes the right not to be tortured. The Act provides a mechanism for detecting and punishing all acts of torture in correctional facilities. The Judicial Inspectorate for Correctional Services (JICS) is a vital independent watchdog body that seeks to ensure inmates’ rights.

11. The DCS continues to train officials on the prohibition of torture with a special focus on the Prevention and Combating of Torture of Persons Act 13 of 2013 (TIP Act). The programme include training on the prevention of torture on the part of correctional officials when working with offenders detained in correctional centres. Training in this regard has been provided to all Heads of Correctional Centres and Heads of Community Corrections. This training is also included in the Learnership for Correctional Services offered by the Department.

### **Recommendations 139.124, 139.125, 139.126, 139.127, 139.128 & 139.129**

12. Parliament enacted the TIP Act, which is a comprehensive legislative instrument to prevent and combat trafficking in persons in all its forms and manifestations and the prosecution of offenders. The TIP Act came into operation on 9 August 2015 and in April

2019 the Prevention and Combating of Trafficking in Persons National Policy Framework (NPF) was launched. South Africa in collaboration with the Office on Drugs and Crime (UNODC), under the framework of the Global Action against Trafficking in Persons and Smuggling of Migrants (GLO.ACT) launched the NPF on 25 April 2019 through multi-stakeholder engagements.

13. The DoJ&CD co-ordinates government's multi-disciplinary efforts to prevent and combat trafficking in persons. In this regard, South Africa has already put structures in place at both national and provincial levels. A National Inter-Sectoral Committee on Trafficking in Persons (NICTIP) which comprises of various departments as well as civil society organisations was established. Departments include amongst others, DoJ&CD, Health, Home Affairs, International Relations and Cooperation, Labour, Social Development, Women, South African Police Service (SAPS), the National Prosecution Authority (NPA). The Committee leads the implementation and administration of the Act at a national Government level. Provincial Task Teams (PTT's) on Trafficking in Persons were also established as well as the National and Provincial Rapid Response Teams (RRT's) to attend to operational matters relating to suspected complaints and pending cases of trafficking in persons and providing support to victims. With the support of the UNODC, South Africa was able to develop a Generic Trafficking in Persons Manual for Criminal Justice Practitioners.

14. The International Organization for Migration (IOM) supported the training programme on Sector Specific curriculum for Government departments to roll out training for their employees. The objective behind these sessions was to ensure that the certified government officials having gained information and skills from the training of trainers were able to conduct TIP training with their peers. This then would lead to the institutionalisation of the TIP curriculum into department training plans.

15. Government, in partnership with the United States Agency for International Development (USAID) commenced a Research Study on the Nature and Scope of Trafficking in Persons (TIP) in South Africa. As part of prevention strategy South Africa continues to conduct awareness raising initiatives on trafficking in persons using various platforms including social media and community radio platforms. Government in collaboration with the IOM developed an Integrated Victim Assistance Standard Operating Procedure (SOP). The Integrated SOP on victim assistance, adopted by Government, is an integral document for the task teams and other Government departments.

16. The said SOP was rolled out to government officials and civil society. The purpose of this research programme is to scale up and make impact by focusing on robust, empirical-driven, and policy and socially relevant studies which are aimed at revealing the nature and magnitude of trafficking in persons in South Africa. It is envisioned that evidence-based studies will create a baseline and shed light on the complex characteristics of trafficking and will target the underlying drivers of exploitation. The systematic collection and analysis of both quantitative and qualitative data on human trafficking is prioritised.

### **Recommendations 139.7, 139.8, 139.9, 139.10, 139.11, 139.12, 139.13, 139.14, 139.15, 139.16, 139.17, 139.18, 139.38 & 139.114**

17. South Africa ratified the OPCAT<sup>1</sup> in June 2019 and domesticated Convention Against Torture CAT<sup>2</sup> in terms of the TIP Act and established its National Preventive Mechanism (NPM). The Government decided to adopt a multi-institution NPM which envisages the SAHRC<sup>3</sup> playing a coordinating role together with other oversight bodies such as the JICS, and the Independent Police Investigative Directorate (IPID). The first annual report of the NPM since its inception is attached as **Annexure D**. The report maps progress on the OPCAT implementation in South Africa since its ratification. It also highlights current and potential challenges and further makes proposals to strengthen the mandate of the NPM through, inter alia, the promulgation of legislation to regulate the powers and functions of the NPM.

18. Pursuant to the 2013 Torture Act, in 2014 the SAPS issued a national instruction to provide clear direction to its members regarding their obligations in terms of the Act which criminalises torture and other offences associated with the torture of persons. According to this instruction an order by a superior, or any other authority, that a person in custody be

tortured, is unlawful and may not be obeyed. The member of SAPS to whom an order has been given to torture a person in custody must take all reasonable steps to put an end thereto and report the matter to the relevant office of the IPID provided that it does not exclude the person in custody to also submit a complaint regarding torture directly to the IPID.

19. The mandate of the IPID is to investigate all incidents of misconduct by members of the SAPS and Metro Police Services (MPS). **Table 3** contains statistical data of cases registered by IPID for the financial years from 2014 to 2020.

20. There is also an on-going Human Rights in Policing Learning Programme for SAPS members being implemented since 1998 and deals with the prohibition of torture amongst others. Training conducted by the SAPS Division: Human Resource Development focusses on the following aspects: Basic Police Development Learning Programme: Managing the detention of persons in custody; Human Rights in Policing Learning Programme Station Lecture: Detention Facilities for Illegal Foreign Nationals; Informed Rights; Standards of Detention; Detention of Children; The Body of Principles for the Protection of all Persons under any form of Detention; Minimum Standard Rules for the Treatment of Prisoners and the Deportation and Detention of Illegal Foreigners. The significance of the Bill of Rights, laws and policies that promote human rights and the protection of the rights of victims of crime are adequately covered in the training manual.

21. The training includes lessons on the total prohibition of torture, including the right of a police officer to refuse to obey an order to torture anyone. The rights of offenders, the execution of arrests and the use of force in compliance with human rights, the prevention of torture, the conduct of search and seizure in compliance with human rights, the impacts of human rights on the detention of a suspect, the management of crowds in compliance with the human rights and the labour rights of police officers. These are some of the key themes covered during the training on human rights-based approach and democratic policing. This shows that there are great strides on promotion of human rights culture in SAPS.

22. The Minister of Police further approved the Use of Force Policy and Guidelines for the SAPS in 2018, which seeks to inculcate a human rights compliant approach, which must inform police management, strategy and operations, in the fulfilment of the Constitutional mandate.

23. One of the recommendations of the Marikana Commission of Inquiry was the establishment of an international Panel of Experts “to address the problems in the SAPS that resulted in the killing by police of 34 people at Marikana to ensure that violations of this kind do not happen again”. The Panel was established, and produced a report titled “Panel of Experts Report on Policing and Crowd Management” which was released to the public on the 29 March 2021. A supporting Implementation Plan was also finalised for implementation.

24. Government complied with the High Court Judgment in the *Khosa case*<sup>4</sup> by widely publishing codes of conduct and operational procedures regulating the conduct of members of the SANDF, SAPS and Municipal Police Departments (MPDs) in enforcing the lockdown regulations under the declaration of the State of Disaster.

### **Recommendation 139.131**

25. Government has taken decisive steps to end state capture and increase the capacity of the State to investigate and prosecute cases of corruption and ensure that stolen public resources are returned to the State. Such measures include the following:

(a) **The Commission of Inquiry to Investigate Allegations of State Capture:** The President has appointed a Commission of Inquiry to investigate allegations of state capture, corruption and fraud in the Public Sector including organs of state in terms of section 84(2)(f) of the Constitution. The Commission was appointed to investigate matters of public and national interest concerning allegations of state capture, corruption, and fraud.

(b) **Promulgation of section 8 and 15 of the Public Administration Management Act 11 of 2014:** Section 8 of the Public Administration Management Act which prohibits employees in the public administration from conducting business with the

state came into effect on 1 April 2019. Section 8 is about managing conflict of interest among employees in the public service, municipalities and special advisors to the executive authorities (political heads of government institutions).

(c) **Establishment of the Investigative Directorate in the NPA:** The President established the Investigative Directorate (ID) in the office of the National Director of Public Prosecutions, in terms of a proclamation by government gazette in Proc. 20 GG 42383 of 4 April 2019, as an instrument in the fight against corruption. The ID focuses on the investigation and prosecution of common law offences including fraud, forgery, uttering, theft and any offence involving dishonesty, statutory offences relating to dishonesty or corruption and any unlawful activities relating to serious, high profile or complex corruption including but not limited to offences or criminal or unlawful activities identified by the Commissions of Enquiry into State Capture, the Public Investment Corporation (PIC) and the South African Revenue Service (SARS). The work of the ID is divided into three (3) focus areas: corruption in the security sector, corruption at State owned Entities (SOEs), and high-level corruption in the public and private sector.

(d) **Special Tribunal under Special Investigation Unit:** The President, in terms of section 2(1) of the SIU founding legislation, the Special Investigating Units and Special Tribunals Act 74 of 1996, is empowered to establish a Special Tribunal (ST). The mandate of the ST is to adjudicate upon civil matters emanating from investigations by the SIU. Litigating in the ST will result in increased litigation outcomes. This means that civil matters instituted will be finalised sooner and the losses/ damages suffered by the state will be more effectively recovered. The SIU will be able to counter attempts to alienate or dissipate assets without value and attach assets in foreign jurisdictions.

(e) **Party Political Funding Act, 2018:** The President signed into law the Party-Political Funding Act 6 of 2018 to enhance transparency in the funding for political parties. The purpose of the Act is to provide for, and regulate, the public and private funding of political parties. The Act changes the landscape for political party funding and promotes transparency by regulating the disclosure of donations exceeding the prescribed threshold. As an added measure to promote transparency in the funding for political parties, the Promotion of Access to Information Amendment Act 2 of 2000 (PAIA) was amended in 2019, to provide for information on the private funding of political parties and independent candidates to be recorded, preserved, and made available upon request.

(f) **Presidential Proclamations, 2019:** The President signed Proclamations for the establishment of the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA-EID-TAU) and Special Tribunal to adjudicate upon civil matters emanating from investigations by the Special Investigating Unit and expedite the finalisation of matters arising from such investigations. Section 15 of the Public Administration Management Act 11 of 2014, establishes the PA-EID-TAU to provide technical assistance and support institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct in the public administration.

(g) **Financial Intelligence Centre Amendment Act:** The Financial Intelligence Centre Amendment Act No. 1 of 2017, amended the Financial Intelligence Act, 2001, to expand the objectives of the Financial Intelligence Centre and provide for additional sharing of information and for the Centre to assist in the implementation of financial sanctions and to administer measures pursuant to resolutions adopted by the UN Security Council; extend the functions of the Centre so as to provide for the additional sharing of information and to provide for guidance to accountable institutions in respect of the freezing of property; extend the list of agencies to which the Centre will make the information it collects available; and provides for further due diligence measures.

(h) **Financial interest disclosure:** To curb corruption in the Public Sector, the Minister of Public Service and Administration designated other categories of employees below the Members of the Senior Management Service, to disclose their financial interests.

26. Furthermore, the National Anti-Corruption Strategy (NACS) was adopted in 2020 to provide for a whole of society approach to preventing and combating corruption in South Africa. The NACS shows that South Africa takes a partnership approach in the fight against corruption, involving various state entities as well as non-state actors and civil society with

a view of ensuring good governance across all levels of government. The NACS seeks to create a society in which the public is empowered and educated about what constitutes corruption and whistle-blowers are encouraged to come forward to report corruption and are protected when doing so.

### **Recommendations 139.118 & 139.186**

27. The Promotion of Access to Information Act 2 of 2000, (PAIA) gives legislative effect to the right of access to information in accordance with section 32 of the Constitution. Both private and public bodies have a duty to provide access to the requested records, unless specifically refused in terms of PAIA. This means that any record held by the State or the private sector may be accessed upon request for the exercise and protection of any rights. There is also the Promotion of Access to Information Amendment Act 31 of 2019, (PAIA). Section 28 of the Judicial Matters Amendment Act 8 of 2017, has amended the provisions of PAIA regarding the training of judicial officers.

28. There is an Information Regulator which is an independent body established in terms of section 39 of the Protection of Personal Information Act which is subject only to the law and the constitution and is accountable to the National Assembly in Parliament. South Africa has also implemented policy and legislative measures for the protection of personal information in terms of the Protection of Personal Information Act 4 of 2013 (POPIA). The President proclaimed the POPIA commencement date to be 1 July 2020. The Information Regulator is, among others, empowered to monitor and enforce compliance by public and private bodies with the provisions of the POPIA Act. The Act aims to promote the protection of personal information processed by public and private bodies by, among others, introducing certain conditions for the lawful processing of personal information so as to establish minimum requirements for the processing of such information.

29. The commencement date of section 1, Part A of Chapter 5, section 112 and section 113 was 11 April 2014. The commencement date of the other sections was 1 July 2020 (except for section 110 and 114(4)). Furthermore, the Protected Disclosures Amendment Act 5 of 2017 was assented to and signed by the President on 31 July 2017, to amend the Protected Disclosure Act, 2000. The Act provides for immunity against civil and criminal liability flowing from a disclosure of information which shows or tends to show that a criminal offence has been committed, is being committed or is reasonably likely to be committed; to create an offence for the disclosure of false information and to provide for matters connected therewith.

30. The Minister of Justice issued Regulations Relating to Protected Disclosures, 2018, to give effect to the amended section 8(1) of the Protected Disclosure Act. The amendment to section 8 increased the list of entities to which a protected disclosure can be made. Such include, the South African Human Rights Commission, the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Service Commission and Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit.

## **V. Economic, social and cultural rights**

### **Recommendations 139.134, 139.135, 139.136, 139.141, 139.142, 139.143, 139.144, 139.145, 139.146, 139.147, 139.148, 139.149 & 139.150**

31. The Government, as it implements the national development plan adopted a multi-pronged approach to addressing the triple challenges of poverty, inequality and unemployment. Broadly, this comprises progressive fiscal policy, social assistance, as well as direct and indirect employment programmes.

32. Budget documentation shows that, in the three fiscal years (FY) 2017/18 to FY 2019/20, on average, over 11% of consolidated public expenditure (4% of GDP) prioritised social development that worked to combat poverty and inequality. Social protection

expenditure, comprising largely of a sizeable social grant programme that works to counter extreme poverty and benefitted 18 million beneficiaries as of FY 2019/20. Additionally, on average, more than 15% of consolidated public expenditure (more than 5% of GDP) was attributable to economic development over the same period to promote faster and sustained inclusive economic growth to address unemployment, poverty and inequality. Economic development expenditure included support for industrialisation and exports, agriculture and rural development, job creation, economic infrastructure and innovation.

33. Government has employed several direct and indirect interventions to alleviate unemployment. Direct measures include public employment programmes such as the Expanded Public Works Programme (EPWP), through which 10.3 million cumulative total work opportunities (of varying duration) have been created since inception in 2004. The Jobs Fund, launched as an initiative within the National Treasury, has supported 275 000 permanent jobs and internships, as well as training for over 260 000 work-seekers and entrepreneurs since its inception in 2011. In addition, the Presidential Youth Employment Initiative (PYEI), launched in 2020 by the Presidency, targets the creation of 3.7 million jobs over the next few years. By the end of January 2021, over 430 000 jobs of varying duration had been supported through the PYEI, with an additional 180 000 jobs awaiting approval. A flagship indirect employment programme relates to the Employment Tax Incentive (ETI), an incentive offering a tax rebate that offsets the costs of employing mainly young people, which is now benefiting over 4 million workers.

34. The Social Assistance Amendment Act 16 of 2020, aims to provide for additional social assistance payments. The above Act amends the Social Assistance Act 13 of 2004, to amongst others provide for additional payments linked to social grants; to provide for payment of benefits to a child-headed household; to provide for social relief of distress in the event of a disaster; to repeal the internal reconsideration process; to provide for an Independent Tribunal to consider appeals against decisions of the SASSA; to provide for the establishment of the Inspectorate as a government component. The country spends about R180 billion per year on social grants targeting poor children, the elderly and those with a disability. In addition to this, during 2020/21, a Special Covid-19 Social Relief package estimated at R55 billion was implemented to assist lower income household during the pandemic. This included a new grant for those between the ages of 18 and 60 and caregivers allowance for those receiving a Child Support Grant, whom are mostly women. While this was a temporary relief measure, the new grant, with some amendment to improve the gender aspects of the grant, was extended to March 2022; and the government is engaged in ongoing dialogue around the possibility of providing more permanent social assistance for this cohort. Over 60% of those who accessed the grant were youth.

### **Recommendations 139.139, 139.225 & 139.232**

35. To protect the most vulnerable workers and low-paid workers such as farm workers, domestic workers etc., Government enacted the National Minimum Wage Act 9 of 2018, to provide for a national minimum wage and to establish the National Minimum Wage Commission with the aims to advance economic development and social justice.

36. South Africa has made huge advancements in efforts aimed at eliminating child labour. The Constitution provides that children under 18 have a right to be protected from work that is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or detrimental to their social, physical, mental, spiritual or moral development. There is consensus amongst social partners that child labour has to be dealt with, and this is supported by the ratification of the key international conventions concerning child labour such as the Minimum Age Convention<sup>5</sup> as well as the Worst Forms of Child Labour Convention<sup>6</sup>. The ratification of these conventions led to the development of laws and policies aimed at eradicating child labour.

### **Recommendations 139.155, 139.156 & 139.157**

37. Section 27 of the Constitution provides that everyone has the right to have access to sufficient food and water. Legislation such as the Water Services Act 108 of 1997, and the National Water Act 36 of 1998, give effect to this right. The latter Act prescribes that the national government is the "public trustee" of the nation's water resources to ensure that water is "protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons. The Water Services Act provides that everyone has a right of access to basic water supply and sanitation services, every water services institution must take steps to realise these rights and every municipality must plan in its water services development plan to realise these rights.

38. South Africa has a policy called Free Basic Water Access whereby every citizen is entitled to a certain amount of free access to water regardless of their ability to pay for it. This policy set the amount of entitlement at 6000 litres per household per month. There is a monitoring and evaluation database known as Water Services Knowledge System (WSKS) which tracks access and progress relating to water and sanitation, see *Table 4* on the WSKS for 2017 to 2020.

### **Recommendations 139.133, 139.159, 139.175, 139.176, 139.177, 139.179, 139.180, 139.182, 139.183, 139.184, 139.187 & 139.188**

39. The South African School Act 84 of 1996, (SASA) makes it compulsory for any public school to admit learners and to serve their education requirements without unfairly discriminating against them in any way.

40. Access to basic education in South Africa has improved. See *Table 5* for School attendance in 2021.

41. Education remains the largest spending area in terms of Government's budget. The Department of Basic Education (DBE) has over the 2016/17 year spent R 233 054 081. During the 2017/18 financial year it spent R 248 091 755. The budget for the 2018/ 2019 financial year was R 262 151 293 and the total budget for the 2019/ 2020 year is R 277 682 821. See *Annexure E* containing statistical data on the National Senior Certificate performance disaggregated per race, gender and provinces and *Table 6* indicating the national pass rate from 2017 to 2020.

### **Recommendation 139.103 & 139.177**

42. Government continues to make great strides in ensuring access to Post-School Education and Training (PSET). The NDP target is 1,6 million enrolments by 2030. *Annexure F* presents headcount enrolments across the PSET System by fields of study, race and gender as well as the number of graduates by fields of study, race and gender between 2017 to 2020. Over 1.8 million enrolments were in the public sector while private sector enrolment accounted for 18.5% (417 735).

43. There has been progress in terms of infrastructure development as more focus has been in establishing and upgrading post-school education and training institutions in rural areas and equally considering the principles of universal access which allow students living with disabilities to access post-school education and training. According to the Statistics on PSET System: 2018 (published in March 2020), there were 508 PSET institutions (both private and public) in South Africa. 85 of these PSET institutions were public institutions (26 public HEIs, 50 TVET colleges and 9 CET colleges). Over 2.2 million students were enrolled in these institutions, with the highest proportion enrolled in the higher education sector (over 1.2 million).

44. The National Student Financial Aid Scheme (NSFAS) remains an enabling instrument in ensuring that students from disadvantaged backgrounds gain access to post-school education and training opportunities. NSFAS funding has increased more than fivefold just in 6 years, from R5,9 billion in 2014 to R34,7 billion in 2020.

**Recommendations 139.133, 139.159, 139.160, 139.161, 139.162, 139.163, 139.164, 139.165, 139.166, 139.167, 139.168, 139.169, 139.170, 139.171, 139.172, 139.173 & 139.174**

45. The National Health Insurance (NHI) Bill, was published in 2018 for public comment, subjected to parliamentary public consultations visits to provinces by the Portfolio Committee of the National Assembly in 2020; and virtual hearings of substantive oral inputs during 2021. Through the NHI the Government continues in its efforts to improve the health-care system and to provide access to health care which is a basic right enshrined in the Constitution.

46. The NHI Bill provides for decentralisation of facilitation and coordination of the provision of primary health care services at district level through the establishment of District Health Management Offices and the establishment of Contracting Units for Primary Health Care directly contracted by the Fund to ensure the provision of primary health care services, including prevention, promotion, curative, rehabilitative ambulatory, home-based care and community care. These units will be responsible for the population in their designated sub-districts. They must identify certified and accredited public and private health care providers at primary care facilities to provide health services to their populations. A further process of NHI Bill consultation has been concluded between government, business, and community representatives at NEDLAC<sup>7</sup> where the positions of the parties have been recorded. The NHI reforms are a central part of the state taking reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to health care services.

47. South Africa's National Strategic Plan for HIV, TB and STIs (NSP) has guided the country's response to the HIV, STI and TB epidemics. The NSP 2017–2022 is the product of a multi-stakeholder collaboration by government, civil society, communities and the private sector to achieve a reduction of HIV, TB and STI morbidity and mortality in South Africa.

48. The NSP is underpinned by several programmes and interventions implemented as a response to the burden of HIV that have yielded positive outcomes. These include the Department of Health (DoH) Sector HIV Strategy, National She Conquers Campaign for Girls and Young Women, National Sex Worker HIV Plan, National LGBTI HIV Framework and the Framework and Strategy for Disability and Rehabilitation Services in South Africa. The NSP is also aligned with other regional and global frameworks. The NSP is directly linked to Goal 3 of the SDGs, Target 3.3, which includes ending the epidemics of AIDS and tuberculosis by 2030.

49. Medical male circumcision (MMC) falls under goal 1 of the NSP 2017-2022, to accelerate prevention and reduce new HIV, TB and STI infection. This is an extremely robust and most cost effective (WHO/UNAIDS) HIV prevention intervention that protects males by 60% from contracting HIV throughout their lifetime. The national MMC programme has gradually scaled up its implementation through ambitious target setting and focussed high-quality high-volume service delivery (PEPFAR and transversal contracts) to meet the 2.5 million targets purported in the national strategic plan 2017-2022. To date the programme has performed 1 821 128 circumcisions, translating to 73% of the target met. However, from inception (2010) to 2021, the programme has performed >4.5 million circumcisions. To ensure magnitude and immediacy of impact the programme has shifted its focus to the age pivot 15-34 as supported by modelling studies. The latest modelling study shows that the programme has contributed to the aversion of >80 000 new HIV infections and will be instrumental in preventing more new HIV infections in the future through its additive compounding effect. Other research shows that MMC is highly effective in preventing both ulcerative and genital discharge STIs. Since the programme focusses on males and circumcises thousands of males nationally, the programme has been identified as a gateway for Men's Health and as a result is in the process of transitioning into a Men's health programme. The programme has developed an integrated Men's health strategy and is currently developing Men's health guidelines. Consequently, the programme will also deliver on the other goals of the NSP by focusing on comprehensive Men's Health. The programme

has developed tools and job aids aimed at improving service delivery at all levels and to ensure that all providers comply with the National MMC Quality Assurance Standards.

50. The Department of Health and the Department of Basic Education agreed on the development of scripted lessons to assist educators in teaching aspects of Sexual and Reproductive Health and Rights (SRHR) in schools. Eighty scripted lessons are offered from grade 4 to 12 teaching learners on amongst others how to prevent the spread of STIs including HIV/AIDS, prevent and report sexual abuse, violence and rape, reducing risky sexual behaviours and on preventing unplanned and teenage pregnancy.

51. Furthermore, a comprehensive 14 module online training was launched in June 2021 which allows broader access by different health care workers. The approach to the SRHR training curriculum is to improve service integration and increase uptake at end service point. 2333 health care workers from both public and private sector were reached through this training platform since March 2021. Revising B-wise website (B-Wise is a website for young people to get honest information about their health, body changes, sex, relationships, contraceptives, HIV, and other STIs).

52. Information platform such as B-Wise were introduced to share scientific and accurate information regarding SRHR targeting both boys and girls, clinic finders, interactive sessions to respond to specific questions and feedback mechanism about services provided in facilities to promote youth friendly service. MomConnect platform on the other hand educate women who are pregnant about the pregnancy management and prevention of complications expanding to post delivery period until the baby is a year old. There is a progressive and sustained reduction in maternal mortality in all provinces, the institutional maternal mortality ratio (iMMR) was below 100 per 100,000 live births in 2019 for the first time ever recorded by the National Committee for Confidential Enquiries into Maternal Deaths.

53. Access to Choose on Termination of Pregnancy (CTop) service has improved as evidenced by an increase of women who accessed CTop services from 105 358 performed in 2016/17 to 124 446 in 2019/20. The introduction of medical abortion facilities which can provide the service outside the designation process has improved access to the CTop service. The guideline on CTop implementation was approved in 2019 and the online training module launched in June 2021. Partnership with NGOs in community engagement regarding the services and communication about the services is ongoing.

### **Recommendation 139.154**

54. Section 25 of the Constitution provides that everyone has the right to have access to adequate housing. Within the context of the constitutional provision outlined above, the Housing Act 107 of 1997 is available as a legislative measure to ensure the realisation of the right to housing and privileges the poor in housing development. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. It further provides that no one may be evicted from their home, or have their home demolished, without an order of court. Over and above the statutory provisions there are specific policy interventions with special policy programmes which enable the application of the national housing policy as defined in the Housing Act. These include financial, incremental, rural, social and rental interventions. Government continues to provide housing benefits to the qualifying beneficiaries without discriminating against any racial groups. By March 2020, the state had provided more than five million housing opportunities to the qualifying beneficiaries. Whilst this is considerably high, the housing backlog continues to grow as the population grows and household formation decreases.

### **Recommendations 139.103 & 139.158**

55. Cabinet supports the land reform programme and has established an Inter-Ministerial Committee (IMC) chaired by the Deputy President to look to all matters that affect land reform. From 2017 until 2021, the Department of Agriculture, Land Reform and Rural Development (DALRRD) has acquired 299,000 ha through land redistribution and tenure reform programmes. A total of 243,000 ha has been allocated to 972 individuals, where 64

000 hectares was allocated to 320 women, 61,000 ha allocated to 279 young people, 489 ha allocated to people with disabilities. The focus of this programme is to redress the past apartheid and colonial injustice system which dispossessed indigenous people of their land and confined African majority to only 13% of the land, and thereby being denied access and ownership of the land. Although the focus is in redressing the land inequality between white and black South Africans, the program also prioritises women, youth and persons living with disabilities under a programme called Proactive Land Acquisition Strategy.

56. The DALRRD is using leasehold as a strategy under a programme called Proactive Land Acquisition Strategy which describe where land can be acquired, how it can be allocated and how it should be managed. The leasehold ensures that the state remain as the custodian of the land and thereby avoid land been lost when the lessee get indebted. The lease contract does offer to the lessee a right to purchase the land especially for those who are running successful farming enterprises. The IMC ensures coordination and collaboration in the implementation of the land reform program and provides political oversight and oversee the implementation of measures to accelerate the redistribution of land in urban and rural areas and serve as a catalyst to fast-track land restitution and redistribution.

57. The President also constituted an advisory panel on land reform and agriculture, and this panel has already produced the report, and the government is implementing the recommendations of the panel. The report is attached as **Annexure G**.

## **VI. Rights of specific groups or persons**

### **Recommendations 139.235 & 139.236**

58. In terms of the Birth and Death Registration Act 51 of 1992, children in South Africa are registered within 30 days of birth. The Department of Home Affairs (DHA) has 412 Frontline Offices (urban and rural) where registration of birth can be undertaken at no cost, and birth certificates are issued immediately. To ensure the efficient registration of all birth, the DHA has connected a total number of 391 Health Facilities (public and private) to the ICT System to enable immediate registration of birth of children when born in these facilities.

59. To improve access for registration of birth in both urban and rural areas, the DHA has identified 1445 Health Facilities to be connected with IT systems including online verifications. This is likely to be completed in 2023/2024 financial year. The DHA also has 100 Mobile Offices that are used in Provinces where the DHA has inadequate footprint. The DHA is currently developing the Official Identity Management Policy to guide development of a future non-discriminatory Identification Act, which will also cater for the birth registration of children who are born intersex.

### **Recommendations 139.221 & 139.222**

60. The DHA is currently developing a new Marriage Policy to harmonise marriage practices in South Africa. A Green Paper has been published proposing that the minimum age of marriage should be 18 years, irrespective of religious or customary practices.

61. The Marriage Policy will once finalised enable the development of the new Marriage Act and will explicitly prohibit marriage of any person below the age of 18 years. The Act will also enable South Africans and non-citizens of different sexual orientation, religious and cultural persuasions to conclude legal marriages without discrimination. The marriage Policy will also deal with the solemnisation and registration of marriages that involve foreign nationals.

### **Recommendations 139.198 139.230,139.227 & 139.228**

62. Government continues to implement measures to eradicate cultural practices that are harmful particularly to women and girls such as Ukuthwala, virginity testing, widow's rituals,

ukungena, breast sweeping/ironing, and other practices that may be discriminatory and harmful.

63. The Department of Traditional Affairs (DTA) has been tasked with the responsibility to develop a legislative framework on the customary initiation practice, covering both males and females. Even though Initiation, is a sacred and respected customary practice used as a rite of passage to adulthood, the practice has in recent years been subject to abuse. In some instances, it has resulted in the death of initiates as well as serious injuries (bodily harm).

64. On 16 March 2021, the National Assembly officially adopted the Customary Initiation Bill. The Bill which is before Parliament for consideration is a significant step towards formalising the customs and norms of the traditional institution of initiation. It is hoped that it would make life better for future initiates and make this traditional practice more efficient. Once promulgated into law by the President, it will prohibit customary initiation practices that infringes on the dignity and wellbeing of both girls and boys respectively.

65. Section 17 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 prohibits the sexual exploitation of children by their parents and others. Parents, relatives or others who collude in, or aid and abet, the unacceptable practice of ukuthwala of a girl child commit the crime of the sexual exploitation of children. These parents and relatives also face being charged with Trafficking in Persons Act, under section 71 of this Act. Perpetrators, parents and community members who aid, support or participate in forced marriage rituals could now face criminal prosecution under the Trafficking in Persons Act, and can no longer hide behind antiquated customs.

66. With regards to ukuthwala there are several programmes and interventions. The outreach programmes organised by government also encouraged girls and women to report all cases of ukuthwala to the law enforcement agencies so that justice can prevail. Furthermore, the South African Law Reform Commission (“SALRC”) published a Discussion Paper 132: “The practice of ukuthwala (Project 138), which set out the preliminary recommendation for law reform relating to the practice of ukuthwala”. The Discussion Paper was published on 01 September 2014 and was distributed as widely as possible with a view to identify alternative policy and legislative framework to regulate the practice of ukuthwala. The SALRC thereafter published the Revised Discussion Paper, which includes a chapter on public consultations and a Draft Prohibition of Forced Marriage and Child Marriage Bill. The Revised Discussion Paper 138 was published on 30 October 2015. The SALRC’s investigation focused mainly on the distortion of the practice of ukuthwala. The main recommendation was the enactment of a new legislation called the Prohibition of Forced Marriage and Regulation of Related Matters Bill. The matter is still under consideration.

67. An important judgment by the Western Cape High Court in *S v Jezile*<sup>8</sup> held that ukuthwala was not a defence to charges of rape, human trafficking and assault. In February 2014, the Wynberg Regional Court convicted Mr Jezile after finding him guilty of ukuthwala on three counts of rape, human trafficking and assault and sentenced him to 22 years behind bars. In addition, the court ordered that his name be included in the National Register for Sexual Offenders in accordance with Section 50(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (the Sexual Offences Act). He appealed the conviction and sentence at the Western Cape High Court but on 23 March 2015, the full bench of the High Court rejected his appeal and confirmed the decision of the court a quo. The decision to prioritise inalienable human rights above oppressive cultural liberties indicates an important realisation that culture must evolve to reflect and support the spirit of the times that we live in.

68. The Sexual Offences Act 32 of 2007 rightfully criminalises all forms of forced sexual penetration. This includes digital penetration, such as a finger which occurs during virginity testing. The Children’s Act 38 of 2005 has made it illegal for Children under the age of 18 to be subjected to virginity testing and female genital mutilation. Virginity testing is widely practiced in some parts of the country and is regulated in section 12 of the Children’s Act. During the parliamentary process, when the amendments to the current Children’s Act was debated and drafted, the issue of banning virginity testing was highly debated and various

opinions, research papers and submissions were considered. The current section as it stands is a result of robust debates and to some degree a compromise from certain sectors of society.

### **Recommendations 139.201, 139.208, 139.209, 139.215, 139.216, 139.218, 139.227 & 139.229**

69. The Department of Social Development developed capacity building programmes addressing requirements of the We Protect Model National Response (MNR), as well as the INSPIRE strategies for ending violence against children. Online training and capacity building of frontline officers on child protection and online child sexual abuse and exploitation.

70. South Africa's approach in the care and protection of children is rights based, child-centred, universal, gender-sensitive, inclusive, transparent, and programmes are evidence based and results-focussed. The National Strategic Plan addressing gender-based violence and femicide (NSP-GBVF) in the country attests to this approach. In line with the NSP-GBVF and implementation of programmes to decrease vulnerabilities of children to child abuse; the department through the Directorate: Child Protection has a responsibility to ensure protection of children who are at risk of and victims of child exploitation which includes the concepts of child trafficking, child labour, commercial sexual exploitation of children and child pornography/cyber-crime. Various measures have been put in place such as the development of the Guidelines for the Prevention of and Response to Child Exploitation as well as capacity building of key stakeholders to render effective and uniform services to children who are exploited. An intersectoral protocol for the prevention and management of violence against children, child abuse, neglect and exploitation is also in place to ensure improved prevention strategies whilst strengthening case management amongst key stakeholders in the child protection sector; improving identification, assessment, reporting and referral of child abuse cases including online violations.

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

### **Recommendations 139.190, 139.191, 139.192 & 139.198**

72. Almost all statutes that discriminated against women before 1994 have been repealed. The Recognition of Customary Marriages Act 120 of 1998 for instance, repealed the provisions of the Black Administration Act 38 of 1927 which condemned African women to a legal status of perpetual minors. The Act confirms formal equality between women and men in customary marriages, provides for the equal status and capacity of spouses who concluded a customary marriage and it affirms a wife's capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have at customary law.

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

74. Considerable progress has been noted in the participation of women in various sectors such as political, public service and the judiciary. After the 2019 elections 46% of the Members of Parliament in the National Assembly are female and 50% of the cabinet is female. All the speakers in the national and provincial legislatures are women. *Table 7* provides a comparative view of women in political life from 2004 to 2019.

75. With regards to the number of women in the judiciary, in 2019 some 38,8 % of the permanent judges were female. *Table 8* sets out the racial and gender of the 250 permanent judges.

76. With regards to inequality as experienced by the sex of the household head, a report released by Stats SA in 2019 shows the various inequality measures based on per capita expenditure by sex of household head (2006, 2009, 2011 & 2015) and as set out in *Table 9*.

**Recommendations 139.197, 139.199, 139.201, 139.202, 139.203, 139.204, 139.205, 139.208, 139.209, 139.210, 139.211, 139.213, 139.214, 139.215, 139.216, 139.217, 139.218 & 139.219**

77. The Presidential Summit Declaration against Gender-Based Violence and Femicide (GBVF) was launched by President Cyril Ramaphosa in March 2019. The Declaration set out specific actions that the country must undertake to prevent GBVF. In May 2020 the President further launched the GBVF National Strategic Plan (2020-2030) (GBVF NSP) which is intended to guide the country in the implementation of the Presidential Summit Declaration.

**Recommendations 139.89, 139.97, 139.98, 139.99, 139.100, 139.101 & 139.102**

78. The establishment of a National Task Team (NTT) on LGBTI Rights in 2011 was intended to counter the continued discrimination and violence perpetrated against people on the basis of their sexual orientation, gender identity, expression and sex characteristics (SOGIESC).

79. The NTT, which is co-chaired by the DoJ&CD and a nominated civil society representative, is a good example of a very successful partnership between government and civil society and was named in a 2016 report by the UN's Office of the High Commission on Human Rights as a best practice model and international case study of government and civil society co-operation. The NTT continues its efforts to counter the continued discrimination and violence perpetrated against people based on their SOGIESC.

80. Some achievements include, the introduction of the "Working with Diverse Communities: Understanding sexual orientation, gender identity and expression: a guide for service providers" (the Guide) which was developed by the NTT and piloted in 6 provinces and rolled out nationally in 2020. The training sessions are conducted by specialised trainers from the LGBTQI+ sector in partnership with the DOJ&CD. Ongoing trainings on the Guide are in progress in this regard. The National Intervention Strategy which was previously launched as "The National Intervention Strategy for the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector" has been revised to include equality matters and will now be referred to as "The National Intervention Strategy – A Human Rights, Survivor Focused and Victim Centric Approach in Countering Discrimination, Hate Crimes, Gender-Based Violence and Femicide Perpetrated against People on the Basis of their Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (the NIS).

81. The establishment of a national Rapid Response Team which meets on regular basis to discuss progress made on pending hate crime cases, and the establishment of Provincial Task Teams, led by the provincial DoJ&CD offices, which implement the NIS activities are some of the achievements to date.

82. In November 2019 DoJ&CD commenced with the Under-the-Tree Programme, in response to the call made by the President of South Africa that men must take responsibility

to end patriarchal norms that breed GBVF. The Programme facilitate dialogues on issues of patriarchy relating to gender equality, emotional healing, family rehabilitation and male parenting, financial disciplines, healthy lifestyle, and how men can combat GBVF. The DoJ&CD delivers the programme, as part of the 365 Days Campaign, in partnership with the NPA, DCS, DoH, Department of Social Development and Commission for Gender Equality. Furthermore, in February 2020, the Minister of Justice approved Regulations relating to Sexual Offense Courts which sets out the catalogue of specialised support services for victims and survivors of sex crimes.

83. A study undertaken by the Foundation for Human Rights (“FHR”) indicates that two-thirds (68%) of all respondents agreed or strongly agreed that people in South Africa are free to choose and express their sexual orientation without fear or judgement. Almost three quarters (74%) of respondents disagreed or strongly disagreed that being gay or lesbian was against the values of their community. This finding was consistent across Indian/Asian (72%), black African (73%), white (77%) and coloured (77%) respondents as well as both male (73%) and female (74%) respondents. A survey of attitudes towards homosexuality and gender non-conformity in South Africa, produced by The Other Foundation and the Human Sciences Research Council (HSRC) found that 55% of South Africans indicated that they will accept a gay family member, but only 27% have a friend or family member whom they know is homosexual; 51% believe that gay people should have the same human rights as other people, even though 72% hold the view that same-sex activity is “morally wrong”.<sup>9</sup>

### **Recommendations 139.91, 139.92, 139.93, 139.94, 139.95 & 139.96**

84. In preparation for the visit by the UN Independent Expert on the Enjoyment of Human Rights by Persons with Albinism to South Africa from 16 September 2019 to 26 September 2019, Government prepared a report (**Annexure H**). The report provides detailed information relating to the realisation of the human rights by persons living with albinism and measures taken by Government, Chapter 9 institutions and civil society organisations to protect persons with albinism from violence, abductions, discrimination and stigmatisation. Government also provides support to the Albinism Society of South Africa (ASSA) in order to provide social protection services and lead Government efforts to forge partnerships through which vulnerable individuals, groups and communities become capable and self-reliant participants in their own development. The report also contains detailed information pertaining to equality and non-discrimination, the right to health care and education, adequate standard of living and social protection of persons living with albinism.

### **Recommendations 139.43, 139.52, 139.53, 139.57, 139.60, 139.61, 139.63, 139.64, 139.66, 139.67, 139.68, 139.71, 139.73, 139.74, 139.75, 139.76, 139.77, 139.78, 139.79, 139.80, 139.81, 139.82, 139.83, 139.84, 139.85, 139.86, 139.87 & 139.88**

85. It is important to highlight that the Bill of Rights states that the majority of rights are guaranteed to “everyone” – i.e. not only to South Africans, but also to foreign nationals within our borders, only four sections apply to citizens. Foreign nationals do enjoy the same rights to healthcare, education and social security as citizens do. Rights afforded to “citizens” only are: S 19 – political rights, S 20 – citizenship, S21 – the right to enter and remain in and reside anywhere in South Africa and the right to a passport, S 22 – the right to choose their trade, occupation or profession.

86. As per the standard practice, asylum seekers are only detained at the Lindela Facility once their applications for refugee status have been proved to be manifestly unfounded and they are awaiting deportation. As a general principle, South Africa does not arbitrary detain asylum seekers and refugees, other than where a criminal offence has been committed and warrants such detention. Arrests and detentions in South Africa are at all times governed by the law, in particular, Section 35 of the Constitution. In cases where asylum seekers, refugees and migrants are arrested, the SAPS will inform the DHA of the arrests to assist in determining whether such arrested person/s are legally residing in the country so that their

status can be determined and where required they can be accordingly released or processed for deportation.

87. The International Committee of the Red Cross (ICRC) also conducts regular oversight visits to assist deportees with basic needs such as telephone contact with family members all over the world, as well as inspections of the Lindela clinic during which interviews are conducted with the deportees. The ICRC provides feedback to the DHA. Lindela was found to be compliant with the Nelson Mandela Rules for detention standards during an evaluation by the DCS. The DHA and the SAHRC have a standing monitoring arrangement regarding Lindela, which includes unscheduled inspections and the submission of monthly reports. As at mid-2019, the DHA received on average approximately 5000 applications for asylum per quarter, and an average of 20 000 asylum applications per year. Adjudication of applications takes up to 5 days to finalise, however, some applications require more time due to their complexity. South Africa, as at mid-2019, had a total of 82 823 active refugees and a total of 184 976 active asylum seekers cases.

## VII. Cross cutting issues

### Recommendations 139.36 & 139.37

88. The budgetary resources of the SAHRC are set out in *Table 10*.

### Recommendations 139.186

89. The current Curriculum and Assessment Policy Statements (CAPS) are underpinned by the values of the Constitution and human rights principles. Government is implementing human rights education in schools to promote the Constitutional values through Oral History, National School Moot Court, Heritage, Citizenship and Nation Building Programmes. The DBE has a structured Human Rights Education programme delivered through Life Orientation within CAPS. To strengthen the delivery of Life Orientation Themes, a phased implementation of Scripted Lesson Plans for the delivery of Comprehensive Sexuality Education has been implemented in 5 of the 9 Provinces, where matters of human rights have been practically addressed for in-class delivery, looking at a broad spectrum of rights. In addition, the 9 Open Source Life Orientation Textbooks that have been developed have been completed with a dedicated section on human rights and nation building. In the co-curricular programme, the National Schools Moot Court Programme is delivered to promote knowledge around constitutional values and constitutional rights, using fictitious problem statements that are inspired by real-life occurrences. In terms of Teacher Development, a programme of dialogue and engagement workshops is implemented to support educators in the coordination and facilitation of the National Schools Moot Court and Human Rights Education effort at school level.

90. Life Orientation is a compulsory subject offered to all learners. One of the six topics focussed on in the subject is *Democracy and Human Rights*. Content related to Democracy and Human Rights included in the curriculum covers issues such as: Diversity, discrimination, human rights and violations; National and international instruments and conventions; Ethical traditions and/ or religious laws and indigenous belief systems of major religions; Biases and unfair practices in sport; Democratic participation and democratic structures; Role of sport in nation building; Contributions of South Africa's diverse religions and belief systems to a harmonious society; Responsible citizenship; The role of the media in a democratic society; Ideologies, beliefs and worldviews on construction of recreation and physical activity across cultures and genders.

### **Recommendations 139.43, 139.47, 139.52, 139.53, 139.54, 139.55, 139.56, 139.57, 139.58 & 139.78**

91. Cabinet approved the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and related Intolerance (NAP)<sup>10</sup> on 27 February 2019. The NAP also has an indicative five-year Implementation Plan for the period 2019/2020 - 2023/2024.<sup>11</sup>

92. The cases registered in the Equality Court during 2016/2017 to 2019/2020 are set out in *Table 11*. *Table 12* shows cases finalised in the Equality Court during the same period.

### **Recommendations 139.7, 139.8, 139.9, 139.10, 139.11, 139.12, 139.13, 139.14, 139.15, 139.17 & 139.18**

93. South Africa ratified OPCAT on 20 June 2019. South Africa is actively working towards the ratification of other instruments mentioned below.<sup>12</sup>

### **Recommendation 139.33**

94. As indicated above, processes are underway to establish the NMIRF in South Africa.

### **Recommendations 139.30 & 139.31**

95. In October 2002, the Government issued a standing invitation to all thematic special mechanisms of the UN. Since then, South Africa has hosted several special procedures mandate holders from various UN and African Union treaty bodies. See **Annexure I** for the list.

## **VIII. Technical assistance**

96. The Government requires technical assistance and support from the international community as it embarks on the establishment of its NMIRF and training and capacity-building of focal points of human rights monitors and report writers across departments.

## **IX. Conclusion**

97. The Government reiterates its commitment to perform treaty obligations in good faith, including giving serious and good faith consideration to assessments on our implementation of regional, continental and international human rights instruments by duly appointed supervisory bodies.

### *Notes*

<sup>1</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>2</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>3</sup> South African Human Rights Commission.

<sup>4</sup> *Khosa and Others v Minister of Defence and Military Defence and Military Veterans and Others* (21512/2020) ZAGPPHC 147.

<sup>5</sup> ILO Convention concerning Minimum Age for Admission to Employment (No. 138).

<sup>6</sup> Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

<sup>7</sup> National Economic Development and Labour Council.

<sup>8</sup> *Jezile v S and Others* [2015] ZAWCHC 31; 2015 (2) SACR 452 (WCC).

<sup>9</sup> "Progressive Prudes - A survey of attitudes towards homosexuality & gender non-conformity in South Africa", 2016.

[https://theotherfoundation.org/wp-content/uploads/2016/09/ProgPrudes\\_Report\\_d5.pdf](https://theotherfoundation.org/wp-content/uploads/2016/09/ProgPrudes_Report_d5.pdf).

<sup>10</sup> <https://www.justice.gov.za/nap/index.html>.

<sup>11</sup> <https://www.justice.gov.za/nap/docs/NAP-20190313-ImplementationPlan.pdf>.

- <sup>12</sup> (a) The International Convention on the Suppression and Punishment of the Crime of Apartheid;  
(b) The International Convention for the Protection of All Persons from Enforced Disappearance; Violence and Harassment Convention, 2019 (no. 190);  
(c) Convention on Occupational Health Services (no. 161), 1985;  
(d) Labour Inspection (agriculture) Convention, 1969 (no. 129);  
(e) Employment Services Convention, 1948 (no. 88); Private Employment Agencies Convention, 1997 (no. 181);  
(f) Migration for Employment Convention, 1949 (no. 97);  
(g) Migrant Workers (supplementary provisions) Convention, 1975 (no. 143) and  
(h) Seafarers' Identity Documents Convention (revised), 2003 (no. 185).
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