



# Hfanelo

"It's Your Right"

Transforming Society. Securing Rights. Restoring Dignity  
The South African Human Rights Commission Newsletter



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## SAHRC's Dialogue on Business and Human Rights

Non-nationals feel systematically discriminated



Excitement as staff learn about Sign Language and Access to Justice during Internal Seminars

16 Days of activism end

International Human Rights Day Commemoration

Opinion: Commissioner Malatji not happy with the state of people with disabilities

## International Day of Commemoration in Memory of the Victims of the Holocaust, 27 January

Denying historical facts, especially on such an important subject as the Holocaust, is just not acceptable. Nor is it acceptable to call for the elimination of any State or people. I would like to see this fundamental principle respected both in rhetoric and in practice by all the members of the international community". UN Secretary-General Ban Ki-moon

Rejecting any denial of the Holocaust as a historical event, either in full or in part, the General Assembly adopted a resolution (A/RES/60/7) by consensus condemning "without reserve" all manifestations of religious intolerance, incitement, harassment or violence against persons or communities based on ethnic origin or religious belief, whenever they occur.

The resolution declared that the United Nations would designate 27 January -- the anniversary of the liberation of the Auschwitz death camp -- as an annual International Day of Commemoration in memory of the victims of the Holocaust, and urged Member States to develop educational programmes to instill the memory of the tragedy in future generations to prevent genocide from occurring again. It requested the United Nations Secretary-General to establish an outreach programme on the "Holocaust and the United Nations", as well as institute measures to mobilize civil society for Holocaust remembrance and education, in order to help prevent future acts of genocide. Source: UN.org

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## SAHRC: Xenophobia should be changed to afrophobia

Tens of thousands of migrants were displaced in SA in 2008 and a number of them killed.

JOHANNESBURG - The South African Human Rights Commission (SAHRC) says violence against foreigners in the country should now be referred to as "afrophobia" and not xenophobia with the latest research showing Africans are attacked and not Europeans.

The Commission is hosting a business and human rights dialogue in Sandton on issues affecting non-citizens including refugees and asylum seekers.

SAHRC chair, advocate Mabedle Lawrence Mushwana says there is a difference between xenophobia and acts of violence committed against African foreigners living in South Africa.

He says the sad fact is that only those who come from African countries are being targeted.

"Only those from within Africa suffer the most."

In 2008, the world watched with dismay as South African citizens violently attacked foreigners in communities across the country.

Tens of thousands of migrants were displaced and a number of them killed amid mass looting and destruction of foreign-owned homes, property and businesses.

The SAHRC says the shocking events of 2008 can never be allowed to happen again. Source EWN

## Business and Human Rights Dialogue: Opening address by ADV. M L Mushwana on 08 December 2014



Adv Mushwana, SAHRC Chairperson and Ms Veronica Modey-Ebi - Deputy Regional Representative, UNHCR

I wish to welcome representatives from various Government Departments, representatives of the Forum for Institutions Supporting Democracy, all panelists, representatives of Civil Society and Community Based Organisations, members of Section 11 Committee on Migration and all esteemed guests gathered here today.

I further wish to welcome and acknowledge representatives from the office of the United Nations High Commissioner for Refugees and fellow Commissioners.

Allow me, on behalf of the South African Human Rights Commission to express my gratitude to all of you for having accepted our invitation to participate in this important workshop, whose aims and objectives are more fully set out in the Concept Note that has already been circulated to you.

This workshop takes place at the

same time when other major local and international events are and would be taking place in South Africa and across the globe.

The first one of which I invite all of us here present to acknowledge, recognize and indeed associate ourselves with its aims and objectives, is the Launch of the 16 days of Activism for no Violence Against Women and Children campaign under the theme, "Count me in: Together moving a non-violent South Africa Forward".

The launch marks the 16th year that South Africa is participating in the global 16 Days of Activism for no Violence against Women and Children.

This campaign therefore challenges South Africans to declare a truce on violence against women and children-and ultimately, to make it a permanent one.

As the South African Human Rights

From page 03

## It's sad that only Non-nationals from Africa are targeted

Commission we unequivocally pledge our support to this noble campaign and accordingly resolve that in the course of our work we will help to strengthen the campaign for it to become a permanent programme of our Country rather than just a once-off sixteen days event in each successive year to come.

The other notable events are the International Human Rights Day; the Universal Children's Day; the World Aids Day and most importantly for South Africans in particular and the World in General is observance and commemoration of the first anniversary of the passing on of our first President of Democratic South Africa; former President Roliqhlahla Mandela. May His Soul Rest In Peace; more about him a little later.

As the world celebrates International Human Rights Day on 10 December, it is important for South Africans, who pride themselves of South Africa being a Constitutional democratic State, to reflect in retrospect on the meaning and acknowledge the significance of this day twenty years after the advent of our democracy.

In doing so it would be imperative and indeed important to assess; reflect and scrutinise the achievements and successes that have been made in promoting and protecting human rights of all who live in South Africa - nationals and non-nationals alike.

This workshop; that brings us together today is equally tasked to carry out this assessment of whether or not we are succeeding in our arduous and onerous task of promoting and protecting human rights of all who live in South Africa nationals and non-nationals alike. The cornerstone of the Universal Declaration of Human Rights is human dignity and equality for all. We are indeed proud that our most revered Constitution is founded on the same values as espoused in the Universal Declaration for Human Rights.

The critical question is whether in the implementation of our Constitution we truly comply with the letter and spirit of these values when it comes to non-nationals and if not what now? - going forward. We need to come out of this workshop with concrete answers and solutions.

The issue of the plight of non-na-

tionals, for lack of a better word, when it comes to their dignity; security and in general, the respect of their inalienable rights as human beings, as enshrined in our Constitution came to prominence in 2008.

Prior to 1994 immigrants from elsewhere in Africa faced discrimination and even violence in South Africa, though much of that risk stemmed from the institutionalized racism of the time due to apartheid.

After 1994 and contrary to expectations, the incidence of Xenophobia increased.

It is estimated that between 2000 and March 2008 at least 67 people died in what were identified as xenophobic attacks.

In May 2008 a series of riots left 62 people dead; although 21 of those killed were South African citizens. It is generally suggested that these attacks were apparently motivated



**The Commission joined hands with other institutions to protect non-nationals during the 2008 Xenophobic attacks**

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## From page 04

## We owe it to UTata Madiba to end these intractable hostilities between some South Africans and Foreign Nationals

by xenophobia, whether perceived; actual or real is an issue that continues to be debated.

What is more sad and indeed unfortunate about these attacks is that when it comes to non-nationals, only those from within Africa suffer the most and one may ask why.

Fast forward, these events are well known and documented and I would not want to spend more time on them safe to say that, following the increase on these attacks in 2008, as a Commission together with some Civil Society Organisations we instituted and conducted an investigation of the causes of these riots, followed by the issuing of a comprehensive Report with numerous Recommendations. Needless to say some recommendations remain unimplemented as of today while some were.

The reality we are facing today is that these attacks and violence still continue to happen and it is for this reason that as a Commission we found it necessary to convene this workshop as a form of dialogue amongst different stakeholders to look and search for answers and solutions to this one single act that antagonizes South Africa against other African States in the continent that must be brought to an end.

This is particularly important bearing in mind the role that some of these African States, side by side with other countries out of Africa, played in helping South Africa to end apartheid and achieve this hard earned democracy we are experiencing and enjoying today.

A study published by the Southern African Migration Project (SAMP) in one of its conclusions states, "The ANC government-in its attempts to overcome the divides of the past and build new form of social-cohesion...embarked on an aggressive and inclusive nation-building project. One unanticipated by-product of this project has been a growth in intolerance towards outsiders...Violence against foreign citizens and African Refugees has become increasingly common and communities are divided by hostility and suspicion".

You will indeed agree with me that this trend of hostilities between South Africans and foreign nationals is indeed worrying and worthy of an intense discussion and interrogation for solutions to regain our impeccable image and esteem as one of the progressive countries within the International World especially in the African Continent is necessary and long overdue.

In an article written for the Sunday Independence by Adebayo, the Executive Director of the Centre for Conflict Resolution in Cape Town, who is also an editor of Africa's Peace Makers, "Nobel Peace Laure on 8 December 2013-three days after the passing on of Madiba-today is also the 8th of December, says the following of Madiba, "An often neglected part of his legacy is, however, his role as a pan-African icon".

Adebayo went on to say "Mandela's historical significance as the "Founding Father" of a democratic South Africa will be similar to that of George Washington for America and Mahatma Gandhi for India. Mandela was a pan-african prophet who was honoured in his own land and across the globe. His legacy will be his export to the world of the pan-african spirit of Ubuntu: the gift of discovery of our shared humanity.

We owe it to UTata Madiba to end these intractable hostilities between some South Africans and Foreign Nationals to earn an entry of our name as a country that respects the rights of all of those within its boundaries, nationals and non-nationals, in the annals of progressive history books of the world-if any.

I want to end by stating that: The South African Human Rights Commission is mandated to promote, protect and monitor human rights.

Its vision is to transform society, secure rights and restore dignity for all.

In line with its promotional mandate and as a national human rights institution, the Commission adopted Business and Human Rights as its theme for the 2014/2015 financial year.

Today, against the backdrop of the global celebration of human rights and in tandem with this theme, the Business and Human Rights Dialogue on Migration provides an opportunity to raise awareness about the challenges experienced by non-nationals in South Africa within the business context and to discuss how best to address these challenges from a human rights perspective.

Admittedly, the scope of the impact of xenophobia is complex and wide, therefore; this two-day dialogue would not provide sufficient time to address all the concerns.

However it provides an opportunity to discuss with the view to improve and add to what as a Commission and Government we have been doing to ameliorate the pain and suffering that is continually experienced and endured by non-nationals in the context of conducting a business; in particular how non-nationals can ideally relate within the business context with their counterparts in business, national and local, so as to exchange and share a wealth of experience in business

## From page 05

## Informal trading, especially in townships, has been identified as one of the key areas of tensions between South African nationals and non-nationals

best practices that would benefit both parties.

Evidence shows that a large number of non-nationals, wherever they find themselves, in the main are involved in informal trading.

Informal trading, especially in townships, has been identified as one of the key areas of tensions between South African nationals and non-nationals.

Several issues have been raised in this regard relating to alleged unfair pricing at the expense of national informal traders; use of unfair business practices at the disadvantage of formal traders and complaints that nationals charge high prices where non-nationals are forced out of trading.

In addition, service delivery protests in townships exacerbate tensions between non-nationals and nationals when looting of foreign-owned businesses and damage to non-nationals' property occur.

As a Commission, we are fully aware that tensions between nationals and non-nationals cannot and should not be attributed to a single cause but to a multiplicity of issues- chief amongst which being the poor socio-economic conditions that prevail in informal settlements where most of the attacks and fights frequently occur.

We all know that the attacks on foreign nationals very seldom, if any at all, take place in affluent areas.

Once again, thank you for coming; share your experiences and views with us without any fear. We value your contributions.

Together we must live the legacy of Madiba which is, "the gift of discovering our shared humanity" UBUNTU.

## Blind cricket body says CSA fails to support 'World Cup' financially

CRICKET SA (CSA) stands accused of being shrewd and untruthful in its public statements on its impasse with Blind Cricket SA (BCSA) over funding.

That will no doubt set sparks flying at a meeting between the two organisations in Cape Town on Thursday — the latest lurch in a saga that could see CSA dragged before the Equality Court.

Last week BCSA lodged a complaint with the South African Human Rights Commission (SAHRC) over what it considers CSA's lack of financial support for the country's blind cricketers.

The issue came to a head over CSA's failure to help BCSA fund the Blind Cricket World Cup, which was played in Cape Town and ended on Sunday with India beating Pakistan in the final.

"We asked them for R1m out of a budget of R5m," Armand Bam, BCSA's national co-ordinator and a global director of the World Blind Cricket Council, said on Wednesday. "We understand they can't spend as much on us as they do on the Proteas, but how much do they spend on the Proteas?"

At the end of the 2010-11 financial year, CSA said 35% of its expenditure for that year had been consumed by the SA team. CSA's latest annual meeting, in September, was told that the organisation's expenditure for the financial year ending April 30 2014 was R6,340,920. Thirty-five percent of that figure is R2,219,322.

Bam disputed CSA CE Haroon Lor-

gat's assertion last week that BCSA had been "fully aware and kept abreast" that help would be forthcoming only if CSA were given lottery money. "That is the tail-end of the story, perhaps the last month or two," Bam said.

"They had already committed themselves to assisting us, and I have the e-mails to prove it. We have been talking to them from around September last year."

Lorgat said that "due process has not been followed in securing funding of the magnitude that was sought".

Bam challenged that statement: "CSA are being shrewd in their statements on the matter — they are not giving the correct context of the communication between us.

"I don't think their CE is being truthful in the way he is communicating with the public about this. We have followed the correct process; we have dealt with the manager we should have dealt with."

The communications co-ordinator of the SAHRC, Isaac Mangena, confirmed that BCSA had laid a complaint against CSA, which was "in the process of being registered and assessed".

"We are also looking at jurisdiction and — should we satisfy ourselves that it is a matter which we are authorised to investigate — it will be investigated," Mangena said.

Although reluctant to pre-empt the probe, Mangena said that, "on the face of it, it seems like a matter that falls within equality — something our assessment should inform".

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# 20 years of Right to Equality for Persons with Disabilities.... where to now?

**By Adv. Bokankatla Malatji,  
SA Human Rights Commissioner**

A few months before the South African Human Rights Commission (SAHRC) will celebrate its twenty years of existence, and during the month where the nation celebrates National Disability Month, it is an opportune moment to reflect on the right to equality for persons with disabilities. Our reflection begins with a reiteration of the SAHRC mandate which informed some of the work the SAHRC has done in promoting the right to equality for persons with disabilities. In particular the recent work we have done in the province of Limpopo.

The SAHRC, as stated in Section 184 of the Constitution (Act 108 of 1996), has the obligation to promote the respect for, promote the protection of, and monitor the observance of human rights.

Recognizing that the attitudinal and environmental barriers in society significantly impact the enjoyment of human rights by persons with disability, the Convention of Rights of Persons with Disability (CRPD) was drafted to ensure that persons with disabilities enjoy the same human rights as everyone else. The Convention is not the first human rights instruments to deal with disability concerns, but unlike the previous instruments, the Convention specifies the rights of persons with disability and the obligations of State parties to ensure these rights are protected.

The Convention, which has been signed and ratified by South Africa,

imposes obligations on State parties to, among others, respect that people with disability though different are persons and entitled to enjoy rights just like everyone else; and to take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of these rights.

Noting the importance of not just establishing a right but also ensuring the implementation of that right, the Convention in Section 33 obligates State parties to designate an institution that will implement the provisions of the Convention.

As an institution established under the Chapter 9 of the Constitution to support democracy, promote and protect human rights, the mandate to implement the Convention falls on the SAHRC. The Convention states the importance of the civil society and persons with disabilities being involved in the monitoring process, as they are the beneficiaries of these rights and their inputs are invaluable. Indeed nothing should be about people with disabilities, without them.

The SAHRC has been involved in the



monitoring of our government's obligation to ensure the rights of people with disabilities are respected. Flowing from this, in 2013 and 2014 the Commission held a Provincial Indaba in Limpopo and met with government departments, NGOs and Disabled People Organisations. (DPOs) It is because we believe that government should take a lead in ensuring rights of persons with disabilities are elevated in terms of policy and planning.

At these meetings the SAHRC wanted to establish how all the government departments in Limpopo have

implemented the rights enshrined in the Convention especially rights to employment, right to education, right to habitation and rehabilitation, right to accessibility and awareness.

It was however apparent that there is still a long way to go in ensuring that rights of persons with disabilities are promoted and protected. Among the shortfalls identified by the SAHRC was the failure to meet the national target of 2-percent of public servants being people with

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## We can no longer wait for another “disability month” to talk about the needs of persons living with disabilities

Also worrying was failure to ensure that people living with disabilities have access to education, health and justice in the province. Most of these concerns came from residents living with or affected by disability, who were part of these meetings.

And regardless of promises made by the departments in 2013, our follow-up visit in September and November this year found that not much has changed in ensuring the rights of persons with disability.

For example, during our site inspections of Ritavi and Thohoyandou Equality Courts, little if anything was done to promote the use of these courts by people with disabilities. Not only were the courts inaccessible for someone with physical disability, but the staff was either not trained to deal with matters brought by people with disabilities, or there were no Magistrates sufficiently trained and equipped to take up such cases. There were no sign language interpreters and other resources to enable access to justice for people with disabilities.

And our visit to four schools catering for learners with special educational needs was the last straw. The schools, spread across different parts of the province are Tshilidzini Special School, Letaba Special School, Bokelé Special School and Setotolwane Special School.

The schools had similarities: a tremendous lack of resources, ranging from lack of quality teachers, lack of appropriate learning materials,

lack of mainstream schooling accessibility for people with disabilities, to the debilitating condition of the schools.

It was our conclusion as the SAHRC that the challenges faced by the schools require urgent intervention, as vulnerable children are possibly being denied their right to basic education, as a result of their disabilities. We further resolved to monitor government to ensure they fulfill their obligations, through a formal investigation, which we are hoping will reveal the extent of the problem in terms of accessibility of state resources to people living with disabilities.

Over and above this, the SAHRC wants to ensure, like we did early in November when we brought government departments in front of people with disabilities, that persons with disability are involved in the planning and the accountability process because they are the ones receiving these services.

Organisations working with people with disabilities, most of whom are our stakeholders, play an important role in monitoring progress by government in terms of the realization of the rights of persons with disabilities. They are the people who will help government in developing policies and plans to ensure efficient delivery of services to people living with disabilities.

We can no longer wait for another “disability month” to talk about the needs of persons living with disabilities. Their plight cannot be highlighted only during events. The problems that the SAHRC found in Limpopo highlight the bigger challenges that still face people with disabilities across South Africa.

It is the responsibility of government to ensure that they fulfill their obli-

gations in terms of the international Convention and national laws with regards to people with disabilities. Government should ensure that people with disabilities are catered for in its policies and service delivery plans. It should ensure budgets are allocated to the realization of rights of persons with disabilities; that they protect persons with disability from abuse and discrimination; support structures in place for persons with disability; and ensure the over 2% employment of persons with disabilities is achieved as per government’s current policy.

Our Constitution affirms the rights of all persons without discrimination as to disability. It is important that these rights are just not enshrined in legislatures but they are transformed into practices that will have real impact on the lives of persons with disabilities.

The SAHRC is currently dealing with over thirty complaints related to discrimination against persons with disabilities during this financial year. These complaints relate to abuses against children with disabilities, the lack of services at special needs schools and limited access to resources for persons with disabilities at public facilities.

The SAHRC is working to address these complaints and to further use these complaints for holding government departments accountable. As we observe national disability month, the SAHRC acknowledges some of the work done by various government departments such as meeting the employment equity quota of two percent employment of persons with disabilities, but much work still needs to be done.

**Adv. Malatji is a SAHRC Commissioner responsible for Disability and Older Persons.** *Pf*

# 10 December, International Human Rights Day

By Adv. Mabedle Lawrence  
Mushwana

*On 10 December every year, Human Rights Day commemorates the date on which the United Nations General Assembly adopted the Universal Declaration of Human Rights, proclaiming its principles as the “common standard of achievement for all peoples and all nations.”*

*This year’s slogan, Human Rights 365, encompasses the idea that every day is Human Rights Day. It celebrates the fundamental proposition in the Universal Declaration that each one of us, everywhere, at all times is entitled to the full range of human rights, that human rights belong equally to each of us and bind us together as a global community with the same ideals and values.*

As yet another year draws to a close we are presented with the opportunity to reflect upon the state of human rights in South Africa and around the world. The 10th December marks the International human Rights Day. The date commemorates the day the United Nations General Assembly adopted the Universal Declaration of Human Rights, which serves as the benchmark for the protection and promotion of the minimum prescripts for human rights norms and standards. Last year marked the celebration of the twentieth year since the adoption of the landmark Vienna Declaration, which reinvigorated international commitment to human rights.

The worldwide celebrations provided yet another renewed focus on the importance of remaining true to the ideals and values pronounced in 1948 when the Universal Declaration was adopted and the momentum continued into this year. But at the same time, there is the realisation that the global context has changed tremendously. While human rights values have undergone



**Non-nationals at the dialogue eagerly engaged various institutions**

a continued universalisation and are a core component in international relations, new challenges such as technology and terrorism and their impact on human rights have emerged. Globally, familiar challenges such as poverty, the plight of vulnerable groups and discrimination to name a few are yet to be effectively dealt with. The re-emergence of conflict within States and at a scale not witnessed since the World Wars has further complicated the context within which to realise human rights. These complexities have perhaps led to the emergence of new and credible actors within the international human rights system.

Increasingly, attention is being paid to the role that new actors within the international human rights system can play. For instance national human rights institutions. These are state institutions with a legislative and in some cases constitutional mandate to promote and protect human rights. They are governed by the international guidelines on the establishment and functioning of national institutions commonly known as the Paris Principles. National human rights institutions such as the South African Human Rights Commission have been recog-

nised for the potential role they can play in positively shifting the dynamics in the advancement of human rights. Almost a year ago, the United Nations General Assembly adopted a resolution on national human rights institutions, which called for consideration for their engagement in all UN-system wide human rights mechanisms and processes.

This resolution reaffirmed the recognition of national human rights institutions as the natural partners for the United Nations human rights system, serving as a bridge between States and other actors and between the international and domestic levels of the application of human rights.

The increasing confidence that the international human rights system places on the role that independent national human rights institutions around the world can play in advancing the human rights ideals that underpin human rights treaties, declarations and pronouncements is important in their day to day activities. It supports their advocacy work in encouraging States to meet their international obligations and to ensure that laws and policies comply with international norms and

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**Non-nationals learnt about steps to take when their rights are violated.**

standards and in turn that implementation of the laws and policies is done through a human rights lens.

This will be particularly important in 2015 when the global focus will be on the adoption of a new international development framework once the millennium development goals (MDGs) expire. There is an opportunity to ensure that these next set of development goals integrate human rights standards, principles, indicators and targets. This will ensure that the goals have the intended impact, particularly on the lives of those in communities around the world still living in dire poverty, are marginalised and have limited awareness and access to their rights.

While expectations on national human rights institutions are high, the reality is that many do face numerous challenges that impact on their capacity to effectively discharge their mandates. They are public entities usually faced with financial and human resource constraints. In addition, they can face reprisals or intimidation as a direct result of their work including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations. For instance this year, the South African Human Rights Commission as the Chair of the International Coordinating Com-

mittee for National Institutions for the Promotion and Protection of Human Rights (ICC) lent support to several institutions including the Human Rights Commission of the Maldives whose Commissioners were charged with high treason for presenting a report on the human rights situation in the Maldives, when Maldives was under review before the Human Rights Council's Universal Periodic Review.

The ICC's efforts to galvanise support from high levels of the UN, international actors and within the ICC membership when national human rights institutions come under threat open a small window into the complexities of promoting and protecting human rights either at the international, regional or domestic levels. Such complexities do not belie the importance of rallying around human rights defenders, be they institutions or individuals, when faced with a threat due to their human rights work. Such support is particularly relevant in light of this year's International Human Rights Day slogan: Human Rights 365 which "celebrates the fundamental proposition in the Universal Declaration that each one of us, everywhere, at all times is entitled to the full range of human rights, that human rights belong equally to each of us and bind us together as a global

community with the same ideals and values."

Understanding that human rights must be a daily lived experience is not an easy task-we need only to look around us but at the same time remember Mahatma Gandhi's words that "the difference between what we do and what we are capable of doing would suffice to solve most of the world's problems." So as we remember Madiba's legacy and reflect upon the Commission's achievements in promoting and protecting human rights and advancing a human rights culture in South Africa for almost twenty years, we must do so bearing in mind that the road ahead is still long and demands that each one of us takes on the challenge of not only believing but living with the appreciation that every human being every day, everywhere and at all times is entitled to the full range of human rights.

ENDS

*Adv. Mushwana is the Chairperson of the SA Human Rights Commission, and Chairperson of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights(ICC).*

**Pf**

From page 06

## Blind Cricket: Last resort will be to refer the complaint to the Equality Court.

Should the impasse "not be resolved through our interventions", Mangena said, it could as a last resort be referred to the Equality Court.

The Promotion of Equality and Prevention of Unfair Discrimination Act includes "special measures to promote equality with regard to race, gender and disability". The act says: "If it is proved in the prosecution of any offence that unfair discrimination on the grounds of

race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence."

CSA ignored requests for comment. Its "mission" involves "basing our activities on fairness, which includes inclusivity and nondiscrimination".

## SAHRC learns sign language to celebrate International Disability Day

*Have you ever wondered what it takes to learn sign language?*

South African Human Rights Commission staff were taken through sign language steps as part of celebrating the International Disability Day. The activity also provided an opportunity for a learning experience to the eager audience. Pfanelo gives you sign language 101 through pictures.



# NGOs score Government dismally in performance report card

**About 36% of all households in informal areas never received services - SAHRC Deputy Chairperson**

The government scored a dismal E for basic education, water and sanitation; a F for electricity and a D for gender, the SA Human Rights Commission and civil society organisations said at a discussion convened by NGO Soul City Institute to reflect on how education, electricity, gender, water, sanitation and transport impacted on the health of South Africans. Soul City believes health is not merely the absence of illnesses but is determined by someone's education and gender and the environment in which they live today. Rating the country's performance in the five areas as it relates to health outcomes, the SAHRC, Section27, the Alternative Information and Development Centre and African Gender Institute, agreed the government had largely failed to make a speedy enough impact on delivery of services that affect the health outcomes of South Africans.

Giving government an E for the provision of water and sanitation, SAHRC Deputy Commissioner, Pregs Govender, said South Africa definitely needed to improve in the two areas. She said her mark was based on the Department of Performance Monitoring and Evaluation's own statistics that showed SA had regressed since 2009. "About 36% of all households in the informal areas have never received services, about 3.2 million households have broken infrastructure," she said reading from the SAHRC's "Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014".

Scoring the government an E for basic education, Thoko Madonko,



**Access to decent sanitation is still a pipedream to some**

Coordinator of the Budget, Expenditure and Monitoring Forum for Section27, said while "some gains have been made, there was a need for improvement".

"Unfortunately, government still must do more to realize the right to basic education in full and immediately in South Africa. Any delays in access to quality basic education will undoubtedly have a knock-on effect on other socio-economic rights such as the right to health," she said.

Jeff Rudin, Research Associate for the Alternative Information and Development Centre (AIDC), said government had failed in electricity provision which was why he had given them an F.

He said 20 years after the ushering in of SA's democratic government, 23% of households were not electrified according to the government. But "the reality is even worse than this officially derived number", he insisted. "Poor households are fitted with 20Amp connections instead of the normal 60A connection. This severely limits the number of appliances that can be used at the same time," Rudin said.

But he said, even worse, was the cost

of electricity which was the "major constraint" on its use. Despite the provision of free basic electricity, Rudin said this needed to be increased "fourfold" to meet the true needs of South Africans.

Marion Stevens of Wish Associates and the Africa Gender Institute said she had allocated the government a D for gender, which meant its performance was poor. The good news was the introduction of the HPV vaccine for girls aged 9 to 13 and its Contraception and Fertility guidelines policy among others.

However, several activists took issue with her mark, saying the preponderance of gender-based violence in the country merited an E or F.

Soul City intends to hand over the results of the report cards at the opening of Parliament after the public has its say.

Savera Kalideen, Senior Advocacy Manager for Soul City, said it was distributing the report card – which is available from its website - nationwide for people to rate the government as well. The results would be handed to government at the opening of Parliament in February.

Pf

## INTERNAL SEMINAR

## Access to Justice a need for South Africa

The month of December is a momentous day in the calendar of human rights. Every year, 10 December, marks the celebration of International human Rights Day. In commemorating this day for 2014, the United Nations Secretary-General, Mr Ban Ki-moon, declared that "human rights are for all of us, all the time: whoever we are and wherever we are from; no matter our class, our opinions, our sexual orientation". The 10th of December is significant to South Africa too, because it was on that day in the year 1996, that our first democratically elected President Nelson Mandela signed the South African Constitution ("the Constitution") into law at Sharpeville.

Subsequent to the adoption of the Constitution, a leading intellectual, Professor Karl Klare, published an article in the South African Journal of Human Rights in 1998 describing the Constitution as a transformative document. According to Justice Ismail Mohamed in the seminal judgment of *S v Makwanyane*, the Constitution provides "a transition from the grossly unacceptable features of the past to a conspicuously contrasting future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans irrespective of colour, race, class or belief". The Constitution contains an expansive Bill of Rights since it not only protects civil and political rights, but also gives effect to socio-economic rights. Professor Etienne Mureinik described the Bill of Rights as a "compendium of values empowering citizens affected by laws or decisions to demand justification".

Perhaps, as we celebrate 18 years since the birth of our Constitution, it



**Commissioner Ameermia sharing with staff on the planned Access to Justice campaign**

is also a time to do some introspection, and consider how far as a nation we have gone in ensuring that the ideals enshrined in the Constitution, have been turned into realities. Although significant strides have been made in the realisation of the human rights, as entrenched in the Bill of Rights, a lot of challenges need to be resolved. In the light of these daunting challenges, and in line with its mandate to protect, promote, monitor and assess human rights, the South African Human Rights Commission ("the Commission") has adopted the right of access to justice as one of its strategic focus areas.

This development is plausible, because the right of access to justice is a leverage right through which a person can enforce their other human rights. In other words, the right of access to justice is a right that unlocks the other rights in our Constitution as human rights are indivisible, intertwined and interrelated.

At an international level, the right of access to justice receives recognition in Article 10 of the Universal Declaration of Human Rights, as well as in Article 14 of the International Convention on Civil and Political Rights.

The right of access to justice is also recognised in the African Charter on Human and Peoples' Rights, in Article 7. The right of access to justice in South Africa is explicitly recognised in section 34 of the Constitution, and implicitly recognised in sections 9 and 10 respectively amongst the other rights in the Bill of Rights. That is, there cannot be equality and human dignity, if people are not able to have access to justice.

The preceding shows that the Constitution recognises a broad conceptualisation of access to justice. According to the broad view of access to justice, the right of access to justice involves more than simply physical access to courts, but includes social justice, economic justice and environmental justice. That is, the right of access to justice acts as a mechanism enabling the economically and politically marginalised to protect the inalienable rights that they have but hitherto they are yet to enjoy. This is a broadened view of access to justice, which gives content to the right to development, and facilitates addressing the broad issues of marginalisation of vulnerable groups in society. It is for this reason that when the Constitution was certified

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by the Constitutional Court, Mr. Justice Chaskalson the then President of the Constitutional Court, aptly pronounced, that socio-economic rights are justiciable.

The Commission describes vulnerable groups, "as those sectors of society with diminished and poor capacities in comparison to more empowered sectors of our society; they are generally more vulnerable to socio-economic hardships, discrimination and general human rights abuses". The access to justice programme therefore attempts to ensure the alleviation of the plight of all vulnerable groups. In the light of the above, the Commission has also joined hands with both government and a host of civil society organisations aimed at increasing awareness, literacy and physical access to the Constitution, premised on this notion that the right of access to justice is a human right. Access to justice will remain illusory and a dream, as long as the privileges attached to race, class, space and gender remain unaddressed and quality of services continues to be shaped by who you are and where you live, and opportunities continue to be largely de-

fined by race, gender, ability, geographic location, class and linguistic background.

In giving content to the access to justice programme, the Commission, has begun engaging a myriad of stakeholders who could play a role in ensuring the realisation of access to justice. Some of the key stakeholders who have been identified as having a role to play are Government, the judiciary, the legal profession, the paralegals and community based-advice centres, the Law Clinics, the Law and education faculties across South Africa, non-governmental organisations including the Foundation for Human Rights.

Empowered by the South African Human Rights Commission Act 40 of 2013, the Commission has established an expert advisory committee, comprising of individuals from the stakeholders to assist it in ensuring that the huge disjuncture of "human rights rhetoric" and "human rights reality" on the theme, access to justice, is addressed in a holistic way. The task of the expert advisory committee will be to explore the definition of access to justice with reference to the mandate of the Com-

mission, identify critical issues and gaps in relation to access to justice, explore possible solutions thereof and explore models and initiatives in improving the lives of the marginalised to access the right to justice in a constitutional democracy within the framework of the rule of law.

Hence, there is a need to ensure that all of us, as a collective put our shoulder to the wheel, to ensure that the right of access to justice, which is an important constitutional tool for the enforcement and realisation of all the rights enshrined in the Bill of Rights, is achieved. As the civil rights activist, the late Dr. Martin Luther King said, "injustice anywhere, is injustice everywhere." For we must all realise that:

Without Rights there cannot be freedom  
Without freedom there cannot be development  
Without development there cannot be transformation.

**By Commissioner Ameermia, SAHRC  
Commissioner responsible for Housing and Access to Justice.**

Pf

# Spotlighting racism, stigma, UN launches International Decade of People of African Descent

**10 December 2014 – People of African descent still face racism in every country, region and continent of the world, said United Nations General Assembly President Sam Kutesa as the world body today kicked off its International Decade of People of African Descent.**

“Over the next ten years, people everywhere are encouraged to take part in the global conversation on the realities faced by people of African descent,” Mr. Kutesa who is a national of Uganda told the General Assembly today, calling the Decade’s launch a historic achievement.

“The Decade will allow us to explore the challenges faced by people of African descent due to pervasive racism and racial discrimination engrained in our society today,” he added.

On 23 December 2013, the General Assembly adopted a resolution proclaiming the International Decade for People of African Descent, commencing on 1 January 2015 and ending on 31 December 2024 with the theme “People of African descent: recognition, justice and development.”

Joining Mr. Kutesa at the Headquarters event was UN Under-Secretary-General for Humanitarian Affairs, Valerie Amos, who spoke on behalf of the Secretary-General Ban Ki-moon; UN Assistant Secretary-General for Human Rights Ivan Šimonović; and Irina Bokova, Director General of the UN Educational, Scientific and Cultural Organization (UNESCO). The event also featured several performances by African

musicians.

This Decade is an opportunity for a wide range of actors including the United Nations, Governments, civil society and individuals to create synergy in efforts to combat racism and contribute to the Durban Declaration and Programme of Action (DDPA) adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Mr. Kutesa added that it is important to ensure the protection of the human rights of all people of African descent. Effective actions at the national and regional levels contribute toward tangible improvements in the lives of millions of people of African descent around the world.

On the matter of justice, he said that people of African descent are “too often” victims of crime and violence, while facing discrimination in their attempts to seek legal redress. In many societies the problem is endemic.

On development, he said the international community has come to recognize the correlation between poverty and racism. Despite the refutable evidence of contribution people of African descent have made to the development of our societies, they are too often marginalized.

During the decade, States are encouraged to help people of African descent by revisiting policies and practices that have a negative impact on the communities of people of African descent. African diaspora is a component of Africa, he said.

The decade is an opportunity to “unite our voices” and renew political will to eliminate racial discrimination against anyone, anywhere.

Speaking on behalf of UN Secretary-General, Ms. Amos said that people of African descent suffer from inequality and disadvantage from the history of slavery. People of African descent are among the poorest and most marginalized around the world with limited access to healthcare, education and even employment.

People of African descent face alarmingly high rates of police violence and racial profiling, Mr. Ban said, calling on Governments to do more to ensure justice. This Decade is about focused and converted action to guarantee that “a decade from now the situation of people of African descent is improved.”

Creative initiatives will be the ones to make concrete impact on people’s lives, the UN chief said, noting that some Member States have already allocated funds for their Decade activities.

Mr. Šimonović said that the launch of the decade on UN Human Rights Day is symbolic. Reading Article 1 of the Universal Declaration of Human Rights, he said that the “simple words should guide us.”

“Human rights belongs to us all,” he declared, noting recent events in New York that serve as a tragic reminders that people of African descent face disproportionate levels of racial discrimination. But the

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# In the Seat

with Thabang Kheswa  
Acting Provincial Manager, Eastern Cape



## Tell us about Thabang in a nutshell?

Thabang Kheswa is a very humble gentleman who believes simplicity is the best recipe of life. I am a very religious and traditional Sotho guy. A young man with lots of respect for others and to a certain extent very durable character.

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

I was born in Botshabelo, a town

outside Bloemfontein in the Free State on 15 April 1985 and I am the second of four children, two brothers and a sister.

I grew up in a very struggling family and it was very difficult for one to break through all the challenges of life, but I was the very first graduate in the family and have thus far made a tremendous difference in changing their lives.

## Educational background?

I attended primary at Qelo Primary in Botshabelo and matriculated in 2002 at Reamohetse Secondary school also in Botshabelo (Free State).

I then proceeded to register Law with the then Vista University in 2003, which was merged with the University of the Free State in 2004 and completed my LLB degree in 2006

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

I first joined the SAHRC in 2007 as a Legal Intern. At the end of 2007 I left to do Articles with Legal Aid South Africa. I was then admitted as an Attorney on 18 March 2010. Because representing the interests of the indigent and vulnerable has always been at the tip of my heart I then decided to rejoin the Commission in May 2013 on a position of Senior Legal Services Officer, a position which I think is one of the most crucial positions in the Commission as it means one is tasked with leading and steering the legal work for the Commission especially at the provincial level towards achieving the purpose that the Commission is set to achieve, that is securing rights of the ordinary South Africans and restoring their dignity.

I have been an Acting Provincial Manager in the Eastern Cape for a short period of time, it has been a wonderful experience, an opportu-



nity I will always cherish.

### In a summary can you take us through your day at the Commission?

The normal complaints handling in that one interacts with complainants as in when they have lodged whatever human rights complaints they may have, governments departments in most cases as respondents and broader civil society.

Conducting investigations and drafting of Investigative reports.

### Day outside office?

\* I am a single young man, so outside office I like going out socializing and enjoying myself. ( after all I am still young)

\* I also like food.

\*I am a die hard soccer fan, I support Bloemfontein Celtic (Siwelele Sa Masele!!!)

### What motivates and inspires you?

The idea of selflessness is what keeps me going, It makes one to stand up and always put interests of others at heart.

Deciding to be a Lawyer was the best decision of my life, because this is how I am able to make the difference in other peoples' lives.

### Favourite activities?

I like reading and keeping myself up to date with current affairs both domestic and international.

I sing a lot, I am a Choral/Opera Music singer, ( I am a baritone), a member of the community choirs ( Free State Choristers and Eastern Cape Choristers.)

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

I think some people do not really know that I can actually sing, in fact it's my second profession.

**Tell us more.....**

I am a terrible cook.

I like children, In fact I want to have a lot of them.

### My favourite quotation

"I learned that courage is not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear" Nelson Rolihlahla Mandela!

### My favourite Book

Tough Times Never Last, But Tough People Do! by "Robert H. Schuller"

Pf

### From page 15

#### The 10-year span will be an opportunity to call for the adoption of anti-discrimination laws

problem is universal.

"This Decade aims to shine a light on inequality, invisibility, underdevelopment, discrimination and violence on each and every continent," the human rights chief said.

The 10-year span will be an oppor-

tunity to call for the adoption of anti-discrimination laws and ensure justice by fighting against impunity in regard to racial profiling and guarantee the equal protection of the law. Decade activities will also promote the right to development and equal access to education, health, as well as employment.

Also joining the event via video conference, UNESCO's Irina Bokova said the launch of a decade sends, at a critical time, an essential message of hope, tolerance and human rights.

"The Decade is inspired by the powerful idea that to counter discrimination, to build a more just future, we must build on the history all humanity shares," she said.

The past features tragic chapters. The Decade is designed to counter and eliminate prejudices inherited from the past and to shed light on the struggle of people.

**Tags: Immigration, UN bodies, UN-Secretary General**

**Author: WebDesk**

Pf

# Snippets

## Madonsela wants court clarity on her powers

Public Protector Thuli Madonsela has filed her application to contest a judgment that deemed her findings and remedial actions not binding.

"The court will let us know when they have considered our notice," said the Protector's spokesperson Oupa Segalwe on Sunday. Earlier this month, Madonsela filed the application to appeal the Western Cape High Court judgment -- related to a case between the Democratic Alliance (DA) and the SABC and its Chief Operating Officer (COO), Hlaudi Motsoeneng.

Judge Ashton Schippers' interpretation of the role of the Protector was contained in a judgment on October 24 when he ordered that the SABC suspend Motsoeneng and start disciplinary proceedings against him within 14 days.

This followed the DA's application for an urgent interim interdict to have Motsoeneng suspended, pending a review of the decision to appoint him. In February, Public Protector Madonsela released a report on Motsoeneng, while he was acting COO. She found his salary increased from R1.5 million to R2.4m in one year, that he had purged senior staff, and misrepresented his matric qualifications to the SABC.

The Protector's office has expressed

concern over the "widespread confusion" caused by this judgment -- as well as the way it could "severely compromise" the office's mandate

Madonsela recommended that a new COO be appointed at the SABC within 90 days. In July, Communications Minister Faith Muthambi announced Motsoeneng's permanent appointment. Motsoeneng is appealing against the court ruling that he be suspended.

As part of a ruling on the matter, Schippers said: "Unlike an order or decision of a court, a finding by the Public Protector is not binding on persons and organs of State.

However, the fact that the findings of and remedial action taken by the Public Protector are not binding decisions, does not mean that these findings and remedial action are mere recommendations, which an organ of State may accept or reject."

The Protector's office has expressed concern over the "widespread confusion" caused by this judgment -- as well as the way it could "severely compromise" the office's mandate.

City Press reported that according to the papers filed, Madonsela said that having to turn to the courts each time a government department declined to enforce her findings would financially cripple the protector's office and negatively affect its functioning. **Source: SABC News Online**

Pf

## 'Ukuthwala' doesn't denote 'abduction'

*A briefing by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) on the practice of 'ukuthwala', which could be defined as the practice of taking a young woman from her village to marry her. Deputy Chair of the CRL Rights Commission, Prof David Mosoma:*

Ukuthwala is a process where the young man and woman consent to getting married and in order to facilitate that - because there may be problems with regards to lobola - decide to get married, but also with the parents' knowledge. In the morning, they would send a delegation to the in-laws to tell them 'your daughter is with us'. It's not elopement in this sense, because the parents of both the woman and the man, because both parents know about the relationship in the first instance, it isn't something that is secret. There must be a clear distinction between ukuthwala and abduction, that is often done under the pre-text of ukuthwala.

The same goes for human trafficking. It's a discussion of the highest order, because there are people that are trying to obstruct the cultural practice to use it for their own end. **Source: Radio 702**

Pf

## DON'T TRASH OUR INSTITUTIONS - ALBIE SACHS

Wits University confer honorary doctorate on man with "deep compassion for others" "Don't trivialise the Constitution or Nelson Mandela .... Don't trash our institutions .... And when you speak, speak with dignity, listen to others and create ensembles of debate and discussion," Justice Albie Sachs told graduates today, 10 December 2014, during his acceptance speech after being conferred with a Doctor of Laws degree by Wits University.

Sachs said he is often asked whether the South Africa of today is the country he has fought for, to which he always replies: "This is the country I'm fighting for; but it is not the society that we wanted to bring about." He urged graduates to especially respect and protect the institutions of democracy today.

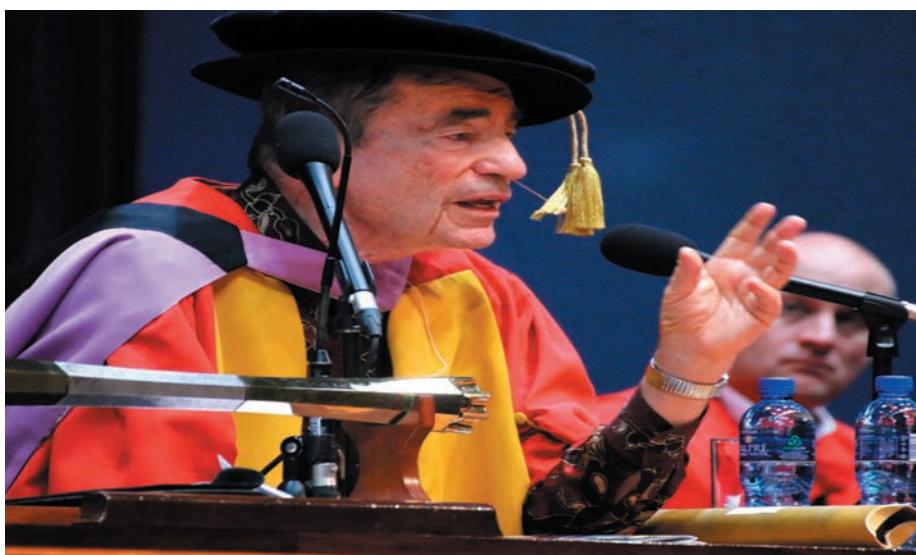
"We fought so hard for them. Use them and use them well. Presidents come and go; Public Protectors come and go; Ministers of Justice come and go; but institutions remain. Institutions consolidate those things we were fighting for. Revere them and protect them.

Build them up. Make them vibrant. Make them a source of energy, contestation, deeply imbued with the values of our society, yes, but don't undermine them. Don't ridicule them. Don't deprive them of dignity. So much went in to creating them," he said.

Lastly, Sachs also urged all South Africans to speak to and debate each other with civility and dignity. "If you have a good argument, you don't have to bellow. You don't have to shout, you don't have to be disruptive to others. You listen to others," Sachs said.

Sachs was honoured during the December graduation ceremony for graduates in the Faculty of Commerce, Law and Management, in recognition of his "selfless dedication to human rights, and the expression in our Constitution of the democratic ideals for which he and many others fought. His enduring gifts to his country include a Constitution that incorporates the value system by which he lives, his progressive interpretations that meaningfully improve the lived reality of many South Africans, and his challenge to lawyers to explore innovative solutions to difficult problems."

Pf



Justice Albie Sachs speaks about the importance of protecting institutions during his Honorary Doctorate at Wits

## Assaults by officers on prisoners double

December 10 2014 at 08:32am

By CHRIS NDALISO

Durban -

The number of prisoner assaults by correctional officers has doubled from 609 in 2011/2013 to 1 298 in 2013/2014.

South African Prisoners' Organisation for Human Rights (SAPOHR) Director, Golden Miles Bhudu, said this number (1 298), revealed in Parliament on Monday, could be

misleading.

Bhudu said the situation could be far worse than the public has been made to understand.

Justice and Correctional Services Minister, advocate Michael Masutha, told Parliament on Monday that these cases included sentenced and awaiting trial inmates in prisons around the country. He was replying to parliamentary questions by the DA on the number of assault cases reported by prisoners.

"This could be worse because revealing more would count against them (correctional services),"

Bhudu said.

"We don't believe a word they say. The revelation will make headlines now and the next day it's forgotten. "Until such time that we as SAPOHR and other human rights bodies become part of the rehabilitation process by playing an oversight role, our brothers and sisters will forever be abused in the country's correctional facilities," Bhudu said.

He said with the "revolutionised" technology that some prisoners managed to smuggle into prisons, those on the outside were able to get updates on the harsh treatment inmates received from warders.

Source: IOL

Pf

# New Appointment

*Pfanelo* would like to congratulate Mr Dirk Hermanus Swart on his appointment as Admin Assistant, Office of the CEO

## Happy Birthday

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

01 January - Florah Dipela (LMP)

04 January - Maureen Shabangu (HO)

05 January - Betty Boya (NW) & Lindiwe Khumalo (HO)

12 January - Zamile Mbanjwa (HO)

13 January - Lerick Muthaphuli (HO) & Ramaredi Mathibela (HO)

14 January - Alinah Khompeli (FS)

15 January - Zena Nair (WC)

23 January - Nthabiseng Kwaza (GP)

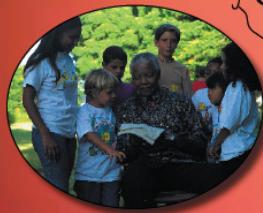
25 January - Faraaz Mahomed (HO) & Lucky Zulu (HO)

31 January - Mokgadi Makgatho (HO)

*"There can be no keener revelation of a society's soul than the way in which it treats its children."*  
- Nelson Mandela



Season's Greetings



The Children and Basic Education Rights Portfolio thanks you for the contribution you have made to its work towards the realisation of Children's Rights. We wish you a peaceful and joyful festive season.

Commissioner Lindiwe Mokate  
SAHRC Commissioner responsible for Child Rights and Basic Education