



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Consideration of reports submitted by States
parties under article 9 of the Convention**

**Fourth to eighth periodic reports of States parties
due in 2014**

South Africa*

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Contents

	<i>Paragraphs</i>	<i>Page</i>
Abbreviations		4
I. Introduction	1–5	6
II. Article 1: Concept of and special measures to combat racial discrimination	6–38	7
A. Population composition	11–20	8
B. Protection of non-nationals in line with the Convention	21–32	9
C. Special measures taken to safeguard the rights of racial or ethnic groups	33–38	12
III. Article 2: Policies and legislation to combat racial discrimination and special measures to develop and protect certain racial groups or individual	39–85	14
A. Judicial transformation	40–55	14
B. The role of traditional leadership	56–62	17
C. The promotion of gender equality	63–66	18
D. The promotion of language rights of indigenous peoples	67–79	20
E. Legislation, policies and other measures in place to eliminate discrimination	80–83	21
F. Criminalisation of racism	84–85	22
IV. Article 3: Condemnation, prohibition and eradication of racial segregation, apartheid and practices of this nature	86–106	23
A. Measures to address de facto segregation	86–104	23
B. Progress with respect to the Durban Declaration and Programme of Action	105–106	25
V. Article 4: Condemnation and criminalisation of all propaganda based on ideas or theories of racial discrimination	107–115	26
Examples of South Africa’s response to racial propaganda	108–115	26
VI. Article 5: Guarantee to everyone the right to equality before the law in the enjoyment of their rights	116–199	28
A. Equality and access to justice	117–119	28
B. Legal aid	120–122	29
C. Liberty and freedom of movement	123–133	30
D. Political rights	134	32
E. Marriage and family life	135–145	32
F. Socioeconomic and cultural rights	146–199	35
VII. Article 6: Effective protection and remedies against any acts of racial discrimination	200–220	45
A. The protection of non-nationals against racially motivated violence	201–211	45
B. Available avenues for redress	212–216	48

C.	Examples of the successful implementation of anti-racist policies and laws, and affirmation of cultural, religious and language rights	217–219	49
D.	Position with regard to Article 14 declaration	220	49
VIII.	Article 7: Measures in the fields of teaching, education, culture and information to combat racial discrimination	221–229	50
A.	The Government’s vision for eliminating racial discrimination in education.....	221–223	50
B.	The legislative framework for eliminating racial discrimination in education.....	224–225	51
C.	The Department of Education and the promotion of equality and non-discrimination	226–228	52
D.	Measures taken to include multiculturalism in educational publications.....	229	52
IX.	Concluding remarks	230–232	53

Abbreviations

ABET	Adult Basic Education and Training
AIDS	Acquired Immune Deficiency Syndrome
APC	African Population Commission
ART	Antiretroviral Treatment
BBBEE	Broad-Based Black Economic Empowerment
BCCSA	Broadcasting Complaints Commission of South Africa
BCLR	Butterworths Constitutional Law Reports
BEE	Black Economic Empowerment
CC	Constitutional Court
CERD	Committee on the Elimination of Racial Discrimination
CoGTA	Department of Cooperative Governance and Traditional Affairs
CRL	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
CRPD	Convention on the Rights of Persons with Disabilities
CSG	Child Support Grant
DEA	Department of Environmental Affairs
DHA	Department of Home Affairs
DOD	Department of Defence
DoE	Department of Education
DoJCD	Department of Justice and Constitutional Development
DSD	Department of Social Development
DWCPD	Department of Women, Children and People with Disabilities
ECT Act	Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)
EE Act	Employment Equity Act, 1998 (Act No. 55 of 1998)
EU	European Union
FET	Further Education and Training
FIFA	Fédération Internationale de Football Association
HDIs	Historically Disadvantaged Individuals
HIV	Human Immunodeficiency Virus
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IDP	Integrated Development Planning
IMC	Inter-Ministerial Committee
IYDS	Integrated Youth Development Strategy of South Africa
JSC	Judicial Service Commission

MEC	Member of the Executive Council
NDoH	National Department of Health
NFAR	National Forum Against Racism
NHC	National Heritage Council
NICRO	National Institute for Crime Prevention and the Reintegration of Offenders
NPA	National Prosecuting Authority
NSP	National Strategic Plan
NYSP	National Youth Service Programme
PanSALB	Pan South African Language Board
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)
RBX	Roll Back Xenophobia
RDP	Reconstruction and Development Programme
RICA Act	Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002)
SACC	South African Constitutional Court
SACOS	South African Council on Sport
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAIDE	South African Institute for Distance Education
SALRC	South African Law Reform Commission
SANAC	South African National AIDS Council
SANBI	South African National Botanical Institute
SAPS	South African Police Service
SASA	South African Schools Act, 1996 (Act No. 84 of 1996)
SAWS	South African Weather Service
SRPP	Social Responsibility Policy and Projects
SRSA	Sport and Recreation South Africa
TRC	Truth and Reconciliation Commission (established after the Truth and Reconciliation Hearings to implement the recommendations of the Government in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995))
UAPS	Union for African Population Studies
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNHRC	United Nations Human Rights Commission
WCAR	World Conference Against Racism

I. Introduction

1. South Africa's first report under the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention or ICERD), presented to the Committee on the Elimination of Racial Discrimination (the Committee or CERD) in December 2004, combined the initial to the third periodic reports and was considered in August 2006. That combined report presented a detailed history of the country and its people.¹ The social, political, cultural and economic history of the country was also adequately reflected in the common core document accompanying the report. It is thus considered unnecessary to engage in a lengthy recounting of the country's history at this stage.

2. South Africa's transition from apartheid rule has been hailed globally as an example of a peaceful regime change in the midst of monumental challenges. That South Africa achieved the transition is testimony to the determination and will of its people. The adoption of a new Constitution, provisionally in 1994 and finally in 1996, was, arguably, the high-water mark of the transition process. Almost 19 years after the formal abolition of apartheid and repealing of apartheid laws, the country is still undergoing multiple and systemic transitions. In an age that has witnessed an exacerbation of historically entrenched racial hierarchies, South Africa is still in the process of creating a credible non-racial society. The new constitutional dispensation marked the end of the age of white supremacy and the beginning of a democratic, non-racial and non-sexist state where all citizens have equal rights.

3. In today's South Africa the legal framework provides for equality, which is enshrined in the Constitution. However, the Government is continuing with the implementation of the Affirmative Action Programme to address disparities of the past. Racial discrimination has largely migrated into the realm of privately held beliefs. The Government recognises that this shift requires it and civil society organisations to devise appropriate awareness programmes to eliminate the psychological and cultural legacy of apartheid. When South Africa adopted its Constitution in 1996, it was remarkable for both the inclusive and consultative process by which it was adopted and its content. The process involved massive public participation in which the role of civil society was paramount. Regarding content, the South African Constitution is manifestly transformative and declares itself committed to the continued inclusion of civil society in governance. Since racism has been outlawed, the country's main challenge is to address all forms of covert and residual racism.

4. In preparing the present combined report, the Government was particularly mindful of the points that were raised in the concluding observations of the Committee following its consideration of the combined initial to third reports.² In line with the direction provided in paragraph 34 of the concluding observations, this report attempts to address all the issues that were highlighted by the Committee during the consideration of the combined initial to third reports.

5. The present report is divided into three parts, of which chapter I, Introduction, is the first part. The second part of the report comprises chapters II to VIII and discusses the implementation of articles 1 to 7 of the Convention. The discussion attempts to address all the issues raised by the Committee with respect to each specific article, while also

¹ See CERD/C/461/Add.3.

² CERD/C/ZAF/CO/3, 19 October 2006.

presenting the progress that South Africa has made in fulfilling the Convention's goals since the last report was presented. The third part of the report comprises chapter IX, which provides some general concluding remarks on the implementation of the Convention in South Africa.

II. Article 1: Concept of and special measures to combat racial discrimination

6. South Africa has made great strides in dismantling the structures that had hitherto institutionalised and legalised racial discrimination. The Government continues to allocate substantial human and financial resources towards the creation of a non-racist state. All legislation that provided for racial discrimination has been repealed and a host of new statutes have been adopted to provide a framework for racial equality. The relevant pieces of legislation were brought to the Committee's attention in the last report — see paragraph 30 of South Africa's initial report.

7. The question of rationalisation of the laws of South Africa has been a subject of concern to the Government. In order to ensure that the South African legal framework complies with its constitutional imperatives and international legal instruments commitments, the Government requested the South African Law Reform Commission (SALRC) to conduct a purification of statutes in all national legislation. This investigation was aimed at the revision of the statute books in order to recommend the removal or the amendment of legislative provisions that were considered to be unconstitutional, redundant and/or obsolete, or infringed section 9 of the Constitution providing for the right to equality, which permeates the Bill of Rights and the Constitution in general. The constitutional validity aspect of this investigation focused on statutes, or provisions in statutes, that were clearly inconsistent with the right to equality entrenched in the Constitution. In practical terms this meant that this leg of the investigation would be limited to those statutes, or provisions in statutes, that:

(a) Differentiated between people or categories of people, and which were not rationally connected to a legitimate government purpose; or

(b) Unfairly discriminated against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or

(c) Unfairly discriminated on grounds which impaired or had the potential to impair a person's fundamental dignity as a human being.

8. Consequently, a law or a provision in a law which appears to be neutral and non-discriminatory but which has or could have discriminatory effects or consequences will be dealt with by the judicial process as and when it is challenged. An audit of all national legislation (excluding provincial and secondary legislation) conducted by the SALRC revealed that there were close to 3 000 statutes, comprising principal Acts, amendment Acts, supplementary and/or additional Acts and private Acts.

9. The Government, however, concedes that its main challenge remains the eradication of residual forms of discrimination, which often occur in very covert and subtle forms. Purification of statutes and prohibition of discrimination through the law results in formal equality; however, the challenge is the attainment of substantive equality.

10. The Committee may recall that for purposes of defining discrimination, South Africa subscribes to the notion of unfair discrimination — section 9 of the Constitution. Section 9 of the Constitution is supported, principally, by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (No. 4 of 2000) ("PEPUDA"). While all discrimination involves differentiation, unfair discrimination is that differentiation which in application is

bound to have an unfair impact and outcome. The concept of unfair discrimination has special relevance to South Africa, especially in the light of the country's history and long experience with overt racism. This means that differentiation which is designed to achieve a worthy objective will be allowed to pass constitutional muster — this concept was further explained in South Africa's answers to the questions that had been posed by the Committee during the last report. See South Africa's response to question number 2 in the initial report.

A. Population composition

11. In paragraph 11 of the concluding observations, the Committee enjoined the Government to provide a qualitative description of the ethnic composition of its population. It must be noted that South Africa's population is both racially and ethnically diverse.

12. For 2013, Stats South Africa estimates the mid-year population as 52.98 million. Approximately 51% (approximately 27.16 million) of the population is female. Gauteng comprises the largest share of the South African population. Approximately 12.7 million people (24.0%) live in the Gauteng province. KwaZulu-Natal is the province with the second largest population, with 10.5 million people (19.7%) living in this province. With a population of approximately 1.16 million people (2.2%), Northern Cape remains the province with the smallest share of the South African population.

13. About 29.2% of the population of South Africa is younger than 15 years and approximately 7.8% (4.15 million) is 60 years or older. Of those younger than 15 years, approximately 22% (3.42 million) live in KwaZulu-Natal and 19.5% (3.01 million) live in Gauteng.

14. Migration is an important demographic process shaping the age structure and distribution of the provincial population. For the period 2006–2011, it is estimated that approximately 264,449 people will migrate from the Eastern Cape; Limpopo is estimated to experience a net out-migration of nearly 227,919 people. During the same period, Gauteng and Western Cape are estimated to experience a net inflow of migrants of approximately 1,046,641 and 307,411 respectively.

15. Life expectancy at birth in 2013 is estimated at 57.7 years for males and 61.4 years for females. The infant mortality rate in 2013 is estimated at 41.7 per 1,000 live births. The estimated overall HIV prevalence rate is approximately 10%. The total number of people living with HIV is estimated at approximately 5.26 million in 2013. An estimated 15.9% of the population aged 15 to 49 years is HIV positive.

16. Mid-year 2013 population estimates by population group are summarised as follows:

Table 1
Mid-year population estimates for South Africa by population group and sex, 2013

Population group	Male		Female		Total	
	Number	Percentage of total population	Number	Percentage of total population	Number	Percentage of total population
African	20,607,800	79.8	21,676,300	79.8	42,284,100	79.8
Coloured	2,306,800	98.9	2,495,400	9.1	4,766,200	9.0
Indian/Asian	669,200	2.6	660,100	2.4	1,329,300	2.5
White	2,239,500	8.7	2,362,900	8.7	4,602,400	8.7
Total	25,823,300	100.0	27,158,700	100.0	52,982,000	100.0

17. In terms of population distribution by province, Statistics South Africa estimates that the above population breaks down as follows:

Table 2
Population distribution by province, 2013

	<i>Population estimate</i>	<i>Percentage share of the total population</i>
Eastern Cape	6,64620,100	12.5
Free State	2,753,200	5.2
Gauteng	12,728,400	24.0
KwaZulu-Natal	10,456,900	19.7
Limpopo	5,518,000	10.4
Mpumalanga	4,128,000	7.8
Northern Cape	1,162,900	2.2
North West	3,597,600	6.2
Western Cape	6,016,900	11.4
Total	52,982,000	100.0

18. As indicated in the initial report, South Africa is a multilingual country and constitutionally recognises 11 official languages. The official languages are: Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sepedi, Sesotho, Setswana, siSwati, Tshivenda and Xitsonga. Other languages that are also spoken in the country are: Khoi, Nama and San languages, Arabic, German, Greek, Gujarat, Hebrew, Hindi, Portuguese, Sanskrit, Tamil, Telegu, Urdu and South African Sign Language. English is generally understood across the country, being the language of business, politics and the media, and the country's lingua franca.

19. The linguistic diversity of South Africa is such that the languages have, over time, influenced each other. The Government actively promotes the use of all official languages plus the Khoi, Nama and San languages and all languages used by minority communities in South Africa. This is principally undertaken by the Pan South African Language Board (PanSALB) which operates under the aegis of the Pan South African Language Board Act, 1995 (No. 59 of 1995) (PanSALB Act). Among the central objectives of PanSALB is the promotion of multilingualism in South Africa. PanSALB is also mandated to investigate complaints about language rights violations from any individual, organisation or institution.

20. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) was established in terms of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002 (Act No. 19 of 2002). It is an independent institution that was established in terms of Chapter 9 of the Constitution to promote and protect the rights of cultural, religious and linguistic communities in South Africa; this also includes the rights of minority groups.

B. Protection of non-nationals in line with the Convention

21. The protection against discrimination that is embodied in the Constitution extends to both nationals and non-nationals. Therefore, generally speaking, almost all the rights the Constitution guarantees extend to everyone in South Africa. In spite of this, the Constitution also underscores the importance of citizenship by reserving certain rights for

South African nationals only. For example, section 21 (movement, residence and the right to a passport) and section 22 (trade, occupation and profession) are some of the rights that can be enjoyed by nationals only. Furthermore, only nationals are allowed to exercise the section 19 political rights and the right to stand for parliament, provincial legislatures and for municipal councils — see sections 47(1), 106(1) and 158(1) of the Constitution. In the same vein, the ordinary law of South Africa recognises that legitimate distinctions can be made between non-nationals and nationals — especially with regard to access to some state benefits. In the public service, for example, permanent appointments are reserved for South African nationals and persons with permanent residence. Non-nationals, whether of African or European descent, are employed on a contract basis and generally only for scarce skills.

22. The fact that some rights are reserved for South African nationals only should not be understood to suggest that non-nationals are considered to be of inferior status. These distinctions merely recognise the primacy of citizenship as a category used, in modern times, to classify people and determine the distribution of benefits among them.

23. The South African legal system accords primary importance to the values of preservation of non-discrimination and human dignity, which are founded in sections 9 and 10 of the Constitution, respectively. The importance of human dignity in South Africa is highlighted by sentiments expressed by the Supreme Court of Appeal (SCA) in *Minister of Home Affairs v. Watchenuka* 2004 (4) SA 326 (SCA) where it was stated that “human dignity has no nationality. It is inherent in all people — citizens and non-citizens alike — simply because they are human. And while that person happens to be in this country for whatever reason — it must be respected and protected” [paragraph 25]. This statement by the Supreme Court underlies South Africa’s commitment to respect the dignity of all persons within its jurisdiction.

24. The Immigration Act, 2002 (Act No. 13 of 2002), comprehensively regulates the admission of non-nationals into South Africa and also their residence and stay in South Africa. South Africa’s immigration policy is premised on the concession that the country can accommodate only a certain number of immigrants. The principal reason for this position is the presence of a vast reserve of unskilled and semi-skilled labour force within the country. Therefore, South Africa is often reluctant to allow migrant workers in the unskilled and semi-skilled categories. The Immigration Act aims at putting in place a system of immigration control, which would ensure that permanent residence permits are issued expeditiously, and on the basis of simplified procedures and objectives, reasonable requirements and criteria, and without consuming excessive administrative capacity. The Immigration Act has since been amended, among others, to clarify the powers of immigration officers and police officers with regard to interviewing a person when they are not satisfied that the person is entitled to be in the country, and to clarify the position with regard to certain offences under the Act.

25. It must be pointed out that the Department of Home Affairs (DHA) is strengthening its capacity to manage migration in a comprehensive manner by recruiting and deploying more immigration officers. The DHA has also designed a programme to train law enforcement officials and justice department officials in immigration legislation. In terms of paragraph 133 of the Durban Declaration and Programme of Action, the DHA has developed human rights training for law enforcement officers. The purpose of this training is to ensure that enforcement of immigration legislation complies with the Government’s international obligations and promotes a human rights culture as provided for by the Constitution and the Immigration Act. This training covers the application of the 1951 United Nations (UN) Convention relating to the Status of Refugees and the 1967 Protocol, the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1948 UN Universal Declaration of Human Rights and the

implementation of domestic legislation. This training also covers the application of the ICERD.

Constitutional rights relevant to migrants' right to health

26. In South Africa, as in all other Southern African Development Community (SADC) member States, the Constitution is the supreme law of the land. In most SADC member states the right to health is constitutionally enshrined. Where a direct link to the right of health is not found, the alternative is to rely on a progressive interpretation of other related provisions of the Constitution. The right to life, equality and non-discrimination provisions enshrined in the Constitution may indirectly provide the basis for the protection of migrants' right to health.

27. In 2006, the National Department of Health (NDoH) issued a memo clarifying that possession of a South African identity document is not a prerequisite for eligibility for antiretroviral treatment (ART). In September 2007, the NDoH issued a directive stating that refugees and asylum seekers, with or without a permit, should have equal access to ART at all public health providers.

28. The National Health Act, 2003 (Act No. 61 of 2003), seeks to protect, respect, promote and fulfil the rights of the people of South Africa to the progressive realisation of the constitutional right of access to health care services, including reproductive health care. The Act enumerates the rights of patients, who inevitably include migrants, which include the right not to be refused emergency medical treatment.

29. A review of each of the following national strategic frameworks and/or plans includes statements about the particular vulnerabilities facing migrants and mobile population and the importance of responding to their particular needs. Furthermore, all these strategic frameworks and/or plans reflect a commitment to a human rights approach to programming. This includes attention to the rights of participation and inclusion, non-discrimination and equality, one of which is reflected below.

HIV/AIDS and STI National Strategic Plan for South Africa (2007–2011)

30. The National Strategic Plan (NSP) aims to reduce the number of new infections by 50% by 2011, and to mitigate the impact of the AIDS (Acquired Immune Deficiency Syndrome) epidemic by expanding, amongst others, access to treatment, care and support to 80% of all the people diagnosed with HIV (Human Immunodeficiency Virus) by 2011. The NSP identified population mobility and labour migration as drivers of the AIDS epidemic and recognised the vulnerability of the mobile population to HIV. It acknowledged that individuals who engage in mobile forms of work or migrant labour were at increased risk to HIV. The NSP provides a guiding framework for the protection of the rights of casual, contract and/or poorly organised workers. It seeks to ensure non-discrimination in accessing HIV prevention, treatment and support by marginalised groups, including sex workers, refugees and undocumented migrants and immigrants. The new draft NSP will also acknowledge the vulnerability of the mobile population to HIV.

31. South Africa's commitment to equal treatment of nationals and non-nationals is manifested in the Constitutional Court's (CC) decision in *Khosa v. Minister of Social Development* 2004 (6) SA 505 (CC). *Khosa* confirms that while the Constitution generally prohibits discrimination against nationals, the right to equality further ensures that rights which are to the benefit of everyone should not be denied to any person simply on account of their being non-nationals. In *Khosa*, the Constitutional Court dealt with a challenge to provisions of the Social Assistance Act, 1992 (No. 59 of 1992) by a number of Mozambican nationals who had acquired permanent residence status in South Africa. The applicants contended that their exclusion as non-nationals from the social assistance scheme

created by the Act was inconsistent with the State's obligations under section 27(1) of the Constitution, which directs that access to social security must be provided to everyone. The Constitutional Court held that properly interpreted the Constitution directs that a permanent resident qualifies for access to social security and that discrimination on the basis of nationality/citizenship in the context of social security amounted to unfair discrimination. In the Court's opinion this was because "the exclusion of permanent residents from the scheme is likely to have a severe impact on the dignity of the persons concerned, who, unable to sustain themselves, have to turn to others to enable them to meet the necessities of life and are thus cast in the role of supplicants."

32. The acquisition or loss of citizenship is regulated by the Citizenship Act, 1995 (Act No. 88 of 1995), see page 42 of the Initial Report. The principal ways of acquiring citizenship under the Act remain: birth, naturalisation and descent. Under section 6 of the Citizenship Act, a person may lose South African citizenship if, for example, he or she, while not being a minor, voluntarily and through a formal act other than marriage, acquires the citizenship or nationality of another country. A South African citizen may also make a declaration renouncing his or her South African citizenship by virtue of section 7 of the Act. The Citizenship Act, ensures that there is no arbitrary deprivation of citizenship.

C. Special measures taken to safeguard the rights of racial or ethnic groups

33. In spite of the adoption of several pieces of legislation meant to help in the eradication of the effects of apartheid in South Africa, arguably the most prominent step has been the adoption of the Broad-Based Black Economic Empowerment Program (BBBEE). The BBBEE Programme was implemented under the aegis of the Broad-Based Black Economic Empowerment Act, 2003 (No. 53 of 2003), (BBBEE Act). BBBEE was launched to redress the inequalities of apartheid by giving economic support to members of previously disadvantaged groups (black Africans, Coloureds, Indians and Chinese [declared to be black in June 2008]) who are South African citizens. It must be noted that under the Act, the term "black" is used generically and not limited to persons of African descent. The economic support and opportunities that are available under BBBEE are often of the type that would previously not have been available to members of the disadvantaged groups. BBBEE includes measures such as employment equity, skills development, ownership, management, socio-economic development and preferential procurement. One must constantly bear in mind that BBBEE is not just a moral initiative aimed at redressing the wrongs of the past, but is a pragmatic growth strategy that is meant to realise the country's full economic potential. Apartheid systematically excluded Africans, Indians and other coloured people [Note: "other coloured" was a racial category under apartheid, and the term "coloured", as used in the USA, for example, is different from the term "Coloured" as used in SA. Use "non-whites" or "previously disadvantaged" for all, or list all the groups — black Africans, Coloureds, Indians and Chinese] from any meaningful participation in the country's economy. BBBEE is meant to redress the effects of this systemic exclusion, especially the distortions in the economy that it engendered. In the application of the Act, therefore, constant effort is made not only to fulfil the objectives of the Act but also the stipulations of the Constitution — section 3 of the Act.

34. BBBEE does not aim to take wealth away from white people and give it to blacks. It is a growth strategy that recognises the inequalities that persist in South Africa today. The BBBEE programme recognises that South Africa's economy can grow only if its growth integrates all its citizens in a meaningful way. As the name of the supporting legislation indicates, the strategy is broad based. The Government's approach is to situate black economic empowerment within the context of a broader national empowerment strategy

focussing on historically disadvantaged people, particularly black people, women, youth, the disabled and rural communities.

35. Under the BBBEE Act, an integral part of the process is the sector-wide generic scorecard, which measures companies' empowerment progress. The generic scorecard is a way to measure the BEE status of a business, giving it a score out of 100%. As can be seen from table 3 below, the generic scorecard measures empowerment progress in four key areas and these are: direct ownership, senior-level management, employment equity and indirect empowerment. The generic scorecard is diagrammatically represented in table 3 below.

Table 3
The generic BEE scorecard

THE GENERIC BEE SCORECARD		
CORE COMPONENT	INDICATORS	SCORE
Direct empowerment score		
Equity ownership	% share of economic benefits	20%
Management	% black persons in executive management and/or executive board and board committees	10%
Human development & employment equity score		
Employment equity	Weighted employment equity analysis	10%
Skills development	Skills development expenditure as a proportion of total payroll	20%
Indirect empowerment score		
Preferential procurement	Procurement from black-owned and empowered enterprises as a proportion of total procurement	20%
Enterprise development	Investment in black-owned and empowered enterprises as a proportion of total assets	10%
Residual	To be determined by sector or enterprise	10%
TOTAL SCORE		100%

36. This scorecard, as well as a scorecard for multinational companies, is defined and elaborated in the BBBEE Codes of Good Practice. The Codes of Good Practice, which govern how companies do business in South Africa, allow global and multinational companies some flexibility in how they structure their empowerment deals. For example, representation does not only have to be at ownership level. The Codes are binding on all State bodies and public companies, and the Government is required to apply them when making decisions on:

- Procurement;
- Licensing and concessions;
- Public-private partnerships; and
- The sale of State-owned assets or businesses.

37. Private companies must apply the Codes if they want to do business with any Government enterprise or organ of State, for example to tender for business, apply for licenses and concessions, enter into public-private partnerships, or buy State-owned assets. Private companies are also encouraged to apply the codes in their interactions with one another since preferential procurement will affect most private companies throughout the chain of supply. Various industries are required to draw up their own charters on BBBEE

so that all sectors can adopt a uniform approach to empowerment and how it is measured. Overall, BBBEE is meant to help transform the South African economy in such a way that it is representative of the demographic composition of the country.

38. South Africa enacted the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), in order to give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution. This allows for preferential contracts with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability; and for further implementation of the programmes of the Reconstruction and Development Programme (RDP). Section 217(3) requires that national legislation be promulgated to facilitate the procurement processes of organs of State, and ensure that they are carried out in a manner that ensures the protection and/or advancement of previously disadvantaged persons, or categories of persons.

III. Article 2: Policies and legislation to combat racial discrimination and special measures to develop and protect certain racial groups or individuals

39. South Africa has adopted a variety of measures aimed at promoting equality and non-discrimination. In spite of this, and as conceded in the initial report (paras. 64 and 127), a gap persists between policy and practice. The Government is mindful of this gap and is actively taking steps in the following areas to close the gap between the formal measures for achieving equality and the reality on the ground.

A. Judicial transformation

40. The lawmakers and particularly the judiciary were complicit in the maintenance of apartheid in South Africa. Even with the formal demise of apartheid the judiciary and the legal fraternity generally remains white dominated. Transformation of the judiciary is essential if the legitimacy of the judicial system is to be restored. The transformation is also necessary to enhance the access of the majority of people, especially previously disadvantaged people, to the justice system. The judicial system must free itself from the images that characterised it as an accomplice in the oppression of black people in South Africa. The judiciary needs to present itself as an institution that is built on the values contained in the Constitution: a justice system that is the face of the people (no longer only white and male, but fully integrated) and that dispenses justice in the language of the people. It is recognised that the judiciary must not be seen as something imposing or to be feared, but as an effective system that is respected by those who use it, because it is the protector of human rights. Most of the efforts in transforming the judiciary are aimed at freeing it from the radicalized past in which it was so intricately caught up.

41. The Government has embarked on a process to transform and strengthen the independence of the judiciary. The the Constitution Seventeenth Amendment Act of 2012, provides for a single High Court of South Africa and makes the Constitutional Court the apex court of the Republic. The Superior Courts Act, 2013 (Act No. 10 of 2013), assented to by the President on 13 August 2013, seeks to rationalise the structure and functioning of the Superior Courts with a view to advancing their effectiveness.

42. In terms of composition, by mid-year 2009, of the 205 judges, 45.37% (93) were white, 38.4% (78) were African, 7.80% (16) were Coloured and 8.78% (18) were Indian. Overall, 20.49% were female and 79.51% were male. In terms of the lower court judiciary,

of the 1,096 magistrates, 46% were white, 39% African, 7% Coloured and 8% Indian. Overall, 33% were female and 67% male.

<i>African</i>		<i>Coloured</i>		<i>Indian</i>		<i>White</i>		<i>Total</i>
<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	
73	35	15	8	12	11	66	23	243

43. The South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008), will, for the first time in history, provide State-sponsored judicial education for judges. The primary function of the South African Judicial Education Institute is to offer training to both judges and magistrates. Prior to the passing of the South African Judicial Education Institute Act and the establishment of the South African Judicial Education Institute, judicial training was offered by the Justice College. There was no institution for the training of judges; training was done through exchanges with peers and senior judges.

44. South Africa has a legal aid system that forms part of the transformation of the judiciary and helps to advance access to justice. This system has reached an advanced stage and is increasingly being used as a model for a number of countries around the world. We have driven the legal aid issue, as a mechanism to advance access to justice, to the level of the UN with a view to having a universal standard for legal aid. This has become part of the agenda of the UN (particularly the United Nations Office on Drugs and Crime). Another development is the transformation of the sheriff's profession, which was previously white dominated. The divisions of service areas, especially in metropolitan areas, have been demarcated to allow access to this lucrative profession to previously disadvantaged groups (mainly African).

45. The Justice College offers a range of training interventions for magistrates, prosecutors, Masters of the High Court, Family Advocates, court interpreters, legislative drafters, registrars of the High Court, clerks of the court, court and area court managers, managers, administrative personnel and other legal professionals. The above institution provides training for judges and magistrates. This should go a long way in enhancing capacity of the judiciary and in aligning it with the Constitution's vision for the country.

46. The transformation of the judiciary is closely related to the transformation of the legal profession and legal scholarship in general. The DoJCD worked in partnership with law schools across the country to transform and align the curriculum of the law degree with modern best practices. Law schools were also encouraged to widen access to students from previously disadvantaged communities. Transformation of the legal profession entails making justice accessible to the poor, uneducated and vulnerable. Considerable effort was invested in transforming the prosecution and other legal services.

The legal aid system and the sheriff's profession

47. The legal aid system, governed by the Legal Aid Act, 1969 (Act No. 22 of 1969), was transformed and now renders free legal services to everyone in the country, and not just sections of society. A means test is used as a criterion to grant legal aid. The Legal Aid Board operates through three delivery mechanisms: firstly through Justice Centres where full-time practitioners are employed by the Board to provide legal aid; secondly through the Judicial System in terms of which private practitioners are briefed to do legal aid work at fixed rates (according to a set table of tariffs); and thirdly through cooperation agreements where certain non-governmental organisations and law clinics are funded to deliver legal aid in geographic areas not covered by the Board. Legal Aid South Africa extended its national footprint to 66 justice centres, 64 satellite centres and 13 High Court Units. It is difficult to fulfil all the legal representation needs of members of the society in need of the

aid, including civil matters, therefore the Board is currently reviewing the system to make it more efficient and cost-effective.

48. An investigation and audit of the sheriff's profession was done to make recommendations with a view to transforming this profession. One major recommendation was the demarcation of the service area divisions, especially divisions in metropolitan areas. This is intended to allow the previously disadvantaged African groups to access the profession. Furthermore, training will be provided to ensure that sheriffs deliver quality service and that they have a proper understanding of the execution of court judgments and warrants, with the expectation of ensuring access to justice by affected parties such as debtors. It should be noted that the Sheriffs Act, 1986 (Act No. 90 of 1986), will be amended to give effect to the envisaged transformation of the sheriff's profession.

Small claims courts

49. In a bid to improve access to justice for the poor, small claims courts were established in terms of the Small Claims Court Act, 1984 (Act No. 61 of 1984), to adjudicate on small civil claims not exceeding R12 000. Small claims courts were created to eliminate the time-consuming adversary procedures before and during the trial of these claims.

50. Matters within small claims courts are presided over by commissioners who are usually practising advocates or attorneys, legal academics or other competent persons. The service is voluntary as there are no fees paid to the commissioners.

51. Neither the plaintiff nor the defendant may be represented or assisted by counsel at the hearing. The commissioner's decision is final and there is no appeal to a higher court; only a review process is allowed. The DoJCD continues to strengthen the capacity of small claims courts. The improvement of the functioning of these courts is a key priority area. Small claims courts constitute an inexpensive tool that was created to settle minor civil disputes in an informal manner. By May 2010, there were 206 small claims courts.

Legal Services Charter

52. The objectives of the Charter are to give effect to the Constitution, PEPUDA and the BBBEE Act through the facilitation of the transformation of the legal services sector, and the promotion and empowerment of historically disadvantaged individuals (HDIs); to ensure access to justice in all respects, namely access to legal services, access to legal work, access to the courts, and access to the legal profession; to entrench the independence of the legal profession; to create an affirming and enabling environment; to promote equality and prevent unfair discrimination; to provide mechanisms for the transformation of the legal services sector, facilitation of economic empowerment, removal of inequalities within the legal services sector, and implementation of positive measures to protect and advance HDIs.

The Superior Courts Act

53. The aim of the Superior Courts Act is to rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa; to incorporate certain specialist courts into the High Court; to make provision for the administration of the judicial functions of all courts; to make provision for administrative and budgetary matters relating to the Superior Courts; and to provide for matters incidental to the functioning of the Superior Courts.

54. In terms of section 2(1)(c) of the Act, provision is made for the adjudication of matters relating to competition appeals, electoral disputes, tax matters, labour disputes and land claims by the Superior Courts. The memorandum on the objects of the Act states that

existing specialist courts similar in status to the High Court will be incorporated into the High Court of South Africa as Special Divisions of the Court.

55. The Act gives effect to item 16(6) of Schedule 6 of the Constitution in terms of which all courts must be rationalised with a view to establishing a single, integrated judicial system that is accessible and affordable.

B. The role of traditional leadership

56. In paragraph 12 of its concluding observations, the Committee requested that detailed information be provided on the role of traditional leadership and on the status of customary law in South Africa. The Committee also sought information about the measures in place to ensure that customary law was not applied in a manner that created or perpetuated racial discrimination. At the outset, it must be noted that [Chapter 12 of the Constitution](#) states that the institution, status and role of traditional leadership, according to customary law, are recognised subject to the Constitution. The institution of traditional leadership was set up with the aim of strengthening democracy, building peace and ensuring harmony. It assists in mass mobilisation for socio-economic development and is the direct link between the political leadership and the rural electorate as it operates at grass-roots level and has a direct link with the people. However, the institution of traditional leadership operates subject to the dictates of the Constitution and cannot be used to further racial or other discrimination or in any way subvert the Constitution.

57. The Constitution mandates the establishment of the houses of traditional leaders by means of either provincial or national legislation. The National House of Traditional Leaders was established in terms of the Council of Traditional Leaders Act (Act No. 10 of 1997). The powers and duties of the House are to promote the role of traditional leadership within a democratic constitutional dispensation, the preservation of the culture and traditions of communities and advise national government. Provincial houses of traditional leaders were established in eight provinces, namely the Eastern Cape, Western Cape, Northern Cape, KwaZulu-Natal, the Free State, Mpumalanga, Limpopo and North West. Unlike the other provinces, Gauteng only has a Council of Traditional Leaders and not a Provincial House of Traditional Leaders. The main aim of this Act was to provide for the establishment of the National House of Traditional Leaders.

58. The Council of Traditional Leaders Act was repealed by the National House of Traditional Leaders Act (Act No. 22 of 2009). The National House of Traditional Leaders Act was enacted to provide for the establishment of the National House of Traditional Leaders; to determine the powers, duties and responsibilities of the House; to provide for support to the House by the Government; to provide for the relationship between the House and the provincial houses; to provide for the accountability of the House. The Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), provides for the establishment of local houses of traditional leaders. The national and provincial houses of traditional leaders enhance the cooperative relationships within national and provincial government. The establishment of local houses of traditional leaders strengthens and solidifies the relationship between municipalities and traditional leaders on customary law and development initiatives. In March 2008, Cabinet approved the proposal to establish a national department for traditional leadership under the Minister of Provincial and Local Government. This department will restore the dignity of traditional leadership, which is the custodian of African customs and heritage. The process began in the 2009/10 financial year and has largely been finalised; the Department of Traditional Affairs is fully operational under the Ministry of Cooperative Governance and Traditional Affairs (CoGTA).

59. The stipulations of Chapter 12 of the Constitution and the advent of democracy required the transformation of the composition of traditional councils. Legislation

transformed the composition of traditional councils to provide for elements of democracy (40% of members must be elected) and gender representation (one-third of members must be women). Legislation has also opened a window of opportunity for municipalities and traditional councils to achieve cooperative governance. Traditional councils have been given a strong voice in development matters and may now enter into partnerships and service-delivery agreements with government in all spheres.

60. Closely connected to the role of traditional leadership in South Africa is the position of customary law in a multiracial and multicultural dispensation. It must be stated that the status and relevance of customary law in South Africa has been acknowledged by the Constitutional Court. It is manifest that the Constitution also acknowledges the relevance and continued applicability of customary law in South Africa. Section 30 of the Constitution gives everyone the right to use the language and to participate in the cultural life of their choice. Section 31 of the Constitution protects the rights of cultural, religious and linguistic communities. Section 39(2) of the Constitution specifically enjoins courts interpreting customary law to promote the spirit, purport and objects of the Bill of Rights. Section 39(3) provides that the Bill of Rights does not deny the existence of any other rights conferred by customary law as long as they are not contradictory to the Bill of Rights. Section 211 of the Constitution protects those institutions that are unique to customary law. Overall, customary law and by extension the institutions of traditional leadership — though recognised by the Constitution — must be understood and practiced in light of the Constitution's values. This position was affirmed in *Bhe v. Magistrate Khayelitsha* 2005 (1) BCLR (Butterworths Constitutional Law Reports) 1 (CC) and *Alexkor Ltd and Another v. Richtersveld Community and others* 2003 (12) BCLR 1301 (CC). This means that customary law and the institution of traditional leadership cannot be used to perpetrate racial discrimination as they would then be in contradiction of the Constitution and may be invalidated on that basis.

The National Heritage Council of South Africa

61. The National Heritage Council of South Africa (NHC) is a government institution that is responsible for the preservation of the country's heritage. Since it came into existence in 2004, the NHC has managed to place heritage as a priority for nation building and national identity. The important areas that the NHC focuses on are: policy development for the sector to meet its transformation goals, public awareness and education, knowledge production in heritage subjects that were previously neglected, and making funding available to projects that place heritage as a socio-economic resource.

62. The NHC has prioritised the most important history of the country to be inscribed as the heritage of the people, before it disappears from public memory. The NHC is working on the development of a Liberation Heritage Route comprised of liberation sites. These sites will be presented to the World Heritage Committee under UNESCO for consideration and possible inclusion in the World Heritage List. We are aware that not all the sites will be included in this prestigious list; those that do not qualify according to the UNESCO World Heritage Convention of 1972 will nonetheless remain of significance and will be protected through legislation nationally, provincially and locally.

C. The promotion of gender equality

63. Racism was not just the oppression of blacks by whites, but included discrimination on the basis of gender, which served to emphasise the oppressive patriarchal practices that were already in place. Black women in South Africa, for example, were doubly discriminated against, firstly on the basis of their race and secondly on the basis of their gender. For poor rural black women this meant no participation in the economy and

reliance on the land, which was often arid due to overcrowding and overuse for sustenance, while the men were away, often for long periods, working in cities or the mines.

64. For white women this oppression manifested itself in a different manner; many were required to be housewives and were excluded from the mainstream economy. For those who had gainful employment it was mainly in the professions relegated to women — the so-called softer professions — such as teaching and nursing.

65. The promotion of gender equality is thus an important objective for the Government. In order to give priority to the global issues that affect women a new department, the DWCP, has been established. The mandate of the DWCPD is to promote, facilitate, coordinate and monitor the realisation of the rights of women, children and people with disabilities. It aims to pay particular focus to, and fast track the security, welfare and development of these vulnerable groups. The new ministry was created in 2009. It was established to meet the need for equity and access to development opportunities by vulnerable groups within the South African society. The DWCPD works towards the creation of a non-sexist, non-racist, inclusive and human-rights based society in line with the Government's objectives of addressing our country's trio of challenges, namely inequality, unemployment and poverty, especially in so far as marginalised communities are concerned.

66. South Africa is one of the few African countries to promote gender equality and has achieved some remarkable results in the process. South Africa has increased the role of women in development, socialisation and policy development by implementing appropriate legislation, which mandates the active involvement of women in the formal sector and in decision-making processes. The under-representation of women in the private sector is clearly a point that requires greater attention and redress, and is indicative of the deep-seated cultural discrimination that exists largely as a result of the prevalent patriarchal tendencies in South Africa. The approach here is targeted at not only eliminating gender inequalities but also the attendant gender dimensions that the inequalities entrenched. Table 4 below gives an indication of the progress that South Africa has made in securing the equitable representation of women in senior government positions.

Table 4
Representation of women in political positions, 2013

<i>Position</i>	<i>Female</i>	<i>Male</i>	<i>Total number</i>	<i>% of women representation</i>
President		1	1	0
Deputy President	1		1	100
Ministers	12	19	28	42
Deputy Ministers	16	16	32	40
Premiers	5	4	9	44.4
Members of National Parliament	128	264	392	33
Members of National Council of Provinces	20	34	54	37.3
Members of Executive Committees in Provincial Legislatures	139	277	416	33.4

* *MEC* – Member of the Executive Council.

D. The promotion of language rights of indigenous peoples

67. The protection and promotion of the rights of indigenous communities/groups, and the maintenance of equal status for each group were paramount to the drafters of both the interim and final Constitutions of 1993 and 1996. The Constitution of the Republic of South Africa, 1996, as the fundamental document to the South African human rights transition, provides in section 6(2) and (5), and in the Bill of Rights, Chapter 2, section 30 that the State must promote and protect the Khoi, Nama and San languages.

68. As indicated in the initial report (para. 251), the Government is engaged in active dialogue with indigenous communities such as the Khois in order to preserve their language and culture, and generally to safeguard their rights and interests. The specific policies in place to help advance the rights of indigenous communities were also highlighted in South Africa's response to the questions posed by the Committee during the consideration of the initial report (see response to question 5). In acknowledgment of the importance of all the indigenous ethnic groups that live within the borders of the country, the Constitution recognizes the importance of language as a signifier of identity. (South Africa, as earlier stated, has 11 official languages.)

69. The current policy and legal framework not only initiates a fresh approach to multilingualism in South Africa, but strongly encourages the utilisation of the indigenous languages as official languages in order to foster and promote national unity. The PanSALB Act has been applied in South African cultural and language communities to protect and promote indigenous languages.

70. The PanSALB Act takes into account the broad acceptance of linguistic diversity, social justice, the principle of equal access to public services and programmes, and respect for language rights. This is an indication that South Africa seeks to achieve the integration of indigenous people through the recognition of the multifarious cultures and linguistic communities who all live in the country.

71. PanSALB and the CRL are national human rights institutions that are central to this endeavour. They are working towards developing, promoting and protecting/safeguarding the rights of minority/indigenous communities in using their languages and enjoying their cultures.

The court language policy

72. The new language policy for the courts introduces the use of indigenous languages in the courts in order to promote access to justice. The policy is aimed at developing a culture of understanding, tolerance and dialogue in courts and improving the delivery of justice. Many courts have significant backlogs, and hearing cases in indigenous languages will hopefully speed up the process.

73. Where one of the parties in an indigenous language court proceeding cannot speak the language, the case will be heard in English. In places where 90% of the population, including the magistrate and all court officials speak an indigenous language, the language policy has helped speed up the wheels of justice.

74. Research has indicated that the use of interpreters can lengthen court proceedings. In diverse communities some cases can be conducted in four languages. In such cases, every word by witnesses, accused persons, magistrates and attorneys must be interpreted four times. The use of interpreters can often be harmful to cases and get in the way of justice, as the accounts of the accused or witnesses are often loosely interpreted and therefore not accurate.

75. The indigenous language practices will initially be limited to magistrate's courts, as all cases heard in magistrate's courts are automatically subject to review by the High Court. When cases go for review or on appeal to the High Court, the transcript will automatically be translated into English.

Promotion of multilingualism in the health sector

76. The promotion of multilingualism in the health sector, by the NDoH, will allow people greater access to health care. They will be able to access health care in the language they know best. This will allow for a better understanding of important health messages, and for more and wider participation in the health discourse. This measure is part of the emphasis on language services in order to achieve the Government's vision of a long and healthy life for all South Africans.

DOD language policy

77. The Department of Defence (DOD) is shaped by the linguistic diversity of its members, employees and the citizens it serves. Realising its duty to uphold the provisions on language in section 6 of the Constitution, the Department promulgated a departmental policy on language. In this policy, the Department commits to:

- (a) Non-discriminatory language practices;
- (b) The promotion of multilingualism among its members and employees, and the linguistic empowerment of its members and employees, with a view to ensuring its own efficient functioning;
- (c) Regarding linguistic diversity as an asset in its dealings with members, employees and the community at large;
- (d) Applying, wherever possible, the principle of functional multilingualism; and
- (e) Achieving language equity within its ranks.

78. The policy goes on to cover aspects of working language; language of record; policies, orders and instructions issued by the Ministry of Defence, Secretary for Defence and the Chief of the South African National Defence Force; and important documents affecting everyone in the Department.

79. To ensure compliance with the policy, the Department places the responsibility on its members and employees to notify, or promptly bring to the attention of, superiors when a particular policy, order or instruction is not understandable owing to the language used. Furthermore, it places the duty on superiors to respond positively to such requests, failing which, subordinates will be entitled to use the available mechanism to report grievances. Thus, the Department supports multilingualism and the language rights of all its members, employees, and the citizens it serves.

E. Legislation, policies and other measures in place to eliminate discrimination

80. The Government's Programme of Action for 2009 was aimed at: building cohesive, caring and sustainable communities; the pursuit of African advancement; and enhanced international cooperation through the social protection and development of communities, by boosting local economies. This will be achieved by the promotion of, and financial assistance to, rural and agricultural communities through agricultural reform by the Government.

81. The criminal justice system was reviewed in order to achieve sustainable results, reduce crime rates, decrease overcrowding in prisons, and avert and minimise the incidence of repeat offenders. The periodic review of existing legislation to address particular challenges relating to compliance includes the Employment Equity Act 1998, (Act No. 55 of 1998), (EE Act) and the BBBEE Act, which were introduced to bring about and promote equal economic opportunities. The purpose of the EE Act is to eliminate unfair discrimination in the workplace, including dealing with issues relating to the principle of equal pay for work of equal value, and to implement affirmative action measures in order to achieve the equitable representation of the designated groups (i.e. black people, women and people with disabilities) in the workplace.

82. The purpose of the BBBEE Act is to address economic disparities faced by all black people including women, people with disabilities, youth and people from rural areas, which resulted from systemic racism stemming from the apartheid era. Codes were introduced to implement this Act. These codes include the following seven elements that employers are measured on: ownership, management control, employment equity, skills development, preferential procurement, social responsibility and enterprise development.

83. In a bid to achieve a more accountable and responsive public administration service, measures such as the direct hotline to the President's Office for any queries or complaints a member of the public may have against a government department were introduced.

F. Criminalisation of racism

84. No legislation in South Africa supports racism. The Prohibition of Hate Speech Bill, discussed in detail under article 4 of the Convention, is being revised to align it with current forms of discrimination, namely xenophobia and related intolerance. The Government is dedicated to the development of democracy and a non-racial society through various mechanisms that seek to achieve and ensure accountability and transparency for governmental actions. It seeks to attain this by involving the full cross-section of the South African people without undue preference to any race. One of the key stratagems in place is that of public consultations through regular *imbizos* (a forum for enhancing dialogue and interaction between Government and the people), public hearings for legislative developments, *lekgotlas* (a meeting place for village assemblies) and other public engagement, which the Government is involved in from time to time in order to keep its electorate within full purview of government actions.

85. South Africa is a signatory to the European Union (EU) Convention on Cybercrime, and has already promulgated the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), (RICA Act) and the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), (ECT Act) in furtherance of the aims of the EU Convention on Cybercrime, inter alia, to deal with the criminalisation of acts of a racist and xenophobic nature committed through computer systems. This was done in promotion of the Government's objective to end racism, xenophobia and all other related intolerances. It must be pointed out that the ECT and RICA Acts were not primarily designed as tools for addressing racial crimes; they operate primarily to deal with cybercrime and also to provide a framework for lawful communications interception. However, the effect of their provisions is such that they can be used to investigate and subsequently prosecute people who use electronic media to propagate racial crimes. If a person uses emails to propagate racial hatred or discrimination, that person can be tracked by cyber specialists and duly prosecuted for the offence.

IV. Article 3: Condemnation, prohibition and eradication of racial segregation, apartheid and practices of this nature

A. Measures to address de facto segregation

86. In paragraph 13 of the concluding observations, the Committee specifically required the Government to provide detailed information on the measures adopted to address the situation of de facto segregation in the country. In response, the Government confirms the existence of various legislative, policy and administrative measures that have been adopted and form part of the policy framework aimed at eliminating segregation and the social legacy of apartheid. PEPUDA continues to provide the overarching policy framework for eliminating all forms of racial segregation and all forms of discrimination. In the initial report attention was drawn to the fact that even though virtually all laws that directly created or enforced segregation have been abolished, repealing or incorporating the remaining aspects of the Black Administration Act, 1927 (Act No. 38 of 1927), constituted one of the few remaining challenges (see para. 77 of the initial report). Since then, the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005), has been passed. This legislation, among others, repeals the provisions of the Black Administration Act, and amends the Administration of Estates Act, 1965 (Act No. 66 of 1965), to give a Master of the High Court jurisdiction over the property of all minors, including those who are governed by the principles of customary law. These amendments rectify some of the racial prejudices that were being perpetrated by the aforementioned pieces of legislation.

87. Another challenge raised in the initial report was the restructuring of the courts. The shift in the basic law of government in South Africa, from a narrowly sectarian suppressive oligarchy to an inclusive, participative constitutional democracy inescapably resulted in the redefinition of the role of the judiciary. Many of the formal restructuring objectives have been achieved, though several initiatives remain in progress. It is, however, widely accepted that it will be some time before the deprecation of racism ceases to negatively affect both the demographic composition of those who staff the courts and the uneven administration of justice on certain sectors of the population. The courts have their own challenges, amongst which are the shortage of adequately trained staff and a heavy work load. As a consequence of the apartheid policy, a shortage of black candidates leaves the court unrepresentative of the population's composition, especially in higher positions. Thus, ideologically, the majority of the population might lose confidence in the inherited judiciary. The lack of representation of the majority of the population and insufficient training in human rights issues might result in biased judgment. Judicial training seeks to address this problem.

Candidate attorney programme

88. The candidate attorney programme was rolled out in the justice sector. This programme is aimed at creating a skills base of qualified and experienced attorneys, while ensuring that poor communities have access to free legal services. The project is a derivative of the National Youth Service Programme (NYSP) through which the DoJCD aims to support nation building, by involving young people in the delivery of crucial government services.

89. The DoJCD pays the graduates a monthly stipend for 24 months, their practical law school fees, registration of articles and board examination fees to qualify as attorneys after the two-year period. The candidates attend part-time practical law school at the cost of the DoJCD and write their board examination. Through this programme, the DoJCD aims to build a pool of skilled and experienced attorneys that can be recruited.

National youth programmes of the Department of Defence

90. The DOD initiated two programmes to promote youth development, namely the Military Skills Development System and the NYSP. These programmes seek to develop scarce skills in the youth of the country to enable them to contribute meaningfully to the growth of its economy.

Transformation of the legal services

91. The Judicial Service Commission (JSC) and the Magistrates' Commission are two independent bodies that were set up to enhance the effectiveness and strengthen the independence of the judiciary and the magistracy of South Africa.

92. The JSC was established in terms of section 178 of the Constitution and its function is to select fit and proper persons for appointment as judges and to investigate complaints about judicial officers. It also advises the Government on any matters relating to the judiciary or to the administration of justice. In terms of the Constitution, the President, in consultation with the JSC, appoints the Chief Justice, Deputy Chief Justice, President and Deputy President of the Supreme Court of Appeal. The President appoints other judges on the advice of the JSC.

93. The Magistrates' Commission ensures that the appointment, promotion, transfer, discharge of, or disciplinary steps against, judicial officers in the lower courts take place without favour or prejudice, and that the applicable laws and administrative directions relating to such actions are applied uniformly and correctly. The Commission also investigates grievances and complaints about magistrates and submits reports and recommendations to the Minister of Justice and Constitutional Development, who in turn tables them in Parliament. The Commission has established committees to deal with appointments, misconduct, disciplinary enquiries and incapacity; grievances; salary and service conditions; and the training of magistrates. The independence of the magistracy is as important as that of the judiciary for without it there would not be independence and accountability for the judiciary as a whole.

Equality courts

94. The establishment of equality courts was yet another measure by the Government to eradicate racism and racial discrimination. These courts seek to achieve the expeditious and informal processing of cases, which facilitates participation in the proceedings by all parties, and to ensure access to justice to all persons in relevant judicial and other dispute resolution forums.

95. In August 2009, the Minister of the DoJCD designated the remaining magisterial districts as equality courts for their areas of jurisdiction. This increased the number of equality courts to 386 nationally, making equality courts more accessible to communities. The DoJCD undertook a series of initiatives to strengthen and ensure effective functioning of these equality courts. This included provincial *izindabas* (conference, meeting or discussion) and awareness and outreach programmes.

The Truth and Reconciliation Commission Unit

96. The DoJCD established a TRC Unit to implement the recommendations of the Government arising from the TRC hearings, namely reparations, medical benefits, community rehabilitation and exhumations.

97. Reparations to victims and communities are payable from the President's Fund, established in accordance with the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), in terms of regulations made by the President. The Chief

Directorate: Legislative Development (within the DoJCD) supported by the TRC Unit, developed the required regulations in conjunction with relevant government departments.

Final reparations (once-off individual grants)

98. The payment of final reparations has not been completed yet, due to the fact that some beneficiaries must still be traced. Through the years several exercises were embarked upon to trace outstanding beneficiaries or their next of kin, in the case of deceased beneficiaries, but these yielded limited results. However, recent exercises have yielded promising results. At present, a total of 729 beneficiaries are still to be paid. This number is decreasing steadily as more and more beneficiaries or their next of kin are traced and paid.

Medical benefits and other forms of social assistance

99. Regulations on basic education, higher education and training, medical benefits and housing assistance are in various stages of development.

Community rehabilitation

100. A needs assessment will be conducted in communities; the results of which will inform the development of regulations to enable implementation of community rehabilitation measures. The Director-General of the DoJCD has approved that the TRC Unit engages with the Independent Development Trust to act as the implementing agent in this respect.

Missing persons, exhumations and reburials

101. In 2004, a Missing Persons Task Team was established in the NPA to conduct investigations into the approximately 500 cases of persons who disappeared in political circumstances between 1960 and 1994, as reported to the TRC. To date 72 exhumations have taken place, 52 handovers of remains to the families concerned have been conducted and 47 reburials have taken place while five are imminent.

102. In addition to this process, reflecting symbolic reparation, regulations have been promulgated to provide financial assistance to the families. To date, 43 families have received reparations in this respect.

103. The TRC organises and conducts the handover of the exhumed remains to the relevant families during special ceremonies, while a supporting role is played during the reburial process.

104. The TRC Unit also assists families with, among others, obtaining death certificates, applications for special pensions, and once-off reparation grants where applicable. Counselling is arranged where necessary.

B. Progress with respect to the Durban Declaration and Programme of Action

105. Subsequent to the WCAR in Durban, 2001, the South African Government approved the establishment of the NFAR in 2003. The NFAR comprises various stakeholders, including national and provincial government and civil society organisations. The terms of reference of the NFAR include:

- Develop the National Action Plan to combat racism, racial discrimination, xenophobia and related intolerance;
- Monitor the implementation of the National Action Plan;

- Hold meetings with a view to developing and monitoring the implementation of the National Action Plan;
- Raise funding for the purposes of developing and monitoring the implementation of the National Action Plan.

106. The DoJCD established a secretariat as a technical arm of the NFAR. Subsequently a steering committee was set up to spearhead the process of developing the National Action Plan. Once the Plan has been developed, a comprehensive strategy will be in place to deal with racism, racial discrimination, xenophobia and other forms of intolerance. The National Action Plan seeks to set out the responsibilities of the various government sectors in dealing with racism and also the mechanisms for monitoring progress towards the elimination of all forms of discrimination.

V. Article 4: Condemnation and criminalisation of all propaganda based on ideas or theories of racial discrimination

107. Article 4 of the Convention requires, mainly, that States Parties criminalise racism and social discrimination. In South Africa the prohibition and regulation of advocacy of hatred based on race derives its foundation from section 16(2) of the Constitution. Although section 16 guarantees freedom of expression, the formulation in the Constitution makes it clear that advocacy based on race, ethnicity, gender and religion that amounts to incitement to cause harm is excluded from the ambit of this right. Two cumulative elements must be present before an expression can be considered as hate speech: the expression must constitute advocacy of hatred on one of the listed grounds and the advocacy must constitute incitement to cause harm. Section 16(2) of the Constitution is directly supported by section 10 of PEPUDA, which expressly criminalises hate speech in South Africa. In paragraph 14 of its concluding observations the Committee requested the Government to ensure the full implementation of article 4 of the Convention and to adopt effective measures to prevent, combat and punish hate crimes and speech. As may be evident from paragraphs 118-126 of the Initial Report, South Africa's legal system has been deliberately aligned to prevent, combat and punish hate crimes and speech. Below is the detail of some instances that indicate South Africa's commitment towards the elimination of hate crimes and speech.

Examples of South Africa's response to racial propaganda

Case law

108. In *Freedom Front v. South African Human Rights Commission* 2003 (11) BCLR 1283 (SAHRC) 1290 an appeal committee of the SAHRC held that the political slogan "Kill the farmer, kill the boer" was advocacy of hatred. It held that calling for the killing of people because they belong to a particular community or race must amount to the advocacy of hatred unless the context clearly indicates otherwise. It is clear though, that the slogan complained of was also advocacy of hatred based on race or ethnicity, as the term *boer* is clearly recognised to be a derogatory reference to the Afrikaner people of South Africa. The Commission also emphasised that harm for the purposes of section 16(2) of the Constitution cannot be limited to physical harm but must also include psychological and emotional harm. It must be noted that around March 2010 controversy over the song flared up again when the President of the ANC Youth League repeatedly sang the song during public rallies. Several complaints were lodged with the SAHRC. Subsequently, a High Court interdict was obtained banning the further public singing of the song in *AfriForum*

and another v. Malema Case No. 18172/2010. The Court found that the song was an incitement to hate and murder.

109. In *Human Rights Commission of South Africa v. SABC (South African Broadcasting Corporation)* 2003(1) BCLR 92 (BCCSA), the Broadcasting Complaints Commission of South Africa (BCCSA) held that derogatory and inflammatory statements about the Indian population in a Zulu song were advocacy of hatred based on race. The song, according to the Commission, polarised Zulus and Indians by demeaning Indians and insinuating that they were the cause of the poverty of Zulus and were worse than whites. It is also important to note that South African courts, in support of the right to freedom of expression, have recognised that however offensive advocacy of hatred may be, it does not rise to the level of proscribed hate speech until it also tends to incitement to cause harm.

110. In *Ramesh Dharamshee Jethalal v. Mbongeni Ngema and Universal Music* (Case No. 3524/2002, 28 June 2002) the Durban and Coastal Local Division of the High Court declined to extend an interim interdict which prohibited the publishing, marketing, distributing and selling of the song “*Amandiya*” — being track 16 on the CD “*Jive Madlokovu*”. (This is the same song that the Broadcasting Complaints Commission had held to be derogatory and demeaning of Indians). The song had been on the market for three months prior to the granting of the interim interdict. The Court referred to the fact that there had not been a single documented case of violent action by blacks against Indians which could be ascribed to the song during that time, and found that the fear expressed by the applicant that the song would lead to race riots and bloodshed was founded merely on his own opinion and was not borne out by any fact. Although the court had little doubt that the song was racist since it contrasts one race (blacks) with another race (Indians) in a very generalised and unspecific way it emphasised that section 16(2) of the Constitution is not aimed at the advocacy of hatred based on race as such, but at advocacy of hatred based on race which also constitutes incitement to cause harm. Both elements advocacy of hatred based on race, and incitement to cause harm had to be present. Since there had been no violent actions against Indians, the targets of the racist song, the court declined to extend the interdict.³

Prohibition of Hate Speech Bill

111. South Africa has developed a Bill on the prohibition of hate speech (Prohibition of Hate Speech Bill). The Bill expressly recognises the imperatives that emerge from article 4(a) of the Convention and seeks to monitor hate speech while at the same time recognising the values that underline open and democratic societies. The Bill intends to criminalise the participation in, or promotion of, hate speech that is based on race, ethnicity, gender or religion, thereby fulfilling South Africa’s commitment to the elimination of all forms of discrimination. The Government is currently working on a policy to deal with the contemporary manifestations of racism, racial discrimination and other forms of discrimination in line with the theme of the WCAR held in Durban, South Africa, in 2001.

DOD’s Transformation Management Policy

112. This Policy states that the human resources of the DOD will be transformed to reflect the values and aspirations contained in the Constitution. The DOD adheres to the principle of equity and equal opportunities in all practices. It values and manages diversity and in doing so recognises that talent, ability and potential are inherently distributed across

³ The Constitutional treatment of hate speech in South Africa 1 by Christa van Wyk, BA, LLB, LLM, LLD Professor, Department of Jurisprudence, University of South Africa. (<http://www.stopracism.ca/content/hate-speech-south-africa>).

the population. It further strives to eradicate all forms of unfair discrimination within the DOD.

113. In enforcing the requirements and provisions of the Policy, the DOD ensures that any person appointed under the Defence Act 2002 (Act No. 42 of 2002), complies with the provision of section 105 of the Act.

114. This section makes provision for an offence called offensive behaviour. It reads that: “Any member of the Defence Force or employee of the Department whose verbal or physical conduct denigrates, humiliates or shows hostility or aversion to any other person on the grounds of that person’s race, gender is guilty of an offence and liable on conviction to imprisonment not exceeding five years”. The provision of this section criminalises any verbal or physical conduct that, among others, amount to racial discrimination within the DOD.

115. All in all, it must be apparent that South Africa does not condone or in any way encourage the propagation of racist propaganda. (Public authorities are not allowed to promote or incite racial discrimination in any form.) Where instances of racial propaganda have arisen, swift measures to deal with these have always been at hand.

VI. Article 5: Guarantee to everyone the right to equality before the law in the enjoyment of their rights

116. Article 5 of the Convention enjoins States Parties to guarantee the enjoyment of various civil and political rights as well as socio-economic rights to everyone in their territories. In paragraphs 15-22 of the concluding observations the Committee requested the Government to indicate the measures that it has taken to fulfil the various obligations under article 5 of the Convention. Some of the measures that the Government has undertaken are reflected below.

A. Equality and access to justice

117. The Constitution recognises the importance of equal treatment, and all legislation is expressly crafted to comply with the norms of equality and non-discrimination. This is critical because it facilitates access to, and protection of, other rights. The constitutional guarantees to equal protection of the law are manifested in sections 9 and 34. In section 9(1), the Constitution guarantees everyone equal protection and benefit of the law. This is reinforced by section 34, which guarantees the right of access to justice and equality before the law to everyone, regardless of, amongst others, race.

118. Since the demise of apartheid, South African courts have repeatedly faced the question of access to justice. In *Chief Lesapo v. North West Agricultural Bank and Another* 2000 (1) SA 409 (CC), for example, the Court stated that “The right of access to court is indeed foundational to stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy that it causes. Construed in the context of the rule of law and the principle against self-help in particular, access to court is indeed of cardinal importance.”

119. The judicial authority of the Republic of South Africa is vested in the courts. It is a constitutional imperative that the courts be independent, impartial and subject only to the Constitution and the law. No person or organ of State may interfere with the functioning of the courts. An order or decision issued by a court binds all persons and organs of State to which it applies, as was stated in the case of *S and Others v. Van Rooyen and Others*

(General Council of the Bar of South Africa Intervening) 2002 (5) SA 246 (CC). For example, in 2009, a JSC enquiry into the conduct of Western Cape Judge President Hlope brought the question of judicial independence into the spotlight. Judge Hlope was accused of making improper suggestions to two constitutional court judges. In August 2009, the JSC found that Judge Hlope was not guilty of misconduct and allowed him to return to work. The JSC's decision was successfully challenged by the Western Cape Premier, Mrs Helen Zille, on the grounds that the JSC was not properly constituted at the time it heard the Hlope matter. The above cases demonstrate the importance the Government and the South African people in general attach to judicial independence and the rule of law. It shows the extent to which they would go to safeguard this. There is also direct access to the Constitutional Court where an application may be made by friends of the court, or it may also be accessed on appeal from the High Court.

B. Legal aid

120. The Government recognises that it is its duty to ensure that every individual enjoys his or her right to access justice. The State gives meaning to this obligation through its legal aid system. The State endeavours to fulfil its constitutional obligations and to provide access to justice through Legal Aid South Africa, an autonomous statutory body established by the Legal Aid Act, 1969 (Act No. 22 of 1969). Its objectives are:

- To render or make available legal aid to indigent persons as widely as possible within its financial means;
- To provide legal representation at the cost of the State, in accordance with the Constitution; and
- To provide legal services in terms of any cooperation agreement that may be enforced between the board and any other body from time to time.

121. It is accepted that South Africa is a developing country with a limited tax base and many demands on the public purse. In recognition of the financial strains, Legal Aid South Africa prioritised the following areas of service delivery:

- The positive rights to legal aid contained in the Constitution, namely:
 - The right of children to have a legal practitioner assigned to them by the State, and at State expense, in civil proceedings affecting the child, if substantial injustice would otherwise result;
 - The right of detained persons, including sentenced prisoners, and accused persons, to have a legal practitioner assigned to them by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - The right of accused persons to appeal to, or review by, a higher court;
- Vulnerable groups, particularly women and children;
- The landless.

122. Legal Aid South Africa and the SAPS are working together on a system that will allow legal aid applications to be submitted electronically from police stations. This will facilitate easier access to legal representation. In 2009, Legal Aid South Africa extended its national footprint to 62 justice centres and 55 satellite centres.

C. Liberty and freedom of movement

123. In *S v. Coetzee* 1997 (3) SA 527 (CC) the Court held that the State may deprive an individual of his or her liberty only when there is a rational connection between the deprivation and some objectively determinable purpose. The National Health Act, 2003 (Act No. 61 of 2003), for instance, empowers the Provincial Minister of Health to order the detention of a patient for purposes of managing, preventing and controlling a communicable or non-communicable disease; and the Immigration Act, 2002 (Act No. 13 of 2002), permits detention of illegal non-nationals at ports of entry prior to deportation. In *Lawyers for Human Rights v. Minister of Home Affairs* 2004 (4) SA 125 (CC) such detention was found to be justifiable and lawful.

124. Our country is a major economic centre in the SADC and Africa. It therefore attracts a huge flow of immigrants and encounters a number of concomitant challenges, such as illegal entry into the country, identity theft by immigrants, false marriages, competition for employment and basic services and fraudulent acts. Furthermore, we have experienced the emergence of xenophobia in recent years as evidenced by continued violent acts against immigrants. Recognising the dangers that violent acts of xenophobia constitute for the stability of South Africa, numerous efforts have been made to counter xenophobia, including the 1998 Roll Back Xenophobia Campaign. This campaign was launched to raise awareness of the plight and rights of migrants among civil servants or social services providers, the police and immigration authorities. Seminars and training workshops were held to educate the media on these issues, and a campaign on radio and television programmes was conducted to educate the public and promote awareness of the importance of preventing xenophobia. In 2001, the South African Government hosted and chaired the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the WCAR). Despite these efforts, xenophobia remains a problem in South Africa, as evidenced by the violent and fatal attacks of foreigners of African origin in May 2008.

125. These attacks against foreign nationals were followed by a swift response by the Government, especially the police who contained the violence in key hot spot areas and spread of such attacks in other areas. An Inter-Ministerial Committee (IMC), led by the Minister of Police, was set up to address xenophobic attacks. After the outbreak of these xenophobic attacks, 597 xenophobia -related cases were recorded and about 1,700 persons were arrested. In July 2009, statistics indicated significant progress with 197 cases withdrawn by the National Prosecuting Authority, and 131 cases finalised with 82 guilty verdicts and 49 not guilty verdicts recorded. The momentum of the fight against xenophobia since 2008 was maintained and witnessed during the 2010 World Cup hosted by South Africa. Strict monitoring of proliferation of businesses owned by foreign nationals is maintained, including regulation and protection of such businesses.

126. In August 2008, a workshop on refugee protection was conducted in Alexandra. The objective of this workshop was to foster tolerance through an understanding of international legal obligations on protection of refugees. Again in August 2008 a National Social Dialogue consisting of government departments and civil society was convened. The aim of this gathering was to engage public dialogue on identifying strategies for promoting social cohesion. At the end of this dialogue, a declaration was adopted committing various role players for shared responsibility on the elimination of xenophobia through public education; educating immigrants about their rights and responsibilities; strengthening stakeholder partnerships in migration management and combating all manifestations of xenophobia. In 2010, the South African Human Rights Commission released a report on its investigation into the 2008 xenophobic attacks. It was well received by the Government and the public at large.

127. In the main, the Government's response to xenophobic violence revolves around the proactive facilitation of societal dialogue. This has been taking place at various areas in the country and involves the police, churches, community policing forums and non-governmental organisations. Communities are advised to alert authorities in the event of xenophobic attacks. The Government and its agencies are committed to a swift and decisive response towards anyone found to be inciting violent acts against foreign nationals.

128. As required by the Declaration and Programme of Action (DDPA) of the WCAR, South Africa has developed a Plan of Action to address racism and xenophobia. A policy to fight hate crime, racism, racial discrimination, xenophobia and related intolerance has been developed. This will be translated into legislation criminalising these acts. Government has programmes on social cohesion aimed at creating one South African society that is united in diversity and includes foreign nationals. In 2011 a summit on social cohesion was held at Walter Sisulu Square (Kliptown).

129. Recognising the dangers of xenophobia to the stability of society, the Government has launched various initiatives, including an advocacy campaign to raise awareness of the plight and rights of migrants among civil servants/social services providers in the fight against xenophobia. Seminars and training workshops have been held to educate the media on these issues, and a campaign of radio and television programmes was conducted to educate the public and promote awareness of the importance of preventing xenophobia.

130. For example, the DoJCD, together with CoGTA, the NPA and the SAPS, led an initiative to prosecute community leaders and others involved in the xenophobic violence, and to strengthen justice mechanisms to protect the rights of minority and marginalised groups.

131. The Government has also opened up more channels for legal migration, to encourage this and to help reverse clandestine migration. This has contributed towards reducing corruption, labour exploitation and other practices that undermined the rights and welfare of both South African and foreign nationals. For example, in April 2009, the DHA signed an agreement with its Zimbabwean counterparts, removing the need for Zimbabwean nationals to obtain a visa to enter South Africa. Since then, Zimbabwean nationals arriving at any South Africa border with a valid travel document are automatically given a 90-day permit to remain in the country. This permit can be endorsed with the right to work, if the applicant so informs the immigration officer. This has allowed thousands of Zimbabweans to remain in South Africa legally.

132. The DHA has also drafted a counter-xenophobia strategy and immigrant-integration strategy. These strategies propose measures to counter xenophobia and build a strong bond between nationals and non-nationals. The strategies provide a proactive approach in dealing with xenophobia and treatment of foreign nationals. The Department also has an active Counter-Xenophobia Unit that works with national and local organs.

133. The Prevention and Combating of Trafficking in Persons Act (Act No. 7 of 2013) was enacted in July 2013. The Act is intended to give effect to the South African Law Reform Commission's legislative recommendations relating to trafficking in persons by offering protection to the most vulnerable in society against highly organised crime syndicates. The Government acknowledges that the law was fragmented, with low reporting and conviction rates. The legislation is also meant to give effect to South Africa's obligations as a signatory to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

D. Political rights

134. The core constitutional value pertaining to political rights is that of a multiparty democracy based on regular elections, universal adult suffrage and a common voters roll. Shortly before the national election in 2004, the Constitutional Court, in *Minister of Home Affairs and Others v. National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and Others* 2005 (3) SA 280 (CC), upheld an application for an order declaring a section of the Electoral Act, 1998 (Act No. 73 of 1998) that prevented prisoners from voting, to be unconstitutional. South Africans living abroad were able to vote in both the first democratic poll in 1994, and the subsequent national election of 1999. The law was, however, amended in 2004 and hundreds of thousands of South Africans were disenfranchised; the Independent Electoral Commission being obliged to grant special votes only to those who were based outside the country on official business, studying abroad, participating in an international sporting event, enjoying an overseas holiday or on a business trip. On 4 March 2009 the Constitutional Court heard an application for confirmation of an order of constitutional invalidity made by the High Court in Pretoria in respect of section 33(1)(e) of the Electoral Act, and certain regulations promulgated in terms of that Act. These provisions related to the right of registered voters who were not in South Africa on polling day to be granted special votes. In *Richter v. The Minister of Home Affairs and Others (with the Democratic Alliance and Others Intervening, and with AfriForum and Another as Amici Curiae)* 2009 (3) SA 615 (CC) the Constitutional Court held that section 33(1)(e) of the Electoral Act, and the related provisions of the regulations constituted an unjustifiable limitation of section 19 of the Constitution in restricting the classes of registered voters who are absent from the Republic on election day from participating in elections. The consequence of this decision was that the Court had to make an order extending the period within which those who were to be abroad on polling day may notify the Chief Electoral Officer of their intention to do so. The effect of the Court's order was that all South African citizens who were registered voters and who would be abroad on polling day would be entitled to cast their national election vote, provided they gave notice of their intention to do so by a set date.

E. Marriage and family life

Same-sex marriages

135. Anyone who has attained the majority age of 18 years may, regardless of race, ethnic origin or nationality, choose a spouse and enter into a marriage. On 14 November 2006, South Africa's National Assembly approved the same-sex marriage Civil Union Bill. The Bill was signed into law in November 2006 as the Civil Union Act, 2006 (Act No. 17 of 2006). The Act seeks to regulate the solemnisation and registration of civil unions by way of either marriage or a civil partnership and to provide for the legal consequences of civil unions. The Act is in line with the Constitutional Court's judgment in the case of *Lesbian and Gay Equality Project and Eighteen Others v. Minister of Home Affairs and Others* 2006 (1) SA 524 (CC) the Court found that the common law definition of marriage in the Marriage Act, 1961 (Act No. 25 of 1961) was inconsistent with the Constitution and invalid to the extent that it did not permit same-sex couples to enjoy the status, benefits and responsibilities it accords to heterosexual couples.

Forced and servile marriage

136. *Ukuthwala* is the kidnapping of a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations. In ancient Africa, particularly among the Nguni group, *Ukuthwala*

was a condoned, although unconventional, path to marriage targeted at certain girls or women of marriageable age. However, it did not involve raping or having consensual sex with the girl until the marriage requirements had been concluded. The act of *Ukuthwala* was not with impunity; it incurred delictual liability for the culprit in the form of payment of one or more heads of cattle to the father or legal guardian of the girl. The practice of *Ukuthwala* has resurfaced, particularly in the Eastern Cape and KwaZulu, and it increasingly involves the kidnapping, rape and forced marriage of minor girls, by grown men old enough to be their grandfathers.

137. Having sex with a child without her consent, following her kidnapping and abduction as part of the practice of *Ukuthwala*, constitutes rape in violation of section 15 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). That Act, which is known as the Sexual Offences Amendment Act, prohibits sex with a person without their consent. Regarding a child, the age of consent is 16, meaning that sex with any child under 16 constitutes statutory rape.

138. Sex with a child who is 12 years and younger is rape, as a child of that age is legally incapable of consent. The Sexual Offences Amendment Act also prohibits other sexual activities with children (sections 16 and 17), including sexual grooming (section 18). Section 17 of the Act prohibits the sexual exploitation of children by parents and others. Parents, relatives and others who collude in, or aid and assist the *Ukuthwala* of a girl-child commit the crime of sexual exploitation of children. Those parents and relatives also face being charged with trafficking in persons, under section 71 of the Act.

139. According to the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), both the bride and the bridegroom must consent to the marriage and must be above the age of 18 years. If one of the parties is under 18 years of age, parental consent is an additional requirement for a valid marriage. Where this cannot be obtained, permission may be granted by a commissioner of child welfare, a judge of the High Court or the Minister of Home Affairs. However, this is subject to the provisions of the Sexual Offences Amendment Act, which sets the age of consent to sex at 16.

140. The Prevention and Combating of Trafficking in Persons Act provides that parents and relatives who hand over a child into a forced marriage for financial or other gain can potentially be prosecuted (section 4 read with section 1). The Act prohibits the recruitment, sale, supply, procurement, transportation, transfer, harbouring, disposal or receipt of persons by means of the use of threat, force, intimidation or other forms of coercion; or by abusing vulnerability, for the purpose of exploitation. Health-care professionals, social workers, educators, and staff and managers of children's homes have a duty to report the ill-treatment of children and young people in their care. The Children's Act, 2005 (Act No. 38 of 2005) provides that in all matters involving children, the best interest of the child is of paramount importance. It also stipulates the age of consent to marriage as 18 years.

141. In order to address the problem of forced child marriages (*Ukuthwala*), the Government has requested the SALRC to investigate the adequacy of existing laws that are applicable to this problem and to recommend law reform if necessary. The DWCPD has taken the lead role in addressing early and forced marriages of young children in traditional communities through a comprehensive, integrated, intergovernmental approach. In partnership with the UNFPA, the DWCPD is undertaking a study on harmful traditional practices against women and girls. The applicable laws are on inheritance and ownership of property as reflected below.

142. The Government's programmes to address sexual offences and other forms of gender-based violence, and violence against children, focus on prevention, support to victims and improving the responses of the criminal justice system to these crimes. Prevention programmes include the Gender Education Movement implemented in schools

by the Department of Basic Education, and awareness and public education programmes in the Education, Health, Social Development, Police, and Justice Departments. Prevention initiatives are complemented by victim-support programmes implemented in all criminal justice sector departments. Specific programmes and facilities for victims of gender-based violence such as Thuthuzela Care Centres (30), Khuseleka One-Stop Centres and victim-friendly rooms at police stations were also established. Following the enactment of the Sexual Offences Amendment Act in 2007, registers (known as the National Register for Sexual Offenders, and the Child Protection Register) aimed at protecting women and children against sexual offences and abuse were also established.

143. The right to inherit is not expressly provided for in the Constitution. However, cases regarding racial, gender and other forms of discrimination have been dealt with satisfactorily within the existing Bill of Rights and through court decisions. Section 9 of the Constitution, on equality and the right against unfair discrimination, has been the basis of inheritance claims involving discrimination. For example, in *Bhe v. Magistrate Khayelitsha* 2005 (1) BCLR 1 (CC) the intestate succession scheme under the Black Administration Act preventing succession by women and extramarital children was declared invalid. The Act and associated regulations (applicable only to persons governed by “Black law and custom”) were intended to give effect to the customary law principle of male primogeniture. The Constitutional Court declared the Act, the regulations and the rule of male primogeniture invalid, as they infringe on the right to equality.

144. The case of *Shilubana and Others v. Nwamitwa* 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC); raises issues about a traditional community’s authority to develop their customs and traditions so as to promote gender equality in the succession of traditional leadership, in accordance with the Constitution. A woman was appointed to a chieftainship position for which she was previously disqualified by virtue of her gender. The Court was called on to decide whether the community has the authority to restore the position of traditional leadership to the house from which it was removed by reason of gender discrimination, even if this discrimination occurred prior to the coming into operation of the Constitution. The matter also raises issues regarding the relationship between traditional community structures and courts of law envisaged by our constitutional democracy. This Court had to consider how courts of law are to apply customary law as required by the Constitution, while acknowledging and preserving the institution and role of traditional leadership and the functioning of a traditional authority that observes customary law.”

145. The case of *Gumede v. President of the Republic of South Africa and Others* 2009 (3) BCLR 243 (CC) dealt with the unfair customary law rule that women could not own property. Mrs. Gumede brought a claim of unfair discrimination on the grounds of gender and race in relation to women who are married under customary law as codified in the province of KwaZulu-Natal. The case brought into sharp focus the issues of ownership, including access to and control of family property by women during and upon dissolution of their customary marriages. Moseneke DCJ stated that the case “on one level it underlines the stubborn persistence of patriarchy and conversely, the vulnerability of many women during and upon termination of a customary marriage, while at another level the case poses intricate questions about the relative space occupied by pluralist legal systems under the umbrella of one supreme law, which lays down a common normative platform.” The High Court declared that the provisions of section 7(1) of the Recognition of Customary Marriages Act that regulates the proprietary consequences of a customary marriage are inconsistent with the Constitution and therefore invalid.

F. Socioeconomic and cultural rights

Land

146. Although the laws that defined apartheid in terms of geographical separation no longer exist, the historical reality of apartheid in South Africa continues. Through legislation such as the Native Land Act, 1913 (Act No. 27 of 1913), the Group Areas Act, 1950 (Act No. 41 of 1950), and the Urban Areas Act, 1923 (Act No. 21 of 1923), all blacks were prevented from buying land outside the reserves and they could never acquire land in white areas.

Housing

147. The right to adequate housing and to acceptable living conditions is entrenched in the Constitution. The case of *Government of the Republic of South Africa and Others v. Grootboom and Others* 2001 (1) SA 46; 2000 (11) BCLR 1169 (CC) dealt with the practical application of the Constitutional right to housing. Yacoob JA stated that “Mrs. Irene Grootboom and other respondents were rendered homeless as a result of their eviction from their informal homes situated on private land earmarked for formal low-cost housing. They applied to the Cape of Good Hope High Court (the High Court) for an order requiring the Government to provide them with adequate basic shelter or housing until they obtained permanent accommodation and were granted certain relief. The appellants were ordered to provide the respondents who were children and their parents with shelter.”

148. The Department of Housing has taken significant steps in addressing the inequalities that existed in the past as a result of race and gender discrimination. Various regulatory measures have been put in place to encourage financial institutions to extend credit to historically disadvantaged groups. One of these measures is the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000).

149. South Africa has put in place policies that increase historically disadvantaged groups’ access to credit to ensure that they are empowered economically. In addressing the needs of the poor for housing and shelter, the Rural Housing Loan Fund has been established to provide loans through intermediaries to low-income households for incremental housing purposes. Incremental housing is a people-driven process that seeks to empower low-income families in rural areas to access credit, to improve their homes or to build homes. The subsidy beneficiaries must contribute towards achieving access to the benefits of the housing subsidy. As of April 2002, all subsidy beneficiaries, except beneficiaries of rural subsidies, were required to make a contribution of R2 479,00. People with disabilities requiring reasonable accommodation have access to a top-up subsidy to compensate for the additional cost of housing.

Health care

150. The Constitution guarantees equitable access to healthcare services, regardless of race. The White Paper on Transforming Public Service Delivery, also known as the *Batho Pele* White Paper recognises that all citizens should have access to the services to which they are entitled. The policy on universal access to primary health care was introduced in 1994 and had a major impact on the landscape of health care programmes in South Africa. This policy promotes access to medical services by providing free health care to, inter alia, pregnant and lactating women, and children under the age of six. This policy is meant to benefit everyone in South Africa but even more centrally it aims at helping previously disadvantaged communities.

151. The NDoH has identified several areas of concern, including the implementation of the National Strategic plan for HIV and AIDS and the improvement of maternal, child and

women's health and nutrition. The Government acknowledges that sexual and reproductive health is one way of attaining health and a better quality of life. Consequently, a Plan of Action for the Continental Policy Framework for Sexual and Reproductive Health and Rights was developed in 2007, whereby areas of concern were identified and strategies implemented. The Plan addresses, inter alia, unsafe abortion and the delivery of quality and affordable services in order to promote safe motherhood, child survival, maternal, new born and child health. Reproductive health and peer education programmes focus on access and activities such as family planning advice, access to contraceptives and the choice on termination of pregnancy.

152. The South African National AIDS Council (SANAC) was formed in January 2000, replacing the Inter-Ministerial Committee (IMC), which was at the time the first high-level political body tasked with providing guidance, leadership and political oversight on HIV and AIDS. SANAC was established in recognition of the need for stronger political leadership, and meaningful participation of all sectors of civil society, in the coordination and monitoring of a multisectoral national response to HIV and AIDS. In September 2006, the IMC was revived in order to strengthen the national response to HIV and AIDS, improve coordination and communication, and monitor implementation.

Poverty reduction and social services

153. "Poverty bears a disproportionately female face. The proportion of women-headed households has increased, with female-headed households accounting for a larger share of poverty than their share in the population. In 2005, more than half of the individuals considered poor in terms of both the R322 and income levels R174, lived in female-headed households. In contrast, only about 43% of the population lived in female-headed households." Income poverty experienced by women is associated with insufficient earned income. It reflects the high rate of unemployment of women; or low wages as a result of low skill and education levels, and in some instances gender discrimination. Income poverty therefore tends to be reproduced as a disproportionately female problem. Second economy interventions and measures introduced by AsgiSA and Jipsado have positive impact for women.⁴

154. However, these interventions and measures need to be extensively scaled up to have a lasting and substantial impact on the quality of life of the targeted groups. "Social security assistance in the form of social grants has been highly effective in reducing poverty and promoting social development and health. It has been a key driver in reducing poverty, particularly among the targeted groups. Of the 12 million grant recipients in 2007, the CSG accounted for eight million, the Foster Care Grant for 450,000 and the Care Dependency Grant for 100,000. In other words, these three child-grants accounted for 70% of all beneficiaries. At least 90% of adult beneficiaries of the CSG were women, most of them between the ages of 27 and 33 years. The distribution of food packages to needy households as part of the Government's food security programme reached 66,000 households during the last financial year" (2008).

155. The South African Social Security Agency (SASSA) has managed to reach 1,273,077 children aged 14 to 17 through the Child Support Grant (CSG). This is an increase of 48,934 from the October 2010 dataset, representing a 4% increase. The number of grants in payment increased from 13,072,173 in 2008/09 to 16,106,110 in 2012/13, reducing poverty amongst 30% of the population. Women form a large proportion of those whose wages have been increased as a result of sectoral determinations in sectors where the vulnerability of workers is high, such as domestic work and farm work. The table below

⁴ <http://www.lamosa.org.za/Historical%20Context.htm>.

reflects the number of social grants and growth by grant type during the first quarter of the 2010/11 financial year.

Table 5
Trends in the total number of grants in payment from 2006, when SASSA was established, to end of financial year 2012/13

<i>Grant Type</i>	<i>2006/7</i>	<i>2007/8</i>	<i>2008/9</i>	<i>2009/10</i>	<i>2010/11</i>	<i>2011/12</i>	<i>2012/13</i>
Care Dependency	98,631	102,292	107,065	110,731	112,185	114,993	120,268
Child Support	7,863,841	8,189,975	8,765,354	9,570,287	10,371,950	10,927,731	11,341,988
Foster Child	400,503	454,199	474,759	510,760	512,874	536,747	532,159
Old Age	2,195,018	2,229,550	2,390,543	2,546,657	2,678,554	2,750,857	2,873,197
War Veteran	2,340	1,924	1,500	1,216	958	753	587
Disability	1,422,808	1,408,456	1,286,883	1,264,477	1,200,898	1,198,131	1,164,192
Grant in aid	31,918	37,343	46,069	53,237	58,413	66,493	73,719
Total	12,015,059	12,423,739	13,072,173	14,057,365	14,935,832	15,595,705	16,032,391

156. People with disabilities, in particular black women and children, are more vulnerable to the impact of poverty due to the attitudinal, physical and communication barriers they experience, as well as the additional financial costs associated with disability. In compliance with article 1 of the Convention on the Rights of Persons with Disabilities (CRPD), South Africa has some of the most comprehensive legislation and policies protecting and promoting the rights of people with disabilities in the world. Discrimination on the basis of disability is prohibited by the Constitution. In order to ensure the practical realisation of the rights enshrined in the Constitution, the Government has initiated the development of a framework for the review of policies focusing on access to justice, employment, assistive devices and reasonable accommodation. The purpose of the framework is to find and amend existing laws, regulations, customs and practices that are discriminatory against persons with disabilities. This process will involve various categories of disabilities and will infuse gender and age-based considerations to cover women, and boys and girls with disabilities in the development, implementation and evaluation of the framework. Policies and systems such as the Technical Assistance Guidelines on the Employment of Persons with Disabilities (TAG) 2000, developed by the Department of Labour (DOL), have been put in place. This policy states that the aim of reasonable accommodation should be to reduce the impact of impairment on a person's capacity to perform the essential functions of the job. Reasonable accommodations are seen as modifications or alterations to the way a job is normally performed, making it possible for a suitably qualified person with a disability to perform as optimally as everyone else. It is further noted that the type of reasonable accommodation required would depend on the job and its essential functions, the work environment and the person's specific impairment. A hand book on Reasonable Accommodation for Persons with Disabilities has been developed by the Department of Public Service and Administration. It provides the following guidance on reasonable accommodation in the workplace:

- Accommodation is always made according to the particular needs of the individual concerned and the nature of the essential requirements of the job;
- Reasonable accommodation must be reasonable to both the employee and the employer, and can be interpreted in terms of the accommodation not creating or causing an unjustifiable hardship to either party;

- The purpose of ensuring reasonable accommodation for people with disabilities is to remove barriers and promote equal access to opportunities;
- The employee has an obligation to indicate to the employer what his or her needs are; and the employer has an obligation to provide for these needs in a cost-effective manner;
- These specific needs must be discussed with the employee after the offer of employment has been made and accepted by the employee, but preferably before the commencement of duties;
- An employer is obliged to provide reasonable accommodation when an applicant or employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the employer;
- Reasonable accommodation must be budgeted for as part of the organisation's operational requirements rather than as a special action.

157. Government's outreach programmes were used as a significant vehicle to raise awareness of the CRPD in rural parts of South Africa. These initiatives, namely Taking Parliament to the People, and *imbizos* are aimed at listening to the concerns of all members of a local community — including people with disabilities. Every year the Minister of Justice and Constitutional Development participates in at least two major *imbizos* in the most rural part of the country. Responses to public questions concerning disability are based on the CRPD. For ease of access, mobile services for Home Affairs, Social Protection, Health, Labour and the National Youth Agency are required at such events for those who would normally find it difficult to access services. To raise awareness and increase capacity within provincial government, two South African Sign Language training sessions were conducted in Bloemfontein with 40 front-line officials. There was also skills training on disability management in the workplace in six provinces for 150 human resource managers.

158. After assuming office, the Government established its economic policies in the 1992 Ready to Govern blueprint, and the RDP of 1994, among others. Key economic objectives were job creation, the elimination of poverty, the reduction of inequality and the overall growth of the wealth of the country. Chief among the tools used were macroeconomic stability, steady trade reform, and improved trade access in the context of a strong multilateral system; industrial policies to add domestic value, increase competitiveness and improve productivity to encourage exports; encouragement of foreign direct investment; strong policies to improve competitiveness and roll back white minority control of the economy; encouraging small, medium and macro enterprises, especially black-owned companies to promote skills development, including occupational skills and adult basic education and training (ABET).

159. During 1996/97, in order to deal with the inherited fiscal crisis as well as new difficulties pertaining to currency volatility and low investor confidence, the Growth and Redistribution Programme was introduced to further elaborate on the idea of macroeconomic stabilisation that was inherent in the RDP. While enormous challenges still lie ahead, these measures explain how the tide was turned from an unviable, internationally isolated apartheid economy into an economic environment that created jobs and contributed to poverty alleviation. For example, between 2004 and 2007, the economy grew by an annual average of 5% and created an average of half a million jobs per annum.

160. Access to basic services by historically excluded citizens was increased. For example, the percentage of households with access to sanitation increased from 48% in 1994 to 73% in 2001. In 1994, 30% of households in South Africa had access to electricity and in 2007 this percentage increased to 80% for lighting, 67% for cooking and 59% for

heating. This translates to 3,8 million households. Significant progress was recorded in the provision of adequate sanitation through the implementation of the rigorous bucket eradication programme. By the end of December 2007, 81% of the 252,254 bucket toilets identified in February 2005 were replaced. The bucket sanitation system was eradicated from formal settlements in March 2008. However, more remains to be done for the scars of apartheid to completely disappear from the social face of South Africa.

Education

161. Compulsory education for children aged seven to 15 years has increased participation in the education system and the percentage of children with some secondary education. Gender parity in education is being attained. Female learners are tending to perform better in primary and secondary schooling than their male counterparts. However, the comparatively higher repetition rate among boys in primary schools and the smaller number participating in or completing secondary schooling is a growing problem that needs addressing. Further education and training (FET) institutions were established in 1998 and these colleges are increasingly used as an alternative form of schooling. They play a critical role in vocational skills development.

162. Many young people face financial constraints to furthering their studies; therefore, the Government assists learners from poorer families through the National Student Financial Aid Scheme. In 2007, R1.3 billion was allocated to the scheme. In 2011, the reach of the FET colleges bursaries tripled and R1.235 billion was made available to financially needy, yet academically capable students. This means that eligible students from poor and working class households enrolled in higher education and further training.

163. Women outnumber men in higher education, suggesting that awareness of the benefits of education is increasing among girls and young women, recognising that education opens economic opportunities for an improved quality of life. However, gender disparities are still evident regarding adult literacy. While literacy is increasing overall, more female adults (12.1% in 2007) than males (8.4%) have no schooling at all. As at 2011, the adult literacy rates were: males — 87.2%; females — 86.9%. Improved access to ABET programmes by women and the mass literacy campaign, *Khari Gude*, should improve the situation. The campaign began in April 2008 and aims to help 4,7 million people achieve literacy by 2012. It is noteworthy that the functional literacy rate of 15 to 24-year-olds increased from 88% in 2002 to 91% in 2009.

164. Another literacy improvement campaign is *Asifunde!* (Let's read). The *Asifunde!* project began in response to the September 2000 call for a literacy campaign. It was a joint initiative of the Centre for Adult Education, other member organisations of the KwaZulu-Natal ABET Consortium and the South African Institute for Distance Education (SAIDE). It was funded by the Department for International Development (DFID), UK. Materials for *Asifunde!* consist of a Learner's Workbook designed for learners to work through at their own pace and to take them from their first encounter with print in their mother tongue to a point where they can use newly developed literacy skills in a range of situations outside the classroom. It includes exercises in which the use of the literacy and numeracy skills they have learnt is simulated in a range of everyday contexts such as reading notices, writing letters, completing forms, comparing prices and resisting being coerced into signing a detrimental agreement.⁵

165. The transition from youth to adulthood is by nature complex and difficult. Without relevant institutions and pathways that provide broader life chances, such as the educational

⁵ <http://cae.ukzn.ac.za/Resources/Asifunde.aspx>.

system, many young people are marginalised and, in their lack of hope and inability to reason, see violence, crime, substance abuse and involvement in various undesirable behaviours as their only recourse. The involvement of young people in illegal activities results in criminality being engraved in their behavioural patterns. They are initiated and hardened into adulthood by the criminal world. The Department of Correctional Services reports an increase in the number of juveniles serving lengthy sentences for violent crimes. High levels of youth unemployment and a high rate of young offenders in prison are reflections of serious deficiencies in the education system and the economy. Those who drop out of school before completing their senior secondary education pose the most problem. They are unable to participate in the economy. There are few educational institutions to cater for them. They cannot make it in self-employment as evidence shows that success in this sector is associated with high levels of education and work experience.

166. The establishment of the SRPP Unit involves a deliberate attempt to engage communities by using organised representatives from communities. Skills development is promoted by Natural Resource Management Programmes such as the social development programme that has set targets for the number of beneficiaries, namely 60% women, 40% youth and 2% people with disabilities.

167. The SRPP has set an employment target with purposive selection of the projects' participants, because participants benefit directly through work and skills development opportunities. The projects include Working for Water, Working for the Wetlands, Working for Fire, and Working for Land. A total of 6,504 beneficiaries, mainly women, have received accredited training in the following fields: hospitality, conservation, agriculture, horticulture, masonry, tiling, painting, construction and plumbing, field rangers, and conservation assistants. Certificates and attendance credits have been awarded to all participants that attended the training interventions.

168. The DEA recruited 50 learners from 4 high schools in the rural area of Hammanskraal, Pretoria, to participate in an empowerment programme. The project was an innovative approach to empower learners of both genders in grades 9 and 10 on the thematic areas of water conservation and the environment. Since the environment and water sector career paths are considered scarce skills, it was deemed appropriate to expose learners to these field with the aim of establishing a firm foundation towards developing their consciousness of the career path; thus ultimately addressing the challenge of job creation. Central to the project was shifting the mindset; learners were encouraged to change their thinking about the way they relate to the environment. The approach enhanced the efforts to educate and create awareness on the thematic areas of the environment and water sectors. Learners were taken on educational excursions to the SAWS, the SANBI and various construction and waste management sites. At SAWS they were exposed to various instruments utilised for meteorological observations and weather forecasting; at SANBI they learned about various medicinal plants and herbarium. They were also briefed on dam construction and various careers in the water sector and on waste sorting techniques and technologies.

169. According to the Integrated Youth Development Strategy of South Africa (IYDS), 2011-2021, Economic participation of youth in South Africa is poor and characterised by high unemployment and poor entrepreneurial levels. Unemployment amongst youth is estimated to be above 70% compared to the older population groups at about 25%. The high rate of youth unemployment is more pronounced in the age group between 15 and 24. This pattern of unemployment has been consistent over a number of years with both African and Coloured youth mostly affected by unemployment. Unemployment is arguably not only a function of the ability of the economy to absorb labour, but it is also a function of the level of education and work experience of young people.

170. The DEA, in an effort to address the unemployment of youth, hosted 50 unemployed youths between 20 and 22 June 2012. The unemployed youths were empowered with information and opportunities in the waste management sector in order for them to ultimately generate income and create employment through cooperatives. The youths were taken for an educational excursion to Collect-a-Can where they received intensive information on business and income generating opportunities from collecting and recycling cans. Collect-a-Can is a recovery based company which aims to minimise the negative impact of used metal cans on the environment. Collect-a-Can's shareholders are Arcelor Mittal South Africa (Africa's major steel producer and producer of tinsplate for steel cans) and Nampak (Africa's largest packaging company and beverage can manufacturer).

Sport and recreation: The 2010 FIFA World Cup

171. The Apartheid government issued a Proclamation in February 1965, under the Group Areas Act, prohibiting any mixed sports or even mixed audiences, except by permit. (Until then, segregation in sport was by "custom", not law). Because of this blatant intervention and repression by the Government, the United Nations General Assembly decided, in 1968, to call upon all States and organisations to suspend sporting exchanges with South African bodies which practise apartheid. The UN Special Committee against Apartheid began actively to promote the sports boycott all over the world. Apartheid became a major public issue in countries with which South Africa sought sports exchanges.

172. The South African Council on Sport (SACOS) was established in 1973 as a non-racial sports federation. Its declaration that there could be "no normal sport in an abnormal society" was a powerful antidote to the propaganda of the apartheid regime and the manoeuvres of white sports bodies which made false claims of non-discrimination.⁶

173. South Africa was suspended from [FIFA](#) in 1961. [Stanley Rous](#), FIFA's President at the time, negotiated its reinstatement in 1963. The South African Football Association proposed entering an all-white team in the [1966 World Cup](#) and an all-black team in the [1970 World Cup](#). This proposal was rejected, and South Africa was again suspended from FIFA in 1964.

174. The Government recognises participation in sport and recreation as a fundamental human right and acknowledges that sport has the potential to build social cohesion and national unity. The Department of Sport and Recreation South Africa (SRSA) is responsible for developing and implementing national policies and programmes regarding sport and recreation in the country. The SRSA's objectives and key strategic areas are to broaden the base of South African sport within an integrated development continuum and to improve the national and international performances of our athletes.

175. In South Africa, we have experienced how sport can be an inspiring force for peaceful change, as seen during the 1995 Rugby World Cup. In many ways this sporting event began the process of healing and unifying all South Africans after the first democratic elections in 1994. After South Africa's victory over the New Zealand All Blacks in the final, former President Nelson Mandela — in a green Bok jersey and cap — presented the winning trophy to the Springbok captain, Francois Pienaar, in front of thousands of cheering fans of all races. This event was a major turning point in the healing process of post-apartheid South Africa.

176. South Africa experienced the spirit of peace and reconciliation as never before, 15 years later during the 2010 FIFA World Cup, the 19th FIFA World Cup (the world championship for men's national association football teams), which was held in South

⁶ <http://scnc.ukzn.ac.za/doc/SPORT/SPORTRAM.htm>.

Africa from 11 June to 11 July 2010. The matches were played in 10 stadiums situated in nine host cities around the country. The final was played at the Soccer City stadium in South Africa's largest city, Johannesburg.

177. A year before the 2010 FIFA World Cup, the Confederations Cup was held in South Africa. The sport movement, in conjunction with the South African Football Players' Union and international agencies such as Football Against Racism in Europe and the International Federation of Professional Footballers, ran an international campaign known as Show Racism the Red Card during these major football spectacles that were broadcast across the globe and on an ongoing basis thereafter. That campaign was complemented by similar international campaigns, such as "Kick Racism Out". The campaigns have been very successful in highlighting the phenomenon of racism in football, in particular, and sport, in general, and the global need and support for this practice to be eliminated. At all major international football matches held in the country the two opposing captains read a declaration against racism. (A Government Minister serves as the official ambassador of this campaign.)

178. The legacy of the 2010 FIFA World Cup stretches beyond the obvious tangibles such as the stadiums, roads, airports, and the new equipment acquired for the police, emergency medical services and other government service points. South Africans, irrespective of gender, colour, political affiliation or class, united behind the national football team and national symbols as never before. The sea of green and gold that greeted spectators at football matches inspired national pride and confidence.

179. We saw young South Africans — proudly wearing their national colours — singing and blowing their vuvuzelas outside Soccer City. This is the same Soccer City near Soweto that in the past would have been called a no-go zone, due to the compartmentalisation of residential areas, and even sports, as a legacy of apartheid. Very vividly, sport demonstrated its power in social cohesion.

180. The updated White Paper on Sport and Recreation (2011) states that "since democracy in 1994 we still have a sporting environment where there is a skewed picture of sporting facilities and opportunities. As a Government we have to correct this and ensure that our national teams are representative of the total South African population. To have a real and lasting impact on our nation we cannot compete with the exclusion of certain parts of our population. With true transformation, as a country, South Africa could become an even greater force in world sport as more people have the opportunity to compete and excel."

181. SRSA developed the first ever National Sport and Recreation Plan for the country that was adopted by the South African sporting sector in November 2011. The Plan was formulated within the framework of non-racial, non-sexist and democratic principles as enshrined in the Constitution. In all the activities, as outlined in the National Sport and Recreation Plan, special emphasis is put on the inclusion, empowerment and promotion of Government's priority groups, namely the youth, the aged, women, rural communities and people with disabilities.

182. Linked to the National Sport and Recreation Plan is a Transformation Charter that is formulated to bring about the establishment of a competitive and demographically representative sport system. This system will be guided by a value set based on equal opportunity, fairness, just behaviour, equitable resource distribution and empowerment. A multidimensional transformation score card will be used to implement, manage and monitor sport's transformation.

183. It is indeed true that the essence of a sport transformation strategy has to be multidimensional and focused on changing demographic profiles on and off the field of play, ensuring equitable access and resource availability, skill and capability development.

The transformation strategy aims to engage the South African society on the broadest possible basis in such a way that it impacts the quality of life within communities.

184. An Eminent Persons Group has been appointed by the Minister of SRSA to serve as an independent advisory committee on matters of transformation in sport and recreation. This should ensure that appropriate monitoring and evaluation of the status of transformation in the sport and recreation sector occurs.

185. The Transformation Charter will enable sport to re-position itself on the basis of the principle of empowerment while at the same time making a substantial contribution to South African society. Transformation, correctly defined and utilised, is a powerful tool not only to correct injustices of the past but also to establish a sustainable competitive advantage targeted at enhancing overall competitiveness globally.

186. On 17 March 2005, the Minister of SRSA and the Minister of Education signed a framework for collaboration with the overall objective to coordinate the delivery of school sport. The Framework was based on the understanding that the transformation of school sport in ordinary public schools is embedded in the transformation of sport and recreation in the entire country. Fundamentally, the Framework recognised the importance of access to sport for all learners and identified the following as key challenges that had prevented the development of school sport in apartheid South Africa:

(a) The limitation on the participation of schools from disenfranchised and rural communities, especially girls, and youth with disabilities;

(b) The backlog in the provision and development of appropriate, safe and secure facilities for sport and recreation in disadvantaged communities, and the improvement of access to existing facilities, especially for youth and people with disabilities;

(c) The lack of participation by educators and learners in ordinary public schools, especially those situated in townships, rural areas, informal settlements and farms, in recreational and competitive school sport programmes;

(d) The constraints related to the provision and capacity of educators involved in sports programmes.

187. In 2011, through ongoing consultation with all stakeholders in school sport, the Government prioritised the National School Sport Programme to deliver on a sustainable legacy to provide school children the opportunity to take part in organised sport through the creation of an accessible and implementable school sport support system. The Government, together with sports federations, school sport code committees and business, is working to deliver a predictable programme of organised activities so that all learners have:

- Access to ongoing league programmes;
- Talent identification and development;
- Coaching to improve skills;
- A choice of different sports;
- Access to sports resources.

188. The school league programme, which culminates in national schools finals, is fully inclusive of learners of both genders from all public schools across South Africa, including learners with disabilities.

189. The sports capacity building programme is aimed at training educators from all public schools as coaches, technical officials and team managers to facilitate the delivery of the school sport programme in schools in disadvantaged communities and to increase the number of skilled and qualified black sports persons in the country.

190. The school sports programme is underpinned by values such as integrity, inclusivity, excellence, respect, fair play, quality delivery, professionalism, ethics, accessibility, capacity development and social cohesion, which include norms and values as enshrined in the Constitution of the Republic of South Africa.

Current situation

191. Over the past 10 years, SRSA has introduced three programmes that aim to use sport to develop communities, namely:

- The Siyadlala Community Mass Participation Programme;
- The School Sport Mass Participation Programme;
- Women in Sport.

The Siyadlala Community Mass Participation Programme

192. This Programme was launched in 2004 with the expressed aim to address some of the social ills and challenges that the poorest of the poor communities face in South Africa. The Programme was implemented in 36 hubs in 2004 and has since grown to 512 hubs in 2011. A hub can be described as a centre where activities take place within walking distance for communities. SRSA started with seven activities: aerobics, general gymnastics, athletics, big walks and fun runs, street soccer, street basketball and indigenous games. The Programme now has more than 14 different activities and participation from both young and old is encouraged with the aim of making more people more active more often.

193. Volunteers, who are mainly unemployed youth, deliver the programme. They receive extensive training and receive a monthly stipend.

The School Sport Mass Participation Programme

194. SRSA implemented a school sports programme involving six sporting codes in 1,000 of the poorest schools in 56 clusters across the country. With the new strategy on school sport this number has increased to over 15,000 schools taking part in the Programme. The Programme focuses on the following:

- Capacity building, which includes training of educators and volunteers as coaches, referees, judges and technical officials;
- Supply of equipment and playing attire/kit, including essential equipment that is necessary for the Programme, and sustainable intra- and interschool leagues.

Women in sport

195. SRSA addresses the gender imbalances in sport and recreation at participation, administrative and official level. The specific objectives of the Programme are: gender mainstreaming, sustainable programmes through tested practice initiatives, access to resources, participation in capacity building (skills development), and developing mentorship programmes.

196. Awareness campaigns include the celebration of women and sport in the month of August. This is done through seminars, sports and recreation festivals. Rural road shows on breaking barriers in leadership and cultural constraints are regularly organised. Efforts are also made to use media portrayal of women, and sport opportunities available to women, to raise further awareness.

197. Delivering sport and recreation in impoverished communities, where unemployment is often as high as 80%, places severe strain on resources. The dependency on government

provision, leadership and funding is very high. Despite the benefits of community and human development, expectations for access to elite sport, and thus sport development, remains a challenge. Access to participation is strained due to the lack of affordable public transport, and of facilities; youth in the rural areas also do not have proof of age and identity documents (ID). Provision of the Programme needs to be comprehensive, with community consultation and buy-in for it to be sustainable. A main obstacle is the timely payment, delivery and replacement of equipment at community level.

198. Education and training may enhance the employability of volunteers, and coaches need to be facilitated by the Government and other stakeholders. Federations, non-government organisations and sports academies assist with coaching and training programmes. Accredited courses at regional level by approved service providers seem to be essential. Vocational training and “learnerships” seem to be a viable option. Absorbing trained volunteers into the government sector provide an avenue for career advancement and sustainable human development.

199. The structuring of community-based and multi-coded sport clubs is an effective strategy by trained activity coordinators who often came up with innovative and entrepreneurial strategies to raise funds and recruit members. Government and other strategic partners are responding with relevant training and assistance to establish clubs and run community, regional and national events for participants.

VII. Article 6: Effective protection and remedies against any acts of racial discrimination

200. Regarding articles 6 and 7 of the Convention, the Committee, in its concluding observations, requested the Government to provide information relating to, among others, the measures in place to eradicate all forms of ill-treatment of non-citizens in South Africa. The Committee also sought information on how the Government has dealt with offences relating to racial discrimination and the reform of the criminal justice system in order to prevent all forms of racial discrimination (paras. 23–27). Set out below are some of the steps and interventions that the Government has put in place.

A. The protection of non-nationals against racially motivated violence

201. South Africa has legal frameworks on immigration with standards surpassing those of the United Nations. The country is a major economic hub in the SADC and Africa, thus attracting a huge flow of immigrants. Like many countries, South Africa is experiencing a serious strain on resources due to the economic depression that started in 2008. The lack of adequate resources and slow economic recovery makes it difficult for the Government to create jobs and deliver basic services to the poor at the rate and scale required to meet the demand. This results in strained relationships between South Africans and non-nationals as they are competing for scarce job opportunities and basic services. In some instances this leads to attacks on non-nationals, which are described as xenophobia. Attacks on non-nationals have also been motivated by criminality, of which South African citizens have also been victims.

202. As stated in the initial report, the SAHRC, for example, has recognised that xenophobia is a threat to human rights and democracy in the country. Therefore, the Commission launched the Roll Back Xenophobia (RBX) Campaign. Under the RBX Campaign the Commission together with other agencies has attempted to disseminate the message that hostility towards non-nationals is not acceptable in South Africa. The

Congress of South African Trade Unions (COSATU), the country's largest trade union, has also unequivocally spoken out against xenophobia.

203. In August 2008, a workshop on refugee protection was conducted in Alexandra. The objective of this workshop was to foster tolerance through an understanding of international legal obligations on the protection of refugees. During that same month a national social dialogue consisting of government departments and civil society was convened to engage the public in identifying strategies for promoting social cohesion. At the end of this dialogue a declaration was adopted committing various role players to the shared responsibility of eliminating xenophobia through public education; educating immigrants about their rights and responsibilities; strengthening stakeholder partnerships in migration management and combating all manifestations of xenophobia. In 2010, the SAHRC released a report on its investigation into the 2008 attacks against foreigners. The broad initiatives by the Government to improve the delivery of basic services, fight crime and corruption, and facilitate social cohesion partly respond to the recommendations made in the SAHRC's Report.

204. In particular, this can be seen in the pro-active facilitation of social dialogue that has been taking place in various areas of the country and involve the police, churches, community policing forums, non-governmental organisations and civil society. Communities are advised to "blow the whistle" in the event of xenophobic attacks. The Government and its agencies are committed to a swift and decisive response towards anyone found to be inciting violent acts against foreign nationals.

205. As required by the Durban Declaration and Programme of Action of the WCAR, South Africa has developed a plan of action to address racism and xenophobia. A policy to fight hate-crime racism, racial discrimination, xenophobia and related intolerance has been developed; this will be translated into legislation criminalising these acts. The Government has programmes on social cohesion aimed at creating one South African nation united in diversity, which includes foreign nationals. In 2011 a summit on social cohesion was held at Walter Sisulu Square in Kliptown.

206. The attacks against foreign nationals were dealt with swiftly by the Government, especially the police who contained the violence in key hot spots and the spread of such attacks in other areas. An IMC, led by the Minister of Police, was set up to address attacks on non-nationals.

207. Since the outbreak of xenophobic violence in May 2008, 597 xenophobia-related cases were recorded and about 1,700 persons were arrested regarding these cases. In July 2009, statistics indicated significant progress, with 197 cases withdrawn by the NPA, and 131 cases finalised with 82 guilty verdicts and 49 not guilty verdicts. In response to the issue of discrimination against non-nationals in South Africa, it should be noted that the DHA conducts public education and training for schools, communities and immigration officers. The education programmes cover human rights, refugee protection and immigration issues. The aim is to promote a human rights culture and to enhance mutual understanding between host communities and immigrants.

208. Public education on immigration, refugees and human rights is also presented in schools around the Gauteng Province. The public education programme, Operation *Umbano* (togetherness), was piloted in 21 schools from September to October 2009. It focused on patterns of migration, refugees, *ubuntu* (a spirit of kinship across both race and creed that unites mankind in a common purpose), manifestations of xenophobia, the Constitution, and human rights. This public education was conducted in various local languages to increase the target audience.

209. The Government has also established a unit within the DHA to prevent and counteract xenophobia within its immigration services. The Counter-Xenophobia Unit

sensitises officials about xenophobia and actively raises awareness within communities across the country and with all stakeholders about xenophobia. The Unit educates communities and organs of civil society on the rights of non-nationals in South Africa, irrespective of whether the non-nationals are in the country legally or not. The focus of this education is the prevention of any manifestations of xenophobic violence in the country. The DHA has prepared an Integration Strategy that is awaiting Government approval. Since 2008, the SAPS together with the United Nations Human Rights Commission (UNHRC) have been developing an early warning system for crimes and threats against non-nationals. The Crime Intelligence Division of the SAPS makes regular assessments in respect of xenophobia so that all police departments at provincial level can be properly alerted.

210. As part of its efforts to address issues around social cohesion and xenophobia, the Department of Social Development (DSD) engaged in a number of activities including:

- Convening a special round table on xenophobia at the Union for African Population Studies (UAPS) Southern African seminar held in Somerset West in June 2008. At the Technical Meeting on Population and Development that followed the seminar, members of the SADC and the African Population Commission (APC) tabled and adopted a joint statement on xenophobia. The joint statement among other things cautioned that xenophobia could undermine sustainable political, social and economic development and regional integration, and urged member States to improve their understanding of the causes of xenophobia, to commit themselves to discouraging all actions generating xenophobia and to support national, regional and continental efforts to promote peaceful coexistence and tolerance of migrants.
- Following the roundtable on xenophobia, a concept paper exploring the impact of xenophobia on communities and on the mandate of the DSD was developed and this was presented at a workshop attended by representatives of various municipalities.
- DSD, as convener of the Social Cohesion Working Group, jointly commissioned the development of a concept paper on social cohesion that provides, among other things, practical guidelines (recommendations) such as indicators to municipalities on how to incorporate social cohesion issues within their local Integrated Development Planning (IDP) processes. The National Development Planning and Implementation Forum adopted the social cohesion concept paper in August 2009. The DSD presented the concept paper on social cohesion at the Department of Arts and Culture's colloquium on Social Cohesion on 29 and 30 October 2009 in Durban, where the output was development of a national framework and programme on social cohesion, national identity and nation building.
- The DSD also convened a two-day workshop on social cohesion and xenophobia on 11 and 12 November 2009 with the aim of garnering greater understanding of social cohesion in the context of IDPs and developing practical guidelines to promote the integration of social cohesion in local planning; enhance service delivery at the municipal level; and unpack those factors that influence social cohesion, including xenophobia and its impact on social development, in particular as it pertains to the DSD's mandate.
- Since 2004, the DSD has focused strategically on local governments to address identified population concerns, which include migration and xenophobia. During 2008, a process was set in motion to develop guidelines to assist municipalities in integrating population concerns into IDPs. In 2010 the guideline document on how to integrate population issues (including migration, gender issues, social cohesion and xenophobia) in IDPs was finalised. Various municipalities have been capacitated to integrate social cohesion in planning processes and share best practice in rural nodes and selected other nodes. In addition, various projects have been

implemented with the aim of development of communities, for example, in Bokfontein, which is a good case study of a cohesive society with an integrated community working together and combating any form of discrimination and xenophobia.

- DSD is in the process of developing material in support of population education, which is integrated within the school curriculum. Part of the material comprises sections on migration and xenophobia in a bid to address notions of racism and discrimination. This will ensure that learners are educated about the disadvantages of racism and the realisation of human rights inherent to all people residing in South Africa.

211. In July 2009, the South African Sociological Association held a special congress dealing with the question of xenophobia in South Africa. The congress debated issues pertaining to xenophobia at great length and also addressed the question of means for preventing future incidents of xenophobia. Despite rumours that mass xenophobic attacks would take place after the FIFA World Cup, no such attacks took place. Isolated incidents of alleged violence against foreigners in places like Kya Sands, an informal settlement north of Johannesburg, were quickly dealt with by the police service as criminality, rather than xenophobic attacks.

B. Available avenues for redress

212. Several avenues exist in South Africa through which one can claim redress for acts of racial discrimination or other related violations. In addition to the ordinary courts, one can also obtain redress for racial discrimination from specialised tribunals. For example, one can bring a complaint of racial discrimination in the Equality Courts.

213. The Equality Courts are courts designed to deal with matters covered by PEPUDA. One can approach the Equality Courts with any complaint alleging unfair discrimination, publication of information that unfairly discriminates, harassment and hate speech. Notably, however, the jurisdiction of the Equality Courts extends to events that occurred after 16 June 2003 only.

214. Where the Equality Court finds in favour of a complainant, there are several orders that can be made. For example, the Court may order that the defendant provide an unconditional apology to the complainant. The Court may also give directions to the defendant to refrain from the continuation of a discriminatory practice. Equality Courts can also order the payment of damages to the victim of racially discriminatory practices. The damages can be for actual financial loss as well as loss of dignity as a result of the racially discriminatory conduct by the defendant.

215. Aside from the Equality Courts, one can also bring a claim for racial discrimination before the SAHRC. Under the Human Rights Commission Act, 1994 (Act No. 54 of 1994), the SAHRC is mandated to, inter alia, investigate complaints of violations of human rights and to seek appropriate redress thereto. It is also mandated to undertake studies and report to Parliament on matters pertaining to human rights. In recent years the SAHRC has conducted studies on racism in the media and in schools, and has also developed a national action plan on strategies to combat racism.

216. Non-State actors have also shown their willingness to assist in the enforcement of the rights of all persons within the Republic, including refugees and other asylum seekers, and to provide more avenues of redress for such persons. An example of such an actor is Lawyers for Human Rights, a non-government organisation consisting of a number of legal professionals who offer free legal assistance to victims of human rights abuses and who work closely with the UNHRC, with particular emphasis on the rights of non-nationals and the question of racial discrimination. Lawyers for Human Rights operates a Strategic

Litigation Unit as well as the Refugee and Migrant Rights Project, both of which seek to enforce the rights of marginalised individuals and communities, including asylum seekers and other migrants. It operates from six offices around the country, providing assistance in the spirit of racial togetherness that is being fostered by the Government.

C. Examples of the successful implementation of anti-racist policies and laws, and affirmation of cultural, religious and language rights

217. In *MEC for Education: KwaZulu-Natal and Others v. Pillay* 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) the Constitutional Court held that school policies forbidding students to wear certain forms of jewellery should be reworked to provide for freedom of cultural expression. In this case, a Hindu girl was forbidden by her school to wear a nose ring (part of her culture as a Hindu) to class. The Constitutional Court held that this school policy was unfairly discriminatory based on the race, culture and religion of the plaintiff and thus unconstitutional. This case is an example of how South Africa has resolved the globally contentious issue of religious attire in public schools. What is notable was the Constitutional Court's recognition that the wearing of the nose stud was a form of expression. According to the Constitutional Court, public schools in South Africa still carry a legacy from the apartheid era where forms of expression that were not germane to white, Western and Christian culture were discouraged. The Constitutional Court also confirmed that the residual stigmatisation that flows from the apartheid times stifles the diversity of religious and cultural expression and cannot be condoned in the new South Africa.

218. In *Bhe and Others v. Magistrate, Khayelitsha, and Others* 2005 (1) SA 580 (CC), the Constitutional Court invoked, inter alia, article 4 of the ICERD in its decision to rule that certain sections of the Black Administration Act, (which has since been repealed) were unconstitutional for unfairly discriminating on the basis of a person's race. This groundbreaking decision has led to major changes within the South African customary law of succession.

219. In *Richtersveld Community v. Alexkor Ltd and Another* 2000 (1) SA 337 (CC), the Constitutional Court held that the eviction of over 3 000 Nama people (of the *Khoi-khoi* indigenous group) to make way for diamond mining operations was unconstitutional. Such eviction amounted to sweeping aside the Nama's laws of land ownership and was held to be unfair racial discrimination. Accordingly, the Court ordered that the Nama's land (85,000 hectares) be returned to them. The Government has also collaborated with the Namibian and Angolan governments and absorbed the Richtersveld National Park into a trans-frontier park (the Richtersveld Transfrontier National Park) along the west coast of Africa, which has significantly contributed to the preservation of the natural habitat and culture of the Nama people.

D. Position with regard to Article 14 declaration

220. The Government is mindful of the provisions of Article 14 of the Convention and it made a declaration under this article on 10 December 1998. The declaration came into force on 9 January 1999. The fact of making this declaration further confirms South Africa's willingness to be subjected to scrutiny with regard to its compliance with the provisions of the Convention.

VIII. Article 7: Measures in the fields of teaching, education, culture and information to combat racial discrimination

A. The Government's vision for eliminating racial discrimination in education

221. During the period under review, the Government has pursued transformation in all aspects of education, including those aimed at the development of girls and women, and the promotion of gender equality. The Government has also continued to ensure its fulfilment of the education-for-all goals and its obligations in terms of international agreements and national laws to promote gender equality in education and eliminate all forms of discrimination within the education sphere.

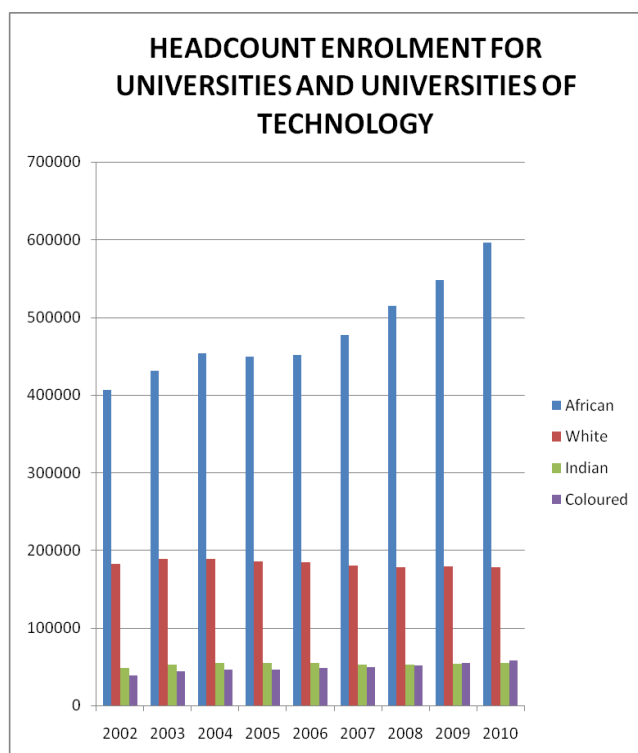
222. The Government has ensured that discriminatory practices in education are addressed for all learners through, inter alia, ensuring the same conditions for all with regard to career guidance, equal access to studies and the achievement of qualifications in educational establishments of all categories in both rural and urban areas. The Government promotes equality in education through measures designed for the elimination of any stereotyped concept of the roles of men and women at all levels by encouraging co-education and other types of education that will help to achieve this aim. It further supports the revision of teacher-learner support materials and learning areas, and adaptation of teaching methods so that they can be in line with the objectives of the Convention and the Constitution.

223. Regarding the elimination of gender stereotyping, the Government released a Manifesto on Values, Education and Democracy to promote the values of democracy, equity, non-racism, non-sexism and human dignity. These are reflected in the teaching material and the curriculum that have been reviewed to eliminate gender stereotyping and other forms of bias and discrimination. The new curriculum for education and teaching methods also seek to integrate the principle of equality between women and men.

Table 6
Enrolment for universities and universities of technology

	<i>African</i>	<i>White</i>	<i>Indian</i>	<i>Coloured</i>	<i>Total</i>
2002	405,914	181,999	48,717	38,965	675,595
2003	430,776	188,353	52,883	43,550	715,562
2004	453,639	188,687	54,315	46,090	742,731
2005	449,241	185,889	54,618	46,357	736,105
2006	451,108	184,668	54,859	48,538	739,173
2007	476,770	180,461	52,596	49,066	758,893
2008	514,955	178,140	52,401	51,647	797,143
2009	547,686	179,232	53,629	55,101	835,648
2010	595,963	178,346	54,537	58,219	887,065

Figure 1



B. The legislative framework for eliminating racial discrimination in education

224. The education system in South Africa has undergone far-reaching changes since 1994. Beyond the structural changes initiated to conform to our Constitution, efforts have been made to introduce a value system totally at variance with the past that affirms internationally accepted standards. Central to this system of values are human dignity, the achievement of equality and the advancement of human rights and freedoms. The Constitution reinforces this commitment to equality and human dignity by spelling out an aversion to discrimination on the basis of race and gender. Section 29 of the Constitution makes it clear that no form of racial discrimination in the field of education will be tolerated.

225. Besides the Constitution, the South African Schools Act, 1996 (Act No. 84 of 1996), (SASA) adopted in 1996 has had a pivotal impact on the desegregation of schools. Key features of the Act are:

- Two categories of schools: public schools that comprise 98% of all schools (formerly State and State-aided schools) and independent (formerly private) schools;
- The establishment of governing bodies at all schools. These are composed of parents (the majority group by one), educators, pupils (in secondary schools), non-educator staff, a non-parent member of the community (optional), and owner of the school property or his/her representative if the property is privately owned (optional);
- The governing body must determine the admissions, language and religious policy of the school within national norms and provincial frameworks. The governing body must also adopt a code of conduct for learners after consulting with learners, parents and educators;

- The levying of compulsory fees determined at an annual meeting of parents of the school and implemented by the governing body.

C. The Department of Education and the promotion of equality and non-discrimination

226. Between 2008 and 2009 the Department of Education (DOE) implemented special social cohesion programmes aimed at ensuring that all educational institutions promote human rights and the dignity of all people in their ethos, policies and practices. The Directorate for Race and Values in Education organised several workshops on values and human rights practices while the development of a human rights culture in schools, as well as the implementation of the Strategy for Integration and Anti-Discrimination received priority. Workshops were conducted on the purpose of the Strategy, aimed at establishing provincial and district structures to support the implementation of the Strategy and to monitor and report incidents of discrimination and human rights abuse at district level. Ongoing support in this connection is being provided to the intervention teams.

227. The DOE is working together with the Department of Arts and Culture to promote arts education in the early stages of education. One of the main aims of this project is to promote a culture-driven approach to social development and increase knowledge and understanding of South Africa's rich cultural heritage. This partnership also aims to increase intercultural communication with the aim of reclaiming cultural identity and fostering non-racism, non-sexism and general respect for each other's cultures, backgrounds and human rights.

228. The DOE Language in Education Policy is aimed at providing education in the language of choice of each learner as well as incorporating other languages (and thus other cultures) into the learning process. This Policy has as one of its many aims the recognition of South Africa's multiculturalism, and efforts to integrate different racial groups within schools and thus create an environment where people grow up and learn in unity so that they may go out into the world with the understanding and tolerance expected of a person within a democratic state. It is worth noting that in *Nkosi v. Vermark and Another* (2008) ZAKZHC 83 the Equality Court of the Durban Magistrate's Court held that the Durban High School's policy, which favoured Afrikaans as a language of instruction, was illegal and unconstitutional. In this case, the parent of one of the children attending the Durban High School complained that the school's language policy, which did not allow her child to be taught in isiZulu while allowing for Afrikaans and English, was discriminatory. The Court held that the preferential treatment accorded to Afrikaans and English negatively affected learners whose mother tongue was not English or Afrikaans. Since the decision was made the Government has enacted the Basic Education Laws Amendment Act (15 of 2011), which seeks to ensure that while a school's governing board may choose a language of instruction at a school, this choice must not be used to entrench discrimination. The Durban Court's ruling and the proposed legislative amendment are in line with the Government's vision of ensuring that all languages treated similarly in the country.

D. Measures taken to include multiculturalism in educational publications

229. PanSALB established the *Khoi* and *San* National Language Body in 1999. This body aims to promote and develop the *Khoi* and *San* languages and conducts surveys in communities in which these languages are spoken in order to record and standardise terminology. This information will be used, *inter alia*, to create books published in the languages of the *Khoi* and *San*. PanSALB is also centrally responsible for the implementation of the Language in Education Policy. Between 2008 and 2009, PanSALB

engaged in several activities that have a strong bearing on the elimination of racial discrimination within education as well as the promotion of diversity and multiracialism. For example, PanSALB embarked on a project with the National DoE regarding the translation of subject assessment guidelines and the learning programmes for Grade 10-12. PanSALB also monitors the implementation of the Language in Education Policy and in December 2008 a meeting was held with the then Minister of Education to discuss issues pertaining to the implementation and monitoring of the Policy, especially in so far as it related to the promotion of previously marginalised languages. PanSALB also advised the Minister of Education on the implementation of the policy of home language as language of learning and teaching in the foundational phase of education. Overall PanSALB worked towards the advancement of the objectives of the Language in Education Policy in a bid to promote multilingualism in South Africa.

IX. Concluding remarks

230. The elimination of all forms of racial discrimination remains high on the agenda of the Government. South Africa's history brings into particular prominence the importance of eliminating all forms of racial discrimination. The Government continues to dedicate considerable financial, organisational and human resources to the fight against racial discrimination. In South Africa, this fight is particularly difficult because, as pointed out earlier, racism in South Africa no longer manifests itself overtly, but covertly. The entire legal framework, however, is very emphatic in its denunciation of all forms of racism. The Government's attention is specifically focused on eliminating all forms of covert racism, and ensuring that South Africans enjoy substantive equality in all aspects of life.

231. The Constitutional Court pointed out in *Brink v. Kitshoff* 1996 (4) SA 197 (CC) that the "Apartheid systematically discriminated against black people in all aspects of social life. Black people were prevented from becoming owners of property or even residing in areas classified as 'white', which constituted nearly 90% of the land mass of South Africa; senior jobs and access to established schools and universities were denied them; civic amenities including transport systems, public parks, libraries and many shops were also closed to black people. Instead, separate and inferior facilities were provided. The deep scars of this appalling programme are still visible in our society."

232. Despite the Constitutional guarantee of equality in section 9, particularly section 9(2) which permits measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination to be taken, the deep scars of the decades of systematic racial discrimination can be seen in all the key measures of the quality of life in South Africa. This impacts on the progress of ensuring equality in access to housing, health, water, education and many others. It further impacts on the Government's progress in its programme of eradicating poverty, since the majority of the poor are black, especially in rural areas.
