



SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)

**NHRI SUBMISSION TO THE THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW OF
THE SOUTH AFRICAN GOVERNMENT**

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South African Human Rights Commission

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1. Introduction

- 1.1 The South African Human Rights Commission (SAHRC) derives its mandate from South Africa's 1996 Constitution and the South African Human Rights Commission Act 40 of 2013. The SAHRC complies with the 'Paris Principles' and is accredited as an 'A-status' NHRI.
- 2.1 Over the past two decades, the SAHRC has provided relief to individuals and groups through its robust complaints mechanisms. Specifically between 2009 and 2013 the institution received over 35000 complaints; conducted over 30 investigations into structural systemic challenges to service delivery across the country and subsequently issued reports containing recommendations to government.ⁱ
- 3.1 The SAHRC calls on the Council to reiterate to the South African government, the importance of adherence to the recommendations of a NHRI and to ensure that adequate financial resources are allocated to the institution to execute its mandate effectively.

2. Status of South Africa's international human rights obligations

- 2.1 The SAHRC notes that during the second cycle of the UPR, several recommendations issued to the government to complete its accession to the core human rights treaties.ⁱⁱ The SAHRC hereby informs the Council of the following:

2.2 *Ratification status*

- a. In 2015, the government ratified the ICESCR. The OP- ICESCR has not been ratified.
- b. In 2013, the government ratified the ILO Convention 189 on Decent Work for Domestic Workers.
- c. The OP-CAT has not been ratified.
- d. The ICRMWF has not been signed.
- e. The ICPED has not been signed.

2.3 **Treaty Body Reporting status**

- a. In December 2014, the government submitted six overdue country reports to the UN treaty bodies.ⁱⁱⁱ
- b. Periodic country reports under the CEDAW, CAT, and CRPD remain outstanding.

3. **Migrants, Refugees and Asylum Seekers**

- 3.1. The SAHRC recognises that several of the recommendations issued during the 2012 UPR process which pertain to the treatment of migrants, refugees and asylum seekers in South Africa were accepted by the government.^{iv} However, the institution expresses concern that negative attitudes toward these groups of persons, violence and xenophobia continue to remain a significant challenge in the country.
- 3.2. Although South Africa has demonstrated its commitment to human rights of foreign nationals through a host of a progressive immigration-related policies towards asylum seekers and refugees, the implementation of these policies as well as the shortcomings in the policing, justice and intelligence agencies have all contributed to the long-term vulnerabilities and tensions between locals and foreign nationals.^v Furthermore, it is highlighted that South Africa's policies towards asylum seekers and refugees do not account for the status and protection of undocumented foreign nationals who are already in the country.^{vi}
- 3.3. In 2011, the ICERD Committee issued an 'Early Warning' to the South African government where it expressed concern over the country's xenophobic acts and continuing "racist violence targeting refugees and asylum-seekers".^{vii} However, notwithstanding the UPR recommendations, the ICERD Committee's concern and the SAHRC's numerous recommendations,^{viii} in 2015 South Africa once again witnessed violent attacks against foreign nationals in the country's *KwaZulu Natal* province. Despite guarantees of inter-ministerial coordination and rapid response mechanisms following the outbreak of violence in 2008, these have not been sufficiently operationalised, with the result that the response to the violence in 2015 was criticised as slow and inefficient.^{ix} It should be noted that the SAHRC's preliminary investigation into the 2015 violence further indicate the need for education initiatives and collective ownership for social cohesion.^x

- 3.4. The SAHRC highlights that in 2012, the institution lodged legal proceedings against the government regarding the detention periods of foreign nationals at the country's Lindela Repatriation Centre.^{xi} The Court ruled in favour of the SAHRC and held, *inter alia*, that the institution should be provided with regular access to the Lindela Repatriation Centre.^{xii} In this regard, the SAHRC's recent monitoring activities^{xiii} reveal the following systemic issues: i) allegations of abuse, corruption and/ or bribery; ii) the use of isolation as a conflict management tool; iii) overcrowding; iv) consistent outbreaks of infections and deficient hygiene standards; v) detention of unaccompanied and separated migrant children; and vi) continued detention of undocumented migrants beyond the prescribed periods. The SAHRC reiterates the need for the government to fully comply with the judgement and to urgently address the challenges which continue to persist at the repatriation centre.
- 3.5. Whilst it is noted that the government has released the draft National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance as well as a Green Paper on International Migration,^{xiv} the SAHRC stresses the importance of expediting legislative processes in this regard and encourages the South African government provide feedback on time-frames within which legislation will be finalised.
- 3.6. The SAHRC specifically calls on the Council to reiterate the importance of the government's implementation of the SAHRC's recommendations relating to the treatment of foreign nationals as well as fully implement the concluding observations issued by the Human Rights Committee^{xv} and the ICERD Committee.^{xvi} Furthermore, that the government responds to the numerous requests of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance who seeks to undertake an official visit to the country.^{xvii}

4. Discrimination towards LGBTI persons

- 4.1. The SAHRC notes several recommendations issued to government during the 2012 UPR which relate to the rights of LGBTI persons and that the government accepted 12 of the recommendations specifically related to strengthening LGBTI rights and combating discrimination toward persons on the basis of sexual orientation.^{xviii}
- 4.2. In its response to these recommendations, the government indicated that it was at an 'advanced stage' of finalising the Policy Framework on Combating Hate Crime, Hate

Speech and Unfair Discrimination and that national legislation was expected during 2013/2014.^{xix} However, the SAHRC points out that in December 2015, the government responded to the Human Rights Committee's List of Issues stating that the policy framework had been abandoned in favour of hate crimes legislation that excludes hate speech^{xx}. However, to date, no legislation to this effect has been shared with the public.

- 4.3. Whilst the SAHRC is aware of the initiatives undertaken by government to combat the negative stereotypes and violent attacks on LGBTI persons^{xxi}, it reiterates the need for dedicated legislation addressing hate crimes in South Africa and emphasises the critical importance of the public's full participation in the development of any legislation which relate to hate crimes and hate speech. Furthermore, that the government adhere to the concluding observations issued by both the Human Rights Committee^{xxii} and the ICERD Committee^{xxiii} in respect of strengthening the rights of LGBTI persons.
- 4.4. Despite South Africa's previous assertion in response to the 2012 UPR recommendations, that the government successfully piloted a resolution on Human Rights, Sexual Orientation and Gender Identity at the 17th Session of the HRC,^{xxiv} the SAHRC highlights that during the 32nd session of the Council, the government abstained from voting on the resolution on the Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity.^{xxv}

5. Education

- 5.1. Access to education remains a significant challenge in South Africa and is characterised by high drop-out rates, weak infrastructure, poor quality of education and the inefficient usage of education resources, particularly in the rural areas.^{xxvi} The SAHRC notes the numerous recommendations issued to the government during the 2012 UPR in relation to ensuring the right to education,^{xxvii} and the subsequent acknowledgement by the government that delivery of quality education remains a challenge.^{xxviii}
- 5.2. Through the SAHRC's investigative hearings and inspections at schools across the country, it has found, *inter alia*, that schools experience i) inadequate water, sanitation, toilet and hygiene facilities which in turn have resulted in absenteeism particularly when girl children experienced their menstrual cycle;^{xxix} ii) lack of delivery of learning materials;^{xxx} iii) high rates of absenteeism due to children having to travel long

distances on foot; and a lack of transportation.^{.xxxii} In addition, the SAHRC has found that children with disabilities face numerous barriers in exercising their right to education and that access to assistive devices and *Braille* materials are not readily available across the country.^{.xxxiii} The SAHRC therefore urges the government to urgently put measures in place to address these concerns and in line with the recommendations issued in the SAHRC investigative reports.

5.3. The SAHRC further points out that at the time of ratifying the ICESCR, the government entered a declaration in respect of the right to education stating that it shall, “give progressive effect to the right to education... within the framework of its National Education Policy and available resources”. The SAHRC reiterates that the right to basic education, as enshrined in Section 29(1)(a) of the Constitution, is an unqualified socio-economic right and not subject to availability of resources or progressive realisation.^{.xxxiii} It has therefore been argued that the declaration entered by the government contradicts the guarantees under section 29(1)(a) of the Constitution, as well as contrary to Constitutional Court judgements.^{.xxxiv}

5.4. The SAHRC highlights the high prevalence of discrimination at institutions of higher learning (e.g. universities) in South Africa, particularly on the ground of race, gender, disability and class. Through its investigations into the issue, the SAHRC has found that transformation in the higher education sector has been relatively slow and has been hindered by numerous factors including, *inter alia*, i) a lack of understanding as to what transformation means; ii) lack of appreciation for or understanding of cultural diversity; iii) a lack of capacity and/or institutional will to successfully implement transformation plans; and, iv) a myriad of persisting social challenges and inequality which exacerbate access to higher education.^{.xxxv} The SAHRC accordingly recommends that the government consider the recommendations contained in the institution’s 2016 ‘Report on Transformation at Universities’, and implement measures aimed at promoting the achievement of substantive transformation and dismantling inherent inequalities between historically white and black universities.^{.xxxvi}

6. Corporal Punishment

6.1. The South African government supported the 2012 UPR recommendation to prohibit corporal punishment in public and private settings.^{.xxxvii} However, South Africa’s common law continues to permit the practice of corporal punishment in the home. The SAHRC specifically points out that in its concluding observations to South Africa, the

Human Rights Committee expressed concern that, ‘corporal punishment in the home is not prohibited and is traditionally accepted and widely practiced’.^{xxxviii}

- 6.2. Despite legislation criminalising corporal punishment in schools, this violent practice remains prevalent in schools across the country with statistics indicating that a total of 49,8% of learners claimed to have been caned or spanked by an educator or school principal.^{xxxix}
- 6.3. The SAHRC therefore recommends that the government, i) adheres to the Human Rights Committee’s concluding observations^{xi} and the UPR recommendations in respect of prohibiting act of corporal punishment; ii) raise awareness and provide support to parents and caregivers around adopting positive and alternative forms of discipline; iii) establish a national protocol for schools so as to have a uniform approach to educators who continue to inflict corporal punishment;^{xli} and, iv) criminalise the act of corporal punishment in the home.

7. Healthcare

- 7.1. Inequality and the high cost of healthcare services remain an ever-present challenge for many persons in South Africa with a general public perception that only the wealthy can afford private healthcare and therefore receive a better level of service and care. Furthermore, research indicates that only 16% of the population subscribe to medical schemes, and that the rest of the population depends on the state healthcare, where the quality and availability of services vary widely, particularly in the rural areas.^{xlii}
- 7.2. In response to the concerns raised in relation to the right of access to healthcare during the 2012 UPR and the subsequent recommendations no’s. 124.22 and 124.23, the government indicated that the country’s National Health Insurance (NHI) was, ‘at an advanced stage and about to be implemented’.^{xliii} The SAHRC however points out that it was only in December 2015 that the government released the White Paper on National Health Insurance (NHI).^{xliiv} Whilst it is noted that the White Paper guarantees access to quality, affordable personal health services for all South Africans based on their health needs and irrespective of their socioeconomic status,^{xliv} the Department of Health’s Strategic Plan 2014/15 – 2018/9 envisages that the National Health Insurance Bill will only be enacted in 2018/19.^{xlvi} In addition, the NHI is set to be gradually phased-in “over a period of 14 years”.^{xlvii} In this regard and noting that the NHI is still at the

initial phase, the SAHRC recommends that the government put interim measures in place to address the inequalities in access to healthcare.

Foreign Nationals access to healthcare

- 7.3. Foreign nationals also face significant challenges in exercising their right to healthcare in South Africa with studies indicating that ‘medical xenophobia’ in the healthcare sector are prevalent.^{xlviii}
- 7.4. In specific relation to the 2012 UPR recommendation no. 124.58,^{xlix} the SAHRC further points out that in 2014, the institution conducted an investigation into the right to healthcare for detainees at the Lindela Repatriation Centre.^l The investigation revealed numerous shortcomings, including, *inter alia*, i) the lack of provision for TB testing and isolation of infected persons; ii) poor psychological care; iii) unavailability of condoms; iv) the lack of voluntary counselling and testing for HIV/AIDS; and, v) the unavailability of tetanus vaccines.^{li}
- 7.5. It is therefore recommended that the government, i) embark on a nationwide human rights training initiative to educate persons working in the healthcare industry about xenophobia and the rights of foreign nationals; ii) introduce advocacy materials to inform patients about the recourse available should they experience discrimination^{lii} and iii) ratify the OP-CAT and establish a national preventive mechanism to enhance the monitoring places where persons are deprived of their liberty (such as the Lindela Repatriation Centre).

8. Access to justice

- 8.1. The SAHRC notes the 2012 UPR recommendations to ensure equal access to justice^{liii} and acknowledges the government’s efforts to ensure the right of access to justice, particularly for women.^{liv} However, numerous barriers such as poverty, illiteracy, high cost of legal services, shortage of free legal service in civil matters and discrimination, impede the full exercise of this right.^{lv} Conventional methods of access to justice such as physical access to courts for redress have also proven to be ineffective in affording justice to the marginalised and poor in South Africa.^{lvi} Furthermore, following the 2008 xenophobic violence judicial outcomes of cases have limited the attainment of justice

for victims of the attacks and have allowed for significant levels of impunity for perpetrators.”^{lvii}

- 8.2. The SAHRC recommends that the government explore appropriate alternate access to justice services to communities where physical access to the courts are at a vast geographical distance and introduce public education initiatives through accessible platforms (e.g. community radio, newspapers, etc.), on the rights of access to justice, particularly at the rural level and in the language/s of the community.^{lviii}

9. Dissolution of the Department of Women, Children and Persons with Disabilities

- 9.1. Whilst reference is made in the 2012 UPR recommendations to capacitate the Department of Women, Children and Persons with Disabilities (DWCPD),^{lix} as established in 2009, it is pointed out that following the 2014 general elections the DWCPD was disbanded. As a result, the women’s portfolio shifted to a new ministry within the Presidency and both the children’s and disability portfolios to the Department of Social Development. The dissolution has subsequently resulted in a void due to the absence of a specific government department mandated to focus solely on disability and children’s rights as well as dedicated parliamentary committees to exercise oversight over government in respect of the attainment of these rights.
- 9.2. The SAHRC specifically recommends that in order to further strengthen the human rights framework, the government should develop an independent children’s rights monitoring mechanism and allocate financial resources to establish the CRPD Article 33 monitoring mechanism.

10. Persons with Disabilities

- 10.1. It is noted that the government accepted the 2012 UPR recommendation in respect of creating a favourable human rights environment for persons with disabilities and strengthening disabilities policies, particularly in the rural areas.^{lx} Despite the notable achievements of the government in fostering the rights of persons with disabilities, challenges continue to persist.^{lxi} The SAHRC notes with concern the slow progress on several targets set by the government and in respect of persons with disabilities and that it is yet to meet its goal of ensuring that 2% of the employed population by the disability sector.^{lxii} The SAHRC further highlights that in instances where persons with

disabilities were employed, they were often not provided with assistive devices nor reasonably accommodated.^{lxiii}

- 10.2. Statistics on the prevalence and inclusivity of persons with disabilities have been inconsistent and contradictory.^{lxiv} The SAHRC expresses concern that the inaccuracy and under-representation of statistics, may result in persons with disabilities being overlooked in the provision of basic services, grants and assistive devices is concerned. It therefore recommends that the government conduct an extensive, statistical analysis on the prevalence of disability in the country.

11. Indigenous People

- 11.1. The SAHRC notes the absence of specific recommendations in the 2012 UPR process relating to the rights of indigenous communities. In this regard, the SAHRC informs that Council that the institution has received several complaints alleging the human rights violations of indigenous communities. Challenges highlighted by these communities include, *inter alia*, violation of their rights to equality, language, education and land redistribution; and the lack of recognition of the indigenous communities and their respective leadership.^{lxv} Based on the frequency of these complaints, the SAHRC hosted a, 'National Hearing on the Human Rights Situation of Indigenous people' during 2015/2016. The SAHRC therefore emphasises the importance of government's implementation as contained in the report on the outcome and findings of the hearing will seeks to strengthen the recognition and protection of the rights of indigenous people.

i And of which 33000 were resolved. See address by SAHRC Chairperson, Adv. Lourence Mushwana at the SAHRC 20 year Commemorative Conference, at <http://www.sahrc.org.za/home/21/files/Pfanelo%20April%202016.pdf> p.5

ii Specifically recommendations 124.1 to 124.9 (in numerical order of sequence i.e. Iraq, Burkina Faso, UK, Hungary, Brazil, Chad, Palestine, Slovenia, Portugal, Argentina, Spain, Nicaragua, Slovakia, France).

iii ICCPR, CERD, CRC, CRC-OPSC, CRPD and the common core document.

iv See specifically the 2012 UPR recommendation no's. 124.38 (Islamic Republic of Iran); 124.39 (Paraguay); 124.41 (Thailand); 124.42 (Iraq); 124.43 (Ireland); 124.44 (Republic of Korea); 124.45 (Mozambique); 124.46 (Indonesia); 124.77 (Uruguay).

v <https://www.enca.com/south-africa/xenophobia-report-released-today>

vi Report of the Special Reference Group on Migration and Community integration in KwaZulu-Natal was commissioned by the *KwaZulu Natal* provincial government and is available at <http://reliefweb.int/sites/reliefweb.int/files/resources/Special%20ref%20group%20on%20Migration%20and%20Community%20Intergration%20in%20KZN.pdf> para 16, p.8

vii United Nations, High Commissioner for Human Rights, Palais de Nations, GH/CBR, 11 March 2011, available from, http://www2.ohchr.org/english/bodies/cerd/docs/SouthAfrica_11March2011.pdf.

viii Report on SAHRC Investigation into issues of Rule of Law, Justice and impunity arising out of the 2008 Public Violence against Non-Nationals. Also see para 13 of the SAHRC's 2011 NHRI submission under the second cycle of the UPR.

ix *Ibid.*,

x The final report release date is imminent and will be available on the SAHRC's website.

xi As in contravention of the Immigration Act 13 of 2002. *South African Human Rights Commission and Others v Minister of Home Affairs: Naledi Pandor and Others* (41571/12) [2014] ZAGPJHC 198, available at <http://www.saflii.org/za/cases/ZAGPJHC/2014/198.html>

xii *Ibid*, para 52.5

xiii As of January 2016 to September 2016

xiv Released for public consultation in February 2016 and June 2016, respectively.

xv See Concluding Observations on the Initial Report of South Africa, Human Rights Committee (CCPR/C/ZAF/1). In particular, para 15 of the Human Rights Committee state: The State party should redouble its efforts to prevent and eradicate all manifestations of racism and xenophobia, protect all communities in South Africa against racist or xenophobic attacks, and improve policing responses to violence against non-nationals. Effective investigations into alleged racist or xenophobic attacks and other hate crimes should be systematically conducted, perpetrators should be prosecuted and, if convicted, punished with appropriate sanctions, and victims should be provided with adequate remedies. The State party should also pass as soon as possible appropriate legislation explicitly prohibiting hate crimes and hate speech.

xvi Specifically CERD Concluding Observations issued to South Africa, (CERD/C/ZAF/4-8) in August 2016, paras 27 and 28,

xvii As requested in 2010, 2011 and 2012, see *ibid*

xviii See recommendations accepted by South Africa and response provided by the government. Specifically, the responses to recommendations 124.50; 124.51; 124.78; 124.79; 124.80 to 124.87. Available under Annex 1 at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>

xix *Ibid*

xx See Replies of South Africa to the List of Issues, CCPR/C/ZAF/Q/1/Add.1 31 December 2015, p. 4

xxi The South African government has established a national task team to address the issues facing the LGBTI community. See, <http://www.nationallgbtitaskteam.co.za/>

xxii *Ibid*, para 11

xxiii *Ibid*, para 13

xxiv See note 14 above.

xxv See the July 2016 session of the Human Rights Council. Also see, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20220&LangID=E>

xxvi SAHRC Charter of Children's Basic Education Rights, p. 8, available at, http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf. For detailed information on right of access to education and the impact on children, refer to the SAHRC's NHRI Report to the Committee on the Rights of the Child, November 2015, section 8.

xxvii See UPR 2012 Recommendations no's. 124.23 (Burkina Faso); 124.109 (Venezuela); 124.118 (Malaysia); 124.120 (Zimbabwe); 124.139 (Republic of Korea); 124.40 (Senegal); 124.141 (Cuba); 124.142 (Islamic Republic of Iran); 124.43 (Egypt); 124.144 (Singapore); and, 124.145 (Timor Leste)

xxviii See government's response to the accepted recommendations as listed in note 14 above. For a copy of the response, refer to Annex 1 at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>

xxix During 2012 and 2013, the SAHRC conducted investigations and public hearings to assess the extent to which these rights were being realised in South Africa and in 2014 released its 'Report on the Rights to Access Sufficient Water and Decent Sanitation in South Africa' (Water and Sanitation Report). In this regard see specifically p. 53. The SAHRC's investigations revealed that the level of service delivery, access to water and

sanitation in poor and rural communities remained below the national average. Also see, *paras* 52 and *para* 96 of the SAHRC's NHRI Report to the Committee on the Rights of the Child, November 2015.

xxx SAHRC *Report on the Investigation into the Delivery of Primary Learning Materials to Schools (SAHRC Textbook Report)*. See SAHRC website for a list of the SAHRC's reports related to children at www.sahrc.org.za

xxxi SAHRC's NHRI Report to the Committee on the Rights of the Child, November 2015, *para* 107

xxxii South African Human Rights Commission, *Charter of Children's Basic Education Rights*, 2012, p. 8

xxxiii South African Charter of Children's Basic Education Rights: briefing by SAHRC to Parliament's Portfolio Committee on Basic Education, 14 May 2013, see, <https://pmg.org.za/committee-meeting/15839/>

xxxiv See, <https://www.equaleducation.org.za/article/2015-01-21-sa-govts-declaration-on-education-clause-mars-the-welcome-ratification-of-the-international-covenant-on-economic-social-and-cultural-rights-icescr> and <http://www.bdlive.co.za/national/education/2015/05/22/our-right-to-learn-is-under-siege>. Also see the

Constitutional Court case between *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011] ZACC 13; 2011 (8) BCLR 761 (CC) (11 April 2011), wherein the Court clarified section 29(1)(a) and held that there is 'no internal limitation requiring that the right be "progressively realised" within "available resources" subject to "reasonable legislative measures'.

xxxv SAHRC's 'Report on Transformation at Universities', 2016, p.10

xxxvi *Ibid*

xxxvii See UPR Recommendation 124.88, 'Prohibit and punish corporal punishment both in the home, as well as in public institutions such as schools and prisons' (as recommended by Mexico)

xxxviii *Ibid* note 11, *para* 24

xxxix According to the 2012 National School Violence Survey. See, Burton P & Leoschut L (2013) *School Violence in South Africa. Results of the 2012 National School Violence Survey*. Monograph Series No. 12. Cape Town: Centre for Justice and Crime Prevention p 44. The survey comprised of 5,939 learners, 121 principals and 239 educators.

x *Ibid* note 11, *para* 25

xii In 2014 the SAHRC convened a national conference on *Ending Corporal Punishment in Schools*. Although several recommendations were proposed, the key outcome of the conference was the need for the establishment of a national protocol to enforce the statutory ban on corporal punishment; address the shortcomings in the current legislative and policy frameworks; and, provide for the prosecution of teachers who administer corporal punishment.

xiii <http://www.bdlive.co.za/national/health/2016/02/01/motsaledi-does-not-want-nhi-to-limit-choices>, (also see *para* 92 of the White Paper on the NHI).

xiiii UPR 2012 Recommendation 124.22 and 124.23 as accepted by the South African government as recommended by Angola and Switzerland, respectively.

xv Available at, <https://www.health-e.org.za/wp-content/uploads/2015/12/National-Health-Insurance-for-South-Africa-White-Paper.pdf>

xvi *Ibid*, *para* 1

xvii Health-E News, "Report: Department of Health Strategic Plan 2014/15 – 2018/9", 25 September 2014, <http://www.health-e.org.za/2014/09/25/report-department-health-strategic-plan-201415-20189/>.

xviii Department of Health, *National Health Insurance in South Africa Policy Paper*, p.4 available at, <http://www.hst.org.za/sites/default/files/2bcce61d2d1b8d972af41ab0e2c8a4ab.pdf>

xix Refer to the findings of a study conducted in 2011 by the South African Migration Programme (SAMP) which found that medical xenophobia manifests itself in the following ways, i) the requirement that refugee patients produce identification documentation and proof of residence status before receiving treatment; ii) health professionals refusing to communicate with patients in English or allow the use of translators; iii) treatment is often accompanied with xenophobic statements, insults and other verbal abuse; (iv) non-South African patients are required to wait until all South African patients have received medical attention, even if they have been waiting longer for treatment; and, (v) refugees and asylum seekers experience difficulty accessing anti-retroviral treatment for HIV in public hospitals and many are subsequently forced to rely on NGO treatment programmes.. See, Ganzamungu Zihindula, Anna Meyer-Weitz and Olagoke Akintola, *Access to Health Care Services by refugees in Southern Africa: A Review of Literature*, Southern African Journal of Demography Volume 16 (1), June 2015, p. 27

xx As recommended by Ecuador.

i Report of the South African Human Rights Commission in the matter between *Medecins sans Frontiers* and 3 others and The Department of Home Affairs and 4 others, GP/2012/0134.

ii <http://www.sahrc.org.za/home/index.php?ipkArticleID=296>

iii See SAHRC NHRI Report to the ICERD Committee, p. 17, recommendation 21 as well as the ICERD Committee's concluding observation 27(b)

iiii UPR Recommendation no. 124.49 (Austria) and no. 124.93 (Switzerland)

lv See government response to the aforementioned recommendation. Available under Annex 1 at

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>

lv AfriMAP & Open Society Foundation for South Africa "South Africa: Justice sector and the rule of law: a discussion paper" (2005) p. 29.

lvi See SAHRC Report on the Colloquium of the Launch of Access to Justice Campaign, June 2015, p. 18

lvii SAHRC Report on Report on Investigation into issues of Rule of Law, Justice and Impunity arising out of the 2008 public violence against non-nationals, p.68

lviii See SAHRC NHRI Report to the CERD, paras 63 to 65

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- lix UPR 2012 Recommendations no's. 124.26 (Chile) and 124.27 (Timor Leste)
- lx See UPR Recommendation no's. 124.111 (Chile) and 124.112 (Djibouti).
- lxi For detailed analysis, see chapter 5 of the SAHRC's 2016 Equality Report.
- lxii Department of Labour 'Technical Assistance Guidelines on the Employment of People with Disabilities' (2012).
- lxiii SAHRC Equality Report, 2016 p.55
- lxiv As evidenced through Statistics South Africa's National Census (2011) and the General Household Survey (2014).
- lxv SAHRC Draft Report on the National Hearing Relating to the Human Rights Situation of Indigenous Peoples in South Africa, November 2015 to January 2016, p.24 (The final report will be publicly available on the SAHRC's website in due course) It is further noted that the SA government released the draft Traditional, Khoi-San Leadership Bill, and whilst it is yet to be fully rolled-out for public consultation, Khoi-San communities have raised concerns with several provisions contained in the draft Bill.