



DRAFT FOR PUBLIC CONSULTATION

NATIONAL ACTION PLAN
TO COMBAT RACISM, RACIAL DISCRIMINATION,
XENOPHOBIA AND RELATED INTOLERANCE

2016 – 2021



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



Draft for public consultation
**National Action Plan to combat Racism, Racial Discrimination,
Xenophobia and Related Intolerance 2016 – 2021**



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ABBREVIATIONS AND ACRONYMS

BBBEEA	Broad Based Black Economic Empowerment Act, 53 of 2003
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CGE	Commission for Gender Equality
CRC	Convention on the Rights of the Child
CRL	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
CSO	Civil Society Organisation
DDG	Deputy Director-General
DDPA	Durban Declaration and Programme of Action
DAC	Department of Arts and Culture
DBE	Department of Basic Education
DHET	Department of Higher Education and Training
DIRCO	Department of International Relations and Cooperation
DoH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DPME	Department of Performance Monitoring and Evaluation
DoW	Department of Women
DSD	Department of Social Development
EEA	Employment Equity Act, 1998 (Act No. 55 of 1998)
FHR	Foundation for Human Rights
ICASA	Independent Communications Authority of South Africa
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
JCPS	Justice Crime Prevention and Security
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NAP	National Action Plan
NDP	National Development Plan
NFAR	National Forum against Racism
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NPA	National Prosecuting Authority
NTT	National Task Team
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)
RSA	Republic of South Africa
WCAR	World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerances
SADC	South African Development Community
SAHRC	South African Human Rights Commission
SANGOCO	South African Non-Governmental Organisational Coalition
SAPS	South African Police Service
UN	United Nations

DEFINITIONS

Affirmative Action measures: Measures designed to ensure that suitably qualified people from designated groups¹ have equal employment opportunities and are equitably represented in all occupational levels in the workforce of a designated employer.²

Direct discrimination: Occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation.

Discrimination: Means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly

- (a) imposes burdens, obligations or disadvantage on; or
- (b) withholds benefits, opportunities or advantages from,

any person on one or more of the prohibited grounds.

Gender-based discrimination: Refers to any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Hate Crimes: Acts motivated by bias based on the identity (with reference to race, religion, and national origin, sexual orientation, gender, or gender identity) of the victim are forms of bias-motivated violence, more commonly referred to domestically and internationally as "hate crimes". Hate crimes are "message" crimes that send a message of fear to an entire community that identifies with the victim. Hate crimes, particularly when they do not meet an adequate response from the State, violate fundamental principles of equality and non-discrimination and can lead to social unrest.

Hate Speech: The phenomenon of incitement to discrimination, hostility, or violence, or what may broadly be referred to as "hate speech." Any person who by any means of expression publicly and intentionally advocates hatred of any other person or group of persons based on –

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth; or
- (b) any other characteristic where discrimination based on that characteristic causes or perpetuates systemic disadvantage or undermines human dignity, in a way that incites others to harm such person or group, is guilty of the offence of hate speech, whether or not such person or group is harmed.

Indirect discrimination: Laws, policies or practices which appear neutral at face value, but which have a disproportionate impact on the exercise of rights as distinguished by prohibited grounds of discrimination.

Institutionalised racism (also known as structural racism and systemic racism): Any kind of system of inequality based on race. It can occur in institutions such as public government bodies, private business corporations (such as media outlets), and universities (public and private). In essence, structural discrimination relates to the ways in which common behaviour and equal legislation for everybody can affect, and obscure discriminatory intent. [It] refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that represent obstacles to groups or individuals in achieving the same rights and opportunities that are available to the dominant group.

¹ Black people, women and people with disabilities, who–

- (a) are citizens of the Republic of South Africa by birth or descent; or
- (b) became citizens of the Republic of South Africa by naturalisation–
 - (i) before 27 April 1994; or
 - (ii) after 26 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but who were precluded by apartheid policies;

² Section 15(1) of the Employment Equity Act, 1998

New forms of intolerance: In addition to the defined terms of “discrimination” and “related intolerance” the implementation of the NAP will take cognizance of, and deal with, the following³ -

- Forms of racism and racial discrimination against Africans and people of African descent, Arabs, Asians and people of Asian descent, migrants, refugees, asylum-seekers, persons belonging to minorities and indigenous peoples, as well as other victims included in the Durban Declaration and Programme of Action;
- Forms of racial or religious intolerance and violence, including Islamophobia, anti-Semitism, Christianophobia and anti-Arabism manifested in particular by the derogatory stereotyping and stigmatization of persons based on their religion or belief; and
- Homophobia expressed in violent attacks on LGBTI persons.

Prohibited (listed) grounds: Any one or more of the following, race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Racial Discrimination: Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁴

Racism: An ideological construct that assigns a certain race and/or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth, involving hierarchical relations where the ‘superior’ race exercises domination and control over others. Racism is a denial of people’s basic human rights, dignity and respect. Its expression ranges from small, everyday acts of discrimination, through to barriers and omissions that may be inadvertently established at an institutional level, to acts of threatening behaviour and violence.

Related intolerance: Forms of intolerance that are connected to the racial or ethnic background of an individual or group. It is the combination of racism, racial discrimination or xenophobia with prejudice or discrimination based on some other factor, such as gender, sexual orientation, disability, religion or language.

Special Measures: To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. These proactive steps undertaken by the State to reduce or eliminate the conditions that cause or contribute to perpetuating racial discrimination, or to accelerate the achievement of equality, may include special measures.

Xenophobia: An attitudinal orientation of hostility against non-nationals in a given population, which can include attitudes, prejudices and behaviour that reject and exclude persons, based on the perception that they are outsiders or foreigners to a community, society or national identity.

³ These areas are based on the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance as outlined been requested by Human Rights Council in Resolution 7/34

⁴ International Convention on the Elimination of All Forms of Racial Discrimination, Article 1

CHAPTER 1: INTRODUCTION AND PURPOSE OF THE NAP

1. South Africa was invited by the United Nations to host the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Conference), held in 2001. The invitation was extended in recognition of the struggle waged by the people of South Africa against the system of apartheid and the country's transition to democracy, founded on constitutional values. The Durban Conference was attended by representatives of 160 countries. The conference adopted the historic Durban Declaration and Programme of Action which urges "states to establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations."⁵
2. The Durban Declaration recognises that -
 - racial discrimination exists in all societies;
 - no country is free of racism, racial discrimination, xenophobia and related intolerance, and
 - all countries face challenges to eliminate racial discrimination.

The Durban Declaration makes the point that addressing these issues successfully requires Governments and all people to work together to change attitudes, to intensify awareness about the scourge of racism and racial discrimination, and to establish and strengthen specialised bodies to combat it.

3. A National Action Plan (NAP) provides the basis for the development of a comprehensive public policy against racial discrimination and assists States in giving effect to their international human rights obligations related to the elimination of racism, racial discrimination, xenophobia and related intolerance. It provides for specific outcomes and is also a process bringing stakeholders together to discuss the challenge of combating racism, racial discrimination, xenophobia and related intolerance. A NAP also provides a technical guiding framework for the State's policies, programmes and strategies to combat racial discrimination and is a step towards complying with the State's obligation to give effect to the constitutional value of equality and non-discrimination.
4. South Africa is mandated in terms of the Durban Declaration to produce a National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. The purpose of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance of the Republic of South Africa is to provide South Africa with a comprehensive policy framework to address racism, racial discrimination, xenophobia and related intolerance at both a private and public level. The NAP is not intended to replace existing laws and policies but rather to be complementary to existing legislation, policies and programmes which address equality, equity and discrimination.
5. The NAP envisions uniting South Africans in building a non-racial, tolerant society that recognises its plurality and diversity based on the values of equality and human dignity through the promotion of anti-racism education, the promotion of constitutional values and the advancement of human rights, through dialogue and action.
6. The NAP will provide for monitoring on-going incidents of racism, racial discrimination, xenophobia and related intolerance through establishing a rapid response team, reporting directly to government serving as a barometer measuring the extent of the incidents, the circumstances which allow for their continuation and the provision of tools to address them.
7. Furthermore, the NAP is intended to assist South Africa to meet its international treaty and regional obligations i.e. the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as its commitments arising from the Third UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

⁵ Para 66 of the DDPA



"No one is born hating another person because of the colour of his skin, or his background, or his religion. People learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite."

Nelson Mandela

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8. The overall goal of the NAP is to build a non-racial, non-sexist society based on the values of human dignity, equality and the advancement of human rights and freedom. The NAP is also intended to combat xenophobia and related intolerance and to address the following:
- Promote human dignity through the promotion and protection of human rights;
 - Raise awareness of anti-racism, equality and anti-discrimination issues among public officials, civil society and the general public, mobilizing support from a wide range of people;
 - Encourage the collection of data regarding racism, racial discrimination, xenophobia and related intolerance and allow for a more comprehensive assessment of their needs to effectively combat it;
 - Ensure that the concerns of individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance are more effectively addressed;
 - Increase the effectiveness and coherence of measures against racism, racial discrimination, xenophobia and related intolerance including financial and human resources;
 - Engender a commitment to eliminating racism, racial discrimination, xenophobia and related intolerance through appropriate programmes aimed at reaching achievable targets;
 - Strengthen programmes for individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance in education, health, employment, housing, food security, social services and access to justice including where necessary through appropriate remedies;
 - Facilitate the identification of legislation that needs to be amended and or adopted with a view to improving the protection of victims, and
 - Generate a more equal society and strengthen the rule of law and democracy.
9. Experiences with the development of national action plans for human rights and national actions plans for human rights education, as well as experiences from states that have already developed national action plans against racial discrimination, suggest that the following factors, amongst others, can have a bearing on a particular plan's effectiveness:
- Transparent and participatory planning;
 - Comprehensiveness of the baseline study underlying the plan;
 - Realistic prioritization and action-oriented planning;
 - Strong participatory mechanisms for monitoring and evaluation, and
 - Adequate commitment of resources.

CHAPTER 2: HISTORICAL CONTEXT

10. Under colonialism and apartheid, black people were oppressed, dispossessed of their land and other means of livelihoods and systematically stripped of their basic human rights including the right to vote and freedom of movement and association. Racial discrimination rested on the political exclusion of black people, resulting in their economic disempowerment and most were also excluded from a representative government and from many of the rights and privileges enjoyed by the country's white inhabitants. Race-based legislation passed in the 1920s and 1930s extended racial discrimination further.
11. The adoption of apartheid in 1948 was purportedly as a model for the 'separate development' of races, but in reality to preserve white privilege. Apartheid literally affected each and every part of a person's life – where they were allowed to live, whom they could marry, who they could associate with, which government services, if any, they could access.
12. Racial discrimination gave rise to protest and resistance politics in South Africa from the late 1940s and more intensely, after 1976. South Africa's oppressed majority organised themselves into sustained resistance, involving political organisations, labour movements, traditional authorities and various organs of civil society. The struggle against apartheid was intensified abroad by the actions of international solidarity. From the mid to late 1980s the apartheid state faced increased economic and diplomatic isolation, leading to economic stagnation, high public-sector debt and increasingly futile attempts by the police and justice system to defend apartheid. By the late 1980s the country, its social fabric torn apart by apartheid and a failing economy, had become ungovernable.
13. The advent of democracy in 1994 ushered in a new social order. The Convention for a Democratic South Africa (CODESA) resulted in the first democratic elections in 1994 and the enactment of an Interim Constitution. The Interim Constitution of 1993 and the Constitution of the Republic of South Africa of 1996 heralded a new constitutional order in which the Constitution became the supreme law of the country. The transition from apartheid to a democratic South Africa was a negotiated settlement rooted in compromises which meant there was no winner or loser. Consequently, there were no prosecutions of the leaders or agents of the apartheid regime for crimes of apartheid. Instead a Truth and Reconciliation Commission was established with the tasks of achieving reconciliation and supervising the granting of amnesty to those who had committed serious violations of human rights during the apartheid years. Post-apartheid South Africa has not become a party to the Apartheid Convention.
14. With a new constitutional, policy and legislative framework in place the apartheid system was dismantled and the foundation laid for a democratic and inclusive state founded on the values of human dignity, human rights, freedom, non-racialism, non-sexism and the rule of law. To achieve this, the democratic state had to work towards reconciliation and social cohesion and ensure that mechanisms were put in place to deal with the legacy of apartheid and redress past imbalances.
15. In President Nelson Mandela's address to the Constitutional Assembly on the occasion of the adoption of the New Constitution in 1996 he described the kind of society South Africa was trying to build. He said that the Constitution was –

*"our own humble contribution to democracy and the culture of human rights world- wide; and it is our pledge to humanity that nothing will steer us from this cause. Everybody will understand that we have a commitment and a mandate from the overwhelming majority of our people in this country to transform South Africa from an apartheid state to a non-racial state, to address the question of joblessness and homelessness, to build all the facilities that have been enjoyed for centuries by a tiny minority. We want men and women who are committed to our mandate, but who can rise above their ethnic groups and think in terms of South Africa as a whole."*⁶

⁶ Address to the Constitutional Assembly on the occasion of the adoption of the New Constitution, May 1996

CHAPTER 3: DEMOCRACY – THE END OF DISCRIMINATION?

16. With the advent of democracy in South Africa in 1994, a human rights culture was made the cornerstone of the new constitutional dispensation and a wide-ranging set of human rights, including socio-economic rights, was inscribed in a Bill of Rights and incorporated in the Interim Constitution of 1993 and repeated in the final Constitution of 1996.
17. From the outset the leadership in South Africa was determined that those rights would not just remain rights on paper, but would be actively realised, promoted and entrenched in the interests of all the people and particularly of the poor and the marginalised and those whose human rights had been consistently violated and abused for generations. The object was the complete transformation of our society from a culture that was oppressive, secretive and profoundly disrespectful of basic human rights into a human rights based culture in which the human dignity of all is both respected and celebrated.
18. The adoption of the Constitution in 1996 was a major turning point in this country's history. It has been called the "birth certificate" of a new South Africa - a country that is profoundly different to the one that existed before. Of course, the Constitution did not arrive suddenly or magically: it is the product of protracted negotiations - and a long and troubled history before that. Many of the ideas it contains are the realisation of years of struggle. In the words of the late former Chief Justice Mahomed -

"In some countries the Constitution only formalises, in a legal instrument, a historical consensus of values and aspirations evolved incrementally from a stable and unbroken past to accommodate the needs of the future. The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive, and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic."

19. The equality clause (section 9) underpins the other rights in Chapter 2 of the Constitution, providing as it does for the "full and equal enjoyment of all rights and freedoms." Section 9 prohibits unfair discrimination on certain prohibited (or listed) grounds.
20. Discrimination is a particular form of differentiation - it is differentiation on illegitimate grounds. This means that discrimination on the basis of one of the grounds listed in s 9(3) is presumed to be unfair discrimination, until the contrary is proved. There is accordingly a presumption that differentiation on the listed grounds will impose burdens on those who have been victims of past patterns of discrimination or will impair the fundamental dignity of those affected. The listed grounds are race, colour, ethnic origin, gender, sex, pregnancy, sexual orientation, marital status, age, disability, religion, conscience and belief, culture and language, birth and social origin.
21. The Bill of Rights is arguably the part of the Constitution that has had the greatest impact on life in this country. As the first words of this chapter say: "This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."
22. South Africa has passed a number of laws to give effect to its constitutional goals of achieving equality, human dignity and the advancement of human rights and freedoms. During the first 20 years of democracy more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination were approved by Parliament. New and amended legislation was put in place to enforce equality and preventing discrimination, such as, for example, the Employment Equity Act, 1998,⁷ the Promotion of Access to Information Act, 2000,⁸ the Promotion of Administrative Justice Act, 2000⁹ and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.¹⁰

⁷ Act No. 55 of 1998

⁸ Act No. 2 of 2000

⁹ Act No. 3 of 2000

¹⁰ Act No. 4 of 2000

23. In addition, the new government passed legislation dealing with land restitution, the upgrading of land tenure, the facilitation of access to housing and the provision of social assistance to those in need. These laws addressed systemic inequalities and unfair discrimination that manifested in the institutions of society and the practices and attitudes of South Africans insofar as these 'undermine the aspirations of our constitutional democracy.'
24. Yet it would be naïve to expect even the best-drafted laws to eradicate decades and centuries of oppression and institutionalized discrimination. The legacy of apartheid and colonialization remained. As President Mbeki remarked in 1998,

"South Africa is a country of two nations. One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure. This enables it to argue that, except for the persistence of gender discrimination against women, all members of this nation have the possibility to exercise their right to equal opportunity, the development opportunities to which the Constitution of '93 committed our country.

The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled. This nation lives under conditions of a grossly underdeveloped economic, physical, educational, communication and other infrastructure. It has virtually no possibility to exercise what in reality amounts to a theoretical right to equal opportunity, with that right being equal within this black nation only to the extent that it is equally incapable of realisation.

This reality of two nations, underwritten by the perpetuation of the racial, gender and spatial disparities born of a very long period of colonial and apartheid white minority domination, constitutes the material base which reinforces the notion that, indeed, we are not one nation, but two nations."

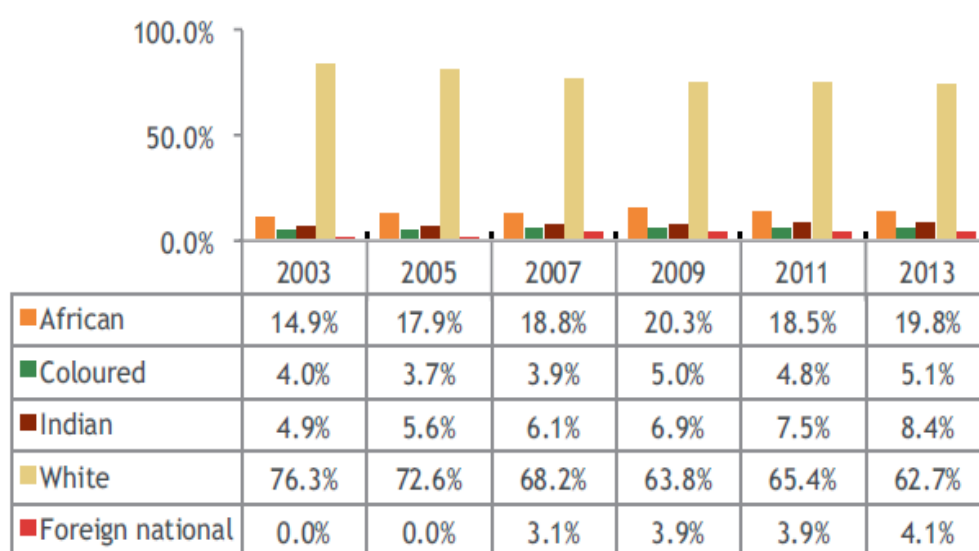
25. Significant progress has been made over two decades of freedom – yet there is still much more to be done. There are still, currently, challenges that we need to face. South African society remains divided. Many schools, suburbs and places of worship are integrated, but many are not. South Africa remains one of the most unequal economies in the world. The privilege attached to race, class and gender has not been fully reversed. Some examples, discussed hereunder, provide a glimpse of the remaining legacy of apartheid.

EMPLOYMENT

26. The Commission for Employment Equity published a trends analysis of the population group and gender workforce profile distribution in the first four occupational levels in terms of employment equity from 2003 to 2013. Table 1 below shows the population group distribution at top management level from 2002 to 2013:

Population distribution trends for the Top Management level from 2003 to 2013 by population group

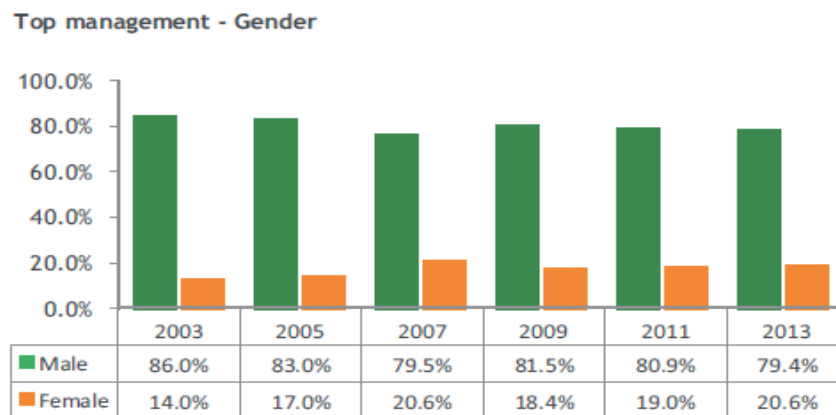
Top management - population group



27. Table 1 shows fluctuations in the employment distribution of African, Coloured and White population groups in terms of their representation at the Top Management level. The representation of Indians and Foreign nationals has been gradually increasing over the same period.
28. White representation decreased by 13.6% from 76.3% in 2003 to 62.7% in 2013 and African representation increased slightly by 4.9% over the same period from 14.9% to 19.8%. Coloureds representation increased over the same by 1.1% from 4.0% in 2003 to 5.1% in 2013.

29. Table 2 below shows the gender distribution at top management from 2003 to 2013:

Population distribution trends for the Top Management level from 2003 to 2013 by gender



30. Table 2 shows that males continue to be over-represented at the Top Management level, although their representation at this level dropped by 6.6% from 86.0% in 2003 to 79.4% in 2013. Female representation increased steadily by 6.6% from 14% in 2003 to 20.6% in 2013 at this level. More still needs to be done in order to bring the representation of females anywhere near close to their EAP (Economically Active Population).

31. The trends analysis at top management level from 2003 to 2013 can be summarized as follows:

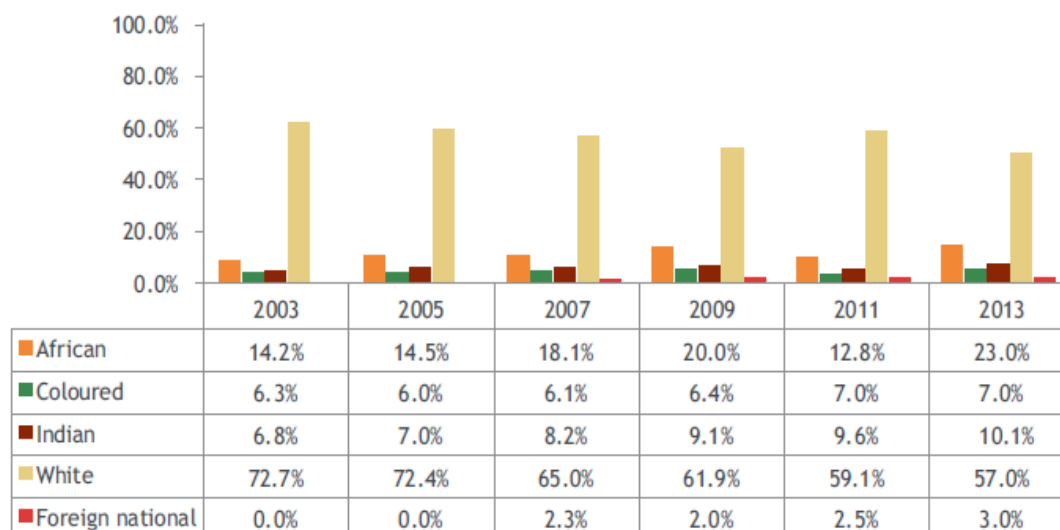
Changes at the Top Management Level from 2003 to 2013 using actual values and percentages

At the Top Management Level, the total workforce increased by 7 056 (45.5%) from 15 515 in 2003 to 22 571 in 2013, which had the following impact in terms of population group and gender distribution:

- White representation increased by 2 318 (19.6%) at this level from 1 1831 employees in 2003 to 14 149 employees in 2013
- Indian representation increased by 1 113 (145.3%) at this level from 766 employees in 2003 to 1 879 employees in 2013
- Coloured representation increased by 537 (88.2%) at this level from 609 employees in 2003 to 1 146 employees in 2013
- African representation increased by 2 155 (93.3%) at this level from 2 309 employees in 2003 to 4 464 employees in 2013
- Female representation increased by 2 468 (113.4%) at this level from 2 177 employees in 2003 to 4 646 employees in 2013
- Male representation increased by 4 587 (34.4%) at this level from 13 338 employees in 2003 to 17 925 employees in 2013
- Disability representation increased by 100 (40.5%) at this level from 247 employees in 2003 to 347 employees in 2013.

32. Table 3 below shows the population group distribution at senior management level from 2003 to 2013:

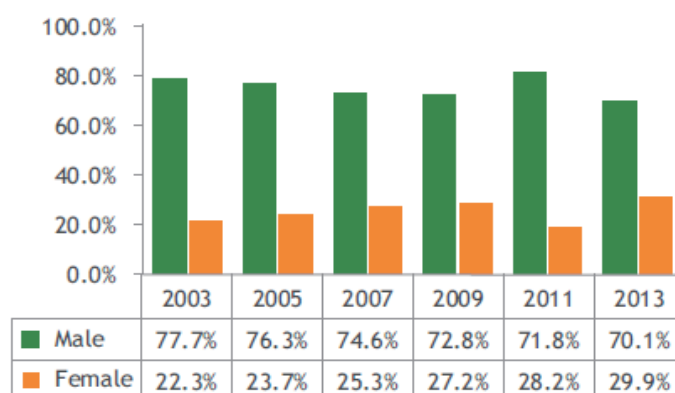
Senior management - population group



33. Table 3 above indicates that African representation has been consistently increasing from 14.2% in 2003 to 23.0% in 2013, representing 8.8% increase. Indians increased at this level by 3.3% from 6.8% in 2003 to 10.1% in 2013, while Coloured representation increased by 0.7% from 6.3% in 2003 to 7% in 2013, which is a clear indication that the increase in representation is not benefiting all within the Black group equally or on an equitable basis. White representation decreased from 72.7% in 2003 to 57% in 2013. The representation of Foreign Nationals increased by 0.7% from 2.3% in 2007 to 3.0% in 2013.

34. Table 4 below shows the gender distribution at senior management level from 2003 to 2013:

Population distribution trends for the Senior Management level from 2003 to 2013 by gender



35. As Table 4 above indicates, males occupy more than double the positions occupied by females at this level. Male representation decreased 7.6% from 77.7% in 2003 to 70.1% in 2013 and female representation increased by the same amount from 22.3% to 29.9% over the same period. The representation of females has been increasing at a snail's pace, illustrating some blockages for women to reach the upper echelons of the organisational structure.
36. The trends analysis at senior management level from 2003 to 2013 can be summarized as follows:

Changes at the Senior Management Level from 2003 to 2013 using actual values and percentages

At the Senior Management Level, the total workforce increased by 37 094 (78.2%) from 47 433 in 2003 to 84 527 in 2013, which had the following impact in terms of population group and gender distribution:

- White representation increased by 13 656 (19.6%) at this level from 34 485 employees in 2003 to 48 141 employees in 2013
- Indian representation increased by 5 285 (165.2%) at this level from 3 200 employees in 2003 to 8 485 employees in 2013
- Coloured representation increased by 2 864 (94.8%) at this level from 3 020 employees in 2003 to 5 884 employees in 2013
- African representation increased by 12 764 (189.7%) at this level from 6 728 employees in 2003 to 19 492 employees in 2013
- Female representation increased by 14 716 (138.7%) at this level from 10 607 employees in 2003 to 25 323 employees in 2013
- Male representation increased by 22 379 (60.8%) at this level from 36 826 employees in 2003 to 59 204 employees in 2013
- Disability representation increased by 456 (74.3%) at this level from 614 employees in 2003 to 1 070 employees in 2013.

37. In view of the above, it is evident that employment equity requires ongoing attention. There is still a great need for employment equity measures in South Africa.

INCOME DISTRIBUTION

38. The latest Income and Expenditure Survey (IES)¹¹ examines the increases to income according to population group. We see the largest increases happening in non-white households. Indian/Asian-headed households showed a 36,8% increase (an increase of R68 013), closely followed by black African-headed households at 34,5% (an increase of R17 859). Households headed by Coloureds saw a 27,7% increase in income (an increase of R30 152), while White-headed households saw only a 0,4% real increase or roughly R1 412 more.
39. However, despite this significant growth in income in Non-White households, there is still a tremendous gap between the population groups, as Table 5 below indicates.
40. White-headed households on average earn more than 5.5 times the income of the average black African-headed household. So while the income growth trend shows very positive signs, inequality remains a serious challenge for the country. Although marginal, male-headed households are still seeing greater income growth than households headed by women. However, in most male-headed households, the income reported commonly includes a working spouse/partner, so it is possible that gains made by their spouses / partners give extra weight to the household's overall income. Even though South Africans are getting richer, overall there are still very high levels of inequality across and within population groups.

Table 5

	IES 2010/11 (R)	IES 2005/06 (R)	Real Growth	Increase in Rand terms
South Africa	119 542	102 401	16.7%	17 141
Sex of household head				
Male	151 186	127 914	18.2%	23 272
Female	70 830	62 397	13.5%	8 433
Population group of household head				
Black African	69 632	51 773	34.5%	17 859
Coloured	139 190	109 038	27.7%	30 152
Indian/Asian	252 724	184 711	36.8%	68 013
White	387 011	385 599	0.4%	1 412

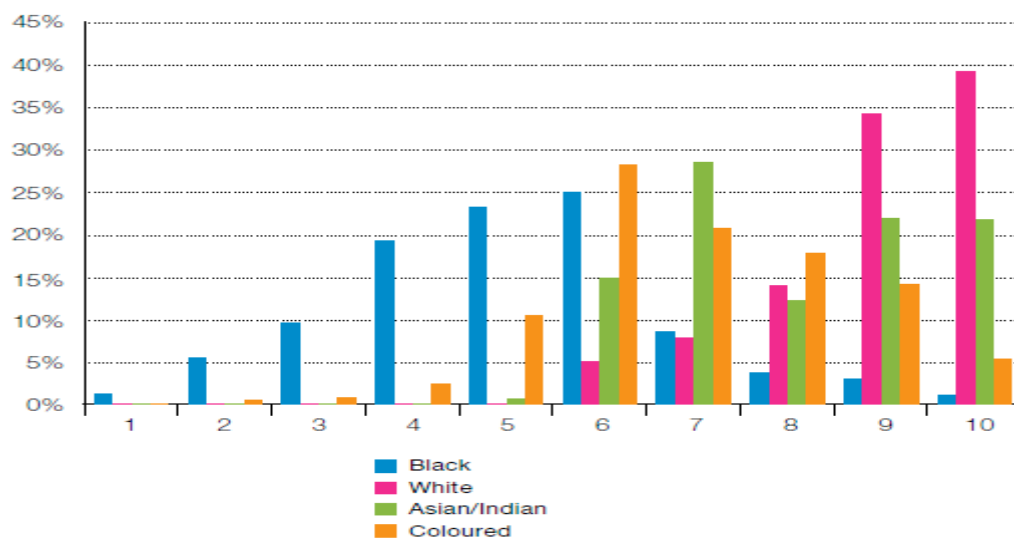
41. By way of using Living Standards Measures (LSM) categories to create broad class categories, LSM 1–5 contain the poorest of South African citizens, followed by a middle-income group within category 6–8, and then the wealthiest of South African citizens within LSM 9–10.
42. Disaggregating LSM scores by race for 2013 data, we continue to see the legacy of this intersecting relationship between race and class as represented in Table 6 below. While the middle and upper LSM groups are becoming more integrated, the poorer LSM groups remain almost exclusively black.¹²
43. The overwhelming majority of the poor continue to be black. The first thing to notice is that, in the lowest four LSM categories (on the horizontal axis), there is a much higher percentage (on the vertical axis) of black South Africans (represented by the blue bar in Table 6 below) relative to the total population of black South Africans found in the lowest LSM groups than any other race group: 35.4% of black South Africans are in the lowest four LSM categories, 48.2% are in the middle categories and 16.3% are in the highest four categories. The opposite trend is demonstrated for white and Indian South Africans (red and green bars respectively), as they are entirely absent from the lower LSM categories and the majority of individuals within these race groups are found in the higher LSM groups.

¹¹ Income and Expenditure Survey 2010/11, Statistics SA

¹² Reconciliation Barometer, Institute for Justice and Reconciliation, 2013

44. For white South Africans, 0% are in the lowest four LSM groups (in fact, there are no white South Africans in our sample in the first five LSM categories), 5% are in the middle categories, and 95% are in the top four categories (with 73.3% of white South Africans in the highest two LSM categories 9 and 10). Within Asian/Indian South Africans, 0% are in the lowest LSM categories, 15.5% are in the middle LSM categories and 84.3% are in the highest LSM categories. For coloured South Africans, the majority are found in the middle LSM groups, with 3.6% in the lowest four LSM categories, 38.7% in the middle categories and 57.8% in the highest four LSM categories.

Table 6



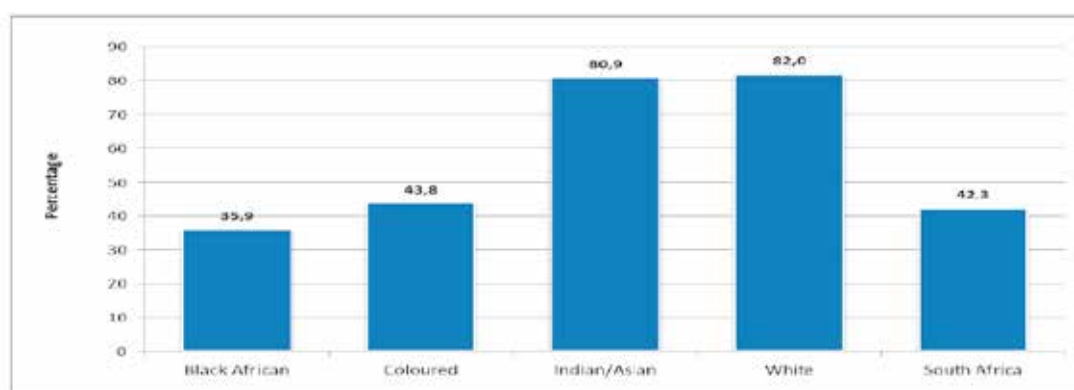
45. These figures indicate a prominent relationship between race and class, especially in terms of material exclusion. Black South Africans comprise the vast majority of the materially excluded in South Africa, a dire reality which is not experienced by most white South Africans. This is part of the legacy passed down from centuries of colonialism that culminated in the apartheid system, which fostered a mutually reinforcing relationship between racial discrimination and class inequality. From the statistic discussed above, we see that this inheritance continues to be alive to this day.¹³

¹³ Reconciliation Barometer, IJR, 2013

HOUSING

46. Findings from the General Household Survey, 2014¹⁴ on the percentage of dwelling units with six rooms or more per population group is depicted in Table 7 below. The number of rooms includes all rooms in the dwelling (including toilets and bathrooms). This question reflects the standard of living of the household.
47. White headed (82%) and Indian/Asian headed (80,9%) households were much more likely to live in dwellings with six or more rooms than Coloured headed (43,8%) or black African headed (35,9%) households. Black African-headed households inhabited dwellings with an average of about 5 rooms, compared to 6 rooms for coloured, about 8 for Indian/Asian and White-headed households.

Table 7



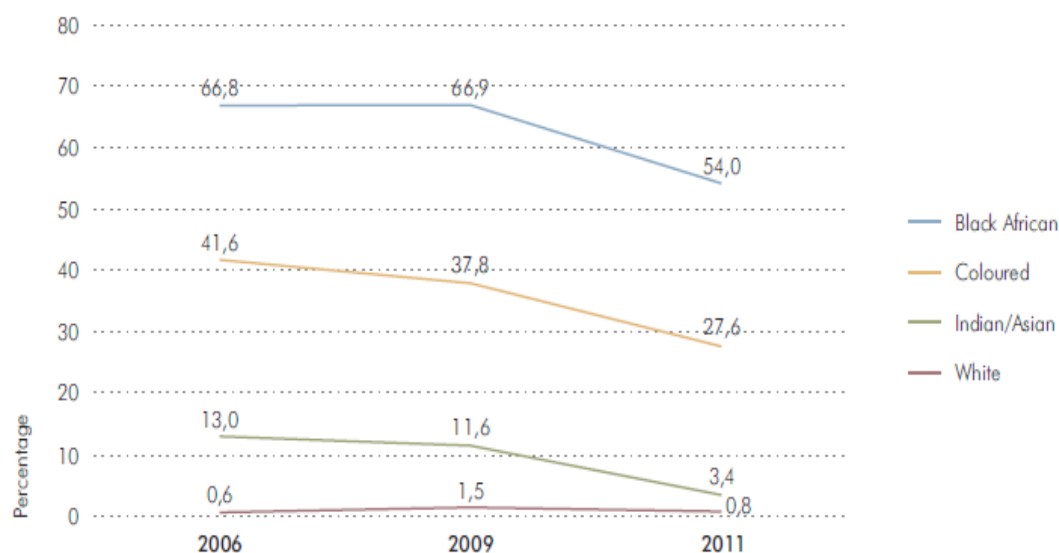
POVERTY AND SOCIAL SECURITY

48. A study on absolute poverty between 2006 and 2011, released by Statistics SA in 2014, shows that there are significant differences in poverty levels between the population groups in South Africa. In terms of poverty share, more than 9 out of 10 (94,2%) poor people in South Africa were black Africans in 2011, a proportion that increased slightly from 2006 (92,9%) and 2009 (93,2%). In 2006, two-thirds (66,8%) of black Africans were living under the upper-bound poverty line. This proportion remained relatively unchanged in 2009 (66,9%) before declining to 54,0% in 2011 – this reflects a 19% decrease in the level of poverty amongst black Africans from 2006 to 2011.
49. These levels of poverty were significantly higher than the levels amongst the other population groups. In 2006, two-fifths (41,6%) of Coloureds were found to be poor, as were one in eight (13,0%) Indians/Asians and very few (0,6%) whites. Levels of poverty amongst Coloureds have progressively decreased to 37,8% in 2009 and 27,6% in 2011, showing an overall decline of 34% during the period.

¹⁴ Undertaken annually by Statistics SA

50. Table 8 below shows the poverty headcount per population group in 2006, 2009 and 2011:

Table 8



51. The poverty gap also differed significantly between the population groups. In 2006, black Africans had a poverty gap of 31,6%, which was almost twice as large as the gap for Coloureds (17,0%) and significantly larger than that for Indians/Asians (3,3%) or Whites (0,2%). While the poverty gap for black Africans had decreased to 23,6% by 2011, it was still more than twice as large as for any other group. The severity of poverty was similarly more than twice as large for black Africans than for other groups at each point in time. In addition, the severity increased from 2006 (18,3) to 2009 (20,1) before it fell to 13,1 in 2011.

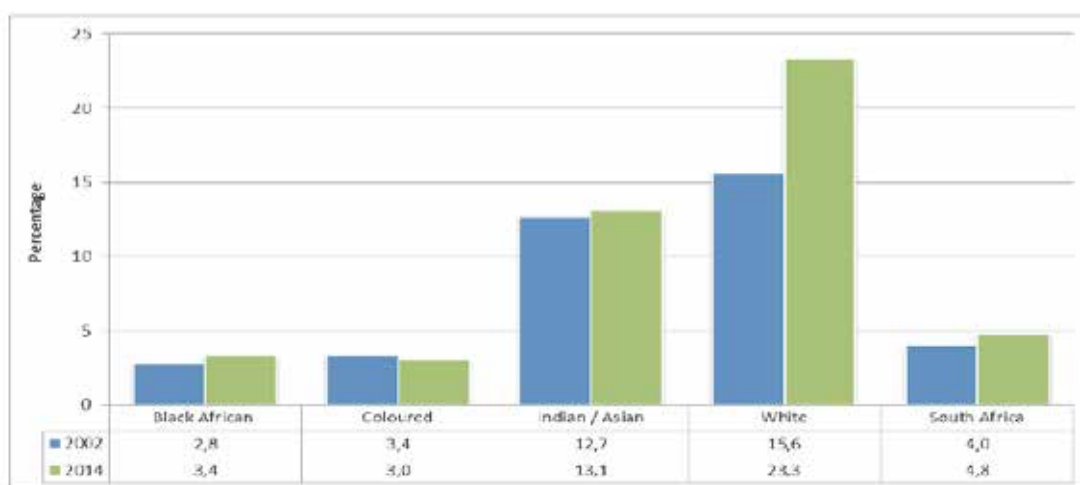
52. Table 9 below shows the poverty gap per population group in 2006, 2009 and 2011.

	Headcount (P_0)			Poverty gap (P_1)			Severity (P_2)		
	2006	2009	2011	2006	2009	2011	2006	2009	2011
Total	57,2	56,8	45,5	26,7	27,9	19,6	15,4	16,7	10,8
Black African	66,8	66,9	54,0	31,6	33,4	23,6	18,3	20,1	13,1
Coloured	41,6	37,8	27,6	17,0	15,1	9,6	8,9	7,7	4,5
Indian/Asian	13,0	11,6	3,4	3,3	2,1	1,0	1,6	0,6	0,4
White	0,6	1,5	0,8	0,2	0,6	0,3	0,1	0,3	0,1

53. In 2014 more than one-third of black African individuals (32,8%) received a social grant, compared to 24,3% of Coloured individuals, and 10,4% of Indian/Asian individuals. Only 4,6% of the White population received grants.

EDUCATION

54. Chapter 9 of the National Development Plan envisages a country where all children can access and benefit from a high quality education.
55. There are still challenges facing education. Out-of-school factors, such as poverty and socio-economic conditions, play a role. Family commitments, having to work at home, and pregnancy account for those not receiving instruction. In addition, many learners in South African schools face a language barrier in the classroom. Other factors include the fact that many South African children do not live in the same household as their biological parents. Poverty and adult illiteracy often prevent parents who are present from getting more involved in their children's education. Many young people are missing out on the chance of getting a higher education, because they cannot afford it.
56. One of the biggest challenges is that schools and institutions of higher learning are not fully integrated. We need to address the legacy of segregated education and to address attitudes and prejudices responsible for the persistence and continued existence of racism. We also need to address distortions and biases in the way in which history has been presented and promote tolerance and respect for racial, cultural and religious diversity.
57. It is imperative to integrate anti-racism training and education into the curriculum, particularly the values and democracy components and to develop curricula that deals honestly, objectively and truthfully with our painful past and to promote greater integration of schools.
58. We need to ensure that schools are not only desegregated but also integrated. Schools must reflect the demography, diversity and richness of our country's cultural heritage.
59. In terms of access to education, approximately 783 545 students were enrolled at higher educational institutions during 2014. Almost two-thirds (63,4%) of these students were black African. However, proportionally this group is still underrepresented. Only 4,8% of Black Africans aged 18 to 29 years were studying as opposed to 13,1% of Indian/Asian individuals and 23,3% of the White population in this age group. Only 3,1% of the Coloured population was studying during 2014. Some 4,8% of persons aged 18 to 29 were enrolled at a higher education institution in the country in 2014 – up from 4% in 2002. An estimated 23,3% of White individuals in this age group and 13,1% of Indian/Asian individuals were enrolled at a university compared to 3,0% of the Coloured and 3,4% of the black African population groups.¹⁵
60. Table 10 below shows the percentage distributions of student participation rates for individuals aged 18 to 29 years, per population group in 2002 and 2014.



¹⁵ General Household Survey 2014

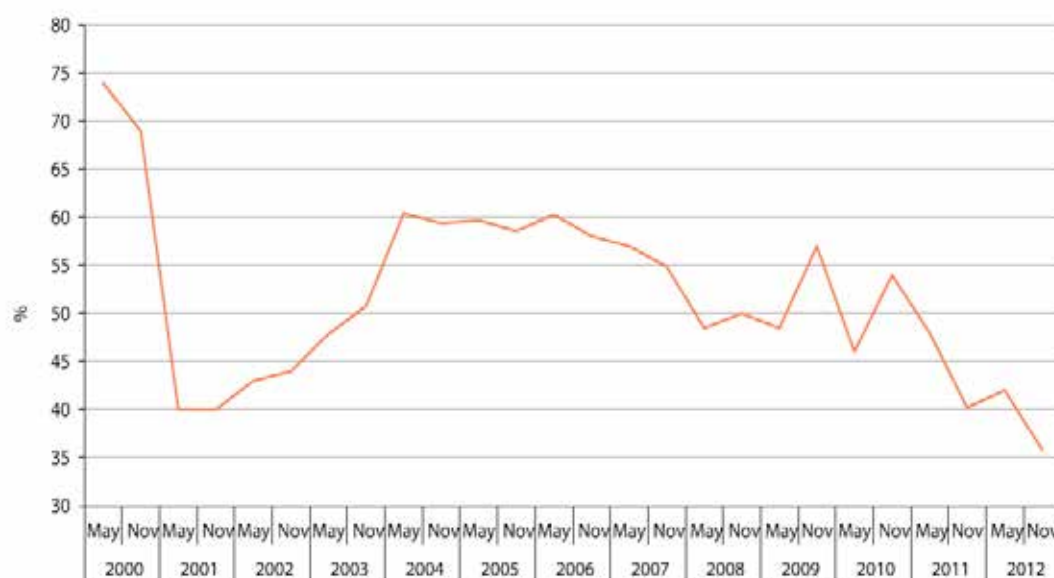
SOCIAL COHESION AND NATION BUILDING

61. The Constitution outlines principles of non-racialism, non-sexism and equality before the law. The social, psychological and geographic elements of apartheid continue to shape the lives and outlook of many South Africans, even though apartheid no longer exists on the statute books.
62. The DPME Development Indicators, 2012, show that more than 50% of all races are confident in a happy future - however since 2006 confidence levels in a happy future has decreased, as shown in Table 11 below. This decline coincided with the onset of the global financial and economic crisis.

Table 11



63. The DPME's Development Indicators also show that at 39% average in 2012, public perceptions were low and herald a call for continuing social cohesion initiatives.
64. Table 12 below shows the public perceptions in race relations from 2000 to 2012.



65. The IJR's SA Reconciliation Barometer 2014 states, correctly, that apartheid regulated and enforced the psychological segregation of South Africa's constitutive population groups. Apart from the economic dispossession that coincided with forced removals and the enforcement of pass laws to police geographic segregation, the imposition of these laws also had a profound impact on the psyche of all South Africans, instilling a "toxic understanding" of intergroup relations.
66. With regard to racial reconciliation, the Reconciliation Barometer concludes that in general, the percentage of people who report engaging in interracial talk and socialisation has increased. However, when both forms of interracial interactions are analysed in relation to class, findings demonstrate that interracial integration is consistently lower for the poorer LSM categories and higher for the more well-off LSM categories. Class inequality, which is mapped into the racial geographies of South Africa, results in exclusion of the poor from racially integrated middle- and upper-class spaces. These results indicate a need to address issues of material inequality in order to forge racial integration across class boundaries. Furthermore, while increased interracial socialisation has resulted in lower levels of mistrust, it has not resulted in higher desire for more interracial interaction or more approval for racial integration.

GENDER EQUALITY

67. Under Apartheid, black women in South Africa were the subject of triple oppression, i.e. on the basis of gender, class and race. The structural nature of apartheid had enormous impact on the lives of black women.
68. Gender oppression is often expressed in socio-cultural traditions and attitudes all of which are supported and perpetuated by an ideology which subordinates women. For most poor black women this entrenched patriarchy meant living on the periphery: economically, politically and also in relation to employment. Many black women were pushed into unskilled, low-paying work as domestic workers or in factories.
69. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee in its concluding observations noted that the legacy of apartheid for women included *"widespread discrimination and underdevelopment, and is visible in areas such as women's high levels of unemployment, illiteracy and poverty and in the area of violence against women"*. It is, therefore, crucial that the needs and interests of women are given priority both at the national level and within the context of the community and home, in order to attain equality. Table 5 above shows the existing disparities in income between males and females.
70. South Africa's commitment to eliminate racism, oppression and exploitation from our society cannot fail to address also the question of the emancipation of women. The experience of other societies has shown that the emancipation of women is not a by-product of a struggle for democracy or national liberation. It has to be addressed in its own right. To achieve genuine equality, policies must be based on a real understanding of inherited entrenched patriarchy and the way it manifests itself in our society.
71. Gender equality is a constitutional imperative in South Africa. The Constitution strives to achieve equality between women and men by prohibiting racial, gender and all other forms of discrimination. This recognition is firmly grounded in the Constitution and reflected in a wide range of laws, policies, programmes and practices. The constitutional mandate on gender equality is clear and the legislative process is to provide the building blocks for a gender-equitable society.

PREVENTING DISCRIMINATION AND PREJUDICE AGAINST LGBTI PERSONS

72. Discrimination on the grounds of sexual orientation still exists. An international survey¹⁶ found huge variance by region on the question of whether homosexuality should be accepted or rejected by society. According to the survey of people in 39 nations, the more secular and wealthy a country is the more likely it is to be accepting of homosexuality. Disturbingly, despite South Africa's legal and constitutional backing of LGBTI equality, researchers found that 61% of South Africans say that homosexuality should not be accepted by society, while just 32% say it should be accepted.

ECONOMIC OPPORTUNITIES FOR ALL

73. In South Africa, public policy has had a significant redistributive content. Close to 60% of government spending is allocated to the social wage, and such expenditure has more than doubled in real terms in the past decade. Per capita health spending has doubled in the same period, free basic education was provided to the poorest 60% of learners, and levels of self-reported hunger have dropped by half. Almost three million houses and housing units have been constructed as potential assets for poor people. Access to basic services such as piped water, sanitation, electricity and refuse removal have all improved, all contributing to a decline in both absolute and relative poverty, and to improving equality of opportunity.¹⁷
74. Poverty and inequality still exist. This means that many South Africans, despite constitutionally justiciable socio-economic rights, are not able to fully enjoy these rights.
75. Social and economic inequality impact on the scope for economic development. South Africa has not fundamentally touched the structure of the economy in order to effect true economic transformation. It is for this reason that 20 years into freedom, we are still grappling with poverty, inequality and unemployment.¹⁸ In addition, the black majority still owns only 3% of the Johannesburg Stock Exchange, pointing to the need to move faster to achieve meaningful economic emancipation. This has led to a call for radical economic transformation.
76. Radical economic transformation means the industrialization of the economy, boosting and expanding agriculture and manufacturing and adding value to South Africa's mineral wealth in order to open up opportunities for economic participation for more people and create jobs.
77. As part of changing the structure and to deracialise the economy, the Broad-Based Black Economic Empowerment Amendment Act was proclaimed into law in October 2014. Regulations to give effect to the Act are being finalised. A B-BBEE Commission is to be appointed in 2015, to oversee the overall implementation of B-BBEE, and ensure effective reporting and monitoring. In addition, a programme to create and support Black Industrialists over three years was launched in November 2014.
78. Mining, like other sectors of the economy, is bound by BEE obligations. Applicants for mining licences are required to demonstrate compliance with a "mining charter" that came into effect in 2004. Inter alia, this requires companies to increase black ownership to 26% by 2014. In September 2010 a revised charter was published which extended some of the requirements. The charter requires companies to allocate 5% of their annual payrolls to skills development by 2014 (apart from the 1% applicable to all employers).

¹⁶ Pew Research Survey, June 2013

¹⁷ The impacts of social and economic inequality on economic development in South Africa, UNDP, 2014

¹⁸ President Jacob Zuma in response to the State of the Nation Address Debate, 19 February 2015

ERADICATING THE LEGACY OF APARTHEID

79. In the context of all of the foregoing, it is incumbent on South Africans from all walks of life to embark on programmes dedicated at eradicating all the lingering negative legacies of apartheid and discrimination from our past and give a true meaning to the notion of a rainbow nation. It is therefore imperative for government, corporate sector, organised labour, and faith based organisations to develop their own progressive barometers (indicators) measuring their achievements in eradicating all the scourges of racism and attaining the ideals of nation building and social cohesion.
80. Systemic and inherited racism must be confronted by society as otherwise it will be reproduced and reinforce itself across generations. It is this inherited psyche of racial prejudice, breakdown in values, inequality of opportunity and massive poverty, as well as competition for scarce resources, which helps fuel racism and, more recently, xenophobia. Discrimination on the grounds of sexuality and homophobic violence are also a major problem. More needs to be done to protect the constitutional and legal rights of sexual minorities. Inequality and discrimination still exist.
81. It is against this reality that the NAP is necessary.

CHAPTER 4: ADDRESSING RACISM AND DISCRIMINATION AND PROMOTING EQUALITY

82. The various measures taken by South Africa to meet its range of constitutional and human rights obligations have been set out in detail as part of South Africa's international treaty reporting obligations.
83. It is not the aim of the NAP to replicate all the information so given, suffice to say that the 1994 democratic elections marked a watershed moment in the political history of South Africa.
84. Democratic legislation replaced unjust and repugnant laws. In addition, the judiciary and the executive provided a framework which provided for the respect for as well as the promotion, protection and fulfilment of a culture of respect for human rights for everyone. The new government prioritised the eradication of racist laws as well as undoing racism and racial discrimination embedded in institutions and social life through enacting the Constitution and the Bill of Rights.
85. South Africa has a strong equality and anti-discrimination legal framework. Section 7(2) of the Constitution requires the State to respect, protect, promote and fulfil the rights in the Bill of Rights with the state having the primary responsibility to guarantee that every individual can exercise their rights. In this regard, the Government of South Africa has passed a number of laws to give effect to its constitutional goals of achieving equality, human dignity and the advancement of human rights and freedoms.

EQUALITY AND ANTI-DISCRIMINATION

86. The right to equality and to be protected from discrimination features prominently in our Constitution.¹⁹ South Africa has enacted various pieces of legislation to rule out discrimination and ensure equality across a variety of areas, e.g. with regard to combating employment discrimination, there is the Employment Equity Act, 1998.
87. Government also passed the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (PEPUDA) which prohibits unfair discrimination on the grounds of race, gender and disability. The Act defines hate speech as words 'that could reasonably be construed to demonstrate a clear intention to be hurtful, cause harm or promote hatred on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth'. This definition is broader than the definition provided for in the Constitution in that it includes both hurtful and harmful speech, as well as speech that could have this intention, introducing a speculative element to the definition.²⁰
88. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000²¹ provides for the framework for the implementation of section 9 of the Constitution. In this regard, the Act provides for the designation of Equality Courts. The purpose of Equality Courts is to adjudicate matters specifically relating to infringements of the right to equality, unfair discrimination and hate speech, with a view toward eradicating the ever present post-apartheid spectre which essentially divided the country along racial, gender and monetary related lines. The Act stipulates that all High Courts are automatically designated as Equality Courts, but more importantly affords the bulk of adjudicative powers relating to equality matters to the Magistrates' Courts. The Department of Justice designates Magistrates'

¹⁹ S 9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

²⁰ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. <http://www.justice.gov.za/legislation/acts/2000-004.pdf>

²¹ Act No. 4 of 2000

Courts as having jurisdiction to entertain equality matters, once presiding officers and staff of such Courts receive the appropriate training. Regulations for Equality Courts were promulgated²² and, in 2009, all Magistrates' Courts were designated as Equality Courts. All High Courts also sit as Equality Courts. This has improved access to justice as the public can now lodge complaints of unfair discrimination at the Magistrates' Court nearest to their community.

89. The extensive range of remedies available to these courts is designed to encourage a creative, informal judicial approach that is sensitive to the circumstances of each case and the needs and interests of the parties. There are wide standing provisions allowing proceedings to be instituted by individuals, those acting on their behalf, in the interests of a group or class, in the public interest, or an association acting in the interest of its members.
90. Persons needing assistance when approaching the Equality Court are usually assisted by the clerk of the Equality Court or the South African Human Rights Commission or the Commission for Gender Equality, as the need may be. Although the Equality Court is a formal court sitting, the rules and procedures are more relaxed than in normal courts. In order to institute proceedings in the Equality Court it is not a requirement that one must have legal representation. The Equality Courts are free of charge, so the complainant does not have to pay any court fees.
91. In 2013/14 there was a total of 638 cases before the Equality Courts. This is an increase of 3,24% from 2012/13. Although an increase in cases enrolled at these courts has been witnessed, it is nonetheless a matter of concern to government that the Equality Courts are underutilized. Of the 638 cases, hate speech and unfair discrimination were the leading complaints in 2013/14 with 255 and 217 cases respectively. While there was a 4% decrease in hate speech complaints, unfair discrimination cases increased by 40%.
92. Our courts have also handed down cases which focus on clamping down on discriminatory laws and practices. For example, in *Minister of Home Affairs v Fourie* Sachs J held that

*"A democratic, universalistic, caring and aspirationally egalitarian society embraces everyone and accepts people for who they are. To penalise people for being who and what they are is profoundly disrespectful of the human personality and violatory of equality. **Equality means equal concern and respect across difference. It does not presuppose the elimination or suppression of difference. Respect for human rights requires the Affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgement and acceptance of difference.** At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best, it celebrates the vitality that difference brings to any society"*²³
93. In essence, the judgments of our courts are continuously being factored into the policies of Government to ensure the strengthening of a human rights culture in the country.

²² Government Notice No R764 of 13 June 2003 (Government Gazette 25065)

²³ Para 60

HATE CRIMES AND HATE SPEECH

94. Hate crimes are identity crimes, directed not only at the identity of the victim but also of the group to which they belong. A victim is thus often a symbol of a broader group of people. Although hate crimes can be perpetrated against anyone, it is often the more marginalised groups that are targeted.
95. We are increasingly living in a world that focuses more and more on difference, a world that is becoming increasingly intolerant. There is no shortage of hate crimes in our society. We know of violent attacks on, and so-called corrective rapes of LGBTI persons. Other examples include the *Skierlik* racially motivated killings of poor Black people by a White youth;²⁴ the case of the "Reitz Four"²⁵ the violent targeting of lesbian, gay, bisexual, transgender and intersex (LGBTI) people based on their sexual orientation and gender identity, for example the so-called "corrective rape" and murder²⁶ of lesbians and transgender men, especially in townships;²⁷ the unprecedented wave of attacks on foreign nationals that South Africa experienced in May 2008 and 2015 which resulted in loss of life and damage to property, as well as displacement of migrants, and their displacement to emergency camps;²⁸ and vandalism targeting religious institutions such as in October 2010, when several tombstones at a Jewish cemetery in Bloemfontein were defaced with swastikas and anti-Semitic graffiti.²⁹
96. Events in South Africa in 2014 and early 2015 reveal that the racism and racial discrimination of the past continues to play out, most visibly in the public arena. In 2014 several racial incidents in the southern suburbs of Cape Town made news headlines. In February 2015, an 18 year-old black male student was attacked in his dormitory, in the Northern Cape Agricultural School in Jan Kempdorp by four boys who subjected him to two hours of torture and a 19 year-old boy raped him with a broomstick. Reportedly, 20 boys, both black and white watched this torture and torment, and laughed at the spectacle. The fact that the boy's mother was white was the speculated reason for this "hate attack". In the same month, the Curro Foundation School in Roodeplaat apologized to the Department of Basic Education for segregating white and black pupils. A probe was ordered after 30 parents signed a petition condemning the alleged segregation. In February 2015, a man was placed under correctional supervision in the Cape Town Magistrate's court for using a racial slur to denigrate his former girlfriend's domestic worker.
97. The SAHRC recently said that violence against foreigners in South Africa should now be referred to as "afrophobia," and not xenophobia, with the latest research showing Africans are attacked and not Europeans.
98. South Africa has a number of laws that deal with discrimination, such as the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) as well as section 9 of the Constitution, yet none of these is specifically tailored to address the issue of hate crime. PEPUDA deals with hate speech, unfair discrimination and harassment. The term "hate crime" does not feature anywhere in the Act. It is important to note that PEPUDA recognizes that unfair discrimination and hate speech may constitute crimes and must be regarded as an aggravating factor for the purposes of sentencing. But this does not address hate crimes individually and specifically, as it does harassment, discrimination and hate speech. PEPUDA has a further weakness in the sense that it focuses specifically (in section 28(1)) on discrimination based on race, disability and gender but does not include nationality or sexual orientation. In this way, PEPUDA creates a 'hierarchy of hate' by prioritising some forms of discrimination over others.

²⁴ An 18 year old white youth walked into the Skierlik informal settlement in North-West Province and opened fire on the occupants, shooting at random. Four persons including a three month baby died; six people were injured.

²⁵ A well-publicised racial incident that occurred at Free State University, in which white students grossly abused black women employees of the university and videotaped the degrading treatment after misleading them into participation. The accused were charged with the common law crime of *crimen injuria* and sentenced accordingly in the absence of any specific provision dealing with hate crime in our law.

²⁶ For example the case of Noxolo Nogwaza who was brutally raped and murdered in KwaThema township. She was raped and murdered, apparently because she was living as an openly gay woman.

²⁷ Human Rights Watch: "We'll Show You You're a Woman", December 2011, <http://www.hrw.org/reports/2011/12/06/well-show-you-youre-woman>

²⁸ South African Human Rights Commission: Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals, March 2010, <http://www.cormsa.org.za/wp-content/uploads/2009/05/hrc-report.pdf> See also <http://www.businessday.co.za/articles/Content.aspx?id=156944>

²⁹ <http://www.antisemitism.org.il/article/13935/south-africa-%E2%80%93-jewish-cemetery-was-desecrated>

99. South Africa has developed a comprehensive policy framework on Hate Speech and Hate Crimes which it intends will be the basis for legislation. The DoJ&CD has made significant progress with the Policy Framework on Combating Hate Crimes, Hate Speech and Unfair Discrimination. The Policy Framework is a result of intense research and will provide for the development of measures to combat hate crimes, hate speech and unfair discrimination.
100. There is currently a first working draft of an Hate Crimes Bill. The Bill is based on the recommendations contained in the policy framework which was developed. Developing specific legislation on hate crimes will have a number of advantages. It will help create a shared definition of hate crime amongst all those involved in the criminal justice system;³⁰ will send a clear public message that hate crimes will not be tolerated in South Africa; will provide additional tools to investigators and prosecutors to hold hate crimes perpetrators accountable; will provide a means to monitor efforts and trends in addressing hate crimes; will allow for effective coordination between government service providers to reduce the impact of secondary victimisation on hate crimes victims. Secondary victimisation takes place where victims are subjected to further insensitive or inappropriate behaviour or comments by police, health care officials or justice officials.

SOCIAL COHESION AND NATION BUILDING

101. South Africa has also adopted various measures providing a basis for a common national identity and greater social cohesion, including the recognition of 11 official languages in the Constitution and programmes promoting the Bill of Responsibility, Constitutional values and national symbols amongst children in schools. Apartheid-era museums and monuments have been protected and new Heritage sites and legacy projects have been completed. Sporting events, such as the Rugby World Cup in 1995, the Africa Cup of Nations in 1996 and the FIFA World Cup in 2010, have made an important contribution to creating national unity.³¹
102. Government is continuously seeking to overcome the legacy of past discriminatory practices and strives to develop one nation, united in our diversity. The country has thus undertaken not only to promote diversity and tolerance but it has also taken positive measures to promote the rights of minority groups.
103. The Department of Arts and Culture (DAC) is the coordinating state department for Outcome 14: nation building and social cohesion.
104. The DAC is specifically tasked to create an environment conducive to the growth and development of South Africa's arts and culture. Among its key objectives are the improvement, re-orientation and expansion of the arts and culture sector to serve South Africa's cultural needs. The DAC's vision is to develop and preserve South African culture so as to ensure social cohesion and nation-building.
105. The DAC defines social cohesion as the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities.
106. In terms of this definition, a community or society is cohesive to the extent that the inequalities, exclusions and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions, distrust and conflict are reduced and/or eliminated in a planned and sustained manner. This, with community members and citizens as active participants, working together for the attainment of shared goals, designed and agreed upon to improve the living conditions for all.

³⁰ For example, the National Policy Guidelines for Victim Empowerment list 'Victims of Hate Victimisation' as a priority group for assistance but there is no recognition of 'victims of hate victimisation' in any domestic current legislation.

³¹ South African Human Rights Commission (SAHRC) 'NHRI written submission to the Universal Periodic Review (UPR) Mechanism', 28 November 2011. (p2) <http://www.sahrc.org.za/home/21/files/SAHRC%20NHRI%20UPR%20Submission%20FINAL%202011.pdf> (Accessed 28.02.15)

107. Nation-building is the process whereby a society with diverse origins, histories, languages, cultures and religions come together within the boundaries of a sovereign state with a unified constitutional and legal dispensation, a national public education system, an integrated national economy, shared symbols and values, as equals, to work towards eradicating the divisions and injustices of the past; to foster unity; and promote a countrywide conscious sense of being proudly South African, committed to the country and open to the continent and the world.
108. Nation-building in this sense, and in the context of South Africa, cannot be the perpetuation of hierarchies of the past, based on pre-given or ethnically engineered and imposed divisions of people rooted in prejudice, discrimination and exclusion. It calls for something else; that is, a rethinking, in South African terms, of what social cohesion, linked to nation-building, should be. It should, no doubt and in essence, be directed towards the practical actualisation of democracy in South Africa.
109. For example, as part of its efforts to promote inclusive citizenships, the DAC hosted no less than eighty community conversations held throughout South Africa to determine from communities the kind of society they seek to build. These conversations culminated in our country's first National Summit on Social Cohesion, held in Kliptown in July 2012. The summit brought together South Africans; black and white, women and men, rich and poor, young and old, urban and rural, with a diversity of beliefs, seeking to unite them under a common declaration and through a practical programme of action
110. The National Summit on Social Cohesion was held to review progress made in creating a caring and proud South African society and to provide a platform to discuss the National Strategy for Developing an Inclusive South African society. The summit adopted a Declaration and Programme of Action. The declaration acknowledges the challenges faced by South Africa in building a non-racial, non-sexist and united society after the dawn of our constitutional democracy. Furthermore, the summit recognises that social cohesion depends to a large measure on our ability, as society, to address this challenge.
111. An Inter-Ministerial Committee (IMC) on Social Cohesion is in operation. The work relating to social cohesion is critical in that the Medium Term Strategic Framework (MTSF) 2014-2019 and the National Development Plan are aimed at ensuring a country where all people in South Africa will be more conscious of the things they have in common than those that differentiate them. The MTSF and NDP envisage a country where lived experiences will progressively dissolve artificial divisions of race, gender, disability, space and class. In this South Africa there will be broad-based knowledge of and support for a set of values by all South Africans, including the values contained in the Constitution; and an inclusive society and economy. This means the factors that sustain inequality will be met head-on by building capability and capacity, obstacles will be removed and the wrongs of the past will be systematically redressed. The NDP identifies the broadening of social cohesion as an important enabler towards achieving Vision 2030, while it is also included as one of the 14 priority outcomes in the MTSF.
112. Government has put particular emphasis on improving constitutional awareness and on promoting constitutionalism and social justice so as to contribute to social cohesion. The DoJ&CD's Branch Constitutional Development is tasked to ensure awareness of the relevance of our constitutional democracy and the rights and obligations of persons in this regard. In addition, other departments, such as DBE and DAC, also run important social cohesion programmes.

ATTACKS ON FOREIGN NATIONALS

113. Attacks on foreign nationals experienced in, amongst others, May 2008, July 2012 and June 2013 resulted in the loss of many lives and damage to property. Crimes motivated by racism, intolerance and hate, or crimes committed by reason of the identity of the victim, are manifestly "racist" and "hate crimes". These crimes continued throughout the country in 2014. In January 2015 widespread looting of migrant- owned shops in townships across the country signalled that xenophobia is set to be dealt with.
114. The UN Refugee Agency (UNHCR) reported in 2015 that South Africa continued to be a major destination for refugees and asylum seekers as well as migrants seeking economic and social opportunities and confirmed reports of human smuggling and trafficking. The report noted that the asylum system was overwhelmed, that it suffered a backlog; without a comprehensive immigration system, migrants took the opportunity to stay legally in the country gaining access to services.³²
115. In August 2008 government held a Social Dialogue on Xenophobia. It involved NGOs, religious organisations, government departments, affected communities, organisations representing foreign nationals and civil society. The aim of the gathering was to facilitate public dialogue on identifying strategies for promoting social cohesion and combating xenophobia. 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 to combat all manifestations of xenophobia.
116. In March 2010 the South African Human Rights Commission released a report entitled "Report on the SAHRC Investigation into issues of the Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals." The report considered the preparedness and response of the organs of state to the 2008 crisis in terms of the prevention of impunity for violators of human rights, the securing of justice for victims of rights abuses, and efforts towards the restoration and maintenance of the rule of law, which is a precondition for the realisation of rights. Recommendations are made to strengthen state institutions and responses with a view to preventing future social conflict or mitigating it more effectively where it arises.
117. In July 2010 Government outlined a multi-faceted plan to prevent any outbreak of violence against anyone, including foreign nationals in South Africa and further called upon all civic organizations, political parties, youth formations and the religious fraternity to work together. According to some of the findings, these tensions were predominantly driven by criminal elements in areas where there are high levels of poverty and unemployment. An IMC, established in 2010 to deal with threats of violence against foreign nationals, was chaired by the Minister of Police and comprised of several other ministers, including those of Home Affairs, Social Development, State Security, Basic Education, Cooperative Governance and Traditional Affairs, Arts and Culture as well as International Relations and Cooperation. This IMC noted that the most disturbing factor is the marked involvement of unemployed young people. The perception amongst foreign shop-owners is that law enforcement agencies fail to protect them. Thus, as a response, foreign-owned business owners resort to defensive measures to prevent looting of their shops.³³
118. Government's strategy, in partnership with various organs of civil society in proactively curbing and averting these threats, was outlined in a multi-faceted and integrated plan. The work to assist in ensuring that peace and order in our communities is restored and maintained following the 2015 incidents of violence against foreign nationals is now coordinated at the highest level through, amongst others, three main Inter-Ministerial Committees. These IMCs are – The Inter-Ministerial Committee (IMC) on Migration, the IMC on Social Cohesion and the IMC on Population Policy. The IMC on Migration chaired by Mr J Radebe, the Minister in The Presidency: Planning, Monitoring and Evaluation, whose mandate was broadened to also deal with all the underlying causes of the tensions between communities and the foreign nationals.
119. Some of the areas that are being addressed in this regard, is the review of the implementation of Labour Relations policies as they affect the foreign nationals; the implementation of the laws that govern business licenses; the country's border management and generally the country's migration policies. This is work in progress and the IMC has initiated consultations with the affected parties so as to seek a lasting solution to the issues raised by

³² 2015 UNHCR Country Operations Profile- South Africa

³³ Media Statement by GCIS, "Government outlines plan to deal with xenophobic threats", 8 July 2010

communities and foreign nationals. In terms of the operational functioning of the IMC, the National Joint Operational and Intelligence Structure (NATJOINTS) which is the structure for coordinating government's response to emergencies of this nature, has been activated. It continues to operate on a 24 hour basis to coordinate the plans of the various government departments so as to restore and maintain peace and order in communities. In addition, a Technical Committee comprising of the Directors- General of all the affected departments, provides the critical support on the intensive work that needs to be done in dealing with the root causes of these tensions. These two structures provide the necessary support to the IMC.

120. It should be noted that as part of the work of the IMC, the President has convened meetings of stakeholders in South Africa to discuss the country's migration policy and discuss how various sectors can work with government to promote orderly migration and good relations between citizens and other nationals. The first such meeting took place in April 2015. The meetings have been attended by business, sport, trade union movements, arts and sports fraternities, religious leaders, community formations, youth formations, children, disabled persons and traditional authorities. The participants were unanimous in condemning and rejecting the attacks against foreign nationals. They further pledged their commitment to work within their constituencies to build social cohesion.
121. In addition, the President also invited the representatives of the foreign nationals residing in South Africa. Over fifty representatives of the foreign national groups attended a meeting in April 2015. All the participants were unanimous in acknowledging and commending government's efforts to stop the attacks. They committed to work together with South African authorities to address the challenges.
122. Some of the actions flowing from the JCPS interventions in 2008 and 2015 include the following:
 - The police have prioritised the investigation of these matters and liaise closely with the NPA and courts in dealing with such matters – especially where large numbers of persons are arrested. The NPA has developed contingency plans to manage and deal with the cases efficiently and speedily and efficiently. In addition, dedicated Deputy Director of Public Prosecutions, Chief Prosecutors, Senior Prosecutors and Control Prosecutors were assigned to monitor, prosecute and give guidance to police investigations. Prosecutors were sensitized and provided with guidelines on how best to deal with such cases. Where required, dedicated court sessions are instituted to help prioritise these matters once they are trial ready.
 - Monitoring of the cases arising from such violence and prioritising their investigations and trials continues. This was dealt with in 2008 and again during 2015. In addition, the DOJ&CD, the SAPS and the NPA are in the process of reviewing cases that were withdrawn, closed as undetected or where people were acquitted due to technicalities, in order to deal with all shortcomings and to close identified gaps. The NPA has also developed guidelines for prosecutors for use in such matters and this is being shared with other role players, especially the SAPS. Community-based campaigns were launched to promote the justice system and educate persons about human rights for all. In particular, the DOJ&CD held various key community events at high level to highlight government's commitment towards the protection of human rights. The DOJ&CD's community events focused on, amongst others, the Bill of Rights, Xenophobia and Equality.
 - National Prosecuting Authority (NPA) officials in the provinces were encouraged to participate in the community dialogues arranged by SAHRC with the view to educate the people on issues that lead to foreign nationals to leave their respective countries and their contribution to the economy of this country. In opposing bail, where required, prosecutors draw the attention of the court to the potential for intimidation of witnesses or complainants, and its wider ramifications for justice and the rule of law.
 - The Branch: Court Services in the DOJ&CD has identified and placed on a database foreign language interpreters that can assist in dealing with interpretation services where required in terms of matters relating to foreign nationals..

123. In terms of the Socio-Economic Justice for All (SEJA) Programme, funded by the European Union (UN) and implemented by the Foundation for Human Rights (FHR) as the DOJ&CD's implementing agency, the DOJ&CD has committed itself to the "Promotion of Broad Based Knowledge about and support for the Values of Equality, Human Dignity and Fundamental Human Rights" whilst focusing on vulnerable and marginalised groups. The SEJA programme branded as 'Amarightza' was formally launched on 10 December 2014 which is International Human Rights Day.
124. In addition it should be noted that a JCPS and IMC: Migration Communication Strategy was developed to guide government communication. A comprehensive media plan was also developed to ensure that communicators occupy the space and communicate the government messages agreed upon

GENDER EQUALITY

125. South African women have come a long way in the struggle for the recognition, promotion, protection and realization of their rights. This struggle was part of the larger struggle against apartheid, the consequences of which are still felt to date. Thus, the empowerment of women and the achievement of gender equality in South Africa also involve dealing with the legacy of apartheid and about the transformation of society, particularly the transformation of power relations between women, men, institutions and laws. It is about addressing gender oppression, patriarchy, sexism, ageism, and structural oppression, and creating an environment that is conducive to women taking control of their lives.
126. In line with its commitment to gender equality, South Africa developed its National Policy Framework for Women's Empowerment and Gender Equality, which was adopted by Cabinet in 2000, and has been the guiding beacon for the development and advancement of women and girls in the country. Government also developed a Gender Policy Framework for Local Government, as well as the National Strategic Framework for Women's Economic Empowerment, among other sectoral policies and strategies guiding the mainstreaming of gender considerations across the work of government.
127. Following the National Elections in May 2014, the President pronounced on a self-standing, dedicated Ministry for Women to be located in the Presidency. The mandate of this Ministry is to promote the socio-economic empowerment of women and the advancement of gender equality. This includes the promotion of women and girls' empowerment; the achievement of substantive gender equality; and the protection of the rights, freedoms and dignity of women.
128. This elevates the promotion of equality for women to Cabinet level and ensures that it features prominently on the agenda of both the public and private sectors. The location of the Ministry at the pinnacle of Government renders it authoritative enough to provide oversight, monitoring and evaluation on the progress made with respect to women's empowerment and gender equality and to ensure that women are socio-economically empowered. It further gives effect to section 9 of the Constitution which outlines the right to equality, as well as its international commitments on the promotion of women's rights.
129. Remaining challenges need to be addressed if women's' rights are to advance and if substantive equality is to be fully achieved. These include the unemployment of women, black women and youth, the elimination of wage inequalities between men and women, access by women to adequate and efficient health services, the need to improve awareness of women's rights, especially in rural areas and among vulnerable groups and ending violence against women.
130. In terms of violence against women in South Africa, a 2014 baseline study in four provinces confirmed the disturbingly high prevalence of violence against women in South Africa, a country with one of the most progressive constitutions on gender equality in the world. The study also revealed the immense lack of awareness about protective laws particularly the Domestic Violence Act, the Sexual Offences Act and current VAW prevention campaigns.³⁴ Government has put in place a variety of policies and programmes to combat gender-based violence.

³⁴ Genderlinks. 'South Africa VAW Baseline Research': <http://www.genderlinks.org.za/page/south-africa-gbv-indicators>, (Accessed 27.03.2015)

LGBTI PERSONS

131. Violence against women and hate crimes including the rape and brutal murder of lesbians has not abated. In 2012 in submitting its National Report to the Universal Periodic Mechanism of the United Nations Human Rights Council, South Africa was commended by UN Member States for its commitment to human rights and improving the lives of its citizens, the delivery of basic services such as housing, health and education as well as South Africa's leading role in the United Nations Human Rights Council, especially regarding the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. Equally, South Africa was also urged to develop urgent measures to deal with violence against LGBTI persons.
132. The establishment of a National Task Team by the DOJ&CD in 2011 was intended to counter the continued discrimination based on sexual orientation and gender identity against members of the LGBTI community. The DOJ&CD launched the National LGBTI Programme, endorsing the government's commitment and issued terms of reference for a National Intervention Strategy to address gender and sexual orientation based violence as well as the terms of reference for the rapid response team to fast track cases in the criminal justice system.
133. When the NTT was re-established in May 2013, the DOJ&CD together with representatives from Chapter 9 institutions and civil society organisations set out to achieve a number of formidable tasks. These included, amongst others, to develop a National Intervention Strategy to respond to, and prevent, gender and sexual orientation-based violent crimes perpetrated against LGBTI persons and to develop an Inter-sectoral Implementation Plan which would link parallel and complementary initiatives, internal and external to the DoJ&CD such as the concurrent development of a Hate Crimes Bill and Policy Framework, and the Hate and Bias Crime Monitoring Forum. The NTT undertook to strengthen government's ability to respond to LGBTI needs and to strengthen the capacity of CSOs to deliver related services.
134. It set out to improve linkages with other government departments, to undertake programmes within the DoJ&CD, such as the Access to Justice and the Promotion of Constitutional Rights Programme as well as working closely with relevant Chapter 9 institutions - such as the Human Rights Commission and the Commission for Gender Equality - to combat racism, xenophobia and related intolerance and in that manner address the impact of different forms of discrimination targeting LGBTI persons. It sought to improve the management of cases by relevant role-players in the criminal justice system, including the South African Police Service, the National Prosecuting Authority, the Department of Social Development, the Department of Health and the Department of Correctional Services. Lastly it aimed to implement, coordinate, monitor and evaluate the National Intervention Strategy and other related objectives.
135. Significant progress has been made to meet these objectives. To this end the National Intervention Strategy, aimed at preventing and responding to gender and sexual orientation-based violence, was finalised and launched. The Inter-sectoral Implementation Plan for the Strategy was finalised. The Rapid Response Team meets to review progress on new and pending cases in the criminal justice system, while multi-sectoral provincial task teams have been established in all provinces, thereby improving and strengthening the issue of representation and participation in the NTT and public education initiatives embarked upon.
136. Ensuring equality for all means that we must respond decisively to incidents of discrimination and crimes that are being committed against LGBTI persons, by using the mechanisms set up under the NTT. In addition, we must collaboratively support public education and training programmes set up under the NTT.

INDIGENOUS PEOPLE

137. South Africa's approximately 320,000 indigenous citizens include the San peoples—!Xun, Khwe, and Khomani—the Nama Communities, the Griqua associations and Koranna descendants, and the "revivalist Khoisan," which are referred to collectively as the Khoisan. In the apartheid period, indigenous identification and culture were discouraged, and many Khoisan people were forced to learn Afrikaans as their primary language. In 1996, the post-apartheid South African government took steps toward recognizing Khoisan rights in Article 6 of the Constitution, requiring the Pan South African Language Board (PanSALB) to promote not only the eleven official languages, but also 'the Khoi, Nama and San languages'. PanSALB created a Khoi and San National Language Board.
138. Following the first democratic elections in 1994, and as part of a comprehensive strategy to implement the new South African Constitution, particular attention was also paid to the question of the constitutional accommodation and recognition of Khoi-San identity. With a view to giving effect to this objective, government decided in 1997 that there be established a National Griqua Forum. This body then proposed that a national body be established to represent the Khoi-San communities in South Africa that would serve as a single body with which Government would consult on all issues relating to the Khoi-San. On 27 May 1999 a national non-statutory body that became known as the National Khoi-San Council (NKC) was established. The NKC consists of 21 members drawn from the five main groupings of Khoi-San society. The function of the NKC is to consult with government on matters pertaining to, and affecting the Khoi-San people. Currently the NKC has aided government by providing expert council on the recognition of the Khoi-San as well as providing assistance when researching the history of the Khoi-San. Most importantly, the NKC had extensive input in drafting the National Traditional Affairs Bill, as it relates to the Khoi-San.
139. In addition, South Africa has implemented and funded practical steps and significant educational, economic and scientific programmes for the protection and promotion of indigenous people. Known as the Indigenous Knowledge System, this ambitious programme brings together indigenous communities, universities, research centres and economic partners and enjoys the support of the government. The Department of Science and Technology's National Indigenous Knowledge Systems Office (NIKSO) has received international recognition for its innovation in enhancing indigenous knowledge systems in the country.
140. The Department of Traditional Affairs was established in April 2010 to underline the critical focus on traditional leadership. This signifies the importance that is placed on the role and place of traditional leaders in the lives of people, especially in rural areas. The department is working on a range of policies which, among other things, include policy on unity and diversity, initiation, traditional healing, traditional leader's protocol, family trees, involvement of the Khoisan people in the system of governance in South Africa, and remuneration and benefits of traditional leaders based on uniform norms and standards.

RACISM AND PREJUDICE IN TRADITIONAL AND SOCIAL MEDIA

141. Racism continues to play out in the traditional media in South Africa, which is itself under the pressure of the increase of social media outlets. Social media has, in some cases, become an outlet for untrammelled racism. In addition, racial conflicts erupt in wars of words among media practitioners themselves. The media and other means of public communication, such as the Internet and social media, play a crucial role in enabling free expression and the realization of equality. But while freedom of expression and freedom of religion or belief are mutually dependent and reinforcing, freedom of expression must not impinge on the right to dignity.
142. Conversely, the unprecedented, rapid development of new communication and information technologies, such as the Internet and social media, has enabled wider dissemination of racist and xenophobic content that has the potential to incite racial hatred and violence.
143. In 2014, the South African Human Rights Commission confirmed that it had received more than 500 reports of racism – of which a large part were on social media.³⁵ In February 2015 the SAHRC said that hate speech cases on social media increased to 22% of matters investigated, compared to 3% in the same period the previous year.³⁶
144. The Durban Declaration and other international human rights instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights provide a comprehensive framework for possible actions in combating the phenomenon of racial, ethnic and xenophobic hatred. The Durban Declaration encouraged States, civil society and individuals to use the opportunities provided by the Internet to counter the dissemination of ideas based on racial superiority or hatred and to promote equality, non-discrimination and respect for diversity.
145. South Africa has also enacted the Protection from Harassment Act, 2011 (Act No. 17 of 2011) thereby enabling all South Africans to approach the courts for protection from harassment or sexual harassment per electronic communication - including harassment via SMS or e-mail.
146. In response to the increasing vulnerability of victims to cybercrime, South Africa has implemented a number of strategic and tactical interventions including the approval of a National Cyber Security Policy Framework (NCPF) in 2012. The issues of racism and racial hatred on the worldwide web and social media platforms are further addressed through legislation to combat cybercrime.³⁷ The country is in the process of finalising legislation on cybercrime and related matters. This is in accordance with the African Union Draft Convention on the establishment of a credible legal framework for cyber security in Africa. It requires States who ratified the Convention to adopt legislation to criminalise the dissemination of racist and xenophobic material. The legislation includes the prohibition and dissemination of racist and xenophobic material through a computer or electronic communications network as well as the incitement of violence against a person or groups of persons through the same.

³⁵ Nieuwoudt, S. 5 February 2015, 'Social media racists not true reflection of South Africa' <http://themediainline.co.za/2015/02/social-media-racists-not-true-reflection-of-south-africa/>

³⁶ SAHRC: Hate Speech Cases Spike".

³⁷ Specific legislation on cybercrime has been enacted through the following instruments: - Electronic communication and Transactions Act No 25 of 2002 - The National Cyber security Policy Framework 2012 - Regulation of Interception of Communications and Provision of communication-related Information Act of 2002 - Protection of Personal Information Act 2013.

CHAPTER 5: SOUTH AFRICA'S NATIONAL ACTION PLAN TO COMBAT RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

147. The general purpose of South Africa's National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance is to provide South Africa with a comprehensive public policy to combat and eliminate racism, racial discrimination, xenophobia and related intolerance. The NAP also confirms the commitment of the Government of South Africa to counter racism, racial discrimination, xenophobia and related intolerance. The NAP will also assist South Africa to meet its various international treaty and regional obligations, particularly in regard to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
148. The NAP is informed by the values enshrined in the Constitution and Bill of Rights as well as South Africa's multilateral obligations. Its aim is to better promote and protect the rights of individuals and groups facing racial discrimination and to promote mutual understanding among different groups within the particular State. It does this by placing the right to equality and non-discrimination based on race, colour, descent, or national or ethnic origin in the context of public policy, that is, setting practical goals, devising programmes and activities to ensure the achievement of these goals, engaging all relevant sectors of government and society, and allocating sufficient resources, all with the aim of eliminating racial discrimination.
149. Thus the NAP provides South Africa with a comprehensive policy framework for programmes and strategies to combat racial discrimination and is a step towards complying with the State's obligation to give effect to the constitutional value of equality and non-discrimination.
150. The NAP has been developed through a comprehensive consultative process involving government, the Chapter Nine institutions and civil society and is informed by general principles of universality, interdependence and indivisibility of human rights, participation and inclusion, progressive realization, accountability, equality and non-discrimination.
 - Universality: The NAP should recognize that fundamental human rights norms enjoy universal protection by customary international law across all borders and civilizations. It should be consistent with the State's duty to promote and protect human rights and fundamental freedoms, regardless of its political, economic or cultural system.
 - Interdependence and indivisibility: The NAP should give equal attention to all categories of rights, including civil and political rights, as well as economic, social and cultural rights, especially bearing in mind that the denial of one right invariably impedes the enjoyment of the others.
 - Participation and inclusion: The NAP should guarantee full, effective and equal participation. It should empower individuals and groups that have faced or face racial discrimination to identify their human rights needs and to ensure that they are met.
 - Progressive realization: The NAP should develop targeted, legally consistent and sufficiently progressive policies to secure the rights of individuals and groups facing racial discrimination.
 - Accountability: To be effective, the NAP requires the development of a system of accountability based on specific, ascertainable goals. It should develop mechanisms to hold the institutions in charge of its implementation accountable to those groups and individuals whose rights it is intended to promote and protect.
 - Equality and non-discrimination: The principle of non-discrimination is the cornerstone of human rights law and a principle included in all human rights treaties. The NAP should be guided by the principle of the enjoyment of human rights on an equal footing as an integral part of the prohibition of racial discrimination. It must strive to guarantee that human rights are applied on a basis of equality

of access, opportunity and results, in fact and in law, for all persons. It should give due priority to those who are most vulnerable to racial discrimination. Non-discrimination and equality are essential to the exercise and enjoyment of human rights. The right to equality and non-discrimination requires States to guarantee non-discrimination in the exercise of each human right.

NATIONAL SCOPE: THE ROLE OF KEY ACTORS IN COMBATING AND ELIMINATING RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

151. The UN Practical Guide document states that “a national action plan is the basis for the development of a comprehensive public policy against racial discrimination and can therefore help States give effect to their international human rights obligations related to the elimination of racial discrimination”. It also strongly “suggests the establishment of a national body or institution against racial discrimination as one of the outcomes of the national action plan.” South Africa can already tick many of the boxes regarding suggestions in this guiding document. Since 1994, the country has had an impressive record of eradicating racist policy and legislation. Its Constitution is strongly based on a human rights approach and the prohibition of racial and other forms of discrimination. These prohibitions extend to state policies and legislation, including an independent Constitutional Court. A substantial number of independent state bodies, known in South Africa as Chapter 9 institutions deal with discrimination; these include the South African Human Rights Commission, the Commission for Gender Equality, the Public Protector, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Auditor-General, Independent Electoral Commission and the Independent Authority to Regulate Broadcasting.³⁸
152. Most South Africans are not under any illusions that racism will vanish into thin air. Concrete measures at the legislative level geared towards preventing, reducing and even eliminating racism and its accompanying manifestations in our communities should perpetually be in place. It is imperative to create and consistently mould a society that has no room for racial discrimination or any other discrimination for that matter. In addition, people have to socialise themselves, as well as others, out of behaviour and choices of language that pander to racial profiling.
153. South Africans owe it to themselves to oppose racism for it bodes ill for our society particularly in its quest for integration and nationhood. There is no magic solution to this problem. As the Centre for the Study of Violence and Reconciliation (CSVR) correctly notes, racial biases perpetually find expression in our speeches and practices in subtle ways. Many a time people deny any intentional biases. This subtle form of racism remains complex thus dangerous since it is real. We cannot afford to gloss over our differences as a multicultural society and the legacy of our history of segregation which is still in existence in our society. Our homes, schools, churches and workplaces continue to bear testimony to this. The question of racism must invariably remain in the public limelight so that South Africans can engage with it in public forums and in the media in order to guard this country against any form of divisions.³⁹
154. Preventing racism, racial discrimination, xenophobia and related intolerance is a multidimensional challenge and any effective preventive agenda must recognise the key roles of a diversity of actors. Whereas governments bear the primary responsibility in combating racism, racial discrimination, xenophobia and related intolerance, the complex nature of racism requires cooperation between, inter alia, government, political parties, national human rights institutions, civil society, the media and private actors. In areas such as education, capacity building and training, awareness-raising, research and monitoring, many non-State actors have a central role to play.⁴⁰

³⁸ Global Anti-Racism Strategies and Practice, Dr Kira Erwin, 2014

³⁹ Racism Still a Threat to South Africa's Democracy, The Centre for the Study of Violence and Reconciliation, 2013

⁴⁰ A/HRC/20/33 15 May 2012 – Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Mutuma Ruteere.

GOVERNMENT

155. The NAP does not belong to government only – it belongs to the country. As the UN Guidelines⁴¹ states, a national action plan against racial discrimination is a mechanism for the effective pursuit of national goals. Thus, it should be regarded as a truly national undertaking, involving all elements of government and society. The State plays a key role in the initiation, launching and implementation of the national action plan against racial discrimination. At the same time, to make a real difference, the plan needs to be “owned” by the entire population. In seeking to achieve their objectives, States must establish meaningful partnerships among all relevant stakeholders
156. The NAP’s scope is national and is applicable to all branches and spheres of government, including the executive, parliament and the judiciary at all levels. The NAP also applies both at a horizontal and vertical level to all who live in South Africa.
157. Government is the key actor responsible for creating a legal and policy framework for the prevention of racism, racial discrimination, xenophobia and related intolerance as well as for the effective implementation of the prevention measures and practices. Government is urged to take legislative and policy initiatives specifically targeted at the prevention of racism. To complement enforcement measures, government should increase its efforts towards prevention of racism, racial discrimination, xenophobia and related intolerance in areas such as immigration policy, policing and administration of justice and the promotion of multiculturalism and cultural diversity. Human rights training for government officials are also central in this regard.
158. Moreover, as stated by the Committee on Economic, Social and Cultural Rights in its general comment no. 21 (2009) these rights impose three types or levels of obligations on government: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfill. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group to freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected. This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation. Lastly, the obligation to fulfill requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant.⁴²
159. ICERD Article 2 states that all state parties should condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.⁴³
160. Government departments had been involved in the development of the draft 13 NAP as well as previous drafts, and were consulted on the role government should play in combating racism, racial discrimination, xenophobia and related intolerance. Re-engagement and follow-up sessions will further be conducted with key departments to solicit inputs and/or refine submissions made. Government departments will be key to the implementation of the NAP. While all government departments will have to review their policies and programmes to ensure compliance with the NAP, there will, needless to say, be certain Departments upon whose activities the NAP will play an even greater role. These Departments include DoJCD, the DBE, DHET, DAC, DoW, DHA, DIRCO, the SAPS, the NPA and Labour.

⁴¹ Developing National Action Plans against Racial Discrimination, A Practical Guide, UNHR, 2014, p. 10

⁴² E/C.12/GC/21, paras. 48-49. Committee on Economic, Social and Cultural Rights
Forty-third session. Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)
2-20 November 2009

⁴³ UNOHCHR (1965). International Convention on the Elimination of All Forms of Racial Discrimination

161. Fundamental to the success of the NAP is the building of partnerships between government and Chapter 9 institutions and civil society. Consultation is therefore extremely important. In this regard, the DOJ&CD convened a joint NAP Steering Committee with government departments, Chapter Nine's and key Civil Society Organisations (CSO's) during a workshop held on 15 May 2015 for purposes of providing an update on developments on the amended draft of the NAP, to obtain comments thereon and to solicit inputs from departments and stakeholders as to the measures which government departments will be taking towards implementation of the NAP. The comments, inputs and recommendations solicited during these workshops have been incorporated in the draft NAP, and the tabular action plan. Subsequent briefings on the progress relating to the development of the draft NAP and consultations to obtain comments and inputs were held with a number of relevant structures. Furthermore briefings were conducted with the Social Protection, Community and Human Development (SPCHD) Cluster; the Economic Sector, Employment and Infrastructure Development (ESEID) Cluster; the Justice Crime Prevention and Security (JCPS) Cluster; the Governance and Administration (G&A) Cluster and the International Cooperation, Trade and Security (ICTS) sub-committee between May- October 2015.
162. The next phase includes planned consultative processes with the purpose of promoting and raising awareness of the NAP amongst communities and stakeholders, in order to build support and buy-in for its implementation. The national public consultation process with municipalities, relevant stakeholders and sectors in the nine provinces is in accordance with the DOJ&CD's approved Annual Performance Plan for 2015/2016 and Outcome 14 of the NDP. Public comment on the Draft NAP will be incorporated into the plan and this will culminate in the hosting of a National Summit to endorse the final NAP for Cabinet approval to be deposited to the United Nations.

CHAPTER NINE INSTITUTIONS

163. Chapter 9 of the Constitution establishes a number of independent institutions the purpose of which is to strengthen constitutional democracy in South Africa by the active promotion of a culture of human rights and the protection, development and attainment of those rights, including monitoring and assessing their implementation. For the purposes of the NAP, these include the South African Human Rights Commission (SAHRC), the Office of the Public Protector (OPP), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL), the Independent Electoral Commission (IEC) and the Commission for Gender Equality (CGE).
164. Chapter 9 institutions in conformity with the principles⁴⁴ relating to the status of national institutions for the promotion and protection of human rights have an important mandate in respect of the prevention and protection of human rights including racism, racial discrimination, xenophobia and related intolerance. In particular they can play a role in addressing the following:
- Assist victims of differential treatment with their complaints
 - Investigate differential treatment
 - Publish reports on differential treatment
 - Make recommendations on the fight against differential treatment
 - Promote the protection, development and attainment of human rights and monitor and assess the observance of human rights in the country.
165. Chapter 9 Institutions have been represented on the NAP Steering Committee since its inception and were included in the recent Steering Committee consultations held in May 2015. The DOJ&CD and SAHRC had quarterly discussions with regard to the SAHRC's role as the National Human Rights Institution and obtaining inputs onto the draft NAP. The SAHRC has identified its specific role in respect of the NAP, emphasizing the successful finalisation and implementation of the NAP; implementation of the monitoring mechanisms and participation as a consultative member in the national coordinating committee. Furthermore the SAHRC is committed to facilitate consultative processes at national and provincial levels for the development of a comprehensive monitoring and evaluation framework.

⁴⁴ UN General Assembly resolution 48/134 of 20 December 1993

166. The DoJ&CD plans to further consult with Chapter 9 Institutions with respect to their role in supporting the finalisation and implementation of the NAP. Chapter Nine institutions should promote respect for the enjoyment of human rights without any discrimination, as expressly set out in Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.⁴⁵ They should also track, monitor and measure progress made under the NAP and guidelines against racism, racial discrimination, xenophobia and related intolerance, identifying its undetected manifestations and submitting recommendations and proposals for improvement.
167. It is envisaged that Chapter 9 bodies will, in particular, play a fundamental role in the monitoring and evaluation of the NAP.

CIVIL SOCIETY

168. Civil society plays a key role in the realisation of human rights and the democratisation of our society. The Durban Declaration recognized the importance of the role and involvement of civil society in combating racism, racial discrimination, xenophobia and related intolerance. Civil society has an essential role to play by holding government accountable. Furthermore, civil society groups have built up vast experience and expertise in working with victims of racism, racial discrimination, xenophobia and related intolerance..
169. Government must harness this experience in order to assist in developing and implementing laws, regulations, policies and actions directed at the prevention of racism, racial discrimination, xenophobia and related intolerance. The South African government has reaffirmed its relationship with civil society in ensuring development and good governance.
170. Civil society has increasingly taken on the role of supporting policy makers, advancing advocacy and assisting the poor in articulating their needs. The UN requires that governments tap into this expertise in developing and implementing laws, regulations, policies and actions directed at the prevention of racism, racial discrimination, xenophobia and related intolerance. The complex and multifaceted nature of racism and racial discrimination requires a diversity of expertise that civil society is able to provide.
171. Civil society actors can contribute to research and policy analysis by collecting relevant data and identifying trends on racism, racial discrimination, xenophobia and related intolerance. They can also provide training for law enforcement officials, legal aid and capacity building to groups or individual victims of racism, racial discrimination, xenophobia and related intolerance, and undertake awareness- raising activities. Civil society actors are key in preventing and combating racism and should partner with government in so doing.
172. Civil society is represented on the National Steering Committee which has overseen the current process of the development of the NAP. The DoJ&CD established a national inter-departmental NAP Steering Committee so as to ensure that the process is consultative and inclusive, comprising 20 government departments, 4 Chapter Nine Institutions, and 10 CSO's to assist in the conceptualization, planning and development of the NAP. The NAP is continuously promoted at various platforms involving civil society, such as meetings, workshops, dialogues and during the recent establishment of the Anti-Racism Network South Africa.
173. The next phase of national consultations with the broader public on the NAP will provide further opportunity for civil society to provide comment and inputs onto the document and its processes.

⁴⁵ International Convention on the Elimination of All Forms of Racial Discrimination (CERD) Article 5

PRIVATE SECTOR

174. The NAP has both horizontal and vertical application thus targeting the private sector as well. In this regard, despite the creation of a new regulatory environment to enable the private sector to reverse the legacy of racial discrimination, this has not happened. Opportunities continue to be defined by race, gender, geographic location, class and linguistic background.
175. In 2015 South Africa still remains predominantly in white hands, continuing to reflect the structural exclusion of apartheid. In 2014 the black ownership of the top listed companies in the Johannesburg Stock Exchange was 3%.⁴⁶ The government reiterated its commitment to deracialise the economy through the accelerated development of black industrialists.
176. The National Development Plan Vision 2030 aims to eliminate poverty and reduce inequality by 2030. However, addressing inequality that is the highest in the world, as well as poverty and unemployment cannot be achieved and delivered by Government alone, but requires a joint collaborative approach by public, private and non-governmental sectors together with citizen participation and involvement. It requires compromises if demographic changes and economic forces will combine to transform the business landscape.
177. The United Nations Global Compact is a United Nations initiative to encourage business world-wide to adopt sustainable and socially responsible policies, and to report on their implementation.⁴⁷ Responsible businesses enact the same values and principles wherever they have a presence, and know that good practises in one area do not offset harm in another. By incorporating the Global Compact principles into strategies, policies and procedures, and establishing a culture of integrity, companies are not only upholding their basic responsibilities to people and the planet, but also setting the stage for long-term success.
178. The private sector employs about three-quarters of South Africa's workers and accounts for over two thirds of investment and research and development expenditure. South Africa needs a thriving private sector that is investing in productive capacity. While the profit motive drives the business, companies cannot grow unless they operate in an environment where employment and income levels are rising. Legislation requires business to consider employment equity, black economic empowerment, the environment, skills development, community social responsibility and several location-specific imperatives, such as mining area development strategies.⁴⁸
179. The private sector should reflect a commitment to observe basic human rights and demonstrate a non-racist approach to employment issues. This should demonstrate responsible transformation and raise issues that may "be genuinely inhibiting them actually creating a workforce that is more representative of our country" given that the private sector has made too little progress in this regard. The sector has to identify how different industries can play a role in addressing underlying issues that give rise to problems like poverty and lack of education.
180. This can include programmes combining national efforts and cooperation with other stakeholders, to promote the use of private investment in consultation with the affected communities in order to eradicate poverty, particularly in those areas in which victims of racial discrimination predominantly live. The private sector should also contribute to research to investigate the nature, causes and manifestations of racial discrimination and xenophobia.⁴⁹
181. The private sector will be engaged on the NAP through the permanent structure of the National Economic Development and Labour Council (NEDLAC). This will provide an opportunity to engage with organised business, organised labour and organised community groupings on a national level to popularise the draft NAP.

⁴⁶ SA News.gov.za 09.03.15 "Radical economic transformation" <http://www.sanews.gov.za/south-africa/radical-economic-transformation> (Accessed 29.03.15)

⁴⁷ <https://www.unglobalcompact.org>

⁴⁸ National Development Plan 2030-Our Future-make it work, p.58

⁴⁹ Developing National Action Plans against Racial Discrimination; A Practical Guide, 2014. p.57;59

LABOUR

182. The labour sector should be proactively involved in a number of campaigns on human development which includes amongst others raising awareness against racism and racial discrimination, xenophobia and related intolerance in the workplace, raising awareness and monitoring child labour, promoting gender equity, providing education and training for trade union members, promoting government's accountability in fighting corruption. Labour's resort to wealth accumulation should transform workers into both labour and capital, employees and employers. There is a need for trade unions to build more inclusive and broad membership base since there is lack of solidarity among trade unions. Labour should intensify its recent initiatives involving organising workers in the informal economy and providing training in entrepreneurial and related skills.
183. The labour sector will be consulted through NEDLAC as the permanent structure of engagement between government and organised labour. The process will not be limited to these engagements but will also be open to further consultations should the need arise.

MEDIA

184. The media remains an integral component of civil society in South Africa and has a central role to play in combating racism, racial discrimination, xenophobia and related intolerance. It has a responsibility to present a balanced, contextualised image of discriminated groups through meaningful dialogues involving all relevant actors, including the media.
185. Section 16 (1) of the Constitution guarantees that everyone has the right to freedom of expression, including, inter alia, the rights to freedom of the press and other media as well as academic freedom. However, section 16(2) states that the above rights do not extend to "propaganda for war; incitement of imminent violence; or advocacy of hatred (hate speech) that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm". The media plays a critical role in nation building and building non-racialism and non-sexism. They also play a role in building an informed, educated and opinionated society and in holding government to account. These are critical for democracy to function. The media should play all these roles while at the same time, breaking down racial and gender stereotypes. The media must promote the Constitution and also promote the non-racial, non-sexist and democratic ethos of the Constitution.
186. The NAP acknowledges that access to information via print, broadcasting and the internet are vital for building an informed and active citizenry. It also contributes to education and economic development. The Press Council oversees the websites of their members and their code outlaws hate speech and racism. The World Editor's Forum (WEF) recommends an approach based as much on promoting useful discussion as preventing abuse.
187. The independence and autonomy of media institutions and regulatory bodies including the South African Broadcasting Corporation, the Independent Communications Authority of South Africa, the Press Council of South Africa and the Advertising Standards Authority should be protected.⁵⁰ However the diversity of the content of media coverage reflects the extent of diversity in newsrooms and media houses. In this context self-regulatory media bodies can also play a positive role including in helping to rebuild the racially and ethnically divided media landscape, through adoption of measures such as enforceable or voluntary media codes of conduct. The slow transformation of the advertising industry in South Africa is a reflection of a recalcitrant private sector.
188. In addition to their central role in democratic society the media wields immense power in influencing and shaping people's mind-sets and attitudes through their coverage of events and through advertisements. As stated in the Durban Declaration, the exercise of the right to freedom of expression, particularly by the media, can make a positive contribution to the fight against racism, racial discrimination, xenophobia and related intolerance.⁵¹

⁵⁰ National Development Plan: Vision for 2030. "Transforming Society and Uniting the Country." Chapter 15. P8 <http://www.gov.za/documents/national-development-plan-vision-2030>

⁵¹ Report of Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Rutere. Human Rights Council 20th session Agenda Item 9, 15 May 2012 http://www.ohchr.org/Documents/Issues/Racism/A.HRC.20.33_en.pdf

189. The media is encouraged to strengthen their role in the fight against racism, racial discrimination, xenophobia and related intolerance including continuing to draw attention to the occurrence of racist, xenophobic and gender discriminatory related incidents while putting them into the right context, giving publicity to the sanctions incurred by the offenders and developing awareness-raising initiatives to sensitize the population to the adverse effects of racism, racial discrimination, xenophobia and related intolerance.
190. The media will be consulted through dialogues with different structures and bodies representing the different types of media and media houses in the country. This will include amongst others the South African Broadcasting Corporation, the Independent Communications Authority of South Africa, the Press Council of South Africa and SANEI. The media will, like other interest groups, have the opportunity to comment on the draft NAP once the public consultations commence.

JOINT PROGRAMMES AND MEASURES

191. The NAP while guaranteeing freedom of expression, in accordance with international law will provide a framework for both government and civil society to develop programmes and measures which are designed to:
- To prevent and eradicate advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by the media;⁵²
 - To ensure that information and communications technologies assist in the promotion of tolerance, mutual respect and understanding and multiculturalism, and contribute to the fight against racism, racial discrimination, xenophobia and related intolerance.
 - To promote end-user empowerment and education;
 - To encourage Internet service providers and social media platforms to engage in policy discourses and in consultations on the issues of combating racism and incitement to racial hatred and violence on the Internet;
 - To develop intelligent software in the areas of monitoring and filtering; and improvements in co-regulation and self-regulation mechanisms
 - The promotion of local content and initiatives to contribute to greater understanding and respect for diversity and reduce misperceptions feeding racist and xenophobic sentiment
 - The creation of policies and strategies to ensure that access is widely available and affordable for all, on the basis of the principles of non-discrimination of any kind, including on the grounds of race
 - To encourage Internet service providers and social media platforms to issue clear policies on combating racial and ethnic incitement and hatred, and to include them in their terms of service
 - To encourage Internet service providers, social media platforms and online moderators to undertake training and education initiatives to address racism online
 - To create technology that supports vulnerable users
 - To support civil society and marginalized communities to build strong movements to counter racism and intolerance online
 - To encourage the examination of the correlation between manifestations of racism on the Internet and social media and the number of hate crimes and cyber bullying.⁵³

⁵² See Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Durban and Corr.1, chap. I, Programme of Action, para. 1

⁵³ Recommendations are taken from UNOHCHR. 6 May 2014. Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

SPECIAL EMPHASIS ON PRIORITY GROUPS

192. The right of vulnerable and marginalized groups to live in a non-racist, non-sexist and non-discriminatory society based on race, colour, gender, sexual orientation, descent, or national or ethnic origin is often challenged. They constitute a priority group for the NAP given the issues of equality and non-discrimination and the need for protection against racism, racial discrimination, xenophobia and related intolerance.
193. The Durban Declaration and Programme of Action identified the following priority groups:⁵⁴ Indigenous peoples; Africans and people of African descent; Asians and people of Asian descent; Migrants; Refugees and asylum seekers; Victims of trafficking in persons; Internally displaced persons; Roma/Gypsy/Sinti/Traveller communities; Jewish communities; Muslim and Arab communities; National or ethnic, religious and linguistic minorities.
194. The NAP also prioritises groups of individuals who, besides being victims of racial discrimination, face multiple forms of discrimination, such as:
 - Rural and urban poor;
 - Persons in extreme poverty;
 - Women and girls;
 - Children and youth;
 - Stateless persons;
 - Domestic workers;
 - People living with HIV/AIDS;
 - Persons with disabilities;
 - Older persons;
 - Persons deprived of their liberty;
 - Lesbian, gay, bisexual, transvestite and transgender groups, and
 - Persons affected by armed conflict or natural disasters.
195. The NAP is applicable to all persons within a national jurisdiction who are rights holders to equality and non-discrimination. Both State and non-state actors are duty bearers of the obligations that arise from the right to equality and non-discrimination. The NAP in keeping with the notion that human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing should seek to ensure the equal enjoyment of all human rights, including civil, cultural, economic, political and social rights. The NAP also takes account that the right to equality and non-discrimination are rights in and of themselves and may be violated even without being associated with the denial of other rights.
196. States are obliged to refrain from interfering with the enjoyment of the rights of victims of racial discrimination. States are also obliged to prevent violations of the rights of victims of racism and racial discrimination by State and non-state actors. States are required to adopt measures to remove any obstacles that may impinge upon the enjoyment of the right to non-discrimination based on race, colour, descent, or national or ethnic origin. This includes the duty to prohibit discrimination in the private sphere. The development and establishment of the NAP which constitutes the technical framework for the State's policies, programmes, strategies and measures to combat racism, racial discrimination, xenophobia and related intolerance constitutes compliance with the state's obligation to protect all individuals and groups from racism and racial discrimination.
197. The tables attached in Chapter 6 set out the policies, programmes, strategies and measures to be taken by the state to address racism, racial discrimination, xenophobia and related intolerance for the period 2016 to 2021.

⁵⁴ Guidelines p81

CHAPTER 6: IMPLEMENTATION PLAN

198. The action plan seeks to provide the details of the various initiatives and interventions necessary to make the NAP work.
199. The UN Guidelines propose a structure based on the need to set specific goals, objectives and actions, as well as on the importance of determining the responsible State bodies, target dates and performance indicators for each objective. The broadest objectives of the plan might be described as goals. They give a clear indication of the State's intentions in its struggle against racial discrimination. The goals are really about the final impact that the national action plan against racial discrimination should bring about. The goals stated in the plan constitute a useful orientation for those working on the plan and provide guidance to the general public.
200. Because of the general terms in which they are expressed, the goals should be few in number.⁵⁵
201. In order to meet these requirements, the proposed goals, objectives and actions/activities are set out hereunder. ***As it is important to have consensus on the goals, objectives and actions/ activities first, the respective performance indicators, timeframes and responsible body will be determined accordingly once the goals have been finalised.***

Goal 1	To promote broad public awareness of racial equality and non-discrimination			
Objective	Promote social cohesion		Promote constitutional and human rights awareness	
Actions / activities	1. Provide effective support and interventions for special categories of learners who are often disadvantaged by unfair discrimination 2. Strengthening school sport and cultural activities and use them as instruments of integration 3. Celebrating national days 4. Coordinating the work of various government departments on addressing social cohesion		1. Programs like Amarightza 2. Extended use of Izimbizo 3. Educating citizens on how to take up their own issues with both public and private bodies 4. Implement a communication strategy to raise public education and awareness 5. Raise awareness of ICERD¹ and raise awareness and popularise the NAP and its goals 6. Enhance content in school curricula, e.g. in terms of life orientation subject	
Responsible				
Timeframe				
Performance indicator				
Monitoring and evaluation				

⁵⁵ Page 95 of the UN Guidelines

Goal 2	Enhancing legislative, policy and administrative measures to combat discrimination	
Objective	Review all existing legislation and policy with a view of further combating discrimination	Implement new legislation, policy and measures to combat discrimination
Actions / activities	Review all existing policy and legislation focusing on specific categories: - Urban and rural poor - Persons in extreme poverty - Women and girls - Children and youth - Stateless persons - Indigenous peoples² - Foreign nationals in SA, including asylum seekers and refugees - Domestic workers - Farmworkers - People living with HIV/AIDS - Persons with disabilities - Older persons - Persons deprived of their liberty - LGBTI groups - Persons affected by armed conflict or natural disasters Review all specific measures adopted to address the situation of de facto segregation that persists in South Africa and evaluate the impact of these measures³ Review and strengthen measures adopted with regard to promoting tolerance, in particular in the field of education and through awareness-raising campaigns, including in the media⁴	Establish a National Focal Point to lead the implementation of the NAP Pass the Hate Crimes legislation⁵ Cyber Bill to monitor cyber racism Undertake a qualitative description of the ethnic composition of its population, in particular indigenous peoples and non-citizens⁶ Undertake a study of the role of traditional leadership and on the status of customary law, including on the measures adopted to ensure that the application of such laws does not have the effect of creating or perpetuating racial discrimination⁷ Undertake a study of all languages recognized in the Constitution, especially their use in education, and on the measures to promote indigenous languages⁸
Responsible		
Timeframe		
Performance indicator		
Monitoring and evaluation		

Goal 3	Assist victims and groups vulnerable to racism and related forms of discrimination			
Objective	Assist vulnerable groups in respect of justice related services		Assist vulnerable groups in respect of social economic matters	
Actions / activities	Further increase access to justice services to historically marginalised communities		Enhance land restitution process and provide post-settlement support ⁹	
	Publicize the Equality Courts		Assist people to obtain credit for houses	
	Strengthen victims support and empowerment		Economic opportunities and measures to reduce poverty and stimulate economic growth ¹⁰	
	Mechanism to collect, compile, analyse and disseminate and publish reliable disaggregated statistical data to assess the situation of racism, racial discrimination, xenophobia and related intolerance		Promote equity in labour through the implementation and enforcement of the Employment Equity Act as amended	
Responsible				
Timeframe				
Performance indicator				
Monitoring and evaluation				

CHAPTER 7: GOVERNANCE MODEL IMPLEMENTATION

202. Internationally the various national actions plans make use of different governance models. As Dr Kira Erwin highlights, the governance model for implementing an NAP is a key factor in its success.⁵⁶ Good governance models are also about transparency and accountability to the public. Both Canada and Ireland serve as strong examples in this regard, as public documents were released during the development process rather than presenting a completed plan to the public.
203. Some NAPs are run by a steering committees with senior officials from various government departments. Other models are designed so that the responsibility for implementation and monitoring lies with one government ministry, such as the case of Norway. In 2003 Brazil created the *Secretaria Especial de Políticas de Promoção da Igualdade Racial* (SEPPIR)⁵⁷. This office was initially assigned a secretariat role similar to that of Canada and Ireland. However, in 2008 the Brazilian Senate elevated this office to ministry level.⁵⁸ Another model that has been successful is that of an independent institution, such as in the Argentinian and Mexican cases.
204. This raises the question as to what the optimal governance model for South Africa would be. The options are, firstly, implementation by an existing NHRI such as the SAHRC. The second option is the establishment of a new independent institution. The third option is to locate sole responsibility within one government department or ministry and the fourth option is a national steering committee/coordinating structure.
205. The first option would be for the SAHRC to be the implementing body. The SAHRC has indicated that the Paris Principles allow and advocate for NHRIs maintaining cooperative relationships with the State. In respect of NAPs, the UN Guidelines speak to the need for NHRIs to participate in both the national coordinating committee and wider consultations. Notwithstanding these provisions, the SAHRC states that the Guidelines do not specifically require the NHRI to take responsibility for central coordination or a chairing role which has previously been the remit of the SAHRC. In line with its constitutional directive and the Paris Principles, the Commission may still participate as an impartial consultative body, capable of supporting the wide range of activities required by a comprehensive NAP.
206. The SAHRC bears both constitutional and statutory obligations in the monitoring of human rights in South Africa, by extension this would include the monitoring of the NAP, an approach supported in the UN Guidelines. The UN Guidelines stress that there are a variety of monitoring mechanisms, but whatever mechanism is chosen, it should be independent from the agencies or bodies in charge of the plan's implementation. Given the need for the SAHRC to play a monitoring role, the SAHRC cannot be the main implementing body.
207. The second option envisages the creation of a new independent body. The UN Guidelines state that, taking into consideration the national institutional framework and available resources, states should consider the establishment of a national institution for racial equality.
208. This option is not a preferred option. South Africa already has a large number of State Institutions Supporting Democracy. For reasons relating to its democratic transition, South Africa is unique in the number of different institutions it has established in terms of the Constitution and by ordinary legislation to protect and promote human rights. In addition to establishing a national Human Rights Commission, the Constitution creates a number of specialised human rights bodies to protect and promote the rights of specific constituencies. These specialised human rights institutions include the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Pan South African Language Board. Moreover, Parliament created the National Youth Commission, amongst others, to promote the rights and interests of the youth of South Africa.

⁵⁶ Global Anti-Racism Strategies and Practice, 2014

⁵⁷ Special Secretariat for the Promotion of Racial Equality

⁵⁸ <http://www.seppir.gov.br/>

209. It has already been found that a proliferation of bodies has the potential to lead to unnecessary duplication. As Parliament's Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions chaired by the late Professor Kader Asmal found, *"a multiplicity of institutions results in an uneven spread of available resources and capacities, which has unfortunate implications for effectiveness and efficiency."*⁵⁹ Human rights are interdependent and indivisible and rights cannot be easily compartmentalised. Individuals often experience human rights violations in multiple ways and may not know how this experience would be translated into a rights discourse. Such individuals may then not know which of the institutions to approach or, worse, may approach the wrong organisation, which must then refer the complainant to another body. A new Chapter 9 body would require a constitutional amendment and new legislation which would delay the process of implementation of the NAP.
210. The third option would entail sole responsibility for the NAP within one department or Ministry. This is also not a preferred option as racism and racial discrimination is a transversal issue, cutting across various government departments and can therefore not be placed solely within the responsibility of a single department. Furthermore, the issue of partnerships is vital to the success of the NAP and therefore various government departments, civil society and other sectors must be included.
211. For this reason a fourth option is being proposed, namely that of a national coordinating structure, consisting of government, the private and public sector. This structure is to comprise of core government departments, such as for example, Justice and Constitutional Development, Women, Labour, Social Development, Human Settlements and Police. The different sectors such as labour, business, media, academia, and civil society will nominate representatives to serve on the national structure.⁶⁰ The structure can have operational committees (sub-committees) that may meet more frequently and where broader sectoral and civil society engagement will take place. It will be important to ensure provincial and local government linkages. It is proposed that the national structure meet at least twice a year and is chaired by the DG of the DoJ&CD. Apart from the core departments and sectors, other departments and institutions can be co-opted.
212. The national coordinating structure will have a clear mandate to establish a national monitoring and reporting centre using a database as a national tool. Such a coordinating structure should be responsible for collecting information from various departments on their programmes and required to report to Cabinet and Parliament on how government departments have fulfilled their constitutional obligations regarding building a society free of racism, racial discrimination, xenophobia and related intolerance.
213. As the DOJ&CD has been tasked by Cabinet with the responsibility for the NAP's development, coordination and implementation, the DOJ&CD will be the focal agency. As such, the DOJ&CD will also be responsible for promoting and mainstreaming the NAP in government and civil society. The DOJ&CD, as focal agency, will play a more active role during the development/finalisation phase of the NAP. Within the DOJ&CD's Constitutional Development Branch, and specifically located within the Chief Directorate: Social Justice and Participatory Democracy, is the Directorate: Social Justice. The latter unit has until now been providing administrative/logistical support as the "secretariat" to the NAP Steering Committee which replaced the NFAR. During the implementation phase, it is envisaged that this unit will continue to provide such support to the new structure to be established.
214. In addition, the Directorate will during the implementation phase, play an important role in amongst others -
- setting up, supporting and coordinating the establishment of a structure to ensure the implementation of the NAP;
 - promoting and mainstreaming the NAP;
 - promoting, protecting and advocating for the eradication of all forms of racism, racial discrimination, xenophobia and related intolerance;
 - conducting research on factors inhibiting the attainment of racial harmony;
 - in partnership with relevant stakeholders, develop and implement various programmes in support of the NAP;

⁵⁹ Committee Report, p.37

⁶⁰ Other examples of similar structures are to be found in the areas of Child Justice, Sexual Offences and LGBTI government initiatives.

- collecting/analysing data, creating a database and generating reports on trends and patterns relating to incidents falling within the scope of NAP (through Technical Assistance under SEJA);
 - promoting research strategies and commission studies/surveys in support of the NAP;
 - conducting a baseline survey (under SEJA);
 - monitoring trends and incidents of racism, racial discrimination, xenophobia and related intolerance;
 - providing adequate responses thereto, through effective co-ordination and facilitation with government departments and stakeholders;
 - facilitating and promoting programmes relating to tolerance and understanding of diversity amongst the people of South Africa, and
 - ensuring the establishment of an Monitoring & Evaluation (M&E) mechanism.
215. The DOJ&CD will develop and design education and training programmes in partnership with other government departments, Chapter 9 institutions as well as civil society to increase awareness of anti- racism, equality and anti-discrimination issues among public officials, civil society and the general public, mobilizing support from a wide range of experts.
216. The baseline study will also be used to measure improvement in the situation in the country following the implementation of the NAP. It moves beyond issues of perception. It will be used to make recommendations on the protection needs for vulnerable and marginalised groups. The baseline study will take account of current laws, policies, programmes, activities, needs and human and institutional resources for the elimination of racism, racial discrimination, xenophobia and related intolerance assessing:
- The overall extent of these issues including discriminatory laws, policies, practices, beliefs and outcomes, and consequently emerging priority groups in need of special protection. Special attention should be paid to groups facing multiple forms of discrimination;
 - The applicable international framework, including the extent to which the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights instruments are observed, as well as the status of the government's ratification of all major international human rights treaties;
 - The incorporation into domestic law of international norms, standards and recommendations related to the elimination of racial discrimination;
 - The effectiveness of the legal framework and the independence and capacity of the judicial system to address cases of racial discrimination;
 - The effectiveness of Chapter Nine Institutions in combating racial discrimination;
 - The social, political and economic conditions relevant to individuals and groups facing racism, racial discrimination, xenophobia and related intolerance;
 - Human rights indicators on the observance of equality and non-discrimination, particularly in relation to economic, social and cultural rights.
217. Disaggregated statistical data will be collected to identify -
- Patterns of racism;
 - The obstacles to the elimination of racism and discrimination that should be overcome, paying special attention to contemporary and emerging forms of racial discrimination;
 - Access to justice for victims of racial discrimination;
 - Punishment of perpetrators;

- Programmes to combat racial discrimination;
- Knowledge about the prohibition of racial discrimination among the general population and among potential victims;
- Perpetuation of racial discrimination by the mass media (including television, radio, Internet, newspapers and magazines);
- How the curricula reinforce the principles of equality and non-discrimination at all levels of education, and
- The availability and accessibility of key human rights documents and other materials safeguarding equality and non-discrimination in national and local languages as well as in simplified form.

RAPID RESPONSE MECHANISM

218. The DOJ&CD will under the leadership of the national coordinating structure develop an Early Warning system linked to a Rapid Response Mechanism initiated by the DOJ&CD. The DOJ&CD will also ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, as well as on the reasons for not prosecuting and on the outcome of prosecuted cases.
219. The DOJ&CD will in collaboration with government departments, Chapter Nine institutions and civil society working with these issues, develop a database with the names of service providers who provide assistance on these matters which will be linked to the Rapid Response Mechanism. The DOJ&CD will also develop mechanisms for the systematic collection, compilation and analysis of data as well as the appropriate dissemination and publication strategies in respect of reports and the victims of racism and discrimination.

RESEARCH AND EDUCATION

220. The DOJ&CD will promote research strategies which include the investigation of the nature, causes and manifestations of racism and discrimination in both public and private spheres as well as the efficient ways of ensuring that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for failure to prosecute and on the outcome of prosecuted cases.
221. The promotion of anti-racist and anti-discrimination education is a shared responsibility between government departments and the Chapter Nine institutions. The DOJ&CD will under the auspices of the NAP promote the multi-faceted educational strategies of government departments as well as the measures adopted by them to combat racism, racial discrimination, xenophobia and related intolerance.

REPORTING OBLIGATIONS

222. Accountability and transparency are vital to make the NAP work. As the NAP is built around partnerships involving different sectors of society, the results depend on how well government and civil society work together. Monitoring progress and reporting back are key elements to the success of the NAP. Consequently, the focal agency will establish an accountability framework. To evaluate its long-term impact, the national coordinating structure in conjunction with the SAHRC and other Chapter 9 bodies will collaborate to identify indicators to monitor progress in the fight against racism. Various role-players will continue to address racism and multiculturalism issues where there is joint responsibility, and assist in coordinating information sharing.
223. The DOJ&CD will, through the Minister of Justice, table an annual report to Parliament outlining the state of racism and discrimination across all provinces. The report will be linked to relevant departments concerned with social cohesion programmes including the Departments of Basic Education, Health and Social Development amongst others so as to focus on racism and incidents of racial discrimination in schools and tertiary institutions, access to health services and social security.
224. Serious consideration should be given to this annual report being debated in the National Assembly.

BUILDING COMPLEMENTARITY WITH OTHER GOVERNMENT PROGRAMMES

225. The DOJ&CD will, under the guidance of the national coordinating structure, be responsible for building complementarity between the NAP and other action plans developed by government departments and the Chapter Nine institutions. It should build complementarity between laws and policies implemented by government impacting on racism, discrimination and affirmative measures taken to address the legacy of apartheid.
226. The DPME's main contribution to the NAP will be in assisting the DOJ&CD to ensure that the plan is implemented and monitored across departments and across all spheres of government. This is informed by what the DPME was set up to do, that is to facilitate, influence and support effective planning, monitoring and evaluation of government programmes aimed at improving service delivery, outcomes and impact on society. Additionally, there are programmes that are implemented by the departments and entities that fall under the presidency directly which contribute to the realisation of some of the objectives set out in the NAP. These include revising the frontline service delivery mechanism and monitoring its implementation; using the Presidential hotline to receive and address citizens' complaints and queries and driving the charter of good values which is about fostering values of tolerance to the citizenry.

STRENGTHENING INSTITUTIONAL CAPACITY

227. The DOJ&CD will secure technical assistance (under SEJA) to determine the institutional framework and capacity needed to implement the NAP including the development of a database, an effective data collection system, analytical framework as well as reporting tools including an effective M&E system. The M&E plan will be an integral part of the Annual Performance Plan for the DOJ&CD as well as of every core department. DOJ&CD will set up within its appropriate unit an M&E system that will be result-based, utilization-focused and participatory-driven.

LINK BETWEEN NAP AND OUTCOME 14: NATION BUILDING AND SOCIAL COHESION

228. It is important that there is a link between the NAP and the outcomes and indicators under Outcome 14 – therefore the NAP should be included in various Annual Performance Plans and Budgets of core Departments.
229. Government has allocated funding in terms of the Medium Term Expenditure Framework 2015/2019 to various government departments implementing programmes and activities relevant to combating racism, racial discrimination, xenophobia and related intolerance. The DOJ&CD will develop a budget and a financing plan to assist it in its coordination role taking account of the activities set out under this section. The success of the plan will depend to a considerable extent on the availability of resources to support its activities, such as the baseline study, as well as its institutional framework.

MEDIA AND COMMUNICATION STRATEGY

230. The DOJ&CD will in collaboration with its Public Education and Communications unit and with the Department Government Communication and Information System (GCIS) develop an effective media and communication strategy with the goal of generating national ownership of the NAP including how to communicate the NAP to relevant government agencies, Chapter Nines as well as major interested groups, such as the judiciary, NGOs, and academic and educational institutions. Furthermore, other Departments who play a role in the promotion of social cohesion will be expected to promote and build awareness of the NAP. Ways must be found to popularize the NAP amongst communities, perhaps by way of Thusong centers, parliamentary constituency offices, initiatives like izimbizo and Taking Parliament to the People.

CONCLUSION

231. South Africa has been a guiding light in the world in conquering racism. The NAP is the blue print for building on what we have achieved thus far.
232. The NAP is the ideal opportunity for our country and its peoples to renew our commitment to the fight against racism, racial discrimination, xenophobia and all other forms of prejudice and intolerance. South Africa belongs to all who live in it – united in our diversity.

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