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**Human Rights Committee**

Concluding observations on the initial report of South Africa

Addendum

Information received from South Africa on follow-up to the concluding observations[[1]](#footnote-1)\*

[Date received: 12 May 2017]

1. The Promotion of National Unity and Reconciliation Act, 1995[[2]](#footnote-2) (the PNURA), created the political and moral climate for the growth of democracy and the fostering of a culture of human rights in South Africa. It provided for the establishment of the Truth and Reconciliation Commission (TRC), with the specific purpose of promoting national unity and reconciliation in a spirit of understanding that goes beyond the conflicts and divisions of the past and to bring reparations to the victims of Apartheid.
2. In order to achieve its goals, the TRC was mandated, among other things, to:

a. Conduct investigations into gross human rights violations;

b. Facilitate and initiate the gathering of information and receiving of evidence to establish the identity of victims, their fate or whereabouts and the harm suffered by them;

c. Grant amnesty for acts, attempted acts and omissions and offences, associated with political activities; and,

d. Make recommendations to the President on, amongst others: the policy to be followed and/or measures to be taken with regard to the granting of reparation to victims; or, the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims.

The TRC recommendations approved by Parliament

1. The last of the TRC recommendations were tabled in Parliament by President Thabo Mbeki on 15 April 2003. Following the President’s subsequent recommendations to Parliament in accordance with section 27 of the PNURA, an Ad hoc Joint Committee on Reparations of both Houses of Parliament (the Joint Committee), was established to consider the recommendations.
2. On 26 June 2003, Parliament approved four key recommendations of the Joint Committee, grouped into the following categories:

a. Final reparations, which entail the provision of a once-off individual grant[[3]](#footnote-3) to individual TRC-identified victims (this has been fully implemented);

b. Symbols and monuments[[4]](#footnote-4) to be erected to exalt the freedom struggle, with implementation by the Department of Arts & Culture (DAC);

c. Medical benefits and other forms of social assistance, which include education, health and housing assistance to address the social needs of TRC-identified victims; and,

d. Community rehabilitation measures, which aim at rehabilitating whole communities that were subjected to intense acts of violence and destruction during the specified conflict period (31 March 1960 – 10 May 1994), and which are still in distress.

Progress on Implementation

1. Regulations providing for the payment of the once-off final reparation grant[[5]](#footnote-5) to victims were published in the Government Gazette. Payments in terms of these regulations commenced on 21 November 2003. 17 398 beneficiaries that applied out of the 21 676 victims that were identified in the TRC report[[6]](#footnote-6) received the reparation grant. Of the 17 398 who applied, there are 36 victims that have not yet been paid the Final Reparation[[7]](#footnote-7).
2. In terms of victims who have proven untraceable or have either been declared untraceable or presumed deceased, the Act provides for the dissolution of the President’s Fund and the transfer of the remainder of funds to the Disaster Relief Fund. In respect of the beneficiaries declared untraceable, any liabilities or claims incurred by the President’s Fund will be settled from the Disaster Relief Fund should claims materialize in future.
3. The Department of Justice and Constitutional Development (DoJ&CD) views this process as finalized except for those cases in which the TRC-identified victims initially did not apply for final reparation grants but who now wish to submit their applications. In this regard, the DoJ&CD will receive their applications and process them accordingly.

Medical Benefits and other Forms of Social Assistance

Basic Education

1. Victims and their relatives and dependants, who meet certain requirements[[8]](#footnote-8), may request financial assistance in respect of the following: Grade R (year preceding grade 1) for 1 year; General Education (Grades 1 to 9) for 5 years; and further education (Grades 10 – 12) for 3 years. The assistance covers school fees, a boarding allowance, a uniform allowance and a transport allowance. This assistance is also available if he or she is a member of a vulnerable household, a concept defined in the Regulations[[9]](#footnote-9).
2. The TRC Unit is positioned in the DoJ&CD and the Department of Basic Education (DBE) is responsible for the implementation of the Regulations. For the academic year 2016, a total of 665 applications were verified and referred to the DBE for final processing. The educational assistance has, in terms of the Regulations, increased by 8% which translates to an amount of R44 820.00 per learner. The DBE commenced with payments for the 2016 academic year in early March 2016.

Higher Education

1. Victims and their relatives and dependants, who qualify, may request assistance in respect of the following: Adult education and training (3 years); further education and training (the duration of the assistance differs depending on the nature of the studies); higher education (5 years) and skills development (the duration of the assistance differs depending on the nature of the studies). The assistance covers registration fees, and boarding, textbook and transport allowances.[[10]](#footnote-10)
2. For the academic year 2016, a total of 540 applications were positively verified and referred to the National Student Financial Aid Scheme (NSFAS) for finalisation. The education financial assistance has increased by 8% which translates to an amount of R70 200 per student.
3. The NSFAS started making payments for the 2016 academic year in respect of tuition fees and allowances in February 2016 and continues to make such payments.
4. The Regulations are currently, after public comments were invited and received, in the process of being amended to provide for the following additional forms of assistance: meal allowances; the settlement of outstanding debts; and the payment of allowances for accessories e.g. a laptop.

Housing

1. Victims who appeared before the TRC identified the following housing needs: decent and affordable housing; the reinstatement of houses and homes lost or stolen during past conflicts; the rehabilitation of damaged housing; the revitalisation of infrastructure in disadvantaged communities, particularly where conflicts had an adverse effect; and, the provision of housing grants.
2. Although the existing National Housing Programme (NHP) has the flexibility to ensure access to housing for victims, viz. in the form of preferential housing assistance, the NHP regulations may still need to be amended to accommodate TRC identified victims.

Health

1. Pending the finalisation of the Regulations, a system has been put into place in terms of which victims who require medical assistance are referred to the case manager, specifically appointed to the Department of Health (DoH) for this purpose.[[11]](#footnote-11)

Exhumation and Handovers

1. Approximately 500 persons were reported to the TRC as missing or having disappeared, which led, following the TRC’s recommendation, to the establishment of the Missing Persons Task Team (MPTT) in the National Prosecuting Authority (NPA) in 2004 to conduct investigations into cases of persons who disappeared in political circumstances between 1960 and 1994.
2. Regulations on Exhumation, Reburial or Symbolic Burial of Deceased Victims were approved in May 2010, to provide for the monies in the President’s Fund to be accessed by family members for exhumation and reburial purposes. An amount of R17 000 is paid to the affected families from the President's Fund on recovery of remains to assist with reburial costs.
3. To date a total of 102 sets of human remains of missing persons have been exhumed by the MPTT. Of these, 90 have been identified, handed over to families and reburied. A total of 76 families have been paid reparations in respect of the abovementioned regulations. Investigations by the MPTT are continuing.

Truth and Reconciliation Commission Prosecutions 31 March 2016

1. One matter (i.e. Nokuthula Simelane) is currently on trial. In two other matters, (i.e. Achmed Timol and Neil Aggett) the NPA has recommended that the respective inquests be reopened. The Chief Justice has been apprised of this recommendation in respect to the Timol case. The Priority Crime Litigation Unit (PCLU) is currently managing and directing the investigations in a number of other cases.
2. The PCLU is currently managing and directing the investigations in a number of other cases, although, numerous problems and challenges are evident, *inter alia*:

• Various and, in some instances extensive, aspects have been identified for further investigation;

• The original case dockets and documentary exhibits were lost, misplaced and / or never returned following the TRC process;

• The original investigating officers are no longer available, which resulted in new officials having to be appointed and having to acquaint themselves with the details of the investigations *de novo*;

• The lengthy time lapse in prosecuting or finalising cases has given rise to difficulties, viz.: some witnesses have died or their whereabouts are unknown; witnesses are either unable to recall events or are unwilling to testify; potential accused have died; and, unduly prolonged cases are withdrawn due to the difficulties in reconstructing court records.

1. The Draft NAP was developed by the DoJ&CD, in consultation with other Government departments, Chapter Nine Institutions and civil society organisations comprising the NAP Steering Committee. The draft NAP was approved by Cabinet for public comment during December 2015.
2. Submission of the final revised NAP to Cabinet for its approval is planned for September 2017 for approval by Cabinet for it to be deposited with the United Nations in compliance with South Africa’s international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, as well as in accordance with the Durban Declaration and Programme of Action.

Programmes and measures in place which promote and support the NAP objectives

1. In the period up to 2019, the overarching objectives in relation to Outcome 14: Nation Building and Social Cohesion, which corresponds with Chapter 15 of the NDP, will be reducing inequality of opportunity, redress, enabling the sharing of common space, awakening the populace to speak when things go wrong and to be active in their own development as well as engendering a knowledge of the Constitution and fostering the values contained therein.
2. The South African Constitution protects all individuals against racist or xenophobic attacks including non- nationals. The South African Police Service (SAPS) renders a law enforcement service to all members in South Africa, including visitors. Whenever violence against any person(s) is reported, SAPS activates a response whereby an assessment is made on site and the relevant resources deployed in order to secure the affected person(s) and their property. All crimes are subsequently registered and investigated. Foreign nationals enjoy all rights enshrined in South Africa’s constitution, except for certain specific rights such as political rights. South Africa continues to be a major destination for asylum-seekers, as well as migrants, including those seeking better economic and social opportunities. Attacks on foreign nationals experienced in the past and, recently in 2015, were strongly condemned by the Government and law enforcement agencies moved in to contain the attacks and stop it spreading to other parts of the country.
3. The restoration of peace, law and order in our communities is coordinated at the highest level of Government. President Jacob Zuma convened meetings of stakeholders in South Africa to discuss the country’s migration policy and how various sectors can work with Government to promote orderly migration and good relations between citizens and other nationals. The issues related to violence and discrimination against foreign nationals are further addressed through three main Inter-Ministerial Committees (IMCs), namely the Inter-Ministerial Committee (IMC) on Migration, the IMC on Social Cohesion and the IMC on Population Policy.
4. In terms of paragraph 133 of the Durban Declaration and Programme of Action, the Government has developed human rights training for law enforcement officers. The purpose of this training is to ensure that enforcement of immigration legislation complies with the South African Government’s international obligations and promotes a human rights culture as provided for in the Constitution and immigration legislation.
5. The Green Paper on International Migration (2016) contends that it is neither desirable nor possible to stop international migration. It concludes that international migration is a natural, largely positive phenomenon which, if well managed, can, does and will make a crucial contribution to growing South Africa’s economy and transforming Africa.
6. The South African Police Service (SAPS) has abolished any quotas relating to arrests and focus its efforts on the reduction of crime via pro-active policing actions, including community involvement, in an effort to achieve a safe and secure environment for all in South Africa.

Prevention and Combating of Hate Crimes and Hate Speech Bill (the Bill)

1. The Bill seeks to address the increasing number of racist incidents, in the form of hate crimes and hate speech, that have occurred in the recent past and to assist victims thereof. Current legislation has not adequately addressed the forms of hate incidents that occur in South Africa. Therefore, the Bill creates the offences of hate crimes and hate speech and puts in place measures to prevent and combat these offences. The Bill also proposes stiffer and harsher sentences to be imposed e.g. Imprisonment. The Bill was published for public comments in October 2016, and the closing date for submissions was 31 January 2017. It is envisaged that the Bill will be introduced into Parliament in the first half of 2017.

Investigation and prosecution of hate crimes and hate speech

1. Anyone who believes they have been unfairly discriminated against, harassed or subjected to hate speech by either State officials, private individuals or institutions, has recourse to the Equality Court.

Cases registered in the Equality Court during 2014/15 and 2015/16[[12]](#footnote-12)

| *Region* | *April to March* | |
| --- | --- | --- |
| 2014/15 | 2015/16 |
| Eastern Cape | 20 | 21 |
| Free State | 38 | 35 |
| Gauteng | 253 | 57 |
| KwaZulu-Natal | 232 | 178 |
| Limpopo | 8 | 18 |
| Mpumalanga | 119 | 116 |
| North West | 42 | 10 |
| Northern Cape | 37 | 16 |
| Western Cape | 95 | 107 |
| Grand Total | 844 | 558 |

Cases brought before the Equality Court

1. Nine of the cases brought before the court were for racist utterances and hate speech. Four cases were finalised and Respondents were found to have committed hate speech. Penalties were imposed ranging from R 150 000 fine, suspended fines, personal apology, and community service. Five cases are pending.
2. Section 28(1) of the Promotion of Equality Act and Prevention of Unfair Discrimination Act (Act No. 4 of 2000) (provides that where unfair discrimination on the grounds of gender or race played a role in the commission of an offence, the unfair discrimination will be deemed an aggravating circumstance warranting the imposition of appropriate graver penalties.
3. Reply to the recommendations contained in paragraph 31 of the concluding observations: Prison Conditions CCPR/C/ZAF/CO/1

Nelson Mandela Rules (NMR) - Standard Minimum Rules for the treatment of Prisoners

1. In the 2016/17 financial year, South Africa commenced an audit of the existing Corrections legislative and policy framework to identify possible gaps in comparison with the NMR. The audit focussed on the following eight thematic areas:

a. Respect for prisoners’ inherent dignity and value as human beings;

b. Medical and health services;

c. Disciplinary action and punishment, including the role of medical staff; solitary confinement and reduction of diet;

d. Investigation of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners;

e. Protection and special needs of vulnerable groups deprived of their liberty;

f. The right of access to legal representation;

g. Complaints and independent inspection;

h. The replacement of outdated terminology; and

i. Training of relevant staff to implement the rules.

1. Of the eight thematic areas, solitary confinement and the management of the independent inspections were found to be areas that require attention and consideration. The issue of the applicability of the NMR was analysed and found to apply to all the departments/institution’s that have a responsibility of detaining arrested persons[[13]](#footnote-13).
2. The country has taken note of the principles of solitary confinement as defined in the NMR and this issue has been earmarked for consideration and possible review.

Management of overcrowding

1. The Department of Correctional Services (DCS) continues to implement strategies for the down-management of its population which are multi-pronged and include cooperation with various structures within the criminal justice system.
2. With regard to remand detainees the Justice Crime Prevention and Security (JCPS) Cluster has established a Bail Protocol which allows for the referral of remand detainees to court for bail review, and, the Protocol on Maximum Incarceration Period which allows for referral of remand detainees to court for consideration of the length of their detention.
3. Within the criminal justice system, there are various sub-structures of the JCPS Cluster (e.g. the Criminal Justice System Review and the Judicial-led structures) established to handle a myriad of cross-cutting issues, including issues relating to remand detainees. Within these structures several departments such as SAPS, NPA, the DOJ&CD, the DoH, the DCS, and, Legal Aid South Africa, are represented.
4. Measures to combat overcrowding include a Facilities Plan which is aimed at establishing new facilities and improving existing structures to increase accommodation capacity and improve the existing infrastructure. The average imprisoned population under the governance of the DCS was reduced by 0.3% during February 2016 to 16 February 2017.

| *Average for Periods* | *Unsentenced* | *Sentenced* | *Total* | *Approved Accommodation* | *Occupancy level* |
| --- | --- | --- | --- | --- | --- |
| February 2016 | 45068 | 116651 | 161719 | 119134 | 135,7 |
| February 2017  (up to 16th) | 44426 | 116885 | 161311 | 119134 | 135,4 |

Promoting Alternatives to Detention

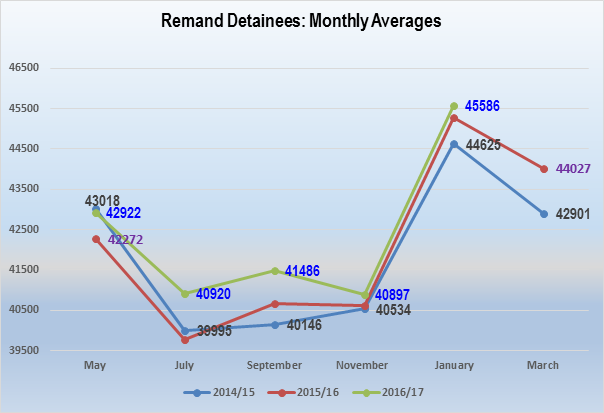
1. There are several JCPS Cluster measures employed as alternatives to detention during the pre-trial phase, these include release in terms of provisions of the Criminal Procedure Act (Act No. 51 of 1977), including bail. Post-conviction measures include diversion; restorative justice; community service; suspended sentences; fines; and, alternatives that fully or partially replace prison sentences.
2. The community corrections system, which is one of the core business areas of the DCS, manages three categories which are: probationers; parolees; and, awaiting-trial persons. The average population under the community corrections system was recorded at 70 779 in December 2016. Probationers made up 16 077, parolees 53 418, and the awaiting trial persons 1 284 of the total 70 779.
3. The Government, represented by the Minister of Justice and Correctional Services, received a court order dated 5 December 2016 which declared that government had failed to provide the inmates of Pollsmoor Remand Detention Facility (RDF) with exercise, nutrition, accommodation, ablution facilities and health care services of a standard that complies with the requirements of the Correctional Services Act (Act 111, 1998) and that this failure is inconsistent with the Constitution. Government, through the DC S, committed to reducing the population at the above mentioned facility by 150% within a period of six months. An action plan on reducing the population on Pollsmoor was developed as part of the court order and is progressively implemented in collaboration with relevant criminal justice system role players such as the South Africa Police Services, National Prosecuting Authority, courts and Legal Aid South Africa[[14]](#footnote-14).

Mandela Rules: Participation by South Africa in the development of the inspection checklist.

1. The Government participated in the Expert Group meeting held on 9 and 10 February in Vienna, with the purpose of reviewing a checklist to assist Member States in assessing compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules"). The meeting was hosted by the Justice section of the United Nations Office on Drugs and Crime (UNODC): Global Programme on addressing prison challenges. The Department of International Relations and Cooperation (DIRCO) represented by the permanent mission of South Africa in Vienna made a brief presentation on the commitment of the country to implementing the Mandela Rules.

Remand Detainees Population

1. The line chart below shows the average population of remand detainees for certain months from 2014/15 to 2016/17 financial year. The trend for three periods shows a similar pattern which is characterized by a downward trend from May to July and upward trend from November to January. In general, the population of remand detainees increases from December to January and gradually decreases from the month of February.



1. \* The present document is being issued without formal editing. [↑](#footnote-ref-1)
2. Act No. 34 of 1995 [↑](#footnote-ref-2)
3. An amount of R30 000.00 per person [↑](#footnote-ref-3)
4. including academic and formal records of history, cultural and art forms, as well as the implementation of new geographic and place names [↑](#footnote-ref-4)
5. See note 2 above [↑](#footnote-ref-5)
6. Government Gazette, Vol 597 no 38188, 14 November 2014. [↑](#footnote-ref-6)
7. These are divided as follows: (i) 11 have been traced and correct documentation is awaited; (ii) 4 declined reparation; (iii) 8 are no longer in South Africa and have been declared untraceable; (iv) 4 could not be traced and have been declared untraceable; (v) 9 are legally missing persons whose next of kin have been advised on the process to apply for a presumption of death declaration should they so desire. [↑](#footnote-ref-7)
8. A victim and his, or her, relative or dependant will only qualify for assistance if the annual gross income of the household, of which the victim or a relative or dependant of a victim is a member, does not exceed the amount of R132 000, 00 [↑](#footnote-ref-8)
9. A vulnerable household is a household consisting of four or more members, where:

   \* the majority of members are over the age of 65 years;

   \* the majority of members are receiving social assistance;

   \* one member is physically or mentally disabled;

   \* one of the members is under the age of 18 years and has to work; or

   \* only one of the members is working. [↑](#footnote-ref-9)
10. A victim and his, or her, relative or dependant will only qualify for assistance if the annual gross income of the household, of which the victim or a relative or dependant of a victim is a member, does not exceed the amount of R198 000, 00 or if he or she is a member of a vulnerable household, as defined in the Regulations. [↑](#footnote-ref-10)
11. The case manager, on receipt of any request for medical assistance, confirms the residential address of the requester and arranges with the nearest health establishment to provide the required assistance. The case manager monitors the process through home visits to the requester and the relevant health establishment for feedback. [↑](#footnote-ref-11)
12. The table reflects the statistics relating to equality court matters “registered” in the Lower Court (Magistrate Court) during April to March 2014/15 vs. April to March 2015/16. Please note that these are registered, not finalised cases. [↑](#footnote-ref-12)
13. These departments are Correctional Services, Social Development, Defence, Home Affairs and the South African Police Services and these participated in the audit process and the development of the implementation plan [↑](#footnote-ref-13)
14. The snapshot analysis for 31 December 2016 revealed that there were 3 238 remand detainees in Pollsmoor against the approved bed-space of 1619 and this converts to the occupancy of 200%. On 24 February 2017 (in terms of the daily head count) the population recorded 2 793 remand detainees. This reflects a reduction of 13.74% and occupancy of 172.5%. [↑](#footnote-ref-14)