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Commission

TOPIC National Mechanisms —
Promotion, Protection, Monitoring

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Speaking points

Introduction

1. Racism, xenophobia and other intolerance continue to plague South African society. The South African Human Rights Commission (SAHRC) plays a crucial role in working with government, civil society, international and regional mechanisms in attempting to eradicate the scourge presented by these serious forms of prejudice.
2. Although South Africa boasts a strong legal framework aimed at eliminating racism, xenophobia and related intolerance, actual implementation remains unsatisfactory. Assistance by international and regional mechanisms to ensure an adequate capacitation of all role players therefore remains important.

National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP)

3. The South African government spent approximately 16 years on developing a NAP in accordance with the Durban Declaration and Programme of Action. During the 16 years, the SAHRC served as a Consultative Member of the Steering Committee. Various civil society and international mechanism stakeholders participated in the process of developing the NAP.

4. The NAP was finalised by Cabinet only in 2018. In terms of the NAP governance structure, the SAHRC, together with other institutions supporting constitutional democracy, will play a significant role in the implementation of the NAP. It will work with the governing structure in monitoring and evaluating the impact of the plan. However, as a national human rights institution (NHRI), the SAHRC will remain independent in monitoring implementation of the NAP.

5. Unfortunately, the NAP implementation plan is currently incomplete. The SAHRC is busy following up on its status, since the implementation plan was meant to be updated and finalised following South Africa's general elections in May 2018.
6. The SAHRC is particularly focused on monitoring objectives in the NAP that are crucial in South Africa's current turbulent environment. Specifically, the Commission requires progress reports from government regarding implementation of *Objective 16: Human rights of foreign nationals are promoted and respected; Objective 17: Eradication of gender-based violence and discrimination; and Objective 19: Promotion of constitutional and human rights awareness - Promote the use of Equality Courts and strengthen Equality Courts.*
7. Despite challenges in finalising the NAP and delays in commencing its expeditious implementation, the NAP remains a potentially powerful tool in eradicating racism, xenophobia and related intolerances.
 - For example, the NAP makes provision for the **promotion** of human rights through awareness-raising and **education**. Although the SAHRC will monitor implementation by government as primary duty-bearer in

completed the requisite training. Equality Courts are supposed to be accessible, inexpensive and expeditious and, as such, legal procedures are meant to be relaxed in these courts.

- Although the creation of Equality Courts constitutes an innovative approach in order to ensure equality with regard to access to justice, many obstacles impede the optional functioning of these courts.
- In the view of the Commission and many other stakeholders, these courts are underutilised and under-resourced. The Commission has previously engaged the Department of Justice on this issue and discussions are continuing.
- In addition, training received by presiding officers and clerks does not seem adequate, since some Judges and Magistrates still display misunderstandings regarding the nature of Equality Courts and equality law in their judgments.
- The administration of justice through Equality Courts can also be significantly improved by government ensuring

that a list of designated Equality Court presiding officers is consolidated and publicised, and by establishing an accessible database for Equality Court precedent.

12. The Employment Equity Act and Broad-Based Black Economic Empowerment legislation and policies aim to give effect to the constitutional recognition of the need to implement **special measures** in various contexts. This is in line with the International Convention on the Elimination of all Forms of Discrimination.

- The Commission has monitored the implementation of special measures in different spheres,² and has made advisory recommendations to government to improve special measures in order to expedite transformation while taking care not to allow the emergence of new forms of inequality and economic imbalances.
- The SAHRC has further observed many instances of discrimination in the **health and policing** sectors. Foreign nationals and LGBTQI persons often face discrimination by health care workers. Similarly, the

² SAHRC Equality Report 2017/18: *Achieving Substantive Economic Equality through Rights-Based Radical Socio-economic Transformation* (2018).

SAHRC has received reports of secondary victimisation by police officers, especially in cases where poor African lesbians have been viciously raped and assaulted.

13. Finally, the **Hate Speech and Hate Crimes Bill** has been on Parliament's agenda for several years. Whereas the Equality Act prohibits hate speech, the Bill seeks to criminalise both hate speech and hate crimes. The SAHRC has made two submissions on two different versions of the Bill. The Commission has recognised that attempting to regulate the diverse phenomena of hate speech and hate crimes in a single piece of legislation may not be the most effective approach. Indeed, the inclusion of hate speech may be the reason why the Bill has been delayed. In the meantime, there is an urgent need to criminalise hate crimes, since violent xenophobic and gender-related crimes abound. Moreover, there is an urgent need for **disaggregated data** in respect of hate crimes. Once the Bill becomes law, the policing service will be required to keep statistics in this regard.

Reinforcement of national institutions

14. Many national institutions require additional resourcing and capacitation. This includes government departments, Statistics South Africa (the national statistical agency), and the SAHRC.
15. In particular, Statistics South Africa requires additional resources in order to gather data that is sufficiently disaggregated to enable the monitoring of equality and other rights violations.
16. The SAHRC has been in preliminary discussions with the regional Office of the United Nations High Commissioner for Human Rights (OHCHR) regarding the possibility of commissioning a study to identify data gaps and to make the Statistics South Africa aware of such gaps. However, without sufficient resources, any resultant recommendations will not be capable of implementation.
17. Likewise, various treaty bodies have urged the South African government to adequately resource the SAHRC. Current capacity constraints render the fulfilment of the Commission's international and constitutional mandates difficult.

Conclusion

18. NHRIs play a crucial role in respect of the promotion, protection and monitoring of the rights to equality and dignity.
19. However, a collaborative approach between NHRIs, international and regional mechanisms, national governments and statistical agencies and civil society is necessary in order to effectively combat racism, xenophobia and related intolerance.