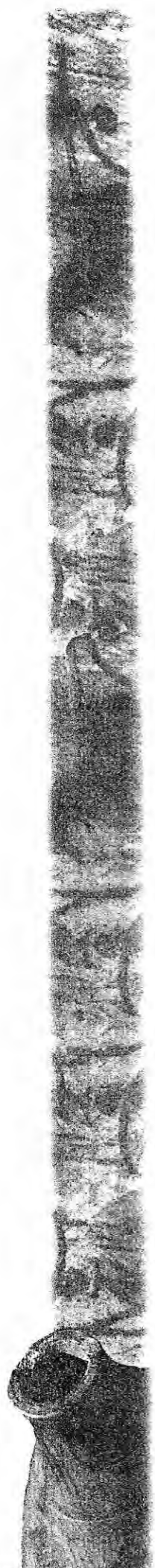


INITIAL COUNTRY REPORT 1998

GOVERNMENT OF SOUTH AFRICA



105

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

INITIAL COUNTRY REPORT: SOUTH AFRICA

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" We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to-

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel'iAfrika. Morena boloka setjhaba sa heso. God seën Suid-Afrika. God bless South Africa. Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika".

Preamble of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

INTRODUCTION

The Republic of South Africa is a sovereign, democratic state founded upon the rule of law and principles of human dignity, the achievement of equality and the advancement of human rights and freedoms. Non-racialism and non-sexism are values that are entrenched in the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), hereinafter referred to as the Constitution, which is the supreme law of the land. The rebirth of our society into a constitutional democracy is the result of the national liberation struggle against apartheid. For hundreds of years the majority of the South African people experienced severe hardships, loss of human dignity, oppression and suffering.

South Africa's new government has inherited a legal system, an education system, a social welfare system, a health system and a socio-economic system that were designed to implement colonialism and later an institutionalised apartheid system. It was a fragmented system that was unable to meet the demands of the new constitutional democracy that dawned upon the new South Africa in the first democratic elections held on 27 April 1994. Racial prejudice and oppression of the majority of the people depicted the history of the country. Throughout South Africa's violent colonial past, vulnerable groups such as women, children and youth also suffered several forms of oppression.

The new Constitution, as illustrated in its Preamble, aims to heal the divisions of South Africa's colonial past and to establish a society based on democratic values, social justice and fundamental human rights. Hence the Bill of Fundamental Rights as contained in Chapter 2 of the South African Constitution makes provision for rights such as the right to security of the person, the right to human dignity and equality. It also provides for certain socio-economic rights that have far-reaching consequences for the standard of living of all South Africans, in particular vulnerable groups.

Since the beginning of political transformation in the early 1990s, efforts have been made to expunge obsolete and discriminatory legislation from the Statute Books. A number of international and regional instruments have been ratified or acceded to, including the African Charter on Human and Peoples' Rights on 9 July 1996. The obligations incurred as a result of South Africa becoming a party to these international and regional instruments have contributed towards government reviewing its legislation in order to ensure that it is in line with the norms espoused in these instruments.

The South African Constitution also makes provision for state institutions whose role is to strengthen constitutional democracy. These include the Human Rights Commission, the Public Protector, Auditor General, Electoral Commission, the Commission for Gender Equality and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic communities. One of the responsibilities of such Commissions is to monitor and make recommendations to Parliament on policies and programmes on human rights.

To date South Africa has presented two country reports to the United Nations, namely a report under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women. These reports, together with additional information provided by the relevant organs of state, form the basis of this Initial Report. The Government is appreciative of the assistance provided by the non-governmental sector in this report writing process.

South Africa is a member of the Organisation of African Unity (OAU) and the Southern African Development Community (SADC). To date it has fostered a good working relationship with the OAU on topics of mutual interest such as the African Court on Human and Peoples' Rights and the question of peace-keeping forces. Within SADC, South Africa together with its partners has developed a Declaration on the Prevention and Eradication of Violence Against Women and Children, to be signed shortly.

South Africa acceded to the African Charter on 9 July 1996. A *note verbale* was entered to accompany the instrument of accession. Parliament agreed to South Africa's adherence to the Charter, but decided that the instrument of accession should be accompanied by a



declaration. This declaration contains South Africa's view that consultation should take place between state parties on a number of issues. These include "possible measures to strengthen the enforcement mechanisms of the Charter" and "criteria for the restriction of rights and freedoms recognised and guaranteed in the Charter" and bringing the Charter in line with the UN's resolutions "regarding the characterisation of Zionism."

Section 231(4) of the Constitution provides that "any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament." Whilst the Charter is not enacted into South African law by national legislation, Section 233 makes provision for the application of international law: "When interpreting any legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." South Africa has also adopted numerous laws, case law and other measures to give effect to the provisions of the Charter. Thus the South African legal system is beginning to mirror the protection of rights as provided for in the Charter, thereby ensuring the protection of human rights through incorporation of African Charter norms into the South African legal system.

This Report as required in terms of Article 62 of the African Charter is South Africa's Initial Report to the OAU. The Report serves to provide basic information on the country, it depicts the progress made thus far in terms of the African Charter on Human and Peoples' Rights as well as other relevant human rights instruments, and identifies areas for further action.

Structure of the Report

The Structure of the Report is based on the Simplified Guidelines for State Reporting set by the African Commission on Human and Peoples' Rights.

Chapter 1 of this Report provides a brief description of the country, in conformity with the established standard that is required by the Guidelines of the African Commission for an Initial Report.

Chapter 2 relates to the introduction to the South African legal system. The relationship between the branches of government and non-governmental organisations is also addressed in this part.

Chapter 3 deals with the general measures of implementation as far as the Charter is concerned. This Part also provides a list of the major human rights instruments that have been ratified by South Africa.

Chapter 4 deals with the measures taken by South Africa to popularise and promote human rights.

Chapter 5 deals with the South Africa's relations with other states in so far as the application of the Charter is concerned.

To avoid too lengthy a report, the reports to the UN on the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination Against Women, policies, legislation and programmes of action on issues that are pertinent to the Charter itself are attached as annexes. A full understanding of government action requires a reading of the full report with annexes.

Limitations of the Report

The South African Constitution provides for decentralised policy making and service delivery among the various sectors at national, provincial and local level. This Report is largely based on information provided by national departments. The Report depicts a broad national picture and hence there may be some gaps in the Report as far as regional and local activities are concerned.

Another limitation relates to the deficiency in data and statistics provided in the Report. The previous government's information strategy reveals the degree of racism and the suppression of information in the administration of its policies and programmes. However, some steps have been taken by the Central Statistics Service to rectify this situation. The Government is committed to providing much more statistical information in the next report to the OAU.

Lastly, although much has been done thus far, the Government is still in the process of developing legislation, policy and strategies for implementation in order to ensure that the legal system is in line with the South African Constitution and other relevant human rights instruments such as the African Charter on Human and Peoples' Rights. There are still many inadequacies and shortcomings in this area and much work remains to be done. To address the legacy of the past and to set new standards, the Government is committed to the full realisation of each and every human right.





CHAPTER 1

HISTORY OF THE REPUBLIC OF SOUTH AFRICA

1.1 Structure of the Government

South Africa is a constitutional democracy. The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) is the product of a negotiation process that began in 1990. Pursuant to the elections, the Constitutional Assembly consisting of both Houses of Parliament negotiated and drafted the new Constitution, which became an Act of Parliament in 1996. The Constitutional Court was created as the guardian of the Constitution.

The South African Constitution provides for a separation of powers. On the national level, the Executive, consists of the President, Deputy President, Cabinet and the state departments are in charge of policy and administration. Parliament, the legislative body, consists of two houses: the National Assembly and the National Council of Provinces. The National Assembly consists of 400 members, elected by proportional representation in national elections held every four years. The National Council of Provinces, a structure designed to create a joint forum for South Africa's nine provinces, consists of equal representation from the provincial legislatures. Both houses are responsible for the passing of legislation, nationally and provincially, respectively.

South Africa is governed on the basis of the principle of co-operative governance. The South African Constitution provides for national, provincial and local spheres of government. The national government is responsible mainly for policy, while the provincial and local spheres are responsible mainly for the implementation thereof.

Each of the nine provinces has an elected legislature and its own executive council. There are almost 850 local government structures in South Africa.

a) Land and People

Geography

South Africa is situated on the southern tip of Africa. It is bounded by the Atlantic Ocean to the west and the Indian Ocean to the east. Its northern borders are shared with Namibia, Botswana, Zimbabwe and Mozambique. Lesotho is entirely within and Swaziland partially within its boundaries. The total area is approximately 1 219 080 square kilometres.

The Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), herein after referred to as the Interim Constitution, which was adopted in December 1993, created nine provinces. These formed the basis of the first democratic elections in April 1994. They replaced four provinces, four nominally "independent states or homelands" and six self-governing territories'.



The new provinces are the Eastern Cape, the Free State, Gauteng, KwaZulu Natal, Mpumalanga, Northern Cape, Northern Province, North West and Western Cape.

The geography and climate of South Africa vary widely. The provincial capital with the highest rainfall is Pietermaritzburg (KwaZulu Natal) which receives approximately 1149 mm per annum while the driest capital is Kimberley in the Northern Cape, which receives only 64 mm per annum. The terrain includes the Savanna, with mixed grasslands and trees, the Grasslands with trees mainly on hills and river beds, the dry Karoo and lush Fynbos areas.

b) Ethnic and demographic characteristics

It is estimated that the population of South Africa in 1995 was 41244000¹. The table below indicates the racial composition of the population. The last census from which information is available, was conducted in 1991. A new census was taken in November 1996 but the results of this are still being compiled and analysed.

Population mid-1995

RACIAL DESCRIPTION	POPULATION
Africans/Blacks	31 461 000
Coloureds	3 508 000
Indians/Asians	1 051 000
Whites	5 224 000
TOTAL	41 244 000

Women represent about 51% of the total population.

Approximately 48% of the population live in urban areas and 52% live in rural areas. The Northern Province has the highest percentage of its population living in rural areas (90,9%), while Gauteng has the highest percentage in urban areas (96%).

The pattern of official immigration into South Africa and emigration from this country in 1995 was as follows: -

¹ The statistics provided in this section below have been obtained from South Africa's country reports on the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination Against Women.

Immigration and emigration

DESTINATION/SOURCE	IMMIGRANTS	EMIGRANTS
Europe	2272	2963
Australasia	85	2449
Asia	927	163
Africa	1304	1114
Americas	281	1612
Other	195	424
TOTAL	5064	8725

There are also widely varying estimates of illegal immigrants in South Africa (mainly from Southern African countries) and many people seeking refugee status.

1.2 Economy

Gross Domestic Product

South Africa has the largest economy in Southern Africa. In 1994, according to World Bank data, South Africa accounted for 43,9% of the combined gross national product of all countries in the sub-Saharan African region.

In 1995 the primary sector represented 13,6% of South Africa's GDP, the secondary sector 32,9% and the tertiary sector 53,5%. Mining and quarries are the major industries within the primary sector, together accounting for 9,0% of the GDP. Manufacturing is the major component of the secondary sector, being 25,2% of the GDP. In the tertiary sector finance, insurance, real estate and business services represent 15,3% of the GDP and wholesale and retail trade, catering and accommodation account for 15,5%.

1.3 External Debt

During the first half of the 1980s there was a dramatic increase in South Africa's external debt from 16,9 billion US dollars to 24,3 billion US dollars. This was exacerbated by the decline in the external value of the rand over this period. Since 1986 there has been a series of Interim Debt Arrangements entered into and South Africa has substantially reduced its foreign debt. By the end of 1995, the amount of affected debt was 3,0 billion US dollars and non-affected debt was 10,1 billion US dollars.

1.4 Unemployment

One of the most serious problems confronting South Africa is the high level of unemployment, particularly amongst the previously disadvantaged population groups.



In October 1995 14,4 million of the 26, 4 million South Africans aged 15 or older were economically active. Of the 14,4 million economically active, 10,2 million were employed and 4,2 million or 30% were unemployed.

Again the unemployment figures show the legacy of previous policies with Africans being the most affected by unemployment, as the following rates of unemployment as a percentage of the economically active population show: -

Unemployment rates

GENDER	AFRICAN / BLACK	COLOURED	INDIAN / ASIAN	WHITE
MALE	33,6%	19,7%	13,3%	4,5%
FEMALE	50,2%	27,8%	24,2%	9,2%
TOTAL	41,1%	23,3%	17,1%	6,4%

1.5 Informal Sector

A significant proportion of economically active persons work in the informal sector, often in micro enterprises. Informal sector activities include the production of marketable products, distribution of merchandise and rendering of services. The following extract from the "Prospectus" on the Republic of South Africa produced by the Department of Finance in October 1996 illustrates the point: -

"Informal enterprise is an important haven for self-employment in rural areas, for the newly urbanized and for unemployed or laid-off persons. In addition, it mobilizes capital at a grass-roots level for the provision of dwellings and community-based services.

The businesses typically operate at a low level of organisation, with little or no division between labour and capital, and on a small scale. Where more than one individual is involved, labour relations are mostly based on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees. Formal sector economic activity, by contract, is conducted within the formal structures created by the legal system of the country".

1.6 Literacy rate

The adult literacy rate in South Africa is largely influenced by race, with Whites nearly always being literate and Blacks being the most disadvantaged by the apartheid education system.

The figures for 1991 were: -

Literacy rate

RACIAL DESCRIPTION	PERCENTAGE LITERATE
Africans/Blacks	76,64%
Coloureds	91,06%
Indians/Asians	95,48%
Whites	99,52%
TOTAL	82,16%

1.7 Religion

The majority of South Africans (about 80%) belong to the Christian faith. Other faiths include traditional African religion, Hindu, Islam and Judaism.

1.8 Home Language

Under the new Constitutional dispensation there are 11 official languages in South Africa. The South African Broadcasting Corporation has incorporated some of these other languages into their programmes and operations. Community radio stations using the language of the local area are a popular form of communication.

The distribution of home languages according to the 1991 census is as follows: -

Home language

LANGUAGE	PERCENTAGE OF POPULATION
Afrikaans	15,1%
English	9,1%
Afrikaans/English	0,2%
IsiNdebele	1,5%
Sepedi	9,8%
Sesotho	6,9%
SiSwati	2,6%
Xitsonga	4,2%
Setswana	7,2%



Tshivenda	1,7%
IsiXhosa	17,5%
IsiZulu	22,4%
Other	1,8%

1.9 Life Expectancy

The table below illustrates the significant racial differences in life expectancy:

Average life expectancy 1995 (years)

Race	Women	Men	All
African	68,2	63,5	65,8
Coloured	68,5	62,6	65,5
Indian	73,0	67,3	70,1
White	76,6	69,9	73,2

Birth Rates and Infant Mortality

Birth rates amongst the various population groups according to the October 1994 Household survey are as follows: -

Birth rates

BIRTH RATE PER 1000	AFRICAN/BLACK	COLOURED	INDIAN/ASIAN	WHITE
	25,3	21,7	18,1	13,7

Infant mortality rates show a similar racial disparity partially, reflecting the uneven provision of medical services and lack of adequate nutrition and general quality of living standards in some communities. For Africans 86 infants die for every 1 000 live births and rural infants are most at risk with a mortality rate of 94 per 1 000 births. Amongst Whites the infant mortality rate is 7.3 per 1 000.

Population by Age Group

Data collected in the October 1994 household survey reflects a fairly even distribution of people by age and gender between urban and non-urban areas. The main trend would appear to be that during the peak income earning years the number of men in urban areas exceeds that of women while women slightly predominates in the non-urban areas.

Population by age, gender and location

GENDER and LOCATION	0 to 19 yrs	20 to 39 yrs	40 to 59 yrs	over 60 yrs	TOTAL
Urban Male	3697000	3806000	1958000	627000	10087000
Urban Female	357900	3459000	1823000	787000	9649000
Non-urban male	5789000	2349000	1064000	487000	9688000
Non-urban female	5764000	2917000	1641000	751000	10893000
Percentage of population	46,7%	31,1%	16,1%	6,6%	100% = 40317000





CHAPTER 2

INTRODUCTION INTO THE SOUTH AFRICAN LEGAL SYSTEM

2.1 Historical Overview

350 years of colonialism and apartheid dominated the South African legal system that reflected the values of the colonial and apartheid rules. As a result, a distinction was drawn between South African common law, the "law of the white people" and traditional African law which was referred to as "native law". This "native law" was supposed to represent customary law (unwritten) of the indigenous people. Colonial and apartheid rule not only marginalised indigenous or customary law but in the process of interpretation, legislation was given a slant which facilitated colonial and apartheid rule. In this regard the role of traditional leaders and traditional courts is a case in point.

The Union of South Africa formed in 1910 represented an alliance between English and Afrikaans speaking whites and the triumph of white domination over blacks. The legal system reflected that domination. In the past, the court system, the administration of estates, and all other parts of the system of justice were moulded around the needs of white people who made up 20% of the national population. The black majority, including coloureds and Indians, who made up 80% of the population, had marginal services that were segregated and of a low standard. Instead of being helped by the justice system, black people were most often the victims of it.

The South African Constitution, 1996 (Act 108 of 1996) brought about a positive change to the South African legal system.

2.2 SOURCES OF SOUTH AFRICAN LAW

South Africa has an uncodified legal system. This means that there is not only one primary source where the law originates and can be found. South African law has more than one source:

- Legislation
- Case Law (court decisions)
- Common Law
- Custom
- Old writers / authors
- Indigenous Law



2.2.1 Legislation

Legislation is law laid down by an organ of the State which has the power to do so. These laws are embodied in writing and are known as statutes (or acts). In South Africa, Parliament is the highest organ that can pass legislation at the national level. There are also other bodies, that can pass subordinate legislation. These include the provincial legislatures which pass provincial acts and municipal councils which pass by laws. Legislation is a powerful source of law. In principle it binds the whole society.

2.2.2 Case Law

Courts are institutions that apply the law on daily basis. Judges and magistrates, like all lawyers consult legislation and rules of common law and custom applying to the particular case before them. Courts also take into account their previous judgements in similar cases, because they are bound to the approach followed in the past. Previous judicial decisions therefore constitute law and the way in which the law was applied there is authoritative. The reason for this lies in the system of judicial precedent, also called the doctrine of *stare decisis*, which applies in South Africa. The application of the doctrine of precedent depends, among other things, on reported cases.

2.2.3 Common Law

When a specific matter is not governed by legislation, common law usually applies. South African common law is mainly the 17th and 18th century Roman-Dutch law that was transplanted to the Cape. This forms the basis of modern South African law and has binding authority. Examples of common law crimes include murder, robbery and rape, etc. Whilst South African common law is mainly Roman-Dutch law, not all the principles of Roman-Dutch law were transplanted to South Africa. Sometimes English law had, by means of precedent, influenced South African common law. Some common law principles are, for this reason, no longer pure Roman-Dutch law. The sources of Roman-Dutch law are the old sources which are the following:

- Legislation (placaaten) - few of these still apply in South Africa
- Judgements of the old Dutch courts
- Writings of learned authors (the so-called old authorities) such as Hugo de Groot, Voet, van Leeuwarm and van der Linden.

2.2.4 Customary Law

Customary law is generally unwritten law. It is fixed practices in accordance with which people live because they regard it as the law. Customary law therefore does not concern all customs or practices, such as practices of polite behaviour. Old Germanic law also consisted of customs. The same can be said of indigenous law. In modern law custom does not play such

an important role as a formative source of law. Any assertion of a custom as law has to be proved. The court in the well-known case of *van Breda v Jacobs* 1921 AD 330, required that the following be proved before a custom could qualify as law²:

- It must be immemorial;
- It must be reasonable;
- It must have continued without exception since its immemorial origin; and
- Its content and meaning must be certain and clear.

2.2.5 Writings of modern authors

It has already been pointed out that the writings of the old authorities on common law have binding force as a source of law. Many academics and other lawyers write books and articles in law journals. There are useful sources in which to find legal principles. The authors explain the whole legal position with respect to legislation, common law and case law. Legal practitioners, the courts and students consult these writings on regular basis. Although these writings do not have binding authority, they can sometimes have persuasive authority. A court may decide to follow the opinion of a particular author, or to depart from a precedents which is at variance with such an opinion. In this way modern authors can influence legal reform.

2.2.6 Indigenous Law

Many black communities live according to indigenous law, which also takes on the form of written or unwritten customary law. Indigenous law is applied in the ordinary courts. The Evidence Amendment Act, (Act 45 of 1988) stipulates that a court can take judicial notice of indigenous law, provided that it is not in conflict with the principles of public policy or natural justice. In some instances an expert will have to give testimony on the content of these rules. The Black Administration Act, 1927 constitutes a partial codification of the principles of indigenous law *albeit* in a distorted form. The Code of Zulu Law is an example of codified African Customary Law. Case law on African Customary law is also applied.

The big challenge facing democratic South Africa is to free indigenous law from the effects of colonial and apartheid domination and to develop a legal system that reflects the true values of a new democratic South Africa. The entire South African legal system and its sources must be re-examined critically. All law is being subjected to critical scrutiny to reflect the new constitutional order. The central values of the South African Constitution mainly democracy, equality, dignity and freedom require a fresh look at South African common law, indigenous law, and religious personal law so that the new South African legal system will reflect the plural nature of the South African society and put and end to South Africa's colonial and apartheid past in its legal system. The process of law reform has begun but is bound to be a long process.

²Halsbury, vol 10 par 423



2.3 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT 108 OF 1996)

The South African Constitution prescribes the following institutions that strengthen and support democracy:

2.3.1 Human Rights Commission

Sections 181 (1) and 184 of the Constitution make provision for the establishment of the Human Rights Commission. The Human Rights Commission must, *inter alia*, -

- “(a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights;
- (c) monitor and assess the observance of human rights in the Republic.”

2.3.2 Commission on Gender Equality

Section 181(1) and 187 of the Constitution makes provision for a Commission on gender equality whose function includes, *inter alia*, the promotion of respect for gender equality and the protection, development and attainment of gender equality.

2.3.3 The Public Protector

Section 182 of the Constitution makes provision for the Public Protector. An Act of Parliament entitled the Public Protector Act, 1994 (Act 23 of 1994), provides for the office of the Public Protector. In terms of the Constitution, the Public Protector is empowered to investigate maladministration in government affairs, abuse of power, improper or dishonest conduct by a person performing a public function, improper or dishonest acts in respect of public money etc. The Public Protector must report on such conduct and to take appropriate remedial action.

2.3.4 Truth and Reconciliation Commission

The Truth and Reconciliation Commission process arose from the need to give effect to the postamble of the Interim Constitution which reads as follows:

“This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.



The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for UBUNTU but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respects of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed .”

Making provision for amnesty and dealing with gross human rights violations has presented the new democratic order with one of its biggest challenges. On the one hand effect had to be given to the Post amble. On other hand granting general blanket amnesty would have undermined South Africa's quest for establishing it rule of law and respect for the law. The Truth and Reconciliation Commission was designed not only to deal with issues relating to amnesty but to make provisions for victims of human rights violations.

The Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995) provides for the establishment of a Truth and Reconciliation Commission (TRC) to promote national unity and reconciliation in a spirit of understanding by the following means:

- Establishing the causes, nature and extent of gross violations of human rights which were committed during the period between 1 March 1960 and the 5 December 1993 cut-off date. President Nelson Mandela announced on 13 December 1996 that the original cut-off date would be extended to 10 May 1994.
- Granting amnesty to persons who make full disclosure of facts associated with political objectives.



- Establishing and making known the fate and whereabouts of victims of gross violations and restoring their human and civil dignity by letting them relate those violations and by recommending reparation measures.
- Compiling a report of activities of the Commission, containing recommendations on measures to prevent future human rights violations.

2.3.5 Judicial Service Commission

Section 178 of the Constitution provides for a Judicial Service Commission. The Commission's function is to make recommendations regarding the appointment, removal from office, term of office and tenure of judges of the Supreme Court and Constitutional Court and to advise the national and provincial governments on all matters relating to the judiciary and the administration of justice.

2.3.6 National Director of Public Prosecutions

The first National Director of Public Prosecutions (NDPP) was recently appointed. One of the values of having a national prosecutorial authority is that there will be national policies which ensure uniformity in the prosecutorial services. Up until now there has been complaints regarding discrepancies leading to public allegations of discrimination. This and other inherited problems have contributed to low levels of trust and acceptance of the judicial system particularly amongst the historically oppressed majority.

Section 179 of the Constitution makes provision for a single national prosecuting authority in the Republic in terms of an Act of Parliament. The national prosecuting authority shall consist of a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President and Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament. The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.

2.3.6.1 The Office for Serious Offences Economic Offences

The Investigation of Serious Economic Offences Act, 1991 (Act 117 of 1991) makes provision for an Office for Serious Economic Offences. This Office is a single co-ordinating body which is responsible for the effective and expeditious investigation of serious economic offences. This Office evaluates the charges and submits recommendations and reports to the Minister of Justice and the attorney-general concerned.

2.4 Courts and the Administration of Justice - Article 26 of the African Charter

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

As discussed earlier, South African law is predominantly based on and influenced by both Roman-Dutch law and English law in respect of legislation and case law. South African legislation is constantly revised, adapted and supplemented to meet changing circumstances in a dynamic and developing society.

This is done on the advice of various government departments and the South African Law Commission after consultation with all relevant role players. The South African Law Commission Act, 1973 (Act 19 of 1973) makes provision for the establishment of a South African Law Commission whose function is to, *inter alia*, undertake research in all branches of the law of the Republic of South Africa and make recommendations on its development, improvement or reform.

The judicial authority of the Republic vests in the courts. The courts are independent, impartial and subject only to the South African Constitution and the law. No person or organ of state may interfere with the functioning of the court. The state must assist and protect the courts through legislative and other measures to ensure their independence, impartiality, dignity, accessibility and effectiveness. The President by Proclamation (31 March 1995) appointed a commission of inquiry (Hoexter Commission), chaired by the Honourable Mr Justice Hoexter, to investigate the rationalisation of all jurisdictional areas and court structures of the High Court.

The administration of justice is a function of the national Government which must ensure a uniform system of justice, guaranteeing equal protection. In terms of the South African Constitution, the eleven former apartheid-based Departments of Justice were amalgamated into one Department, with effect from 1 October 1994.

The product of the past poses some serious challenges for the new democratic government. The old framework for justice and the laws of the country have to be transformed to reflect the new Constitution, especially the human rights that are enshrined in it. The five key challenges facing the Justice System are:

i) Providing an Equal and a User Friendly System of Justice

South Africa needs a system of justice, both criminal and civil justice, including family care and the administration of estates, that gives an equal and user friendly service to everybody.



The background: The colonial and apartheid legal orders, concentrated on the legalised subordination and oppression of black people. Blackness was stigmatised. Social amenities and legal services were segregated. Black communities were given very inferior legal services. Traditional courts and institutions were marginalised and underdeveloped. In many respects they were subverted to assist colonial and apartheid rule. Customary and religious laws that affected black communities were ignored or corrupted.

When the pseudo-independent black states were created, the justice system was deliberately fragmented into eleven different departments. Laws, and the way they were applied, were also fragmented according to the artificial borders. For example, maintenance services were provided on a racial basis. Black people were given inferior services through segregated, marginalised institutions. These services were further fragmented to provide segregated services for coloured and Indian communities along the lines of the 1983 apartheid Constitution that gave limited and segregated participation in government for coloured and Indian people.

The way forward: In the past South Africa had a justice system that was fragmented. It was racially skewed in terms of resources and of service delivery. Now the courts must be deracialised, and to redemarcate jurisdictional areas. Maintenance services, the administration of estates and other services must be deracialised. We must change people's attitudes to eliminate racism and sexism and to ensure that service delivery is the same for everybody. Everybody who uses the justice system must be treated humanely and with dignity. Equal protection for everybody under the law must be guaranteed.

ii) Making the Public Service and the Judiciary Representative

The South African Constitution and the government's policy on reconstruction and development (RDP) put forward a public service and a judiciary that are representative of all the people in South Africa.

The background: In the past, most managerial positions were reserved for white people. These included judges and other legal professionals. Until recently, competent women and men from the black community, including coloured and Indian people, could not become judges, magistrates, prosecutors, state advocates or state attorneys. Nor could they hold many other senior posts in the public service. The creation of the Bantustan system and the tri-cameral system further segregated people along racial and ethnic lines.

The way forward: As a result of the past, human resources in the justice system are skewed along race and gender lines. Posts in the former TBVC states and the lower posts in the justice system are virtually all held by black people. Senior posts are virtually all held by white people. The legal profession and its governing institutions are dominated by white males.



This must be changed. There must be enough black people and women in senior legal posts and in the justice system as a whole. It must be made truly representative of the South African people. Corrective action must be embarked upon in order to ensure that this objective is achieved as speedily as possible.

iii) **Implementing the Constitution and the Bill of Human Rights**

The South African Constitution entrenches a legal system of constitutional democracy with a justiciable Bill of Human Rights. This gives the courts the power to test government decisions and even some of the decisions made by private people. Also, there is a Constitutional Court that is the highest court in the land, and that is the ultimate court on constitutional issues.

The background: Many of the elements of the apartheid state were institutionalised through the law. The court system, including the prosecutorial services, were used to enforce apartheid laws such as the pass laws, the *Urban Areas Act*, the *Population Registration Act*, the *Group Areas Act*, the *Immorality Act*, the *Separate Amenities Act* and the various security laws which suppressed the free political activity. During the 1970s, as the liberation struggle gained momentum, so too did repression. The apartheid regime and its functionaries became increasingly authoritarian and dictatorial. Generally speaking, the judicial system, through the enforcement of security laws such as the *Suppression of Communism Act* and the *Terrorism Act*, became part of the repressive machinery upholding apartheid, destroying democratic values, undermining civil liberties and trampling upon the Rule of Law. As repression increased during the 1980s, accompanied by a growing disregard for dignity, human rights, human suffering, and democratic values, the courts and the prosecutorial services became major instruments of repression. As the gap between justice and the law widened, the justice system put itself on the side of the law. State lawyers, including state advocates, state attorneys, prosecutors, state legal advisors and state legalisation drafters, found themselves at the heart of developing and defending apartheid laws and the apartheid state. Many times, state lawyers had to defend the gross human rights abuses of the state. Generally, attorneys-general used their powerful discretion in political trials and security related cases to uphold and strengthen the apartheid system.

The way forward: The justice system was deeply affected by racial discrimination, repression and the destruction of democratic values. The victims of apartheid were not only black people, but also human values like dignity, openness, political participation, decent behaviour and caring relationships. Unfortunately, the loss of these human values will continue to affect the culture, or ethos, of the justice system for some time.

Nevertheless, the work must begin immediately (indeed it has already begun) to transform the justice system, especially the criminal justice system. One of the consequences of the



emphasis on law, order and the protection of the state, rather than the pursuit of fairness and justice, is the relative neglect of the criminal justice system, especially the needs of the victims of crime. We are now challenged not only with transforming the criminal justice system, but also with combatting crime effectively. And we have to do this within the context of the South African Constitution and the Bill of Human Rights. This removes from the prosecution and the police the repressive and inhuman instruments that were available to them before. South Africa and in particular, the Department of Justice must design and implement a criminal justice system that can fight crime effectively but with due regard to basic human rights as enshrined in the new Constitution.

iv) Providing Equal Access to Justice

One of the main principles in the Constitution is equality. Among other things, this means that real equality of access to justice for every person, regardless of their race, gender, culture, age, sexual orientation, disability or any other difference must be provided.

The background: Traditionally, the legal system has not paid attention to issues of difference or disadvantage. This has meant, among other things, a failure to cater for the special needs of vulnerable groups such as women, children, the disabled and rural communities. Women only recently became recognised as equals before the law. South Africa has inherited a legal system that is based on the one hand on the common law, moulded by legislation, and on the other hand on customary and religious laws that were not given proper recognition.

The way forward: Today South Africa has a mainstream system of formal courts, statutes and the common law, and a marginal system of customary or traditional law. Laws include those that treat women who are married under religious and customary laws as minors, and that do not fully recognise religious and customary marriages. Real equality must be brought into the justice system. All must be sensitised - including judges, magistrates, state advocates, prosecutors, state attorneys and all the other people involved in the justice system to the special needs of children, women, the disabled, rural people, victims of wrongful acts, different religious communities, different cultural groups and all other categories of difference that are named in the Constitution. The legal system which has placed such importance on procedural justice must now also give equal attention to substantive justice.

v) Adapting to Change, Especially to Democracy

The South African legal system has to adapt itself to change. It has to be able to meet the needs of a stable democracy and greater access to justice, especially for marginalised communities. It must become responsive to the diverse and evolving needs of children, women, the disabled, workers, business people, professionals and many other different groups that make up our complex society.

The background: During the apartheid years, South Africa was an outcast in the world. As a result, many people inside the country were excluded from international dialogue. This deprived our legal system of the full benefit of international developments in various branches of law and human rights.

The way forward: South Africa's past isolation means that a great deal will have to be done to reform the legal system so that it can respond to the needs of a modern democratic society that cares for its people. The South African Constitution prescribes a number of institutions that strengthen and support democracy. These institutions include bodies like the *Human Rights Commission*, the *Commission on Gender Equality* and the *Office of the Public Protector* (see par 2.3), which are already operating. We must now ensure that they work and that their independence is strengthened. They must be supported, and at the same time, they must be critically assessed and reassessed. There is also the ongoing challenge of facilitating the operation of the *Truth and Reconciliation Commission* (see par 2.3) to deal with the gross violations of human rights under apartheid and to help build stable foundations for our young democracy. The question of what happens beyond the *Truth and Reconciliation Commission* is a further challenge. Also, other matters like the need for equality or anti-discrimination laws to provide for legal recourse for social injustices in private life as well as the public sphere and for administrative justice must be dealt with. Laws that promote and regulate the right to information and to facilitate public accountability must be put in place.

2.4.1 Structure of the Courts

Democratic South Africa inherited a system of courts that reflected an apartheid dispensation which provided for the Republic of South Africa and the four "independent" states or homelands (Transkei, Bophuthatswana, Venda and Ciskei) and six "self-governing territories". The new constitutional democracy now makes provision for 9 provinces. The court system is currently being rationalised so that it reflects the new order.

The South African Constitution depicts South Africa's judicial system as follows:

- (a) the Constitutional Court
- (b) the Supreme Court of Appeal
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts
- (d) the Magistrate's Courts
- (e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrate's Courts.

2.4.1.1 The Constitutional Court

In terms of the Interim Constitution of South Africa, the Constitutional Court is the highest court in cases regarding the interpretation, protection and enforcement of the Constitution.



The Interim Constitution of South Africa, was repealed by the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996). The Constitutional Court -

- (a) is the highest court in all constitutional matters;
- (b) may decide only constitutional matters and any issues related thereto; and
- (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.

Jurisdiction of the Constitutional Court

The Constitutional Court consists of a President, a Deputy President and nine other judges. The court has its seat in Johannesburg and has jurisdiction within the whole geographical area of South Africa.

It may only decide constitutional matters and issues connected with such matters. It is the highest court with respect to constitutional matters and its decisions bind all other courts, including the supreme court of appeal.

The constitutional court has exclusive jurisdiction in the following matters:

- disputes between **organs of state** in the national or provincial sphere
- the **constitutionality** of parliamentary or provincial **bills** after the president or the premier of a province, respectively, has referred them to the constitutional court, which can happen when the president or a premier refuses to sign a bill
- the **constitutionality** of a parliamentary or provincial **act** after members of the national assembly or a provincial legislature, respectively, have applied to the constitutional court for an order declaring such an act unconstitutional
- the **constitutionality** of any **amendment to the constitution**
- the question whether parliament or the president has failed to fulfil a **constitutional duty**
- the certification of a **provincial constitution**

As no other court has jurisdiction in these matters, the constitutional court functions as a **court of first instance** in such cases.

Because the constitutional court is the highest court as far as constitutional matters are concerned, it also functions as a **court of appeal** in such matters. Appeals against constitutional judgments of the high court or the supreme court of appeal can proceed to the constitutional court.

The constitutional court has the final say with respect to the unconstitutionality of an act of parliament, a provincial act or conduct of the president. When the supreme court of appeal

or a high court makes such an order, it will only have force after it has been referred to the constitutional court and has been **confirmed** by it.

2.4.1.2 Higher Courts

a) Supreme Court of Appeal

The chief justice heads the supreme court of appeal. The other presiding officials are the deputy chief justice and judges of appeal. The supreme court of appeal has jurisdiction within the whole geographical area of South Africa. It functions only as a court of appeal and never as a court of first instance. It hears appeals from the high courts and it is the highest court of appeal in all matters **except constitutional matters**.

- **Criminal and civil cases** The supreme court of appeal can decide all criminal and civil cases on appeal. It is the highest court of appeal in such matters and it can impose any sentence and make any order. Its decisions in this regard bind all the ordinary courts.
- **Constitutional matters** The Supreme court of appeal can decide appeals on constitutional matters except matters that only the constitutional court can decide (that fall within the exclusive jurisdiction of the constitutional court). It can declare an act of parliament, a provincial act or conduct of the president unconstitutional. However, such an order of constitutional invalidity will only have force after it has been referred to and confirmed by the constitutional court.

b) High Courts

Section 169 of the Constitution provides that a High Court may decide -

- “ (a) any constitutional matter except that -
(I) only the Constitutional Court may decide; or
(II) is assigned by an Act of Parliament to another court of a status similar to a High Court; and
(b) any other matter not assigned to another court by an Act of Parliament.”

A judge president heads a high court. The other presiding officers are judges. Each high court has jurisdiction within a particular provincial area. A local division may co-exist within that provincial area. A high court has appeal jurisdiction and it can function as court of first instance. A local division is usually a court of first instance only.

- **Jurisdiction as court of first instance** High courts have jurisdiction as courts of first instance in the following cases:

Criminal cases A charge of high treason must always be heard by the high court. Furthermore, it can try any criminal offence, but in practice it will try only serious cases.



These are cases where the possible sentence is imprisonment of more than ten years or a fine of more than R200 000. Only the high court can impose these sentences.

- **Civil cases** If the amount of the claim is more than R100 000, the claim must be instituted in the high court. If the claim is one for specific performance without damages in the alternative, it must also be instituted in the high court. Only the high court can hear cases concerning matters of status, such as an application for a presumption of death and matters concerning wills. At present only the high court has jurisdiction in divorce cases, but this will change as soon as family courts are established (see para 3 below).
- **Constitutional matters** A high court can decide any constitutional matter except a matter which falls within the exclusive jurisdiction of the constitutional court. It also cannot decide matters assigned by an act of parliament to another court of a status similar to a high court, for example a special court. Like the supreme court of appeal, the high court can declare an act of parliament, a provincial act or conduct of the president unconstitutional. But such an order will only come into force after it has been referred to and confirmed by the constitutional court.
- **Appeal and review jurisdiction** High courts review and hear appeals of **criminal and civil cases** in the lower courts. In such cases a further appeal can be made to the supreme court of appeal. Sometimes one can appeal within a high court against the decision of a single judge to full bench (three judges) of the same court.

2.4.1.3 Lower Courts (Magistrates' Courts)

Magistrates are the presiding officers in the lower courts. The regional court has jurisdiction within a particular regional division and the district court within a particular magisterial district. They only function as courts of first instance. As an exception, they can hear appeals from the courts of chiefs and headmen. In practice, regional courts only try criminal cases, while district courts try criminal and civil cases. The Magistrate's Commission deals with the appointment, promotion, transfer or dismissal of or disciplinary steps against magistrates.

2.4.1.4 Regional courts

A regional court can try any criminal offence, such as murder and rape, but not high treason. It cannot, however, impose imprisonment of more than ten years, nor a fine of more than R 200 000. Apart from high treason, a regional court can, therefore, try any offence that the supreme court can try. As *dominus litis*, the Director of Public Prosecution decides in which of the two courts an accused is to be prosecuted. If the case is so serious that the possible sentence might exceed the jurisdiction of the regional court, the high court is used as court of first instance.

- **Criminal cases** The criminal jurisdiction of a district court is restricted. It cannot try offences such as murder, rape and, of course, high treason. It tries less serious offences, such as theft, drunken driving and assault. It may not impose a sentence of imprisonment for more than one year or a fine of more than R 20 000.
- **Civil cases** The civil jurisdiction of a district court is also restricted, in the sense that it has no jurisdiction in matters which fall within the exclusive jurisdiction of the high court. It can, therefore, only hear cases where the amount of the claim is less than R100 000. If the claim is one for specific performance with damages (of less than R100 000) in the alternative, the district court may hear the matter. It has no jurisdiction in matters concerning status or wills. Presently it also has no jurisdiction in divorce cases. This will change once family courts have been instituted (see para 3 below). If the amount claimed exceeds R100 000, the parties concerned may consent in writing to an increased jurisdiction of the court. The parties can only consent to such jurisdiction with respect to the **amount**. They cannot consent to jurisdiction with respect with the **nature** of the claim, such as divorce or status matters, which always fall outside the court's jurisdiction.
- **Constitutional matters** A lower court has jurisdiction with respects to constitutional matters only if an act of parliament provides it with such jurisdiction. It can, however, never have the power to decide on the constitutionality of any legislation or any conduct of the president.

2.4.1.5 *Special Courts*

Special courts have been instituted for the purposes of specialised litigation. They are also divided into higher and lower courts. The presiding officers in the higher courts are judges. Special courts can decide constitutional matters only if an act of parliament allows it. Special lower courts, like the ordinary lower courts, may never decide on the constitutionality of any legislation or conduct of the president.

A brief outline of some of these courts is set out below:

a) **Labour court and labour appeal court**

The labour court and the labour appeal court were established in terms of the Labour Relations Act, (Act 66 of 1995).

The labour court consists of a judge president, a deputy judge president and additional judges. It has its seat in Johannesburg and has jurisdiction within the whole geographical area of South Africa. This court adjudicates labour disputes concerning, for example, strikes,



retrenchments and discrimination. The Labour Relations Act provides the labour court with jurisdiction in certain constitutional matters, for example, when infringements of human rights by the state in its capacity as an employer are alleged.

The general rule is that a labour dispute must first be resolved through conciliation. Only if conciliation was unsuccessful, is the dispute referred to the labour court for adjudication.

An appeal can proceed from the labour court to the labour appeal court. This court consists of the judge president and deputy judge president of the labour court and three other high court judges.

b) Water court

The Water Act, (Act 54 of 1956) provides for the establishment of water courts. These courts adjudicate various disputes concerning the use of public water, for example private irrigation from public rivers. A session of the water court takes place before a water court judge, who is also a judge of the division of the high court. A water court has *inter alia* the power to make orders and awards in disputes regarding the use, diversion or appropriation of public water and in applications in connection with claims for servitudes by means of which rights to use or dispose of public water or subterranean water may be exercised.

The water courts will be replaced by a water tribunal in terms of the National Water Act. The water tribunal will have jurisdiction in all the provinces of South Africa. The water tribunal has *inter alia* jurisdiction in appeals against decisions taken by administrative bodies in terms of the Act.

c) Court for income tax appeals

These courts hear appeals concerning income tax issues. The presiding judge sits together with an accountant who has at least ten years' experience and a representative of the commercial community.

d) Commercial court

A commercial court was instituted in the Witwatersrand local division. The purpose of this court is to ensure speedy and effective adjudication in commercial cases. Such cases deal with matters relating to, for example, companies, mining and minerals, banking and international trade. The presiding judges are experts in these fields. The procedure is less formal than usual, and the judge plays a more active part in the trial.

e) Land claims court

This court has been instituted by the Restitution of Land Rights Act, (Act 22 of 1994). The function of the court is to restore land rights to people who have been dispossessed of such

rights in terms of racial discrimination after 19 June 1913. The court can, amongst others, restore the original or alternative state land or award compensation. Usually such a case is first dealt with by a Commission on Restitution of Land Rights. If the Commission cannot settle the claim, it is referred to the land claims court. The court consists of a president and additional judges as members.

2.4.1.6 Special Lower Courts

a) Children's court

Each magistrate's court functions as a children's court within its particular magisterial district. It investigates matters concerning, for example, the adoption of children, children whose parents or guardians cannot be traced or children whose parents or guardians are unfit. A children's court can make various appropriate orders with respect to these matters. The proceedings in such a court are confidential and may not be published without permission.

b) Maintenance court

Each magistrate's court functions as a maintenance court within its particular magisterial district. Some persons, such as parents, are legally liable to maintain (support) others, for example their children. If they do not fulfil their duties, a complaint can be lodged with the court's maintenance officer. The maintenance officer will investigate the case, and submit it to the court. The court can make an appropriate order. It can also increase the amount of maintenance in light of changed circumstances.

c) Family court

The Magistrates' Courts Amendment Act, 1993 (Act 120 of 1993) provides for the establishment of family courts. These courts will be instituted as pilot projects in the various provinces. Family courts will be part of the lower court structure, and these courts will hear divorce actions. The **exclusive** jurisdiction of the high court in such cases will therefore cease. Many divorce cases are quite simple because they are unopposed. The family court will provide for cheaper litigation in such cases. It will not be necessary to appoint an advocate, as is the case in the high court, because an attorney will be able to appear in the family courts. It will also reduce the costs for people who live far away from a high court. But the high court will still have jurisdiction (although not exclusive jurisdiction) in divorce cases. This means that the high court will be a more suitable forum for opposed and complex divorce actions. The family court also has jurisdiction in other family related disputes such as maintenance, access, custody and guardianship of children.



2.4.1.7 Other Special Courts

a) **The Short Process Courts and Mediation in Certain Civil Cases Act, 1991 (Act 103 of 1991)** ensure greater access to legal services and to keep the cost of litigation down while speeding up the resolution of civil cases. The presiding officer is referred to as the adjudicator. An adjudicator has the same powers as a magistrate. The court may take any steps on request of the parties to ensure a speedy and cost-saving resolution of the dispute. It can also abandon the application of the rules of evidence. Legal representatives may appear on behalf of the parties. No appeal is allowed against the court's judgment, but the institution on review proceedings is possible.

b) Traditional Courts

In rural areas the chiefs and headmen of certain black communities in the country have their own courts. These courts have restricted civil and criminal jurisdiction. They apply the traditional customary law of the specific community. No legal representation is allowed. There is a right of appeal to the magistrate court. Traditional courts are alternative dispute resolution structures and are involved mainly with mediation and arbitration.

2.4.1.8 Other Relevant Bodies

a) The Rules Board

The Rules Board Act, 1985 (Act 107 of 1985) makes provision for the establishment of a Rules Board. This Board reviews existing rules of the court and, subject to the approval of the Minister of Justice, may make, amend or repeal rules for the Supreme Court and lower courts.

b) Legal aid

The old Legal Aid Act, 1969 (Act 22 of 1969) which makes provision for the establishment of a Legal Aid Board, applied to the Republic of South Africa and not the former four homelands or states and six self-governing territories. This legislation was amended by Legal Aid Amendment Act, 1996 (Act 20 of 1996), making it applicable throughout South Africa thus ending discrimination in the legal system. The current legal aid system relies on the *judicare* system. This is a system whereby the Legal Aid Board distributes work to private legal practitioner. In consultation with relevant role players, the legal aid system is being transformed to make provision for the expansion of the public defender system

c) Office of the Family Advocate

Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987), makes provision for the establishment of the Office of the Family Advocate which was established in 1990. The Office is tasked with the responsibility of looking after the well being and needs of under age or dependent children in divorce cases. The Family Advocate, assisted by family counsellors reports to the court and makes recommendations are in the best interests of the child. A mediation service is also provided to parents.

d) Legal Practitioners

The legal profession is divided into two branches, namely advocates and attorneys who are subject to strict ethical codes. Advocates are organised into Bar associations or societies. The General Council of the Bar of South Africa is the co-ordinating body of the various Bar associations. The attorneys have law societies in each province. The Association of Law Societies is the coordinating body of the various independent law societies. Previously, advocates were the only practitioners who had a right of appearance in the Supreme Court, the situation has now changed, in that attorneys are also afforded the right of appearance in the Supreme Court for certain matters.

Restructuring and rationalisation of the legal profession is being proceeded with in due course. Legislation will make provision for the regulation of the profession to maintain minimum standards and to protect the public. The right of the profession subject to minimum regulation, to organise themselves on the basis of the right of freedom of association will be respected.

In respect of legal qualifications, different branches of the legal profession previously required different legal qualifications. In the public sector in particular, there was a need to address legal qualifications for prosecutors and magistrates. In terms of the Qualification of Legal Practitioners Amendment Act, 1997 (Act 78 of 1997), a four year LLB course will be the new requirement in the private and public sector.

e) Heath Commission Special Investigating Unit

This Unit was created under the Special Tribunals Act, 1996 (Act 74 of 1996). It investigates and prosecutes corruption and the misuse of state resources under the management of Judge W Heath. It is relevant from a land reform perspective because, in some cases, the illegal and corrupt allocation of state land occurs with respect to land which is in fact subject to the rights of local people protected under the Interim Protection of Informal Land Rights 1996, (Act 31 of 1996).

2.5 The relationship between the branches of Government and NGOs in respect of State Reporting

It is generally accepted that one of the most efficient mechanisms for co-ordination of policies and programmes is through a partnership between government and civil society. Prior to the elections in 1994, civil society played a significant role in this regard but, since the first democratic elections, the responsibility for co-ordination has shifted from civil society to government. Government has accordingly initiated a number of mechanisms to give effect to its international commitments. These include the Inter-Ministerial Core Group (MCG) within Cabinet, and the National Programme of Action (Children) Steering Committee (NPASC) within government which has identified several task groups to work in particular areas.



The members of MCG were nominated by Cabinet in 1995 and comprise of the Office of the Deputy President and the Ministers of Health, Welfare, Education, Water Affairs and Forestry, Finance, and Justice. This group is charged with developing the National Programme of Action for Children.

The NPASC comprises the Directors-General of the departments corresponding to the seven ministries on the MCG, as well as representatives from the National Children's Rights Committee (NCRC), representing non governmental organisations and UNICEF South Africa. The NPASC is the executive arm charged with overseeing the identification and implementation of plans, as well as with overseeing co-ordination of all actors to ensure compliance with the Convention on the Rights of the Child. Since its inception the NPASC has co-opted other actors including the Human Rights Commission, the National Youth Commission and the Truth and Reconciliation Commission.

The preparation of South Africa's first country report on the implementation of the Convention on the Rights of the Child was a collaborative venture between government and organs of civil society.

The first country report on the implementation of the Convention on the Elimination of All Forms of discrimination Against Women (CEDAW) was also compiled by government in collaboration with NGOs.

In respect of the present Report to the African Commission, a similar methodology has been adopted. South Africa is currently engaged in the process of drafting a National Action Plan on the improvement of the protection and promotion of Human Rights to be deposited with the United Nations on 10 December 1998 in commemoration of the 50th anniversary of the Universal Declaration of Human Rights. The Department of Justice, in co-operation with the Human Rights Commission, is leading this process. NGOs including the United Nations Development Programme (UNDP), are represented in the Steering Committee. Other government departments are also involved in this process particularly through the National Coordinating Committee where all government Departments are involved. It was decided that the process of drafting the National Report to the African Charter on Human and Peoples' Rights should fall within the ambit of this process. Thus a drafting team composing relevant state departments and NGOs who have observer status at the African Commission have been co-opted on this drafting team.





CHAPTER 3

GENERAL MEASURES OF IMPLEMENTATION

3.1 MAJOR HUMAN RIGHTS INSTRUMENTS TO WHICH SOUTH AFRICA IS A PARTY.³

3.1.1 United Nations (UN) Instruments

- (a) **UN Convention relating to the Status of Refugees - 28 July 1951.**
South Africa acceded on 12 January 1996.
- (b) **UN Protocol relating to the Status of Refugees - 31 January 1967.**
South Africa acceded on 12 January 1996.
- (c) **Convention on the Elimination of All Forms of Discrimination Against Women - 18 December 1979.**
South Africa signed the Convention on 29 January 1993 and ratified it on 15 December 1995.
- (d) **Convention on the Rights of the Child - 20 November 1989.**
South Africa signed the Convention on 29 January 1993 and ratified it on 16 June 1995.
- (e) **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages - 10 December 1962.**
South Africa acceded on 29 January 1993.
- (f) **South Africa acceded to the four Geneva Conventions of 12 August 1949, on 31 March 1952.** Instruments of Accession (relating to the **two Additional Protocols of 10 June 1977 to the Geneva Conventions of 12 August 1949**) were signed on 21 November 1995 and deposited with the Swiss Government on 22 November 1995.
- (g) **Slavery Convention - 25 October 1926.**
South Africa acceded on 18 June 1927.
- (h) **Protocol amending the Slavery Convention of 1926 - 7 December 1953.**
South Africa signed (definitive) the Protocol on 29 December 1953.

The obligations incurred in terms of these instruments are discussed under relevant articles in the report.



- (i) **Convention for the Suppression of the Traffic in Women and Children - 20 December 1921.**
South Africa signed (definitive) the Convention on 28 June 1922.
- (j) **Convention for the Suppression of the Traffic in Women of Full Age - Geneva, 11 October 1933.**
South Africa signed (definitive) the Convention on 20 November 1935.
- (k) **Protocol to amend the Convention for the Suppression to Traffic in Women and Children of 1921 and the Convention for the Traffic of Women of Full Age of 1933 - 12 November 1947.**
South Africa signed (definitive) the Convention on 12 November 1947.
- (l) **Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, plus Final Protocol -**
South Africa ratified on 10 October 1951.
- (m) **International Agreement for the Suppression of White Slave Traffic (1904) amended by Protocol.**
South Africa accepted on 14 August 1951.
- (n) **International Convention for the Suppression of White Slave Traffic (1910) amended by the Protocol.**
South Africa accepted on 14 August 1951.

3.1.2 Organisation of African Unity (OAU) instruments

- (a) **OAU Convention Governing Specific Aspects of Refugee Problems in Africa - 10 September 1969.**
South Africa signed the Instrument of Accession on 15 December 1995 (the Instrument of Accession was deposited on 15 January 1996).
- (b) **African Charter on Human and People's Rights - adopted on 27 June 1981 and entered into force on 21 October 1986.**
South Africa acceded on 9 July 1996.

3.1.3 Hague Instrument

- (a) **Hague Convention on the Civil Aspects of International Child Abduction.**
South Africa acceded to this Convention on 8 July 1997. It entered into force for South Africa on 1 October 1997.

3.1.4 Basic human rights instruments approved by Cabinet for ratification or accession

3.1.4.1 UN instruments

- (a) **International Covenant on Economic, Social and Cultural Rights - 16 Dec 1966.**
South Africa signed the Covenant on 3 October 1994.
- (b) **International Covenant on Civil and Political Rights - 16 December 1966.**
South Africa signed the Covenant on 3 October 1994.
- (c) **Convention on the Elimination of All Forms of Racial Discrimination - 7 March 1966.**
South Africa signed the Convention on 3 October 1994.
- (d) **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 10 December 1984.**
South Africa signed the Convention on 29 January 1993.
- (e) **Optional Protocol to the International Covenant on Civil and Political Rights,** dealing with claims by individuals that they are the victims of human rights violations.
- (f) **Second Optional Protocol to the International Covenant on Civil and Political Rights,** aiming at the abolition of the death penalty.
- (g) **Convention on the Prevention and Punishment of the Crime of Genocide.**

3.1.4.2 OAU instrument

- (h) **African Charter on the Rights and Welfare of the Child.**
South Africa signed the Charter on 10 October 1997.

3.2 MEASURES OR STEPS (INCLUDING LEGISLATION OR POLICY) TAKEN BY SOUTH AFRICA TO IMPLEMENT THE RIGHTS PROTECTED BY THE CHARTER

3.2.1 Civil and political rights

3.2.1.1 Articles 2 and 3 of the African Charter

Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

*Article 3: 1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.*



A. THE SOUTH AFRICAN CONSTITUTION

Section 7 of the Constitution provides:

1. 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.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights ..."

Section 9 of the Constitution provides:

1. Every one 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 should 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, language and 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."

B. LEGISLATION AND POLICY

South Africa began to repeal its discriminatory laws even before the 1994 elections. Thus, the General Laws Fourth Amendment Act, 1993 (Act 132 of 1993), repealed a number of discriminatory laws regarding citizenship, attendance at trials, dismissal of female employees on marriage, and prohibition of women performing dangerous work or night shifts.

Government departments are largely responsible for initiating legislation pertaining to their main areas. Legislation that contains discriminatory provisions is generally addressed by amending existing legislation, formulating policy, and publishing White Papers.



1. The following initiatives have been taken by departments with a view to removing discriminatory provisions and actively promoting equality :

(a) Recognition of Customary Marriages Bill

This Bill has been approved by Cabinet. Its principal objectives include the granting of full recognition to customary marriages, removal of minority status of and marital power over women married under customary law, equalising rights in regard to administration of matrimonial property, equal rights in respect of property in the event of dissolution of property through divorce and equal parental rights and responsibilities. The Bill repeals relevant provisions in the Black Administration Act and related laws.

(b) Amendment of Customary Law of Succession Bill

This Bill harmonises succession under customary law with the South African Constitution and the common law. Key provisions include full recognition of the right of African widows to inherit from their husband's intestate estate and the right of African girls and male children who are not the "first male child" to inherit from their parent's intestate estates. This Bill is also currently before Parliament. Children born out of wedlock also have the right to inherit intestate from their fathers in terms of this Bill.

(c) Natural Fathers of Children Born out of Wedlock Act, 1997 (Act 86 of 1997)

This Act makes provision for the possibility of access to, custody and guardianship of children born out of wedlock by their natural fathers.

(d) Equality Legislation

The Equality Legislation Drafting Project is a joint project of the Ministry of Justice and the South African Human Rights Commission. The objective of this project is to enable Parliament to pass legislation to prevent or prohibit unfair discrimination before February 2000, as required by Section 9 (4) of the South African Constitution and Item 23 of Schedule 6 of the Constitution. This legislation will also take into account the provisions of international instruments ratified including the African Charter, the Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

The Project has appointed focus groups for the forbidden grounds of discrimination as mentioned in Section 9(3) of the South African Constitution. The researchers appointed in these focus groups have undertaken the following:

- a situational analysis of discrimination on the basis of the given grounds;
- an attempt to define discrimination and equality;
- an analysis of vulnerable groups, with regard to unfair discrimination;



- a comparative analysis of the situation in South Africa and abroad; and
- formulation of recommendations on enforcement mechanisms.

The objectives of the envisaged legislation should include the following:

- To promote equality between people or groups or categories of people whatever their race, gender, sex, sexual orientation, ethnic or social origin, colour, religion, conscience, belief, culture, language, marital status, family status, age, condition as to pregnancy, disability or a combination of any of these attributes.
- To eliminate discrimination against people or groups of people on the basis of the above.
- To provide for the adoption of positive measures aimed at pro-actively eliminating discrimination and promoting equality for persons currently or previously disadvantaged by unfair discrimination.

(e) National Water Act, 1998 (Act 36 of 1998)

The National Water Act, 1998 replaced the Water Act, 1956 (Act 54 of 1956), which was enacted at a time when the policies of the Government were primarily for the benefit of white people only. The main object of the Act is to provide for the management of the nation's water resources so as to bring about the sustainable use of water for the benefit of all water users. (*See Article 22 below*) One of the fundamental principles in the National Water Act, 1998 is equitable access to water resources to all users of water.

(f) Abolition of Certain Racially Based Land Measures Act, 1991 (Act 108 of 1991)

This Act makes provision to repeal and amend certain laws so as to abolish certain restrictions based on race or membership of a specific population group on the acquisition and utilization of rights to land; to provide for the rationalisation or phasing out of certain racially based institutions and statutory and regulatory systems, for the regulation of norms and standards in residential environments; and for the establishment of a commission under the name of the Advisory Commission on Land Allocation.

(g) A Review of the Tax System

The Minister of Finance appointed the Katz Commission to review all aspects of the tax system to ensure that it supports the economic and social goals of the government, including equity and efficiency. The First Interim Report of the Commission recommended changes to remove provisions of the income tax code which discriminated on the basis of gender and marital status. Policy and legislation were amended in the 1995/6 fiscal year to eliminate all overt gender discrimination.

The pension fund laws for the civil service were also found to be discriminatory, in that women contributed 6% and men 8% of their salaries. The different contribution rates resulted



in discriminatory benefits. There is now a uniform contribution rate of 7,5% of pensionable salary. Another amendment to the pension law allows for a pension to be paid to a widower and not only a widow.

2. South African Law Commission has registered the following projects that may have a bearing on discriminatory legislation:

(a) Purification of Statute Law

The object of this investigation is the ultimate establishment of a simple coherent and generally accessible statute book. This comprises inter alia, the repeal of obsolete and unnecessary provisions, the consolidation of provisions that belong together, the codification where appropriate, of particular branches or aspects of law, and the bringing about of uniformity in the law in all parts of the Republic.

(b) Islamic marriages

The object of this investigation is to determine the extent to which provision can be made in South African law for the recognition of rules of Islamic Law relating to marriage, matrimonial property, succession, guardianship and related aspects of family law and the law of persons.

(c) Harmonisation of the common law and indigenous law

The aim of the investigation is to address problems in respect of legal pluralism and allied matters. An issue paper was published on succession in customary law, for public comment. The objective of this project is to align the rule of succession in customary law with the Constitution. Section 9 of the Bill of Rights prohibits any discrimination on grounds of age or gender.

(d) Family law and law of persons

This investigation involves a review of all aspects of family law and the law of persons, where a review is called for. Domestic violence and maintenance are currently being investigated as part of this project. The projects have yielded a Maintenance Laws Amendment Bill and Domestic Violence Bill which are currently before Parliament. In respect of the project on maintenance, the investigation is aimed at establishing a more efficient and equitable maintenance system. Although the current legislation may not in itself be discriminatory in nature, historical developments and socio-economic circumstances in South Africa have led to a situation of inequality between the economic positions of men and women as it is usually women and children who are the victims of a dysfunctional maintenance system.



(e) The application of the Bill of Rights to criminal law, criminal procedure and sentencing

This investigation identifies the problems arising from the application of the Bill of Rights as entrenched in the Constitution, to criminal law, criminal procedure and sentencing.

(f) Sexual offences against children

The purpose of this investigation is to review all existing statutory and common law offences relating to the sexual abuse of children as well as the procedural aspects of trials in this respect. The Minister of Justice has approved the expansion of the terms of reference of this project to include adults. Aspects under consideration that may impact on the equality provision in the Constitution and the Charter include : the definitions of common law crimes of rape and sodomy; the cautionary rule in sexual offence cases and Section 14 of the Sexual Offences Act, 1957 which prohibits unlawful carnal intercourse with persons below a certain age.

(g) Review of the Child Care Act

This investigation is aimed at developing a comprehensive children's code for South Africa. Aspects under consideration that may impact on the equality clause, relate to specific aspects of the Child Care Act, 1983 dealing with adoption, certain religious and cultural practices that discriminate against children of different sexes.

(h) Review of the Law of Insolvency

The Commission published a draft bill for comment. The draft Bill proposes that section 27(1) of the Insolvency Act, 1936 (Act 24 of 1936), which discriminates between husbands and wives, be removed.

(i) Surrogate motherhood

Discrimination on the grounds of gender, sex, marital status, sexual orientation and birth are factors that will be considered in formulating surrogacy legislation.

(j) Aspects of the law relating to Aids

This is a comprehensive investigation into different aspects of the law relating to Aids. In essence the investigation deals with the prevention of discrimination against persons with HIV/AIDS in various areas.

3. Ongoing Review of Legislation

(a) Public Service Act, 1994

After the elections, the then Office of the Public Service Commission undertook a comprehensive review of regulations with the aim of eradicating all discriminatory practices

within the Public Service. The exercise resulted in the Public Service Act, 1994 as well as in amendments to the Public Service Staff Code and other measures. The measures were all recast in non-sexist language. The amendments included the removal of previously discriminatory provisions such as those in the Staff Code which did not recognise customary marriages, and those in the Public Service Regulations, which differentiated between male and female spouses in relation to the payment of benefits, and which also differentiated between male and female in relation to housing and other allowances. The Public Service Amendment Act, 1998 further amends the Public Service Act to remove residual discrimination and other unconstitutional provisions.

(b) The Labour Relations Act (1995)

This Act was extended to cover the public service in 1996. The Act states that no-one may be discriminated against on the basis of family responsibility, marital status or sexual orientation. Such discrimination constitutes an unfair labour practice. The Public Service will also be covered by the Employment Equity legislation being prepared by the Department of Labour (see under Article 11).

(c) The Employment Equity Bill

The Public Service will also be covered by the Employment Equity Bill which was recently approved by the National Assembly and is currently before the National Council of Provinces (NCOP). The bill was promoted by the Department of Labour (see under Article 11).

(d) The White Paper on the Transformation of the Public Service

One of the primary objectives of the 1996 White Paper on the Transformation of the Public Service is the creation of a "genuinely representative Public Service which reflects the major characteristics of South African demography". More specifically, it set as its key targets:

- within four years, a 50 % representation of blacks at management level; and
- during the same period, at least 30 % of new recruits to the middle and senior management echelons are to be women.

These targets are reiterated in the White Paper on Affirmative Action in the Public Service, the government policy paper which provides guidelines for the implementation of affirmative action in the public sector. There has been an increase in the representation of women in senior management from 3 to 10 per cent and visible progress in the representation of black people at senior management and in the professional occupational sectors in the public service, since the 1994 elections.

C. CASE LAW

Recent cases illustrate a trend where courts interpret the Constitution within the context of promoting the protection of human rights for all, particularly the rights of those who were historically disadvantaged and vulnerable groups.



The following cases reflect this trend:

- *Jackson v The State* (case 35/97 Appellate Division judgement dated 20 March 1998), Evidence of a complainant in a rape or any sexual offence case has to be approached with caution by the court due to the belief that such "victims are prone to lie against the accused." For the evidence of the complainant to be acceptable to the court, it must be must corroborated. This is known as the Cautionary Rule. The learned judge made the following remarks "In my view the cautionary rule in sexual assault cases is based on an irrational and out-dated perception. If unjustly stereotypes complainants in sexual assault cases (overwhelming women) as particularly unreliable. The court then held that on the merits of the case in question the cautionary rule should not have been applied and law reform abolishes, the cautionary rule should be implemented.
- In *Brink v Ritshoff* 1996(4) SA 197 (C), the Constitutional Court ruled that the provisions which discriminate against married women are illegal and must be abolished.
- In *George v Western Cape Education Department* 1996 (2) BLLR 199 (IC), the Industrial Court of the Western Cape had to decide on the issue of housing subsidies for married women. The Court looked at the constitutional prohibition of discrimination on the basis of sex and marital status. It ordered that the applicant be granted the subsidy and that the discriminatory provisions be amended.
- In *Professional Teachers and Rademan v Minister of Education and Governing Body of Primrose Hill Primary School* 1995 (9) BCLR 29 (IC), the Industrial Court found that the housing policy in the Public Service Staff Code directly discriminated against a class of women on the basis of their sex and marital status. It said the provisions must be amended. This last case was decided before the Labour Relations Act 1995, came into operation. This Act now specifically provides that unjustified discrimination constitutes an unfair labour practice.

3.2.1.2 Article 4 of the African Charter

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

A. THE SOUTH AFRICAN CONSTITUTION

Section 11 of the Constitution provides that : "Everyone has the right to life".

B. CASE LAW

in the case of *S V Makwanyane and Another 1995(b) BCLR 665(a)*, the Constitutional Court held that the sentence of death as provided for in Section 277(1) of the Criminal Procedural Act, 1977 (Act 51 of 1977) was unconstitutional and therefore invalid.

C. LEGISLATION

As a result of this decision, the Criminal Law Amendment Act, 1997 (Act 105 of 1997), deletes all references to the death penalty from the statute book and makes provision for the Minister of Justice to "...refer the case of every person who has been sentenced to death and has in respect of that sentence exhausted all recognised legal procedures pertaining to appeal or review, or no longer has such procedures at his disposal, to the court in which the sentence of death was imposed."

3.2.1.3 Article 5 of the African Charter

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

A. THE SOUTH AFRICAN CONSTITUTION

Section 10 of the Constitution provides that : "Everyone has inherent dignity and the right to have their dignity respected and protected."

Section 12 (d) and (e) of the Constitution provides that :

- "1. Everyone has the right to freedom and security of the person, which includes the right-
- (d) not to be tortured in any way and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way."

Section 13 of the Constitution provides that : " No one may be subjected to slavery, servitude or forced labour."

Section 28 (e) and (f) of the Constitution provides that : "every child has the right to be protected from exploitative labour practices and not to be required or permitted to perform work or provide services that are inappropriate to a person of that child's age or place at risk to the child's well-being, education, physical or mental health or spiritual, moral or social development."



B. LEGISLATION AND POLICY

(a) **Basic Conditions of Employment Act, 1997 (Act 75 of 1997)**

The Department of Labour has introduced the Basic Conditions of Employment Act, 1997 (Act 75 of 1997). Section 48 of the Act prohibits forced labour and makes forced labour a criminal offence. This Act includes a special chapter on children and forced labour, prohibits the employment of children under the age of 15 or below the minimum school leaving age if this is more than 15. The Act also contains provisions for the criminal enforcement of the prohibition of child labour and protects children who are employed between the ages of 15 and 18. The Act enables the Minister of Labour to make regulations prohibiting or placing conditions on the employment of such children.

(b) **Abolition of Corporal Punishment Act, 1997, (Act 33 of 1997)**

In *S v Williams and others 1995(7) BCLR 861*, the Constitutional Court found juvenile whipping in terms of Section 294 of the Criminal Procedure Act, 1977 (Act 51 of 1977) to be in conflict with section 11(2) of the Constitution. Thus the above-mentioned legislation abolishes corporal punishment and deletes from the Statute Book all references to corporal punishment as a form of sentence which can be imposed by a court of law.

(c) **South African Schools Act, 1996 (Act 84 of 1996)**

This Act makes provision for the protection of individual rights against cruel or inhuman actions by prohibiting corporal punishment as a form of punishment in schools (*see under Article 17*).

(d) **Sexual Offences Act, 1957 (Act 1957)**

Whilst the Sexual Offences Act, 1957, covers some aspects and forms of child sexual abuse, there is no clear statutory definition of child abuse, child sexual abuse or child neglect in South African law. "Sex tourism", which is growing in South Africa, is also not covered by the present legislation. In respect of prostitution, the Sexual Offences Act, 1957, makes prostitution, as well as any involvement in a brothel, an offence. Many have argued that this provision is discriminatory in that some constitutional rights may be violated. These rights include the right to equal protection and benefit of the law; the right to have one's dignity respected and protected; the right to freedom and security of the person; the right to privacy; the right to freedom of association; and the right to choose one's trade, occupation or profession.

The South African Law Commission is however in the process of reviewing the Sexual Offences Act, 1957 and these issues will be highlighted.

C. OTHER MEASURES TAKEN BY GOVERNMENT

- (a) In August 1996, a 20 member delegation of South Africans, led by the Minister for Welfare and Population Development, attended the First World Congress on Commercial Sexual Exploitation of Children, held in Stockholm. Each participating country had undertaken to prepare an Agenda for Action on Commercial Sexual Exploitation of Children. In this regard, South Africa has produced a draft Agenda for Action under the leadership of the Ministry.
- (b) In respect of South Africa's commitment to the eradication of child labour, South Africa concluded a Memorandum of Understanding with the International Labour Organisation (ILO) entitled "In Co-operation with the International Programme for the Elimination of Child Labour (IPEC)". The Department of Labour has established a National Steering Committee comprising relevant government departments, non-governmental organisations, and the private sector to develop and implement a National Programme of Action.
- (c) Information and education programme on the prevention of torture and the treatment of persons in custody:

The National Management Services Division of the South African Police Service (SAPS) has developed various strategies and policies, examples of which are the strict standards and guidelines that have been drawn up concerning the use of force during an arrest, as well as the policy regarding non-torture, including the limitations that are set for the procedures to be followed during an interrogation. This right of an individual to be protected against torture is widely accepted in international law and is clearly confirmed in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

In terms of the Convention, each state must take effective legislative, administrative, judicial or other measures to prevent acts of torture in its territory. In view of this, the South African Police Service re-evaluated the treatment of persons in its custody and its approach towards interrogation methods, conditions of detention, etc. The Service adopted a policy in this regard. Placing certain obligations on members of the service while they are working with persons in custody assist in ensuring that the human rights of persons are respected while they are in the custody. At the same time, the system ensures protection against false allegations of torture and ill-treatment of persons in custody.

The policy makes it clear that no member of the service may torture any person, permit anyone else to do so, or tolerate the torture of anybody by anyone. No exception will justify torture. Information sessions regarding the policy, are currently under way in all nine



provinces. The purpose of these information sessions is to inform all station commissioners of the key elements of the policy and the practical implications thereof. A comprehensive training manual has also been developed in co-operation with Training, Head Office. It is expected that the policy will be implemented throughout the Service before the end of 1998.

3.2.1.4 Article 6 of the African Charter

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law, in particular, no one may be arbitrarily arrested or detained.

A. THE SOUTH AFRICAN CONSTITUTION

Section 12 of the Constitution provides:

- “1. Everyone has the right to freedom and security of the person, which includes the right-
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.

2. Everyone has the right to bodily and psychological integrity, which includes the right-
 - (a) to make decisions concerning reproduction;
 - (b) to security in and control over their body; and
 - (c) not to be subjected to medical or scientific experiments without their informed consent.”

B. LEGISLATION AND POLICY

In promoting and protecting the right to freedom and security of the person, the Department of Justice has promulgated several pieces of legislation in order to address crime and meet the needs of the victims of crime. They are as follows:

a) Investigation of Serious Economic Offences Amendment Act, 1995 (Act 46 of 1995)

This Act amended section 6 of the principle Act to bring the investigation, search and seizure provisions in line with the South African Constitution.

(b) Criminal Procedure Second Amendment Act, 1996 (Act 85 of 1996)

This Act amongst others things, ensures that the continued use of the taping system is in accordance with the spirit of the South African Constitution.

(c) State of Emergency Act, 1997 (Act 64 of 1997)

This Act gives effect to section 37 of the South African Constitution and provides for the declaration of a state of emergency.

(d) Hague Convention on the Civil Aspects of International Child Abduction 1996 (Act 72 of 1996)

The Hague Convention on the Civil Aspects of International Child Abduction has been ratified by South Africa. This Convention addresses the issue of international child abduction. The Act makes provision for the incorporation of the Convention as part of South Africa's domestic law. This Act facilitates the implementation of the Hague Convention, restricting the wrongful removal of children across international boundaries and establishing a procedure to restore children to their rightful custodians as soon as possible. It also designates the Chief Family Advocate as South Africa's Central Authority for purposes of the Convention and empowers the Chief Family Advocate to delegate or assign certain power and duties to any Family Advocate. It empowers the Minister of Justice to make regulations to give effect to the Convention, including the power to prescribe penalties for the contravention of any regulation.

(e) International co-operation in Criminal Matters Act, 1996 (Act 75 of 1996)

This Act is designed to facilitate the provision of evidence and the execution of sentence in criminal cases. It also provides for the confiscation of the proceeds of crime and the transfer of such proceeds between the Republic and foreign states.

(f) Proceeds of Crime Act, 1996 (Act 76 of 1996)

This Act makes provision for the recovery of the proceeds of crime; for the prohibition of money laundering; and for an obligation to report certain information.

In 1997 a number of bills to address the issue of crime and protection of victims of crime were tabled in Parliament:

(g) The Witness Protection Bill, 1998

This Bill provides for the protection of witnesses and the establishment of an Office for Witness Protection.

(h) Domestic Violence Bill, 1998

Following a study conducted by the South African Law Commission at the request of the Minister of Justice, a Bill on Domestic Violence was developed and is currently before Parliament.



The Bill seeks to address gaps in the current Family Violence Act, 1993, through the following key provisions:-

- (i) Provision for granting protection orders upon application, even though the respondent has not been given prior notice of the application. In granting the protection order, the court should issue a for the arrest of the respondent.
- (ii) Extension of protection to persons in domestic relationships other than husband and wives.
- (iii) "Domestic violence" includes, but not limited to, physical abuse or threat of physical abuse; sexual abuse or threat of sexual abuse; intimidation; harassment; emotional abuse and destruction of property.
- (iv) Empowerment of the court to prohibit the abuser from physically or sexually from abusing the applicant or threatening to do so; intimidating or harassing the applicant; damaging or threatening to damage property in which the applicant may have an interest; entering, watching, loitering near, preventing or hindering access to or from the applicant's place of residence, business, employment, educational institution or any other place that the applicant visits often; following the applicant or stopping or approaching the applicant in any place; making any contact with the applicant by telephone or any form of written communication; enlisting the aid of another person to act in any of the above ways; entering the shared residence or a specified part of the shared residence or a specified area in which the shared residence is situated and discharge mortgage payments or rental obligations on the shared home.
- (v) Prohibition of stalking
- (vi) Provision for non cost administration of protection orders
- (vii) Provision for execution of arrest even when a protection order has been destroyed.

(i) National Crime Prevention Strategy

In response to Section 12 of the South African Constitutional provisions, and the problems caused by increasing crime, the Government has developed a National Crime Prevention Strategy. The key departments in this regard are the Departments of Justice, the South African Police Services, Correctional Services and Welfare and Population Development.

The objectives of the National Crime Prevention Strategy include :

- The establishment of a comprehensive policy framework which will enable the Government to address crime in a co-ordinated and focussed manner, drawing on the resources of all government agencies as well as civil society.
- The promotion of a shared understanding and common vision of how the whole nation will tackle crime. The vision developed will also give guidance to and stimulate initiatives at provincial and local levels.



- The development of a set of national programmes which serve to kick-start and focus the efforts of various government departments in delivering quality services aimed at resolving the problems leading to high crime levels.
- the maximization of civil society's participation in mobilising and sustaining crime prevention initiatives.
- The creation of a dedicated and integrated crime prevention capacity, which can conduct ongoing research and evaluation of departmental and public campaigns as well as facilitate effective crime prevention programmes at provincial and local levels.

(j) Justice Vision 2000

The Department of Justice's **Justice Vision 2000** document provides for a vision and a number of strategies relating to crime, safety and security.

In terms of this document, the Department of Justice has nine goals for the realisation of its vision on crime. These are:

1. To develop a policy which promotes security and safety for all persons.
2. To develop an efficient and effective prosecution service.
3. To develop an appropriate bail policy.
4. To develop a parole policy which takes account of the seriousness of the crime, the nature of the sentence and the seriousness of the offence.
5. To evolve a comprehensive, uniform, but flexible sentencing policy.
6. To develop, together with other organs of government, a crime prevention policy which would address serious offences effectively.
7. To develop a policy which would maximize co-operation of witnesses and victims with the criminal justice system, while at the same time being sensitive to the needs and safety of victims and witnesses.
8. To develop a justice system which addresses the particular conditions of vulnerable groups such as women, children and victims of violence as well as a multifaceted approach which would address attitudes towards violence, the structural and social causes and the consequences of violence.
9. To develop a juvenile justice system which is in conformity with the Constitution and international human rights norms but also takes into account the nature of offences in which juveniles are involved.

The Justice Vision 2000 document also provides suggestions as to how the above goals can be realised.

- (k)** The Department of Land Affairs has been requested by the Departments of Agriculture, Justice, and Defence to assist with the elimination of farm murders. This request is in line with the Department of Safety and Security White Paper which distinguishes



between crime prevention and law enforcement, in terms of which the full enjoyment of socio-economic rights is regarded as an important factor in crime prevention.

3.2.1.5 Article 7 of the African Charter

1. *Every individual shall have the right to have his cause heard.*

This comprises:

- a) *The right to an appeal to competent national organs against act of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
 - b) *the right to be presumed innocent until proved guilty by a competent court or tribunal;*
 - c) *the right to defence, including the right to be defended by counsel of his choice;*
 - d) *the right to be tried within a reasonable time by an impartial court or tribunal.*
2. *No one may be condemned for an act or omission which did not constitute a legally punishable offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 35(3) of the Constitution provides that: every person has a right to a fair trial, which includes the right-

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court ;
- (d) to have the trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (h) to be presumed innocent, to remain silent and not to testify during the proceedings;
- (i) to adduce and challenge evidence;
- (j) not to be compelled to give self-incriminating evidence;
- (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted into that language;

- (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
- (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- (o) of appeal to, or review by, a higher court.

B. LEGISLATION AND POLICY

Several pieces of legislation have been passed in order to protect and promote the rights of arrested, detained and accused persons. Key legislation passed include the following :

(a) The Legal Aid Amendment Act, 1996 (Act 20 of 1996)

The powers and objects of the Legal aid Board were extended by the Amendment Act as contemplated in section 25 of the Interim Constitution of South Africa, to enable the Board to provide legal representation at State expense for accused persons in deserving cases.

(b) Criminal Procedure Amendment Act, 1996 (Act 86 of 1996)

This Act makes provision for, *inter alia*,:-

- an accused to be informed of his or her right to legal representation;
- evidence to be given by means of a closed circuit television or similar electronic media; and
- the court to limit unreasonable delays.

(c) Criminal Procedure Second Amendment Act, 1996(Act 85 of 1996)

This Act deals with the application of the trapping system in South Africa, that is whether there is justification and a need for the use of such a system as a method of investigation, whether there is sufficient control over its use and how it fits in with a human rights dispensation. This Act, amongst other things, ensures that continued use of the trapping system is in accordance with the spirit of the South African Constitution.

(d) Criminal Procedure Amendment Act, 1997 (Act 76 of 1997)

In the case of *Sv Ntuli 1991 1 BCLR 141*, the requirement under section 309 (4) (a) of the Criminal Procedure Act, 1977 (Act 51 of 1977), that unrepresented prisoners should obtain a judge's certificate to appeal against a lower court, was found to be in conflict with section 25 of the South African Constitution. The Amendment Act therefore addresses the problems identified by the Constitutional Court in such cases.



(e) Criminal Law Amendment Act, 1997 (Act 105 of 1997)

In the case of *S v Makwanyane and Another* (1995(3) SA 292, the Constitutional Court found the death penalty as provided for in section 277 (1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) to be unconstitutional (See Article 4). Hence as contemplated by the Constitutional Court the above-mentioned Act deletes all references to the death penalty from the statute books and creates mechanisms in terms of which the sentences of all persons who have already been sentenced to death can be commuted (see under Article 4).

(f) Criminal Procedure Amendment Act, 1997 (Act 85 of 1997)

This Act further regulates the provisions in the Criminal Procedure Act, 1997, relating to bail. For instance, bail applications may only be heard during court hours since bail applications outside court hours often give rise to problems, that bail applications in respect of serious offences may only be heard in the regional court, unless such a court is not available, that bail can be refused if this will be in the best interests of justice, where accused person will disturb the public order or undermine public peace or security, that a court can detain an accused person charged with certain serious offences unless the accused person satisfies the court that exceptional circumstances exist which justify his or her release.

(g) Inter Ministerial Committee on Young People At Risk (IMC)

In respect of young offenders, Section 28 (1) (g) the South African Constitution provides that "every child has the right not to be detained except as a measure of last resort..."

The Inter-Ministerial Committee on Young People At Risk (IMC) was established in May 1995, to manage the process of crisis intervention and transformation of the Child and Youth Care System. The Committee consists of Ministers of Welfare, Justice, Safety and security, Correctional Services, Education, Health and relevant NGO's. One of the objectives of the IMC is to ensure that children in conflict with the law are protected and where applicable be diverted from the criminal justice system to the child and youth care system. Children should be placed after assessment in the least restrictive most empowering placement for that particular child. The IMC operates at National and Provincial level.

(h) The Establishment of a Separate Youth Justice System

The South African Law Commission has completed an issue paper, which was recently released, with the purpose of stimulating public debate and eliciting comment on a host of issues and proposals pertaining to the introduction of composite legislation governing a comprehensive youth justice system for South Africa.

The issues identified in the issue paper include the following :

- incorporation of international principles of youth justice in the body of proposed legislation;
- the possible adjustment of the age of criminal capacity and the present legal presumption governing young persons' accountability;
- the provision of specialised and quality legal representation;
- alternatives to arrest, notification of parents, guardians and other role-players as well as diversion options that could be exercised by the police;
- the detention of children in appropriate institutions and alternatives to the monetary payment of bail;
- diversion options, determination of the role-players who will be responsible for making decisions concerning diversion, and equality of access to diversion;
- a revised court structure; and
- sentencing options, the establishment of guidelines for sentencing, the desirability of reform schools, alternatives to payment of fines, alternative sentences, correctional supervision, pre-sentence reports, and evidence relevant to sentencing.

Having regard to the South African Constitution as well as a variety of international instruments, the issue paper makes it clear that any legislative approach should aim to promote the well-being of the child and deal with each child in an individual way. The central focus of the system should be on the diversion of cases away from the criminal justice system as early as possible, either to the welfare system, or to suitable diversion programmes run by competent staff. The involvement of the family and community is of vital importance, as is sensitivity to culture, tradition and the empowerment of victims.

(i) Rights of Persons in Detention

There are no court decisions yet on the constitutional requirement that detained persons should be detained under conditions consistent with human dignity or that adequate accommodation, nutrition and reading material should be provided at state expense, to sentenced and un-sentenced prisoners. However in *B and Others v Minister of Correctional Services and Others* 1997 (6) BCLR 789 (c), the respect of the right to medical treatment for detained persons was considered. The court held that the failure by the Department of Correctional Services to provide anti-viral medication to HIV-positive prisoners amounted to an infringement of their rights and ruled that the Department should provide HIV-positive prisoners with the drugs if so prescribed by a doctor (*reported in Sunday Times, 20/04/97*).

The Department of Correctional Services has prepared a Correctional Services Bill, 1998, which aims to ensure, *inter alia*, that accused persons are treated with dignity.

The overall objective of the Bill is to ensure that the sentences of the courts are carried out expeditiously, at the same time providing individuals with the opportunity to develop



themselves. In order to achieve this, the minimum non-derogable rights and duties which apply to all prisoners are pertinently stated in the Bill, together with the obligations of the State. The Bill also deals with sentenced and un-sentenced prisoners separately, emphasising the rights of vulnerable groups such as women and children. Provision is made for independent structures to oversee the correctional system and to ensure that prisoners are incarcerated in humane conditions and that their dignity is maintained.

(j) Prisoner's right to a safe environment

In respect to the prisoner's right to a safe environment, it may be said that prisoners may never be instructed or compelled to work as a form of punishment. The right to a healthy environment and sustainable development is essential to the mental health of the prisoner. Social and psychological services are provided to support and promote the social functioning and mental health of prisoners. Programmes take into account the special needs of women and children.

The Department of Correctional Services strives to guarantee the right of prisoners to exercise and adequate accommodation, nutrition, reading material and medical treatment to be provided at state expense. Prisoners must have at least one hour's exercise per day, weather permitting. Prisoners have access to reading material of their own choice unless the reading material poses a security threat. The reading material can come from the prison library or from outside the prison. By accepting its responsibility to provide prisoners with access to "adequate" health care, the Department of Correctional Services has firmly entrenched the principles of primary health care in the Correctional Services Bill. The Department of Correctional Services acknowledges the principles of responsibly managed health care economics, by accepting the impossibility of duplicating all medical services necessary to provide for a comprehensive "adequate" service. Suitable alternatives have to be investigated to ensure a safe custody environment in cases where the need arise to admit a prisoner patient to a higher level of care facility. In this regard the Department of Correctional Services is working in close co-operation with the Gauteng Department of Health, the South African Police Service and the Department of Public works to investigate the viability of creating closed/ secure units within provincial hospitals to accommodate prisoner patients when the need arises. Overcrowding in prisons does not promote conditions consonant with human dignity in prisons. The combatting of overcrowding in prisons remains one of the biggest challenges facing the Department of Correctional Services. The building of new prisons has been expedited and concerted efforts are being made to accelerate the upgrading of existing structures.

Urban jails

The development of inner city prisons is being considered as a viable option to alleviate the problem of overcrowding amongst persons awaiting trial in prisons. It is also envisaged that

a one stop criminal justice service station will save human resources, decrease escapes and revitalise inner city activities.

(k) Achieving A Balance Between the Rights of Victims and Accused Persons: Victim Empowerment Programme (VEP)

South Africa is mindful of the need to ensure while protecting the human rights of accused persons, that the rights of victims are not compromised. A lot of initiatives aimed at supporting and empowering victims have emerged both in Government and the NGO sector, over the years. There is now a move towards the development of comprehensive and crosscutting policies on Victim Empowerment. This move includes the adoption of a Victim Charter. The idea of a holistic policy and of a Victim Charter was endorsed by a conference on this issue in June 1998. Both the policy and charter deal with generic issues of victim empowerment but highlight and prioritize violence against women and other vulnerable groups. Relevant initiatives in the Justice System which form part of the generic victim empowerment programme include:

(i) Pre-trial Services

This project refers to support services such as counseling and legal advice for victims, a database capturing profiles of accused persons and research into reduce delays and relevant information gaps. It also involves effective coordination of witnesses and role players. Research suggests that victim co-operation has been enhanced and the rate of recidivism reduced in areas where this service is in place. The challenge is to roll out this service to every court as soon as possible.

(ii) Witness Friendly Courts

The creation of witness friendly courts is a key area of transformation in the justice system and it has enormous potential in making courts more responsive to the appropriate management of violence against women. It involves separate waiting rooms, counseling services, one-way mirrors and closed circuit television sets in courts to insulate vulnerable witnesses particularly children and the creation of an environment which will be reassuring for children managed by trained personnel capable of understanding and handling victims sensitively. Some courts have also introduced refreshment facilities and change/playrooms for children. The challenge is to extend these services particularly to rural areas.

(iii) Support Services

The services of family advocates and child welfare commissioners are available for children, which is essential for children in matters of child abuse. Support services also include access to legal advice and information offered either by a gender desk or citizen's advice desk or information kiosks. An audit of available services with a view to isolating critical services to be prioritized for extension nationally, is in the process of being completed. Justice Vision 2000



envisages one-stop service centers. However, financial constraints required prioritising transformation initiatives. Hence, the creation of one-stop centers have been deferred in favour firstly providing basic services at all courts and police stations.

C. CASE LAW

- (a) *S v Zuma 1995(4) BCLR 401 (CC)*, In this case the presumption that a confession was made voluntarily in terms of section 217 of the Criminal Procedure Act, 1977 (Act 51 of 1977), was held to be unconstitutional.
- (b) *Moeketsi v Attorney-General, Bophuthatswana and Another 1996 (7) BCLR 947 (B)*, in this case, the right to be tried within a reasonable time after having been charged was tested i.e. whether there was a denial of such a right in a particular case, and the remedies available in the case of such a delay, were discussed.
- (c) *Du Preez v Attorney-General of the Eastern Cape 1997 (3) BCLR 329 (E)*. While the court acknowledged that a person charged with a criminal offence has the right to insist that he or she should be tried within a reasonable time after being charged, the court refused an order interdicting the attorney-general from proceeding with a prosecution against the applicant, on the grounds that 20 months was not an unreasonable delay to justify the drastic remedy of a permanent stay of criminal proceedings. The court also ruled that the applicant's right to a fair trial had not been prejudiced by the delay.
- (d) *S v Gouwe 1995 (8) BCLR 968 (B)*, in this case, the presiding officer failed to inform the accused of his right to legal representation. On appeal, the Supreme Court held that this failure amounted to an irregularity resulting in the trial being unfair. The court ordered that the conviction and sentence be set aside.
- (e) *S v Mathebula and Another 1997 (1) BCLR 123 (W)*. In this case, the State had sought to tender evidence of an accused person who had not been informed of his constitutional right to legal representation or his right not to be compelled to make a confession that could be used in evidence against him. The court held that evidence obtained by means that ignore an accused person's constitutional rights is inadmissible unless the breach of such rights is justified by the provision of the limitation clause in the Constitution. This was not the case in this instance.

3.2.1.6 Article 8 of the African Charter

Freedom of conscience, the profession and free practise of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

A. THE SOUTH AFRICAN CONSTITUTION

Section 15 of the Constitution provides that :

- "(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that-
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) This section does not prevent legislation recognising -
 - (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

Section 30 of the South African Constitution provides that "Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights." (*see under Article 19*).

B. LEGISLATION AND POLICY

(a) Section 211(3) of the South African Constitution

As a means of redressing the subjugation of indigenous institutions which play an important role in the cultural life of many African people, **section 211(3) of the South African Constitution** provides that: "The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law."

(b) Section 181(1) of the South African Constitution

In order to give effect to cultural rights, **section 181(1) of the South African Constitution** provides for the establishment of houses of traditional leaders at national and provincial levels and for the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (*see under Article 19*).

(c) The Pan South African Language Board Act, 1995 (Act 59 of 1995)

This Act gives effect to the promotion and protection of cultural rights, especially language rights. The main functions of the Board are to develop previously marginalised languages and



promote respect for other South African languages used for communication and religious purposes.

(d) The Council of Traditional Leaders Act, 1997 (Act 10 of 1997)

This Act makes provision for indigenous law and its institutions. This was followed by the establishment of the Council of Traditional Leaders.

(e) The South African Schools Act, 1996 (Act 84 of 1996)

This Act makes provision for the freedom of religion. The Department of Education has established a task team to develop a policy for religious freedom in South African schools (see under Article 17). The National Education Policy Act, 1996 (Act 27 of 1996), also lists religious freedom in schools as a directive principle.

C. CASE LAW

Courts have also played an important role in advancing cultural rights especially those cultural rights and practices of South Africans that were not fully recognised and accepted under the apartheid regime.

- In *Ryland v Edros 1997 (1) BCLR 77 (c)*, the court held that in recognising the principle of equality and the principle of tolerance of diversity and the recognition of the diverse nature of South African society and the underlying values manifested by the fundamental provisions in the Interim Constitution, the recognition of Islamic marriages and the enforcement of the contractual relationships arising from such marriages was no longer contrary to public policy. By recognising the validity of Islamic marriages, the court held that it was unacceptable for one group to impose its values on another as was the case before the Interim Constitution came into operation.

D. OTHER MEASURES TAKEN BY GOVERNMENT

- (a) 24 September each year has been declared National Heritage Day (public holiday), the purpose of which is to foster national identity amongst South African peoples and to promote respect and tolerance towards each other.
- (b) In order to advance cultural rights, the Department of Arts, Culture, Science and Technology is in the process of establishing three statutory bodies, the National Arts Council (NAC), the National Heritage Council (NHC), and the National Video Foundation. These bodies will, amongst other functions, focus on the development and promotion of the art forms, heritage and cultures that were neglected and marginalised by the past regime. The Department is of the opinion that these

structures will facilitate access and equity in arts, culture and heritage in all areas of South Africa.

- (c) The Department has also accessed funds from the Reconstruction and Development Programme's funds in order to establish cultural facilities which are lacking in formerly black areas. The Department's plan to build community art centres and libraries country-wide has already been approved by the Department of State Expenditure.
- (d) The Department is also represented on the National Curriculum Development Committee which was established in 1996 to ensure that all South Africans have access to arts education.

3.2.1.7 Article 9 of the African Charter

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

A. THE SOUTH AFRICAN CONSTITUTION

Article 16 of the Constitution provides that:

- "(1) Everyone has the right to freedom of expression, which includes-
- (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to-
- (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

Section 32 of the Constitution provides that :

- " (1) Everyone has the right of access to -
- (a) any information held by the State; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.



- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State."

B. LEGISLATION AND POLICY

To enhance protection of freedom of expression, the Government has passed the following legislation:

(a) Independent Broadcasting Authority Act, 1993 (Act 153 of 1993)

This Act has been amended by the Electoral Amendment Act, 1994 (Act 1 of 1994) and the Independent Broadcasting Authority Amendment Act, 1995 (Act 36 of 1995). These Acts established the Independent Broadcasting Authority (IBA), whose main task is to regulate broadcasting activities in South Africa. Some of the functions of the IBA are-

- (i) to promote the provision of a diverse range of sound and television broadcasting services on a national, regional, and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- (ii) To promote the development of public, private and community broadcasting services which are responsive to the needs of the public;
- (iii) ensure that broadcasting services, viewed collectively-
 - (a) develop and protect a national and regional identity, culture and character;
 - (b) provide for regular:
 - news services;
 - actuality programmes on matters of public interest;
 - programmes on political issues of public interest; and
 - programmes on matters of international, national, regional, and local significance.
- (iv) to protect the integrity and viability of public broadcasting services;
- (v) to ensure that, in the provision of public broadcasting services, the needs of the following are duly taken into account :
 - (a) language, cultural and religious groups;
 - (b) constituent regions of the Republic and local communities; and
 - (c) educational programmes.
- (vi) to encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
- (vii) to encourage equal opportunity employment practices by all licensees;
- (viii) to ensure that broadcasting services are not controlled by foreign persons;

- (ix) to ensure that private and community broadcasting licenses, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- (x) to refrain from undue interference in the commercial activities of licensees, whilst at the same time taking into account the broadcasting needs of the public;
- (xi) to promote the stability of the broadcasting industry;
- (xii) to ensure equitable treatment of political parties by all broadcasting licensees during any election period;
- (xiii) to ensure that broadcasting licensees adhere to the code of conduct acceptable to the IBA; and
- (xiv) to encourage the provision of appropriate means of disposing of complaints in relation to broadcasting services and broadcasting signal distribution.

(b) Films and Publications Act, 1996 (Act 65 of 1996)

Viewed against the background of the past censorship laws under the apartheid regime, this Act is another important piece of legislation. This legislation provides for the regulation of the distribution of certain publications and the exhibition and distribution of certain films, by means of classification, the imposition of age restrictions and the giving of consumer advice. Distribution of any prohibited film or publication is a criminal offence in terms of the legislation.

(c) The Interception and Monitoring Prohibition Act, 1992 (Act 127 of 1992)

This Act has been amended by the Interception and Monitoring Prohibition Amendment Act, 1995 (Act 77 of 1995) which prohibits the unauthorised interception and monitoring of communications.

(d) Open Democracy Bill

The legislation envisaged by Section 32(2) of the South African Constitution must be enacted within 3 years of the date on which the new Constitution took place, that is before February 2000. In this regard, the Open Democracy Bill was tabled in Parliament. The aim of the bill is to provide for public access to information held by government bodies, subject to certain exemptions and to make information in respect of the functions and operations of government bodies available to the public. The Bill also provides a mechanism for individuals to correct information about themselves held by government bodies or private bodies and protect individuals who make known evidence relating to disclosing of contraventions of the law, serious mal-administration or corruption in government bodies and matters connected therewith.

G. CASE LAW

The courts have also played an important role in promoting and protecting freedom of expression in South Africa.



- In *Mandela v Falati* 1994 (4) BCLR 1 (w), the court emphasized the importance of freedom of expression in a democracy.
- In *Curtis v Minister of Safety and Security and other*, 1996 (5) BCLR 609, the Constitutional Court declared as unconstitutional Section 2(1) of the Indecent or Obscene Photographic Matter Act, 1967 (Act 37 of 1967), which prohibited the possession of indecent or obscene photographic matters.

3.2.1.8 Article 10 and 11 of the African Charter

Article 10: 1. *Every individual shall have the right to free association provided that he abides by the law.*
 2. *Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.*

Article 11: *Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 18 of the Constitution provides that: "Everyone has the right to freedom of association."

Section 17 of the Constitution provides that "Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions."

Section 23 of the Constitution provides that :

- "(1) Everyone has the right to fair labour practices.
 (2) Every worker has the right-
 (a) to form and join a trade union;
 (b) to participate in the activities and programmes of a trade union; and
 (c) to strike.
 (3) Every employer has the right -
 (a) to form and join an employer's organisation; and
 (b) to participate in the activities and programmes of an employer's organisation.
 (4) Every trade union and every employer's organisation has the right -
 (a) to determine its own administration, programmes and activities;
 (b) to organise; and
 (c) to form and join a federation

- (5) Every trade union, employer's organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1)...."

B. LEGISLATION AND POLICY

(a) The Labour Relations Act 1995, (Act 66 of 1995)

The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are -

- to give effect to and regulate the fundamental rights conferred by section 23 of the Constitution;
- to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;
- to provide a framework within which employees and their trade unions, employers and employer's organisations can -
 - i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest, and
 - ii) formulate industrial policy; and
- to promote
 - i) orderly collective bargaining;
 - ii) collective bargaining at a sectoral level;
 - iii) employee participation in decision-making in the workplace; and
 - iv) the effective resolution of labour disputes.

This Act does not apply to members of -

- the National Defence Force;
- the National Intelligence Agency; and
- the South African Secret Service.

(b) The Agriculture Labour Act, 1993 (Act 147 of 1993)

This Act makes provision for the application of the Labour Relations Act, 1956, and the further application of the Basic Conditions of Employment Act, 1983, to farming activities and employers and employees engaged therein. Before the enactment of the Agricultural Labour Act, farm labourers enjoyed no protection as far as the prevention and settlement of disputes and the regulation of terms and conditions of employment by agreement or arbitration, were concerned. The Agricultural Labour Act now adequately protects the rights and obligations of farm workers.



(c) Basic Conditions of Employment Act, 1983 (Act 3 of 1983)

This Act will be repealed by the Basic Conditions of Employment Act, 1997 (mentioned above). The purpose of this new Act is similar to the provisions of the 1983 Act but the legislation has been "modernised" and brought in line with the provisions of the Constitution, international conventions and the new Labour Relations Act of 1995. The purpose of this Act is to advance economic development and justice by giving effect to and regulating the right to fair labour practises conferred by Section 23 (1) of the South African Constitution by establishing and enforcing basic conditions of employment. The new Act covers the following areas :

- working time
- leave
- particulars of employment and remuneration
- termination of employment
- prohibition of employment of children and forced labour

(d) Wage Act, 1957 (Act 5 of 1957)

The above-mentioned Act will also be repealed by the new Basic Conditions of Employment Act once it comes into operation and is implemented. The new Basic Conditions of Employment Act includes chapters that replace the Wage Board with an Employment Conditions Commission (ECC). The functions of the ECC are similar to that of the Wage Board but the ECC has enhanced and extended functions enabling it to advise the Minister on all matters pertaining to the setting of basic conditions of employment.

(e) Employment Equity Bill

The above-mentioned Bill has already been drafted and presented to Parliament. The National Assembly passed the Bill on 20 August 1998. The National Council of Provinces debated the Bill in September 1998. The Bill seeks to prohibit discrimination in the work place and provides for affirmative action measures to promote employment equity. The bill also provides for the adoption of measures to eliminate unfair disparities in pay. The Bill prohibits discrimination on the following grounds :race, sexual orientation, gender, age, pregnancy, disability, marital status, religion, family responsibility, conscience, ethnic or social origin, belief, political opinion, culture, language, birth, and HIV-status.

The affirmative action provisions in the bill are restricted to the advancement of the following historically disadvantaged groups:-

- Women
- Black People(African, Coloured, Indian)
- people with disabilities

C. INTERNATIONAL LABOUR ORGANISATION CONVENTIONS RATIFIED BY SOUTH AFRICA

- Unemployment Convention, 1919-
- Night Work (Women) Convention, 1919
- Equality of Treatment (Accident Compensation) Convention
- Minimum Wage-Fixing Machinery Convention, 1928
- Marking of Weight (Packages transported by Vessels) Convention, 1929
- Forced Labour, 1930
- Night Work (Women) Convention (revised), 1934
- Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934
- Underground Work Women Convention, 1935
- Convention concerning Statistics of Wages and Hours of Work, 1938
- Final Articles Revision Convention, 1946
- Freedom of Association and Protection of the Right to Organise Convention, 1948
- Night Work (Women) Convention Revised, 1948
- Right to Organise and Collective Bargaining Convention, 1949
- Abolition of Forced Labour, 1957
- Discrimination (Employment and Occupation), 1958
- Final Articles Revision Convention, 1961

D. OTHER CONVENTIONS THAT ARE BEING PROCESSED FOR RATIFICATION ARE:

- Convention concerning Equal Remuneration
- Convention concerning Minimum Age (Child Labour)

E. OTHER MEASURES TAKEN BY GOVERNMENT

(a) Labour Court or Commission for Conciliation, Mediation and Arbitration (CCMA)

The Labour Relations Act, 1995 makes provision for the CCMA and a Labour court. In terms of Section 113 of the said Act, the Commission is independent of the State, any political party, trade union, employers' organisation and federations. Section 115 (3) provides for the functions of the CCMA, and stipulates that the CCMA, if asked, to provide assistance to employees, employers, registered trade unions, registered employers' organisations, federations and bargaining councils to advise them on extending or establishing collective bargaining structures and workplace forums.



The CCMA has set up a Bargaining Council Committee which will work in conjunction with the Department of Labour. The Department of Labour has assisted in the establishment of the trade union training institute, DITSELA, as part of its programme to strengthen civil society.

(b) President's Comprehensive Labour Market Commission

This Commission presented its findings and recommendations to the President in the form of a report entitled Restructuring the South African Labour Market, accompanied by a background report undertaken by the International Labour Office entitled Restructuring the Labour Market: The South African Challenge - An ILO Country Review. The Commission recommended that policies should aim at strengthening collective bargaining and protecting workers in a manner that promotes economic growth and job creation. In view of the Commission's recommendations measures related to the promotion of affirmative action and employment equity, wage determination and productivity enhancement based on participatory and self-regulatory approaches by the government, should be pursued (see under Article 15).

3.2.1.9 Article 12 of the African Charter

1. *Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.*
2. *Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.*
3. *Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.*
4. *A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.*
5. *The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 21 of the Constitution provides that :

- (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
- (4) Every citizen has the right to a passport."

B. LEGISLATION AND POLICY

Save for specific citizenship rights and some socio-economic rights, documented and undocumented immigrants are accorded fundamental rights and freedoms. In terms of the

South African Constitution the only rights which non-nationals do not have the following political rights, namely, the right to enter, remain in and to reside anywhere in the Republic, the right to a passport, or the right to choose trade, occupation or profession freely.

(a) Aliens Control Act, 1991 (Act 96 of 1991)

The rights of documented and undocumented immigrants were regulated by this Act, which contained provisions that were contrary to international human rights provisions and the Constitution. For example, Section 47(2) of the Act had the effect of restricting courts of law from reviewing the removal of aliens upon the order of the Minister of Home Affairs. Section 55 of the Act also ousted the jurisdiction of any court of law in reviewing, quashing or reversing any act, order or warrant of the Minister or any immigration officer performed under the Act. The courts could only intervene where an alien is detained for unreasonably long period.

(b) The Aliens Control Amendment Act, 1995 (Act 76 of 1995)

This Act brought the Aliens Control Act, 1991 in line with the South African Constitution. Apart from the restriction on courts to review the decisions of the Minister of Home Affairs and immigration officers, other anomalies were rectified, for example, an open ended detention pending removal and entering and searching of premises without a warrant was redressed.

(c) Electoral Act, 1993 (Act 202 of 1993), Schedule 4 of the Local Government Transition Act, 1993 (Act 209 of 1993)

These Acts provide that non-citizens who are permanent residents in South Africa are allowed to vote in elections.

(d) South African Passport and Travel Document Act, 1994 (Act 4 of 1994)

This Act provides that every citizen has the right to obtain a passport, which was not the case in the apartheid era.

(e) Home Affairs Law Rationalisation Act, 1995 (Act 41 of 1995)

This Act made provision for the repeal of laws which applied in the former TBVC States and self-governing territories.

(f) South African Citizenship Act, 1995 (Act 88 of 1995)

This Act provides for the acquisition, loss and restoration of citizenship.

C. CASE LAW

- In *Baloro and others v University of Bophuthatswana and others* 1995 (4) SA 197 (BOP), the decision of the Interim Council of the University of Bophuthatswana placing a moratorium on promotions of non-South African



academic staff with valid contracts of employment, while promoting staff members with South African citizenship was declared by the court as a gross violation of section 8(2) of the Constitution.

D. OTHER MEASURES TAKEN BY GOVERNMENT

- (a) The South African Government is in the process of developing White Papers on Refugees and International migration that will be rights regarding. A White Paper on Refugees has been published in the Government Gazette for public comment. A White Paper on International Migration is presently in progress at the Provincial Public Hearings.
- (b) A technical task team was set up by government to look at international migration. The findings suggested that it was unfair to expect the receiving state to carry the burden of refugee protection, and that this responsibility should be shared among states, based on what they can realistically contribute. It was also suggested that an independent authority be established to make rapid assessments of a claimant's right to refugee status.
- (c) The United Nations High Commission of Refugees (UNHCR) plays a significant role in ensuring that refugees, including children, are accorded rights enjoyed by nationals. A Refugee Board has been established to hear appeals. The UNHCR also proposes training of relevant role-players on the handling of refugees.
- (d) Various programmes for refugees exist, and refugee forums have been established in three of the large urban centres. Under the auspices of the UNHCR, the forums in these centres co-ordinate endeavours to assist with the placement of refugees in shelters and giving support of a general nature. The South African Council of Churches provides food and blankets to those with asylum seeking status who are not in shelters. Support programmes for refugees are provided.
- (e) In 1996, the government granted amnesty to nationals from the SADC region in certain circumstances.

3.2.1.10 Article 13 of the African Charter

1. *Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*
2. *Every citizen shall have the right of equal access to the public service of his country.*
3. *Every individual shall have the right of access to public property and services in strict equality of all persons before the law.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 19 of the Constitution provides that:

1. Every citizen is free to make political choices, which includes the right to:
 - (a) form a political party;
 - (b) participate in the activities of, or recruit members for, a political party; and
 - (c) campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right to:
 - (a) vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - (b) stand for public office and, if elected, to hold office.

Section 195 of the Constitution regulates the administration of the Public Service. It provides, inter alia, that:

- “(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
 - (b) Efficient, economic and effective use of resources must be promoted.
 - (c) Public administration must be development-orientated.
 - (d) Services must be provided impartially, fairly, equitably and without bias.
 - (e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
 - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation”

B. LEGISLATION AND POLICY

(a) The Electoral Commission Act, 1996 (Act 51 of 1996)

This Act makes provision for the establishment of an Electoral Commission to manage elections for national, provincial and local legislative bodies, and to manage referenda. The Act also makes provision for the establishment and composition and the powers, duties and functions of an Electoral Court.



C. PUBLIC SERVICE AND SERVICE DELIVERY

The Department of Public Service and Administration published a White Paper on Transforming Public Service and Administration. The Paper and the initiative entailed there in is called *Batho Pele* i.e. People First. The purpose of the Batho Pele initiative is to provide a policy framework and a practical implementation strategy for the transformation of Public Service Delivery. It introduces eight core principles which should govern the delivery of public services. The Batho Pele White Paper is also published in four languages, namely Afrikaans, Sesotho, Xitsongo, and isiZulu.

(a) The White Paper: Human Resource Management in the Public Service published in December 1997

The White Paper provides a framework for human resource development and management which should ensure in the medium and long term, an equitable, representative of the demographics of the country, well-skilled and innovative Public Service.

(b) The White Paper on Public Service Training and Education, published in July 1997

The White Paper sets out very clearly the importance of an environment that provides for training and skills development, to mainstream socio-economic activities and that those people previously disadvantaged receive priority to overcome their historic marginalisation. To move away from the over-centralised, heavily bureaucratised Public Service, the project was set up in the Department to call for the institutionalisation of service delivery programmes, whereby executing authorities would be expected to establish and sustain service delivery improvement programme and to be held accountable for such in accordance with the Public Service Laws Amendment Act, 1997, which gives effect to the devolution of powers to levels of Executing Authorities. In this regard, the **New Public Service Regulations** has been developed and are being considered in the Parliamentary process. The enactment of the Regulations will effectively give effect to a humane, respectful treatment of people requiring public services. Departments would be expected to embrace the following in their improvement programmes-

- clear identification of the actual and potential customers and the services provided to them;
- the existing and future consultation arrangements with the department's existing as well as potential customers;
- address the barriers that inhibit accessibility;
- what level of standard can be expected for the main services provided; and
- how current and future complaints will be handled.



(c) Access to Public Property

The Open Democracy Bill makes provision for public access to information held by government bodies, subject to certain exemptions(see under Article 9).

3.2.1.11 Article 14 of the African Charter

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

A. THE SOUTH AFRICAN CONSTITUTION

Section 25 of the Constitution provides that:

- “(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application-
- (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-
- (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section-
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.



- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).
- (9) Parliament must enact the legislation referred to in subsection (6)."

B. LEGISLATION AND POLICY

The property clause provides for compensation in the event of expropriation as well as the right of state to take measures to redress the results of past racial discrimination. The land reform programme of the Department of Land Affairs is framed in terms of the property clause. This programme has three legs: Restitution, Redistribution, and Land Tenure Reform.

(a) Restitution of Land Rights Act, 1994 (Act 22 of 1994)

The **Restitution Programme** falls within the ambit of the above-mentioned Act. The Act provides that all persons who were dispossessed of land as a result of racially discriminatory laws or practices are entitled to restitution through restoration of the actual land, or to comparable redress. Forced removals in support of racial segregation have caused enormous suffering and hardship in South Africa and no settlement of land issues can be reached without addressing such historical injustices. The Interim Constitution provided a framework for the restitution of land rights, instructing the legislature to put in place a law to provide redress for the victims of acts of dispossession that took place after 1913, in the form of restoration of the land that was lost, or alternative remedies. Accordingly, Parliament enacted the Restitution of Land Rights Act, 1994 (Act 22 of 1994), creating the Commission on Restitution of Land Rights and the Land Claims Court.

(b) The Redistribution programme

This programme consists of the provision of a subsidy to households earning less than a certain amount per month in order to enable them to purchase land. It is linked to the housing subsidy and funds are spent in terms of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993) as amended. This programme also provides for the use of the subsidy by

beneficiaries to enter into equity partnerships with capital partners in order to gain access to assets which will enable them to strategically improve their livelihoods. In this regard the Development Tribunals established under the Development Facilitation Act 67, 1995 (Act 67 of 1995) will be required to balance the rights and duties pertaining to access to land so that distribution patterns will be altered in a manner which will improve human rights and promote development. These tribunals will be staffed by local people. The particular model(s) chosen are determined through participatory consultation with local communities in order to find the point at which sustainable development can be achieved according to local style and requirements.

(c) The Tenure Reform programme

This programme provides for the protection and confirmation of insecure land rights. Until the 1990's, it was government policy that black people should not own land. In townships and ex-homeland areas, the form that land rights took was generally subservient, permit-based or 'held in trust'. This policy was implemented through various laws, eg the 1913 Native Land Act, the 1936 Development and Trust Land Act, the 1927 Black Administration Act, the Group Areas Act, and various proclamations such as Proclamation R 188 which provided for the issuing of permits to black people to reside on land in the former homelands.

The role of tenure reform is not only to ensure that the future system of land rights is equal for all South Africans, but also to recognise and confirm those pre-existing black rights and interests in land which have come to exist in practice, if not yet in law. This framework adopts the approach that tenure reform must achieve two objectives:

- One is to set in place viable future institutions and tenure forms which address and resolve the current endemic problems of insecurity, inequality, lawlessness and development bottlenecks.
- The other is that tenure reform must resolve current tenure disputes and unravel the chaos of overlapping tenure rights, conflicting claims, and restricted and thereby internally compromised forms of tenure.

3.2.2 ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.2.2.1 Article 15 of the African Charter

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

A. The right to work

Unemployment in South Africa is very high and of a structural nature due to the mis-allocation of resources in the apartheid economy. The growth in unemployment reflects the long term



in employment generation since the 1960s, while labour supply has continued increasing at a relatively steady rate consistent with the annual population growth rate of 2.4 percent. In addition, failure to generate significant employment reflects, *inter alia*, the asymmetry of the occupational structure and the unequal access to all levels of education.

For the 25.6 million of the adult population (age 15 and above), the South African economy only provides 9.6 million jobs. According to the Central Statistics Services October 1994 Household Survey, the unemployment rate is 33 percent defined as those available and having desire for paid employment (*See Introduction*). This definition understates the need for job creation since it excludes those who are nominally self employed and those involved in low paid informal activities in an attempt to make ends meet. Moreover, wage levels for many South African workers cannot meet basic needs - some 10 percent of employees earn incomes of less than R 263 per month⁴. The divide between those with and without regular jobs that pay adequate wages characterises the duality of South African society.

In his State of the Nation address this year, the President while noting the success that the present Government has made in improving the lives of all, and especially for those that have been historically disadvantaged, lamented the fact that not much progress has been made in eliminating the scourge of unemployment and poverty. In this regard a **National Job Summit** will be convened by Government and relevant role players.

The Government has released an "Employment Strategy Framework" for the Summit. The following is highlighted in the Overview :

- **In the short term**

The creation of sufficient number of jobs to match net growth in the labour force and to expand the Special Employment Programmes to raise the level of job creation as quickly as possible.

- **In the medium to long term :**

To raise the skills base and move into higher value-added sectors to raise national income, enable a more stable exchange rate and to better reflect the underlying cost structure. This trajectory will require : increase in the labour absorptive capacity of the economy by expanding the creation of sustainable formal sector employment through the identification and promotion of higher value added sectors, more labour using industries, with strong employment multiplier potential; and improving access for small business through economic opportunities.

The Government and in particular the Department of Labour is in support of the provision that every individual shall have the right to work under equitable and satisfactory conditions, and

⁴ Children, Poverty and Disparity Reduction, A Report Commissioned by the RDP Office Page 31

shall receive equal pay for equal work. The Basic Conditions of Employment Act, 1997 and the envisaged Employment Equity Bill (as discussed under *Articles 10 and 11*), provides the legislative framework to make this provision a reality. As discussed earlier, the purpose of this Bill is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

The Department of Labour attempts to promote trade unionism to ensure that this provision is realisable. An Inspectorate of the Department has been tasked with ensuring compliance with the above-mentioned legislation.

B. The right to satisfactory conditions

The following legislation provides for the health and safety of persons at work :

(a) Occupational Health and Safety Act, 1993 (Act 85 of 1993)

The objectives of the OHS Act are to "provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; [and] to establish an advisory council for occupational health and safety....."

(b) Mine Health and Safety Act, 1996 (Act 29 of 1996)

The objects of this Act are :

- to protect the health and safety of persons at mines;
- to require employers and employees to identify hazards and eliminate, control and minimise the risks relating to health and safety at mines;
- to give effect of to the public international law obligations of the Republic that concern health and safety at mines;
- to provide for employee participation in matters of health and safety through health and safety representatives and the health and safety committees at mines;
- to provide for effective monitoring of health and safety conditions at mines;
- to provide for enforcement of health and safety measures at mines,
- to provide for investigations and inquires to improve health and safety at mines; and
- to promote : (i) a culture of health and safety in the mining industry; (ii) training in health and safety in the mining industry; and (iii) co-operation and consultation on health and safety between the State, employers, employees and their representatives.



C. CASE LAW

In *Larbi-Odam and Others v Member of the Executive Council for Education (North West Province and Another 1998 (1) SA 745*, the Constitutional Court held that whilst it was a legitimate purpose for a government department to reduce unemployment among South African citizens, the provision of quality education had to be the primary aim of a government department. Permanent residents should be viewed no differently from South African citizens when it came to reducing unemployment and as such merited full concern of the government concerning the availability of employment opportunities.

3.2.2.2 Article 16 of the African Charter

1. *Every individual shall have the right to enjoy the best attainable state of physical and mental health.*
2. *States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 27(1) (a) of the Constitution provides that: "Everyone has the right to have access to health care services, including reproductive health care..."

B. LEGISLATION AND POLICY

The government has passed the following legislation designed to promote the provision of health care services, especially for women and children.

- (a) The enactment of the **Choice on Termination of Pregnancy Act, 1996 (Act 92 of 1996)** has had a major impact on the health and reproductive autonomy of women, as well as their right of access to health care services. This Act gives women the absolute right to decide whether or not to terminate their pregnancies in the first 12 weeks, a qualified right between 12 and 20 weeks and a very limited right after 20 weeks. This Act was implemented in February 1997. By 26 December 1997, 406 women had safe and legal terminations performed at public and private health facilities⁵.
- (b) The State has also made substantial progress in laying the foundation for ensuring accessible, comprehensive and equitable health service delivery throughout the country. Through the Department of Health, the State is also pursuing the

⁵ Gender Research Project Bulletin, Centre for Applied Legal Studies, Page 7

transformation of the health system towards a unified, integrated national health system based on principles of primary health care. The following legislation was enacted to ensure the rationalisation of the health care system- namely

- (b) Medical, Dental and Supplementary Health Professions Amendment Act, 1995
- (c) Pharmacy Amendment Act, 1995
- (d) Nursing Amendment Act, 1995
- (e) Chiropractors, Homeopaths and Allied Professions Amendment Act, 1995
- (f) Another important development is the National Health Bill, which is intended to repeal the Health Act, 1973, (as amended) and provides for the rationalisation of health legislation in general. The Bill provides, *inter alia*, for the rights of health service users, and for public health services, health personnel, traditional healers, environmental health protection, the utilisation and disposal of human tissues, occupational health and industrial hygiene and the financing of the national health system.
- (g) In 1997, Parliament passed the following health legislation:
 - (f) The Medicines and Related Substances Control Amendment Act, 1997 (Act 90 of 1977)
 - (g) Medical, Dental and Supplementary Health Service Professions Amendment Act, (Act 89 of 1997)
 - (h) Chiropractors, Homeopaths and Allied Health Service Professions Act, 1997 (Act 91 of 1997)
 - (i) Nursing Amendment Act, (Act 19 of 1997)
 - (j) Dental Technicians Amendment Act, 1997 (Act 43 of 1997)
 - (k) Pharmacy Amendment Act, 1997 (Act 88 of 1997)

C. OTHER MEASURES TAKEN BY GOVERNMENT

(a) Towards a National Health System

The Government, through the Department of Health, has appointed committees to develop strategic plans for the implementation of the most urgent intervention measures. The reports were consolidated to form a policy document. The draft document was published in November 1995.

The guiding principles for the reconstruction and development of the health sector are:

- to unify the fragmented health services at all levels into an integrated and comprehensive National Health System;
- to promote equity, accessibility and the utilisation of health services;
- to extend the availability and ensure the appropriateness of health services;
- to develop health promotion activities;
- to develop the human resources available to the health sector;
- to promote community participation across the health sector; and
- to improve planning in the health sector and the monitoring of health status and health services.



(b) Life skills education

The Department of Health in consultation with the Department of Education has formulated a draft policy document for life skill education, especially pertaining to the issues of HIV and AIDS. Furthermore, the Department of Health has, during the past few years, developed a National Health System for Universal Primary Health Care Policy and a National Drug Policy.

(c) The Presidential Lead Project

This project provides free health care services in public health care facilities, for children under the age of six years and pregnant and lactating women. The aim of this project is to improve the quality of life of women and children by reducing maternal mortality; to improve the health of new-born infants through equitable access to primary health care, including family planning, ante-natal, delivery and post-natal care for the mother and the infant; and to increase access to essential obstetrics and neo-natal care.

Part of the project entails providing clinics in areas, especially rural areas, which previously did not enjoy easy access to health care services. During 1996 a total of 102 new clinics were built, and mobile clinic units were also provided.

(d) Aids Action Plan

South Africa has the fastest spreading of the AIDS epidemic globally. Due to this alarming increase of the epidemic, a number of steps have been taken by the various sectors to address this issue. An AIDS Action Plan for South Africa 1998-2000 has been developed to reduce the number of new infections. The AIDS Action Plan has three phases:

Phase 1: 1998 will be the year of *MASS MOBILIZATION* against AIDS

Phase 2: 1999 will be the year of *MASS ACTION*

Phase 3: 2000 will be the first year of *ROLLING MASS ACTION*

Guiding principles for the plan include principles of access, equity and participation, the importance of community participation and consultation, the understanding that everyone is affected, that everyone should take preventative measures, and that everyone needs to work together.

Government initiated a Government Plan to Prevent HIV/AIDS in South Africa. Through this plan Government will mobilise all sectors, private and public, in South Africa to participate in the combatting of this disease. A parallel process of vaccine development is equally necessary and will strengthen this campaign. Cabinet has established an Inter Ministerial Committee on HIV/AIDS, which is chaired by the Deputy President to implement this programme.

Government is also addressing the reduction of discriminatory practices in the workplace by ensuring that legislation is in place as well as conducting research on various aspects of this epidemic. Government recognises that success will occur through collective action.

3.2.2.3 Article 17 of the African Charter

1. *Every individual shall have the right to education.*
2. *Every individual may freely take part in the cultural life of his community.*
3. *The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 29 of the Constitution provides that:

- “(1) Everyone has the right-
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -
- (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-
- (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies or independent educational institutions.”

Schedule 4 of the Constitution makes provision for education at all levels, excluding higher education to be a functional area of concurrent national and provincial legislative competence. Higher education is a national competence.



B. LEGISLATION AND POLICY

(a) **The following education legislation has been placed on the law book since 1994:**

- South African Qualifications Authority Act, 1995 (Act 58 of 1995)
- National Education Policy Act, 1996 (Act 27 of 1996)
- Educators Employment Act, 1994 (Act 38 of 1994) to be replaced by the Bill on the Employment of Educators, 1998
- The South African Schools Act, 1996 (Act 84 of 1996) and provincial school education Acts
- Higher Education Act, 1997 (Act 101 of 1997)
- Bill on Further Education and Training, 1998

(b) **National Education Policy Act, 1996 (Act 27 of 1996)**

The South African Constitution states that education for children must be provided by the nine provincial departments of education, taking into account the right of everyone to basic education and the right to receive education in the official language of their choice. However, the Minister of Education at national level determines the minimum norms and standards for education in terms of the **National Education Policy Act, 1996 (Act 27 of 1996)**, in consultation with the Members of the Executive Councils who are responsible for education in the provinces.

(c) **South African Schools Act, 1996 (Act 84 of 1996), (SASA)**

This Act as well as the provincial education laws provide the legal framework for the provision of education to all learners and for the protection of their rights in public and independent schools. The South African Schools Act makes provision for compulsory basic education for all learners from the age of seven, or Grade 1, to the age of fifteen or Grade 9, based on the principle of non-discrimination. Compulsory education places an obligation on provinces to cater for all potential learners. Consequently, the provincial departments of education have embarked on a building programme to provide sufficient places for the 11 908 879 learners who are in Grades 1 to 12 in 1997. Reconstruction and Development (RDP) funds are used in provinces to assist with the transport of school children to and from school.

On admission to a school or educational institution, body, the Schools Act bans unfair admission policies and discriminatory educational practices in public schools (Section 9 of the South African Constitution) - *(see under Articles 2 and 3)*.

Other major achievements which were accomplished through the South African Schools Act are the following:

- (a) Minimum norms and standards for language policy in public schools were established in the new language policy which is in keeping with the values and principles of the South African Constitution.
- (b) Freedom of religion which is provided for in the South African Constitution is entrenched in the South African Schools Act and a policy for religious education is being developed by a task team of the Department of Education (*see under Article 8*).
- (c) Governing bodies may adopt a code of conduct for a public school after consultation with the learners, parents and teachers of the school and taking into consideration guidelines provided by the Minister of Education to ensure that discipline is maintained in public schools. These guidelines make provision for the continued education of pregnant girls.
- (d) Protection of individual rights against cruel or inhuman actions is entrenched in the South African Constitution and in the South African Schools Act, 1996, which prohibits corporal punishment (*see under Article 5*).
- (e) Learners are represented on their own Learner Representative Councils which must be established at all public schools enrolling learners from the eighth grade or higher.
- (f) In seeking the well-being of children, learners are represented on the governing bodies of public schools and take part in decision making about matters affecting them, e.g. a Code of Conduct.
- (g) A capacity building programme is under way to enhance the capacity of newly elected governing bodies and parents.

Minimum norms and standards for the funding of public schools are currently being developed and will be implemented from 1998. Schools will be funded from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in the provision of education.

Education is compulsory up to Grade 9. The South African Schools Act enables schools to charge school fees if a resolution to do has been adopted by a majority of parents. In such case parents are liable to pay the school fees unless they have been exempted from payment based on financial considerations. Learners may be excluded from a school because of the non-payment of school fees. If parents cannot fulfil their financial responsibility towards a school, they may be exempted from payment partially or in full by the governing body and may appeal to the Head of Department if the



application for exemption is refused by the school. In some public schools, fees of up to R 2 000 per year are payable if the parents can afford it.

- (h) Provision has been made for home schooling.

C. OTHER MEASURES TAKEN BY GOVERNMENT

(a) National School Construction and Upgrading Programme

This programme was established in 1995 and caters for the physical improvement of school buildings.

(b) National Commission on Special Needs in Education and Training and the National Committee for Education Support Services

These were appointed to identify critical issues and needs, develop policy options and make recommendations on the education of learners with special needs. Under the new South African Schools Act, mainstream schools have to admit such learners where this is reasonably practical, and schools are encouraged to take every step to make their facilities accessible to the disabled. Learners who cannot be properly taught at mainstream schools will be educated at separate special schools.

(c) Committee on Gender Equity

This Committee was established by the Minister of Education in October 1996 contributed to the development of Curriculum 2005 to ensure that gender sensitivity is reflected in the learning outcomes. All curriculum development work will be sensitive to gender, race and disability. There will also be equity and representivity in the employment and training of educators (*see under Articles 2 and 3, and 18*).

(d) Curriculum 2005

This was launched in April 1997. It makes provision for eight learning areas, i.e. (1) Language, Literacy and Communication, (2) Human and Social Sciences, (3) Technology, (4) Mathematical Literacy, Mathematics and Mathematical Sciences, (5) Arts and Culture, (6) Economics and Management Sciences, (7) Human and Social Sciences and (8) Life Orientation. Two of these learning areas, i.e. Human and Social Sciences and Life Orientation, specifically make provision for human rights education. However, children's rights will be addressed across the curriculum. Protection of the environment is included in Human and Social Sciences and Natural sciences. Life Skills Education, including sex education, will be addressed in Life Orientation. The South African Law Commission has developed a policy on AIDS/HIV for schools.

(e) National Primary School Nutrition Programme

This programme is available in most of the provinces. The programme targets school children in all schools particularly those in economically disadvantaged communities.

(f) Arts and Culture

These are crucial components of developing human resources. All children will be encouraged to participate in arts and culture orientated subjects in school to help unlock the creativity of children, allowing for cultural diversity within the process of developing a unifying national culture. This learning area makes provision for design education, oral traditions, communication, literature and literacy (*in line with the South African Constitution and Article 8 of the Charter*).

(g) Early childhood development

The national Department of Education is now supporting the implementation of a Project-based Early Childhood Development Programme (ECD) entitled the **National ECD Pilot Project**. The aim of this project is to implement a reception year throughout South Africa and to build the capacity of provincial departments of education and NGO's to contribute to the overall development of policy implementation for ECD from birth to at least nine years. ECD aims to implement the principles of "learning begins at birth", joint and shared parental responsibilities and the defence of children's rights, assisting disadvantaged and disabled children and work for children's enhanced development.

(h) Commission for Further Education

This Commission completed its investigation into the provision of education for learners after the age of fifteen years. The provision of vocational education and guidance is part of this investigation. Further Education and Training Bill, 1998 aims at transforming this sector of education to make it more accessible to all learners; by providing greater mobility in the education system. The Bill also makes provision for qualifications to be recognised by the South African Qualifications Authority within the National Qualifications Framework.

(i) Culture of Learning, Teaching and Service Campaign (COLTS)

This campaign was launched early in 1997 to restore the culture of learning and teaching which broke down in the liberation struggle. The COLTS programme also aims to counteract the dropout of learners from schools. The campaign will be sustained for a period of three years until 1999.



(j) Education Management Information System (EMIS) and the School Register of Needs Survey

This survey was initiated as one of the foundations of the Government's commitment to equity in education and improving the quality of learning and teaching. It provides a comprehensive database of schools and educational institutions and will be a useful instrument for planning the optimal use of facilities and, the allocation of resources, and for addressing the historical backlogs in physical facilities. On the basis of this survey schools are being provided with clean drinking water and sanitation, for example, 200 schools have to be provided with toilet facilities.

(k) The Act on Higher Education, White Paper on Higher Education and the Higher Education Act

These became available during 1997. The principle of accessibility is acknowledged. Higher education is not free, consequently a National Student Financial Aid Service (NSFAS) was established in 1996. The higher education institutions may levy fees but cannot discriminate in any way in admitting students to such institutions.

(l) The National Arts Council and Provincial Arts Councils

These Councils were established to develop all aspects of arts and culture which will also make provision for children. Community Arts Centres are being built and developed with RDP funds in the provinces. The Southern Africa Development Community (SADC) is also contributing towards a strategy for funding arts and culture. The Department of Arts, Culture, Science and Technology is developing a growth strategy for cultural industries to maximise the role of arts and culture in economic and social development which will include the contribution of children. Business Arts of South Africa is seeking to link business and specific art events. Several NGOs have developed various initiatives to promote art and culture amongst children.

(m) The South African National Games and Leisure Activities (SANGALA)

This is a child and youth focussed recreation project administered Department of Sports and Recreation.

(n) The Children's Broadcasting Forum

This forum has been established regionally. It aims at providing programmes in all the official languages. Access to electronic media is being expedited through RDP funding which is used for electrification projects in all the provinces. The Independent Broadcasting Association (IBA) to also makes provision for specific quotas of children's programmes on radio and television. The National Film and Video Foundation supplies schools with audio-visual material to supplement teaching in schools.

The Minister of Education hosted the 1996-Conference on Education for All in South Africa.

3.2.3 GROUP RIGHTS

3.2.3.1 Article 19 of the African Charter

All peoples shall be equal, they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

A. THE SOUTH AFRICAN CONSTITUTION

Section 181(1) (c) of the Constitution

This Section provides for the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Section 185 of the South African Constitution

This Section provides for the objective of such a Commission :

- (i) to promote respect for the rights of cultural, religious and linguistic communities;
- (ii) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
- (iii) to recommend the establishment or recognition, in accordance with national legislation, of cultural or other council or councils for a community or communities in South Africa."

B. LEGISLATION AND POLICY

- (a) The Department of Constitutional Development administers Section 185 and is responsible for the drafting of national legislation that will determine additional powers of the Commission as required by the Constitution. The Department is currently consulting stakeholders and interested parties as a forerunner to the drafting of the required legislation. Section 181 also gives effect to the right to participate in the cultural life of a community as provided for in Section 30 of the Constitution.

The Minister for Provincial Affairs and Constitutional Development announced in his Budget Vote to Parliament on 5 June 1998, that he intends to request Parliament and provincial legislatures to set aside a day for a special debate on this matter. This would be the launch of a great national debate on the establishment and the purpose of the Commission.

It was further proposed by the Minister that the debate should be followed by public hearings, preferably in the provincial legislatures, so as to enable organisations and members of the public to participate in and enrich the discussion. The culmination of the initial phase of an ongoing discussion should take the form of a national conference attended by representatives of cultural, linguistic and religious organizations and communities. This conference was held on National Heritage Day on 24 September 1998.

(b) Council of Traditional Leaders, Act, 1997 (Act 10 of 1997)

Section 212(2)(a) and (b) of the Act provides respectively for the establishment of Houses of Traditional Leaders in the provinces and for a Council of Traditional Leaders to promote amongst other things, matters relating to traditional leadership, and to advise national and provincial governments on matters relating to the customs of communities observing a system of customary law. Houses of Traditional Leaders have been established in terms of provincial legislation in six provinces and a Council of Traditional Leaders has been established in terms of the Council of Traditional Leaders, Act, 1997 (Act 10 of 1997).

C. OTHER MEASURES TAKEN BY GOVERNMENT

(a) Griqua Forum

During 1995-6, the Department undertook an investigation regarding the Griqua, interest groups and leadership. After various meetings with Griqua organisations, the Minister formally established a National Griqua Forum. A workshop on the accommodation of vulnerable communities was held on 23 to 24 May 1998. A meeting of the National Griqua Forum was held from 30 June to 02 July 1998 to draft a document on a proposed model regarding the constitutional accommodation of vulnerable or indigenous peoples.

(b) The Status Quo Report on Traditional Affairs

The Department has also commenced work on a discussion document for purposes of a White Paper on Traditional Affairs. The White Paper will look, amongst other things, at the role of traditional authorities as development agencies and their interrelationship with other development agencies. The proposed time-frame for the release of the discussion document is **December 1998**.

3.2.3.2 Article 20 of the African Charter

1. *All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.*
2. *Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.*
3. *All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.*

A. THE SOUTH AFRICAN CONSTITUTION

Section 235 of the Constitution provides that:

"The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation".

The Volkstaat Council

Section 184 A and 184 B of the **Interim Constitution** provided for the establishment of a Volkstaat Council with a mandate to examine, make recommendations, and advise the Government regarding self-determination in general, and the attainment of a Volkstaat for the Afrikaner nation. The Council was established on 2 December 1994 and its composition, powers, and functions are defined in the **Volkstaat Council Act, 1994** (Act No. 30 of 1994).

The Volkstaat Council receives its budget from the Department of Constitutional Development and therefore the Director-General of the Department is also the Accounting Officer of the Council.

The Council has been engaged in the following activities:

- Made submissions in the theme committees of the Constitutional Assembly
- Submission of a special report on group and individual rights
- Submission outlining the political and constitutional proposals of the Volkstaat Council
- Consultations with non-governmental organisations and interest groups
- Contact with foreign institutions and individuals on the subject
- Conducting research for the gathering of information on the subject

Publication of the results of both the research and the contact with other groups



3.2.3.3 Article 21 of the African Charter

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources.

A. South Africa's Economy

South Africa has a modern, well-diversified economy in which agriculture, mining, secondary industry, commerce and a broad structure of service establishments contribute to the wealth of the nation. Nearly 32 per cent of the Gross Domestic Product (GDP) is derived from secondary industry and policy-makers are devoting particular attention to sound, accelerated development of this sector. South Africa manufactures a wide range of consumer goods, including food products, textiles, footwear and clothing, metal and chemical products, and paper and paper products, while the volume of production of capital goods such as machinery, transport and electrical equipment has increased substantially since World War II.

On 26 July 1995, the Cabinet appointed a special committee charged with the task of devising a growth plan for South Africa's economy. The committee will concentrate on industrial development, infrastructure, the provision of social goods and services, and human resources. The South African economy is one of the most 'open' economies in the world, in the sense that foreign trade accounts for a much higher share of the Gross National Product (GNP) than in the case of many other countries. This also means that the economy is highly susceptible to trends and developments in the economies of major trading partners.

B. Agriculture

The Government is currently part of an international negotiation process under the auspices of the Food & Agriculture Organisation (FAO) on access to indigenous plant genetic resources for food and agriculture. This will eventually include terms of benefit sharing, should indigenous material be obtained and improved by foreign parties.

The Government has already adopted a national policy on the conservation and sustainable use of plant genetic resources and is currently busy with the implementation of strategies and action plans to enact legislation, which will eventually effect access control and benefit sharing mechanisms in respect of Farmers' Varieties (land races, traditional cultivators) and indigenous plant genetic resources for food and agriculture. This implies that the developers of plant genetic resources that originated in South Africa will have to negotiate terms of benefit sharing with the legal holder of intellectual property rights, or with the State in the absence of the letter, when such improved genetic resources are eventually commercialised in any way.

These concepts have already been approved in principle by the Executive Committee of the National Department of Agriculture and was deliberated by the National Plant Genetic Resources Committee on 30 September 1998. The relevant policy, strategies and derived action plans will be submitted to the Minister for Agriculture and Land Affairs. In the meantime, existing control measures in the provincial nature conservation set-up are used to restrict access to indigenous plant genetic resources as far as possible.

C. Lawful Recovery of Property

Section 25(7) of the South African Constitution provides that "A person or community dispossessed of property after 19 June 1913 as result of past racially discriminatory laws or practises is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable access." (*see under Article 14*)

3.2.3.4 Article 24 of the African Charter

All people shall have the right to a general satisfactory environment favourable to their development.

A. THE SOUTH AFRICAN CONSTITUTION

Section 24 of the Constitution provides that:

"Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of the present or

future generations, through reasonable legislative and other measures that-

- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."



B. LEGISLATION AND POLICY

(a) South Africa has enacted over 35 pieces of legislation on environmental issues. The major pieces of legislation are:

- Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965) as amended.
- Prevention and Combatting of Pollution of the Sea by Oil Act, 1981 (Act 6 of 1981) as amended.
- Dumping at Sea Control Act, 1980 (Act 73 of 1980) as amended.
- International Convention for the Prevention of Pollution from Ships Act, 1986 (Act 2 of 1986).
- Environmental Conservation Act, 1989 (Act 73 of 1989) as amended, this Act mandates the Minister of Water Affairs to control waste disposal sites by bearing the responsibility and keeping a register of these sites.
- Recently (on 1 September 1998) the Marine Living Resources Act, 1998 (Act No. 18 of 1998) came into operation. The Act among other things provides for the long-term sustainable utilisation of marine living resources and for the fair and equitable control over these resources to the benefit of all the citizens of South Africa.

(b) The White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity

This White Paper outlines South Africa's response to its obligations in terms of the Convention on Biological Diversity which was ratified by South African during November 1996, and articulates the country's policy and strategy towards achieving the objectives of the Convention.

(c) The White Paper on Environmental Management Policy for South Africa

This White Paper proposes an overarching environmental management policy which has as its vision a society in harmony with its environment. The policy seeks to unite the people, of South Africa in working towards a society where all people have sufficient food, clean air and water, decent homes and green spaces in their neighbourhoods, enabling them to live in spiritual, cultural and physical harmony with their natural surroundings. This requires a new model of sustainable development based on integrated and co-ordinated environmental management, in the recognition of the fact that development and environment are not in opposition to one another, but inextricably linked. In general the White Paper undertakes to give effect to the rights in the Constitution relating to the environment.

(d) A draft White Paper on Integrated Pollution and Waste Management for South Africa

This was published in August 1998 for comment. The vision for the policy contained in the draft White Paper is to develop, implement and maintain an integrated pollution and waste

management system which contributes to sustainable development and a measurable improvement in the quality of life through harnessing the energy and commitment of all South Africans for the effective prevention, minimisation and control of pollution and waste. The purpose of the policy is to serve as a subsidiary policy of the overarching environmental management policy set out in the White Paper on Environmental Management Policy for South Africa referred to above. As such, it details the Government's specific policy for pollution and waste management. One of the fundamental approaches is the prevention of pollution, minimisation of waste, control of impacts and remediation. The management of waste will be implemented in a holistic and integrated manner and will extend over the entire waste cycle, from cradle to grave, including the generation, storage, collection, transportation, treatment and final disposal of waste.

(e) Environmental law reform programme

The Department of Environmental Affairs is at present engaged in an environmental law reform programme aimed at the eventual adoption of legislation to give effect to the policies contained in the abovementioned White Papers and draft White Paper. One outcome of this project is already in an advanced stage, in the form of the **National Environmental Management Bill**, which is at present before Parliament. This Bill is scheduled to be passed by Parliament during 1998. The Bill establishes principles that directly and indirectly promote human rights in order to comply with section 24 of the South African Constitution. These principles are in line with the Charter.

Some of the main principles in the Bill are:

- promoting the environmental rights and other social and economic rights and in particular, the basic needs of persons disadvantaged by unfair discrimination.
- development must be socially, environmentally and economically sustainable
- avoiding pollution and degradation of the environment
- avoiding disturbance of the nation's cultural heritage
- promoting environmental justice
- equitable access to environmental resources
- ensuring environmental health and safety
- providing for public participation in environmental governance
- community well being and empowerment
- the social, economic and environmental impacts of activities must be considered, assessed and evaluated
- protection of the rights of workers
- recognition of the vital role of women and youth in environmental management

Other proposed legislative measures within the scope of the environmental law reform programme deal with the following:

coastal zone management



- pollution and waste management
- sustainable development
- endangered species
- wetlands
- protected areas/biodiversity

The Bills that will be drafted to address the abovementioned topics will contain provisions to improve the protection of the rights of women, children and other disadvantaged groups.

C. INTERNATIONAL INSTRUMENTS

- (b) In May 1994, South Africa became a party to the Basel Convention, which will, from January 1998, ban imports of toxic waste by developing countries from industrial countries.
- (c) South Africa has acceded to the Montreal Protocols for the Protection of the Ozone Layer and has a, such undertaken to implement the requirements of this Protocol in South Africa.
- (d) South Africa has also ratified the Convention on the Control of Trans-boundary Movements of Hazardous Waste and their Disposal and the Convention on Biological Diversity (CBD).
- (d) Sea Fisheries in South Africa is currently bound to the following international conventions:
 - The International Whaling Convention;
 - The Convention for the Conservation of Antarctic Marine Living Resources;
 - The London Convention on dumping at sea;
 - The International Commission for the Conservation of Atlantic Tuna; and
 - The UN Law of the Sea

D. WATER POLLUTION AND FORESTRY DEVELOPMENT

In respect to water pollution, Government has the duty to make sure that water pollution is prevented, that there is sufficient water to maintain the ecological integrity of our water resources and that water conservation and sustainable justifiable economic and social developments are promoted.

An estimate of 21 million South Africans do not have adequate sanitation facilities. Inadequate sanitation impacts on the water quality of the countries' water resources and also on the health and well being of the population. For this reason water supply and sanitation are linked as part of the broader development process and this is why the Department of Water Affairs

and Forestry is undertaking the responsibility of assuring that all South Africans have access to adequate sanitation services. The following legislation is relevant:

(a) National Water Act, 1998 (Act 36 of 1998)

This Act will ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate. The Minister is ultimately responsible for ensuring that water is allocated equitably and used beneficially in public interest, while promoting environmental values. In the determination of the resource quality objectives, a balance will be sought between the need to protect and sustain water resources on the one hand and the need to develop and use them on the other. The Act also makes provision for the essential needs of individuals such as water for drinking, for food preparation and for personal hygiene as well as for the water required to protect the aquatic ecosystems. The reserve refers to both the quantity and quality of the water required.

(b) White Paper on Sustainable Forest Development in South Africa

This White Paper realises the right of everyone to have the environment protected, for the benefit of present and future generations, through reasonable legislation and other measures that secure ecologically sustainable development and the use of natural resources, while promoting justifiable economic and social development. At least two million rural households in South Africa have long gained benefits from trees and associated resources. However, these resources are in decline. Although there are notable successes, community forestry efforts in South Africa and elsewhere have frequently failed to reverse the decline in resources and to impact on improving livelihoods. In redressing this the White Paper emphasises the necessity:

- i. to consider community forestry essentially within the context of rural livelihoods systems;
- ii. to recognise that community forestry has two components, i.e. tree planting and the management of natural forest and woodland resources;
- iii. for Government to continue to support community forestry initiatives; and
- iv. for community forestry extension services to be integrated in a wider unified extension services.

(c) The National Forests Bill

This Bill was tabled in Parliament, it acknowledges the right to have the environment protected for the benefit of present and future generations. The Bill recognises that natural forests and woodlands form an integrated part of the environment and need to be conserved and developed according to the principles of sustainable management. The Bill further recognises



that the economic, social and environmental benefits of forests have been distributed unfairly in the past and it therefore promotes the sustainable management and development of forests for the benefit of all. It also promotes community forestry.

3.2.4 RIGHT TO DEVELOPMENT

Article 22 of the African Charter

1. *All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*
2. *States shall have the duty, individually or collectively to ensure the exercise of the right to development.*

A. United Nations Declaration on the Right to Development

Article 1(1) of the United Nations Declaration on the Right to Development defines the right to development as follows:

"the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realised."

Art 8(1) deals with the duty of states at the national level and provides that

"States should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment, and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be made with a view to eradicating all economic and social injustices."

B. The Reconstruction and Development Programme (RDP)

The RDP is the embodiment of the commitment of the South African Government to the elimination of poverty in a rapidly growing economy and in the context of an open, peaceful and democratic society. For this vision to materialise, policies must be oriented towards the provision of basic needs, the development of human resources, and a growing economy capable of creating sustainable jobs. The success of the RDP is inherently bound by the Government's ability to generate this development and redistributive thrust within a sound fiscal and macro economic framework. The fundamental principles of the Government's economic policy are democracy, participation and development.

The central goal of reconstruction and development is to create a strong, dynamic and balanced economy in order to

- eliminate poverty, low wages and extreme inequalities in wages and wealth generated by the apartheid system, and to meet basic needs to ensure that every South African has a decent living standard and economic security
- develop the human resource capacity of all South Africans so that the economy achieves high skills and wages
- ensure that no one suffers racial or gender discrimination in hiring, promotion or training situations
- address economic imbalances and structural problems in industry, trade, commerce, mining, agriculture, finance and labour markets
- democratise the economy by encouraging broader participation in decisions
- address economic imbalances and uneven development within and between the regions in South Africa
- create productive employment opportunities at a living wage for all South Africans
- develop a prosperous and balanced regional economy in southern Africa based on the principles of equality and mutual benefit.
- integrate into the world economy.

Central to the RDP document is that the economy cannot be built in isolation from its Southern African neighbours. The RDP stresses that if South Africa attempts to dominate its neighbours it will restrict their growth, reducing their potential as markets, worsening their employment and causing increased migration to South Africa. However, mutual cooperation will lead to the development of a large stable market offering stable employment and common labour standards in all areas.

In order to give effect to the goals of the RDP, an RDP Fund was established in terms of the RDP Fund Act, 1994 (Act 7 of 1994). Through consultation with national departments and provinces, 22 Presidential Lead Projects were identified, planned and budgeted to kick-start the delivery. These programmes are paid for jointly by the RDP fund and departmental and provincial budgets. These projects include⁶ :

- Land reform, restitution and redistribution : Pilot schemes allocating land to the rural poor, return of land to dispossessed communities and the provision of land to specific communities (*see under Article 14*)
- Small farmer development: Intensive training programmes to help put small farmers back on the land
- Urban renewal: Development projects focussed on the most crisis-ridden areas

South African Year Book 1996, South African Communication Service, Page 56-57



- Promoting a culture of learning: Renovation of schools combined with programmes to promote school governance structure, improved attendance and community involvement in education. A major adult education and training programme was also launched (*see under Article 17*)
- Free health care services and a clinic building programme: Free health care for children and pregnant women with no medical aid (*see under Article 16*)
- Rural water and sanitation: Focuses on supplying water to areas with the greatest need
- Upgrading and extending municipal services: Support to transitional local councils to help them deliver services to their communities
- Other projects include electrification, capacity building, Aids awareness, a primary school nutrition programme, national information project and national reconstruction and housing agency.

C. GEAR (Growth, Employment, And Redistribution)

The GEAR strategy is an economic reform programme that is directed towards :

- a competitive fast growing economy which creates sufficient jobs for all job seekers;
- a redistribution of income and opportunities in favour of the poor;
- a society capable of ensuring that sound health, education and other services are available to all; and
- an environment in which homes are safe and places of work are productive.

Central to the GEAR strategy is investment and job creation. Whilst the RDP's general objectives are to meet the basic needs of the people of the country, develop the country's human resources, and increasing democracy and participation in society, the GEAR strategy deals with how the economy should operate in order to facilitate such objectives. GEAR therefore deals with aspects such as fiscal and monetary policy, trade policy, industrial and small enterprise policy, public investment and asset restructuring, and social and sectional policies.

D. National Development Agency (NDA)

The NDA is a planned grant making, policy development and research statutory institution which is being established for the purpose of supporting civil society organisations in their efforts in development, poverty alleviation and the advancement of democracy in South Africa. The NDA is a long term institutional mechanism that will promote partnerships between the South African Government and Civil Society.

In order to facilitate the establishment of the NDA, a draft NDA Bill has been produced. The objectives of the Bill are to establish -

- a funding mechanism that allows for the transfer of government and other funds to civil society, to be used for developmental purposes and

a forum or instrument for policy dialogue and the exchange of policy information regarding the civil society sector.

The envisaged Bill makes provision for a statutory structure. The structure will have a governing board comprising of six government representatives and nine members from civil society organisations. There will be a Chief Executive Officer to manage the grant making and policy dialogue/ research functions of the NDA. The political accountability of the structure will be to Parliament through the Ministry of Finance.

E. Centre for Small Business Promotion (CSBP)

The mission of the Centre for Small Business Promotion (CSBP) is to implement and monitor and evaluate the effectiveness of the National Small Business Strategy. The aim of the strategy is to contribute to job creation, income generation, the redistribution of wealth and overall economic growth. The Department of Trade Industry is the relevant state department concerned with the CSBP.

The CSBP has set out to achieve the above through the creation of an enabling legal environment and sustainable institutional framework that facilitates increased access to support programmes and services that small, medium and micro enterprises (SMME's) require in the areas of finance, training, markets, technology, infrastructure and information. Key agencies have been established under the institutional framework. These are Khula Enterprise Finance Limited (Khula), which facilitates access to finance for SMME's; the Ntsika Enterprise Promotion Agency (Ntsika), which facilitates non-financial support services for small businesses; and the National Small Business Council (NSBC), responsible for SMME representation and advocacy.

The CSBP is responsible for the provision of funding for small business support agencies, the development of support programmes in co-operation with implementing agencies, policy, research, monitoring and evaluating the impact of programmes.

(a) Access to Finance

Access to finance has been widely considered to be a major constraint for the growth of SMME's. In recognition of this constraint, the CSBP established an institutional support framework and introduced a system of subsidies and incentives to leverage greater private and non-governmental sector investment in the SMME sector. However, certain constraints have hampered the flow of funds to SMME's. These include the lack of financial service providers in rural areas, the limited amount of small-scale and start-up equity being provided, the low level of involvement of commercial banks in the SMME sector, the lack of coordination



between financial and non-financial service provision, as well as the limited outreach of micro enterprise finance institutions in the country. The limited number of financial products on the market is a further constraint. The almost complete lack of finance available to SMME's in the loan ranges between R 10 000,00 and R 50 000,00 poses a significant challenge. The CSBP has begun a process of addressing these constraints.

(b) The Business Referral and Information Network (BRAIN)

"Easy access to information" was identified in the White Paper on the National Strategy for the Development and Promotion of Small Business (1995) as one of the most important issues that required attention. The CSBP has made extensive progress with regard to the implementation of information for SMME's.

The centres are currently being piloted with a view to establishing centres on a country wide basis during the 1998/99 financial year.

(c) Publications by the CSBP

The CSBP published the following publications during the 1997/98 financial year:

- A "Guide to Exporting for SMME's". This booklet provides a comprehensive guide on exporting, including taking the SMME through the complete export cycle.
- "Potential Small Business Partners Booklet" which provides a number of SMME company profiles for overseas importers and potential joint venture partners.
- 9 Provincial SMME Service Providers Directories.
- National SMME Service Providers Directory. This directory combines the provincial directories into a national reference directory.
- Various Succeed SA inserts on exporting and finance for SMME's

(d) Small Business Help Line and Your Own Business Television Programme

As a further means to providing SMME's with information, the CSBP established the Small Business Helpline and supported the "Your Own Business" television Programme.

(e) The National Small Business Regulatory Review

The White Paper details that inappropriate or unduly restrictive legislative and regulatory conditions are critical constraints to SMME's entering business and can restrict their growth. Since government is responsible for the legislative and regulatory framework and its continued amendment, it is its role to ensure the appropriateness of these rules and regulations for the small business sector.

As a result, the CSBP has initiated the establishment of the National Small Business Regulatory Review. The review will be overseen by an Advisory Board that will advise

government on the legal and regulatory framework that impacts on small business development. The board comprises representatives of the public and private sector.

(f) The Second National Conference on Small Business

Since the adoption of the White Paper in 1995, SMME support policies and programmes have largely been driven by national government and implementing agencies as well as provincial government. Due to the important role that local economic development can play in overall development and the necessity for SMME's to thrive within their local economies, the CSBP began a process of involving local authorities in SMME development. The process was launched with a six month outreach programme that included consultations and information sessions with local government officials. This culminated with the hosting of the Second National Conference on Small Business which was held in Durban at the International Convention Centre from 3-7 November 1997. The conference was co-hosted by the Department of Trade and Industry, in conjunction with the Department of Provincial Affairs and Constitutional Development, and the South African Local Government Association (SALGA). The conference was sponsored by the Royal Danish Government.

(g) Financial loans provided by the Small Business Development Corporation (SBDC)

During the period between 1 April 1997 to 31 March 1998, the SBDC granted 896 loans to the value R 304 640 000,00. A regional breakdown in terms of the SBDC defined regions shows that the largest number of loans were issued in Kwa-Zulu/Natal, Free State and the Western Cape regions. Across all the regions, it is evident that the SBDC has moved away from the micro-market, with average loan sizes and the business sizes increasing, in line with the policy decision taken by the Board of Directors.

Of particular importance is the number of jobs that have been facilitated, amounting to 13 401 for the financial year. The following table provides a breakdown of the above figures:

Region	Number of Investments	Value of Investments	Average Size of Investment	Employment Opportunities Promoted	Previously Disadvantaged Clients	
					Actual 97/98	Target 98/99
Central	109	R 38 910 000	R 356 972	1 737	30%	40%
North East	111	R 47 030 000	R 423 694	1 387	22.7%	36%
Western Cape	162	R 57 720 000	R 356 296	1 870	18%	35%
Eastern Cape	86	R 35 360 000	R 411 163	1 567	11.9%	30%
KwaZulu/Natal	221	R 70 090 000	R 317 149	3 656	34.5%	45%
Free State	207	R 55 530 000	R 268 261	3 184	4.9%	25%
	896	R 304 640 000	R 340 000	13 401	21%	36%



(h) Programmes under the Ntsika Enterprise Promotion Agency

Ntsika facilitates the provision of the following support programmes and services:

- A network of Local Business Service Centres (LBSC's) has been established to provide services such as business advice, counselling, training and mentorship on a local level.
- Marketing and linkages through a network of Tender Advice Centres (TAC's).
- Access to technology including the establishment of Technopreneur Cocoons and Manufacturing Advisory Centres (MAC's).
- Targeted assistance programmes for rural women, the youth and disabled entrepreneurs.

The following provides a summary of the results of the programmes and services that have been facilitated by Ntsika:

Programme/Service	Numbers Assisted
1. Local Business Service Centres (LBSC's)	
1.1 Capacity Building of LBSC's	Capacity of 70 service providers enhanced Over 175 service providers trained
1.2 Service delivered to SMME's	Over 12,000 entrepreneurs provided with services in areas such as business advice, counselling, training etc.
2. Markets	
2.1 Tender Advice Centres	12 Tender Advice Centres Established Procurement advice booklets printed.
3. Technology	
3.1 Technopreneur Cocoons	Business Cocoons established in 11 Technical Colleges. 160 Technical College teachers trained 420 youth have been provided with support
3.2 Manufacturing Advisory Centres	2 Manufacturing Advisory Centres established in East London and Durban
4. Targeted Assistance	
4.1 Targeted support for rural women, youth and disabled entrepreneurs.	Over 600 rural women, youth and disabled entrepreneurs provided with assistance

(i) **Programmes under the National Small Business Council (NSBC)**

The NSBC is responsible for the following programmes:

- The Chamber Development Programme which is designed to strengthen the capacity of business chambers. The programme will promote small business membership and representation within business chambers by building their capacity and encouraging a united voice for SMME's within each town.

F. LOCAL GOVERNMENT

(a) White Paper on Local Government

The Department of Constitutional Development is also responsible for Local Government as provided for in Chapter 7 of the Constitution of the Republic of South Africa. During March 1998 the Department of Constitutional Development published the White Paper on Local Government. Within the framework of the Constitution, this White Paper establishes the basis for a new developmental local government system, which is committed to working with citizens, groups and communities to create sustainable human settlements which provide for a decent quality of life and meet the social, economic and material needs of communities in a holistic way.

Within the context of creating sustainable local government, the White Paper envisages metropolitan government to address extreme inequalities which are the result of insufficient tax-bases. District government will be introduced in non-metropolitan areas for those areas without the capacity or tax-base to deliver all municipal functions.

(b) Other Policy initiatives on Local Government Development

There are several programmes managed by the Department of Constitutional Development which have been designed to develop communities and improve the lives of citizens. These are some of the projects:

i. The Municipal Infrastructure Programme (MIP)

The Municipal Infrastructure Programme (MIP) was initiated by the South African Government as a part of the once-off grants made at the inception of the Reconstruction and Development Programme. The goal of the MIP has been to rehabilitate, upgrade and provide new municipal infrastructure to meet the basic needs of communities as quickly and effectively as possible. Furthermore, the MIP was expected to initiate a process whereby the developmental capacity of municipalities could be enhanced in a sustainable manner, while promoting their financial viability and democratisation. The objective of the MIP has therefore been to improve the quality of life of the poorest sections of South African communities through ensuring access to at least a basic level of services.



The Municipal Infrastructure Programme (MIP) received 1,3 billion rand for the 1995/6 financial year. Capital grants were allocated according to population, unemployment, poverty index, surface area and skills needed in the various provinces. The grants were aimed at funding the installation of new, as well as upgrading and rehabilitating existing, bulk and connector infrastructure. Project types that were considered for the programme included: water, sanitation, roads, refuse, electricity and community healthcare facilities.

ii. **Municipal Infrastructure Investment Framework (MIIF)**

In order to assist local authorities in planning their infra structural investment, the Department of Constitutional Development has prepared a Municipal Infrastructure Investment Framework (MIIF).

The MIIF covers the following activities of local authorities:

- the extension of internal bulk and connector services for water supply, sanitation, roads, storm water, energy and solid waste disposal;
- the upgrading of areas without adequate services by introducing new services or rehabilitating existing services that are not functioning;
- the installation of services for new residential developments;
- the installation of services in rural settlements; and
- the provision of services to farm-workers on commercial farms.

iii **Local Economic Development (LED)**

The Local Economic Development (LED) programme aims to harness the resources of local communities for purposes of economic growth, job creation, and development.

The LED focuses in particular on:

- **Economic Growth:** Promote Investment in Jobs, New Growth Sectors, Support for Innovation
- **Broadening Ownership:** Mobilise Support for Small Enterprise Development, Community Co-operatives and Corporations.
- **Spatial Integration:** Mixed-income Development, Linking Town and Township, Investment in Public Transport.
- **Addressing Backlogs:** Infrastructure Investment Plan for Basic Services.
- **Reducing Inequality:** Special Programmes to Target Poverty.
- **Rights and Responsibilities:** Socio-Economic Rights, Payment for Services According to Affordability.
- **Efficient Government:** Performance Standards: Quality of Outputs, Speed, Responsiveness, Work with Labour to Improve Services.
- **Civic Pride:** Community Participation and Partnerships.

iv Masakhane

The Masakhane campaign is a government-driven project launched by the President in 1995 to accelerate the transformation and democratisation of local communities within the framework of the Reconstruction and Development Programme. Its objectives include:

- To mobilise public, private and community resources to contribute towards development
- To encourage community participation in the development of their areas.
- To educate the public about their rights and responsibilities.
- To encourage the formation of partnerships and foster co-operation.
- To promote nation-building and a democratic culture.
- To encourage civic responsibility in order to accelerate transformation and development.

3.2.5 ACTIONS TAKEN OR BEING EMBARKED UPON TO IMPROVE THE PROTECTION OF THE RIGHTS OF THE FOLLOWING GROUP

Article 18 of the African Charter

1. *The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health.*
2. *The State shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community.*
3. *The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of woman and the child as stipulated in international declarations and conventions.*
4. *The aged and the disabled shall also have the right to special measures of protection in keeping with their physical and moral needs.*

A. CHILDREN

The Convention on the Rights of the Child (CRC) was ratified by Parliament on 16 June 1995. Within a year of this event the President, a Core Group of Ministers, other government leaders together with representatives of civil society launched the National Programme of Action: A Framework (NPA). Subsequently the provinces launched respective Provincial Programmes of Action for Children (PPA). A Cabinet decision determined that an annual report be prepared by the NPA Steering Committee (NPASC) as a key instrument for monitoring and improving NPA implementation and its commitment to the principle of First Call for Children.



i. South Africa's commitments to children

In South Africa, the government and various non-government organisations and alliances have made a number of commitments to children. These include -

- the development of a situation analysis (1992), an Agenda for Action (1993) and an outline for a National Programme of Action for Children in South Africa (1994) (NPA) (under the auspices of the National Committee for the Rights of Children and with the support of the United Nations Children's Fund (UNICEF);
- the adoption of the principle of a "first call for children", reflected in a statement that the needs of children must be paramount throughout the Reconstruction and Development Programme (RDP);
- the acceptance of the World Summit goals for the survival, protection and development of children, adapted to the needs of South African children;
- the establishment of an inter-ministerial committee to guide the development of a National Programme of Action for children (1995);
- the ratification of the Convention on the Rights of the Child (1995); and
- the approval of the NPA framework and its implementation by relevant government departments (April 1996).

The National Programme of Action for Children in South Africa (NPA) thus represents the culmination of all efforts towards promoting well-being of children. It provides a framework for giving children political priority, making them visible, implementing and monitoring the impact of co-ordinate and effective action, while promoting children's rights to protection, development, survival and participation in society.

ii. The conceptual framework of the National Programme of Action

The framework adopted for the implementation of the NPA is underpinned by the recognition that attainment of children's rights is fundamental to any plan for promoting the well-being of children. Thus the basic principles which guide the NPA are derived from the Convention on the Rights of the Child. This human rights instrument provides a detailed set of standards and principles against which to test laws, policies and practices affecting children.

Within the NPA, seven policy priorities have been identified for child-directed action.

POLICY PRIORITIES OF THE NPA

- *nutrition*
- *child health*
- *water and sanitation*
- *early childhood development and basic education*
- *social welfare development*
- *leisure and culture*
- *child protection*

Using the Convention on the Rights of the Child as the basis for the analysis of problems and definition of strategies ensures that certain basic principles, viz

- the non-discrimination principle (Article 2);
 - the best interests principle (Article 3); and
 - rights to participation in decision-making (Article 12)
- are considered in relation to all services affecting children.

It also provides a framework for inter sectoral and interdepartmental collaboration which is focussed on the needs of children, rather than the specific interests of the concerned sector or department.

iii. Structure of the NPA

Each of the seven priority policy areas includes the following structure to guide implementation⁷:

- Goals for children within that policy area (some of which overlap with the World Summit Goals)
- Relevant articles in the Convention on the Rights of the Child
- Responsible lead and supporting sectors
- National strategies
- Measurable targets for achievement and related indicators
- Estimated resource requirements
- Sources to be mobilised
- Monitoring plan

iv. Decentralisation of the NPA

The National Programme of Action for Children is aimed at improving the well-being of children throughout the country, and its intent is to ensure local action and involvement in the process. While the long-term goal is to ensure the establishment of local committees for children, the immediate strategy towards this end was the establishing of provincial programmes for children, with structures to oversee the development, implementation and monitoring of plans.

These provincial structures replicate the national structure, and provinces are represented on the national steering committee as well as on the work groups of that committee.

⁷ Implementation plans of the relevant government departments is attached hereto as an annexure, Progress Report to the President, 1997.



B. WOMEN

South Africa signed Convention on the Elimination of all Forms of Discrimination against Women in January 1993 and ratified it on 15 December 1995, without entering any reservations, in spite of all the differences in religion and cultures.

As soon as the new Government took over, an Office on the Status of Women was set up in the President's Office. The mandate of that Office was to develop a women's empowerment policy for the new Government. That project was coordinated by one of the better known non-governmental activists. The research done in that Office resulted in the emergence of some consensus on the nature of national machinery we needed for South Africa.

The Government also set up a co-ordinating secretariat for the Fourth World Conference on the Status of Women. This secretariat was located in the Ministry for Welfare and Population Development and coordinated both the pre- and post-Beijing activities of Government.

To actualize the Constitutional requirement with respect to gender, men and women embarked on an extensive consultation aimed at mainstreaming gender into a transforming society. Central to these consultations was a review of the best mechanisms and best practices that could be applied in the South African context to ensure gender transformation. These best practices were translated into an action programme which is commonly referred to as the "national machinery". This national machinery is composed of a variety of structures operating from the premise that transformation and reconstruction cannot be complete without transforming gender relations.

A multi-pronged approach to gender mainstreaming was imperative to accomplish the constitutional objectives. This meant the utilization and creation of structures at all levels of society aimed at changing gender relations. Consequently, the national machinery is composed of a multiple set of structures located at different levels of our society to execute specific functions which collectively should result in gender equality. The structures within and outside Government comprises:

- Office on the Status of Women;
- Gender Focal Points and Structures on government departments;
- Committee on the Quality of Life and Status of Women in Parliament;
- Independent Bodies: Commission on Gender Equality; Human Rights Commission; and,
- A strong Women's Movement.

The key structures are the Office on the Status of Women (OSW) and the Commission on Gender Equality (CGE).

In accordance with the recommendation of the women's movement, the OSW, at national level is replicated by OSWs at provincial and ultimately at local government level. The OSW functions through Gender Focal Points at departmental level.

Both structures were established in January 1997 to ensure that the constitutional and transformational objectives of gender equality are translated into real and meaningful government programmes.

The location of these structures was very carefully thought through. At the request of the Women's Movement, the OSW is located in the Office of the Deputy President with a mandate to undertake internal and external transformation of government. The Commission on Gender Equality is charged with changing the culture and mindset of all society.

Since January 1997, the OSW has accomplished the following:

- Production of a framework for activating the OSW mandate.
- Production of first draft of the National Policy Document.
- Development of a National Plan of Action.
- Development of six provincial plans.
- Standardization of approach among provincial OSWs.
- Development of a comprehensive Capacity Building Strategy.
- Development of a draft Gender Audit Framework.
- Development of Framework for compiling the bi-annual Status of Women Report.
- Identification of clear areas of operation.
- Development of performance indicators for the national and provincial OSWs.
- Identification of priority cross-cutting programmes; and
- Initiation of a capacity building process for provincial OSWs.

South Africa began to repeal discriminatory laws before the 1994 elections in order to facilitate the elections, and our report refers to legislation significant to women. These include the General Law Fourth Amendment Act (1993), The Prevention of Family Violence Act (1993), and the Guardianship Act.

At a sectoral level government departments are largely responsible for initiating legislation. Where departments are aware of discriminatory provisions they generally address these in their White Papers and continue to review existing legislation on an on-going basis to ensure that gender equality is not violated. In addition, Government has adopted a National



Framework for a Plan of Action on Human Rights which, among other things, provides for systematic promulgation of alternative legislation.

i. ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

The South African Constitution allows for special measures to be taken to correct past imbalances. Some of the measures adopted are to be found in legislation such as the Labour Relations Act (1995), the Basic Conditions of Employment Act (1997), and the Employment Equity Bill (1997), and some in government policy generally.

Many government departments have also set internal targets to accelerate the entry of women into the public service. One of the Government's foremost tasks post-1994 has been to transform the Public Service into an efficient and effective instrument capable of delivering equitable services to all citizens and of driving the country's economic and social development. However, the Government inherited a Public Service characterised by ineffectiveness, unfair discrimination and division on the basis of race and gender, and which virtually excluded people with disabilities, and a service which lacked legitimacy and credibility in the eyes of the majority of South Africans.

The Constitution requires, among other, that the composition of the Public Service be broadly representative of South African society. In 1995, the composition of the population of South Africa stood at 75% African, 13% White, 9% Colored and 3% Indian people. Women, just over half (51%) of the entire population, comprised 76% African women, 12% White women, 9% Colored women and 3% Indian women. Accelerated measures to achieve racial equality are moving faster than those for gender equality at least with regard to representativeness.

ii. COMMISSION ON GENDER EQUALITY

The Commission on Gender Equality has a major advocacy and public education role. Among the tasks of the Commission on Gender Equality is to evaluate "any system of personal and family law or custom; any system of indigenous law, custom or practices or any other law", so as to make recommendations to Parliament. One of the first activities of the Commission was a series of hearings on culture, tradition and religion. South African women are speaking out against those aspects of tradition which they find oppressive. The Commission designed and launched a public campaign on gender in the media. It has successfully challenged a Muslim radio station which barred the voices of women, and will make representations to the Constitutional Court on this matter.

iii POLITICAL AND PUBLIC LIFE

In the 1994 elections, the adoption of a quota by the now ruling African National Congress, led to a dramatic change in the representation of women in Parliament, although women are still under-represented in other areas of public life.

The **National Assembly** has 400 seats of which 111, or 27%, are held by women, and a similar pattern is reflected in the **provincial parliaments** where women comprise 102 (24%) of the 425 members. Women occupy the post of Speaker and Deputy Speaker in the National Assembly.

A gender framework has been institutionalised through three groups in Parliament which strengthen parliamentarians, and to ensure that gender issues are systematically taken into account in all legislation. The impact of women in parliament has been significant.

For example, in the Constitutional Assembly which ushered in the new Constitution, women ensured specific provisions for gender equality, affirmative action, freedom and security, socio-economic rights and the provision that equality takes precedence over contradictory provisions in customary law.

There has been a steady increase in the number of women ministers and deputy ministers in Cabinet. Prior to the 1994 elections there was only one woman minister and one deputy minister. Currently, 4 out of 25 ministers are women, 8 out of 13 deputy ministers. The report details significant gender programmes which have been driven by these ministers and deputy ministers.

At a local government level, the figures for the representation of women are lower than that for national and provincial levels, but they still compare well with global statistics.

In the **judiciary**, none of the 18 judges in the Appellate Division of the Supreme Court are women, two of the eleven in the Constitutional Court are, one in the Land Court, while the representation is very low for other the High Courts in the various provinces. A position paper on the Transformation of the Judiciary has been developed.

iv. GENDER-BASED VIOLENCE AGAINST WOMEN

The Constitution guarantees all "the right to freedom and security of the person which includes the right to be free from all forms of violence from either public or private sources, not to be tortured in any way and not to be treated in a cruel, inhuman or degrading way". The



Constitution further guarantees "the right to bodily and psychological integrity". There have been several achievements to date.

(a) Constitutional framework

An enabling Constitutional framework and a commitment to implement human rights norms are in place. The prevention of violence against women is one of the key areas in the South African National Plan of Action on the Protection and Promotion of Human Rights which is being developed in compliance with the Vienna Declaration (1993). This plan will be submitted to the United Nations in December 1998.

(b) Legislation

Violence against women is a crime like any other crime. Forms of violence against women include domestic violence, sexual violence, witch-hunting and burning, sexual harassment, etc., and are included in various general laws which seek to regulate crime. Aspects of violence against women are integrated in civil law. Examples include the Family Violence Act in so far as interdicts are concerned and delictual claims in regard to assault and other damages arising from violence.

However, the general legal system is inadequate to deal with violence against women. In fact, Government has issued numerous policy pronouncements, acknowledging violence as the greatest impediment to women's enjoyment of human rights. The prevention of violence against women is regarded as a priority matter in the National Crime Prevention Strategy. The National Crime Prevention Strategy is a government led inter sectoral and integrated initiative involving all role-players in the criminal justice system and aimed at fighting crime aggressively and effectively.

The issue of violence against women was also highlighted as a priority in government commitments in regard to the implementation of the Beijing Platform for Action. Several challenges have been identified to ensure an effective and efficient response to violence against women. Recent reforms which have been introduced or are in the process of being introduced, to address the **gaps in law and policy**, include the following:

- Criminal Law Amendment Act (1991): enables special treatment of young witnesses;
- Criminal Procedure Amendment Act (1996): enables shortened processes which improve access to justice by reducing delays;
- Criminal Amendment Act (1996): limits the granting of bail in particular including gender-based violence;
- Minimum sentences legislation: includes sexual offences amongst the serious crimes requiring minimum sentences; and,
- Policy Guidelines for handling victims of sexual offences: developed and implemented in 1997.

- Work in progress includes:
- Domestic Violence Bill (1998): addresses gaps in the current Family Violence Act. Provisions deal with easier access to protective orders, more swift action regarding arrest, including cases where a warrant of arrest has been lost, free services and protection from stalking.
- Sexual offences legislation: to redefine crimes such as rape and review evidentiary rules. Courts have abolished the so called Cautionary Rule.
- Comprehensive policy statement and guidelines establishing a code of conduct for best practices in service delivery with regard to violence against women.

(c) Institutional and administrative issues relating to victim empowerment

Recent thinking on crime prevention measures as encompassed in the National Crime Prevention Strategy (NCPS), promotes a victim centered approach to crime prevention which places the rights and needs of the victims or survivors at the center of the strategy.

Various government departments are addressing these issues as part of their service delivery improvement initiatives in compliance with the White Paper on the Transformation of Service Delivery. These issues are also being addressed in an inter-sectoral Victim Empowerment Programme and sectoral plans on victim empowerment.

A holistic policy on victim empowerment aimed at integrating and consolidating initiatives is already being implemented by service providers within and outside government.

(d) Dispute resolution arrangements

The current judicial system leans too strongly towards adversarial dispute resolution. The South African Law Commission has been commissioned to review dispute resolution in all areas of law including crime relating to violence against women. It will identify alternative dispute resolution strategies which are more responsive to people's day to day experiences and which serve to build relationships in circumstances where there is a breakdown. The investigation is also looking into more appropriate remedies which compensate victims effectively and will explore the feasibility of a victim compensation fund.

(e) Other initiatives

The Government is mindful of the general limitations of the current criminal justice system to deal with the specialists nature of certain forms of violence against women, such as domestic violence and sexual violence. Government's response to this challenge involves a move towards specialist services. Current initiatives in this regard, include:

- a pilot project on sexual offences courts, which is currently based in the Western Cape. This project has been running for more than two years and is being evaluated with a view to expanding this service.



- specialist chambers in courts or specialist service providers within a multi focused court.
- A policy decision to establish a unified family court and a pilot project is being implemented. Pilot sites have been established in six rural and urban centers. The process of developing long term legislation on this matter has commenced. Legislation should be in place by the end of 1999.

South Africa also hosted a SADC Regional Conference on the Prevention of Violence against Women and Children. It looked at improved co-ordination, monitoring and the sharing of best practices. The conference emerged with a SADC Declaration on the Prevention of Violence against Women and Children as well as an accountability framework. The latter summarises critical areas for intervention and provides a framework for monitoring delivery and for holding government departments accountable.

v. EDUCATION

Measures introduced in this regard are twofold: community outreach and training of service providers. An area that still requires attention is an effective complaints mechanisms to empower the public to enforce service standards. Outreach programmes undertaken since 1994 include the following, *inter alia*:

- Launch of campaign on "No Violence against Women" in November 1996 (International Day of No Violence against Women);
- Open Court Day, March 1997;
- White Ribbon Campaign, 1997;
- Men's March, 1997;
- Taxi Net Campaign 1998; and,
- Constitutional Week (May 10 - 27): A focus on the girl-child was sponsored by the Department of Justice within a broader campaign on children. The campaign involved posters, pamphlets, media releases and school visits by judges (including judges from the Constitutional Court), magistrates and other key service providers. It has resulted in schools requesting that this be an ongoing venture.

vi. INITIATIVES WHICH PROVIDE TRAINING TO SERVICE PROVIDERS INCLUDE:

- "train the trainer" courses co-ordinated by Justice College, on the sexual offences guidelines, and a programme to reach all relevant service providers throughout the country by 1999;
- materials development programme on all issues on violence against women coordinated by Justice College, in partnership with NGOs;

- human rights training programme offered by the Department of Safety and Security to police officers;
- NGO efforts to train service providers; and,
- course on "Race, Gender and Sexual Context" offered under the auspices of the Justice College.

C. DISABILITY PROGRAMME

The 1994 elections in South Africa heralded a new era for all citizens of the country. Expectations were high and people with disabilities realized that advocacy around the inclusion of disabled people in the reconstruction and transformation of South African society had to be increased and backed with sustainable mechanisms within government.

The Reconstruction and Development Programme of the Government provided the guidelines for the transformation of South African society. The RDP White Paper committed government to "design, in consultation with disabled people, a comprehensive programme for the disabled which will enhance their engagement in society and remove discriminatory practices against them, especially in the workplace."

i. Aims and Objectives of the Disability Programme

The aims of the Disability Programme was to develop a framework for a comprehensive, integrated and sustainable national disability strategy in line with the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.

Three main objectives identified:

- to develop a management system in the various line function departments at all tiers of government in order to co-ordinate plans catering for persons with disabilities and to monitor progress in the implementation of such plans.
- to develop capacity building strategies that will enhance government ability at all levels to implement the recommendations contained in UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.
- to facilitate the integration of disability issues in government development strategies, planning and programmes.

ii. The Green Paper on an Integrated National Disability Strategy

The purpose of the Green Paper is to incorporate the following objectives:

- provide broad guidelines to national line function departments for the development of disability sensitive legislation, policies and programmes;
- identify areas of inter-sectoral collaboration;
- identify the framework for setting priorities and time frames;



The process involved

- extensive consultation with disabled people
- consultation and lobbying key government departments
- international study tour to Sweden to investigate models for management of disability; and
- presentations in parliament and to the inter- governmental forums.

The first draft was completed at the end of April 1995, and distributed to key stakeholders in government and the disability sector. The Green Paper was released after adoption by Cabinet by the then Minister of the RDP on the International Day of Disabled People, 3 December 1995, during a function at the Soweto Self Help Association of Paraplegics.

The Green Paper was copied onto Braille and tape recorded and distributed to approximately:

- 3 000 national, provincial and local NGO's and CBO's focusing on; disability, rural and urban development, adult literacy, housing, democratization;
- all national and provincial government departments ;
- parastatals and tertiary institutions ;
- business and labour sector ; and
- international agencies.

Achievements of this phase

The Green Paper raised awareness and provided some guidelines on the need for inclusion of disability issues in national policies and programmes at a crucial time of transformation. Policy documents that include disability as a human rights and development issue include the following:

- the White Paper on Social Welfare;
- the Green Paper on Employment Equity;
- the Labour Relations Act;
- the White Paper on the Public Service;
- the White Papers on Education and Training;
- the South African Schools Act; and
- the Green Paper on Human Resource Development.

The presence of the Disability Programme at central level provided a focal point for lobbying and advice both within and outside of government and Parliament.

- The support of the Disability Programme was evidenced by , among other things;
- the Deputy President accepting patronage of the disability sector;
- RDP funds being allocated for the provision of wheelchairs in some provinces

- funding being allocated to organisations of disabled people directly.
- the establishment of a Disability Desk in the Mpumalanga Premiers Office.

iii. Towards a White Paper

The vision of the Integrated National Disability Strategy proposed by the White Paper is a society for all. This means that there must be an integration of disability issues in all government development strategies, planning and programmes. There must be an integrated and co-ordinated management system for planning, implementation and monitoring at all spheres of government. To complement the process, there must be capacity building and wide public education.

Key policy areas have been identified. These include prevention, health care, rehabilitation, public education, barrier free access, transport, communications, data collection and research, education, employment, human resource development, social welfare and community development, social security, housing and sport and recreation. The White Paper has developed policy objectives, strategies and mechanisms for each of these areas. Where necessary, different components have been identified.

iv. Office on the Status of Disabled Persons (OSDP)

This Office has been established and works closely with the National Department of Welfare. The functions of the Office on the Status of Disabled Persons is to:

- facilitate, co-ordinate, and monitor the implementation of the National Disability Strategy
- provide an advisory service to national and provincial line function departments, regarding the inclusion of disability into regular policies and programmes; and
- co-ordinate the establishment of a central data base and information service on disability.

An inter-departmental collaboration forum was established by the OSDP at the beginning of 1998, with the Department of Welfare being represented in this forum. The Department of Welfare has a sub-directorate on disability. The activities of the sub-directorate are informed by the White Paper on the Integrated National Disability Strategy. The Department is involved in two pilot projects on :

- Assessment and transformation of protective workshops
- Empowerment of parents and care-givers of children with disabilities

The objective of these pilot projects is to facilitate integration of people with disabilities into society.



D. Aged Persons

Matters regarding aged persons are governed by the Aged Persons Act, 1967 (Act 81 of 1967). It has become apparent that existing procedures for dealing with matters relating to aged persons are not adequate and effective and are in fact too rigid to allow speedy and effective resolution of problems faced by aged persons, particularly those in residential care and homes, such as acts of abuse and the poor quality of services to the aged. A working committee comprising relevant role players was established to formulate a national strategy on elder abuse.

A new Aged Persons Amendment Bill, 1998 envisages upgrading measures relating to the protection of the aged against abuse through the provision of more effective measures for the investigation and handling of cases of abuse, the introduction of service delivery provisions and tighter control of the utilisation of subsidies paid to managers of homes for the aged.

3.2.6 STEPS TAKEN TO PROTECT THE FAMILY AND ENCOURAGE ITS COHESION

The family is a central unit in all social processes and a South African family may not necessarily be a standard family composed of husband, wife and children. A family in the South African context manifests itself in different forms, including the following:-

- Heterosexual married partners with or without children.
- Cohabitation between heterosexual partners with or without children.
- Cohabitation between partners of the same sex with or without children.
- Single parent of either gender with children, grandchildren etc .
- Heterosexual married partners, children and extended family including aunts, uncles, nieces, nephews and grandparents.

Policies and programmes to strengthen and support families are being implemented by government and civil society. For example, the Minister for Welfare and Population Development chairs an Inter- Ministerial Committee on Young People at Risk (IMC) tasked with the transformation of the Child and Youth Care System. The IMC has produced a set of interim policy guidelines on the transformation of the child and youth care system. The pilot projects initiated for the transformation of the child and youth care system in the country aims at protecting the family and encouraging its cohesion. The pilot projects utilise the IMC policy recommendations which provide a guide for all services to children and their families.

(a) The Family Preservation Pilot Project

The project aims to strengthen and support the family for the protection and development of young people within their families and communities. The project offers intensive support for at-risk families, family re-unification, community conferences and youth empowerment. The

project prevents the out-of-home placement of children and promotes awareness on the role of the family and family preservation.

(b) Family Group Conferences

The project strives to bring together victims, offenders and their families in an attempt to restore the breakdown which has been caused by crime.

The community is involved in these projects, for support purposes and this prevents children from being removed from their families. The community is urged to go back to the olden days where children were the responsibility of every adult and the whole community was responsible for raising and protecting children. It revives the culture of UBUNTU in every human being. Communities are trained through workshops in these projects.

**3.2.7 DUTIES CONFERRED UPON INDIVIDUALS IN TERMS OF THE CHARTER
(Articles 27-29)**

The Charter is unique among regional instruments of its kind in that it imposes duties on the individual towards "his family and society, the State and other legally recognised communities and international community", as well as the rights against the state (Article 27(1)). The duties enumerated in Article 29 comprise respect for the family and care of parents, the preservation of social and natural solidarity, as well as contributing to the achievement of African unity, defence of the state, the payment of taxes and the strengthening of African cultural values⁸.

Although some of these duties are general, they are not necessarily unenforceable. These for example include the duty to support one's parents in case of need, or to pay taxes. The duty by an individual to pay taxes is provided for by national legislation.

Whilst there is no express provision for duties in the South African Constitution, the notion of duties has indeed been used as interpretative guidance. For example, section 7(3) of the Bill of Rights provides that "The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill." This provision read together with section 36 which provides: "The general rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom....." implies duties.

The courts have however explicitly stated that rights implies duties reciprocally. In *S v Chapman 1997 (2) SACR 3*, the court stated "The rights to dignity, to privacy and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation. Women in this country are entitled to the protection of these rights. They have a legitimate

Dlamini "Human Rights in Africa Which Way South Africa"(1995) at Page 90



claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives. The appellant showed no respect for her rights."

In traditional African societies, there is no opposition between the rights and duties or between the individual and the community- they blend harmoniously⁹.

Among traditional African families and communities, the duty to respect and maintain one's parents in need of care is one of the most salient features of the African culture. This practise is also prevalent amongst other minority groups. Sharing of communal land, and group rights to land, is also practised mainly in rural areas. Rights to such land are held by the clan or tribe in question. Such collective or group rights are respected by members of the community.

UBUNTU is the guiding principle in ensuring the sustainability of family and society. *UBUNTU* is defined as the principle of caring for each other's well being within the attitude of mutual support. This principle extends to the international community.

Other duties such as the duty to serve one's national community by placing one's physical and intellectual abilities at its service merely places a moral rather than a legal duty on individuals. In respect of the promotion of African Unity, the Government has proposed a programme of action on cultural, socio-economic and political renewal of the African Continent , more popularly known as the "African Renaissance" (see under chapter 5).

By entrenching in the South African Constitution the right to one's own language, culture and religion, the Government has paved the way for all South Africans to practise and promote their own culture in the spirit of *UBUNTU*.

3.3 MEASURES TAKEN BY SOUTH AFRICA TO PROTECT RIGHTS NOT PROTECTED BY THE CHARTER IF ANY

The following rights are provided for in the South African Constitution and not in the Charter:-

- (i) **Section 9 (2) of the Constitution makes provision for affirmative action** " 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 and advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

⁹ Dlamini at 91

- (2) **Section 9(3) of the Constitution** provides that "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 language and birth".

The High Court decriminalised the common law crime of sodomy and Section 20 A of the Sexual Offences Act, 1957 in the unreported case of *National Coalition of Gay and Lesbian Equality v Minister of Justice*.

In another case of *Langemaat v Minister of Safety and Security 1998 (4) BCLR 444 (T)*, the court held that the exclusion of a partner of a lesbian member of the department of Safety and Security from benefits of medical aid was found to be unconstitutional.

- (3) **Section 12 (2) (a) of the Constitution** provides " Everyone has the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction."
- (4) **Section 12 (2) (c) of the Constitution** provides " Everyone has the right to bodily and psychological integrity, which includes the right not to be subjected to medical or scientific experiments without their informed consent."
- (5) **Section 14 of the Constitution** provides "Everyone has the right to privacy, which includes the right not to have-
- (a) their person or home searched;
 - (b) their property searched;
 - (c) their possessions seized; or
 - (d) the privacy of their communications infringed."
- (6) The South African Constitution contains a clear right to vote, **Section 19(3) of the Constitution** provides "Every adult citizen has the right-
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - (b) to stand for public office and, if elected, to hold office."

Whilst the Charter provides " Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law." (*Article 13*)



- (7) **Section 22 of the Constitution** provides that: "Every citizen has the right to choose their trade, occupation or profession freely. The practise of a trade, occupation or profession may be regulated by law."
- (8) **Section 23 of the Constitution** contains an extensive provision on labour relations, in particular, Section 23 (2) (a) provides "Every worker has the right to form and join a trade union..."
- (9) **Section 25 of the South African Constitution** contains a provision on the right to property, and in particular **Section 25 (3) (b)** provides the "amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances including the history of the acquisition of the property."

Sub-section 5 of the same provision states "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. Section 25 of the Constitution therefore goes beyond Article 14 of the Charter.

(10) The Right to Housing

A. THE SOUTH AFRICAN CONSTITUTION

Section 26 of the Constitution provides:

- " (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

B. LEGISLATION AND POLICY

The Department of Housing has also facilitated the passing of legislation on housing matters:

i. **Housing Amendment Act, 1994 (Act 8 of 1994)**

This Act amended the Housing Arrangements Act, 1993 (Act 155 of 1993), and extends the application of the Housing Arrangement Act and the Housing Act, 1966 (Act 4 of 1966) throughout the Republic and, *inter alia*, provides for the establishment, regulation and composition of provincial housing boards and certain committees in each of the provinces. It also provides for the allocation of money to the housing boards.

ii. Housing Amendment Act, 1996 (Act 6 of 1996)

In amending the Housing Act 4 of 1966 and the Housing Arrangement Act 155 of 1993, provides, *inter alia*, for further provisions for the financing of housing; the monitoring of certain housing matters by the National Housing Board; the accreditation of local authorities to carry out national housing programmes; the management and administration of the assets of the National Housing Board and the establishment of the South African Housing Fund and its regulations.

iii. Housing Act, 1997 (Act 107 of 1997)

This Act provides, *inter alia*, for the facilitation of a sustainable housing development process and lays down the general principles applicable to housing development. The Act also defines the functions of national, provincial and local governments in South Africa in regard to housing development and provides for the financing of national housing programmes. However, the Act does not make provision for subdivision of welfare housing.

iv. White Paper on Housing

This was published in December 1994 and outlines the Government's policy framework on housing. It acknowledges that the Government cannot, on its own, provide housing to serve the needs of all South Africans, especially those disadvantaged by the apartheid system. The Paper emphasises the need for a partnership between government, the private sector and communities in the delivery of houses.

v. Urban Development Framework

In 1997, the Department of Housing released the Urban Development Framework. The aim of the framework is to promote a consistent urban development policy for effective urban reconstruction and development and to guide development policies, strategies and actions of all stakeholders in urban development in order to achieve a collective vision.

C. OTHER MEASURES TAKEN BY THE GOVERNMENT

The Department of Housing has also instituted a number of measures to facilitate the provision of adequate housing in South Africa:

(i) The Housing Accord

The Housing Accord is a programme of action for the provision of housing across the Republic. Its objectives include overcoming the legacy of the past unjust and racist apartheid housing policy and thereby restoring the dignity of millions of South Africans who are without adequate shelter. This Accord has been entered into by Government and several role layers involved in housing matters, such as the homeless, various organs of civil society, contractors, developers, the international donor community and many others.



(ii) **Housing and Urbanisation Information System (HUIS)**

The Department, through the Housing and Urbanisation Information System (HUIS), will collect data on housing development matters. The data collected will be broken down into the following categories; race, gender, level of income and geographical location. This data will assist the department in planning around the delivery of houses.

(iii) **Delivery of houses**

While many South Africans are without adequate housing, the Department is working hard to address the situation, although the pace is a bit slow. Between March 1994 and November 1996, the department had facilitated the building of 123 139 houses. This number is far less than the projected annual delivery of 192 765. The department has a five year plan starting from March 1994 to provide one million houses.

However, at the beginning of 1997 the Government realised that it would not be able to provide the 1 million houses.

D. INTERNATIONAL INSTRUMENTS

In 1996, South Africa at the UN Conference on Human Settlements (Habitat II) in Turkey endorsed the universal goals of ensuring adequate shelter for all and for making human settlements safer, healthier and more liveable, equitable, sustainable and productive. South Africa supported the Istanbul Declaration and committed itself to the objectives, principles and recommendations contained in the Habitat Agenda. The Commitments of the Habitat Agenda are:

- (a) Adequate shelter for all
- (b) Sustainable human settlements
- (c) Enablement and participation
- (d) Gender Equality
- (e) Financing shelter and human settlements
- (f) International Co-operation
- (g) Assessing progress

(11) **Section 27 (1) (b) of the South African Constitution provides:** "Everyone has the right to have access to sufficient food and water."

LEGISLATION AND POLICY

(a) **White Paper On A National Water Policy For South Africa (April 1997)**

The National Water Act, 1998 under Articles 2 and 3 was based on this White Paper, the main purpose of which is to ensure equitable access to water resources to all users of water.

(b) Water Supply and Sanitation Policy (November 1994)

The document, A Framework for the Water Services Act, 1997 was based on this document and the White Paper on a National Water policy for South Africa (April 1997).

The Department still uses the determination of this White Paper of what basic water supply is. Basic Water Supply is determined as:

- i) 25 litres per person per day;
- ii) Within 200 m from their dwelling;
- iii) The flow rate of water from the outlet should not be less than 10l per minute and the water should be available on a regular daily basis;
- iv) Schemes for domestic water supply, the availability of raw water should be ~~able~~ for 98% of the time, which means that services should not fail due to drought more than one year in 50, on average;
- v) The quality of water provided should be in accordance with currently accepted minimum standards with respect to health related chemical and ~~microbial~~ contaminants and it should be acceptable to the consumers in terms of its potability (taste, odour and appearance).
- vi) The desire of the community to upgrade basic service to provide for household connections should be taken into account during planning.

The White paper regards one Ventilated Improved Pit toilet per household, if constructed to the agreed standards and maintained properly as an appropriate and adequate basic level of sanitation services.

(c) A Framework for Water Services, 1997, the Water Services Act, 1997 was based on this document.

(d) National Water Act, 1998 (Act 36 of 1998), in terms of this Act the quantity, quality and reliability of water required to meet basic human needs is reserved and enjoys priority of use.

(e) Water Services Act, 1997 (Act 108 of 1997), the public funds that were in the past available for water supply development have been invested mainly to ensure that bulk supplies are available to those who can afford to exploit them. This has benefited farmers who can install pumps to take water from rivers to irrigate their fields, and municipalities that built plants to extract and purify water to sell to their citizens. Poor communities, for lack of both funds and organization, have not been able to take advantage of their "right" to primary water supplies. The Reconstruction and Development Programme identified the lack of adequate water supply and sanitation services as an important priority for government intervention. The

intention of this Act is therefore to ensure that the right of access to basic water supply and sanitation is realised and that all South Africans have access to acceptable levels of water supply and sanitation services. The Act places a duty to all water services institutions to take reasonable measures to realise the right of access to basic water services and basic sanitation. Exactly what basic water supply and basic sanitation are will be prescribed by the Minister in the near future, but until then the definition of basic services as stated in the white Paper on Water Supply and Sanitation is used.

(f) The Agriculture White Paper (1995)

This Paper commits the South African Government to addressing both national and household food security. A key focus of the agriculture strategy is to broaden access to agriculture of those of those who were previously excluded from the sector within an increasingly competitive global environment.

Another important aspect is the Department's monitoring function with regard to food safety. Food should not only be available, but should also be nutritious and safe to consume. Though this is to a great extent a function of the Department of Health, the Department of Agriculture also performs certain functions that are health related and which impacts on food security from that angle.

The Department regards itself as co-responsible for creating an environment that will enable people to ensure their own food security. The Department has an important function in monitoring the food industry in the Republic in order to ensure national food security. It also plays an important role in health and quality standards for food, which standards generally improve the nutritional value of food.

Though the Constitutional enshrines each person's right to access to "sufficient food and water" and each child's right to "basic nutrition", giving effect to these rights may be integrated in different ways. The department has as one of its major policy objectives the ensuring of household food security. This is in no way incompatible with the perspective that it views itself as an economic state department. Household food security is considered part of the programme of economic empowerment and national food security in particular. In pursuit of this objective, the Department joints other national departments, the private sector and civil society organisations.

(12) Section 27 (1) (c) of the Constitution provides " Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance."

(13) **Section 28 of the South African Constitution** contains an extensive provision on the protection of children : "Every child has the right-

- (a) to a name and a nationality from birth;
- (b) to family care or parental care, to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practises;
- (f) not to be required or permitted to perform work or provide services that-
 - are inappropriate for a person of that child's age; or
 - place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be -
 - kept separately from detained persons over the age of 18 years; and
 - treated in a manner, and kept in conditions, that take account of the child's age;
- (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - not to be used directly in armed conflict, and to be protected in times of armed conflict.
 - A child's best interests are of paramount importance in every matter concerning the child.
 - In this section "child" means person under the age of 18 years."

(14) **Section 33 of the Constitution** contains a specific provision on just administrative action :

- "(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must-
 - provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;



- impose a duty on the state to give effect to the rights in subsections (1) and (2) ; and
- promote an efficient administration.”

(15) **Section 35 of the Constitution** provides extensive rights of arrested, detained and accused persons, in particular **Section 35 (2) (c) of the Constitution** provides “Everyone who is detained, including every sentenced prisoner, has the right to have legal representation assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly...”

The Charter does not contain a provision on legal representation.

3.4 DIFFICULTIES ENCOUNTERED IN IMPLEMENTING THE AFRICAN CHARTER IN GENERAL OR ANY OF THE RIGHTS GUARANTEED THEREUNDER HAVING REGARD TO THE POLITICAL, ECONOMIC OR SOCIAL CIRCUMSTANCES OF THE STATE

3.4.1 Article 1

Equality legislation is in the process of being developed to facilitate the implementation of the Charter in the courts (*see under articles 2 and 3*).

3.4.2 Article 3 and Article 7

Customary laws are often patriarchal in nature and in the application thereof. Women do not participate in decision making process in traditional courts and tribal authorities.

Traditional courts are not courts of record and their decisions are not recorded as part of mainstream court decisions. It is almost difficult to apply the principles of *stare decisis* in customary law. Such courts are mainly alternative dispute fora. Decisions by traditional courts are appealable and the appeal lies with the magistrates' court. However, in very rare situations litigants do appeal to the magistrate court, challenging the decision by a traditional court. Legal representatives do not render services to litigants in a traditional court. It is therefore very difficult to monitor if decisions made by traditional courts reflect equality before the law and equal protection by the law.

To remedy this inadequacy, the Departments of Justice, and of Provincial Affairs and Constitutional Development as well as other relevant bodies are in the process of researching the legal status of a traditional court with the prospect of demarginalising them. Traditional leaders play a pivotal role in this regard.

3.4.3 Article 5

In respect of treating persons with dignity, the challenge facing South Africa is to address the legacy of the past by upgrading the current prison facilities, bearing in mind the provisions of the South African Constitution, which require conditions consistent with the humane detention of prisoners. Factors which affect the good intentions of the Department of Correctional Services in this regard include old, sub-standard prison structures, high prisoner population, subsequent overcrowding, lack of technology, staff shortages, negligence and corruption. However, the Department is engaged in developing policies and legislation to rectify this situation.

3.4.4 Article 14

In general the problems which are caused by the lack of legally enforceable rights to land include the following:

- vulnerability to interference with or confiscation of rights whether by the state or others;
- difficulty in securing housing subsidies and other development finance;
- no administrative support for the system of land rights which operates in practice, which in turn contributes to internal breakdowns and administrative chaos giving rise to abuses of power by officials, some chiefs and powerful elites; the position of the poor and the vulnerable is exacerbated by the lack of legal certainty and administrative protections;
- unscrupulous individuals take advantage of the lack of enforceable land rights to bring others onto the land in exchange for money and to bolster their personal power.

3.4.5 Article 18 (3)

The right of the child to maintenance is crucial and the best interests of the child is of paramount importance in this regard. Regarding maintenance, administrative problems continue to hinder the implementation of some legislation. For example, the problems experienced under the Maintenance Act severely disadvantage women and children, and allow men to escape financial responsibility for their children. However, because of the extent of the problem, this matter will be dealt with through new legislation and administrative reforms.

3.4.6 Article 4 and Article 28

The right to life and integrity and the duty to respect fellow human beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance are constantly violated through witch-hunting, killing of alleged witches and removing the people alleged of practising witchcraft from their villages. These human rights violations are prevalent in the Northern Province.



To address these heinous criminal acts, the Government, constitutional bodies, traditional leaders and other relevant stakeholders held a Conference on Witch Hunting in the Northern Province from 6 to 10 September 1998. Resolutions adopted at the conference will assist in the development of a National Strategy that will effectively and efficiently address this scourge. Measures to be adopted include a public education campaign on the issue, victim empowerment and support for victims, perpetrator rehabilitation and reintegration of victims into mainstream society.

3.4.7 Article 25

Public awareness on the Charter has not been raised since the Charter was acceded to. It thus becomes difficult for South Africans to assert their rights as guaranteed by the Charter. However state departments and the Human Rights Commission have embarked on education campaigns on human rights that may have a bearing on the provisions contained in the Charter.

3.4.8 Article 17

In respect of Article 17 which advocates the promotion and protection of morals and traditional values of a community by a State, it is clear that there must be a harmonisation of customary laws with common law. In the absence of this human rights will continue to be violated. For example, the Prevention of Family Violence Act, 1993 (Act 133 of 1993) has had application in the delicate intersection between customary law (or its misapplication), and the protection of human rights and informal land rights. This case was handled by the Legal Resources Centre in 1994, but is unreported. The details were as follows :

A certain widow living in a tribal area governed by customary norms in the former KwaNdebele used the Act to approach the Court for assistance in evicting the brother of her deceased husband from her home. Her brother-in-law had moved into her home on the basis of an old customary rule that brothers "inherited" the wives of deceased brothers so that they could take responsibility for their welfare. This rule incorporates the rule that women may not own property in their own right, but only through a man. The brother-in-law abused the widow and her children, and often locked the children in the kitchen for long periods of time, and was attempting to drive the family out of their home. Although an interdict was granted, the brother-in-law ignored it and the matter was brought to the attention of the police by the widow's attorneys. While the brother-in-law was arrested, he was not detained and when he appeared at court, the process of administration of justice was coloured by the cultural norms in the area. The Magistrate in question handled the matter very insensitively and did not exercise his discretion to impose any punishment on the brother.

This anecdote points to the interrelation between human rights issues, how instruments aimed at the protection of civil and political rights can be used to protect socio-economic rights, and

also to the need for sensitisation and training of persons working in the administration of justice. The South African Law Commission is, however, engaged in the research and legislative process aimed at harmonising customary law and common law.

3.4.9 Article 22

In respect of the right to development, Government's experience since the introduction of the White Paper in 1995 on Small Business Development has been, that there is a lack of delivery and capacity amongst service providers in the country. A significant challenge encountered is to raise the level and standard of service provision to SMMEs (*referred to under Article 22*) on a country wide basis by developing the capacity of service suppliers.

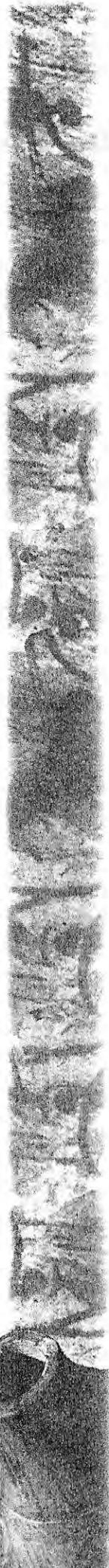
In addition, there is a need for an outreach programme extending to all points of the country. This is again a process of supporting service suppliers and encouraging them to establish service delivery in areas where services do not exist.

A special effort is required to increase access of small businesses to financial sources. Here the cooperation of the banking and financial community is required and the process that is already under way needs to be developed and strengthened.

Special programmes which are targeted at specific growth sectors are required. This will allow for competitive industries to be developed and higher employment targets to be attained. Finally, the existing monitoring and evaluation system needs to be developed so that the CSBP can evaluate the impact and the direction of the resources invested in SMME development. For all of these activities the intensive support and co-operation of the private sector is needed to achieve the goal of creating jobs, generating income, and redistributing wealth; all of which will contribute to overall economic growth.

South Africa has inherited the apartheid system which promoted unequal distribution of wealth and resources amongst different racial groups. As a result of past policies, systematic discrimination, previously disadvantaged groups are subjected to abject poverty. In order to address this, poverty alleviation programmes have been developed by Government in collaboration with NGO's and the private sector. The RDP is pivotal to these programmes. Due to budgetary constraints and the high levels of unemployment in the country, it is very difficult to completely eradicate poverty within a short space of time.





CHAPTER 4



MEASURES TAKEN BY SOUTH AFRICA TO PROMOTE AND ENSURE THE RESPECT OF HUMAN RIGHTS THROUGH TEACHING, EDUCATION AND PUBLICATION IN ACCORDANCE WITH ARTICLE 25 OF THE CHARTER

The following initiatives have been taken by Government in respect of the promotion of human rights:

4.1 National Constitutional Week

Government declared **26 April to 10 May 1998** as National Constitution Week. A public education campaign on human rights was launched. This campaign was endorsed by Cabinet and was aimed at promoting awareness of rights and responsibilities of citizens and the corresponding duties and obligations of the state that derive from the Constitution. During this week copies of the Constitution, CD roms on the constitution-making process and an eight page supplement explaining the concept of constitutional democracy were distributed to schools, universities, government departments and to members of the public. The theme for the week was "Violence against Women and Children."

4.2 Department of Justice

Launched a public education campaign on Children's Rights, Child Abuse and in particular Violence against the Girl Child. Posters and pamphlets were distributed to schools nationwide and information sessions on children's rights, Child abuse in particular violence against the girl child were held at different schools and venues nationwide. Court procedures, how the courts protect children who are victims of violence and the role of a child victim / witness in court were explained to children. Justice personnel including judges, magistrates and prosecutors participated at the information sessions. The Department of Justice has also published an information kit for children entitled 'Law Talk for Children, Play your Part.' The aim of this kit is to attempt to explain to children in simple language what their rights are in relation to the law. Justice College, (a training institute of the Department of Justice) convenes training programmes for magistrates and prosecutors within a framework of human rights. International and regional instruments on human rights form part of the training sessions.

4.3 Department of Provincial Affairs and Constitutional Development

In **May 1998**, the Department of Provincial Affairs and Constitutional Development and the University of Pretoria jointly hosted a seminar on the Constitution. The Department, in co-operation with the Swedish International Development Agency (SIDA), the Universities of Pretoria and Fort Hare, hosted a workshop on Human Rights Education for Traditional Leaders from **18 to 20 May 1998**.



4.4 South African Police Services

The Human Rights Unit of the South African Police Service is in the process of finalizing a training package on Human Rights and Policing. The aim of the package is to provide information and training on how to transform the police service in line with international human rights principles and the South African Constitution.

The training package was developed by SAPS Human Resources Management Legal Services, the Legal Services of the nine different provinces together with the South African Police Service Training. International Organisations such as the United Nations High Commissioner for Human Rights, the Human Rights Unit of the Commonwealth Secretariat, the International Committee of the Red Cross, the South African Office of Amnesty International and the Raoul Wallenberg Institute in Sweden provided inputs. The project is sponsored by the South African Reconstruction and Development Programme (RDP).

The training package on "Human Rights and Policing" will be provided to all SAPS trainers, to SAPS legal advisers and to all the police stations of the SAPS, as well as to NGO's and International Organisations that are involved in education in human rights in the SAPS. The package and will be provided to trainers after completing the training workshop and consists of the following:

- **A resource manual for trainers**

The resource manual on Human Rights and Policing (module) serves as the source document for trainers, facilitators and educators during workshops and work sessions. The manual contains the theoretical basis for the training programme on Human Rights and Policing.

- **A presenters guide for trainers**

The presenters guide provides assistance to trainers, facilitators and educators during workshops and work sessions. The presenters guide contains guidelines on the presentation of workshops and working sessions, lesson plans, goals and objectives, case studies and other information necessary to present workshops and working sessions.

- **The information book/workbook on Human Rights and Policing**

This booklet forms the basis for the education programme. The booklet is a full colour photo story with theoretical questions and explanations on some relevant human rights issues. The book is written in language that is easy to understand and yet detailed enough to explain some of the skills and knowledge that is needed for police officials to fulfil their usual daily activities.

- **Training Videos**

Six training videos of approximately ten minutes each were developed to serve as an extra tool during workshops. The videos contain case scenarios and theory on relevant issues relating to human rights and policing for example arrest, detention search and seizure, investigation of crime, vulnerable persons including domestic violence.

- **Posters**

A set of five posters was developed. The topics of these posters are arrest, rights of detained persons, good policing, community policing and equality. Each community service centre (police station) and training facility of the SAPS will receive a set of five posters. The posters will be used to provide basic information on the topics and can also be used as a tool during the workshops.

- **The Constitution of the Republic of South Africa**

Pocket size copies of the Constitution were provided by the Department of Constitutional Affairs and are included in each training package.

- **The minimum standards for law enforcement officials**

Pocket size copies of a booklet on the International Human Rights Standards for Law Enforcement were provided by the United Nations High Commissioner for Human Rights in Geneva, Switzerland, and will be included in each training package.

4.5 Department of Correctional Services

A personnel retraining project as well as a Human Rights training programme was launched by President Mandela on 25 June 1998. The Human Rights Project aims at developing a culture of human rights in prisons amongst staff members and inmates. Staff members and inmates who follow the course will develop an understanding of human rights and their related responsibilities. They will also know when rights are being violated and which remedies to apply.

In order to achieve this, the Centre for the Study of Violence and Reconciliation, Lawyers for Human Rights and the Electoral Institute of South Africa, in partnership with the Department of Correctional Services conducted a Human Rights Training Programme as a pilot project in four prisons in the country. If, upon evaluation, the programme proves to be successful, it will be extended to prisons country-wide.

The Department of Correctional Services has also requested the South African Human Rights Commission to assist it with the development of a publication aimed at staff members officials and prisoners, explaining their rights and obligations.



4.6 Department of Land Affairs

The following public awareness campaigns are being run:

Restitution: "Stake Your Claim Campaign". This is a multi-media awareness campaign, which commenced in July and it ends on 31 December 1998. The purpose of the campaign is to advise people to lodge their claims before 31 December 1998, which is a final date for lodging claims. It is targeted at people who were legally dispossessed of land and those who were forcibly removed from their land.

Tenure: Extension of Security of Tenure Act (ESTA) Communication Campaign. This is a radio and print campaign. It is targeted at people who do not have secure tenure, e.g. farm workers, people living on state owned land, people living on land with the consent of the owner, and people living on land which is occupied on a tribal communal basis.

Tenure: Interim Protection of Informal Land Rights Act (IPILRA) campaign. This is to be a multi-media campaign comprising radio, educational material and workshops. It is targeted at people with informal land rights such as communal occupants of land vested in South African Development Trust, former self governing territory governments and TBVC states, and unrestricted land right holders qualifying, e.g. leaseholds, deeds of grant and quitrents.

A print campaign will also be run in either the October/November edition of Enterprise magazine and will be a joint effort between Land Bank, Department of Agriculture and Department of Land Affairs. This is an information awareness campaign focussed on opportunities for Black Empowerment in Land and Agriculture related ventures or share equity schemes.

4.7 Department of Defence

The Department of Defence has initiated a civic education programme which is designed to instill in members of the Department of Defence respect for democracy, as well as to promote military professionalism, all with the express purpose of educating the members to respect the human dignity of all persons. The programme includes key features of a democracy such as the South African Constitution and the Bill of Rights, civil-military relations, respect for cultural diversity and military professionalism.

A comprehensive training programme has been launched to train members of the South African National Defence Force in international humanitarian law. This initiative has gained the support of the International Committee of the Red Cross and the UN High Commissioner for Human Rights.

4.8 South African Human Rights Commission

The South African Human Rights Commission works in collaboration with the heads of provincial departments of education to promote human rights in schools, i.e. through a human rights week every year, school assemblies focussing on human rights, extra-curricular activities, classroom lessons on human rights, a human rights essay competition, school community gatherings, and teacher capacity building programmes.





CHAPTER 5

AS A SIGNATORY PARTY , HOW FAR THE STATE USES THE CHARTER IN ITS RELATIONS WITH OTHER STATE PARTIES OR OTHER SUBJECTS OF INTERNATIONAL LAW

5.1 THE SOUTH AFRICAN CONSTITUTION

Section 231 (4) of the Constitution provides that " any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament". Whilst the Charter is not enacted into South African law by national legislation, Section 233 makes provision for the application of international law : "When interpreting any legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." (See introduction)

Although South Africa has not yet been afforded ample opportunity to make use of this Charter in its relations with other States, it has made significant contributions to the promotion and protection of Human Rights in Africa and elsewhere.

5.2 Organisation of African Unity (OAU)

After becoming a member of the OAU in 1994, South Africa participated actively in all its activities and structures, such as the Secretariat, the Centre for Conflict Prevention, Management and Resolution, the Central Organ, the Council of Ministers and the Annual Summit.

South Africa's support for the activities of the OAU ranges from the political and security fields to labour, telecommunications, humanitarian matters and women's affairs and the economic field in all its facets. This includes conflict prevention, management and resolution of the Landmine Convention, illicit arms and drug trafficking, capacity building for peace missions, implementation of the various peace initiatives, for example in Angola, the Democratic Republic of Congo, Burundi, implementation of the Abuja Treaty and establishing the African economic support for democratisation and good governance.

At the last OAU Summit, South Africa was elected to the Central Organ and was requested to act as co-ordinator of the countries in the region in implementing the OAU resolution on the sovereignty and territorial integrity of the Commores. South Africa will be the Chair of the Social and Labour Council of the OAU for the coming year. Dr Barney Pitso Moseneke (Chairperson of the South African Human Rights Commission) is a member of the African Commission on Human and Peoples' Rights. Many non-governmental organisations in South Africa have observer status at the African Commission on Human and Peoples' Rights and participate actively in the proceedings thereof.



In the spirit of international and regional co-operation, as stated in the Preamble of the African Charter, South Africa became involved in the conflict of the then Zaire. South Africa's involvement is based on the belief that the renewal of the region and the continent can only be predicated on a stable and peaceful continent, committed to respect for human rights. South Africa maintains that its contribution should comprise a programme of activity whose primary aim is to empower the people of the Democratic Republic of the Congo to establish a political order which, both in form and content, shall be broad based and as inclusive as possible for all political tendencies, ethnic interests and geographic dispersal.

5.3 Southern African Development Region (SADC)

In its attempt to promote human and peoples' rights in Southern Africa and beyond, South Africa prefers to follow a multilateral path through SADC and OAU structures. With regard to SADC, the SADC Organ on Politics, Defence, and Security is potentially the most ideal instrument.

The SADC organ constituted an appropriate institutional framework whereby member states would co-ordinate their policies and activities in the areas of politics, defence, security and human rights. While the SADC organ is still not fully operational, the main function of the Organ is to intervene where conflict in states occurs and to seek to end this as soon as possible through diplomatic means. If and when the need arises, the Chairperson of SADC, President Mandela would convene a Summit of SADC Heads of State and Government as indeed was the case on 23 August 1998 in Pretoria, where the Summit deliberated on the situation in the Democratic Republic of the Congo.

South Africa was also involved in consultations with its regional partners to address and seek a solution to the recent crisis threatening Lesotho's stability.

President Mandela has also used his role as Chairman of SADC to impress upon the leaders and governments of the region the necessity to adhere to the principles of good governance and democracy in their respective states. For this he has subjected himself to criticism, but has repeatedly indicated that he is not prepared to compromise on the values and ideas which motivated the liberation of Africa from colonialism and repression.

5.4 African Court on Human and Peoples' Rights

South Africa demonstrated its intention to enhance the implementation and efficiency of the Charter by convening, in conjunction with the African Commission on Human and Peoples' Rights, the first meeting of legal experts to consider the establishment of an African Court on Human and Peoples' Rights. South Africa hosted a conference on the establishment of an African Court on Human and Peoples' Rights from 6-12 September 1995 in Cape Town. This Conference was attended by 23 states that considered the Draft Protocol on the African Court

on Human and Peoples' Rights. The Draft Protocol was subsequently considered at meetings in Nouakchott (Mauritania) and Harare (Zimbabwe), and finalised at a meeting at the OAU in Addis Ababa in December 1997. Before the Addis Ababa meeting, the South African Department of Justice hosted a special consultative workshop in Pretoria in order to draw from the expertise in government, NGOs and civil society and formulate inputs for the Addis Ababa meeting. The Protocol will enter into force upon ratification by 15 State Parties.

5.5 National Action Plan on Human Rights (NAP)

The World Conference on Human Rights (1993) adopted the Vienna Declaration and Programme of Action which recommended that each State considers the desirability of drawing up a National Action Plan identifying steps whereby the State would improve the protection and promotion of human rights as well as freedoms. In developing the National Action Plan, governments are required to assess the current measures in place to protect and promote human rights, identify areas requiring improvement and commit themselves to the adoption of measures to improve the situation.

In the light of South Africa's history during the apartheid era, in particular the institutionalised gross violations of human rights, the present government took the opportunity presented by the recommendation on National Action Plans, to holistically address the realisation of human rights and better life for all in this country.

The final National Plan of Action will constitute the following :

- An integrated and systematic national strategy to help realise the advancement of human rights in South Africa. This involves an audit of the human rights situation in this country, identifying areas of improvement and a commitment to adopting concrete measures for improving areas where the enjoyment of human rights is inadequate.
- A framework for sustained and coordinated measures to be taken by government, the private sector, civil society in general and other actors in protecting and promoting human rights in the next five years, and a serious effort by government to address the legacy of apartheid. The plan can be used by the Government and organs of civil society to monitor and assess the observance of human rights. It can also be used to gauge the commitment of the Government to the promotion and protection of human rights.
- An assessment of International and regional instruments which South Africa has ratified or acceded to, those which have been signed but not yet ratified and those which are in the process of being ratified or acceded to. There will also be an input on reports on the instruments that South Africa has ratified.



The final National Action Plan will be based on the premise that all human rights are universal, indivisible and interdependent. Effective promotion of human rights requires an integrated approach. The rights will be categorised into three headings namely; socio-economic rights; civil and political rights; and cultural and religious rights. The rights under each heading will be based on the provisions of the Bill of Rights of the 1996 Constitution and on the provisions of relevant international human rights instruments.

The final National Action Plan will contain a framework for the implementation of each right. The obligations of South Africa under the Bill of Rights of the 1996 Constitution and various international human rights instruments, including the Vienna Declaration, will serve as a basis for the framework. There will be a section focussing on the policies, legislation and other measures necessary to give effect to constitutional and international obligations.

Furthermore, the framework regarding implementation of each right will focus on what has been done, further challenges, measures to address the challenges including resources required. There will be evaluation and assessment mechanisms, which entail the development of monitoring indicators and the monitoring of the entire Action Plan by the Human Rights Commission and other constitutional structures supporting democracy. There will also be a section on measures to strengthen the protection of human rights such as the independent judiciary, constitutional human rights structures, etc.

The Draft National Action Plan was approved by Cabinet. A series of national consultations with all stakeholders including organs of civil society was held so as to develop the final National Action Plan which will be submitted to Cabinet for approval in time for presentation to the United Nations on 10 December 1998 - the 50th anniversary of the Universal Declaration of Human Rights.

A workshop was held on the Right to Development on 15-16 September 1998. The African Charter on Human and Peoples' Rights was one of the focal areas of the workshop and more specifically South Africa's Initial Report to the OAU.

5.6 African Renaissance

The Government of South Africa recognises that the continent of Africa is at a historical conjuncture comprised of a number of factors whose collective effect presents the people of Africa with an unprecedented possibility to close the centuries-old chapter of exploitation, oppression, marginalisation and under-development. The Government further recognises that a real possibility exists for the emergence of a continent deserving of attention and respect accorded to the other regions of the world. The Government has therefore proposed a programme for the cultural, socio-economic and political renewal of the African Continent, more popularly known as the "African Renaissance".

The real *raison de 'etre* for the African Renaissance agenda and programme is the need to empower African peoples to deliver themselves from the legacy of colonialism and neo-colonialism and to situate themselves on the global stage as equal and respected contributors to, as well as beneficiaries of, all the achievements of human civilisation. The proposed Programme of Action includes consultations with and mobilisation of pertinent partners and institutions on the African Continent such as SADC and the OAU. Consultations will also include the mobilisation of the international community. Some of the international organisations that will be targeted include the United Nations, World Bank, International Monetary Fund (IMF), World Trade Organisation, International Labour Organisation (ILO), the Non-Aligned Movement (NAM), the European Union (EU). Civil society will be encouraged and inspired to organise conferences, seminars, consultations and workshops on all aspects which are pertinent to the renewal of the African continent. Areas of interest include the following:

- Political renewal and the stabilisation of the African continent;
- Human Rights of vulnerable groups;
- Sustainable economic development;
- Human resource development and intellectual exchange programmes of African foreign students;
- Technical innovation, development and research;
- African Telecommunications Development Strategy;
- Environmental Resource Management, Water and Forestry; and
- Regional Strategies on Food Security, Tourism and the Combatting of HIV/AIDS

5.7 Non-aligned Movement (NAM)

NAM has created a unique form of administration style. It is non-hierarchical, rotational and inclusive, providing all member states, regardless of size and importance, with an opportunity to participate in global decision-making and world policy formulation. NAM rotates its chair to the Head of State of the country hosting the Summit, who holds office until the next Summit. The Chair is also delegated certain responsibilities for promoting the principles and activities of the Movement. South Africa hosted the NAM Summit in Durban from 28 August-3 September 1998 and is the Chair of NAM for the next three years. Indeed South Africa will use the African Charter on Human and Peoples' Rights as one of its guiding human rights instruments.



CONCLUSION

The South African Government is proud to present its Initial Report on the African Charter on Human and Peoples' Rights to the African Commission on Human and Peoples' Rights. South Africa extends the gratitude of all South African people to the Organisation of African Unity and all its structures, as well as the peoples of the African continent, for the assistance given to the peoples of South Africa in the struggle for liberation from the oppressive apartheid regime.

That oppressive apartheid regime has left South Africa with a legacy of under-development, the magnitude of which South Africans are just starting to appreciate. When the new Government assumed power in 1994, the content of every South African's life was defined by the colour of skin and level of income. Four years later, the discrepancy in development between white and black South Africans still poses a major challenge for the South African Government.

The statistics set out in the Introduction of this Report paint a stark picture of the legacy of the discriminatory practices of the previous Government. With the data available to us, it is quite clear that race, geographic location and gender are the main determinants of who is poor.

Because of this depth of deprivation, 61% of Africans live under conditions of abject poverty, while only 1% of whites are poor. It is this reality that informs South Africa's continued call to the African continent to work closely with South Africa in the development of a peaceful and economically stable South Africa and Africa. It is also within this reality that the South African Government has to address the question of the empowerment of Africans, which remains high on the national agenda, despite all the challenges facing the Government.

Since South Africa emerged as a democracy on 27 April 1994, a new Constitution with a Bill of Rights has been put in place, policies and legislation guaranteeing fundamental human rights have been developed and promoted and South Africa has become a party to many international and regional human rights instruments.

The Government of South Africa, however, recognises that there are still many imbalances that exist in respect of fundamental human rights as guaranteed in the South African Constitution. Thus this Report to the OAU, like the other country reports to the United Nations on women and children, can be used as a benchmark against which future developments can be measured. The next South Africa Report to the OAU will depict further advancement in the protection, promotion and fulfilment of human and people's rights. It will also seek to address the limitations as outlined in the introduction.



South Africa appreciates the scrutiny of the African Commission on Human and Peoples' Rights and peoples of Africa of the efforts to work towards entrenching values of the Charter. South Africa is both proud to proclaim its successes towards the achievement of human and peoples's rights, and mindful of that which still has to be achieved.

A salient feature of this Report is the unavailability of data, or the unreliability thereof due to under- or non reporting. This was particularly so for the period pre-1994. Since then South Africa has been able to establish systems and baseline data in certain areas.

The South African Government therefore wishes to conclude this Report by stating that it acknowledges that the transformation of laws and policies is not enough in a rapidly changing democracy. The Government reaffirms that further action is required in order to translate policies and legislation into fundamental change at the ground level.

MAYIBUYE I AFRIKA

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APPENDICES

ABBREVIATIONS

BCEA	Basic Conditions of Employment Act
BRAIN	Business Referral and Information Network
CCMA	Commission for Conciliation Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
COLTS	Culture of Learning, Teaching and Service Campaign
CRC	Convention on the Rights of Children
CSBP	Centre for Small Business Promotion
ECC	Employment Condition Commission
ECD	Early Childhood Development
EMIS	Education Management Information System
EU	European Union
GDP	Gross Domestic Product
GEAR	Growth Employment and Redistribution
IBA	Independent Broadcasting Authority
ILO	International Labour Organisation
IMC	Inter-Ministerial Committee on Young People at Risk
IMCG	Inter Ministerial Core Group
IMF	International Monetary Fund
IPEC	International Programme for the Elimination of Child Labour
LBSC	Local Business Service Centre
LED	Local Economic Development
LRA	Labour Relations Act
MACS	Manufacturing Advice Centres
MIIF	Municipal Infrastructure Investment Framework
MIP	Municipal Infrastructure Programme
NAM	Non-Aligned Movement

NAP	National Action Plan (Human Rights)
NCOP	National Council of Provinces
NCP	National Council of Provinces
NCRC	National Children's Rights Committee
NDPP	National Director of Public Prosecutions
NGO	Non-governmental Organisation
NHC	National Heritage Council
NPA	National Plan of Action
NPASC	National Plan of Action Steering Committee
NSBC	National Small Business Council
OAU	Organisation of African Unity
OSDP	Office on the Status of Disabled Persons
OSW	Office on Status of Women
PPA	Provincial Plan of Action (Children)
RDP	Reconstruction and Development Programme
SADC	Southern African Development Community
SAPS	South African Police Services
SMME	Small, Medium, Micro Enterprises
TAC	Tender Advice Centres
TRC	Truth and Reconciliation Commission
TVBC	Transkei, Venda, Bophuthatswana, Ciskei
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
VEP	Victim Empowerment Programme

