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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION


CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

REPORT

ON THE STUDY VISIT TO THE REPUBLIC OF SOUTH AFRICA

FROM 21ST – 25TH AUGUST 2023

THE DIRECTORATE OF AUDIT, APPROPRIATIONS AND
OTHER SELECT COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

 THE NATIONAL ASSEMBLY PARDOS I AD	
DATE: 23 NOV 2023	DAY: Thurs
TABLED BY:	Hon Charles Nguna Ngunjiri MP Member Constitutional Implementation & Oversight
CLERK-AT THE TABLE:	Miriam Moko

NOVEMBER, 2023

NATIONAL ASSEMBLY
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ABBREVIATIONS

CIOC – Constitutional Implementation Oversight Committee

SAHRC – South African Human Rights Commission

KNCHR-Kenya National Commission on Human Rights

CHR – Centre for Human Rights

PPSA –Public Protector South Africa

RSA –Republic of South Africa

CALS-Centre for Applied Legal Studies

ESR – Economic Social Rights

SHiNE – Social Harmony Through National Effort

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children’s Fund

EU –European Union

UNPWG-United Nations Promotion Working Group

ACRC-African Children’s Rights Committee

CHAIRPERSON'S FOREWORD

The Constitutional Implementation Oversight Committee derives its mandate from Schedule Six section 4 of the Constitution of Kenya which provides for the Parliamentary Select Committee. The Committee is responsible for overseeing the implementation of the Constitution.

The Committee was invited to accompany the Kenya National Commission on Human Rights (KNCHR) for a study visit to the Republic of South Africa from 21st – 25th August, 2023. The South African Human Rights Commission (SAHRC) was the host and made arrangement for engagements with relevant institutions involved in the South African Constitutional implementation process.

The Kenya National Commission on Human Rights (the Commission (KNCHR) is an independent National Human Rights Institution (NHRI) established under Article 59 of the Constitution of Kenya, 2010 and the Kenya National Commission on Human Rights, Act, 2011(Revised 2012). The Commission is oversighted by the Constitutional Implementation Oversight Committee regarding its constitutional mandate to implement the Constitution of Kenya.

The delegation held consultations with the South African Human Rights Commission (SAHRC), Centre for Human Rights (CHR), Public Protector of South Africa (PPSA) and the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand.

The visit to the Republic of South Africa (RSA) offered an opportunity for the KNCHR and the Committee to interact and learn best practices from the South African Human Rights Commission on its constitutional and legislative framework; mandate and structure; social economic rights in South Africa and challenges; hearings and investigations; stakeholder engagements; supporting and strengthening state institutions; promotion of equality, human settlement, water and sanitation; challenges of urbanization and children's rights among others.

The Committee was represented by a delegation comprised of the following members and staff-

- (i) Hon. Hon. Gathoni Wamuchomba, HSC, MP- Leader of Delegation
- (ii) Hon. Geoffrey Ekesa Mulanya, M.P
- (iii) Hon. George Risa Sunkuyia, M.P
- (iv) Hon. Charles Nguna Ngusya, M.P
- (v) Ms. Grace Apale Odedere –Clerk Assistant III /Delegation Secretary

I take this opportunity to express my gratitude to members of the delegation, the Kenya National Commission on Human Rights for the invitation and coordination which enabled the Parliamentary Delegation to undertake the study visit.

The Committee also wishes to express special gratitude to the office of the Clerk of the National Assembly for the support accorded to Members of the Committee and the staff, in the execution of its mandate.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the members of the delegation who undertook the study visit and for their contribution towards the preparation of this Report.

On behalf of the Constitutional Implementation Oversight Committee, it is my pleasant privilege and honor to present to this House the Report of the Committee on its study visit to the Republic of South Africa.

Hon. Gathoni Wamuchomba, HSC, MP

CHAPTER ONE

1.0 PREFACE

1.1 Mandate of the Committee

1. The oversight of State organs is amongst the roles assigned to the National Assembly under Art 95 of the Constitution, In fulfillment of this role the Committee adopted a work plan to engage with commissions and independent offices on matters related to their mandates in implementation of the Constitution.
2. The Constitutional Implementation Oversight Committee derives its mandate from Schedule Six section 4 of the Constitution of Kenya which provides for the Parliamentary Select Committee.
3. The Constitutional Implementation Oversight Committee is responsible for overseeing implementation of the Constitution and which, among other things-
 - (a) received regular reports from the Commission on the Implementation of the Constitution including reports concerning-
 - (i) the preparation of the legislation required by this Constitution and any challenges in that regard;
 - (ii) the process of establishing the new commissions;
 - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and
 - (v) any impediments to the process of implementing this Constitution;
 - (b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and
 - (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.

1.2 Membership of the Committee

4. The Constitutional Implementation Oversight Committee was constituted on 27th October 2023 as follows;

Chairperson

Hon. Wamuchomba Gathoni, HSC, M.P

Githunguri Constituency

UDA Party

Vice-Chairperson

Hon. William Kamket, M.P.

Tiaty Constituency

KANU – Party

Hon. Silvanus Onyiego Osoro, CBS M.P.

South Mugirango Constituency

UDA

Hon. Aramat Lemanken, M.P

Narok East Constituency

UDA

Hon. Benjamin Langat Kipkirui, M.P.

Ainamoi Constituency

UDA

Hon. Jesca Mbalu Nduku Kiko, CBS M.P.

Kibwezi Constituency

WIPER PARTY

Hon. George Risa Sunkuyia, M.P.

Kajiado West Constituency

UDA

Hon. Patrick Ntwiga Munen M.P.

Chuka, Igambang'ombe Constituency

UDA

Hon. Peter Oscar Nabulindo, M.P.

Matungu Constituency

ODM

Hon. Lawrence Aburi Mpuru, M.P

Tigania East Constituency

NOPEU

Hon. Jackson Lentoijoni Lekumontare M.P.

Samburu East Constituency

KANU

Hon. Charles Nguna Ngusya, M.P.

Mwingi West Constituency

WIPER PARTY

Hon. Ruth Odinga, M.P.

Kisumu (CWR)

ODM

Hon. Hamisi Kakuta Maimai, M.P.

Kajiado East Constituency

ODM

Hon. John Murumba Chikati, M.P.

Hon. Geoffrey Ekesa Mulanya, M.P.

Tongaren Constituency
FORD-K

Hon. Patrick Osero Kibangendi, M.P.

Borabu Constituency

ODM

Hon. Ali Abdisarat Khalif. M.P

Nominated

UDA

Hon. John Gitonga Mukunji Mwaniki M.P.

Manyatta Constituency

UDA

Nambale Constituency
Independent

Hon. Daniel Karitho Kiili, M.P

Igembe Central Constituency

JUBILEE

Hon. Betty Njeri Maina M.P

Muranga (CWR)

UDA

Hon. Augustine Mwafrika Kamande M.P

Roysambu Constituency

UDA

Hon. Harun Mohamed Umulkher, M.P

Nominated

ODM

1.3 Committee Secretariat

5 The Committee secretariat is as follows-

Mr. Abenayo Wasike
Principal Clerk Assistant II
Lead Clerk

Ms. Grace Apale Odedere
Clerk Assistant III

Ms Emma Essendi
Senior Legal Counsel

Catherine Mukunyi
Senior Serjent -at- Arms

Ms. Lilian Aluga
Public Relation Officer

Mr. Kelvin Lengasi
Audio Officer

Ms Ivy Maritim
Media Relation Officer

Mr. Alvin Ochieng
Researcher

Ms. Felistus Otwabe
Hansard Reporter

CHAPTER TWO

2.0 BACKGROUND

2.1 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

6. The Kenya National Commission on Human Rights is established pursuant to Article 59 of the Constitution and sections 3 and 4 of the Kenya National Commission on Human Rights Act, 2011. Article 59 of the Constitution provides as follows:

Kenya National Human Rights and Equality Commission

(1) There is established the Kenya National Human Rights and Equality Commission.

(2) The functions of the Commission are—

(a) to promote respect for human rights and develop a culture of human rights in the Republic;

(b) to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development;

(c) to promote the protection, and observance of human rights in public and private institutions;

(d) to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;

(e) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;

(f) on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;

(g) to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights;

(h) to investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice;

(i) to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct;

(j) to report on complaints investigated under paragraphs (h) and (i) and take remedial action; and

(k) to perform any other functions prescribed by legislation.

(3) Every person has the right to complain to the Commission, alleging that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(4) Parliament shall enact legislation to give full effect to this Part, and any such legislation may restructure the Commission into two or more separate commissions.

(5) If Parliament enacts legislation restructuring the Commission under clause (4)—

(a) that legislation shall assign each function of the Commission specified in this Article to one or the other of the successor commissions;

(b) each of the successor commissions shall have powers equivalent to the powers of the Commission under this Article; and

(c) each successor commission shall be a commission within the meaning of Chapter Fifteen, and shall have the status and powers of a commission under that Chapter.

Further, sections 3 and 4 of the Kenya National Commission on Human Rights Act, 2011 provides as follows:

3. Establishment of the Commission

(1) There is established a Commission to be known as the Kenya National Commission on Human Rights.

(2) The Commission is established as a successor Commission pursuant to the provisions of Article 59(4) of the Constitution.

Functions of the Kenya National Commission on Human Rights

Pursuant to Article 59 (5) (a) of the Constitution, the functions of the Commission are provided under section 8 of the Kenya National Commission on Human Rights Act, 2011 as follows:

The functions of the Commission shall be to—

- (a) promote respect for human rights and develop a culture of human rights in the Republic;*
- (b) promote the protection and observance of human rights in public and private institutions;*
- (c) monitor, investigate and report on the observance of human rights in all spheres of life in the Republic;*
- (d) receive and investigate complaints about alleged abuses of human rights, except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission, and take steps to secure appropriate redress where human rights have been violated;*
- (e) on its own initiative or on the basis of complaints investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;*
- (f) act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and nondiscrimination;*
- (g) formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution;*
- (h) work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration;*
- (i) perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and*
- (j) perform such other functions as may be prescribed by the Constitution and any other written law.*

Membership of the Commission

Section 9 of the Act provides that *the Commission shall consist of a chairperson and four other members appointed in accordance with the Constitution and the provisions of this Act.*

Enjoyment of Human Rights under the 2010 Constitution

7. The struggle for **civil and political rights** persists with **Right to life**, and **freedom and security of the person** still featuring high among the violations that the Commission continues to document. Extra judicial killings, arbitrary arrests torture and sexual violence have mostly manifested themselves during electoral conflict but also in alarming numbers in informal urban settlements with the police being cited as the major perpetrators. The Commission therefore is concerned over the low rate of investigation and prosecution of security officers for extra-judicial killings and excessive use of force *vis a vis* the number of complaints.
8. The punishment of petty offences through arbitrary arrests has not only violated the freedom and security of the person but also created a panacea for the violation of human rights of especially the poor, marginalized and vulnerable people. They seem to punish the status of the person.
9. Insecurity further remains a major threat to the people of Kenya. Kenya has also continued to experience high crime rates of which both civilians and police were victims of crime. The decade past has seen Kenya become victim of several acts of terrorism. These have led to the loss of innocent lives. Notwithstanding, the manner in which the national security forces have responded to the attacks has raised major serious human rights concerns. The Commission has recorded these violations in the various reports.
10. The past decade has also been marked by heightened insecurity and tribal conflicts in various parts of the country. Multiple attacks, counter-attacks, reprisals and displacements have been witnessed in the North Rift region. This was highlighted in a KNCHR public inquiry report, *Mending the Rift*.
11. **Freedom of association; assembly and demonstrations** have faced threats including several attempts to either suspend operations or de-register non-governmental organizations viewed as being critical of the State and the non-operationalization of the Public Benefit Organizations Act seven years later. Demonstrators have been lobbed with tear gas and arbitrary arrested for exercising this right.
12. **Equality and Non-Discrimination:** The Constitution of Kenya 2010, through its progressive provisions, specifically Articles 27(8) and 81(b) seeks to address gender inequality in political sphere by enshrining the principle that not more than two thirds of

the members of public bodies shall be of same gender. Notwithstanding the Constitutional guarantee, gender equality remains an aspiration. It is an unrealized constitutional promise for the Kenyan women. With a population that has more than half of its population as the female gender, the two thirds gender rule however still remains an aspiration yet to be realized in both elective and appointive posts.

13. **Freedom of Movement and Residence** with regards to refugees has largely been restricted during this period as compared to the pre-2010 era. From 2012 to date there have been various attempts by the Government to enforce an encampment policy and later on repatriation of refugees and threats to close the dadaab camp.
14. Economic and Social Rights was indeed the constitution's ray hope for Kenyans with the hope to restoring dignity and uplifting the lives of the wanjiku. **Whereas the Bill of rights is very progressive on these rights, the implementation thereof has been lacking.** Moving forward we call on more concerted efforts to realize these visions. ECOSOC rights need to be strengthened in the Constitution so that as a nation we move away from progressive realization to an inherent right and /entitlement to everyone by virtue of being a human being. The structures and frameworks for enhancing these ECOSOC rights need to be further strengthened for instance there is need to provide for a clear mechanism to protect health services, public health and sanitation through a Constitutional Commission.
15. **Food production** has primarily been affected by extreme phenomena characterised by droughts, famine, heavy rainfall, locust invasions and fall army worms infestations. These events have contributed to fluctuations in the production of agricultural commodities over the years, and thus the right to freedom from hunger.
16. Financial allocation for the **health sector** remains low with the country managing to allocate only around 5 to 7% of the budget to health between 2013/14 to 2015/16 which is below the 15% target in the 2001 Abuja Declaration. There is a grave concern about the poor state of public health facilities at both National and County levels and the continued detention of bodies and sickly persons for failure to pay medical bills. The doctor-patient ratio is still below par. On the positive side the commission noted improvement on maternal health, births occurring in health facilities increased from 90.1 per cent in 2015 to 96.7 per cent in 2019 due to free maternity programme in public health facilities launched in 2014. However, disparities persist, ranging from 189/100,000 in ElgeyoMarakwet to over 1,000/100,000 in the four counties (Mandera, Marsabit, Wajir and Turkana) where many women live beyond the reach of health facilities.
17. With regards to **clean water and sanitation**, the Commission notes that although Kenya has set out various sanitation policies such as the Kenya Environmental Sanitation and Hygiene policy 2016-2030; scarcity of water, let alone clean and safe water remains a huge challenge posing a risk to realisation of other rights such as the right to health. And

with the COVID-19 pandemic, this basic need and right threatens to **Right to Housing remains an outstanding issue**, Kenyans without land documentation or tenure security have found it hard to own a home. Kenya has an annual housing demand of 250,000 units with an estimated supply of 50,000 new units; this culminates to a housing deficit of about 2 million units.

18. Similarly, there has also been an increased number of **forced evictions** and destruction of property especially for marginalized urban communities to pave way for mega urban renewal and regeneration programs. The government carried out forceful evictions in **Mau in 2018 and 2019 where about 50,000 people were displaced** resulting to the elderly, children and women to be exposed to harsh weather conditions in their makeshift camps. In the year 2020, forceful evictions during the COVID-19 pandemic period occurred in Kariobangi and Ruai where a total of 12,000 families were left in the cold after demolition of their houses despite the inherent dangers of the pandemic and existence of an interim court order. The manner in which these evictions have been carried has flouted national and international law and guidelines governing elections. Scores of women and children have been evicted in the night and left more vulnerable amidst harsh weather conditions.
19. With regards to **Access to justice**, several pieces of legislations have been enacted towards facilitating access to justice namely the Legal Aid Act, Victim Protection Act, Witness Protection Act, Prevention of Torture Act, Small Claims Court Act and Persons Deprived of Liberty Act. The full benefits intended under these Statutes are however yet to be felt; full operationalization and resourcing of these statutes and relevant regulations however remains a challenge. These laws enacted need to translate to the intended tangible benefits on the common citizen especially among those who have been historically marginalized.
20. With regards to **rights of persons detained, held in custody or imprisoned**, the Commission notes that places of detention continue to face various challenges such as congestion, health and general well-being of the detainees. In an investigation on the state of healthcare for prisoners in Kenya, the Commission noted the challenges that face the prison system:-Lack of sufficient health infrastructure, lab equipment, poor health facilities within the prisons; Lack of adequate medical personnel including resident medical doctors and regular services by a dentist and a psychiatrist; Most prisons do not cater for the needs of persons with disabilities and there is lack of assistive equipment for the inmates with physical disabilities.

2.2 SOUTH AFRICAN HUMAN RIGHTS COMMISSION

21. The South African Human Rights Commission organised the study visit for the KNCHR and CIOC from 21st – 25th August, 2023.
22. The Kenyan delegation led by the Chairperson of the KNCHR Ms. Roseline Adhiambo Odede held high level meetings with commissioners of the SAHRC on 21st August, 2023 at the JD Building, 27 Stiemens Street, Braamfontein in Johannesburg.
23. SHRC was represented by Commissioners JB Sibanyoni, research advisor: Adv M Marongo and personal Assistant Sibo Tula.

The Constitutional Mandate to Monitor the Realisation of Economic and Social Rights

Mr. **Yuri Ramkissoon** made a presentation on the SAHRC mandate;

24. The South African Human Rights Commission (SAHRC) has a mandate in terms of the Constitution of the Republic of South Africa 1996, to monitor the realisation of economic and social rights (ESR) in the country.
25. Article 184(3) of the RSA Constitution requires that relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment.
26. Monitoring is not merely for constitutional compliance, but to ensure the advancement of ESR so that the most vulnerable in society may enjoy the full benefits of democracy.
27. There are various form of monitoring undertaken by the research unit, which is not limited to the S184 (3) process.

Early Years

- At the outset, the SAHRC used questionnaires to obtain relevant information on the realisation of ESR from relevant provincial and national government departments.
- Methodologies utilised to collect the relevant information were not entirely effective.
- Either the responses were not forthcoming – or the response rate was well below 50%.
- The responses received were perfunctory and not detailed enough.
- In fact, some departments responded by merely posting their annual reports to the SAHRC.
- Overall, the SAHRC was unable to collect information that was sufficiently substantive to meaningfully assess the realisation of ESR.

Public Hearings

- In 2008/9, the SAHRC decided to hold public hearings, which were successful in stimulating a robust dialogue on human rights issues.

- Communities and CSOs that do not usually have a platform to voice their issues were also given an opportunity to engage with State departments.
- It was a difficult process to ensure that government departments attended the hearings, and the hearings were postponed once due to a lack of timely responses from state departments.
- Like previous years, submissions from state departments were perfunctory and, in some cases, late.
- There was no mechanism follow-up on issues raised at the hearings, particularly in relation to specific complaints.
- A detailed report was published following this process.

2012- 2022 Period

- In subsequent years, the SAHRC has reverted to the use of questionnaires and paired this with other data collection techniques.
- The rate of response from State departments improved, but submissions were received well after the due date.
- The data received could not be verified and differed greatly from statistics provided by civil society (audit finding).
- In the 2014/15 reporting period, the SAHRC attempted to conduct one-on-one interviews with Director-Generals.
- This system was advantageous as it enabled us to probe the respondents but was onerous to set up.
- The SAHRC and SPII (now SPI) developed indicators for the measurement of ESR – which are useful and still being used.
- Strategic focus area reports were also produced (e.g. water and sanitation hearing report; right to food report).
- Since 2016/2017, the SAHRC has produced a combination of SoHRRs and research briefs.
- SOHRRs followed broad strategic themes of poverty, unemployment, inequality and violence (the first two pertinent to S184 (3)).
- Some research briefs were follow-up reports to assess changes in the realization of a right or specific aspects of a right (e.g. follow up on the water and sanitation report).
- Some research briefs focused on a specific issue within a right (e.g. the Special Needs Housing Policy – which was presented to the PC on Human Settlements).
- As such, there are few best practice examples to learn from and the methodology for data collection remains a work in progress.
- Countries often approach the SAHRC for lessons on monitoring ESR.
- Reports are often “obligatory” in style due to the late response from government departments and the poor quality of the responses.

- It is difficult to verify the authenticity of the data, which differs greatly from that of civil society.
- There is little room for follow up on pertinent issues, particularly those relating to a lack of services or oversight in poorer communities.
- Currently, the SAHRC does not liaise with provincial departments for the purposes of getting information on the realisation of ESR – except when collecting specific information.
- The impact of reports has not been interrogated by the SAHRC and often there is no follow up on recommendations made (SSG has assisted with this some extent).
- On a substantive note, there is a conceptual lack of understanding of key concepts within government departments, such as progressive realisation.
- Training government officials is not the solution as staff turnover in these departments is high.
- Currently, the SAHRC does not assess the realisation of ESR, or violations thereof, by non-state actors (i.e. private companies), which is indeed a shortcoming, given, for example, the impact of mining activities on local communities' rights.
- Reports are not always published once written – which may have influenced further the belief that the SAHRC is not fulfilling its S184 (3) mandate.

28. Commissioner **JB Sibanyoni** presented on the Constitutional and Legislative Framework of the SAHRC;

Constitutional and Legislative Framework

29. Section 24 of the Constitution states 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 present and 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.”
30. Article 25 of the RSA 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 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.”

31. In addition, article 25 (7) states that: “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.”

Section 27 1 (b) provides that: “Everyone has the right to have access to sufficient food and water;”

32. The Chief aims of the focal area is to work with and support the State in ensuring that people’s rights to a clean environment, sufficient food and to land are fulfilled, protected, respect and promoted; where there has been a violation of human rights to take steps to secure appropriate redress. These steps differ from situation to situation. In one scenario, a person whose rights have been violated can be directed to an appropriate forum. In another situation, we can assist that person to engage with the person, entity or government department that has violated their rights. And in another we can go to Court and finally we issue investigative reports on the violation with recommendations and or directives that ought to be complied with and to advice, through reports, research briefs, stakeholder engagements and meetings of how human rights can best be protected.
33. The focal area works towards the achievement of SAHRC aims through submissions on Parliamentary Bills before a relevant portfolio committee on matters that affect the Work of the SAHRC.
34. Making a submission on the Constitution Eighteenth Amendment Bill – “Without land reform that benefits those disadvantaged by unfair discrimination, human dignity cannot be restored and poverty and inequality cannot be effectively alleviated. Land is therefore of both inherent and instrumental value to South Africans.”

Hearings and Investigative Reports

35. The SAHRC conducted a National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa; worked with the Mpumalanga Provincial Office - Investigative report into allegations of an eviction conducted without a Court order in the matter of Francis Tembo v The Mpumalanga Economic Growth Agency and investigated and reported on Safety and Security Challenges in Farming Communities and on issues and challenges in relation to unregulated artisanal underground and surface mining activities in South Africa

Stakeholder Engagements

36. The Focal areas regularly meets with stakeholders, from NGOs to government departments either to receive complaints or to transmit complaints and to advise on best possible ways to protect human rights.

37. The Commission is involved in engagements with small scale fisheries in order to find out what issues small scale fisheries face; meeting with an organisation called Women on Farms a feminist NGO that has been working with women farm workers and dwellers in the Western Cape to support and strengthen their capacity to know, claim and realize their rights and the University of South Africa Law Clinic on Farm Murders, Land and Agricultural Reform for Rural Development in the contemporary South Africa.
38. Section 11 of the South African Human Rights Commission Act provides that the Commission can establish advisory committees that are purposed at assisting the Commission to fulfill its objectives. In the context of the Focal area the advisory committees advise either on recent developments, strategies and any other issue pertaining to the work of the focal area. These advisory committees consist of organisations or individuals with knowledge or expertise on issues that the focal area is working on.

Supporting and Strengthening State Institutions in the Republic of South Africa

39. The SAHRC has planned engagements with key state departments including the Commission on Restitution of Land Rights – in order to ascertain ways in which the Commission can ensure that complaints received by Focal area on land claims and communal property associations are resolved; Department of Social Development regarding food related issues in early childhood development centres; the Ministry of Agriculture, Land Reform and Rural Development regarding certain reports of the Commission in respect of Land such as the Report of the High Level Public Inquiry on the Impact of Rural Land Use and Ownership Patterns on Human Rights.
40. The SAHRC organised a national conference to reflect on progress made on measures undertaken by the state towards redistribution of land in South Africa. The conference was attended by delegates from various government departments, Chapter 9 Institutions, academics, researchers, civil society organisations, the House of Traditional Leaders and Councils of Traditional Leaders.

Equality Focal Area

41. The Deputy Chairperson of SAHRC, Fatima Chohan made a presentation on equality as a key focal area as follows;

Sources of its Mandate

- a) The Constitution of the Republic of South Africa: - S9 Equality Clause - S184 Promote, protect, and monitor observance of the right to equality.
- b) Promotion of Equality and Prevention of Discrimination Act: Giving effect to the S9 of the Constitution.

- c) South African Human Rights Commission Act: In its capacity as a Chapter 9 Institution.
42. Its mandate under this focal area is to advance the realization of the right to equality for all who live in South Africa through, among others.
43. The SAHRC mandate under the Constitution of South Africa is:
- (i) To promote measures, including legislation, designed to ensure full and equal enjoyment of all human freedoms and rights in a manner that does not result in unfair discrimination against any category of persons (s9(2)Act 108 of 1996) .
 - (ii) To keep the State and private persons accountable for any of their actions that constitute direct or indirect discrimination 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” (s9(3) Act 108 of 1996)
 - (iii) To promote measures that prevent unfair discrimination.
44. Mandate under the Promotion of Equality and Prevention of Unfair Discrimination Act includes;
- (i) To support the PEPUDA mandate through, inter alia, promoting eradication of systematic and institutionalized unfair discrimination, non-racialism, and non-sexism.
 - (ii) Support justice measures by ascertaining whether a complaint before the commission constitutes unfair discrimination and sometimes refer complaints that may constitute unfair discrimination to the Equality court
 - (iii) Research for the purpose of evaluation of the functioning of equality courts, monitoring management of the courts including training of judges and magistrates, while also being users of the equality courts.
45. Some of the recent works undertaken by the SAHRC include:
- (i) Developed documents promoting rights of intersex children and their parents.
 - (ii) Response to the KZN unrest in July 2021- Proactive program developed aimed at Social Harmony through National Effort (SHiNE launched in September 2022).
 - (iii) Currently, working on initial stages of an in-house Diversity Education and Training program that will benefit the Commission internally and be offered to the general public as part of the promotion mandate of the Commission, among others. Eventually, it will also serve as a benchmark for external diversity programs to ensure streamlining and the application of a human rights approach.
 - (iv) In the process of monitoring equality related SAHRC recommendation to different government departments (e.g DoL- monitoring unfair discrimination against LGBTIQ+ employees).
 - (v) The Commission responds to complaints regarding unfair discrimination through its provincial offices.

The Social Harmony Through National Effort (SHiNE)

46. Mr. Chohan briefed the delegation that SHiNE is based on common human values underpinned by the interdependence of individuals in society (Ubuntu).
47. He informed the delegation that SHiNE advocates for social harmony in South Africa through national efforts, self-reflection, family meetings/dialogues, sharing their stories (Learning to respect through understanding), places the responsibility for social harmony on everyone and not government, places their common humanity before socialized identities and dialoguing through their differences to counter growing culture of violence.

SHiNE Achievements

48. The delegation was informed that SHiNE was successfully launched in 6 provinces with each of the Commission's provincial offices being responsible for a themed month of activities (e.g North-West Province's 'Good governance begins at home'); Dialogues arranged at schools, prisons, community hall, and with men on the role of father figures in nurturing adolescent daughters in order to ensure their dignity and empowerment.
49. The organisation is now focused on developing SHiNE chapters at Universities and schools in South Africa.
50. The organization's intention is for everyone in society to be reached through SHiNE which is designed to adapt to all institutions including business, NGOs, and government institutions.

Human Settlements, Water, and Sanitation Portfolio

Briefing by Commissioner Ntuli

51. Commissioner Ntuli briefed the delegation that inequality in access to basic services is still a reality, and is marked by race and class distinctions, with African people in poor rural areas the most deprived and that state and rate of service delivery has been deteriorating.
52. Three major water provision sub-sectors in the RSA are;
 - (i) Water resource management (national government)
 - (ii) Water services provision (local government) and;
 - (iii) Disaster management (national and provincial governments)
53. The Republic of South Africa experiences water provision challenges as follows;
 - (i) South Africa is a water scarce country. Rated the 30th driest in the world; with a rapidly increasing population. Average rainfall is 500 mm compared to the world average of 860mm.
 - (ii) Despite scarcity, a large portion of national GDP is directly dependent upon water.
 - (iii) 15% of national GDP comes from the agricultural sector, which uses 60% of national water supply. Only 5% of agricultural water used is by black farmers.

- (iv) More than 50% of South Africa's wetlands have been lost, and of those that remain, 33% are in poor ecological condition.
 - (v) 41% of municipal water does not generate revenue. 35% is lost through leakages.
 - (vi) Energy production: South Africa is the world's fourth largest exporter of coal – which is washed after being mined. In one second, Eskom uses the same amount of water as a single person would use within one year (based on the minimum 25 litres of water per day).
 - (vii) Industries such as mining, which contributes about 8% to the total GDP, uses about 6% of the national water supply.
54. There are Major Financial Challenges in the Water sector including;
- (i) Weak billing and revenue collection at municipal level.
 - (ii) The Water Trading Entity (WTE) in DWS was owed R23 billion by end of 2022.
 - (iii) The debt is rising due to non-payment by municipalities (owing about R9 billion) and Water Boards (about R8 billion)
 - (iv) Water Boards are owed approximately R14 billion due to non-payment by municipalities
55. The raising debt has had an impact the declining credit ratings and borrowing capacity and inadequate investments in infrastructure, inadequate allocation to operations and maintenance due to weaknesses in revenue collection and negative impact on water quality and quantity, and other socio-economic rights such as health, and the environment, housing, and education.

Housing / Human settlements

56. According to Statistics South Africa's General Household Survey of 2021, slightly more than eight-tenths (83,6%) of South African households lived in formal dwellings in 2021, followed by 11,7% in informal dwellings, and 4,2% in traditional dwellings.
57. On urban spatial challenge, according to United Nations estimates, 80% of the world's population will be urban by 2050. National Treasury estimates that for South Africa it is 77.4%. By 2030, this percentage is expected to reach approximately 70%.
58. On unlawful Evictions, despite constitutional and legislative protections, communities and individuals continuously face unlawful evictions, which are carried out inhumanely.
59. Complaints to the SAHRC on evictions range from excessive use of force in the conduct of evictions, use of inadequately trained independent contractors when executing evictions orders, lack of appropriate legal processes and sufficient notice of evictions, disregard for the safety and well-being of children and other vulnerable groups, disregard for the time of day or weather conditions when carrying out evictions, use of derogatory or racist language by those tasked with executing the eviction order and damage and theft of property and the failure by local municipalities to provide alternative accommodation or implement appropriate emergency housing plans.

Challenges of Urbanization

60. The main challenges associated with urbanisation in Africa are
- (i) Low economic growth and growing poverty that contribute to the “urbanisation of poverty”,
 - (ii) Inadequate infrastructure and lack of services,
 - (iii) Degradation of the environment,
 - (iv) The absence of clear policies on land ownership,
 - (v) Unsustainable consumption of resources.

Briefing on Children’s Rights

Presented by Angie Makwetla

61. Angie Makwetla is one of the Commissioners at the SAHRC. Her focus areas are children and migration. She stated that in addressing the focus area, they rely on national laws, regional and international instruments South Africa is a signatory to; SAHRC promotes these rights through various advocacy initiatives, which include education, workshops and training; the SAHRC protect children’s rights by addressing their violation through their complaint-handling procedure, conducting investigations, hearings and inquiries and monitor rights by ensuring government compliance with the laws, conducting monitoring visits to ensure the implementation of the laws, policies and treaties.

SAHRC’S Work on Children’s Rights

62. The SAHRC has achieved the following in its work on Children’s rights:
- (i) Establishment of a dedicated Children’s Right Unit.
 - (ii) Hosted a workshop on alternatives to detention and care policies for children on the move in partnership with UNICEF, UNHCR and EU.
 - (iii) Developed advocacy materials on birth registration and alternative care
 - (iv) Hosted a conference with children on the impact of Covid19
 - (v) Conducted monitoring visits to children on the move to assess if their rights are being ensured and to secure care centers
 - (vi) Family Strengthening initiative
 - (vii) Drafted a thematic discussion paper on ending corporal punishment in the Home.
 - (viii) Hosted a human trafficking symposium, giving how this impacts a number of vulnerable groups of children especially. The objective is to increase public awareness of human trafficking and discuss potential solutions to combat it.
 - (ix) Together with Nelson Mandela Foundation, ran a community child safety advocacy campaign named ‘Making the Community Safe’.

- (x) Contributed to the development of a children's manifesto which was spearheaded by the Nelson Mandela Foundation.

SAHRC'S Work on Migrant's Rights

63. In 2008, the Commission conducted a national hearing to investigate the nature and causes of xenophobia. The investigation culminated in a report that made recommendations on how the government can ensure the rights of migrants and promote social cohesion.
64. One recommendation from the national hearing is to develop systematic mechanisms to monitor and respond to xenophobic attacks. Based on this recommendation, UNHCR established the United Nations Promotion Working Group (UNPWG). The UNPWG comprises civil society, government departments (DOJ, DHA and SAPS), UN agencies and the Commission.
65. The SAHRC participates in the review and comments on government policies and legislation so that they align with the rights of migrants/refugees as stated in national and international instruments that South Africa is a signatory to.
66. The Commission also drafts policy briefs and engages with government departments on existing policies that negatively impact the rights of migrants.

Public Protector South Africa

67. The team visited the Public Protector South Africa Offices on 22nd August, 2023. They were received by Adv. Kholeka Gcaleka (Public Protector SA), Ms Benita Young (Manager International Relations and Parliamentary Liaison, Ms. Nthoriseng Motsitsi (Executive Manager Complaints and stakeholder management), and Adv. Neels Van der Merwe (Senior Manager: Legal services), Mr Ndili Msoki (Acting Spokesperson).

The delegation was briefed as follows;

Mandate of Public Protector Office – Adv Kholeka Gcaleka

68. The Public Protector is an independent institution established in terms of section 181 of the Constitution, with a mandate to support and strengthen constitutional democracy. As a supreme administrative oversight body, the Public Protector has the power to investigate report on and remedy improper conduct in all state affairs. The Public Protector must be accessible to all persons and communities. Anyone can complain to the Public Protector.

Before complaining

69. The Public Protector is a complaints body of last resort. Before you complain to the Public Protector, you should try to solve the problem yourself by: speaking to the official(s) involved; writing to the person in charge of the official(s) such as the Head of

the Department, the Chief Executive Officer or the Municipal Manager; and one may also consider approaching a member of parliament or provincial legislature.

The Complaints Process

70. The delegation was informed that anyone can lodge a complaint with the Public Protector, who will then investigate it. The Public Protector acts as a referee who can look at all sides of a problem. If the Public Protector finds that the complaint is justified, he/she will do whatever possible to find a solution to the problem, which includes recommending changes to the system.

- The Public Protector can also report the matter to Parliament, which may debate to ensure implementation of the recommendations.
- Investigations are mostly done informally, but the Public Protector can serve summons on people to give evidence under oath or affirmation where necessary.

71. The following information should be contained in a complaint before the Public Protector;

- (i) The background and the nature of the conduct complained of;
- (ii) The reasons you feel the complaint should be investigated by the Public Protector;
- (iii) Personal steps undertaken to try to solve the matter. All details such as names, dates, and what occurred or was said must be provided.
- (iv) Complainant's copies of any correspondence and the officials should be attached to his letter; and
- (v) The postal address and telephone number and where he can be reached.
- (vi) The complainant may write, or request someone to write on his/her behalf or call the Public Protector's office where trained professional staff members will listen to one's complaint.
- (vii) A complainant can also visit any of their offices located in all nine provinces for an interview or consultation, if they prefer.

72. A complaint must be reported to the Public Protector within two years from the date of occurrence of the incident.

73. Complaints can also be lodged at visiting points and workshops conducted by the office. Visiting points are areas that have been identified for the purpose of conducting interviews with complainants, and they are found in all provinces. Visiting points are serviced at least once a month.

74. The Length of the Complaint is as follows;

- (i) The complaint is registered within two working days of receipt and acknowledge in writing within 3 working days.
- (ii) The complaint is assessed for jurisdiction and merit within 7 working days of registration.
- (iii) The complainant is advised within ten working days if the public protector has no jurisdiction over the complaint and refers the matter to another competent institution within for assessment.

- (iv) An investigator is provided within 5 working days of the file being allocated to one, where they accept jurisdiction.
- (v) The Public Protector provides feedback every six weeks after an investigation has commenced.
- (vi) The Public Protector strive to finalise investigations as soon as possible (cases allocated to the administrative justice and service delivery branch will be finalized within 6 to 12 months while those allocated to the good governance and integrity branch may take up to 24 months).
- (vii) The complainant is informed of the outcome within 15 working days of finalization of one's complaint.
- (viii) The PP always grants an opportunity to complainant upon request for consideration to reconsider the decision made.
- (ix) They are always courteous, return calls within one working day after receiving a message and adhere to the code of conduct and values of the Public Protector South Africa.
- (x) They serve the elderly and people with disabilities first when they visit their offices.
- (xi) The PP assists people with challenges in reading and writing.
- (xii) The PP complies with provisions of the Executive Members Ethics Act and endeavors to conclude such investigation within 30 days.

75. The Public Protector Reports are divided into the following categories:

Investigation Reports

- a) Reports on investigations into allegations of fraud, corruption, mismanagement and abuse of funds allocated to public offices such as Office of the Chief Justice.
- b) Reports on investigation into allegations of failure to pursue disciplinary action against officials of the State Departments such as Department of Correctional Services implicated in the Commission of Inquiry into State Capture relating to tenders awarded to African Global Operations, previously known as BOSASA
- c) Reports on an investigation into allegations of irregular awarding of tenders
- d) Reports on an investigation into allegations of maladministration, corruption, nepotism and abuse of power.

Protected Disclosures / Whistle Blower Protection Reports

- a) Reports of an investigation into allegations of improper conduct and victimization of alleged whistle-blowers.
- b) Reports on an investigation into allegations of undue delay, gross negligence, improper conduct and maladministration by public officers such as the Minister of Police and the South African Police Services in failing to provide whistle-blowers with security protection at state expense following the expose of allegations of maladministration, corruption and the unconscionable expenditure of public funds by the UMzikhulu Local

Municipality in connection with the restoration of the heritage of the dilapidated Umzimkhulu Memorial Hall

Executive Ethics Enforcement Reports

Reports on an investigation into allegations of violation of the Constitution of the Republic of South Africa such as violation of the Executive Ethics Code by the President of the Republic of South Africa and by the Minister of Justice and Correctional Services when appointing public officers.

Public Protector Irregularities Reports

Reports on investigations into maladministration and procurement irregularities in the award of tenders.

Centre for Human Rights – University of Pretoria

76. The delegation visited the CHR at the University of Pretoria on **22nd August 2023**. The delegation was hosted by Prof Nkatha Murugi (Assistant Director), Prof. Magnus Killander (Academic Coordinator), Clement Agyemang (Tutor and Doctorial Candidate), Ms Marystella Auma Simiyu (Programme Officer)

They presented about the Institution as follows:

77. The Centre was established at the Faculty of Law, University of Pretoria, in 1986, as part of domestic efforts against the apartheid system of the time. Members of the Centre participated in meetings with the liberation movements outside the borders of South Africa, organized conferences and participated in efforts to promote human rights in South Africa, and, when the transition came, served as technical advisors in the constitution-writing processes.
78. Over the years, the Centre's focus broadened to encompass diverse issues of human rights law in Africa, and international development law in general. Today, the Centre is at the hub of an unmatched network of Practising and academic lawyers, national and international civil servants and human rights practitioners across the entire continent. An ever-growing cadre of Centre graduates now contributes in numerous ways to the advancement of human rights and democracy and the strengthening of institutions all over the African continent, and beyond.
79. In 2006, the Centre for Human Rights was awarded the UNESCO Prize for Human Rights Education, with particular recognition for the African Human Rights Moot Court Competition and the LLM/MPhil in Human Rights and Democratization in Africa. On the occasion of marking 25 years of its existence in 2012, the African Commission on Human and Peoples' rights awarded its Human Rights Prize for civil society organizations to the Centre.
80. The Centre is an internationally recognized university-based institution combining academic excellence and effective activism to advance human rights, particularly in

Africa. The Centre therefore occupies a strategic position with its focus on the rights of marginalised and vulnerable people and democratization on the African continent. Its hybrid nature as an academic institution and a civil society organization gives it an added advantage to enhance the capacity of both rights holders and duty bearers through research, strategic engagement and teaching, train the next generation of human rights advocates and conduct advocacy at the national, regional and global levels.

Centre for Human Rights Values

81. The Centre is guided by human rights, in particular the equal dignity of and respect for everyone. It adopts a human rights-based approach to all its activities.
82. The CHR is bound by and uphold all UP policies. In particular, it strongly disapproves of sexual harassment, misuse of authority, racism, homophobia, sexism, xenophobia, religious and other forms of intolerance.
83. They act with compassion to ensure the inclusion and protection of those most vulnerable to human rights violations.
84. The aim is to provide a non-judgmental and participatory convening space where intellectual freedom prospers and commit themselves to act with integrity in all their endeavors, by acting with fairness to all.
85. They consider themselves to be accountable to everyone involved in their work; partners, colleagues, the Faculty and broader University, and their donors. They uphold the principle of transparency.
86. They centre commits to act with professionalism, and be effective and efficient in its use of human and material resources; strive to advance the spirit of Ubuntu by cultivating acceptance of diversity and difference, and by working in solidarity with each other and our partners, endeavor to strengthen pan African institutions and to foster a pan African identity and is committed to invest in the future of Africa's youth.

Key Cross Cutting Imperatives For the Centre's Work

87. The Centre's scope and focus is Pan-African, while emphasizing the local relevancy of continental human rights norms and institutions
88. The African Union (AU)'s vision is an integrated, prosperous and peaceful Africa driven by its own citizens. The Centre is strategically positioned to advance the rights of people in Africa without leaving anyone behind. The African people have suffered egregious human rights violations as a result of global injustices, poor governance and decision-making by African states as well as lack of capacity by citizens to demand protection and accountability.
89. The solutions to the continent's problem are more effectively developed and implemented by people and institutions located in Africa. For change to occur on the continent it is crucial for the Centre to focus on issues affecting the African continent and to be on the ground collaborating with partners and empowering victims of human rights

violations and engaging state and non-state actors operating in Africa. In acknowledgement of its geographical location in South Africa, the Centre is also strategically positioned to promote human rights in South Africa.

90. To advance the rights of the people of Africa, the Centre engages AU and UN human rights protection mechanisms through advocacy, research (for example by conducting studies), capacity building and training. For many years the Centre has worked closely with the AU's three primary human rights bodies, the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of Children and the African Court on Human and Peoples' Rights in promoting respect for and protection of human rights on the continent. The Centre also has well-established relationships with other AU organs that form part of the African Governance Architecture (AGA), including the Pan-African Parliament (PAP), ECOSOCC and the APRM.
91. The Centre enjoys observer status with the African Commission and African Children's Rights Committee. While it has engaged less frequently and intensively with the UN human rights system, the Centre also engages with the UN human rights system. The Centre has consultative status with the UN ECOSOC

The Centre works to advocate for and protect the rights of vulnerable groups

92. Vulnerable and marginalised persons and communities usually suffer the most whenever there is a crisis at the domestic or international level. The Centre in collaboration with its partners has found it obligatory to fight against injustices and human rights violations suffered by vulnerable people on the continent as they are often overlooked by states, business entities and other key stakeholders in development projects and social justice initiatives.

The Centre's Thematic Priorities

93. The Centre's work over the next five years is aimed at the following strategic thematic priorities

Rights that support and facilitate participatory, transparent and accountable democracies

94. While multi-party democracies have been established in most of Africa, recent times have seen the resurgence of authoritarianism through unconstitutional changes of government, the entrenchment of illiberal democracies and increasing populism. The Centre aims to work towards supporting and entrenching relevant civil and political rights, such as freedom of expression, access to information, the right to political participation and elections.

Engagement on socio-economic rights and the right to development

95. The world (at the local, national, regional and global level) is characterized by widening inequality within states and between states across the globe. Inequality affects the material well-being of people across the world, and in Africa, in particular.
96. The COVID-19 pandemic showed that increasing attention needs to be focused on the material conditions of the majority of the African peoples. Justiciable socio-economic rights provide one avenue through which the effect of these inequalities can be addressed.
97. Over the next five years, socio-economic concerns, and the role of justiciable socio-economic rights, should be fully integrated into all Centre programmes and projects of the various Centre Units and be prioritized in the Centre's working methods.

Climate change

98. Climate change is the most fundamental threat to human rights of our time. In sub-Saharan Africa cyclones and floods have destroyed livelihoods, damaged schools, hospitals, roads, and killed and displaced many people in Madagascar, Malawi, Mozambique, South Africa and Zimbabwe.
99. Several African states are faced with serious threats to food security, loss of houses, destruction of infrastructure and debilitating droughts. In the horn of Africa several states are facing starvation caused by the incessant droughts that have destroyed crops and livestock. The marginalised, poor and vulnerable communities in these regions are disproportionately bearing the brunt of climate change as they do not have the requisite capacity to adapt and mitigate the effects of nature's vagaries.

Business and human rights

100. The business sector plays a central role in the economic development of most countries, including in the African region. Most national development agendas on the continent are private sector led. Whereas the private sector remains key in economic development and can further contribute to the realisation and enjoyment of human rights, many corporate activities on the continent have been heavily associated with human rights abuses and violations

Centre for Applied Legal Studies at the University of Witwatersrand

101. The delegation visited Centre for Applied Legal Studies at the University of Witwatersrand (CAL S) on **23rd August 2023**. The delegation was hosted by Dr Tshepo Madlingozi (Director and Associate Professor), Ms. Omhle Ntshingila (Communication and Engagement Officer), Ms Busisiwe Kamolane (Attorney and Research Coordinator), Mr. Matimba Hungwani (Senior Secretary),

Submissions on the CALS

102. The Centre for Applied Legal Studies was founded in 1978 by Professor John Dugard as a legal research unit within the University of Witwatersrand. The purpose of the Centre was to encourage law reform and improve access to justice during apartheid. While much has changed over the years since then, the organisation remains committed to promoting human rights and challenging systems of power in South Africa and the region.
103. The CALS vision is a society where historical and social justice are achieved, state institutions are strengthened and powerful entities are held to account by marginalised actors. In working towards this vision, CALS is guided by four key pillars, namely: Expanding the agency of marginalised actors; developing a critical partnership with the state; Ensuring horizontal application of the Constitution and Taking an intersectional and gendered approach to human rights violations.
104. The CALS appreciates that rights violations do not generally occur in isolation, but rather intersect. These violations also often have a disproportionate impact on particular groups who are already rendered vulnerable, such as women and people with disabilities.
105. The center works towards its vision by undertaking research, advocacy and strategic litigation organised according to the five intersecting programmes, namely: Business & Human Rights; Civil & Political Justice; Environmental Justice; Gender Justice and Home, Land & Rural Democracy.

Programmes (CAL S)

Business and Human Rights

106. Traditionally, the social justice sector has focused on the state's responsibilities to uphold human rights. There are, however, many other powerful actors that have a role to play here. Corporations have a long history of impacting on the rights of individuals and communities living in poverty where they operate, affecting everything from their environment to their social security. The Business and Human Rights Programme works toward ensuring that corporations respect human rights and are held accountable for violations.
107. The center takes a step further by targeting the entities that fund such operations, including investors, banks and other financial institutions. Since many of the largest and most powerful corporations operate across borders— a great deal of CALS's advocacy

work takes place not only in South Africa but in the African Commission of Human and People's Rights, the United Nations and beyond.

108. The Business and Human Rights Programme also takes a gendered approach to its work, mindful of the unique manner in which women and other vulnerable groups are affected by abuses committed by the private sector.

Civil and Political Justice

109. The Civil & Political Justice programme advances civil and political rights, such as the right to protest, the right to freedom of expression, the rights of the arrested and detained, and the right of access to information.
110. In addition to rights-based work, the Programme aims to protect and promote the systems and institutions of South Africa's constitutional democracy. This includes working to strengthen Chapter Nine institutions, supporting the transformation of the judiciary, and engaging with Parliament.
111. CALS currently hosts a project which analyses the work of the Constitutional Court, publishing statistics annually in the South African Journal on Human Rights (SAJHR). The project focuses on issues such as voting alignment between Justices of the Constitutional Court, government success rates in cases before the Court, and trends in the nature of cases heard by the Court.

Environmental Justice

112. Protecting the environment is critical for everyone, but particularly for communities living in poverty. These communities are the ones who are directly impacted by the burdens of development and the environmental degradation that comes with it, but are the last to see its benefits.
113. The Environmental Justice Programme aims to counter injustices and make environmental rights a reality for all who live in South Africa. The center's aim is to change the behaviour of both the corporate actors that make use of natural resources, and the state which regulates this process. The focus remains on the mining sector, which is a major contributor to economic growth in the country, but is also responsible for a great deal of environmental harm and exploitation.
114. The Centre work's specifically on the social and labour plan system and other models for community benefit sharing, placing the issues of voice, participation and transparency at the centre of its work.

Gender Justice

115. CALS has a rich history of working in the gender rights arena. It is acknowledge that human rights violations do not affect all people in the same way, and many times there is a disproportionate, gendered harm that needs to be addressed. The Gender Justice

programme focuses on protecting the rights of people of all gender identities and expressions.

116. The work of CALS largely centres on gender-based violence, and in particular the trauma and structural violence people face when they are failed by the very systems that are meant to protect them. This can include the treatment they face in the criminal justice system, the responses they confront to reports of sexual harassment in the workplace, how instances of sexual violence in schools are handled, and the conditions and management of domestic violence shelters.

Home, Land and Rural Democracy

117. South Africa has a Constitution which contains progressive protection for socio-economic rights, including the rights to sufficient water, health care services, adequate housing and protection from arbitrary eviction. Formerly known as the Basic Services programme, the CALS Home, Land & Rural Democracy programme focuses on ensuring that socio-economic rights are realised by the state.
118. For a number of years, the programme largely focused on the need for housing and the continuing problem of unlawful evictions in inner city Johannesburg.
119. The programme has since been expanded to include work on access to water, sanitation, and electricity – where they have been able to ensure their clients get the free basic services to which they are entitled. Housing and evictions remain a major challenge, however, and CALS continues to represent many client communities in this area. Of particular concern is the need for the state to provide temporary alternative accommodation to people left homeless when evicted.

CHAPTER THREE

3.0 COMMITTEE'S OBSERVATIONS

The delegation made the following observations:

- 1) South Africa is one of the few countries in the world that has enshrined ESR in its Constitution as justiciable rights and the Commission is mandated to collect information from relevant State organs on the measures they have taken towards realisation of such rights.
- 2) Currently, the SAHRC does not assess the realisation of ESR, or violations thereof, by non-state actors (i.e. private companies), which is indeed a shortcoming, given, for example, the impact of mining activities on local communities' rights.
- 3) The SAHRC is involved in engagements with stakeholders and the public in improving its monitoring processes, undertakes consultations with the state actors and relevant stakeholders on monitoring and implementation of commission recommendations.
- 4) Public hearings are critical and successful in stimulating a robust dialogue on human rights issues.
- 5) Socioeconomic challenges, including poverty, inequality, and unemployment is issues closely intertwined with human rights violations.
- 6) The entrenched culture of violence is a major contributor to the violation of rights of children and migrants.
- 7) SAHRC interventions and protection measures includes; Supporting communities to file complaints with the Commission or other relevant bodies in instances of violations of Human Rights; Conducting investigations on allegations of violations of human rights; Convening investigative hearings and inquiries where problems persist in a systemic manner; Engaging relevant government authorities to intervene directly to complaints of non-delivery of basic services; Litigation to defend the Bill of Rights on behalf of communities; monitoring the observance of human rights through Human Rights Monitors in provincial offices; matters may be referred to promotion office for intervention in promoting and populating human rights discourses in communities or referred to the Protection Office for further investigation.
- 8) The last decade has seen a tremendous improvement in terms of enacting an enabling legal environment to bring light to the rights as stipulated in the Constitution. The implementation therefore is what has generally lacked which has led to a dissatisfied Mwananchi who had so much hope in the Constitution of Kenya 2010.
- 9) The main gains of the 2010 Constitution was the recognition of human rights as inherent to every human being and not a favour as had been practiced in the previous regimes. This express affirmation in our Supreme law culminated to various enabling legislations that gave light to these rights and brought them closer to the people.

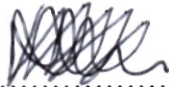
CHAPTER FOUR

4.0 COMMITTEE'S RECOMMENDATIONS

The Committee recommended as follows;

1. The KNCHR should be facilitated with sufficient resources for awareness-raising campaigns on the Bill of Rights across 47 counties, availing information to communities on avenues to report possible violations of Human Rights, working with community-based human rights champions to safeguard human rights and to maintain a consistent presence of the Commission in communities and training community leaders on strategies to promote Human Rights awareness in communities.
2. The KNCHR should hold engagements with relevant actors to highlight challenges in the Human Settlements; Water sector; Undertake inspections/site visits to assess realization of the right of access to adequate housing and water; host forum on County Governments Accountability, Service Delivery and Human Rights and Develop a Water Justice Tracker Project.
3. The Commission on Administrative Justice Act should be amended to inter alia, create a criminal charge of contempt of the Ombudsman, where persons and / or organs of state who do not implement the recommendations of the Commission on Administrative Justice are held accountable.

Signed



Date

22/11/2023.

Hon. Gathoni Wamuchomba, HSC, MP

**MINUTES OF THE 15TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE HELD ON THURSDAY 16TH NOVEMBER, 2023 AT 10:00 PM IN
CONTINENTAL HOUSE, COMMITTEE ROOM, 5TH FLOOR, PARLIAMENT BUILDINGS.**

PRESENT

1. Hon. Wamuchomba Gathoni, HSC, M.P. – Chairperson
2. Hon. Patrick Osero Kibagendi, MP
3. Hon. Peter Oscar Nabulindo M.P.
4. Hon. Charles Nguna Ngusya, M.P
5. Hon. Daniel Karitho Kiili, M.P.
6. Hon. Geoffrey Ekesa Mulanya, M.P
7. Hon. Jessica Mbalu Nduku, CBS, M.P.
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Ruth Odinga, M.P.
10. Hon. Augustine Mwafrika Kamande, M.P
11. Hon. John Murumba Chikati, M.P
12. Hon. Lawrence Aburi Mpuru M.P.
13. Hon. Benjamin Langat Kipkirui, M.P.

ABSENT WITH APOLOGIES

1. Hon. William Kamket, M.P- Vice Chairperson
2. Hon. Silvanus Onyiego Oso, CBS, M.P
3. Hon. Aramat Lemanken, M.P.
4. Hon. John Gitonga Mukunji Mwaniki, M.P
5. Hon. Jackson Lentoijoni Lekumontare, M.P
6. Hon. Betty Njeri Maina, M.P.
7. Hon. Harun Mohammed Umulkher, M.P.
8. Hon. Ali Abdisirat Khalif, M.P
9. Hon. Hamisi Kakuta Maimai, M.P
10. Hon. Harun Mohammed Umulkher, M.P

SECRETARIAT

1. Mr. Abenayo Wasike- Principal Clerk Assistant II
5. Ms. Ivy Maritim – Media Relations Officer III
6. Mr. Emusugut Esamai – Audio Officer

Min No. CIOC/68/2023

Preliminaries

The Chairperson called the meeting to order at 10.30 a.m. and said a word of prayer.

The Chairperson briefed members on the agenda being a meeting with the Honourable Attorney General, adoption of the Committee's sponsored legislative proposal on IGR (Amendment) Bill, 2023 and Committee report on a study visit to the Republic of South Africa.

Min. No. CIOC/69/2023: Confirmation of Minutes

Minutes of the 14th sitting held on Thursday 12th October, 2023 were confirmed as a true record of the deliberations having been proposed by **Hon.Charles Ngusya Nguna, M.P** and seconded by **Hon.Daniel Karitho, M.P.**

Min No. CIOC/70/2023: Meeting with the Hon.Attorney General

The secretariat informed the committee that it had received a call from the Office of the Attorney General that the AG was not available for the meeting as he was attending a Cabinet retreat.

Members directed the secretariat to liaise with the AGs Office to come up with another appropriate date for the rescheduled meeting.

Min No. CIOC/71/2023: Adoption of Report on a Study Visit to the Republic of South Africa

The committee jointly with the KNCHR undertook a study visit to the Republic of South Africa from 21st to 25th August, 2023. The report was unanimously adopted by members having been proposed by **Hon.Charles Nguna Ngusya, M.P** and seconded by **Hon.George Risa Sunkuyia,M.P.**


Min No. CIOC/72/2023: The Intergovernmental Relations (Amendment) Bill, 2023

1. The Legislative proposal is sponsored by the committee.
2. It was developed by the committee following a retreat with the Intergovernmental Technical Relations Committee.
3. The legislative proposal seeks to amend the Intergovernmental Relations Act, 2012 in order to *inter alia* strengthen the Intergovernmental Relations Committee to the status of an agency owing to its crucial role in dealing with intergovernmental matters.
4. Members resolved to submit the legislative proposal to the Speaker of the National Assembly for publication.
5. The legislative proposal was unanimously approved having been proposed by **Hon.Jesca Mbalu, M.P** and seconded by **Hon.Oscar Nabulindo, M.P.**

Min No. CIOC/73/2023

Adjournment

There being no any other business to transact, the meeting was adjourned at 11.35 a.m

Signed..........Date.....22/11/2023.....

Hon. Wamuchomba Gathoni, HSC, M.P.
Chairperson

KENYA NATIONAL ASSEMBLY



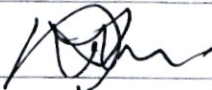






CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER FOR MEMBERS

Date: 16/11/23 Venue: CONTINENTAL HOUSE, 5TH FLOOR

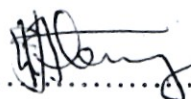
Agenda: ADOPTION OF REPORT ON STUDY VISIT TO S. AFRICA
CONSIDERATION OF INTERGOVERNMENTAL RELATIONS (AMENDMENT)
BILL, 2023.

NO.	NAME	SIGNATURE
1	Hon. Wamuchomba Gathoni, HSC, M.P. Chairperson	
2	Hon. William Kamket, M.P. Vice Chairperson	
3	Hon. Silvanus Onyiego Osoro, CBS, M.P.	
4	Hon. Aramat Lemanken, M.P.	
5	Hon. Benjamin Langat Kipkirui, M.P.	
6	Hon. Jessica Mbalu Nduku, CBS, M.P.	
7	Hon. George Risa Sunkuyia, M.P.	
8	Hon. Patrick Ntwiga Munene, M.P.	
9	Hon. Peter Oscar Nabulindo, M.P.	
10	Hon. Lawrence Aburi Mpuru, M.P.	
11	Hon. Jackson Lentoijoni Lekumontare, M.P.	
12	Hon. Charles Nguna Ngusya, M.P.	
13	Hon. Ruth Odinga, M.P.	
14	Hon. Hamisi Kakuta Maimai, M.P.	
15	Hon. John Murumba Chikati, M.P.	
16	Hon. Geoffrey Ekesa Mulanya, M.P.	

17	Hon. Patrick Esero Kibagendi, M.P.	
18	Hon. Daniel Karitho Kiili, M.P.	
19	Hon. Ali, Abdisirat Khalif, M.P.	
20	Hon. Betty Njeri Maina, M.P.	
21	Hon. John Gitonga Mukunji Mwaniki, M.P.	
22	Hon. Augustine Mwafrika Kamande, M.P.	
23	Hon. Harun Mohamed Umulkher, M.P.	

Committee Clerk.....

Date ...16/11/23.....

Director-AAOSC.....

Date...22/11/2023.....