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South African Human Rights Commission-Business and Human Rights Work¹

This document highlights the Commission's human rights and business strategy, details how they monitor and evaluate business and human rights situations in South Africa and investigate and address systemic issues.

HUMAN RIGHTS AND BUSINESS STRATEGY

Given the relatively underdeveloped nature of the business and human rights agenda in South Africa,² the South African Human Rights Commission (the Commission) has sought to promote awareness and understanding of the impact of business on human rights in South Africa, while addressing specific abuses by business brought to its attention through complaints handling at an individual level. In addition to the commitment to promote awareness and providing appropriate redress where complaints of violations are received, the Commission monitors the impact of business on human rights through selected interventions.

In 2013, the Commission hosted a Business and Transparency Conference with key

stakeholders, including business experts and the then Minister in the Presidency for the National Planning Commission, Mr Trevor Manuel. The aim of the Conference was to discuss issues of business transparency and inform the development of a National Action Plan for South Africa to support the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs).³ The Commission's engagement on business and human rights was further supported by the inclusion of this theme as a key strategic focus area in the Commission's 2014-15 Annual Performance Plan.⁴ This theme was developed subsequent to a roundtable discussion hosted by the Commission in February 2014.

The roundtable discussion centred on three issues, namely: the applicability of the UNGPs to the South African context; the impact of

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² Notwithstanding the impressive efforts of many dedicated and engaged South African civil society organisations, academics, and individuals.

³ South African Human Rights Commission (2013), SAHRC Conference on Business and Transparency.

<https://www.sahrc.org.za/index.php/sahrc-media/speeches/item/86-opening-address-sahrc-conference-on-business-and-transparency>

⁴ South African Human Rights Commission (2014), Strategic Plan 2014 to 2017, Annual Performance Plan 2014/2015.

<https://www.sahrc.org.za/home/21/files/SAHRC%20Strategic%20Plan%202014-17%20and%20APP%202014-15.pdf>

the private sector on the realisation of socio-economic rights and the intersection of various rights within the notion of Business and Human Rights. The discussions were convened in each of the country's provinces to expand engagement to the local level and culminated in a national roundtable. To give impetus and continuity, the business and human rights theme adopted during 2014/15 was then extended to 2015/16 in terms of the Commission's Strategic Plan for the fiscal years 2015 to 2020.⁵ A critical point of inception for working on business and human rights was to build the Commission's own institutional capacity while simultaneously promoting awareness at local levels. The activities in this earlier period therefore relied on raising awareness about the UNGPs and on catalysing conversations, which explored the adequacy of existing legal frameworks with regard to business and human rights.

Moreover, the Commission sought to promote a human rights based-approach in the business context by developing tools that monitor awareness and implementation of business and human rights principles. The need for monitoring tools arose in a context of clear inadequacies of focussed monitoring and assessment of the impacts of business practices on human rights. In March 2015, the Commission, in partnership with the Danish Institute for Human Rights (DIHR), published a Human Rights and Business Country Guide for South Africa (Country Guide).⁶

The Country Guide is underpinned by the UNGPs and outlines the roles and responsibilities of the State and business enterprises in upholding and promoting human rights in the South African context.

With a view to supporting the private sector adopt a human rights-based approach to their operations, the Commission developed a Disability in the Workplace Toolkit for business as an easily accessible reference tool. The toolkit was developed after intensive consultations with experts and stakeholders to expand on issues the Commission had noted from its National Hearing on Discrimination in the Workplace.

MONITORING AND EVALUATION

By virtue of its constitutional mandate to monitor and assess the observance of human rights in the South Africa, the Commission's monitoring of the Lindela Repatriation Centre (Lindela) resulted in litigation relating to the detention periods of asylum seekers, refugees and undocumented migrants at Lindela.⁷

The Court declared the actions and/or practices by the Minister and the Director-General of Home Affairs, in exceeding the periods of detention as provided for in the Immigration Act, to be unlawful and unconstitutional. The Minister, Director-General, and Bosasa (Pty) Ltd ("Bosasa") were directed to take all steps reasonably necessary, without delay, to ensure the

⁵ South African Human Rights Commission (2015), Strategic Plan for the fiscal years 2015 to 2020.
<http://www.sahrc.org.za/home/21/files/SAHRC%20Strategic%20Plan%202015%20to%202020.pdf>

⁶ South African Human Rights Commission, & the Danish Institute for Human Rights (2015), Human Rights and Business Country Guide: South Africa.

<https://www.sahrc.org.za/home/21/files/Guide%20Final%20final.pdf%20March%202019.pdf>

⁷ Republic of South Africa (2014), South African Human Rights Commission and 40 Others v Minister of Home Affairs: Naledi Pandor and 4 Others. Case no. 41571/12.
<http://www.saflii.org/za/cases/ZAGPJHC/2014/198.pdf>

practices were terminated forthwith. The respondents were further directed to provide the Commission, on a regular and at least quarterly basis, with access to the Lindela and the detainees. Monitoring in this instance led to remedial action against the State together with a private actor (Bosasa) with whom the State had been contracting to run Lindela.

The Commission continues to monitor Lindela which is a for-profit detention facility operated by the private contractor African Global Operations (Pty) Ltd (formerly known as Bosasa (Pty) Ltd).⁸ Periodic monitoring of Lindela also resulted in an investigation and findings by the Commission into conditions of detention. These findings have seen the managing entity take corrective actions in respect of the provision of chronic medication to detainees, amongst other reforms.

NATIONAL HEARINGS AND INVESTIGATIONS

The Commission convened national hearings and related interventions to investigate and address systemic issues in the business and human rights context. For example, in June 2015 and in April 2016, the Commission hosted roundtable discussions on the Children's Rights and Business Principles,⁹ and on access to justice and effective remedy for victims of business related human rights violations,¹⁰ respectively.

⁸ African Global. (n.d). Our Global System. Retrieved from <https://www.africanglobal.com/#global-ecosystem>

⁹ South African Human Rights Commission (2015b), Children's Rights and Business Principles Roundtable. <https://www.sahrc.org.za/home/21/files/Childrens%20Rights%20and%20Business%20Principles%20Roundtable%20for%20web.pdf>

¹⁰ South African Human Rights Commission (2016), Business and Human Rights: Access to Fairplay for Those Affected by Business-related Human Rights Violations is Possible via SA's Constitution. <https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/372-business-and-human-rights-access-to-fairplay-for->

In August 2018, the Commission launched its Report on the National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa.¹¹ The Report, building on a National Hearing previously hosted on the subject, identifies continuing challenges for mining-communities affected by extractive industries in respect of land; housing; water; the environment; Social and Labour Plans; meaningful participation; consultation, consent, access to information; and monitoring and compliance mechanisms. Consequent to findings by the Commission, a high level inter-ministerial task team has been convened to report on progress made by the State in response to the Commission's remedial directives.

In seeking to deepen respect for a culture of human rights, a key approach has been to focus on and support efforts directed at eradicating systemic abuses by business, particularly where impacts are most pronounced for vulnerable groups. During 2016, the Commission participated in strategic impact litigation to advance principles of business and human rights.

The Commission intervened as a friend of the court in the matter of University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others,¹² where the Commission

[those-affected-by-business-related-human-rights-violations-is-possible-via-sa-s-constitution](https://www.sahrc.org.za/home/21/files/those-affected-by-business-related-human-rights-violations-is-possible-via-sa-s-constitution)

¹¹ South African Human Rights Commission (2018), Report on the National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa. <https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf>

¹² Constitutional Court of South Africa (2016), University of Stellenbosch Legal Aid Clinic and Others. <http://www.saflii.org/za/cases/ZACC/2016/32.pdf>

submitted arguments in terms of international law highlighting that States have a duty to protect against and to remediate human rights abuses committed on their territory by private parties through creating effective judicial remedies to prevent or punish the infringement of a debtor's rights.

The matter involved low-income earners whose salaries were subject to attachment orders for the payment of oftentimes trifling debts, resulting in considerable rights violations. The case reached the highest court in South Africa (the Constitutional Court), which ruled that these attachment orders – which were not subject to judicial oversight – were inconsistent with the provisions of the Constitution.¹³

Building on the success of protections secured for vulnerable debtors, in July 2017 the Commission prepared a report for the National Credit Regulator on the impact of short-term loans on the realisation of socio-economic rights.¹⁴ The report highlighted the impact of debt, and particularly short-term loans, on the enjoyment of socio-economic rights.

The Commission has thus consistently endeavoured to reflect the importance of business in respecting, protecting and promoting human rights through the fulfilment of its promotion, protection and monitoring mandates. The dialogue held during South Africa's human rights month, in March 2018, accordingly sought to build on earlier initiatives by creating a platform for

further engagement by business, government and civil society.

Photo: South African Human Rights Commission. Panel on corporate accountability and state-owned enterprises at the 2018 Business and



Human Rights Dialogue hosted by the South African Human Rights Commission.

The dialogue was structured to provide the space where participants and experts, interacted to identify and respond to the pressing issues of the role of business in equality and development; corporate accountability and State-owned enterprises; business and community engagement; and employment equity.

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¹³ Ibid.

¹⁴ South African Human Rights Commission (2017), Human Rights Impact of Unsecured Lending and Debt Collection Practices in South

Africa.

<https://www.sahrc.org.za/home/21/files/SAHRC%20BHR%20RA%203%20-v3.pdf>