



SOUTH AFRICAN PERMANENT MISSION GENEVA

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96/2013

The Permanent Mission of the Republic of South Africa to the United Nations Office in Geneva and other International Organisations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honour to refer to the Ad Hoc Committee on the elaboration of complementary standards to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

The Permanent Mission of South Africa wishes to forward South Africa's response to the questionnaire received from the United Office of High Commissioner for Human Rights in relation to the work of the Ad Hoc Committee on the elaboration of complementary stands to the International Convention on the Elimination of All Forms of Racial Discrimination.

The Permanent Mission of the Republic of South Africa avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

OHCHR REGISTRY

13 MAY 2013

Recipients: ICERD



Geneva, 08 May 2013

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 Rue des Pâquis
CH 1201 Geneva
Switzerland

Tsheole, T; Ms : Geneva, Counsellor, Human Rights

From: Tsheole, T; Ms : Geneva, Counsellor, Human Rights
Sent: 08 May 2013 11:59
To: Tsheole, T; Ms : Geneva, Counsellor, Human Rights
Cc: Anthony, SF, Mr :Geneva, Second Secretary, Political, DIRCO
Subject: RE: Response to the Questionnaire on the Ad Hoc committee on the Elaboration of Complimentary Standards on the ICERD

Original copy is being sent to you by post.

Regards,
Tsholofelo Tsheole

From: Tsheole, T; Ms : Geneva, Counsellor, Human Rights
Sent: 08 May 2013 11:58
To: 'Gloria Nwabuogu'
Cc: Minty AS, Mr : Geneva, Ambassador, DIRCO; Notutela, NP; Ms : Geneva DPR, DIRCO; Anthony, SF, Mr :Geneva, Second Secretary, Political, DIRCO
Subject: Response to the Questionnaire on the Ad Hoc committee on the Elaboration of Complimentary Standards on the ICERD

Dear Gloria,

Please find attached for your kind attention.

Sincere apologies for the delay in transmitting this to you.

Regards,
Tsholofelo Tsheole

From: genevacanon6@dirco.gov.za [mailto:genevacanon6@dirco.gov.za]
Sent: 08 May 2013 13:52
To: Tsheole, T; Ms : Geneva, Counsellor, Human Rights
Subject: Attached Image



international relations & cooperation

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Geneva 10
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Dear Chairperson Rapporteur / Ambassador Abdul S Minty

South Africa's response to the questionnaire received by the United Nations Office of the High Commissioner for Human Rights (OHCHR) in relation to the work of the Ad Hoc Committee on the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination.

The Department of International Relations and Cooperation (DIRCO) acknowledges receipt of your request sent to States in relation to the work of the Ad Hoc Committee on the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In this regard, please find attached South Africa's response to the questionnaire.

It should be noted that the Department of Home Affairs, the Department of Justice and Constitutional Development and the Department of Arts and Culture all play key roles in the implementation of South Africa's national strategy around issues of racism, racial discrimination, xenophobia and related intolerance. These Departments, amongst others, are actively implementing Government policies and programmes towards the elimination of racism, racial discrimination, xenophobia and related intolerance.

I hope that the attached information will be useful to the Ad Hoc Committee on the elaboration of complimentary standards to the ICERD.

For any queries please contact Mr L Ndimeni, +2712 351 1178, NdimeniL@dirco.gov.za .

My Department assures you of its continued support on your mandate.

Yours sincerely,


Ambassador JM Matjila
Director-General

Date: 06/10/2013

Ref: 13gba2080301

Kgoro ya Tirišano le Tšhomišano ya Dinaga tša Boditšhabatšhaba • Lefapha la Dikamano le Tshebedisano Dinaheng tsa Matjhaba • Lefapha la Dikamano tsa Boditšhabatšhaba le Tirisano • UMnyango Wezobudlelwano Nokubambisana Bamazwe Namazwe • Litiko Letebudlelwane Bemave kanye Nekusebentsana • ISebe lezobuDlelwane neNtsebenziswano yamaZwe ngamaZwe • UmNyango weTjhebiswano nokuSebenzisana kweenTjhabatjhaba • Muhasho wa Vhushaka ha Dzitshakatshaka na Tshumisano • Ndzawulo ya Vuxaka bya Matiko ya Misava na Ntirhisano • Departement van Internasionale Betrekkings en Samewerking



OFFICIAL GOVERNMENT RESPONSE

REPUBLIC OF SOUTH AFRICA

QUESTIONNAIRE ON XENOPHOBIA, NATIONAL MECHANISMS AND PROCEDURAL GAPS

BY THE

**AD HOC COMMITTEE ON THE ELABORATION OF COMPLIMENTARY STANDARDS TO THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION**

MARCH 2013

i. Kindly provide information on the phenomena of xenophobia in your national context, including any general trends.

In recent times large inflows of foreign nationals has flooded South Africa, with estimates showing that they account for approximately 4 % of the population. In dealing with migration as a phenomenon, the South African Government also faces the challenge of illegal migration. South Africa is seen as amongst the highest in the world with pervasive levels of anti-foreign sentiments; this was further perpetuated by several recommendations provided to South Africa by the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, including recommendations made by the Special Rapporteur on migrants, and the concluding observations of the Committee of the ICERD.

Currently, South Africa has no legislation that defines and criminalises xenophobia, including punishing offenders for xenophobic acts. However, incidents of this nature are often accompanied by violence, destruction of property and other forms of criminal acts, which are comprehensively governed by the Criminal Procedure Act; hence impunity is not allowed in these instances.

Although there is currently no specific hate crimes laws in South Africa there are various provisions in terms of both the Constitution and the law of general application that can be used to charge a person who commits hate crimes. These include Section 9 of the Constitution which guarantees the right to equality and prohibits unfair discrimination and Section 10 which guarantees and protects the right to dignity. Violation of the right to dignity may lead to prosecution under a common law crime of *crimen injuria*. Other provisions that help guard against hate crimes such as xenophobia are the limitations on freedom of expression as set out in Section 16(2) and Section 10 and 11 which prohibit hate speech and harassment respectively.

The South African Government is currently in the process of finalising legislative measures to effectively prevent and combat racism, racial discrimination, xenophobia and related intolerance. Government has produced a Policy Framework on Hate Crimes which was finalised following the inputs from the Justice, Crime Prevention and Security cluster (JCPS). After which it has been submitted to the legislative development branch of the Department of Justice and Constitutional Development in order to inform the development of draft legislation. The target date for Cabinet approval of the draft legislation is set to be within the first half of 2013. The proposed law will bring South Africa in line with its obligations to the United Nation's International Convention on the Elimination of all forms of racial discrimination.

Whilst there are myths and stereotypes around the phenomena of xenophobia in South Africa, it is imperative to note that these are not State-sponsored. The challenges of unemployment, poverty and inequality have given rise to xenophobic tendencies among South Africans; the Government of South Africa

has placed the principle of non-discrimination as well as the core values of Social Cohesion, elimination of marginalisation and social & economic inclusion at the core of its policies.

ii. How is xenophobia addressed in your country (include any legal and judicial frameworks and practices, substantive and procedural measures)

In July 2007 the South African Cabinet considered and approved a Macro-social Strategy Framework on the implementation of campaigns and programmes in order to address weak or negative indicators of social cohesion and social justice such as mass poverty, unemployment, racism, xenophobia, intolerance, and other symptoms of underdevelopment. The Framework placed emphasis on two strategic pillars i.e. dialogue and community mobilization. Landmark activities include, but not limited to the following:

- a) In 2009 Public Perception Survey on Social Cohesion in the province of KwaZulu-Natal was undertaken.
- b) A Colloquium on Social Cohesion was held in October 2009 under the theme "Building a Caring Nation". The purpose of the colloquium was to encourage dialogue and reflection on the state of social cohesion in South Africa. The Colloquium recommended that a National Conference on Social Cohesion be held and provincial community conversation be held as a build-up to the conference.
- c) The South African Police Service (SAPS) has, since the 2008 attacks, developed an early warning system for crimes and threats against non-nationals in South Africa.
- d) A National Social Cohesion Summit was held from 4 to 5 July 2012 and all sectors of our society were represented. Subsequent to that a Declaration was drawn with recommendations which an implementation plan or programme of action was drawn.
- e) Furthermore, a National Strategy for the Developing and Inclusive and Cohesive South African Society in June 2012.

The 2008 outbreak of "xenophobic violence" in South Africa has heightened the Government's awareness and alertness of xenophobia in the country. Joint mitigating strategies have been developed within the Justice Crime Prevention and Security (JCPS) Cluster to ensure better protection of non-nationals. Outcome 3 of the Government's five priorities which are; Job Creation, Health, Education, Fighting Corruption & Crime, and Rural Development, talks to the important issue of "all those living in South Africa are and feel safe".

The Roll Back Xenophobia Campaign was launched in 1998 in response to the rising levels of xenophobia particularly targeted at African migrants and refugees in South Africa. The campaign is a partnership between the South African Human Rights Commission, the National Consortium on Refugee Affairs and the United Nations High Commissioner for Refugees. This campaign continues today to promote racial integration, including immigrants and refugees.

Legislative measures which govern acts of racism, racial discrimination, xenophobia and related intolerance include the Constitution, the Bill of Rights, Promotion of Equality and Prevention of Unfair Discrimination Act (Pepuda). The criminal justice system has in recent times prosecuted those found guilty of having committed xenophobic acts.

- iii. **Which national mechanism(s) with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance does your country have in place? Kindly indicate the(ir) mandate(s) and powers, including any proposals for improvement on the basis of national experience.**

South Africa does not have a single mechanism in dealing with the eradication of xenophobia and takes a comprehensive approach, with the involvement of all stakeholders, including the Department of Social Development, the Department of Home Affairs, the South African Police Services, the Department of Justice & Constitutional Development and Civil Society. Furthermore the SA Government following the hosting of the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) established the National Forum Against Racism (NFAR). This Forum has a mandate to promote the ideal of a Nation in dialogue with the view to eliminating the manifestations of all the scourges of racism.

Additionally the Department of Arts and Culture has embarked on a series of community conversations throughout the nine Provinces with the aim of inculcating a culture of social cohesion and racial tolerance. In compliance with the outcomes of the 2001 WCAR, key to the NFAR's mandate is to produce a National Action Plan (NAP) that addresses all forms and manifestations of racial discrimination including against non-nationals. The draft NAP has been approved by the following Government clusters; Justice, Crime Prevention and Security; Social Sector; Economic Sector and Employment, and International Cooperation, Trade and Security. The draft NAP is presently awaiting Cabinet approval to commence with the consultation process with all relevant stakeholders, including Chapter 9 institutions, Civil Society Organisations, Business, Labour, Media, UN Regional Offices and members of the public.

South Africa has also been an effective leader in championing substantive resolutions "From Rhetoric to Reality: A Global Call for Concrete action against Racism, Racial Discrimination, Xenophobia and Related Intolerance", "The Comprehensive Follow-Up to the WCAR and the Effective Implementation of the DDPA" in the context of the HRC and the 3rd Committee of the UNGA.

The South African Human Rights Commission (SAHRC) is the national institution established to support constitutional democracy, committed to promote respect for, observance of and protection of human rights for everyone. The SAHRC has the ability to receive individual complaints of human rights violations. The Mandate of the Commission as contained in the South African Constitution allows

the commission to have powers necessary to perform its functions, including the power to investigate and report on the observance of Human Rights as well as take steps and secure appropriate redress where Human Rights have been violated.

- iv. **Kindly provide information or any comments your country might have on the issue of procedural gaps to the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), including any legal and judicial frameworks and practices, substantive and procedural measures.**

South Africa supports the CERD's work and is of the view that the following procedural gaps are key;

- the need for CERD to be able to undertake Country visits;
- the need to formalise the procedure of follow-up to the recommendations addressed to State parties by CERD in its Concluding Observations as well as opinions on communications under article 14 of the Convention.

- v. **Would your country have any comments on the issue of the impact of reservations on the implementation to the ICERD? Is there a need for reservations and why?**

Reservations by States are generally permissible under treaty law, unless the reservation is incompatible with the object and purpose of treaty, this is in line with article 9 of the Vienna Convention of 1969. It should however be noted that in some cases treaties specifically prohibit reservations to be entered into, for example article 120 of the Rome Statute of 1998 and the Agreement relating to the Implementation of part XI of the United Nations Convention of the Law of the Sea of 10 December 1982, 1994.

A State when signing, ratifying, accepting, approving, or acceding to a treaty, can formulate a reservation unless such a reservation is prohibited by the treaty, the treaty provides that only specified reservations, which do not include the reservation in question, may be made or the reservation is incompatible with the object and purpose of treaty. It is important to ascertain whether the reservation made by another State is incompatible with the object and purpose of the convention.

Seemingly a number of States have entered reservations on article 4 of the ICERD which addresses issues of incitement. It is of South Africa's view that the contemporary forms of racism and racial discrimination which have emerged, are likely to go unpunished in this context. South Africa adheres to and believes in the permissible limitations (article 20 ICCPR) under International Human Rights law on the exercise of freedom of opinion and expression versus other rights. It is in

this context that General Recommendation 15 of the CERD becomes relevant and imperative in terms of interpreting the provisions of article 4.

vi. Would your country have any comments concerning article 14 of the ICERD (declaration by State Party recognising the competency of the Committee to receive / consider individual complaints)?

South Africa has not made any reservations on the provisions of the ICERD; however two positive Declarations were made concerning this convention. The declaration is as follows:

The Republic of South Africa

- a) declares that, for the purposes of paragraph 1 of article 14 of the Convention, it recognises the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within the Republic's jurisdiction claiming to be victims of a violation by the Republic in any of the rights set forth in the Convention after having exhausted all domestic remedies and
- b) indicates that, for the purposes of paragraph 2 of article 14 of the Convention, the South African Human Rights Commission is the body within the Republic's national legal order which shall be competent to receive and consider petitions from individuals or groups of individuals within the Republic's jurisdiction who claim to be victims of any of the rights set forth in the Convention.

vii. Which CERD recommendations has your country implemented with regard to national mechanisms and xenophobia, including any legal and judicial frameworks and practices, substantive and procedural measures? What has been your national experience (including challenges) in this regard?

CERD considered the Initial to Third Periodic Reports of South Africa in 2006 and adopted concluding observations and recommendations to South Africa. The following areas of recommendations were addressed:

- **Disaggregated data and regularisation of illegal migrants:**
Statistics South Africa (STATS SA) is responsible for the collection, production and dissemination of official and other statistics, including the conducting of a census of the population. The data items for the questionnaire for the last census in 2011, included first name and surname, date of birth, age, sex, population group and presence of person in dwelling unit.

Studies conducted by STATS SA are essential; the purpose of official statistics is to assist organs of State, businesses, and other organisations in providing effective services. The South African Government aims to provide services for all within South Africa, regardless of race, or ethnicity, therefore official census data does not require the in depth breakdown of Race into ethnic group. However it is important to note that Stats SA, if required, could conduct such a study.

The Department of Home Affairs is responsible for the effective, secure and humane management of immigration. In this regard, the Department's work is governed by the Immigration Act of 2002. The Department of Home Affairs Inspectorate, together with the South African Police Service (SAPS) Hawks Unit conducted operation Full Force in 2011 aimed at dealing with on the illegal facilitation of foreign nationals into South Africa using fraudulently acquired documents with a view to stemming the tide of illegal immigration into the country.

South Africa shares borders with Zimbabwe, Lesotho, Botswana, Namibia and Mozambique, in recent years South Africa observed an increase in the number of foreign nationals coming to South Africa the majority of which are in search of sustainable livelihoods, and few eligible for refugee status. It is against this background that South Africa introduced the regularisation of illegal migrants.

An example of best practise is one such agreement made with the Government of Zimbabwe. South Africa in partnership with the Zimbabwe Government has developed a process to regularize the stay of Zimbabwe nationals who came to South Africa prior April 2009 by providing them an opportunity to apply for alternative permits contemplated in the Immigration Act. The regularisation programme carried out from 20 September to 31 December 2010 enabled 275 000 Zimbabweans to register their application for a four year residence permit (study, work or business permit). The process to document the Zimbabwe nationals is envisaged to be extended to cover all other SADC nationals.

- **Role of Traditional leadership and on the status of customary law**

Chapter 12 of the South African Constitution states that;

The institution, status and role of traditional leadership, according to customary law, are recognized, subject to the Constitution;

A traditional leader authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of that legislation or those customs;

The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

Traditional leadership institutions play a critical role in South Africa's Constitutional Democracy and are at the core of South Africa's success as a nation in achieving the country's developmental objectives, particularly in the Rural Development Strategy. Government remains committed to strengthening the institution of traditional leadership and appreciates the role it plays in society. The Department of Traditional Affairs was established in April 2010 and fully operational by 2011, to underline the critical focus on traditional leadership. This signifies the importance that is placed on the role and place of traditional leaders in the lives of people, especially in rural areas.

The Constitution mandates the establishment of houses of Traditional Leaders by means of either provincial or national legislation. The national and provincial houses of traditional leaders enhance the cooperative relationships within national and provincial government, while the establishment of local houses of traditional leaders deepens and cements the relationship between municipalities and traditional leaders on customary law and development initiatives.

The Department of Traditional Affairs is amending legislation to create an enabling legislative and regulatory environment for dealing effectively, efficiently, holistically and in a sustainably manner with traditional affairs. The National House of Traditional Leaders Act, 2009 (Act 22 of 2009), and the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003), were consolidated by the National Traditional Affairs Bill to simplify the process. The amendment of the legislation will also ensure, among other things, that traditional affairs, rather than only traditional leaders, will take centre stage. The Khoisan communities will also be fully represented in the National House of Traditional Leaders.

- **Measures the State has adopted to put an end to segregation in regard to; ownership of property, access to finance, access to health and social services:**

The South African Government has adopted seminal policies and strategies for the advancement of its human rights protection regime towards the goal of the realisation of a better life for all. These include, but are not limited to, the development of;

- A Green Paper on Land Reform intended to bring drastic changes in the implementation of land reform and overhaul the rural communities into equitable and sustainable rural communities.
- Social Assistance Amendment act 2010, to provide for the right to administrative justice and the right of appeal against adverse decisions pertaining to applications for social assistance
- The National Health Insurance is being introduced, with the primary goal of ensuring that all citizens and residents of South Africa, irrespective of their socio-economic status, have access to good quality health services

provided by both the public and private sectors. The process is currently in the piloting Phase.

- South Africa's Social assistance programme has contributed significantly to the country achieving MDG 1.

- **Poverty reductions**

One of the main measures put in place to address poverty, inequality and economic growth in South Africa is the National Development Plan (NDP). The National Planning Commission was appointed in May 2010 to draft a vision and national development plan. The NDP was released in 2011 and aims to eliminate poverty and reduce inequality by 2030, by proposing a multidimensional framework to bring about a cycle of development, with progress in one area supporting advances in others.

In terms of the current clustering approach in the South African collective governance system, these key priorities for the fourth administration of government are comprehensively coordinated within the Social Sector Cluster which carries the poverty eradication mandate and the improvement of quality of life of all South Africans as well as providing social assistance and social security for the vulnerable who suffer extreme poverty and hunger (MDG1), working in conjunction with other relevant Clusters of government.

- **Gender related acts of violence against women**

The Department of Women, Children and People with Disabilities was established in 2009 with the view of promoting, facilitating, coordinating and monitoring the realisation of the rights of women, children and people with disabilities and fulfilment of human rights and fundamental freedoms.

The Family Violence Child Protection and Sexual Offences (FCS) units have proven effective in ensuring efficiency in combating and investigating crimes against women and children. Nationally there are 176 established Family Violence Child Protection and Sexual Offences Units. The Re-establishment of these courts is currently underway.

Additional measures are underway in order to provide protect to women and children;(a) The Bill on Gender Equality and Women Empowerment has been approved by Cabinet for public comment, the Bill criminalises practices that have adverse effects on women and girls;(b) the Protection from Harassment Bill, which deals with harassment by persons who stalk their victims by means of electronic communications;(c) the Domestic Violence Act also provides protection. In addition, the Combating of Trafficking in Persons Bill was passed by the National Assembly in 2012 and is now at the National Council of Provinces. Once implemented, the law will assist women and children, who are often victims of this heinous crime.

- **Criminalising Human Trafficking**

South Africa has developed a Prevention and Combating of Trafficking in Persons Bill, which prohibits illicit trafficking in human beings and human organs. Parliament has approved the Bill and it is pending endorsement/approval by the National Council of Provinces (NCOP), after endorsement by the NCOP, it will be submitted to the President of the country to be signed into a law/Act. The Bill deals comprehensively with human trafficking in all its various forms and in particular provides for the protection of and assistance to victims of trafficking.

- **Situation of indigenous people**

The Constitution of South Africa affords equal rights, privileges and benefits to all citizens. Furthermore in the Bill of rights, the State is enjoined to respect, protect, promote and fulfil the rights of all. The Special Rapporteur on human rights and indigenous peoples conducted a mission visit to South Africa in 2005, in his visit the Special Rapporteur focused mainly on the Khoi and San communities, as the most vulnerable indigenous communities in South Africa and as groups who self-identify as indigenous peoples in the country.

The Department of Cooperative Governance and Traditional Affairs (COGTA), as the domestic custodian of Khoi and San issues has developed a National Traditional Affairs Bill which makes provision for the recognition of the Khoi and San communities, their leadership and structures. National Departments have been identified by Cabinet decision to carry out the Mandate of promotion and protection of the rights of Khoi and San Communities. As part of the advancement of the rights of indigenous peoples and their fundamental freedom, preparatory meetings has begun for the 500 year national commemoration of the Khoi and San struggle for freedom.

- **HIV/ AIDS**

The South African Government has introduced numerous strategies and treatment programmes, including the comprehensive HIV and Aids treatment and Prevention programme, to combat the scourge of HIV and Aids.

There has been a stabilisation of HIV prevalence (the number of people living with HIV) in South Africa. The rate of new infections has decreased; there has also been reduction in mother-to-child transmission of HIV. This turnaround can be attributed to an acceleration and expansion of HIV awareness and prevention campaigns, counseling and testing, treatment, care and support being conducted in South Africa.

- **Back log of refugees and asylum seekers**

The Department of Home Affairs (DHA) controls, regulates and facilitates immigration and the movement of persons through ports of entry. It also provides

civics and immigration services at foreign missions; and determines the status of asylum seekers and refugees in accordance with international obligations.

Also refer to point on **regularisation of illegal migrants**.

- **Language**

The Pan South African Language Board (PANSALB) is established in terms of the Pan South African Language Board Act 59 of 1995 amended as PANSALB Amendment Act of 1999. The Board was established according to the Constitution of the Republic of South Africa (Act 106 of 1996) in order to; (a) promote, and create conditions for the development and use of official languages, the Khoi and San languages and sign language, (b) promote and ensure respect for all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, and Urdu and; Arabic, Hebrew, Sanskrit, and other languages used for religious purposes in South Africa

PanSALB is mandated by law to investigate complaints about language rights violations from any individual, organisation or institution. PanSALB conducts hearings at which complainants and respondents are present, and depending on its findings may recommend steps to be taken by the department or institution concerned. In May 2004, PanSALB launched a campaign to raise the public's awareness of their right to be served in their own language at government institutions.

- **Torture and ill treatment including extortion**

South Africa has signed and ratified the Convention against Torture and Other Cruel, inhuman or Degrading Treatment or punishment. Legislative measures to prevent and combat torture are in process. The prevention and combating of Torture Bill has been developed what remains is the enactment of this Bill into law. Developments are underway to produce a National Preventative Mechanism which would monitor and implement the provisions of the Convention and Optional protocol against Torture and Other Cruel, inhuman or Degrading treatment or Punishment.

- **Access to justice**

The Equality Courts deal with complaints that are about unfair discrimination, hate speech or harassment. The establishment of the Equality Courts seeks to achieve the expeditious and informal processing of cases, which facilitate participation by the parties to the proceedings, and also seeks to ensure access to justice to all persons in relevant judicial and other dispute resolution forums. Given this South Africa still faces the challenge of access to justice especially for members of the most disadvantage and poor.

The Department of Justice and Constitutional Development is engaged in the Access to Justice and Promotion of Constitutional Rights Programme. The aim of the programme is to contribute to the promotion, protection and realisation of rights established in the Constitution through the following three key performance areas; improving access to justice, raising awareness of rights and strengthening participatory democracy.

- **Information on cases related to racial discrimination**

The South African Government is currently in the process of finalising legislative measures to effectively prevent and combat racism, racial discrimination, xenophobia and related intolerance. Government has produced a Policy Framework on Hate Crimes which will effectively deal with cases of offences relating to racial discrimination.

South Africa's National experience has been the challenge of funds; skills; technical expertise; infrastructure and human resources amongst others. South Africa as a country is in a developmental stage and therefore for effective implementation of relevant measures taken by South Africa requires these challenges to be addressed. The South African Government has identified five key National priorities for 2009 to 2014, namely, Job Creation; Health; education; fighting corruption and crime; and Rural Development.

viii. **How is assistance provided to victims and/ or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level? How do victims and/or affected communities participate fully and effectively in relevant processes and national mechanisms?**

Refer to question iii and vii of the questionnaire.

ix. **With regard to the topics of this questionnaire:**

a) **Kindly indicate any possible recommendations your country would wish to provide , and**

South Africa strongly believes that the ICERD requires complimentary standards to address the contemporary manifestations of racial discrimination, i.e. xenophobia, Islamophobia, Anti-Semitism, propagation of racist and xenophobia acts through the cyberspace (cybercrime), racial profiling, incitement to racial, ethnic and religious hatred.

b) **Are there any additional comments or information your country wishes to provide in relation to xenophobia, national mechanisms or procedural gaps?**

Refer to the above response