



# Submissions on the CSP Report: Implementation of the DVA of 1998



**WOMEN'S LEGAL CENTRE**

Lisa Vetten  
Sanja Bornman

12 August 2015

# Outline



WOMEN'S LEGAL CENTRE

- Concerns in 11 June letter
  - Legal and policy reference to the Civilian Secretariat of Police
  - Statutory reporting obligations of the National Police Commissioner
  - CSP report: Only one station 100% compliant with its obligations
  - Important related legal and policy processes

# Concerns cont.

- Ongoing litigation showing Police failure
  - Schaper matter
  - Naidoo matter
  - KZN damages claim
- 147 cases of domestic violence perpetrated by SAPS members reported at 74 stations
  - Transparency and accountability in respect of disciplinary process
  - The shooting by Constable Ronnie Masie of four people, including his wife, at Alexandra police station on 3 June 2015
  - Underscores the need to pay particular attention to the **use and control of firearms by general public and SAPS members**



WOMEN'S LEGAL CENTRE

**What is contributing to these  
persistent, entrenched problems?**



# Statutory reporting obligations



WOMEN'S LEGAL CENTRE

- Section 18(5)(d) of the Domestic Violence Act
  - The number and particulars of complaints received against its members in respect of any failure contemplated in subsection (4)(a);
  - The disciplinary proceedings instituted as a result thereof and the decisions which emanated from such proceedings; and
  - Steps taken as a result of recommendations made by the Secretariat
- Intention of the legislature:
  - Accorded great importance and priority to proper implementation
  - Evident from the institutional and operational arrangements
  - Legislature intended to make practical arrangements that also make a policy statement about stance on domestic violence: that it is to be dealt with seriously, methodically, and at the highest levels of government.
- National Police Commissioner has ostensibly failed to submit such reports **since 2013** – despite a 2013 circular

# The shift from ICD → CSP



WOMEN'S LEGAL CENTRE

- Legal and policy reference to the Civilian Secretariat of Police does not appear to have been effected in all documents (eg National Instructions) – co-operation
- Shift resulted in loss of independent complaints mechanism:
  - In first year of its new role CSP received 22 complaints from three provinces - 77% decline in the number (94) recorded by the ICD in its final 12 month reporting period
  - 1 April 2012 - 30 September 2012: 49 complaints collated by the national office of the CSP.
  - SAPS presentation to the Police portfolio committee (13 May 2013) - 1 July 2011 and 30 September 2012: 280 DVA-related cases of misconduct came to the attention of SAPS disciplinary fora

# Challenges of monitoring



WOMEN'S LEGAL CENTRE

- Purpose of oversight not solely to provide inventories of police inadequacy – consequences?
- CSP authority over provincial offices – need for involvement of NCOP?
- Monitoring is an unfunded mandate?
- Adherence to prescripts of DVA not routinely treated as key measure of performance

# Provincial monitoring

Province (no. of stations)	04 – 09/2012	10/2012 – 03/2013	04 – 09/2013	No. stations revisited	Total (% of all stations)
Gauteng (141 stations)	38	30	44		112 (79%)
Mpumalanga (85 stations)	11	10	17	2	36 (42%)
Limpopo (96 stations)		4	3		7 (7%)
North West (81 stations)	20	20	20		60 (74%)
Free State (110 stations)	18	37	26	2	79 (72%)
KwaZulu-Natal (185 stations)	11	13	4	1	27 (15%)
Northern Cape (90 stations)	4	8	13	1	24 (27%)
Eastern Cape (194 stations)	1	12	4		17 (9%)
Western Cape (149 stations)	51	11	4	2	64 (43%)
Totals (1 131 stations)	155	145	135	8	427 (38%)

# Legislative & policy developments



WOMEN'S LEGAL CENTRE

- **CSP policy on GBV**
  - away from quantity, towards quality
- **White Paper Police, and White Paper Safety and Security**
  - approach to GBV in these policies, concerns already raised by APCOF
- **Firearms Control Amendment Bill**
  - is DV sufficiently considered?
  - is the current approach working, and if not, why not?

# Recommendations



WOMEN'S LEGAL CENTRE

- Establish independent panel to review homicides involving a protection order – one in 20 women killed by their intimate male partners in 2009 in possession of a protection order at the time
- Note CSP policy – approach to quality of services and experience of victims
- Empower CSP
  - Quality of services
  - Identify good practices
- Khayelitsha Commission
  - Investigated DVA compliance
  - Heard evidence
  - Recommendations yet to be considered, **one year on**

# Recommendations



WOMEN'S LEGAL CENTRE

- Include/call for Section 18 reporting as standing item on PC agenda
- Civil society participation: call for comments on section 18 reports

**Thank you.**





**WOMEN'S LEGAL CENTRE**



### **Contact:**

7th Floor Constitution House  
124 Adderley Str. (Cnr of Church Str.)  
Cape Town, Western Cape  
**Telephone: 021 424 5660**

2nd Floor, Braamfontein Centre  
23 Jorissen Street, Braamfontein  
Johannesburg, Gauteng  
**Telephone: 011 339 1099**

[www.wlce.co.za](http://www.wlce.co.za) / <https://www.facebook.com/WLCCapeTown> /  
**@WLCCapeTown**

# Domestic Violence Act



WOMEN'S LEGAL CENTRE

# Domestic Violence Act

- 0 The Domestic Violence Act 116 of 1998 (“the DVA”) is the law that deals with domestic violence in South Africa.
- 0 This law exists to give people who are experiencing domestic violence the best possible protection that the law can, and it commits the government to act against domestic violence.
- 0 The DVA makes it possible for you to get a protection order against an abuser.
  - 0 The protection order will prohibit the abuser from committing more acts of domestic violence against you.
  - 0 If the abuser commits an act of domestic violence against you that is prohibited in the protection order, he can be arrested and taken to court for disobeying the protection order.

# What is domestic violence?

**When people in a domestic relationship are hurting each other through:**

- 0 Physical abuse
- 0 Sexual abuse
- 0 Emotional abuse
- 0 Verbal and psychological abuse
- 0 Economic abuse
  - 0 Unreasonably withholding money which the victim is entitled to by law or requires out of necessity, e.g. payment of rent, payment of bond
- 0 Intimidation
- 0 Harassment
- 0 Stalking
- 0 Damage to property

# What is a domestic relationship?



**“domestic relationship” means a relationship between a complainant and a respondent in any of the following ways:**

- 0 You currently live, or lived in the past, under the same roof with that person in an intimate relationship (like boyfriend or girlfriend), in a civil marriage, or a customary or religious marriage.
- 0 You currently live under the same roof with that person, or you did so recently (house mates / co-renters).
- 0 You do not live with the person, but you are married to or are in an intimate relationship with the person.
- 0 The person is a family member of yours (like your father, cousin, son or aunt) or a family members of your current husband or partner, or ex-husband or partner.
- 0 You and that person share responsibilities for a child. You do not need to be the natural, adoptive parents or legal guardians of the child, but could be.
- 0 The person believes or thinks that they are in an intimate relationship with you.

# What can a victim of DV do?

- 0 Lay criminal charges at the police station (assault, *crimen injuria*, damage to property)

**and/or**

- 0 Follow the civil law route of getting a protection order from the Magistrates Court:

The **Domestic Violence Act** allows a victim of domestic violence to apply for a protection order (an interdict)

- 0 A protection order is a civil court order that is meant to stop the abuser from abusing you
- 0 Violating a court order has legal (criminal) consequences



# Who can apply for a PO?

- 0 You can apply for a protection order in terms of the DVA if you are abused by somebody with whom you are in a domestic relationship, even if you are under 18.
- 0 You can also apply for a protection order on behalf of someone else who is a victim of domestic violence.
- 0 If you are applying for a domestic violence protection order on behalf of someone else, you must have the person's written permission, unless the person is younger than 18 years, is mentally disabled, unconscious, or the court is satisfied that the person cannot give their permission for some reason.
- 0 Any person who is concerned that you are being abused, including a social worker, teacher, a health worker or police service member.



# Where do you get a PO?

The victim/complainant can approach the nearest **Magistrates Court** where the victim:

- 0 Permanently lives, temporarily lives, or is employed *OR*
- 0 Where the respondent lives or is employed *OR*
- 0 Where the cause of action arose (the place where the abuse occurred).
- 0 During ordinary court hours, which usually are from 09:00 – 15:30.
- 0 Outside of ordinary court hours, or on weekends and public holidays, if you can show that your case is urgent.

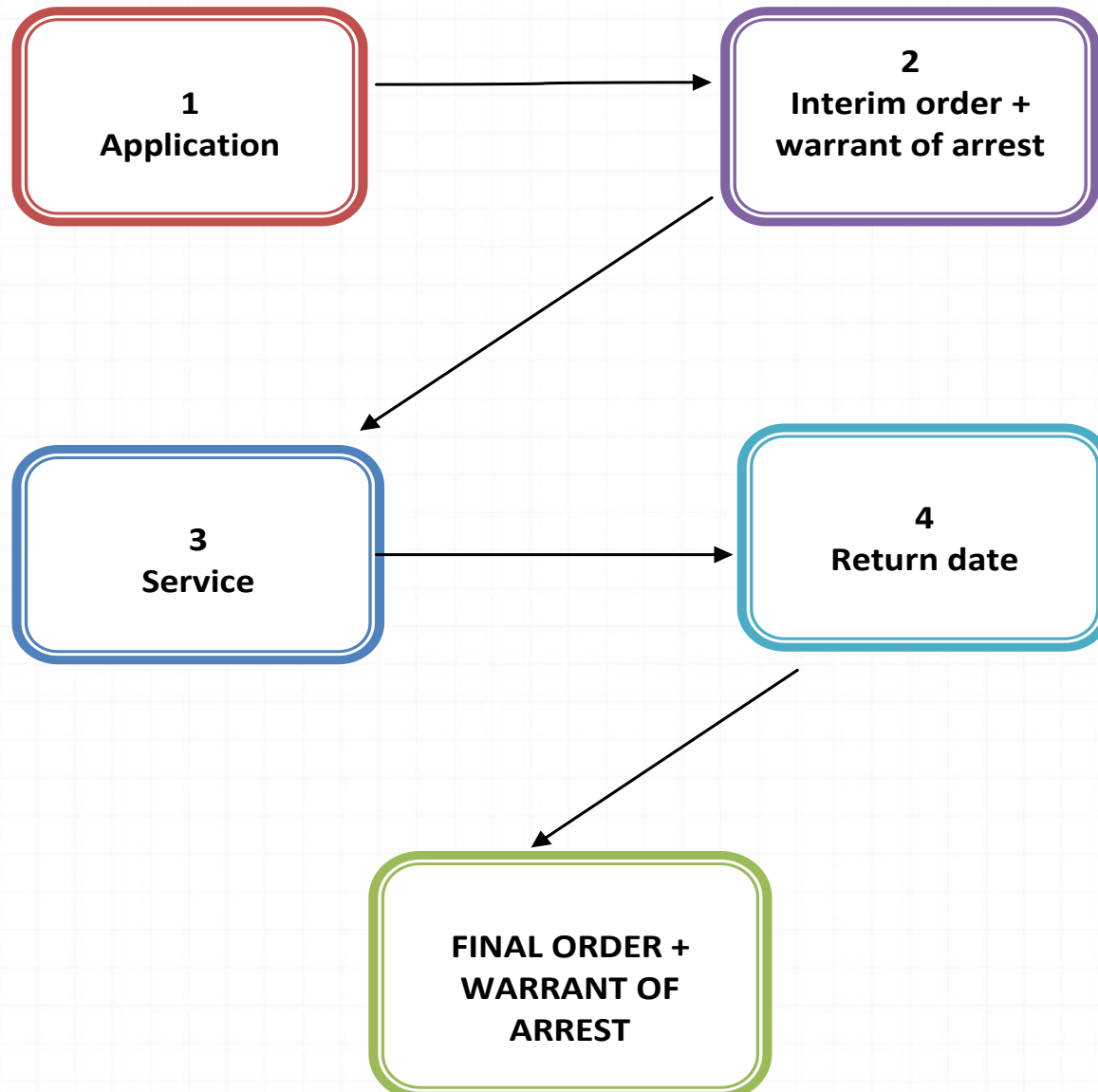
**You cannot get a protection order from the police.** But it is the job of the police to **give you information** about your legal right to apply for a protection order.

# Before you apply



WOMEN'S LEGAL CENTRE

- 0 You do not need a lawyer, but you can get a private lawyer to represent you if you choose to do so.
- 0 This is **YOUR process** – YOU are asking the court to make an order, and it is your job to convince the court that you need the order, and why.
- 0 You must get together, organise and take with you any supporting **documents** that show what you have been through:
  - 0 medical reports, photographs of injuries or damage to property, affidavits of witnesses, sms's, etc...
- 0 Ask as many question as you need until you fully understand the process, and what will happen at each stage of the process
- 0 You may take a friend or family member with you for moral support.



# How do you apply for a PO?



WOMEN'S LEGAL CENTRE

- 0 You must ask to see the **clerk** of the Domestic Violence Court, and say you want to make an application for a protection order.
- 0 The clerk of the court will ask you to fill out an application form
  - 0 The form looks long and complicated, but actually it is not so bad!
  - 0 Make sure you **READ** and **UNDERSTAND** the **WHOLE** form before you begin
  - 0 If you can't, or if there is anything at all that you don't understand, ask the clerk to explain it to you
  - 0 If you cannot fill in the form yourself, ask the clerk to write for you – but make sure the clerk writes down exactly what you say, by asking to see what they have written

# Step 1: The application form

- 0 The domestic violence clerk at the Magistrate's Court will ask you to fill in an application form. In this form there will be space for:
  - 0 Your full details, like your name, ID number, address, phone number and place of work
  - 0 The details of the person that is abusing you – give as many details as possible, because this will help the court and the police
  - 0 A full, detailed explanation of what kind of abuse happened to you – the dates and times of every incident, the exact order of events, the exact words/weapons used, the details of any injuries, and whether you had to get medical help
  - 0 **It is not enough to say, “He hit me”. You must say, “He hit me with his fist in my face on the night of 2 May 2015, when he came home drunk after work. I went to the doctor, who gave me pain medicine and put a bandage on.”**
  - 0 All the reasons why your application may be urgent, and why you will suffer if you do not get a protection order urgently – if you are afraid say so!
  - 0 Asking the court for the kind of protection that you want – look carefully at all the options, and think about what suits your needs!

# Step 1: continued

- 0 Pay close attention to the form, and make sure you answer all the questions. If there is anything in the form that you do not understand, you must ask the clerk.
- 0 When the form is complete, the clerk will ask you to swear or promise that all the information you have put in the form is correct and true. Lying on purpose in an application form is a serious offence, and you can go to jail for it, or be made to pay a big fine.
- 0 Things to bring with you:
  - 0 Any photographs, letters, or doctor's notes that show how you have been abused
  - 0 If there are people who have seen you being abused (witnesses), then they can make affidavits and you can take the affidavits with you

# Step 2: An interim order

- 0 When your application form is completed the domestic violence clerk will take it to the magistrate while you wait. The magistrate will look at the facts of your case, and will consider all your reasons for why your application is urgent, and how you will suffer if you do not get a protection order urgently.
  - 0 The magistrate may ask for more information in the form of affidavits, or may ask to speak to you or witnesses in order to decide whether or not to give you an interim protection order
- 0 The magistrate will then make a decision about giving you temporary protection “in the meantime”, until the day that you and the person who abused you can both come to court to talk about your application.
- 0 This temporary “in the meantime” protection is called an “interim protection order”. **IT IS NOT A FINAL PROTECTION ORDER.**



# Step 2: continued

- 0 Every interim protection order has **a date on it when you must come back to the court and appear in front of the magistrate.** This is called a “return date”. You must make very sure you do not miss that date.
- 0 *If you miss the return date at date, the interim protection order “lapses” and becomes useless, and you are not protected any more!*
- 0 The WLC has had many clients who have complained that their protection order “does not work” – then when we ask to see the order, it is clear that the order has lapsed, was actually just an interim order and they never went back to court to make it final!
- 0 The interim protection order can only be used against the abuser legally after it has been **served on him.**

# Step 3: “service” = notice to abuser



WOMEN'S LEGAL CENTRE

## WHAT HAPPENS IF THE MAGISTRATE DECIDES TO ISSUE THE INTERIM PROTECTION ORDER?

If the magistrate decides to give you an interim protection order, the following papers must be **served** on the person who is abusing you by the sheriff of the court, or a member of the police:

- Copy of your application documents
- Copies or recordings of any documents or information that the magistrate used to make his or her to give you an interim protection order
- Copy of the interim protection order
- **A notice calling on the person who is abusing you to come to court on the return date**

## WHAT HAPPENS IF THE MAGISTRATE DECIDES NOT TO ISSUE THE INTERIM PROTECTION ORDER?

If the magistrate decides not to issue the interim protection order, the following papers must be **served** by the sheriff of the court or a member of the police:

- Copy of your application documents, and witness affidavits
- **A notice calling on the abuser to come to court on the return date**



## Step 3: continued

- 0 A person will cannot know that the court has ordered them to stop doing something, UNLESS they get a copy of the order.
- 0 That is why a protection order starts operating once the respondent has been SERVED.
- 0 Service means delivery by hand.
- 0 You might have to take all the documents that have to be served to the office of the sheriff or the police yourself.
  - 0 You can ask the clerk where the sheriff's office is.
  - 0 You might be asked to pay a small service fee to the sheriff. If you cannot afford the sheriff's service fee, you should inform the clerk of the court.
  - 0 The police may serve the documents free of charge, or the court could arrange for payment of the sheriff's fee.
- 0 The person who is abusing you must have **at least 10 days' notice that they have to come to court on the return date**. This notice period gives the person time to prepare for the hearing.

# Step 4: The return date

- 0 On the return date, you will have a chance to tell the Magistrate your whole story, and to give all the reasons why you should be given a FINAL protection order. On that day you must **bring all your evidence with you**, like photos and other papers showing the abuse, **and witnesses**.
- 0 The person who abused you will also have a chance to tell their side of the story, and to give the Magistrate any reasons why you should not be given a final protection order. The court might allow the person to ask you questions, and to challenge your evidence.
- 0 The magistrate will then consider all the documents and witness statements, and may ask you and the person who abused you questions. These will help the magistrate to decide whether you should have a final protection order.
- 0 This day in court is like a small trial and can be scary, especially if you've never been in a court before. **But you must not allow this fear to stop you from getting your protection order. Tell the magistrate all the facts, and use your rights.**

# Step 4: continued

- 0 Both the you and the person who abused you are allowed to bring lawyers on the return day, to help you argue your case – but this is not a “must”
- 0 At court you can ask that the person who abused you not be allowed to question you directly, unless they have a legal representative. The abuser must then put his questions to the Magistrate, who will then ask you the questions.
- 0 **WHAT HAPPENS IF THE ABUSER DOES NOT COME TO COURT ON THE RETURN DATE?**

The magistrate must then:

- 0 Give you a final protection order, on condition the magistrate is satisfied that all the documents were served on the abuser ahead of time.
- 0 If the Magistrate thinks service did not happen correctly, they will postpone the case, and send a new notice to the person who abused you to say he must come to court on another date. You must also be in court on that date!

# What can the order say?



WOMEN'S LEGAL CENTRE

The court can order that the person who is abusing you must not:

- 0 Commit an act of domestic violence against you
- 0 Arrange for other people to commit an act of domestic violence against you
- 0 Enter the home you share with the person who abused you, or a certain part of the home like your room
- 0 Enter your home, if you and the abuser do not share a home
- 0 Enter your workplace
- 0 Commit any other act of domestic violence

# What else can the order say?



WOMEN'S LEGAL CENTRE

You should ask the court to make any other order that it believes is reasonably necessary to protect your health, safety and wellbeing including an order:

- 0 **Asking the police to take away any dangerous weapon, like a gun, from the abuser**
- 0 For a police officer to go with you to the abuser's place, so that you can collect anything there that is your personal property
- 0 For a police officer to go accompany the abuser to your house, so they can keep you safe while the abuser collects their personal property
- 0 Depending on your financial situation, forcing the abuser to pay rental or the bond payments in respect of a home that you share
- 0 Depending on your financial situation, forcing the abuser to pay you emergency maintenance, or the expenses that you had to pay because of the domestic violence, like medical, hospital, dental, loss of income or temporary rent costs.
- 0 Stopping the abuser from seeing your children, or saying that the abuser may only see the children under certain conditions – the court will do whatever is in the best interest of the children.
- 0 Stopping you going into the abuser's home



# The warrant of arrest



WOMEN'S LEGAL CENTRE

- 0 Every protection order comes with a “suspended” warrant of arrest. If the abuser disobeys the terms of the protection order, the police can use the warrant to arrest the abuser, **BUT only if:**
  - 0 The violation of the protection order was serious
  - 0 The abuser is going to abuse you more, and cause you serious harm if he is not arrested
  - 0 Not much time has passed between the violation and you reporting it
- 0 If the way in which the abuser disobeyed the protection order is not serious, the police will not arrest, but they should still warn the abuser to appear in court.

# More about warrants



WOMEN'S LEGAL CENTRE

- 0 If the police use the warrant of arrest that the court gave you with your protection order, that warrant is used up, and cannot be used again.
- 0 It is **your responsibility to go back to court for another warrant as soon as possible**, if your first warrant is used up. You will have to make an affidavit, stating that the first warrant has “terminated” and that you need another warrant to protect yourself from the abuser. You will have to do this every time you need a new warrant.
- 0 Warrants of arrest “terminate”, and cannot be used when they are:
  - 0 lost
  - 0 destroyed
  - 0 once it has been used to have the abuser arrested, when he violates the terms of the protection order

# What must you do when the abuser breaches the PO?

- 0 If the abuser does anything that the protection order stops him from doing, then the abuser is “violating” the terms of the protection order.
- 0 If this happens, **you must go immediately to the police station, or call the police, and report the violation to them.**
- 0 The police will ask you to make an affidavit explaining how and when the abuser violated the protection order.
- 0 If the police will arrest the abuser, **ONLY** if they believe that:
  - 0 The violation of the protection order was serious
  - 0 The abuser is going to abuse you more, and cause you serious harm if he is not arrested
  - 0 Not much time has passed between the violation and you reporting it
- 0 If the police do not arrest the abuser, **they must still give you assistance and help you to be safe.** They must also the abuser a notice to appear in court for violating the terms of the protection order.

# How is a violation of a PO punished?

- 0 Violating the terms of a protection order is a criminal offence, because it means the abuser is disobeying the court and hurting another person.
- 0 The police must deal with a violation in this way
- 0 The abuser must either be arrested, or be warned to appear in the criminal court before a magistrate
- 0 The abuser might be sent to jail up to 5 years, or ordered to pay a fine, or both.

# What are the duties of the police?



WOMEN'S LEGAL CENTRE

- 0 To **respect** you, and treat you with kindness and professionalism
- 0 To give you their name and badge numbers if you ask for it
- 0 To **take your statement** when you report domestic violence at the police station
- 0 To **come** to the place where the abuse happened **quickly** if you call them
- 0 To **help you get** medical treatment, and to give you the details of places where you can get counselling and shelter
- 0 To **tell you about your rights** in terms of the DVA in a way that you understand
- 0 To tell you about your right to **lay a criminal charge** against the abuser, whether you are going to use the DVA or not – like rape, assault, or intimidation
- 0 **To take away any firearm or dangerous weapon** that the abuser might have, or have access to
- 0 **To arrest the abuser when the abuse is serious, and if you are going to be physically harmed if the abuser is not arrested**
- 0 To arrest the abuser or to give the abuser a **notice to appear in court** if the abuser has violated the terms of a protection order
- 0 To **serve** the interim protection order, and final protection order and/or notice calling on the abuser to attend at court on the abuser
- 0 To **record the domestic violence incident** in the domestic violence register in the police station, and to keep a copy of your protection order on record.

# What if the police don't help me?

- 0 You can make a complaint to **the Station Commander** of the police station where you got bad service. The Station Commissioner must then take disciplinary steps against the officer that gave you bad service. It helps to give the station commander the names and badge numbers of officers that give you bad service.
- 0 You can lodge a complaint with the **Civilian Secretariat of Police**, which has the power to investigate misconduct claims against police officers
- 0 You can approach an NGO, like us, for help.

# Stopping or changing a PO

- 0 A protection order only stops when **you** go to court and “withdraw” or cancel it, or when the court sets it aside.
- 0 The abuser may also apply to court to ask for your protection order to be set aside, but the court will only listen to his application if the court is satisfied that you have been notified to come to court. In other words, the abuser cannot interfere with your protection order without notice to you.
- 0 You can change the terms of your protection order, like maybe you moved to a new house, or your place of work has changed, by making an application to the domestic violence clerk of the magistrates court.





**WOMEN'S LEGAL CENTRE**



**Contact:**

7th Floor Constitution House  
124 Adderley Str. (Cnr of Church Str.)  
Cape Town, Western Cape  
**Telephone: 021 424 5660**

2nd Floor, Braamfontein Centre  
23 Jorissen Street, Braamfontein  
Johannesburg, Gauteng  
**Telephone: 011 339 1099**

[www.wlce.co.za](http://www.wlce.co.za) / <https://www.facebook.com/WLCCapeTown> / **@WLCCapeTown**

**Thank you**



# ***Institutions supporting constitutional democracy***



***Karam Jeet Singh***, Provincial Manager, Western Cape

***University of Cape Town***

***Sustained Advocacy & Training for Refugees***

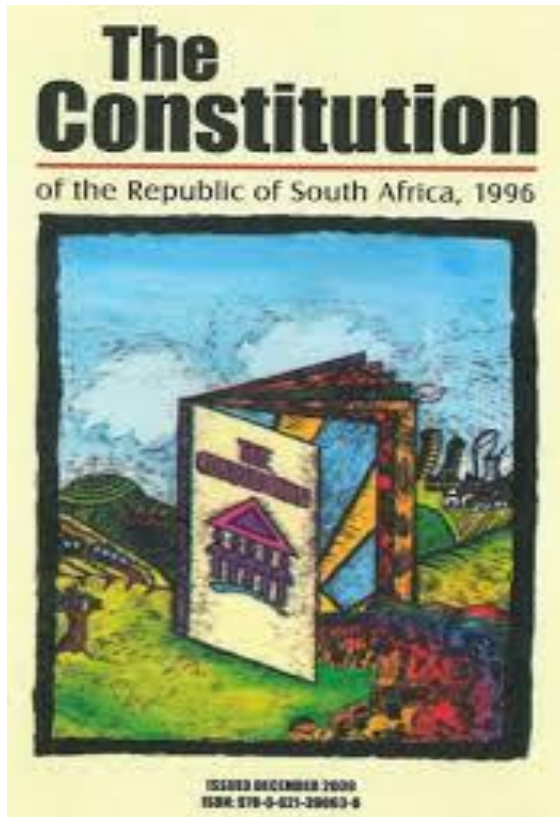
**14 August 2015**



# Contents

- 
- A large, stylized orange flame or flower-like symbol is centered in the background of the slide, behind the table of contents list.
- 1. The Constitution of South Africa**
  - 2. The Role of the SAHRC**
  - 3. Human Rights**
  - 4. Mandate of the SAHRC**
  - 5. Functions of the SAHRC**
  - 6. Powers of the SAHRC**
  - 7. Obligations of Government Departments**
  - 8. How the SAHRC Works**
  - 9. Filing Complaints with the SAHRC**
  - 10. Difficult cases**
  - 11. Other Institutions supporting Constitutional Democracy**
  - 12. Questions and discussion**

# 1. Constitution of South Africa



## Bill of Rights:

- Cornerstone of South African democracy
- Supreme Law of South Africa
- Wide range of rights to be **protected** by the State and **respected** by all social actors
- Broad **civil and political rights** such as right to vote, association and freedom of expression
- **Socio-economic rights** such as the right to water, food, health, and housing – *progressively realised*.
- The rights enshrined **are interrelated and interdependent; no hierarchy**
- **Horizontal and vertical application**

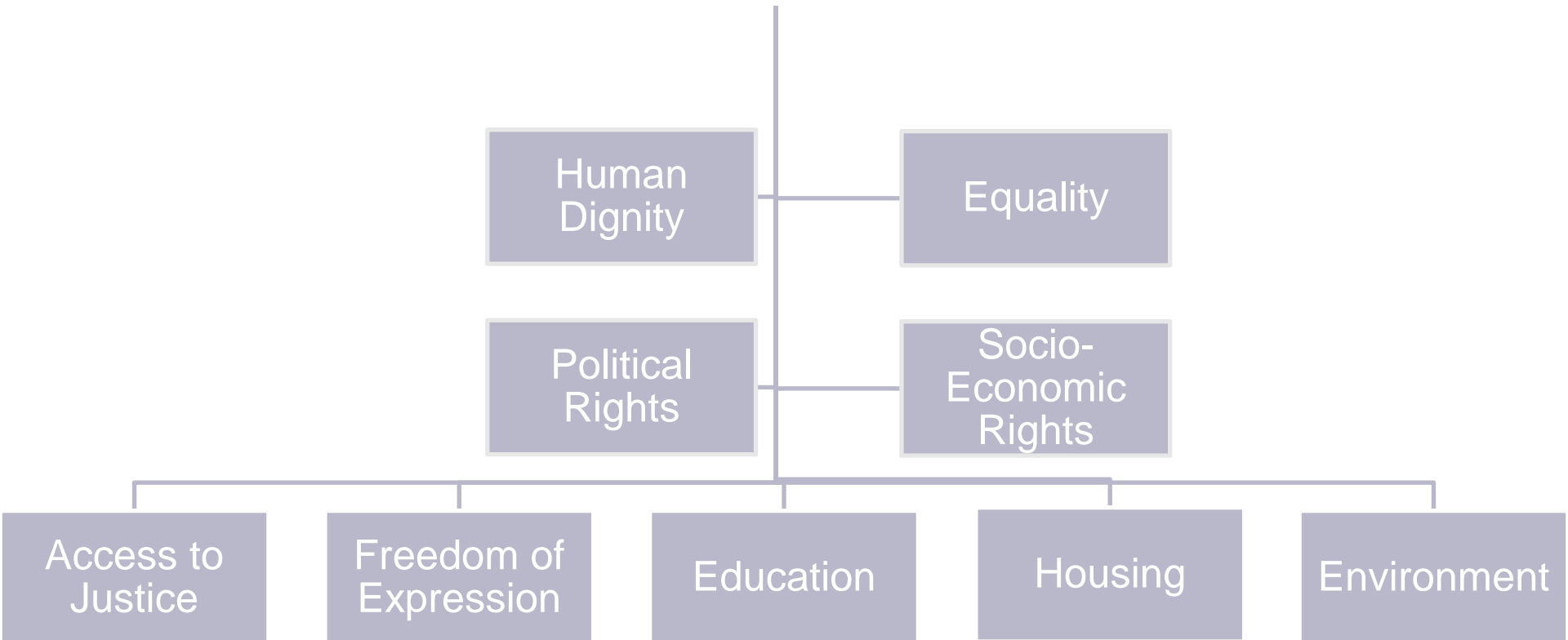
## ***2. The Role of the SAHRC***

- Is not a Government Department;
- Reports directly to Parliament;
- Derives its powers from Constitution; Human Rights Commission Acts of 2013; and various legislation and regulations
- Broad mandate covering Chapter 2 - Bill of Rights ;
- Additional responsibilities in terms of Promotion of Unfair Discrimination Act (PEPUDA); Promotion of Administrative Justice Act (PAJA); Promotion of Access to Information Act (PAIA).
- Decisions of the Commission can only be taken on review to a court of law.

## 2. The Role of the SAHRC (2)

- **Vision:** Transforming society. Security rights. Restoring dignity.
- **Mission:** The Commission as the independent national human rights institution is created to support constitutional democracy through promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.
- **Values:** Integrity, honesty, respect, objectivity, Batho Pele principles and equality.

### 3. Human Rights



## 4. Mandate of the SAHRC

### Constitution of the Republic of SA:

#### Section 184(1)

- (a) **promote respect** for human rights;
- (b) **promote the protection** of human rights;
- (c) **monitor the observance** of human rights.

- Legal Services, Advocacy, Research, Provincial offices

### Paris Principles (1993):

- **Advise** government and competent bodies on the **promotion and protection** of human rights
- Promote **national harmonization** and implementation of **international norms and standards**

## 5. Functions of the SAHRC

### 1. Protect

- To investigate human rights violations on receipt of complaints or to initiate investigations on its own accord; and to **take steps to secure appropriate redress where human rights have been violated**;
- Powers: search and seizure; subpoena; conduct hearings.
  - to make findings and recommendations;
  - to mediate and conciliate;
  - to refer matters to the Equality Court and to litigate - get orders.



## ***5. Functions of the SAHRC (2)***

### **2. Promote**

- Through advocacy, education and training;

### **3. Monitor**

- To carry out research;
- Receive reports from Government in terms – on steps relevant organs of state have taken towards realization of rights in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment;
- Submit reports to Parliament: the Commission shall submit to the President and Parliament quarterly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it during that quarter; or at any time, submit a report to the President and Parliament if it deems it necessary.

## ***6. Powers of the SAHRC***

- **Section 15(1) of the SAHRC Act of 2013** empowers the Commission to require any person by notice in writing ... to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation...
- In addition, **Section 16 of the SAHRC Act** provides that: “Any member of the Commission, or any member of the staff of the Commission or a police officer authorised thereto by a commissioner, may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is suspected to be.”

## 7. Obligations of Government Departments

Section 4 of the SAHRC Act states further states that:

- (2) All organs of state shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.*
- (3) No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 11(1) or 19(5) in the exercise or performance of its, his or her powers, duties and functions.*

Section 22 Offences and penalties:

*.....shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.*

## 8. How the SAHRC Works

- Complaints handling:
  - Assessment : rejected/accepted/referred
  - Investigation: subject to nature of complaint
  - Conciliation, Mediation, Arbitration/ Litigation
  - Finding
- Interventions/ Stakeholder Engagements
- Hearings

## 9. Filing Complaints with the SAHRC

- Written or verbal complaints
- Require full details of the alleged human rights violation and the person(s) or institution etc who is alleged to have violated the right(s)
- Complaint is assessed and may be accepted for investigation
- Complaints can be accepted, rejected or referred

## 9. Filing Complaints with the SAHRC (2)

- If accepted investigation will be conducted
- Respondent afforded the opportunity to respond to the allegations
- Complainant may be required to then give further comment
- Remedies – conciliation/mediation, drafting of findings and recommendations or alternatively institution of court action
- Prescribed time frames in terms of the Commission's Complaints Handling Procedures

## 10. Difficult Cases

- Discrimination cases
- Hate speech
- Claims for socio-economic rights
  - Rights to water and sanitation
  - Other basic services
- Rights of non-nationals/safety and security and xenophobia
- Claims against the police
- Prisoner rights

## 11. Other Chapter 9 and 10 institutions

- Section 182. The Public Protector
- Section 185. Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- Section 187. Commission on Gender Equality
- Section 188. Auditor-General
- Section 190. The Electoral Commission
- Section 192. Independent Authority to Regulate Broadcasting

### Chapter 10

- Section 196. Public Service Commission



## 11. Other Chapter 9 and 10 institutions (2)

### ➤ **Section 182. The Public Protector**

- (1) The Public Protector has the power, as regulated by national legislation-
  - (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
  - (b) to report on that conduct; and
  - (c) to take appropriate remedial action.
- (2) The Public Protector has the additional powers and functions prescribed by national legislation.
- (3) The Public Protector may not investigate court decisions.
- (4) The Public Protector must be accessible to all persons and communities.
- (5) An report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

## 11. Other Chapter 9 and 10 institutions (3)

- **Section 187. The Commission on Gender Equality**
- The Constitution grants the CGE with “the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.”
- It has the mandate to promote, attain and protect gender equality in government, civil society and the private sector.
- In order to promote gender equality and make any recommendations deemed necessary to Parliament, the CGE is also mandated to monitor and evaluate the policies of organs of state at any level, as well as those of statutory bodies and functionaries, public bodies and authorities and private businesses, enterprises, and institutions.

## 11. Chapter 9 reform proposals

### Asmal Report

The principal recommendation of the Committee in respect of the Human Rights Commission is to establish a Commission that would comprehensively address the promotion and protection of all human rights within a single institution

### SAHRC Comment

- There are two major lines of argument for amalgamation: the indivisibility of rights and resources
- There is a general trend internationally to amalgamate human rights bodies into one
- Kenya case study

## 11. Chapter 9 reform proposals

- From a resources perspective it may be practical for all human rights institutions to be placed in one institution.
- It should also be noted that each country may only have one recognised national human rights institutions at an international level. The SAHRC is currently recognised with “A” status by the United Nations, Office of the High Commissioner for Human Rights (OHCHR).
- Consequently, the SAHRC defers to Parliament on the question of amalgamation since Parliament may be best placed to decide on this matter

## 11. Other relevant bodies

- **Commission on Conciliation, Mediation and Arbitration (CCMA)** - is a dispute resolution body established in terms of the Labour Relations Act, 66 of 1995 (LRA). It is an independent body, does not belong to and is not controlled by any political party, trade union or business.
  
- **The CCMA will -**
  - Conciliate workplace disputes
  - Arbitrate disputes that remain unresolved after conciliation
  - Facilitate the establishment of workplace forums and statutory councils
  - Compile and publish information and statistics about its activities
  - Consider applications for accreditation and subsidy from bargaining councils and private agencies.
  
- **The CCMA may -**
  - Supervise ballots for unions and employer organisations
  - Give training and advice on -
    - the establishment of collective bargaining structures
    - workplace restructuring
    - consultation processes
    - termination of employment
    - employment equity programmes
    - dispute prevention

## 11. Other relevant bodies (2)

- **Legal Aid South Africa** - is an independent statutory body established by the Legal Aid South Africa Act 39, 2014, as amended.

The aims of Legal Aid SA are to:

- Give legal aid or to make legal aid available to indigent persons within its financial means.
- Provide legal representation at State expense, as set out in the Constitution of the Republic of South Africa, 1996 (the Constitution) and relevant legislation giving content to the right to legal representation at State expense.
- Legal Aid South Africa's role is to provide legal aid to those who cannot afford their own legal representation. This includes poor people and vulnerable groups such as women, children and the rural poor.
- It does this in an independent and unbiased manner with the intention of enhancing justice and public confidence in the law and administration of justice.

## 12. Questions and discussion



# Thank you

[KSingh@sahrc.org.za](mailto:KSingh@sahrc.org.za)

021 426 2277

[www.sahrc.org.za](http://www.sahrc.org.za)

@sahrcommission







# ARESTA's Community Education Campaign



# **Community Education Campaign**

Goal: To build bridges and promote social cohesion between local communities and refugee and asylum seekers through information sharing and education

**UNHCR**  
The UN Refugee Agency



# Tolerance Workshops and Peace Ambassadors

- ARESTA works with the United Nations High Commissioner for Refugees (UNHCR) to implement school workshops designed to educate students on refugee issues, decrease discrimination, and teach conflict management
- After the workshops, each student writes a response essay on the material that was covered
- Based on the essays, we select promising students to train as “peace ambassadors” with the French Embassy in South Africa, and help them form “peace clubs” at their schools, so that they can relay the information to their peers



# Peace Networks in Communities



ARESTA also undertakes cultural diversity, conflict transformation programmes, and other community peace building and social cohesion interventions as well as advocacy to prevent and respond to xenophobia-related violence





# Community Peace Monitors

Part of “Ubuntu Has No Borders” also involves the training of community “peace monitors”, who are adult community leaders. They participate in workshops focusing on human rights, preventing social conflicts, and creating cohesive and peaceful communities.







Progress





# Peace Ambassadors finishing their training – ready to start peace clubs in their schools





# Engaging with Stakeholders



# Involving the community leaders



# Politics

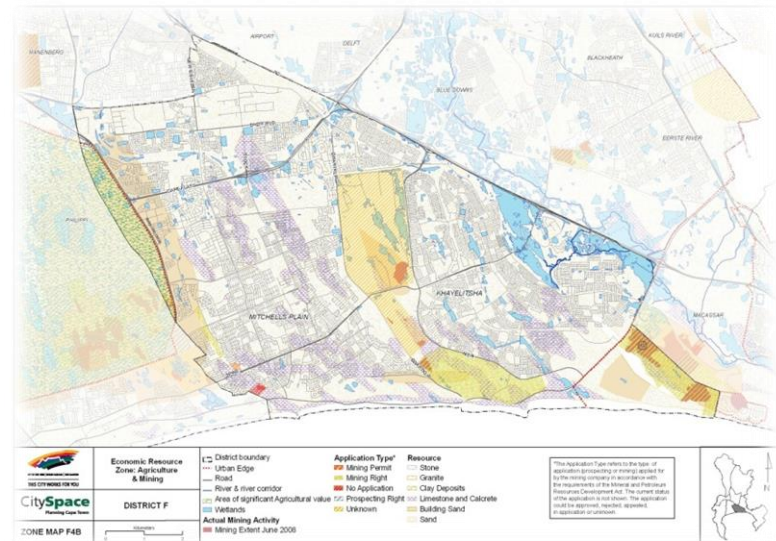




# Reaching more areas

Before taking the Community Education Campaign to a new community, we conduct a preliminary mapping process

Mapping is important because it gives us the possibility to reach more areas and see which areas that are in need as well as tailoring the programmes.







# Solutions

- creating peace networks





# Cultural Diversity

Our cultural diversity festivals feature rich cultural performances of many different backgrounds while promoting peace and unity within our communities







# Peaceful Demonstrations

The Campaign organizes peaceful marches, speeches, and other demonstrations in our communities in order to raise awareness of the violence caused by xenophobia



# "Kicking for Peace"

The Community Education Campaign holds soccer tournaments in our communities with players from many different cultural backgrounds, promoting diversity and teamwork through the sport





# World Refugee Day Quiz

The quiz is held around World Refugee Day, and is designed to educate students about refugee rights and other issues in a fun and interactive way



LET'S STAND TOGETHER **AGAINST**  
DISCRIMINATION, RACISM & XENOPHOBIA







THE WESTERN CAPE NETWORK FOR  
COMMUNITY PEACE & DEVELOPMENT



ARESTA and the Community Education Campaign appreciate the strong support of our partners, including the Catholic Committee against Hunger and For Development (CCFD), The United Nations High Commissioner for Refugees (UNHCR), the French Consulate to the Western Cape, the International Organization for Migration (IOM), The Western Cape Network for Community Peace and Development (WCNCPD), The Department of Higher Education and Training, Quadrem®, Violence Prevention Through Urban Upgrading (VPUU), and the South African Police Service. Their support is essential to building our program and further benefitting our community.



Thank you very much

Enkosi kakulu

Merci Beaucoup



# Introduction to the International Organization for Migration (IOM) and Cape Town programs

Zoe Rohde  
August 2015



# International Organisation for Migration

- Founded in 1951; headquarters in Geneva-Switzerland
- 157 member states
- Over 480 field offices in over 150 countries
- More than 8400 IOM staff globally
- Mandate: to promote humane and orderly migration, through provision of services to governments and migrants for the benefit of all



# International Organisation for Migration

IOM works with partners, government and civil society to:

- Assist in finding practical solutions to migration challenges
- Advance understanding of migration issues and its impact of society
- Encourage social and economic development through migration; and
- Uphold the human dignity and well-being of migrants and mobile populations through provision of services



# International Organization for Migration (IOM)

**South Africa:** Regional office in Pretoria which manages the organization's projects in the entire SADC region

- Country Office for South Africa also in Pretoria with sub-offices in Durban, Cape Town and Musina

**South and East Africa:** Offices in Angola, Botswana, Burundi, Ethiopia, Democratic Republic of Congo, Kenya, Lesotho, Mauritius, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe



# International Organisation for Migration

IOM in South Africa works in six areas

- Migration and Health
- Regulating Migration
- Movement and Resettlement
- Assisted Voluntary Returns
- Counter Trafficking
- Emergency and Humanitarian Response





# Migration Health

- Migration and Health initiatives are aimed at addressing the health vulnerabilities and challenges faced by migrants and migration affected communities by responding to their health needs throughout all phases of the migration process.





# Migration Health

- IOM promotes Healthy Migrants in Healthy Communities through:
  - Service Delivery and Capacity Building;
  - Advocacy for Policy Development;
  - Research and Information Dissemination;
  - Regional Coordination



# Regulating Migration

Aimed at developing an increased understanding of and responses to mixed/irregular migration

- Enhancing regional dialogue through MIDSA;
- Building capacity of governments through training of officials
- By providing communities in South Africa with tools to create harmony and peace by creating a network of social mediators;
- By carrying out cultural diversity training for various stakeholders;
- Specific project addressing responses to unaccompanied and separated migrant children
- Direct assistance to migrants - AVR



# Assisted Voluntary Returns

- Voluntary repatriation to vulnerable stranded migrants:
  - UAMs, VoTs, medical cases, victims of xenophobia
  - Requires formal referral, assessment, health checks, family tracing, liaising with embassies to secure travel documents, escorts/medical escorts



# Resettlement

- Organizing the transportation of refugees and migrants for the purpose of resettlement is a core activity of IOM in Southern Africa. Working closely with the UN Refugee Agency (UNHCR), IOM coordinates pre-entry medical assessment and the transport logistics for refugee resettlement cases. Refugees are commonly resettled to the United States, Canada and Australia



# Counter Human Trafficking

IOM has been working to counter trafficking in persons since 1994:

- It has implemented more than 800 projects in over 100 countries
- provided assistance to approximately 20,000 trafficked persons globally
- SACTAP program in South African (2003-2010)



# Counter Human Trafficking

IOM works to:

- Provide protection and empower trafficked women, men, girls and boys (protection)
- Raise awareness and understanding of the issue (prevention)
- Bring justice to trafficked persons (prosecution)
- Develop coordinated response (partnerships)





# Emergency and Humanitarian Assistance

- Provides emergency and humanitarian assistance to migrants and displaced people
- Enhances preparedness and early warning systems and initiates early recovery for disaster risk reduction and community stabilization in areas affected by natural and unnatural disasters.



# Emergency and Humanitarian Assistance

- IOM in South Africa works to coordinate responses at national, regional and international level with respect to supporting reconstruction efforts, demobilization of former combatants, and reintegration of Internally Displaced Persons (IDPs) and the repatriation of refugees.





# IOM Cape Town Office

- Assisted voluntary return (354 migrants returned home from Cape Town since Oct 2011)
- Resettlement (274 individuals resettled from Cape Town btw July 2014 and July 2015)
- Capacity Building of government and civil society organizations
- Social cohesion activities – Phillipi and Khayelitsha
- Counter human trafficking activities
- Emergency response – 2008, De Doorns

# IOM Global Stats (2014)

- Resettlement: 121,782 people resettled
- AVR: 42,254 people returned home
- Migrant training: 38,413 migrants received training from IOM
- Trafficking: 5,290 people assisted to move as a result of trafficking e.g. return home, resettled



# Contact Details

Zoe Rohde

2<sup>nd</sup> Floor, 80 Strand Street, Cape Town

021 425 4038

[zrohde@iom.int](mailto:zrohde@iom.int)

# ROLE OF UNHCR IN CAPE TOWN, SOUTH AFRICA

14 August 2015, Cape Town South  
Africa

# Refugee Context in South Africa

In 2010, more asylum applications were lodged in South Africa than in any other country in the world.

How is life for Refugees  
Different in South Africa  
than in other African  
Countries?



- No Refugee camps
- Freedom of movement
- Access to basic education, employment and health
- Government conducts Refugee Status Determination
- UNHCR plays a *supportive* role

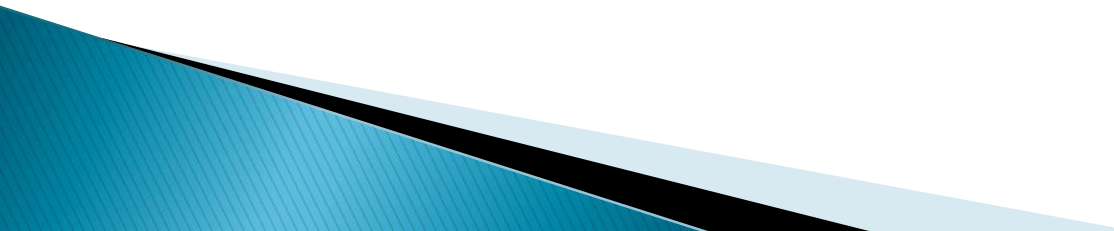
**1** refugee without hope  
**is too many.**



# Role of UNHCR Cape Town– Overview

- ▶ Primarily, FO CT liaises with Parliament to positively influence legislation that affects persons of concern.
- ▶ Involved with Prevention and Response to xenophobic attacks directed at POCs
- ▶ Provide guidance and assistance to UNHCR's Implementing Partners to ensure smooth delivery of services to beneficiaries

# Overview

- ▶ Establish a network of mutual trust and efficient coordination with and between DHA, Prov. & City gov authorities, civil society, UN agencies and other stakeholders.
  - ▶ Support Gov, especially DHA in fulfilling its obligations towards POCs through technical advice, capacity building.
- 

# Overview

UNHCR's implementing partners in Cape Town provide direct assistance to refugees and asylum seekers on UNHCR's behalf.

The IPs in Cape Town consist of:

- ▶ Cape Town Refugee Centre (CTRC),
- ▶ University of Cape Town's Refugee Rights Project,
- ▶ Agency for Refugee Education, Skills Training and Advocacy (ARESTA)

# Areas of involvement with partners

- ▶ CTRC – Identification of candidates for income generation, donor-funded grants, monitoring of school program
- ▶ UCT – SAFER training, attending strategic litigation cases, guest lecturing, ad-hoc protection exchanges
- ▶ ARESTA – Attend Community education campaigns and other programs that enhance peace-building

# Parliamentary liaison

- ▶ FO Cape Town attends Parliamentary sessions on Home Affairs, Soc Development
- ▶ Matters affecting the protection space of POCs are highlighted during the meetings with follow-up actions recommended;
- ▶ In 2014, UNHCR made a presentation to PC on Home Affairs



# Engagement with DHA

- ▶ Build relations with DHA RRO in CT, have regular meetings to address pressing issues.
- ▶ Until 2014, UNHCR funded field workers to assist with work at the RRO, to address challenges with running an effective & updated registry at Centre.

# Coordination of civil society

- ▶ UNHCR is a member of the Western Cape Refugee and Migrants Forum and sits on the Secretariat.
- ▶ The Forum, originally set up during the aftermath of the xenophobic attacks, has since taken on more thematic issues in the asylum regime.
- ▶ FO Cape Town also regularly engages with refugee leaders of the various communities which relationship has contributed to the identification of urgent protection cases.

# Monitoring Implementing Partners

- ▶ FO Cape Town staff are engaged with attending various workshops; selection committees for beneficiaries of grants, vocational skills and income generation; completion ceremonies and training activities held by the IPs.
- ▶ FO Cape Town also initiates a bi-monthly IP meeting where the IPs come together to share updates, challenges, trends and discuss protection strategies.

# Anti-xenophobia activities

- ▶ Supporting ARESTA's program in running peace-building and social cohesion workshops in schools.
- ▶ Working closely with Gov counterparts at Provincial & Municipal level, partners, civil society, media outlets, refugee population.
- ▶ Relationship with City crucial-Mayor of Cape Town acting as focal point; and together with SAPS and Prov. Disaster Mgmt Centre collaborate to respond to any such future attacks on refugees/a/s-seekers.

# Ongoing PNA referrals, resettlement and regular intakes

- ▶ FO Cape Town interacts with persons of concern on a daily basis.
- ▶ Intakes are done on a weekly basis, 21 persons are attended to each week.
- ▶ Receive regular resettlement selection missions from US, Australia, Canada



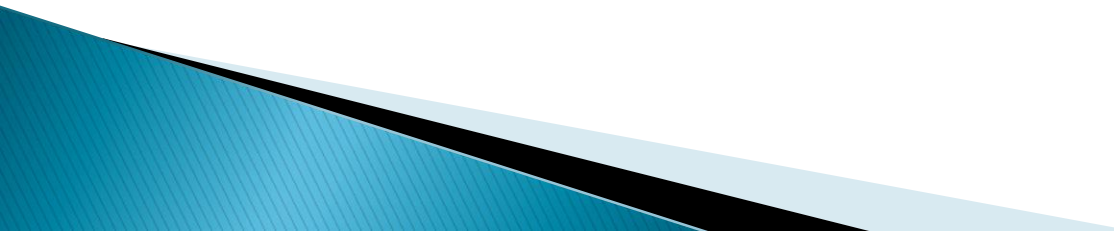
# Durable Solutions



# Durable Solutions

- ▶ Developed by the Mandate of UNHCR but not enshrined in the universal refugee instruments.
- ▶ Types of Durable Solutions:
  - Voluntary Repatriation;
  - Local Integration;
  - Resettlement.

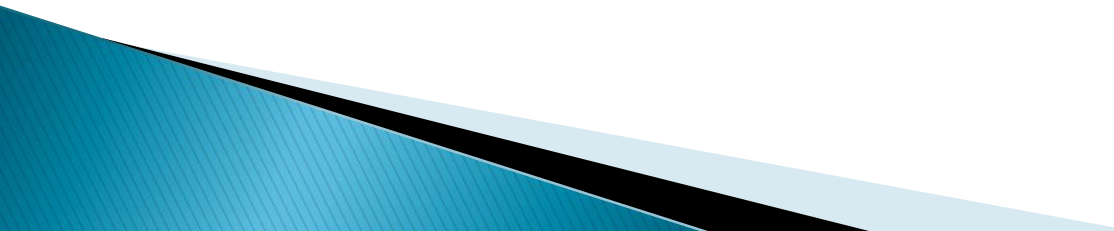
# Voluntary Repatriation to Country of Origin

- ▶ Right to return is recognized in international law
  - ▶ Return must be voluntary – developed as a principle of international law emanating from the principle of non-refoulement
    - Only an informed decision can be voluntary
  - ▶ Return must be in safety and dignity
  - ▶ Beneficiaries are refugees
  - ▶ Organized under tripartite mechanisms
- 

# Voluntary Repatriation



# Local Integration in Country of Asylum

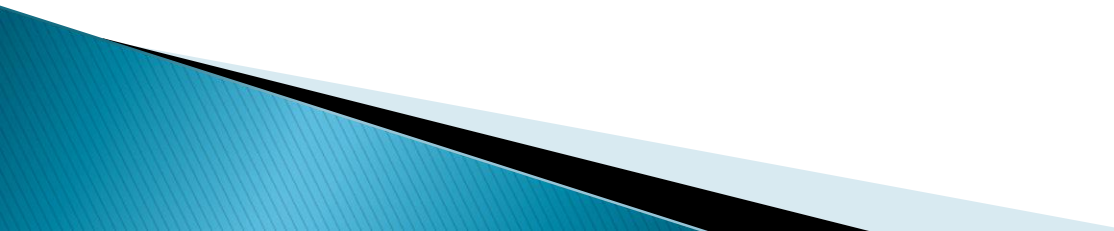
- ▶ Access to naturalization is the optimal response but an initial permanent residence is accepted
  - ▶ Acquisition of documents to affirm his status in the country.
  - ▶ Refugee status only ceases upon naturalization
  - ▶ Three pronged solutions
    - Legal dimension
    - Economic dimension
    - Social integration
- 



# Local Integration



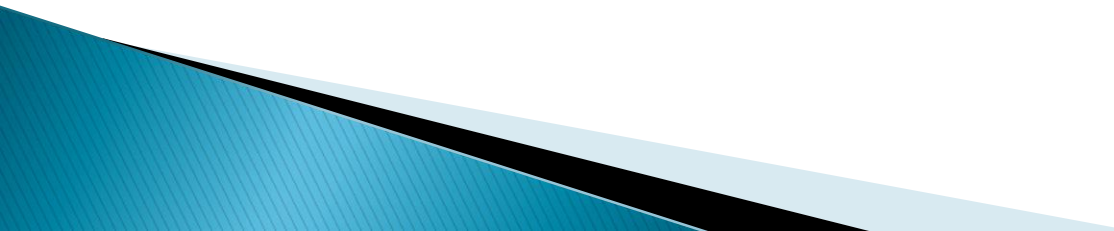
# Resettlement to a Third Country

- ▶ Resettlement is part of UNHCR's responsibility in assisting Governments to find permanent (durable) solutions for refugees (1950 UNHCR Statute)
  - ▶ Responsibility-sharing mechanism
  - ▶ Strengthening of asylum system and opening-up opportunities
- 

# Resettlement

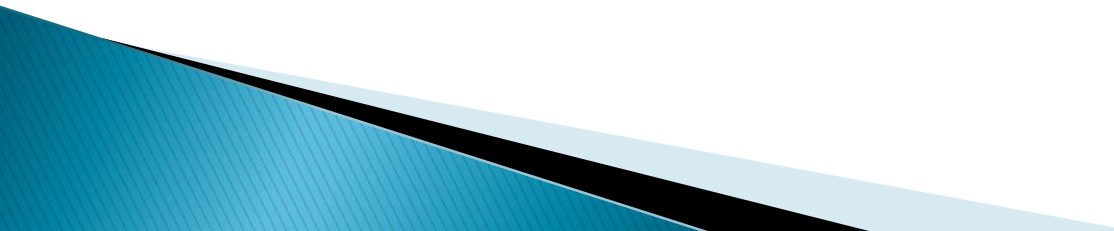
- ▶ Resettlement is not a right embodied in international law; no country is legally obliged to resettle refugees
- ▶ Resettlement as a tool of protection and durable solution:
  - Refugees facing human rights violations in the country of asylum
  - Authorities fail or are unable to protect refugees
  - Lives and freedom of refugees threatened
  - Protracted refugee situations

# Resettlement...

- ▶ Mainly used to address the needs of the most vulnerable sectors of the refugee population
  - ▶ Limited places and opportunities are made available for resettlement (target for South Africa is 1250)
  - ▶ No application or appeal process for resettlement / not to be equated with applying for asylum (needs based)
- 

# Resettlement.....

## Resettlement categories

- ▶ Legal and physical protection needs
  - ▶ Survivors of violence and/or torture
  - ▶ Medical needs
  - ▶ Women and Girls at risk
  - ▶ Family reunification
  - ▶ Children and adolescents at risk
  - ▶ Lack of foreseeable alternative durable solutions
- 



# Resettlement to a Third Country



# Cessation of Refugee Status

- ▶ Formal decision to end refugee status as it is no longer necessary or justified (declaration)
- ▶ Refugee status ceases when a refugee voluntarily re-avails himself of his nationality, or reacquires another nationality or
- ▶ The circumstances in connection with which he/she has been recognized as a refugee have ceased to exist
- ▶ Refugees may invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

# Resettlement to a Third Country





# Our Contacts

- ▶ UNHCR Field Office
  - ▶ Protea Assurance Building
  - ▶ 9–11 Greenmarket Square
  - ▶ Cape Town
  - ▶ Tel: 021 483 98 59
  - ▶ Email: [rsact@unhcr.org](mailto:rsact@unhcr.org)
  - ▶ Website: [www.unhcr.org](http://www.unhcr.org)
- 

**And Finally....**

**▶ Thank you for listening!**

**▶ Any questions?**

