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Human Rights Monitor Series

**UNIVERSAL PERIODIC REVIEW, 1ST SESSION
SOUTH AFRICA (FINAL)
REVIEWED ON 15 APRIL 2008, AFTERNOON**

Membership of the Human Rights Council

South Africa is a member of the Human Rights Council, and its term expires in 2010.

Members of the troika

Zambia, Guatemala, Qatar.¹

National consultation

South Africa submitted a report shortly before it was to be reviewed by the Working Group. The resulting document did not note any national consultation process.

Information submitted to the Working Group

State report²

South Africa had not submitted its State report until the day of the review. The opening statement delivered by South Africa was a recitation from different parts of the report. The State report opens with a review of South Africa's human rights obligations at the domestic, regional, and international level. Among the major international instruments South Africa ratified is the *Convention on the Rights of Persons with Disabilities* and its Optional Protocol, as well as the *Rome Statute of the International Criminal Court*. The remainder of the report provides more detail about the status of various human rights within South Africa. These include the right to adequate housing, the right to healthcare, food, water, and social security, the right to education, citizenship rights, the rights of refugees and asylum seekers, as well as the role of the Department of Public Services and Administration, which implements policies related to human rights.

¹ South Africa requested that a member of its regional group be among its troika. Regional groups selected: African Group, Asian Group, Group of Latin American and Caribbean Countries (GRULAC). Because South Africa originally drew itself as a troika member, the African Group representative was redrawn. There were no objections by South Africa or by the members of the troika to the final troika composition. For a full summary of the selection of troikas, see

http://www.ishr.ch/hrm/council/councilalert/council_update_7session.pdf

² A/HRC/WG.6/1/ZAF/1, 15 April 2008, available at :

<http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CZASession1.aspx>.

Throughout the State report, South Africa reiterates that it believes economic, social, and cultural rights are as important as civil and political rights. The landmark South Africa Constitution, promulgated in 1996, guarantees ‘all human rights and fundamental freedoms’, and according to the State, incorporates all of the ‘core’ rights of the International Bill of Human Rights. Despite the remarkable progress South Africa has made since the ouster of the apartheid regime in 1994, the State recognised that many of its citizens are still unable to fully exercise their rights—owing in large part to the remnants of colonialism. In response, the State has established a number of government programmes to eradicate all forms of discrimination, particularly regarding access to education, healthcare, and housing, which remain top priorities. The State report concluded with South Africa’s pledge to continue working for the progressive realisation of economic, social, and cultural rights.

Official UN documents³

While South Africa is a party to a number of international treaties, several UN procedures asked the State to ratify other international instruments to which it is not yet a party.⁴ A lengthy section on human rights protections noted several concerns, including *de facto* segregation,⁵ torture,⁶ police brutality,⁷ housing,⁸ threats to migrants,⁹ corruption in the judiciary,¹⁰ poor prison conditions,¹¹ domestic violence,¹² human trafficking,¹³ corporal punishment (especially of children),¹⁴ HIV/AIDS,¹⁵ rights of migrants, refugees, and asylum seekers,¹⁶ poverty,¹⁷ access to social services,¹⁸ education,¹⁹ and indigenous rights.²⁰ While South Africa was commended for achieving its goal to deliver 30% of State-developed homes to women, there were

³ A/HRC/WG.6/1/ZAF/2, 11 April 2008, available at:

<http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CZASession1.aspx>.

⁴ Core universal human rights treaties to which South Africa is a party: *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)*, *International Covenant on Civil and Political Rights (ICCPR)*, *Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1)*, *Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2)*, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)*, *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, *Convention on the Rights of Persons with Disabilities (CPD)*, *Optional Protocol to the Convention on the Rights of Persons with Disabilities (CPD-OP)*, *Convention on the Rights of the Child (CRC)*, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (CRC-OP-SC)*.

⁵ Committee to End Racial Discrimination (CERD).

⁶ Committee Against Torture (CAT).

⁷ CAT, Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Special Rapporteur on terrorism).

⁸ CERD, UN-Habitat, Special Rapporteur on adequate housing.

⁹ Special Rapporteur on terrorism.

¹⁰ CERD, CRC, South Africa Human Rights Commission (SAHRC).

¹¹ CAT, Working Group on Arbitrary Detention.

¹² Committee on the Rights of the Child (CRC), CAT, CERD, Special Rapporteur on the sale of children, child prostitution and child pornography.

¹³ CAT, CERD.

¹⁴ CRC, CAT.

¹⁵ CERD, UN Development Programme, United Nations Children’s Fund (UNICEF), Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on indigenous people).

¹⁶ CERD, CAT, UN High Commission for Refugees, CRC, Special Rapporteur on terrorism, Working Group on Arbitrary Detention,

¹⁷ CERD.

¹⁸ CERD.

¹⁹ CRC, UNICEF.

²⁰ CERD, Special Rapporteur on indigenous people.

still concerns about the continued lack of affordable housing, made worse by the prevalence of violence against women.²¹

South Africa was recognised for some achievements, however, including its establishment of a State-funded corps of public defenders,²² its constitutional commitment to protecting socio-economic rights,²³ its ‘excellent’ social security system,²⁴ and its penal system’s focus on rehabilitation.²⁵ While South Africa committed to tripling its expenditures to combat HIV/AIDS, the disease’s impact remains strong because of the unequal regional distribution of treatment resources, as well as the stigma surrounding the disease. In a note verbale²⁶ submitted in 2007, South Africa pledged to submit reports to both CERD and CAT, both of which had requested more information from South Africa in 2006, regarding the implementation of their respective recommendations.²⁷ The State also committed to developing a National Action Plan that specifically addresses racism, as required by the Durban Declaration and Programme of Action. With respect to capacity-building and technical assistance, United Nations Development Assistance Framework (UNDAF) 2002-2007 stated that the main challenges South Africa faced were HIV/AIDS and access to basic services, including education, healthcare, water, and employment. UNDAF’s subsequent report, spanning 2007 to 2010, stressed the need to improve the capacities of local and provincial governments, especially regarding the delivery of basic services and financial management.

Other relevant stakeholders²⁸

This report compiled information submitted by South Africa’s national human rights institution, the South African Human Rights Commission (SAHRC), the University of Pretoria, and 16 NGOs.²⁹ Many of the issues raised were the same as those contained in the official UN documents. Specific concerns included *de facto* racism and racial discrimination, substandard housing, education, poverty, torture, inadequate social services, HIV/AIDS, poor prison conditions, gender-based violence, corruption, limited access to information, exploitation of migrants, refugees and asylum seekers, corporal punishment of children, child exploitation, indigenous rights, and hate crimes based on sexual orientation. While these stakeholders expressed grave concern about a number of issues but did praise South Africa for its Equality Courts³⁰ and its attempts to provide medical care to all of its citizens. Most subsections contain recommendations to the Government and some to the Human Rights Council. While no information was included under the sections on key national priorities, initiatives and commitments or capacity building and technical assistance, Children Now did recognise South Africa’s model for developing and implementing child-related legislation as a best practice.

²¹ Special Rapporteur on adequate housing.

²² Working Group on Arbitrary Detention.

²³ Special Rapporteur on adequate housing.

²⁴ UNICEF.

²⁵ Working Group on Arbitrary Detention.

²⁶ A/61/889, annex.

²⁷ Special Rapporteur on the sale of children, child prostitution, and child pornography, World Health Organisation.

²⁸ A/HRC/WG.6/1/ZAF/2, available at: <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CZASession1.aspx>.

²⁹ Submissions were made by the South African Human Rights Commission, South Africa’s national human rights institution, the Centre for Human Rights/University of Pretoria, as well as the following NGOs: Amnesty International, Centre for the Study of Aids, Centre for the Study of Violence and Reconciliation, Centre on Housing Rights and Evictions, Children Now, Commonwealth Human Rights Initiative, Community Law Centre, Cultural Survival, Federation Internationale des Ligues des Droits de l’Homme, Global Initiative to End All Corporal Punishment of Children, Human Rights Watch, Joint Working Group, Masimanyane Womens Support Centre, Reporters Sans Frontières, Unrepresented Nations and Peoples Organisation, and Voice of Wrongfully Imprisoned.

³⁰ These courts field complaints about discrimination filed by individuals who are not represented by legal counsel.

Interactive dialogue

Presentation by the State

The delegation of South Africa was led by Ambassador Glaudine J. Mtshali, Permanent Representative to the United Nations (UN) in Geneva. After thanking the Working Group for taking the time to work constructively with South Africa, Ms Mtshali moved on to review the human rights framework in place since the collapse of the apartheid regime in 1994. The oral presentation, which constituted the State report, was not made available until shortly before South Africa's review began.

One of South Africa's finest achievements, according to the delegation, was its progressive Constitution, which springs from the principle that economic, social, and cultural rights are as important as civil and political rights. Beyond guaranteeing all human rights and fundamental freedoms, the Constitution also established several independent institutions to oversee the promotion and protection of human rights, including the Public Protector, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Commission on Gender Equality, as well as the State's Paris Principles-compliant³¹ national human rights institution, the South African Human Rights Commission. Given the importance South Africa accords socio-economic rights, Ms Mtshali stated that delivering adequate housing, education, and public health care to its people remain major priorities for the State. To that end, South Africa's legislature adopted several laws to bolster human rights protections, such as the Promotion of Equality and Prevention of Unfair Discrimination Act, National Health Act, National Education Policy Act, National Housing Act, and Prevention of Illegal Eviction and Unlawful Occupation of Land Act. Through its Reconstruction and Development Programme, South Africa was able to provide 2.3 million homes to the homeless in just four years, as well as unfettered basic access to water, and support 10 million children through its social security network. In addition, the State expects to provide universal primary education (Millennium Development Goal #2) by 2015.

Regarding its international and regional commitments, Ms Mtshali stated that protections in international treaties are already codified in domestic law. Moreover, South Africa's human rights protections go beyond those found in international law because the State has made economic, social, and cultural rights justiciable through its courts. The State did, however, note its recent accession to both the *Convention on the Rights of Persons with Disabilities* (CPD) and its Optional Protocol (OP-CPD). According to Ms Mtshali, improving protections of the rights of the disabled is a key priority for the State.

Throughout the presentation, South Africa repeated that it continues to set the standard for human rights in the region, despite its recent past. Ms Mtshali assured the Council that South Africa is working to address its shortcomings, particularly regarding healthcare given its large HIV/AIDS-infected population. She closed her statement by expressing hope that all South Africans will soon be able to exercise all of their human rights.

Key issues

During South Africa's review, 45 States intervened.³² Upon taking the floor, each speaker praised South Africa for the progress it has made thus far given how recently the apartheid regime was overthrown. While States had close to no time to review South Africa's written version of the oral presentation, several still

³¹ The 'Paris Principles' were adopted by the United Nations General Assembly as an Annex to *Resolution 48/134*. They define the role and functions of national human rights institutions in the promotion and protection of human rights. Available at: <http://www.un.org/Depts/dhl/res/resa48.htm>.

³² The Working Group has agreed that to facilitate a dialogue with the State under review, no more than 45 speakers may take the floor.

thanked the delegation for the report's thoroughness. Unlike other countries, South Africa's delegation was very small, and only Ms Mtshali responded to questions posed by the Working Group.

The issues raised by the Working Group were: the preparation of the national report, voluntary commitments undertaken by the Government, international human rights obligations, the establishment and ongoing work of South Africa's national human rights institution, women's rights and gender equality, racial discrimination, corporal punishment, torture, threats to human rights defenders, sexual violence, the rights of the child, the rights of the disabled, the rights of non-citizens and migrants, HIV/AIDS, standing invitation to special procedures, prison conditions, transitional justice and reconciliation, and access to social services including health care, education and housing.

One of the main concerns raised by several delegations was *de facto* **racial segregation and discrimination**, a particularly salient issue given how recently South Africa transitioned from apartheid to democracy. While several countries asked for information about steps the State has taken to foster integration generally,³³ other delegations asked more specific questions about how segregation has evolved. Malaysia, Brazil, Democratic Republic of Congo, and Iran requested more information about South Africa's implementation of the Durban Declaration and Programme of Action (DDPA). While South Africa did not specifically update the Working Group about its progress regarding Durban, it noted some recent reforms the State initiated to address the situation. Most notably, these reforms include the establishment of Equality Courts, where an individual can file a discrimination complaint without legal counsel. China, Jordan, and the Sudan also asked whether South Africa intended to share its experiences overcoming racism and intolerance, and other related issues, with the international community. South Africa reminded the Working Group that no country could be expected to overcome the legacy of apartheid in just 14 years.

The status and rights of **women** were a recurring theme during the session. While some countries³⁴ asked more generally about what South Africa is doing to promote gender equality, other countries pressed the State to answer more specifically about its efforts to combat violence against women, particularly rape.³⁵ (Switzerland even cited alarming data that found that approximately 40-50% of rapes are of children.) The United States (US) congratulated South Africa for creating 10 treatment centres and 65 specialised offences courts to deal with sexual violence, but wanted to know more about the prospective impact of the new Sexual Offences Bill, and what resources would be devoted to its implementation. Switzerland similarly called on South Africa to implement the recommendations of the Committee against Torture to combat violence against women. Slovenia asked that it incorporate a gender perspective into its future human rights assessments. Canada recommended further that the State implement the recommendations issued by the South African Law Reform Commission.³⁶ Germany and the Netherlands asked South Africa to intensify its efforts to combat gender violence, and provide more information about how it intends to do so. With respect to reproductive health, South Africa noted a law that entitles women to choose to continue or terminate a pregnancy.

The Working Group was similarly interested in South Africa's efforts to combat **torture**.³⁷ In its statement, Slovenia repeated the praise the Committee against Torture gave South Africa for its policy against the use of torture on persons in police custody. However, citing the reports of several other UN mechanisms, which found that allegations of torture are on the rise, Denmark recommended that South Africa codify torture as a specific offence in domestic criminal law. Slovenia and Switzerland made similar recommendations, urging South Africa to implement the Committee's recommendations and moreover, issue a blanket prohibition on

³³ Guinea, Democratic Republic of the Congo (DRC), Côte d'Ivoire, Egypt, Pakistan, Senegal, China, Mauritania, Switzerland.

³⁴ Tunisia, Brazil, Slovenia, Angola, Indonesia, Bangladesh.

³⁵ Canada, Switzerland, Netherlands, US.

³⁶ The recommendation concerns supporting and protecting complaints in court and providing post-sexual assault medical care and treatment services.

³⁷ Denmark, Slovenia, Russian Federation, Switzerland, DRC.

the practice. Citing reports of migrants' return to places where they risk being tortured, Mexico asked that South Africa respect the *non-refoulement*³⁸ principle. Brazil, the UK, Romania, and Indonesia also urged South Africa to ratify the Optional Protocol to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OP-CAT). In response, South Africa reminded the Working Group that while it has not ratified OP-CAT, it has ratified the *Convention against Torture* and recently reported to that Committee. Moreover, while South Africa derogates from certain rights protections during states of emergency, the delegation assured the Working Group that the use of torture is always prohibited. The Russian Federation requested more details about the independent directorate South Africa established to adjudicate torture complaints. South Africa did not provide much more information, except to say that the independent complaints directorate introduced a human rights approach to torture investigations and thus 'increased accountability.'

Many countries intervened to request more information on South Africa's efforts to fight **HIV/AIDS**.³⁹ While Brazil wanted more information about how South Africa assesses its HIV/AIDS policies, other States recommended that it focus its HIV/AIDS efforts on different groups: Mexico on ethnic minorities, Germany on women, and Canada on rural women. Canada also expressed concern about unequal access to anti-retroviral drugs. By contrast, Nigeria stated that while South Africa continues to face challenges in this regard, it is satisfied with the State's progress thus far. In response, South Africa assured the Working Group that it had allocated significant resources to assure equal access to healthcare services, for both treatment and prevention. The State had, within 90 days of the apartheid government's departure, that free healthcare services be introduced. Thus, according to the delegation, there was no such thing as unequal access to healthcare as such; rather, it was a matter of delivering the necessary resources. Moreover, South Africa had lobbied for the reduction of the price of drugs to improve access to anti-retroviral drugs. According to Ms Mtshali, recent data collected from young people shows that preventative programmes have taken root, and that the prevalence of HIV/AIDS is declining.

The **right to education** was also a popular topic during the review. Many States wanted more information on South Africa's education policy, and in particular how it intends to establish universal primary education by 2015 (Millennium Development Goal #2).⁴⁰ Slovenia pressed South Africa to explain why the prohibition of all forms of corporal punishment was omitted from recent children's legislation. Given that such punishment is still used at schools and in private homes, Slovenia urged South Africa to criminalise the practice. Switzerland and Brazil raised similar concerns, asking what South Africa intended to do about increasingly frequent reports of violence against girls in school. South Africa did not specifically answer the questions regarding violence in schools. What it did say, however, was that it is gradually fulfilling its Constitution's promise of a universal right to education. According to the delegation, the numbers of students with access has grown steadily, and the State continues to assist poor students through its National Financial Aid Scheme.

Several countries⁴¹ wondered how South Africa handles rising numbers of **migrants, refugees, and asylum seekers**. Senegal argued that South Africa's ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* would be an important first step. In response to a question from the US regarding Zimbabwean refugees, South Africa conceded that refugees from that State, and migration in general, pose several problems. It argued, however, that since relevant legislation does not turn on an applicant's nationality, it does not matter whether the migrants or asylum seekers come from Zimbabwe. Moreover, because South Africa's migration and asylum system is prone to abuse there are thousands of unprocessed applications. At one time, Ms Mtshali stated, there was a backlog of

³⁸ *Non-refoulement* is a principle of international law that forbids the extradition of an individual to an area where he or she might be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

³⁹ US, Pakistan, Mexico, Algeria, Germany, Brazil, Zambia, Romania, Bangladesh, Iran.

⁴⁰ Angola, Libyan Arab Jamahiriya, Tunisia, India, Bangladesh, Indonesia.

⁴¹ US, Canada, Senegal, Ghana, the Netherlands, France.

over 100,000 applications. Since then, the State hired additional staff and the backlog has dwindled to 8,000 pending applications. Moreover, the Department of Home Affairs established a counter-xenophobia unit under the auspices of the Immigration Act. Using a human rights-based approach, this unit simplifies many bureaucratic procedures for non-nationals, such as improving access to residence permits for eligible applicants.

The United Kingdom and Belgium applauded South Africa's work to eradicate discrimination on the basis of **sexual orientation**, including its legalisation allowing same-sex marriages, and asked for more information about such efforts. To this, South Africa said there's no specific legislation dealing with sexual orientation; rather, the principle of non-discrimination enshrined in the Constitution applies to all regardless of sex, gender, etc.⁴²

Several States were also very interested in South Africa's **human rights institutions**, particularly its Truth and Reconciliation Commission.⁴³ In particular, Guinea and China asked what specific steps taken by the Truth and Reconciliation Commission helped South Africa move forward. South Africa noted that the Commission still grants amnesty to some 'deserving' individuals under its jurisdiction. The Commission has also awarded damages to more than 90% of complainants, and unresolved cases involve victims who have either died or could not be located. Australia asked about the South Africa Human Rights Commission (SAHRC), the State's national human rights institution. Norway asked for more information regarding a recommendation that South Africa merge several of its national institutions. South Africa did not respond specifically to questions regarding the role and accomplishments of the SAHRC.

Palestine and Botswana, thanked South Africa for extending a **standing invitation** to all UN special procedures. Yet Belgium, Switzerland, and New Zealand also requested that South Africa do more to comply with requests from treaty bodies, including that it submit more timely reports and intensify its efforts to implement treaty body recommendations. New Zealand also asked whether South Africa needed any international assistance to help meet its treaty body reporting obligations. South Africa declined such assistance, stating confidently that there were no particular obstacles to report writing; rather, the State is simply looking for ways to 'optimize' the process.

Many countries also took the floor simply to recommend that South Africa ratify international treaties immediately, particularly the *International Covenant on Economic, Social and Cultural Rights* and the Optional Protocol to the *Convention against Torture*.⁴⁴ In its statement, Zimbabwe argued that South Africa should not be so hesitant to ratify this Covenant because it already considers economic, social, and cultural rights to be justiciable. The Sudan and Sri Lanka also asked that South Africa consider the assistance international cooperation can provide in the full exercise of economic, social, and cultural rights. Nigeria echoed this sentiment, asking what South Africa might need to develop such rights. South Africa responded that it would report back when it is in a position to ratify these instruments. The delegation suggested that it could provide more information in four years when it will be reviewed again under the UPR. It assured the Working Group that there were no political obstacles to ratification.

Concluding Remarks

Taking the floor to conclude the review, Ms Mtshali thanked the members of the Working Group and attending NGOs for their recommendations, comments, and advice. She assured the Working Group that she would convey their concerns and suggestions to her government, and that they would be used in a constructive manner, particularly those related to economic, social, and cultural rights. Ms Mtshali reiterated

⁴² *South Africa Constitution*, Chapter 2, Bill of Rights.

⁴³ Guinea, DRC, Jordan, Norway.

⁴⁴ Germany, Zimbabwe, Brazil, Romania, Tanzania, Indonesia, Senegal.

South Africa's commitment to developing and protecting such rights as fervently as civil and political rights. She closed by saying that while much remains to be done in South Africa with respect to human rights, there is hope, and 'where there is hope, there is a future.'

Adoption of the report [18 April, 3:30 pm]

Guatemala introduced the draft UPR report on South Africa on behalf of the troika. Guatemala mentioned that there were a few minor editorial amendments made to the draft. It was noted, however, that South Africa had opted to include all recommendations in the draft report, to which it will respond before the 8th session of the Human Rights Council in June 2008.

Ambassador Mtshali then took the floor to thank the participating delegations for their constructive contributions, as well as the Secretariat for its professionalism. She assured the Working Group that its recommendations would be seriously considered by South Africa and reflected in its subsequent report to the Human Rights Council. Of particular note, Ms Mtshali announced that the State will be fulfilling recommendation 8 of the draft UPR report when South Africa signs the *International Convention for the Protection of All Persons from Enforced Disappearance* in New York next week.

The Working Group then adopted the draft UPR report on South Africa without objection.

COUNCIL MONITOR STAFF

Paul Dziatkowiec, Human Rights Officer
Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Vanessa Jackson, Human Rights Officer
Rosa Sanz, Fellow
Gareth Sweeney, Deputy Manager
Yuri Saito, Fellow
Katrine Thomasen, Manager

Author of this report

Ashwini Habbu, Intern

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