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**Human Rights Council**  
**Working Group on the Universal Periodic Review**  
**Forty-first session**  
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## **South Africa**

### **Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights**

#### **I. Background**

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the outcome of the previous review.<sup>1</sup> It is a compilation of information contained in relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

#### **II. Scope of international obligations and cooperation with human rights mechanisms**

2. The Committee on Economic, Social and Cultural Rights expressed concern that South Africa maintained its declaration in relation to the International Covenant on Economic, Social and Cultural Rights, and noted the Constitutional Court judgment that the right to a basic education was “immediately realizable”.<sup>2</sup> The Committee recommended that South Africa withdraw its declaration.<sup>3</sup>

3. The United Nations country team recommended that South Africa consider ratifying pending international human rights instruments.<sup>4</sup>

4. South Africa contributed financially to the Office of the United Nations High Commissioner for Human Rights in 2017.<sup>5</sup>

#### **III. National human rights framework**

##### **1. Constitutional and legislative framework**

5. The Committee on Economic, Social and Cultural Rights noted that the Constitution had not fully incorporated the rights enshrined in the Covenant, and that Covenant provisions were not directly applicable by the courts.<sup>6</sup> The Committee recommended that South Africa ensure that Covenant rights were fully recognized in its Constitution and domestic legislation and that Covenant provisions could be directly invoked before domestic courts.<sup>7</sup>



## **2. Institutional infrastructure and policy measures**

6. Two Committees expressed concern that the South African Human Rights Commission lacked adequate resources to execute its mandates.<sup>8</sup> Three Committees and the United Nations country team recommended that South Africa allocate sufficient resources to the Commission to execute its mandates.<sup>9</sup>

7. The Committee on the Elimination of Discrimination against Women noted the limited resources of the Commission for Gender Equality.<sup>10</sup> It recommended that the Government allocate adequate resources to that Commission.<sup>11</sup>

8. The United Nations country team reported that the national preventive mechanism faced challenges in drafting a legislative framework.<sup>12</sup> The Committee against Torture recommended that South Africa ensure that the mechanism was provided with resources to fully implement its mandate.<sup>13</sup> The country team recommended the establishment of a mechanism that was aligned with the guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>14</sup>

## **IV. Promotion and protection of human rights**

### **A. Implementation of international human rights obligations, taking into account applicable international humanitarian law**

#### **1. Equality and non-discrimination**

9. The Committee on Economic, Social and Cultural Rights stated that South Africa was among the most unequal countries in the world, signalling that the economic development model being pursued remained insufficiently inclusive. It regretted geographical disparities. The fiscal policy, particularly regarding certain taxes, did not enable mobilization of the resources required to reduce such inequalities, and was not sufficiently progressive. The Committee expressed concern about the impact of value added tax on low-income households, and of illicit financial flows and tax avoidance on the ability of South Africa to mobilize the maximum available resources.<sup>15</sup> The Committee recommended that South Africa review its fiscal policy with a view to improving capacity to mobilize domestic resources and to increasing the redistributive effect of such policy; reduce regional disparities; assess the increased value added tax and take corrective actions; and re-examine its growth model to move towards a more inclusive development pathway.<sup>16</sup> The Committee and the United Nations country team recommended combating illicit financial flows and tax avoidance.<sup>17</sup>

10. The Committee on the Elimination of Discrimination against Women noted that Equality Courts heard cases of discrimination and hate speech, but were concentrated in urban areas.<sup>18</sup> It recommended that the Government raise awareness among women, including women belonging to ethnic minorities, women with disabilities, migrant women, and lesbian, bisexual and transgender women, about available legal remedies, and ensure that Equality Courts were accessible in rural areas.<sup>19</sup>

11. The United Nations country team noted that the Prevention and Combating of Hate Crimes and Hate Speech Bill had been before Parliament since 2018.<sup>20</sup> The Committee against Torture, the Independent Expert on the enjoyment of human rights by persons with albinism, and the country team recommended that the Government pass the bill into law.<sup>21</sup>

#### **2. Right to life, liberty and security of person, and freedom from torture**

12. The Committee against Torture was concerned about the absence of a categorization of torture as a serious crime with a mandatory minimum sentence, that the Prevention and Combating of Torture of Persons Act did not provide for redress or investigation and that no public officials had been prosecuted under the Act.<sup>22</sup> The Committee recommended that South Africa amend the Act to include mandatory minimum or graduated penalties, redress, and ensure prosecution and punishment of perpetrators.<sup>23</sup>

13. The same Committee was also concerned that the proposed international crimes bill would amend the above-mentioned Act to provide immunity for certain persons from prosecution for torture, constituting a gross violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>24</sup> It recommended that South Africa align its legislation with the Convention and refrain from enacting the corresponding provisions of the bill into law.<sup>25</sup>

14. The same Committee was concerned that detained persons may not enjoy all fundamental legal safeguards from the outset of their deprivation of liberty.<sup>26</sup> It recommended that the Government guarantee detained persons all fundamental legal safeguards.<sup>27</sup>

15. The same Committee noted numerous reports of acts of torture committed by police officials, corresponding deaths in police custody, and the absence of recommendations for prosecution from the Independent Police Investigative Directorate.<sup>28</sup> The Committee recommended that South Africa ensure that law enforcement officials notified the Directorate regarding all allegations of torture by such officials, and that South Africa recommend disciplinary actions to the police service, and ensure that the Directorate referred all criminal cases to the National Prosecuting Authority. The Committee also recommended that all allegations of torture by law enforcement officials be investigated, and that all such officials be trained on the use of force.<sup>29</sup>

16. The same Committee expressed concern about numerous incidents of violence in places of deprivation of liberty and deaths in custody.<sup>30</sup> It recommended that South Africa ensure that all deaths in custody and prison violence cases were investigated by an independent mechanism, that those responsible were brought to justice and that victims obtained redress.<sup>31</sup> Furthermore, it recommended improving conditions of detention.<sup>32</sup>

### **3. Human rights and counter-terrorism**

17. Several special procedure mandate holders addressed a communication to South Africa concerning camps located in a country in conflict where South African nationals were allegedly deprived of their liberty.<sup>33</sup> In its reply, the Government stated that it was doing everything possible to secure the release and repatriation of South Africans in the camps.<sup>34</sup>

### **4. Administration of justice, including impunity, and the rule of law**

18. The Committee on the Elimination of Discrimination against Women noted: that Legal Aid South Africa lacked the resources necessary to deliver its mandate; that women faced barriers to accessing justice; and the low prosecution and conviction rates in sexual offence cases.<sup>35</sup> The Committee recommended that the Government ensure that Legal Aid South Africa had adequate resources, that all cases of gender-based violence were investigated, that perpetrators were prosecuted and punished, and that victims had access to reparations.<sup>36</sup>

19. The same Committee expressed concern that the “opt-out” section may have been removed from the traditional courts bill, so that women would not be able to appeal decisions of traditional courts to ordinary courts.<sup>37</sup> The Committee recommended that South Africa review the bill to ensure that women could opt out of traditional court proceedings and appeal decisions.<sup>38</sup>

### **5. Fundamental freedoms and the right to participate in public and political life**

20. Various special procedure mandate holders addressed communications to South Africa on allegations regarding the killing of a human rights defender,<sup>39</sup> the intimidation of a human rights defender,<sup>40</sup> assaults against a journalist<sup>41</sup> and the assassination of a woman environmental human rights defender.<sup>42</sup> In its response regarding the journalist, the Government indicated that assault charges would be laid.<sup>43</sup>

21. The Committee on Economic, Social and Cultural Rights expressed concern at reports of human rights defenders being harassed, the overly broad definition of “public violence”, and the high number of rejections of protest applications.<sup>44</sup> The Committee recommended that South Africa provide a safe and favourable environment for human rights defenders,

including by ensuring that all cases of harassment and violence were investigated and the perpetrators were brought to justice, and by training law enforcement personnel to prevent excessive use of force against protesters.<sup>45</sup>

22. UNESCO referenced regulations under the Disaster Management Act criminalizing the publication of “any statement through any medium with the intent to deceive with regard to COVID-19”. UNESCO noted concerns over the legality, necessity, and proportionality of such legislation, and the chilling effect arrests may have on freedom of expression.<sup>46</sup> It encouraged the Government to ensure that Act provisions affecting freedom of expression aligned with international human rights standards.<sup>47</sup>

## **6. Right to marriage and family life**

23. Two Committees were concerned at the lack of legal recognition of Muslim, as well as Hindu, marriages.<sup>48</sup> They recommended that South Africa facilitate recognition of Muslim, and Hindu, marriages.<sup>49</sup>

## **7. Prohibition of all forms of slavery, including trafficking in persons**

24. The Committee on the Elimination of Discrimination against Women expressed concern that South Africa was a source, transit and destination country for trafficking in persons, and about the lack of data on the extent of trafficking and its root causes. It recommended that the Government implement the Prevention and Combating of Trafficking in Persons Act, collect data, provide capacity-building for officials on the Act, and ensure that women victims were protected and traffickers were prosecuted and punished.<sup>50</sup> The United Nations country team recommended implementing the Prevention and Combating of Trafficking in Persons National Policy Framework.<sup>51</sup>

## **8. Right to work and to just and favourable conditions of work**

25. The Committee on Economic, Social and Cultural Rights and the United Nations country team noted the high rates of unemployment.<sup>52</sup> The Committee recommended that South Africa reduce unemployment, including through vocational training, programmes to meet labour market demands, and incentives for employers.<sup>53</sup> The country team recommended creating jobs and expanding social protection for unemployed youth.<sup>54</sup>

26. The same Committee noted the large number of workers in the informal economy without labour rights and sufficient social protection, that there was no legislative framework regulating the informal economy, and the increasing casualization of employment in the formal economy.<sup>55</sup> The Committee recommended that South Africa introduce a legislative framework, extend the coverage of labour and social security legislation to informal workers, and mitigate casualization.<sup>56</sup>

27. The Committee expressed concern that the minimum wage did not ensure workers an adequate standard of living, that minimum wages for domestic and farm workers were lower and that a large number of workers were not covered by the minimum wage bill.<sup>57</sup> It recommended applying the same minimum wage across all sectors, raising the minimum wage, and regularly adjusting it to the cost of living.<sup>58</sup>

28. The Committee was concerned at the gender pay gap, and that labour laws and collective agreements did not incorporate the principle of equal pay for work of equal value.<sup>59</sup> It recommended that South Africa intensify efforts to close the gap, address occupational segregation, and ensure that the principle of equal pay for work of equal value was incorporated into labour laws and collective agreements.<sup>60</sup> The Committee on the Elimination of Discrimination against Women recommended conducting regular labour inspections.<sup>61</sup>

29. The Committee on Economic, Social and Cultural Rights expressed concern that sex workers did not enjoy the rights to work, health, and trade unions, and were exposed to harassment, arbitrary arrest, detention and coercion by the police owing to the criminalization of the sale of sex.<sup>62</sup> The Committee recommended that South Africa consider decriminalizing the sale of sex, protect sex workers from police harassment and from exploitation, provide victim support, and provide alternative livelihood opportunities.<sup>63</sup>

## 9. Right to social security

30. The Committee on Economic, Social and Cultural Rights noted that despite a high poverty level, there was no composite index on the cost of living providing a benchmark for social benefits to ensure an adequate standard of living, that levels of all non-contributory social assistance benefits were too low to ensure an adequate standard of living, that those with no or little income aged 18 to 59 and capable of working were not covered, and that the coverage of the Unemployment Insurance Fund remained low and excluded workers in the informal economy.<sup>64</sup> The United Nations country team noted the COVID-19 Social Relief of Distress grant which had been introduced for unemployed persons but had been set below the poverty line.<sup>65</sup>

31. The Committee on Economic, Social and Cultural Rights recommended that South Africa design a composite index on the cost of living, raise benefit levels to ensure an adequate standard of living, ensure that those aged 18 to 59 with little or no income could access social assistance, establish a social protection floor, expand Fund coverage to all workers, and consider introducing a universal basic income grant.<sup>66</sup>

32. In its response, the Government stated that the consumer price index served as the composite index on the cost of living providing the Government with a benchmark to set the levels of social benefits.<sup>67</sup> The Committee assessed the Government's progress on all three follow-up recommendations related to social security as "insufficient".<sup>68</sup>

## 10. Right to an adequate standard of living

33. The United Nations country team reported that trends in poverty reduction had been reversed, exacerbated by the COVID-19 pandemic, with the most vulnerable being children under 17, women, non-white persons, and people living in rural and water-scarce regions.<sup>69</sup>

34. The Committee on Economic, Social and Cultural Rights expressed concern at the high incidence of food insecurity and malnutrition, particularly among children, that the child support grant was set below the food poverty line, and at the lack of a framework law to ensure the right to food.<sup>70</sup> The United Nations country team noted that pandemic-induced disruption to food systems, reduced livelihoods and food price hikes had exacerbated food insecurity.<sup>71</sup>

35. The Committee on Economic, Social and Cultural Rights recommended that South Africa increase the child support grant at least up to the food poverty line, ensure that all eligible children benefited from the grant, and develop a national food and nutrition security strategy.<sup>72</sup> The Committee and the United Nations country team recommended adopting legislation protecting the right to adequate food.<sup>73</sup>

36. The same Committee expressed concern at the large number of people living in inadequate housing, the growing number of informal settlements and the decrease in social housing. It noted reports of illegal evictions, excessive use of force during evictions, and potentially negative consequences of the Extension of Security of Tenure Act.<sup>74</sup> The Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context addressed a communication to South Africa on alleged forced evictions.<sup>75</sup>

37. The Committee and the United Nations country team recommended that the Government improve housing conditions and meet increasing demand, including by providing adequate social housing and upgrading informal settlements.<sup>76</sup> The Committee recommended ensuring that evictions were carried out only as a last resort, without the use of force, and ensuring that the implementation of the Extension of Security of Tenure Amendment Act complied with international human rights standards.<sup>77</sup>

38. The same Committee expressed concern that land concentration had increased and women owned only 13 per cent of agricultural land.<sup>78</sup> It recommended that the Government accelerate implementation of land redistribution and restitution policies, and ensure women had equal access to land.<sup>79</sup>

39. The Special Rapporteur on the human rights to safe drinking water and sanitation addressed a communication to South Africa regarding the prohibition of water disconnections

for those incapable of paying, asserting that disconnection for failure to pay due to lack of means constituted a violation of the human rights to safe drinking water and sanitation. To prohibit disconnections, it was imperative that the human rights to safe drinking water and sanitation be explicitly recognized in the legal framework.<sup>80</sup> The United Nations country team reported that inequality in access to water, sanitation and electricity persisted. The country team recommended improving access to water and sanitation in informal settlements, schools and health centres.<sup>81</sup>

## **11. Right to health**

40. The Committee on Economic, Social and Cultural Rights and the United Nations country team were concerned at the large disparities in health care between the public and private systems, and between rural and urban areas.<sup>82</sup> They recommended that the Government expedite adoption of the National Health Insurance Bill, and address disparities by securing a sufficient number of medical professionals, and expanding and improving public health-care services.<sup>83</sup>

41. The United Nations country team reported that South Africa had the highest number of HIV infections globally, with 2.5 million infected persons not on antiretroviral drugs.<sup>84</sup> The Committee on Economic, Social and Cultural Rights recommended that the Government ensure that all people in need of life-saving treatment had access to affordable medicines, particularly antiretroviral drugs.<sup>85</sup>

42. The Committee on Economic, Social and Cultural Rights and the United Nations country team were concerned that only 7 per cent of health-care centres provided abortion services, owing to medical personnel invoking conscientious objection, and the limited accessibility of facilities.<sup>86</sup> Two Committees and the country team noted the high incidence of teenage pregnancy.<sup>87</sup> The Committee on the Elimination of Discrimination against Women remained concerned about women's limited access to health care, including sexual and reproductive health services, especially during the COVID-19 pandemic.<sup>88</sup>

43. Two Committees recommended that the Government ensure that women had adequate access to health care, particularly sexual and reproductive health services such as abortion, and to information about sexual and reproductive health and rights, and that pregnant girls be able to attend school and be readmitted.<sup>89</sup> The Committee on Economic, Social and Cultural Rights recommended ensuring that physicians who invoked conscientious objection provided referrals.<sup>90</sup>

44. Several special procedure mandate holders addressed a communication to South Africa regarding unequal access to COVID-19 vaccines, medicines, health technologies, diagnostics and health therapies within and between countries. Among other things, the mandate holders sought information on relevant national policies, laws and practices regarding the production and distribution of vaccines in the public interest.<sup>91</sup>

## **12. Right to education**

45. The Committee on Economic, Social and Cultural Rights expressed concern that public-school infrastructure was poor, and that a number of schools had limited or no access to water, sanitation facilities or electricity, and at the high dropout rates, the practice of charging fees in no-fee schools, the lack of guidance on the responsibilities of private sector actors in education, and the low level of participation of children from low-income families in early education.<sup>92</sup> The United Nations country team noted challenges regarding student retention, and completion, and the quality of teaching.<sup>93</sup>

46. The Committee on Economic, Social and Cultural Rights and the United Nations country team recommended that the Government improve school infrastructure and ensure that all schools had access to water, sanitation facilities and electricity.<sup>94</sup> The Committee recommended reducing the school dropout rate by improving foundational numeracy and literacy, ensuring that no-fee schools stopped charging, defining the responsibilities of private sector actors, and guaranteeing early education for all children.<sup>95</sup> The Committee recommended ensuring the accessibility and affordability of the Internet.<sup>96</sup>

47. The Committee on the Elimination of Discrimination against Women was concerned about sexual exploitation in educational settings.<sup>97</sup> It recommended that the Government ensure safe educational environments, address cases of sexual exploitation through reporting and sanctions, and provide victim support.<sup>98</sup>

48. UNESCO reported that legislation guaranteed nine years of compulsory education, and the Schools Act did not guarantee free education. Pre-primary education was neither free nor compulsory.<sup>99</sup> UNESCO recommended that South Africa guarantee free education for all, aim to provide it for at least 12 years, and consider enshrining one year of compulsory, free pre-primary education.<sup>100</sup>

### **13. Development, the environment, and business and human rights**

49. The Committee on Economic, Social and Cultural Rights expressed concern that South Africa had introduced austerity measures to relieve debt without defining the time frames for them, and that these measures had resulted in significant budget cuts in public service sectors, and may further worsen inequalities, or reverse gains.<sup>101</sup> It asserted that, where unavoidable, austerity measures should be temporary, necessary and proportionate, and not increase inequalities.<sup>102</sup> The Committee and the United Nations country team recommended that South Africa increase funding in social security, health and education.<sup>103</sup>

50. The Committee against Torture recommended that South Africa review the compliance of companies with their responsibilities under relevant legal standards for operations in the mining sector.<sup>104</sup> The Committee on Economic, Social and Cultural Rights recommended that South Africa intensify efforts to improve the working and living conditions of mineworkers.<sup>105</sup>

51. Two special procedure mandate holders addressed a communication to South Africa concerning alleged human rights violations and environmentally damaging consequences of lead contamination in another country, regarding which a South African company was the sole designated operator.<sup>106</sup>

## **B. Rights of specific persons or groups**

### **1. Women**

52. In 2019, the Committee on the Elimination of Discrimination against Women conducted a confidential inquiry visit, under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Committee found that South Africa had violated a number of articles of the Convention;<sup>107</sup> was responsible for grave violations of rights under the Convention, considering, inter alia, that it had failed to protect a significant number of women and girls from domestic violence; and was responsible for systematic violations of rights under the Convention.<sup>108</sup> The Committee recommended that the Government address the legal and institutional framework, including to criminalize all forms of domestic violence and femicide; law enforcement, including to exercise due diligence to prevent, investigate and punish domestic violence; access to justice; victim support; prevention and awareness-raising; and accountability and data collection, including to monitor implementation of the National Strategic Plan on Gender-based Violence and Femicide.<sup>109</sup>

53. In its response, the Government noted, inter alia: the passage of three bills – the Domestic Violence Amendment Bill, the Criminal and Related Matters Bill and the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill; public communications to educate people on their rights to access justice; and assistance for survivors of gender-based violence to access efficient and sensitive criminal justice.<sup>110</sup> South Africa stated that the finding of grave violations was contestable.<sup>111</sup>

54. The Committee on the Elimination of Discrimination against Women noted persistent systemic failures in the implementation of legislation and policies to address gender-based violence, rampant levels of gender-based violence, related impunity, police failure to investigate, and lack of training on applying criminal law provisions.<sup>112</sup> The Committee against Torture expressed concern about the prevalence of all forms of violence, including

gender-based violence that may be committed with the support of State actors.<sup>113</sup> The United Nations country team reported very high levels of gender-based violence and femicide, exacerbated by the COVID-19 pandemic.<sup>114</sup>

55. Both Committees recommended that South Africa ensure that all cases of domestic violence and femicide were investigated and prosecuted, perpetrators were punished and victims could access remedies, and that it provide mandatory training on investigating and prosecuting gender-based and domestic violence to all law enforcement and justice officials.<sup>115</sup> The Committee on the Elimination of Discrimination against Women recommended establishing the National Council on Gender-Based Violence and Femicide, and ensuring adequate resources for the National Strategic Plan.<sup>116</sup> The Committee against Torture recommended enhancing efforts to combat gender-based and domestic violence engendered by State agents, and implementing the six-point plan on gender-based violence, sexual offences and victim support.<sup>117</sup> The United Nations country team recommended prioritizing rollout of the National Strategic Plan.<sup>118</sup>

56. The Committee on the Elimination of Discrimination against Women expressed concern about the absence of a law specifically prohibiting discrimination against women.<sup>119</sup> It recommended that South Africa adopt a gender equality law and a definition of discrimination against women.<sup>120</sup>

57. The same Committee recommended that South Africa place women at the centre of COVID-19 recovery efforts, and ensure they benefited equally from economic stimulus packages.<sup>121</sup> It recommended adopting a national programme on women's economic empowerment, and temporary special measures to increase the participation of women in political and public life, education, and employment.<sup>122</sup>

58. Noting that women's representation in local government and the judiciary remained low,<sup>123</sup> the Committee recommended that the Government accelerate adoption of the women's empowerment and gender equality bill, increase women's representation at the decision-making level, and provide capacity-building for women candidates.<sup>124</sup>

## 2. Children

59. The Committee on Economic, Social and Cultural Rights and UNESCO were concerned about the discrepancy between the Children's Act No. 38 on the one hand, and on the other hand the Marriage Act No. 25 which set the minimum age for marriage at 18 years for boys and 16 years for girls.<sup>125</sup> The Committee for the Elimination of Discrimination against Women noted that the Recognition of Customary Marriages Act allowed for child marriage with parental consent.<sup>126</sup>

60. The Committee for the Elimination of Discrimination against Women recommended that South Africa adopt a single marriage bill, and amend the Recognition of Customary Marriages Act to raise the minimum age of marriage to 18 years for girls and boys.<sup>127</sup> The Committee on Economic, Social and Cultural Rights recommended harmonizing all relevant legislation to ensure that the minimum age was aligned with international standards.<sup>128</sup> UNESCO recommended amending the Marriage Act to set the minimum age at 18 for girls and boys.<sup>129</sup>

61. Two Committees expressed concern that the Children's Act prohibited virginity testing only for children under 16 years, and about the persistence of harmful practices, mainly *ukuthwala* (the abduction of women and girls) for child or forced marriage and female genital mutilation, despite its prohibition under the Act.<sup>130</sup> The Committees recommended that South Africa amend the Act to prohibit virginity testing for all women and girls, and that it raise awareness about the criminal nature of harmful practices.<sup>131</sup> The Committee on the Elimination of Discrimination against Women recommended criminalizing *ukuthwala*, ensuring that all cases of *ukuthwala* and female genital mutilation were investigated and that perpetrators were prosecuted and punished, ensuring access to protection, and adopting a strategy to eliminate harmful practices.<sup>132</sup>

62. The Committee on Economic, Social and Cultural Rights, the United Nations country team and the Office of the United Nations High Commissioner for Refugees (UNHCR) were concerned that birth registration was hindered, particularly for children with foreign



parents.<sup>133</sup> The Committee recommended that the Government streamline the registration procedure.<sup>134</sup> The country team recommended issuing a birth certificate to all children born in South Africa.<sup>135</sup> UNHCR recommended reviewing aspects of the asylum system negatively impacting on children.<sup>136</sup>

63. The Committee against Torture expressed concern that the age of criminal responsibility was 10 years.<sup>137</sup> It recommended that South Africa amend its legislation to raise the age of criminal responsibility in accordance with international standards.<sup>138</sup>

### 3. Persons with disabilities

64. The Committee on the Rights of Persons with Disabilities expressed concern about extreme forms of violence against persons with disabilities, and the absence of measures to prevent these crimes, protect victims, and convict perpetrators.<sup>139</sup> The Independent Expert on albinism, the Committee on Economic, Social, and Cultural Rights and the United Nations country team noted reported cases of murders and attacks against persons with albinism.<sup>140</sup> Their body parts were used in witchcraft rituals.<sup>141</sup>

65. The Committee on the Rights of Persons with Disabilities recommended that South Africa prevent the killings of persons with disabilities, ensure their protection and ensure that perpetrators were brought to justice.<sup>142</sup> The Independent Expert on albinism recommended identifying gaps in security measures, providing victim support, and completing the review of the Witchcraft Suppression Act.<sup>143</sup>

66. The Committee on the Rights of Persons with Disabilities expressed concern that understanding of reasonable accommodation was limited among public authorities, and that discrimination remained widespread.<sup>144</sup> The Committee recommended that South Africa promote awareness about reasonable accommodation, ensure that the Government applied this principle, and establish mechanisms for persons with disabilities exposed to discrimination to obtain redress.<sup>145</sup> The Committee also recommended adopting legislation, a national strategy and policies on accessibility.<sup>146</sup>

67. The same Committee noted the lack of legislation on inclusive education for children with disabilities, the high number of reported cases of abuse by teachers and peers, and the large number of children with disabilities out of school or studying in specialized schools.<sup>147</sup> The United Nations country team reported barriers in accessing mainstream schools.<sup>148</sup>

68. The Committee recommended that the Government adopt legislation ensuring that children with disabilities were protected from abuse, and legislation on inclusive education, allocate resources for reasonable accommodation, and train teachers on inclusive education.<sup>149</sup> The Committee on Economic, Social and Cultural Rights recommended rolling out the no-fee schools programme for children with disabilities.<sup>150</sup> Both Committees recommended adopting inclusive education as the guiding principle of the education system.<sup>151</sup>

69. The Committees recommended that the Government promote the employment of persons with disabilities, including through affirmative action and implementing the 2 per cent quota.<sup>152</sup>

70. The Committee on the Rights of Persons with Disabilities recommended establishing a social protection scheme inclusive of all persons with disabilities.<sup>153</sup>

71. The Independent Expert on albinism reported that persons with albinism were highly vulnerable to skin cancer,<sup>154</sup> faced a lack of reasonable accommodation to ensure access to education<sup>155</sup> and encountered discrimination in accessing employment.<sup>156</sup> The Independent Expert on albinism recommended that the Government ensure that sunscreen was available in all provinces, integrate albinism into the training of health workers, provide free assistive devices, increase school resources for reasonable accommodation, train educators, provide skills development, and adopt the Regional Action Plan on Albinism in Africa and a national action plan on albinism.<sup>157</sup> The Committee on Economic, Social and Cultural Rights recommended strengthening the legal framework, engaging with traditional leaders and facilitating access to work and education.<sup>158</sup>

#### **4. Indigenous peoples and minorities**

72. The Committee on Economic, Social and Cultural Rights was concerned that indigenous peoples continued to be marginalized.<sup>159</sup> It recommended that South Africa ensure the equal enjoyment by indigenous peoples of the rights in the International Covenant on Economic, Social and Cultural Rights, and their participation in implementing the Traditional and Khoi-San Leadership Bill.<sup>160</sup> It recommended that South Africa enhance its efforts to protect endangered languages, and ensure that indigenous languages and knowledge systems were taught in schools.<sup>161</sup>

#### **5. Migrants, refugees and asylum-seekers**

73. The Committee against Torture expressed concern at the closure of refugee reception offices and at inadequate safeguards against refoulement, that the Immigration Act of 2002 provided for holding an “illegal foreigner” in custody for up to 120 days without a court hearing, at prolonged detention in inadequate conditions, that xenophobic attacks continued, and that foreign nationals were often turned away from hospitals.<sup>162</sup> The Committee recommended that South Africa establish more efficient enforcement mechanisms to guarantee that the principle of non-refoulement was not violated, ensure effective processing of asylum applications, provide adequate resources, refrain from prolonged detention without a warrant, promote alternatives to detention, ensure adequate living conditions and access to health care, provide rehabilitation services, and take measures to eradicate racism and xenophobia and ensure the investigation, prosecution and punishment of perpetrators.<sup>163</sup>

74. The Committee on Economic, Social and Cultural Rights remained concerned that the right of asylum-seekers to work was denied by the Refugees Amendment Act, at the large backlog of asylum applications, and at the proposal to establish asylum-processing centres in border areas, which may restrict the access of asylum-seekers to social services.<sup>164</sup> It recommended that South Africa clear the backlog, and ensure that asylum seekers could access services and enjoy the right to work.<sup>165</sup>

75. Noting the high percentage of undocumented migrant, refugee and asylum-seeking children not enrolled in formal education, the same Committee recommended ensuring that all such children had access to education.<sup>166</sup> The Government noted that it had removed all requirements for legal documents as conditions for school admission.<sup>167</sup> The Committee assessed the measures taken as insufficient.<sup>168</sup>

76. Two special procedure mandate holders addressed a communication to South Africa regarding the Gauteng Township Economic Development Bill, of 2020, whose provisions may be incompatible with obligations under international human rights law, notably by excluding categories of foreign nationals from participation in the township economy.<sup>169</sup>

77. Three Special Rapporteurs highlighted xenophobic violence and called for accountability.<sup>170</sup> The United Nations country team recommended implementing the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance.<sup>171</sup> UNHCR recommended accelerating implementation of the Plan in all provinces.<sup>172</sup>

78. The United Nations country team noted challenges with migrant integration. The closure of refugee reception offices also impacted refugees and asylum-seekers needing to renew identity documentation.<sup>173</sup> The country team recommended that the Government sensitize the public on the rights of migrants, refugees and asylum-seekers.<sup>174</sup> The country team and UNHCR recommended reopening reception offices and expanding the online permit extension platform.<sup>175</sup>

79. UNHCR remained concerned about amendments to the Refugees Act.<sup>176</sup> It recommended that South Africa ensure that any legislative amendments to the asylum framework complied with its international refugee law obligations.<sup>177</sup>

#### **6. Stateless persons**

80. The Committee on the Elimination of Discrimination against Women noted inadequate safeguards in the Births and Deaths Registration Act to prevent children of

undocumented women from becoming stateless.<sup>178</sup> It recommended that South Africa amend the Act to ensure that such children did not become stateless.<sup>179</sup>

81. The Committee on Economic, Social and Cultural Rights was concerned that the Citizenship Amendment Act (2010) was interpreted restrictively to benefit only children born after 1 January 2013, exposing those born before that date to statelessness.<sup>180</sup> It recommended that South Africa apply the Act to all children of foreign nationals.<sup>181</sup>

82. UNHCR recommended that South Africa develop a road map towards realizing the 2011 pledge to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, draft regulations to operationalize the Citizenship Act on citizenship by birth, and ensure that the Act accorded citizenship to children of unknown parentage.<sup>182</sup>

## Notes

- 1 See [A/HRC/36/16](#), [A/HRC/36/16/Add.1](#) and [A/HRC/36/2](#).
- 2 [E/C.12/ZAF/CO/1](#), para. 6.
- 3 *Ibid.*, para. 7.
- 4 United Nations country team submission for the universal periodic review of South Africa, para. 8.
- 5 See [https://www2.ohchr.org/english/OHCHRreport2017/allegati/5\\_Funding\\_2017.pdf](https://www2.ohchr.org/english/OHCHRreport2017/allegati/5_Funding_2017.pdf), p. 79.
- 6 [E/C.12/ZAF/CO/1](#), para. 4.
- 7 *Ibid.*, para. 5.
- 8 [CAT/C/ZAF/CO/2](#), para. 26; and [E/C.12/ZAF/CO/1](#), para. 8.
- 9 [CAT/C/ZAF/CO/2](#), para. 27; [E/C.12/ZAF/CO/1](#), para. 9; [CRPD/C/ZAF/CO/1](#), para. 55 (b); and United Nations country team submission, p. 5.
- 10 [CEDAW/C/ZAF/CO/5](#), para. 29.
- 11 *Ibid.*, para. 30 (a)–(b).
- 12 United Nations country team submission, para. 24.
- 13 [CAT/C/ZAF/CO/2](#), para. 25 (a)–(b).
- 14 United Nations country team submission, p. 5.
- 15 [E/C.12/ZAF/CO/1](#), para. 16.
- 16 *Ibid.*, para. 17.
- 17 *Ibid.*; and United Nations country team submission, p. 9.
- 18 [CEDAW/C/ZAF/CO/5](#), para. 23.
- 19 *Ibid.*, para. 24 (a)–(b).
- 20 United Nations country team submission, para. 12.
- 21 [CAT/C/ZAF/CO/2](#), para. 37 (j); [A/HRC/43/42/Add.1](#), para. 108; and United Nations country team submission, p. 4.
- 22 [CAT/C/ZAF/CO/2](#), para. 6.
- 23 *Ibid.*, para. 7 (a), (c) and (e).
- 24 *Ibid.*, para. 8.
- 25 *Ibid.*, para. 9.
- 26 *Ibid.*, para. 12.
- 27 *Ibid.*, para. 13.
- 28 *Ibid.*, para. 32.
- 29 *Ibid.*, para. 33.
- 30 *Ibid.*, para. 22.
- 31 *Ibid.*, para. 23 (a).
- 32 *Ibid.*, para. 17 (a)–(b); and United Nations country team submission, p. 8.
- 33 See communication ZAF 1/2021, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25964>.
- 34 See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36135>.
- 35 [CEDAW/C/ZAF/CO/5](#), para. 21.
- 36 *Ibid.*, para. 22 (a)–(b).
- 37 *Ibid.*, para. 25.
- 38 *Ibid.*, para. 26.
- 39 See communication ZAF 2/2017, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23512>.
- 40 See communication ZAF 1/2018, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24095>.
- 41 See communication ZAF 1/2020, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25320>.
- 42 See communication ZAF 3/2020, available from

- <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25756>, pp. 1–2.
- 43 See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35819>.
- 44 [E/C.12/ZAF/CO/1](#), para. 12.
- 45 *Ibid.*, para. 13.
- 46 UNESCO submission for the universal periodic review of South Africa, paras. 4 and 6.
- 47 UNESCO submission, para. 10.
- 48 [E/C.12/ZAF/CO/1](#), para. 52; and [CEDAW/C/ZAF/CO/5](#), para. 61.
- 49 [E/C.12/ZAF/CO/1](#), para. 53; and [CEDAW/C/ZAF/CO/5](#), para. 62.
- 50 [CEDAW/C/ZAF/CO/5](#), paras. 35–36.
- 51 United Nations country team submission, p. 8.
- 52 [E/C.12/ZAF/CO/1](#), para. 28; and United Nations country team submission, para. 46.
- 53 [E/C.12/ZAF/CO/1](#), para. 29.
- 54 United Nations country team submission, p. 10.
- 55 [E/C.12/ZAF/CO/1](#), para. 30.
- 56 *Ibid.*, para. 31.
- 57 *Ibid.*, para. 39.
- 58 *Ibid.*, para. 40.
- 59 *Ibid.*, para. 41. See also United Nations country team submission, paras. 46–47.
- 60 *Ibid.*, para. 42.
- 61 [CEDAW/C/ZAF/CO/5](#), para. 48 (a). See also United Nations country team submission, p. 10.
- 62 [E/C.12/ZAF/CO/1](#), para. 32.
- 63 *Ibid.*, para. 33.
- 64 *Ibid.*, para. 47.
- 65 United Nations country team submission, para. 44.
- 66 [E/C.12/ZAF/CO/1](#), para. 48.
- 67 [E/C.12/ZAF/FCO/1](#), para. 6.
- 68 See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fFUL%2fZAF%2f47179&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fFUL%2fZAF%2f47179&Lang=en).
- 69 United Nations country team submission, para. 40.
- 70 [E/C.12/ZAF/CO/1](#), para. 56.
- 71 United Nations country team submission, paras. 41–42.
- 72 [E/C.12/ZAF/CO/1](#), para. 57.
- 73 [E/C.12/ZAF/CO/1](#), para. 57; and United Nations country team submission, p. 9.
- 74 [E/C.12/ZAF/CO/1](#), para. 58.
- 75 See communication ZAF 2/2020, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25510>. See also United Nations country team submission, para. 43.
- 76 [E/C.12/ZAF/CO/1](#), para. 59; and United Nations country team submission, p. 9.
- 77 [E/C.12/ZAF/CO/1](#), para. 59.
- 78 *Ibid.*, para. 61.
- 79 *Ibid.*, para. 62.
- 80 See communication ZAF 1/2022, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26958>.
- 81 United Nations country team submission, p. 10.
- 82 [E/C.12/ZAF/CO/1](#), para. 63; and United Nations country team submission, para. 52.
- 83 [E/C.12/ZAF/CO/1](#), para. 64; and United Nations country team submission, p. 11.
- 84 United Nations country team submission, para. 50.
- 85 [E/C.12/ZAF/CO/1](#), para. 64.
- 86 *Ibid.*, para. 65; and United Nations country team submission, para. 51.
- 87 [E/C.12/ZAF/CO/1](#), para. 65; [CEDAW/C/ZAF/CO/5](#), para. 43; and United Nations country team submission, para. 51.
- 88 [CEDAW/C/ZAF/CO/5](#), para. 53.
- 89 *Ibid.*, paras. 54 (a)–(b) and 44 (a); and [E/C.12/ZAF/CO/1](#), para. 66 (a), (c) and (d).
- 90 [E/C.12/ZAF/CO/1](#), para. 66 (b).
- 91 See communication ZAF 4/2021, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26696>.
- 92 [E/C.12/ZAF/CO/1](#), para. 70.
- 93 United Nations country team submission, paras. 54–56.
- 94 [E/C.12/ZAF/CO/1](#), para. 71; and United Nations country team submission, p. 12.
- 95 [E/C.12/ZAF/CO/1](#), para. 71.
- 96 *Ibid.*, para. 77.

- 97 CEDAW/C/ZAF/CO/5, para. 45.
- 98 Ibid., para. 46 (a)–(b).
- 99 UNESCO submission, pp. 4–5.
- 100 Ibid., p. 7.
- 101 E/C.12/ZAF/CO/1, para. 18.
- 102 Ibid., para. 19.
- 103 Ibid.; and United Nations country team submission, p. 9.
- 104 CAT/C/ZAF/CO/2, para. 31 (b).
- 105 E/C.12/ZAF/CO/1, para. 38.
- 106 See communication ZAF 3/2021, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26406>.  
See also <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26811>.
- 107 CEDAW/C/ZAF/IR/1, para. 111. The Committee found that South Africa had violated the following articles of the Convention: 1, 2 (f), 3, 5 (a), 10 (c) and (h) and 16; 2 (b), (e) and (f), read in conjunction with 5 (a), 15 and 16; 2 (b), (c) and (e), read in conjunction with 5 (a) and 15; 1 and 2 (b), (c), (e) and (f), read in conjunction with 5 (a), 12 and 15; 1 and 2 (c)–(e), read in conjunction with 3, 5 (a), 12 and 15; 2 (c), 5 (a) and 15; 2 (c) and (e), 11 (c), 12 and 15; and 2 (c) and (e), 10, 13 and 16.
- 108 CEDAW/C/ZAF/IR/1, para. 116 (a) and (b).
- 109 Ibid., paras. 118–123.
- 110 CEDAW/C/ZAF/OIR/1, pp. 2–14.
- 111 Ibid., p. 15.
- 112 CEDAW/C/ZAF/CO/5, para. 9 (b)–(c).
- 113 CAT/C/ZAF/CO/2, para. 34.
- 114 United Nations country team submission, paras. 16–17.
- 115 CEDAW/C/ZAF/CO/5, paras. 10 (b) and 14 (d); and CAT/C/ZAF/CO/2, para. 35 (b), (d) and (e).
- 116 CEDAW/C/ZAF/CO/5, para. 12 (a)–(b).
- 117 CAT/C/ZAF/CO/2, para. 35 (a) and (f).
- 118 United Nations country team submission, p. 5.
- 119 CEDAW/C/ZAF/CO/5, para. 19.
- 120 Ibid., para. 20 (a).
- 121 Ibid., para. 16 (a) and (d).
- 122 Ibid., paras. 32 and 52 (a).
- 123 Ibid., para. 39.
- 124 Ibid., para. 40 (a) and (c). See also para. 40 (d).
- 125 E/C.12/ZAF/CO/1, para. 52; and UNESCO submission, pp. 5–6.
- 126 CEDAW/C/ZAF/CO/5, para. 61. See also United Nations country team submission, para. 15.
- 127 CEDAW/C/ZAF/CO/5, para. 62.
- 128 E/C.12/ZAF/CO/1, para. 53.
- 129 UNESCO submission, p. 7.
- 130 CEDAW/C/ZAF/CO/5, para. 33; and E/C.12/ZAF/CO/1, para. 54.
- 131 CEDAW/C/ZAF/CO/5, paras. 34 (a) and (d); and E/C.12/ZAF/CO/1, para. 55.
- 132 CEDAW/C/ZAF/CO/5, para. 34 (b)–(c).
- 133 E/C.12/ZAF/CO/1 para. 50; United Nations country team submission, para. 27; UNHCR submission for the universal periodic review of South Africa, p. 4.
- 134 E/C.12/ZAF/CO/1, para. 51.
- 135 United Nations country team submission, p. 6.
- 136 UNHCR submission, p. 5.
- 137 CAT/C/ZAF/CO/2, para. 10.
- 138 Ibid., para. 11.
- 139 CRPD/C/ZAF/CO/1, para. 18.
- 140 A/HRC/43/42/Add.1, paras. 37–41 and 80; E/C.12/ZAF/CO/1, para. 23; and United Nations country team submission, para. 13.
- 141 A/HRC/43/42/Add.1, para. 45.
- 142 CRPD/C/ZAF/CO/1, para. 19 (a).
- 143 A/HRC/43/42/Add.1, paras. 96, 98 and 103.
- 144 CRPD/C/ZAF/CO/1, para. 8.
- 145 Ibid., para. 9 (a)–(c).
- 146 Ibid., para. 17 (a).
- 147 Ibid., para. 12 (a)–(c).
- 148 United Nations country team submission, para. 30.
- 149 CRPD/C/ZAF/CO/1, paras. 13 (a)–(d) and 41 (b)–(c).
- 150 E/C.12/ZAF/CO/1, para. 73 (a).

- 151 [CRPD/C/ZAF/CO/1](#), para. 41 (a); and [E/C.12/ZAF/CO/1](#), para. 73 (a)–(b).  
152 [CRPD/C/ZAF/CO/1](#), para. 45 (a); and [E/C.12/ZAF/CO/1](#), para. 29.  
153 [CRPD/C/ZAF/CO/1](#), para. 47 (a).  
154 [A/HRC/43/42/Add.1](#), para. 48.  
155 *Ibid.*, paras. 54 and 61.  
156 *Ibid.*, para. 66.  
157 [A/HRC/43/42/Add.1](#), paras. 11, 112, 114, 117, 121, 128 and 130–131.  
158 [E/C.12/ZAF/CO/1](#), para. 24.  
159 *Ibid.*, para. 14.  
160 *Ibid.*, para. 15.  
161 *Ibid.*, para. 75.  
162 [CAT/C/ZAF/CO/2](#), para. 36.  
163 *Ibid.*, para. 37 (b)–(i).  
164 [E/C.12/ZAF/CO/1](#), para. 25.  
165 *Ibid.*, para. 26.  
166 *Ibid.*, paras. 72 and 73 (c).  
167 [E/C.12/ZAF/FCO/1](#), para. 16.  
168 See  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fFUL%2fZAF%2f47179&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fFUL%2fZAF%2f47179&Lang=en), p. 2.  
169 See communication ZAF 2/2021, available at  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26039>.  
170 See <https://www.ohchr.org/en/press-releases/2022/07/south-africa-un-experts-condemn-xenophobic-violence-and-racial>.  
171 United Nations country team submission, p. 4.  
172 UNHCR submission, p. 3.  
173 United Nations country team submission, para. 34.  
174 *Ibid.*, p. 7.  
175 *Ibid.*, p. 8; and UNHCR submission, p. 4.  
176 UNHCR submission, p. 4.  
177 *Ibid.*  
178 [CEDAW/C/ZAF/CO/5](#), para. 41.  
179 *Ibid.*, para. 42 (b).  
180 [E/C.12/ZAF/CO/1](#), para. 50.  
181 *Ibid.*, para. 51.  
182 UNHCR submission, p. 6.
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