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Pretoria, 16 November 2007

OHCHR Civil Society Unit
Ms Laura Dolci-Kanaan
NGO Liaison Officer

CC: Department of Foreign Affairs, Pretoria

Submission with regard to the Human Rights Council's Universal Periodic Review of South Africa scheduled for April 2008

Dear Ms Dolci-Kanaan,

Monitoring of a state's compliance with human rights norms takes place at the national, regional and global level. The Universal Periodic Review (UPR) presents an opportunity to follow-up on the outcomes of monitoring at these different levels. As part of the UPR process the Office of the High Commissioner for Human Rights (OHCHR) will prepare a report which includes observations by the various UN bodies involved in human rights monitoring. This submission fills a complementary role as it sets out recommendations emanating from monitoring mechanisms at the African regional level dealing with South Africa. This is in line with the basis of the review which according to Human Rights Council resolution 5/1 shall include '[h]uman rights instruments to which a State is party'.¹ These include African regional instruments such as the African Charter on Human and Peoples' Rights, the Protocol on the Rights of Women in Africa, the Protocol on the African Court on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the Convention Governing Specific Aspects of Refugee Problems in Africa. All these regional instruments have been ratified by South Africa.

The General Guidelines for the Preparation of Information under the Universal Periodic Review provides that the documents on which the review will be based shall include *inter alia* 'implementation of international human rights obligations' and 'cooperation with human rights mechanisms'.² In this submission we set out some of the recommendations emanating from the consideration of the first periodic report of South Africa under the African Charter on Human and Peoples' Rights considered by the African Commission on Human and Peoples' Rights in November 2005 and the Report of the Special Rapporteur on Prisons and Condition of Detention in

¹ Human Rights Council resolution 5/1, Annex, IA 1(c).

² Human Rights Council decision 6/102, IA C.



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Africa on her mission to South Africa in June 2004. We also include some of the recommendations included in the African Peer Review Mechanism (APRM) Country Review Report on South Africa which was presented to the APRM Forum of Heads of State and Government in July 2007.³

This submission focuses on concrete recommendations by these regional bodies. These recommendations are clearly ‘credible and reliable information’ which should be included in the summary of stakeholders’ information and taken into consideration by the Council.⁴ The Universal Periodic Review provides an excellent opportunity to follow-up on these recommendations, many of which have not yet received any response or have not been adequately addressed by the South African government.⁵

The African Commission on Human and Peoples’ Rights

The African Commission on Human and Peoples’ Rights monitors the implementation of the African Charter on Human and Peoples’ Rights and the Protocol on the Rights of Women in Africa. The African Commission on Human and Peoples’ Rights considered the first periodic report of South Africa in November 2005.⁶

The Commission noted as ‘principal areas of concern’ that the report was outdated already when it was submitted and that the report did not reflect consultation with relevant state institutions and civil society. The Commission noted that in some sections the report only referred to legislation and policy without evaluating the effect these measures have had on the implementation of the African Charter. The Commission also noted the lack of awareness of the Charter and the Commission.

The Commission *inter alia* recommended the government to:

- Make a declaration under article 34(6) of the Protocol establishing the African Court on Human and Peoples’ Rights which would give individuals direct access to the Court;
- Ensure speedy consideration of applications for asylum;
- Undertake studies to design policies to prevent and combat sexual exploitation of children;
- Interact more with civil society organisations;
- Present its next periodic report to the Commission in conformity with article 62 of the Charter.

³ The documents are attached to this submission and are also available on the website of the Centre for Human Rights, University of Pretoria, www.chr.up.ac.za.

⁴ Human Rights Council resolution 5/1, Annex, ID 15(c).

⁵ Comments from the government on the APRM Country Review Report are attached to the report (pp 343-374). However many of the recommendations by the Panel are neither addressed in these comments nor in the Programme of Action that is attached to the report. In its concluding observations on South Africa’s first periodic report under the African Charter on Human and Peoples’ Rights the African Commission requested clarification on a number of issues which were not addressed in the report. To our knowledge the South African government has not responded to this request. The South African government did not respond to the recommendations of the Special Rapporteur in its report to the Commission as requested in the mission report.

⁶ Consideration of Reports submitted by State Parties under Article 62 of the African Charter on Human and Peoples’ Rights - Concluding observations and recommendations on the First Periodic Report of the Republic of South Africa, adopted at the 38th ordinary session of the African Commission on Human and Peoples’ Rights, 21 November – 5 December 2005.

The Commission also endorsed the recommendations of the report of the Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa on her mission to South Africa.⁷ In this report the Special Rapporteur noted her concerns on overcrowded prisons and that many accused persons remain in prison because they cannot afford bail.⁸ The Special Rapporteur further noted that recreational facilities were inadequate in most of the prisons and that many detainees did not seem to have been properly informed of their rights.⁹ The Special Rapporteur also observed that:¹⁰

By neglecting to supervise and control the inmates within their facilities, failing to respond to incidents of violence, corruptly allowing the entry of dangerous weapons into the prisons, and by abetting gangsterism, prison authorities are directly responsible for the violence in their facilities.

The recommendations of the Special Rapporteur to the South African government included calls to:¹¹

- Increase the budget allocation to prisons to ensure that prison officials are properly remunerated and motivated to work;
- Ensure that prisons are regularly inspected by government officials;
- Expand the training of prison staff to include top prison officials – from the Commissioner to the warders. This training should include basic human rights, international norms on the treatment of offenders, etc;
- Organise a national conference involving all stakeholders in the criminal justice system to discuss ways of improving the criminal justice system – the police, the prosecutors, the prison officials and the judiciary. NGOs and other members of civil society working in this sector should also be involved in the conference;
- Come up with a firm and concise strategy on how to deal with the problems of gangs in prison;
- Immediately attend to the situation in Stanger Prison;
- Provide arrested illegal immigrants or undocumented migrants the opportunity to challenge their arrest and/or detentions in a court of law.

The African Peer Review Mechanism

The African Peer Review Mechanism (APRM) consists of a self-assessment and the development of a national Programme of Action. To ensure that the national process is participatory and takes note of all issues of concern for the country a country review mission made up of African experts visits the country under review for a couple of weeks at the end of the self-assessment. The Country Review Report prepared by the review mission includes recommendations and is presented to the APRM Forum of Heads of State and Government. The country review mission visited South Africa

⁷ Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa – Mission to the Republic of South Africa, 14-30 June 2004.

⁸ As above, 38-39.

⁹ As above, 51.

¹⁰ As above, 53

¹¹ As above, 63-65.

in July 2006 and the report was presented to the APRM Forum of Heads of State and Government in July 2007. The report was made public in October 2007.

The APRM covers four governance areas: Democracy and political governance, economic governance and management, corporate governance and socio-economic development. Some issues are cross-cutting and the report on South Africa identifies the following cross-cutting issues which pose serious challenges:¹²

- Unemployment
- Capacity constraints and poor service delivery
- Poverty and inequality
- Land reform
- Violence against women and children
- HIV and AIDS pandemic
- Corruption
- Crime
- Racism and xenophobia
- Managing diversity

The country review report includes recommendations with regard to all the four governance areas. Some of the recommendations which, if implemented, would have an impact on the protection of human rights and promote democracy in South Africa include:

- Ratification of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹³
- Provide more information on the ‘Know Your Rights Awareness Campaign’ identified in the Programme of Action;¹⁴
- Adopt legislation on disclosure of private funding to political parties;¹⁵
- Review legislation allowing floor-crossing in Parliament;¹⁶
- Ensure that proposed amendments to the Judicial Services Commission Act do not undermine the independence of the judiciary;¹⁷
- Revisit the manner in which security forces deal with refugees and undocumented persons;¹⁸
- Devote more resources to improving quality of data on poverty, HIV and AIDS and labour statistics;¹⁹

¹² APRM Country Review Report no 4, Country Review Report – Republic of South Africa, May 2007, para 885.

¹³ As above, paras 82 & 85.

¹⁴ As above, para 85.

¹⁵ As above, para 152.

¹⁶ As above, paras 136 & 152.

¹⁷ As above, para 212.

¹⁸ As above, paras 267, 276, 957.

¹⁹ As above, para 356.

- Expedite the enactment of legislation that empowers Parliament to amend line items of a money Bill;²⁰
- Enhance enforcement of the ILO codes through inspection and site visits, in particular in labour-intensive factories and rural farms where these laws are often wantonly abused;²¹
- Take steps to protect whistleblowers effectively;²²
- Develop a programme for monitoring implementation of the Promotion to Access to Information Act (PAIA);²³
- Fully integrate the MDGs in a national development strategy;²⁴
- Ensure that community clinics have an adequate supply of antiretroviral drugs;²⁵
- Improve the reliability of HIV and AIDS data by mandating doctors to indicate AIDS as the cause of death.²⁶

Conclusion

This submission to the OHCHR with regard to the UPR of South Africa is copied to the South African Department of Foreign Affairs to draw the attention of the South African government to the issues set out above when it prepares for the UPR. It is our hope to be able to further engage the South African government in the ‘broad consultation process at the national level’ which should form part of the preparation of the national UPR report.²⁷

We consider the recommendations of the African regional bodies set out in this submission to be important and request that they be included in the summary of stakeholders’ information prepared by OHCHR. We further request the rapporteurs on the UPR of South Africa to ensure that the South African government responds to these recommendations in the national report or in the interactive dialogue.

Yours sincerely,

Frans Viljoen
Director

Magnus Killander
Researcher

²⁰ As above, para 367.

²¹ As above, para 457.

²² As above, para 589.

²³ As above, para 663, 689,

²⁴ As above, para 786.

²⁵ As above, para 822

²⁶ As above, para 822

²⁷ Human Rights Council resolution 5/1, Annex, ID 15(c).