



South African Human Rights Commission (SAHRC) NHRI submission to the Universal Periodic Review Mechanism

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Introduction

1. The South African Human Rights Commission (SAHRC) welcomes and looks forward to participating in this first round of the Universal Periodic Review (UPR). The SAHRC recognises the enormous strides that have been taken by government to improve the human rights situation in South Africa. Given our Apartheid past it will take many more years and unwavering commitment and action at all levels to ensure that the rights contained in our Constitution and the various international instruments become a reality for every person in South Africa. The UPR mechanism is an important exercise in assessing our progress thus far and identifying areas where more dedicated focus and commitments are needed. This submission will assess South Africa's compliance with its international obligations and will highlight key issues that need to be addressed at a domestic level in order to give effect to South Africa's international human rights commitments. These key issues include addressing issues in the areas of equality, poverty, education, service provision in rural areas, land redistribution, rural evictions, medical care, HIV/AIDS, Asylum seekers, human trafficking, violence against children, sexual violence, corruption, substance abuse and programs relating to the 2010 World Cup.

International Obligations

2. Ratification: South Africa has made substantial progress in signing and ratifying a number of important international instruments. However, there is still a lot that can be done in this area.

2.1. In 1994 South Africa signed the International Convention on Economic, Social, and Cultural Rights (ICESCR) but has yet to ratify it. This is particularly disappointing in light of South Africa's own incredibly progressive constitution, which protects economic, social, and cultural rights.

2.2. South Africa has signed but must still ratify the Optional Protocol to the Convention Against Torture (OPCAT). In terms of CAT and OPCAT legislative and other measures need to be taken to criminalize torture and establish a National Preventative Mechanism (NPM). The SAHRC calls on the South African government to recommit as they have previously done to doing so.

2.3. The South African government has displayed commitment and support in the drafting process of the Convention on the Rights of People with Disabilities. In fact, South Africa was one of the first signatories to this new convention. A number of steps are currently being undertaken towards ratification of the Convention and the establishment of a National Disability Machinery. South Africa ought to be acknowledged for its work thus far in this

area and encouraged to continue upon the path of ratification. Such action is urgently needed in order to protect this extremely vulnerable sector of society.

2.4. South Africa still needs to sign and ratify the International Convention on the Protection of all Persons from Enforced Disappearance.

3. Reporting: South Africa has been overdue in meeting its reporting requirements under those treaties that it has ratified. For example, South Africa has yet to submit either its 2001 or 2005 reports for the Convention on the Elimination of Discrimination against Women (CEDAW). In 2000, South Africa failed to make its initial appearance before the Committee for the International Convention on Civil and Political Rights (ICCPR) and has yet to submit any reports to that Committee. South Africa is also five years behind in its reporting on the Convention on the Rights of the Child, and significantly delayed in its reporting to CAT. Most disappointing, in light of South Africa's history, it is substantially delayed in the completion of its reporting requirements under the Convention for the Elimination of All Forms of Racial Discrimination (CERD). Thus, the SAHRC calls on the South African government to commit to putting procedures in place to ensure that reports are submitted in a timely manner.

In spite of the CERD Committee's recommendations that South Africa should take measures and pass legislation specifically criminalizing hate crimes and hate speech and report back to the Committee by 15 August 2007, South Africa has not done so. Indeed, hate crimes are being reported in the media in increasing numbers. Recent examples include the brutal killing of Somali refugees in the Cape Town and Port Elizabeth areas and the murder of a black, lesbian, HIV positive woman in a township. The SAHRC calls on the South African government to commit to developing and passing legislation that specifically addresses hate crimes and hate speech.

4. Dissemination of Concluding Remarks: The SAHRC is unaware of steps that have been taken to disseminate the concluding remarks and recommendations of the various treaty bodies to which it has reported.

Domestic concerns

5. Wealth Gap: The wealth gap in South Africa has been growing, rather than shrinking, since the end of Apartheid. Additionally, many poor South Africans have sunk deeper into poverty since the end of Apartheid. Further, it continues to be true that a grossly disproportionate number of those living in extreme poverty are black. This is a substantial threat to the health of our new democracy, and is connected with many of our other most pressing social problems, including the extremely high levels of violence and the spread of HIV/AIDS. Indeed, SAHRC has heard reports, some emanating from government sources, of people living in such desperate poverty that there are persons intentionally infecting themselves with HIV in the hope of getting a disability grant. There have also been reports of HIV positive persons deliberately refusing to take ARV treatment for fear of losing their disability status and disability grant. Despite no research to substantiate allegations, there are persistent reports in the media that teenage girls intentionally become pregnant in order to access a child support grant from government. Given the extreme poverty and the high unemployment rate in South Africa, SAHRC calls on the South African government to seriously consider the creation of a Basic Income Grant (BIG). SAHRC also calls on the South African government to continue prioritizing the creation of jobs and job programs.

6. Equality courts: South Africa deserves substantial praise for its creation of the Equality Courts. These courts hear complaints relating to discrimination and are designed to be accessible to the average South African acting without a lawyer. Unfortunately, whilst great strides have been taken on the legislative front and Equality Courts have been set up, it is now becoming apparent that these courts are grossly underutilized and that some appear even to have been closed without notice to the Commission or to the general population. The SAHRC calls on the South African government to commit to taking further measures to popularize these courts and ensuring that discrimination is redressed.

7. Education: The poor quality and the continued inequality of education in South Africa has implications for virtually all rights guaranteed by international treaties and the South African Constitution. South African learners lag behind those in other African countries, even though South Africa's spending on education is high for the region. The SAHRC is deeply concerned about the state of education in South Africa and has held a public hearing into the right to basic education.

There is a need in South Africa to move swiftly towards ensuring that there is a right to free basic education. The government should be encouraged to move in this direction.

Additionally, violence in schools in South Africa is a significant challenge, with schools being regarded as the most dangerous place for a child in South Africa. Accordingly, SAHRC calls on the South African government to commit to prioritising this issue and taking innovative and interdisciplinary approaches to resolving it.

8. Service provision to rural areas: The SAHRC notes that the government has placed a significant emphasis on the provision of services to rural areas. However, SAHRC recognizes that, in spite of this commitment, service provision in some rural areas is still inadequate. There are still some rural households that are without adequate housing, water, sanitation, and electricity. Additionally, many rural residents are unable to access government services, including medical services, due to lack of transportation. This has many disturbing implications, including in the areas of female reproductive health and HIV/AIDS. SAHRC calls on the government of South Africa to commit to increasing its efforts to provide services to rural areas.

9. Land redistribution: The SAHRC is concerned by the failure of the government to meet its targets for land redistribution. There are many challenges in this area including the inability to carry out land reform due to lack of adequate resources and skills. In some instances, land reform projects have failed due to inadequate support from government. SAHRC calls on the South African government to commit to hiring the skilled personnel needed to carry out land redistribution and to provide requisite services to new landowners. This commitment should extend to the provision of necessary support services to new land owners so that they can be successful in their farms.

10. Rural evictions: Although South Africa has good legislation (Extension of Security of Tenure Act) that provides protections and mechanism to protect against unlawful and arbitrary evictions, insufficient resources have been put into ensuring that the protections contained in the legislation can be accessed by vulnerable farm dwellers. The government has been speaking of setting up an alternative dispute resolution to deal with evictions for a number of years, but to date this is not forthcoming. There is also a dire need for additional legal services to be offered to farm dwellers faced with eviction. SAHRC calls on the South African government to provide alternative and further legal services to farm dwellers faced with eviction.

11. Medical care: South Africa is to be commended for its attempts to make medical care available to all South Africans, in accordance with its Constitution and with the UNCESCR. Unfortunately, the achievement of this goal has been hampered by consistent under-resourcing and by the increased demand created by HIV/AIDS. Currently, there is a four-year wait for many common medical procedures. Additionally, resources for education in medicine and nursing have been cut, leading to a current shortage of health care providers. This year, the government is further cutting funding for medical care. These problems are worst in rural areas. There is an enormous disparity in South Africa between public and private health care that further fuels inequality. The SAHRC calls on the South African government to commit to increasing funding for medical care and taking action to increase the number of health care providers.

12. HIV/AIDS: The SAHRC is concerned that, while the rates of HIV and AIDS are decreasing in many countries, there does not appear to be a substantial decrease in South Africa. Many rural residents lack even basic information about the cause and treatment of HIV/AIDS. Additionally, some South Africans still believe that having sex with a virgin, an older person or even a person with mental disability will cure them of HIV (the Commission has come across accounts of the latter two in the course of its fieldwork). The SAHRC calls on the South African government to commit to taking more aggressive steps to combat the spread of HIV/AIDS, including addressing sexual violence and undertaking creative and extensive awareness raising campaigns.

13. Asylum seekers: The SAHRC is deeply concerned by the conditions experienced by asylum seekers to South Africa such as access to the asylum procedure which leaves asylum seekers without any documentation and therefore at risk of arrest and possible *refoulement* back to their countries of origin where they may face persecution. Also there are incredibly lengthy backlogs in processing asylum applicants despite projects to address the issue. The delays results in asylum seekers encountering significant challenges in trying to be self sustaining and avoid a situation of extreme poverty. There are however indications of a turn around strategy by government.

14. Human Trafficking: The SAHRC calls on the government of South Africa to commit to the passage of comprehensive legislation criminalizing human trafficking.

15. Violence against children: In the area of children's rights a significant opportunity to prohibit all forms of violence against children was lost in October 2007 when a clause that would have ensured the prohibition of all forms of corporal punishment against children in the home was removed from the Children's Amendment Bill that was before Parliament. The provision would have also provided for the state to support, educate and raise awareness about the negative consequences of corporal punishment. This would have brought South African law in line with recent developments at an international level regarding corporal punishment and violence against children. In a country which experiences high levels of violence it is particularly urgent to take bold steps that will contribute towards the creation of a violence free society. The SAHRC calls on the South African government to commit not only to removing the defence of reasonable chastisement but also to criminalizing corporal punishment with the concomitant pledges towards raising awareness and providing the necessary resources to support parents in adopting positive and alternative forms of discipline.

16. Sexual violence: Sexual violence is at unacceptably high levels in South Africa. The country has one of the highest rape rates in the world. SAHRC calls on the South African government to commit to taking more aggressive steps to combat sexual violence.

17. Corruption: The SAHRC is deeply troubled by reports of government corruption. This corruption substantially interferes with the exercise of social and economic rights and also contributes to the poor and the vulnerable being unable to access government services. The SAHRC calls on the South African government to continue in its efforts to combat corruption.

18. Substance abuse and methamphetamines (aka 'tik'): The SAHRC notes with concern that the rates of substance abuse are very high in this country, particularly as they relate to the use of methamphetamines. The high rates of substance abuse exacerbate the problems faced in the areas of education, health, and law enforcement, and are also linked to the high rates of violence. Accordingly, there is an urgent need for a holistic, inter-sectoral approach to combating substance abuse. SAHRC calls on the South African government to commit to taking such an approach and to finalizing the new substance abuse legislation that is currently under consideration.

19. Programs relating to the 2010 World Cup: The SAHRC welcomes the government's efforts to address living conditions in South Africa in anticipation of the 2010 World Cup. However, the SAHRC has been concerned by reports of slum-dwellers being permanently displaced by the beautification projects. Thus, SAHRC calls on the government of South Africa to commit to providing quality housing and services to all who are displaced as a result of these projects.

20. Conclusion

Substantial progress has been made in South Africa during the past 13 years to address the imbalances of the past and to create a society founded on the values of equality, dignity and freedom. This submission has highlighted some key areas need that need more decisive time-bound interventions.