

Submission to the Universal Periodic Review (UPR) by the Centre for the Study of Violence and Reconciliation (CSVr), South Africa

Submitted on 21 September 2016



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1. INTRODUCTION

This is the Centre for the Study of Violence (CSVr)'s submission to the UN Human Rights Council for the third South African Universal Periodic Review, which is due in 2017. This submission was produced with technical support from the International Rehabilitation Council for Torture Victims (IRCT).

The Centre for the Study of Violence and Reconciliation (CSVr) is a non-governmental organisation which envisions societies that are peaceful, equal and free from violence. CSVr aims to understand and prevent violence, heal its effects and build sustainable peace at community, national and regional levels. This is achieved through collaboration with and learning from the lived and diverse experiences of communities affected by violence and conflict to inform innovative interventions, generate knowledge, shape public discourse, influence policy, hold States accountable and promote gender equality, social cohesion and active citizenship.

2. CONTEXT OF THE REPORT

In this document, CSVr examines the Government of South Africa's compliance with its international human rights obligations to uphold, promote and protect human rights within the Republic of South Africa. This submission highlights the state of human rights in the country within the period under review and proffers recommendations to the Government of South Africa. The thematic areas covered include: Gender Based Violence (GBV), Torture, International Covenant on Economic Social and Cultural Rights (ICESCR) and Refugees and Migrants Rights.

3. KEY ISSUES OF CONCERN AND RECOMMENDATIONS

3.1 Gender-Based Violence (GBV)

a. Introduction

In the 2nd UPR cycle, South Africa received recommendations to implement a national strategy which includes the review and the drafting of laws, and campaigns to raise awareness about discrimination at all levels of society, aimed at modifying or eliminating harmful stereotypes and practices which discriminate women in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

b. Outstanding Issues

South Africa has made strides in uplifting women in the country, however gender-based violence (GBV) still remains a major human rights violation in South Africa. Economic, cultural, social and religious factors drive GBV in South African communities. Further, a lack of understanding of the extent of the problem, inaccurate and unreliable statistics on GBV continue to inhibit effective responses. Also, the lack of a national coordinated strategy to address GBV remains a challenge. CSVR reiterates the 2011 CEDAW Committee's concerns that, "in spite of the legal measures put in place, de facto implementation of such laws and policies have yet to be achieved in many areas". The following challenges are also important to note:-

- Lacunae in existing legislation: in theory, the Domestic Violence Act is a progressive piece of legislation. However, it fails to take into account the intersectionality between violence, poverty and HIV and AIDS. Also it does not mandate other Departments such as Housing to provide shelters for abused women.
- Despite the passing of the minimum sentencing legislation courts continue to disregard the minimum sentencing principles and continue to give out lenient sentences.
- Inadequate costing and budget allocation for the implementation of legislation, including the Domestic Violence Act and the Sexual Offences Act.

Further, the continuing recognition of customary and religious laws and their adverse effects on the inheritance and land rights of women and women's rights in family relations. Specifically, while the State recognises harmful practices of *Ukuthwala* (child marriages), there is no specific law to address the practice and protect women. Currently the practice is being regulated in a fragmented manner which addresses the acts associated with the practice without condemning the practice itself.

c. Recommendations

- Review the Domestic violence Act to ensure that it places addresses the intersections of GBV, poverty, HIV and AIDS and also obligates other departments (such as the Department of Social Development) in the provision of shelters
- Cost and budget for GBV related legislation as a key measure to addressing implementation challenges. Adequate human and financial resourcing must be prioritised for all key institutions mandated to address GBV.
- Intensify preventive measures to curb GBV, including interventions that seek to transform negative social norms and emphasise the equality between men and women, and challenge patriarchy
- Develop and implement integrated gender sensitive training of officials in the justice system including their roles in the criminal justice chain and how these are inter-linked
- Develop specific legislation that addresses the practice of *ukuthwala* and other customary practices that directly or indirectly lead to forced and child marriages.

- Implement effective monitoring and evaluation of all government policies and interventions dealing with GBV.

3.2 Torture

a. Introduction

During the last UPR, South Africa received recommendations to ratify the OPCAT and to adopt an anti-torture law in accordance with international standards. In July 2013, South Africa enacted the Prevention and Combating of Torture of Persons Act (Act 13 of 2013).

b. Outstanding Issues

Torture remains a reality in many countries around the world. As one of the largest recipients of refugees in the world, South Africa has become home to many victims of this extreme form of human rights violation. Sadly torture continues to be perpetrated within South Africa, which has high rates of violent crime in addition to extreme high levels of economic inequality in the world. The impacts of torture are diverse and include biological, psychological and social dimensions. Although South Africa signed the Optional Protocol to the Convention against Torture (OPCAT), it has not yet ratified it.

The Prevention and Combating of Torture of Persons Act does not provide for redress for victims of torture which includes forms of reparation articulated in General Comment No 3 of the Committee against Torture on Article 14 of UNCAT. This gap has translated to numerous torture victims in South Africa being only able to access redress through the courts – a long-winded and costly procedure which often results in secondary traumatising for victims.

Although the anti-torture legislation is in place, Regulations that will operationalise the Act and possibly address some of the processes for accessing redress for victims have not been promulgated.

South Africa's torture victims are a diverse group and they include apartheid era torture victims, refugees and asylum seekers and current torture victims. Of these groups, the anti-torture legislation only covers current torture victims who have been tortured in South Africa, after 25 July 2013. Apartheid era torture victims for instance still battle with accessing redress. The Truth and Reconciliation Commission (TRC) Recommendations provided for compensation for a closed list of victims who came forward to narrate their experiences of torture and other gross human rights violations during apartheid. A number of victims were excluded from this list and still cannot access reparation. There has been delays and challenges in implementing some of the Recommendations of the TRC including the disbursement of the President's Fund to victim groups. The South African government is currently prioritising developmental projects such as building schools in various provinces in South Africa with the President's Funds as a form of collective reparation for apartheid era victims.

The right to rehabilitation for various torture victims groups is only being provided by Non-Governmental Organisations. Government institutions such the Department of Health and the Department of Social Development are not providing rehabilitation services to torture victims and there has not been any national budget to establish and support rehabilitation programmes for victims.

c. Recommendations:

- Ratify the Optional Protocol to the Convention against Torture (OPCAT) which will establish the National Preventive Mechanism for torture in South Africa.

- Promulgate Regulations to operationalise the Prevention and Combating of Torture of Persons Act 13 of 2013. The Regulations will also give guidance on procedures and processes that prioritise current torture victims' need for redress such as reparation.
- Promptly implement TRC recommendations for reparation for apartheid era torture victims through initiatives and reparative measures that benefit both individual and collective victims, and in ways that directly address victims' needs rather than broader developmental objectives.
- Ensure that state policies and budgets enable availability and accessibility of appropriate holistic rehabilitation services to all victims of torture and ill-treatment within the borders of South Africa (including apartheid torture victims, refugees and asylum seekers).
- Ensure that victims have a free choice between state or non-state rehabilitation services, that all costs associated with the services are covered by the state and that the validity of non-state services is fully recognised.

3.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

a. Introduction

One of the recommendations of the last UPR was for South Africa to; ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocol. South Africa ratifies the ICESCR in 2015. The South African Constitution also protects socio-economic rights such as the right of access to healthcare services and social security, sufficient food and water, as well as to adequate housing alongside civil and political rights. While South Africa has made notable progress in promoting and protecting human rights, there are still real issues with the full realisation of socio-economic rights.

b. Outstanding issues

South Africa has recorded the largest number of socio-economic service delivery protests in the world in the past three years. These protests are also increasingly becoming violent. CSVR research on the key drivers of this violence including collective violence has shown that such underlying factors as high levels of inequality, social marginalisation and exclusion and the legacies of South Africa's repressive past are at the root of this violence. Addressing these underlying factors in our society will not only prevent this violence but will also achieve more peaceful and equal communities in the long term.

The qualification that the right to basic education will be provided "within available resources" is of great concern given South Africa's long standing history of inequality, social exclusion and marginalisation of the majority of black people. The right to free basic education for all will go a long way in affording the poor and marginalised in society this basic right

South Africa has also grappled with violent tertiary education protests where students have staged sit-ins and demonstrations against increases in University fees. The university fee increases means that tertiary education becomes unattainable for most black South African students, widening the inequality gap. The realisation of secondary and tertiary education should also be prioritised by the South African government "within available resources".

c. Recommendations:

- Frame the right to basic education as a right to all without the qualification of “within available resources”.
- Facilitate access to secondary and tertiary education for the most marginalised groups in the South African society, ensuring that tertiary education is affordable, readily available and further that resources are channelled to make this right a reality for the majority of the South African population.
- South Africa should ratify the Optional Protocol on the International Covenant on Economic Social and Cultural Rights (OP-ICESCR) to promote a culture of accountability for implementing the ICESCR.

3.4 Protection of the Rights of Migrants and Refugees

a. Introduction

The 2nd cycle of the UPR recommended that South Africa ratifies the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). South Africa is a major recipient of migrants from various African countries and the world.

b. Outstanding Issues

Migrants in South Africa include refugees and asylum seekers and undocumented migrants whose plight in obtaining documentation to legalise their stay in the country and being joined by their families in South Africa is dire. Furthermore, undocumented migrants continue to be exploited in their work stations, sometimes undertaking work without remuneration. Access to healthcare services for migrants is a challenge, especially for undocumented migrants. South Africa has not yet ratified the United Nations Convention on Migrant Workers and Their Families. Ratification of this instrument will go a long way in protecting the rights of migrant workers in South Africa and joining migrant workers with their families in host countries.

c. Recommendations

- Ratify the United Nations Convention on Migrant Workers and Their Families
- Strengthen protection and fulfilment of Migrants’ rights, in particular by effectively prosecuting offences committed against them in South Africa and adopting policies and regulations that improve their living conditions their access to adequate health-care services.
- Develop and adopt policies and programmes designed to promote the integration of migrants into society and the respect for their rights, including the protection of their person and physical integrity.