



**The Edmund Rice Justice Desk**

## **Human Rights Council**

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### **Universal Periodic Review (UPR) of South Africa**

**Submission from:**

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## **I Introduction**

1. Edmund Rice International (ERI) is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

2. The Edmund Rice Justice Desk of South Central Africa was launched in 2013. It is based in Cape Town, South Africa and operates in South Africa, Zambia and Zimbabwe. Our purpose is to advocate, educate and equip in the area of Human Rights, Justice and Advocacy.

## **II METHODOLOGY**

3. Informal, open-ended interviews were conducted with asylum seekers, women, vulnerable community members, and teachers through the work of The Edmund Rice Justice Desk.

4. Informal, open-ended interviews were conducted with active citizens, development specialists and ordinary citizens.

5. Specialist Non-Government Organisations were consulted.

## **III GENDER BASED VIOLENCE**

### **Situation Analysis**

6. South Africa has one of the highest rates of gender based violence worldwide. Over 150 women report being raped to the police in South Africa every day. However, less than 30 of these cases result in a court case and no more than 10 of these cases lead to a conviction. The overall conviction rate, therefore, lies only between 4-8% of all reported cases.<sup>12</sup>

7. Up to 60% of women who report rape cases to the police withdraw their case because of police ineffectiveness and incompetence.<sup>3</sup>

8. In 1993, the first sexual offences court was established in Cape Town, South Africa. However, due to various unjustified reasons – such as budgetary constraints, inappropriate and limited facilities, and the failure of the state to properly protect victims of multiple forms of abuse – the sexual offence courts were widely abolished in 2005. In 2013, the government acknowledged that there was a need to re-establish these courts, and soon after announced their plans to establish a minimum of 106 sexual offense courts.<sup>4</sup> Despite this promise, the very low conviction rate in these courts have shown that, so far, the sexual offence courts have not taken appropriate measures to reduce sexual abuse in the country.<sup>5</sup>

9. South Africa's Domestic Violence Act of 1998 is a prominent legal mechanism which aims to protect victims of domestic violence, as well as ensure police protection – however, this act

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<sup>1</sup> Smythe, Dee (2016).

<sup>2</sup>Guardian Development Network (2013).

<sup>3</sup>Rape Crisis (2016).

<sup>4</sup>Davis, Rebecca (2013).

<sup>5</sup>SAnews (2014).

is insufficiently implemented.<sup>6</sup> Domestic violence is often seen as a ‘private matter’ within the domestic environment, and is therefore not something that should be made public or reported to the police. With this in mind, it is reported that police across the country often refuse to take on the responsibility of opening cases of domestic abuse, which leaves the victims helpless and unprotected.

10. South Africa not only has one of the highest rates of rape in the world, but it is also known for its shocking reports of ‘corrective rape’ which is on the rise – especially against lesbian women. There is deep-rooted bias against the South African LGBTQIA community. However, as these hate crimes are not yet recognized as unique crimes under South African law, there are no reliable figures about the extent of this issue.<sup>7</sup> Additionally, courts do not recognize the considerable cases of hate crimes and the police are often reluctant to investigate these cases further.<sup>8</sup>

### **Legal Framework**

11. Article 7 (2) of the South African Constitution states that the state must respect, protect, promote and fulfil the rights stipulated in the Bill of Rights.<sup>9</sup>

12. Article 9 of the South African Constitution ensures the right of all persons in South Africa to be treated equally. This equality includes the full and equal enjoyment of all rights and freedoms. Article 9 (3) further states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex pregnancy, marital status, ethnic or social origin, colour, sex orientation, age, disability, religion, conscience, belief, culture, language and birth. Therefore, women seeking protection from domestic abuse should not be discriminated against by police.<sup>9</sup>

13. Article 10 of the South African Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected.<sup>9</sup>

14. Article 34 of the Constitution states that everyone has the right to have disputes that can be resolved by the application of law, decided on in fair public hearings, before a court or, where appropriate, another independent and impartial tribunal or forum.<sup>9</sup>

15. Article 38 of the South African Constitution states that the rights listed in the Constitution are enforceable. Therefore, everyone has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened.<sup>9</sup>

16. Article 2 of the Convention on the Elimination of Discrimination Against Women (CEDAN) demands that states parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Thereby, – amongst others – it ensures that state parties adopt appropriate legislature and other measures, including sanctions where appropriate, prohibiting all discrimination against women. Additionally, they are supposed to establish the legal protection of the rights of women on an equal basis with men.<sup>10</sup>

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<sup>6</sup> The South African Domestic Violence Act.

<sup>7</sup> Davis, Rebecca (2012).

<sup>8</sup> Smith, Lydia (2015).

<sup>9</sup> The South African Constitution.

<sup>10</sup> Convention on the Elimination of Discrimination against Women (CEDAN).

17. Article 3 of the Declaration on the Elimination of Violence against Women (DEVAN) ensures that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include – amongst others – the right to equal protection under the law.<sup>11</sup>

## **Recommendations**

18. **We recommend that the government of South Africa:**

- **Improve the functioning of current sexual offence courts, and establish new courts throughout the country, to ensure that appropriate measures are taken in reported cases.**
- **Promote the use and implementation of The Service Charter for Victims of Crime in South Africa (which presents the legal framework relating to the rights of and services provided to victims of crime) among South African Police Service, prosecutors and magistrates. Forums need to be created for victims to discuss their experiences within the system.**
- **Improve the overall running of the criminal justice system by establishing a review board to monitor investigators and prosecutors in their duties.**
- **Establish a working group that ensures police are fulfilling their duties as stipulated in the South African Domestic Violence Act 1998 and the Sexual Offences Act 2007.**
- **Implement recommendation 124.49 accepted in the previous UPR Cycle to “put in place stronger mechanisms to protect women and girls against gender-based violence and provide redress to victims.”**

## **IV CHILDREN’S EDUCATION**

### **Situation Analysis**

19. Schools that served predominantly white learners under apartheid remain functional while the vast majority of those which served black learners remain dysfunctional.<sup>12</sup>

20. The National School Effectiveness Study has shown that by grade 3, children in the poorest 60% of schools are already 3 years behind those in functional schools. This gap grows as the children progress and by grade 9 they are 5 years behind more affluent children in learning.<sup>12</sup>

21. Less than 50 percent of learners who enrolled in grade 1 in 2002 stayed within the schooling system to write their final Matriculation exams 12 years later in 2014. Thus, a significant number of pupils drop out of school before they reach Matriculation level.<sup>13</sup>

22. South Africa spends an average of 20% of its national budget on education. Thereby, it spends more on education, some 6% of GDP, than any other African country.<sup>14</sup> However, the majority of school children cannot enjoy a quality education. The causes lie deep in the education system.<sup>15</sup>

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<sup>11</sup> Declaration on the Elimination of Violence against Women (DEVAN).

<sup>12</sup> Spall, Nic (2015a).

<sup>13</sup> Spaul, Nic (2015b).

<sup>14</sup> Mhize, Nomalanga (2016).

<sup>15</sup> Nkosi, Milton (2016a).

23. In 2015, the Department for Basic Education reported in the National Education Infrastructure Management System Quality that of the 23,589 schools; 12% of the schools still have unreliable electricity supply; 20% of the schools still have unreliable water supply; and 44% of the schools still use pit latrine toilets.<sup>16</sup>

24. Students that learn in a language other than their home language have difficulties understanding and expressing themselves at school.<sup>17</sup> South Africa has 11 official languages. Despite the fact that English is the mother tongue for only 9.6% of the population, it is the predominate teaching language at most schools.<sup>18</sup>

## **Legal Framework**

25. Article 29 (1) of the South African Constitution states that everyone has the right to a basic education, and to further education, which the state, through reasonable measures, must make progressively available and accessible.<sup>19</sup>

26. Article 28 (1) of the South African Constitution provides that every child has the right not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age or that place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.<sup>19</sup>

27. Article 7 (2) of the South African Constitution states that, the state must respect, protect, promote and fulfil the rights in the bill of rights. This article imposes the duty on the state to encourage educational participation and provide equal access to education for everyone.<sup>19</sup>

28. Section 5a of the South African Schools Act No. 84 of 1996 states that minimum uniform norms and standards are to be prescribed concerning school infrastructure, a school's capacities, and teaching support material. Therefore, each school is supposed to have - beyond others - electricity, water, and sanitation.<sup>20</sup>

29. Article (8) of the UNESCO's Children's Act 1998 states that - amongst others - no person shall deprive a child access to education.<sup>21</sup>

30. Article (87) of the UNESCO's Children's Act 1998 provides that exploitative child labor that deprives the child of its health, education or development is prohibited.<sup>21</sup>

31. Article 28 of the Convention on the Rights of the Child (CRC) states that states parties shall recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. Amongst others, they shall encourage the development of different forms of secondary education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and

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<sup>16</sup>Department of Basic Education (2015).

<sup>17</sup>Nkosi, Milton (2016b).

<sup>18</sup>SAinfo reporter (2015).

<sup>19</sup>The South African Constitution.

<sup>20</sup>South African School Act.

<sup>21</sup>The UNESCO's Children's Act.

offering financial assistance in the case of need. Furthermore, states parties shall take measures to encourage regular attendance at schools and the reduction of drop-out rates.<sup>22</sup>

## **Recommendations**

32. **We recommend that the government of South Africa:**

- **Conduct a nationwide audit of the educational system’s budgeting and spending to ensure that funds are invested effectively and responsibly.**
- **Establish a working group to identify reasons why school drop-out levels are so high in South Africa.**
- **Enforce the infrastructure stipulations indicated within the South African School Act, as well as regulations relating to the Minimum Uniform Norms and Standards for Public School Infrastructure (2013).**
- **Implement recommendation 124.141 accepted in the the previous UPR Cycle to “Continue implementing programs that guarantee the success of strategies aimed at achieving quality basic education.”**

## **V REFUGEES**

### **Situation Analysis**

33. At the end of 2015, South Africa had 1,096,063 asylum claims with 62,159 new applications that year.<sup>23</sup> Of the 62,159 asylum applications, 2,499 applications were approved for refugee status while 58,141 were denied or pending.<sup>24</sup>

34. Asylum seekers entering South Africa are required to apply for asylum seeker status at a local Refugee Reception Office. Upon submitting an application, the asylum seeker will receive a permit according to section 22 of the South African Refugee Act which is valid until their application has been reviewed and they receive official refugee status. South Africa currently has a backlog of over 400,000 asylum claims.<sup>25</sup> Due to this back log, many asylum seekers wait years to receive official refugee status and are required to renew their permit according to section 22 every six months. Asylum seekers residing in South Africa with this permit are not entitled to the same rights as official refugee status holders including but not limited to the right to work and access to basic social services.<sup>26</sup>

35. In the beginning of 2014, the Director General of the Department of Home Affairs announced the closure of the Cape Town Refugee Reception Office and the Port Elizabeth Refugee Reception Office. Presently, there are only three Refugee Reception Offices open in South Africa; Pretoria (Marabastad and Tirro), Durban (Greyville) and Musina.<sup>27</sup> As a result, the current backlog of over 400,000 asylum seeker applications along with new applications has to be managed by very few Refugee Reception Officers. The closure of these offices has restricted freedom of movement for asylum seekers within South Africa. This has profound implications for asylum seekers who may have been residing in Cape Town or Port Elizabeth for multiple years but have to relocate to where a Refugee Reception Office is so that they can

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<sup>22</sup> Convention of the Rights of the Child (CRC).

<sup>23</sup> UNHCR (2016).

<sup>24</sup>EWN (2016)

<sup>25</sup>UNHCR (2014a).

<sup>26</sup> UNHCR (2014b).

<sup>27</sup> UNHCR (2014b).

renew their permit according to section 22 of the South African Refugee Act every six months.<sup>28</sup>

## **Legal Framework**

36. South Africa is party to the 1951 Refugee Convention and its 1967 Protocol, as well as the 1969 OAU Convention. Therefore, the Government of the Republic of South Africa has an obligation to grant protection to refugees and other persons in need of protection.

37. Article 21 of the South African Constitution states that everyone has the right to freedom of movement. Therefore, everyone has not only the right to leave the Republic but also the right to enter, to remain in, and to reside anywhere in the Republic.<sup>29</sup>

## **Recommendations**

38. **We recommend that the government of South Africa:**

- **Reopen Refugee Reception Offices in Cape Town and Port Elizabeth to ensure that asylum seekers as well as refugees have the right to freedom of movement within South Africa.**
- **Review administration procedures to address the immense backlog of asylum seekers permit applications.**
- **Grant asylum seekers who have been in South Africa for more than a year official refugee status – with special focus on protracted refugees – in order to ensure their right to work and their access to basic social services.**
- **Implement recommendation 124.126 accepted in the the previous UPR Cycle to “Respect its international and national legal obligations in the field of the protection of the rights of asylum seekers and migrant workers.”**

## **VI HOUSING AND ACCESS TO BASIC SERVICES FOR TOWNSHIP CITIZENS**

### **Situation Analysis**

39. According to the World Bank, half of South Africa’s urban population lives in townships or informal housing, accounting for 38% of working-age citizen.<sup>30</sup>

40. According to the World Health Organization (WHO), 19% of the population in South Africa still lives without access to improved drinking-water sources (an improved drinking-water source is defined as one that, by nature of its construction or through active intervention, is protected from outside contamination, in particular from contamination with faecal matter).<sup>31</sup>

According to the WHO, 34% of the population in South Africa have no access to improved sanitation facilities (an improved sanitation facility is defined as one that hygienically separates human excreta from human contact).<sup>32</sup>

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<sup>28</sup> UNHCR (2014a)

<sup>29</sup> The South African Constitution.

<sup>30</sup> Worldbank (2014).

<sup>31</sup> World Health Organization (2015a).

<sup>32</sup> World Health Organization (2015b).

41. In Khayelitsha, which is one of the largest townships globally, over a quarter of households have no access to electricity, while outdoor taps are shared between around 20 families and toilets between ten families.<sup>33</sup>

42. The Reconstruction and Development Program (RDP) is supposed to address the housing and sanitation backlog that has been running since the end of apartheid. However, so far, the results have not been satisfying. Ms Madonsela, South Africa's Public Protector, said that the project faces major obstacles due to maladministration. By way of example, she mentioned that many beneficiaries have been waiting for an RDP house for more than a decade. Furthermore, the poor workmanship and corruption comprise the quality of housing. Some houses were even built without water supply and sanitation.<sup>34</sup>

### **Legal framework**

43. Article 26 of the South African Constitution states that everyone has the right to access adequate housing. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.<sup>35</sup>

44. Article 27 of the South African Constitution states that everyone has the right to have access to health care services, including reproductive health care; sufficient food and water; and social security, including – if they are unable to support themselves and their dependants – appropriate social assistance.<sup>35</sup>

### **Recommendations**

#### **33. We recommend that the government of South Africa:**

- **Make available adequate housing as stated in Article 26 of the South African Constitution through the Reconstruction and Development Program.**
- **Review the administrative procedures of the Reconstruction and Development Program to ensure that the housing is made available for the right people at an appropriate time.**
- **Provide basic services including, but not limited to, sanitation, clean water, health-care, and electricity for people in need and thus ensure that Article 27 of the South African Constitution is enforced.**
- **Review all township communities as well as establish a determined schedule for the improvement of housing, as well as access to basic services, in order for the South African people to keep their government accountable.**

### **VII Implementation of UPR Recommendations**

34. In order to more effectively implement the recommendations accepted as part of its UPR we recommend that the Government of South Africa:

- **ensure the effective implementation of UPR recommendations through the establishment, by the time of a mid-term assessment of the current UPR cycle, of a permanent governmental mechanism to liaise with relevant ministries and consult with Civil Society, NHRI's and all relevant stakeholders.**

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<sup>33</sup> Wainwright, Oliver (2014).

<sup>34</sup>Phakathi, Bekezela (2013).

<sup>35</sup> The South African Constitution.



