

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: 3rd Cycle, 27th Session

REPUBLIC OF SOUTH AFRICA

I. BACKGROUND INFORMATION

The Republic of South Africa (“South Africa”) acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1996. South Africa has neither ratified the *1954 Convention relating to the Status of Stateless Persons* nor the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and the *1961 Convention* respectively).

South Africa incorporated the *1951 Convention* into domestic legislation through the *1998 South Africa Refugees Act*.¹ This *Act* also incorporated provisions of the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, to which South Africa is also a State party.

By the end of 2015, South Africa hosted 1,217,708 persons of concern to UNHCR, including 1,096,063 asylum-seekers and 121,645 refugees. In 2015, South Africa’s Department of Home Affairs (DHA) registered 62,159 new arrivals. The new asylum applications were mainly from Zimbabwe 28 per cent, Ethiopia 15 per cent, Nigeria 10 per cent, Democratic Republic of Congo (DRC) 10 per cent and Somalia 3 per cent.

UNHCR anticipates that the number of new asylum applications in South Africa will remain the same for the period 2016-2017 given the prevailing conflicts in Somalia, eastern Democratic Republic of the Congo and the deteriorating political and security situations in both Burundi and Mozambique, which have both been placed under the “conflict risk alert” list by the International Crisis Group (ICG). The poor economic situation in Zimbabwe and migratory movements from West Africa and Asia will also affect the number of applications.

There are, however, no readily available statistics on stateless persons residing in the Republic of South Africa.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

¹ South Africa: *Act No. 130 of 1998, Refugee Act, 1998*, 26 November 2008, available at: <http://www.refworld.org/docid/4a54bbd4d.html>.

Linked to 2nd cycle UPR recommendation no. 124.89: “Enact the Prevention and Combating of Trafficking in Persons Bill as soon as possible (Namibia).”²

UNHCR commends the enactment of the *Prevention and Combating of Trafficking in Persons Act* in July 2013.³ This act is the first comprehensive legislation on trafficking in persons which, among other goals, seeks to implement South Africa’s international obligations with respect to trafficking. The legislation adopts a broad definition of what constitutes trafficking, criminalizes various acts that constitute or relate to trafficking in persons and imposes harsh penalties for violations. UNHCR is also pleased to note that the legislation further provides certain protections for all survivors of trafficking in persons and thus, covers foreign nationals, including refugees and asylum-seekers. It states that all survivors of trafficking may not be charged for violating immigration law, for carrying forged documents, or for other crimes that he/she were compelled to commit by his/her captors. It also affords all trafficking survivors the same right of access to public health care services as that available to citizens. The legislation requires the DHA to grant trafficking survivors, who are foreign nationals, permission to remain in South Africa for a non-renewable 90-day term, as a “recovery and reflection period.”

Linked to 2nd cycle UPR recommendation no. 124.37: “Speed up the process to develop its National Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Namibia).”

UNHCR commends the formulation of the *Draft National Action Plan to Combat Racism and Xenophobia (NAP)*,⁴ which will give effect to South Africa’s international human rights obligations related to the elimination of racism, racial discrimination, xenophobia and related intolerance. The draft *NAP* is a positive achievement and follow-up to the recommendation of the *Durban Declaration and Programme of Action* adopted at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in 2001. The draft *NAP* has since been widely circulated for extensive public consultation and it will provide the basis for the development of public policy against such occurrences.

Linked to 2nd cycle UPR recommendation no. 124.40: “Continue combating acts of xenophobia against migrants, refugees and asylum-seekers (Djibouti).”

UNHCR commends South Africa for increasing efforts to combat acts of xenophobia against foreign nationals, including refugees and asylum-seekers. In addition to the aforementioned formulation of the *NAP* to combat xenophobia, the Government improved its response as with the second occurrence of attacks in 2015. An Inter-Ministerial Committee on Migration was appointed to deal with all the underlying causes of tensions between communities and foreign nationals. Some of the areas that are being addressed include: the implementation of labour relations policies as they affect the foreign nationals; the implementation of the laws

² All recommendations made to South Africa during its 2nd cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review of South Africa” (9 July 2012), A/HRC/21/16, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>.

³ South Africa: *Act No. 7 of 2013, Prevention and Combating of Trafficking in Persons Act, 2013*, 29 July 2013, available at: <http://www.justice.gov.za/legislation/acts/2013-007.pdf>.

⁴ South Africa: *National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (2016 – 2021)*, available at: <http://www.justice.gov.za/docs/other-docs/NAP/NAP-A4-PublicConsultationBook.pdf>.

that govern business licenses; the country's border management and in general, the country's migration policies. A Special Reference Group on Migration and Community Integration in Kwa-Zulu Natal was established in direct response to the 2015 xenophobic attacks. In particular, they released a report which addresses xenophobia with a specific focus on the shortcomings of, and lack of, preventative measures by law enforcement agencies, the spreading of misinformation on social media platforms and by media houses, and recommendations to prevent a recurrence.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Addressing and preventing xenophobia

Linked to 2nd cycle UPR recommendation no. 124.44: "Reinforce measures to combat and prevent xenophobia and related violence (Republic of Korea)."

While acknowledging the efforts of South Africa in initiating the *NAP*, UNHCR notes that the larger focus of the draft *NAP* is on racism and racial discrimination. Thus, there is a substantial lack of focus on xenophobia and an inadequate account of the challenges faced by foreign nationals, including refugees and asylum-seekers in South Africa.

In furtherance of the *NAP*, the South African Government should take additional legislative and administrative measures to protect all communities in South Africa against racist or xenophobic attacks, while improving responses to violence against non-nationals. It is noted that considerable steps have been made by the Government to draft a *Hate Crimes Bill*. However, UNHCR recommends that such legislation undergo broad and inclusive consultations and incorporate comprehensive guidelines for prosecutors and investigators on how to use such legal provisions to collect and demonstrate evidence of prejudice or deliberate selection of survivors based on identity.

Recommendations:

UNHCR recommends that the Government of South Africa:

- a) Promote an expanded focus on xenophobia in the *NAP*, with a view to improving the respect for and protection of non-nationals, including refugees and asylum-seekers;
- b) Ensure a greater focus on the collection of comprehensive and disaggregated data on all affected populations in the *NAP*;
- c) Establish the proper operation of independent monitoring mechanisms of the *NAP* when compiling periodical assessments of behaviours, attitudes and prevalence of incidents – while also developing future interventions;
- d) Explore inclusive social cohesion programmes proposed and recommended by the draft *NAP*, which should also provide a comprehensive representation of the experiences of foreign nationals, including refugees and asylum-seekers;
- e) Undertake comprehensive public education campaigns to raise awareness of the legal consequences and harmful effects of xenophobia; and
- f) Ensure that the draft *Hate Crimes Bill* is subject to broad and inclusive consultation, contemplates the development of guidelines for investigators, prosecutors and judges, and includes measures to provide restitution for survivors.

Issue 2: SGBV against refugee women and children

Linked to 2nd cycle UPR recommendation no. 124.62: “Put in place stronger mechanisms to protect women and girls against gender-based violence and provide redress to victims (Austria).”

UNHCR notes the unusually high prevalence of sexual and gender-based violence (SGBV) and other forms of violence in South Africa,⁵ which disproportionality affects refugee women, girls and unaccompanied and separated children (UASC), as they are often marginalized members of society or who are rendered vulnerable due to lack of documentation. Despite the progressive legal framework on SGBV and violence committed against women and children – notably the *2007 Sexual Offences and Other Related Matters Act*, which must be read in conjunction with the *2005 Children’s Act*⁶ – as well as programmes such as, the effective Thuthuzela Care Centres, which provides integrated services to survivors, challenges continue to remain for UNHCR’s persons of concern.

Disaggregated data on the population of concern to UNHCR is not available, nonetheless, according to records from UNHCR and partner assessments, refugee women, men, adolescents, and children, may be at greater risk of SGBV and other forms of violence on account of their additional specific needs, including language barriers, lack of documentation, fear of authorities, discriminatory attitudes towards foreigners, lack of access to livelihoods and poverty which force particularly women and children into survival sex.⁷ Children are less likely to understand the wrongful nature of sexual acts committed and undocumented and/or children lacking parental care are also at greater risk of such violence as they are less likely to report. Psychological consequences for children are long-term and damaging.⁸

Recommendations:

UNHCR recommends that the Government of South Africa:

- a) Strengthen protection and response mechanisms, policies, and programmes to ensure that women and children are protected from all forms of sexual and gender-based violence;
- b) Provide access to appropriate, age-specific and multi-sectorial response programmes, which fully takes into consideration the child’s views and best interests, and the specific needs of refugee women and children;

⁵ Research suggests that the proportion of adult men whom have committed acts of sexual violence is between 28 to 37 per cent, with 7 to 9 per cent having engaged in multiple perpetrator rape. Such extreme levels of sexual violence are coupled with systematic underreporting of sexual crimes to the Police and low rates of arrest (from 38 to 54 per cent) and even lower rates of conviction (4 to 6 per cent). See R. Jewkes, et al., *What We Know and What We Don’t: Single and Multiple Perpetrator Rape in South Africa*, 41 *South African Crime Quarterly* (2012), pg. 11, available at: <https://www.issafrica.org/uploads/CO41Jewkes.pdf>; and Rape Crisis (2015), available at: www.rapecrisis.org.za.

⁶ South Africa: Act No. 38 of 2005, Children’s Act [South Africa], 19 June 2006, available at: <http://www.refworld.org/docid/46b82aa62.html>.

⁷ UNHCR documents these challenges based on the results of its Age, Gender and Diversity participatory assessments, case management, and urban large-scale protection needs assessments.

⁸ UNHCR Child Protection Issue Brief: Sexual Violence against Children, January 2014.

- c) Improve documentation access for the undocumented survivors of sexual and gender-based violence and other forms of violence, to ensure that they are able to access services; and
- d) Ensure a greater focus on the collection of comprehensive and disaggregated data on refugees and asylum-seekers affected by sexual and gender-based violence and other forms of violence.

Additional protection challenges

Issue 3: Access to fair and efficient asylum procedures

The high numbers of asylum applications as well as misuse of the asylum system by individuals seeking better opportunities in South Africa – who may not necessarily be in need of international protection – continue to affect the fairness and efficiency of the asylum system. Due to the high demand of services and limited number of Refugee Reception Offices (RROs), the number of individuals requesting services far exceeds the ability of these offices to cater to such demand. The possible closure of the Cape Town and the Port Elizabeth RROs may affect the right to seek and enjoy asylum, including the right to a timely and efficient reception and processing of asylum applications and related documentation. UNHCR however, acknowledges the efforts of the Government to improve the functionality and services rendered at the Marabstad RRO. The *Immigration Regulations* came into effect in 2014 and introduced measures that will have a significant impact on access to asylum procedures, but they may also bar certain individuals from entering South Africa based on the “first country of asylum concept”. UNHCR notes that implementing the “first country of asylum concept” without proper safeguards may result in *refoulement*. The *Refugees Amendment Bill, Notice No. 806 of 2015* proposes a number of measures aimed at improving and streamlining asylum seeker management and enhancing the integrity of the asylum process. However, it also applies restrictions on certain rights for asylum-seekers, including the limitations on the right to work for four months pending adjudication of their claim.

Recommendations:

UNHCR recommends that the Government of South Africa:

- a) Ensure that any legislative modifications of the national asylum framework comply with South Africa’s international obligations in relation to asylum-seekers and refugees;
- b) Amend the *Immigration Regulations* to exclude the “first country of asylum concept” as it is inconsistent with international and national refugee law; and
- c) Put in place adequate provision for social welfare pending adjudication of the asylum claim.

Issue 4: Statelessness

Although South Africa is not yet a State party to the *1954 Convention* or the *1961 Convention*, numerous national legal instruments generally protect the right to nationality. Accession to these *Conventions*, however, would establish a stronger framework to prevent and reduce statelessness as well as to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of potentially stateless

persons. In December 2011, South Africa made a pledge at the UN ministerial-level conference in Geneva to sign and ratify both *Conventions* but has yet to do so.⁹

Recommendations:

UNHCR recommends that the Government of South Africa:

- a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- b) Ensure reliable statistics on stateless persons in South Africa in order to facilitate the creation of an identification and protection mechanism for stateless persons and persons at risk of statelessness; and
- c) Implement a provision of administrative assistance – in relation to documents and certification – to stateless persons that would normally be afforded by a foreigners own authorities, but due to the lack of recourse, must be taken upon by the residing State.

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Division of International Protection
UNHCR
August 2016

⁹ UN High Commissioner for Refugees (UNHCR), Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011, October 2012, available at: <http://www.refworld.org/docid/50aca6112.html>.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

SOUTH AFRICA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to South Africa.

I. Universal Periodic Review (Second Cycle – 2012)

Recommendation ¹⁰	Recommending State/s	Position ¹¹
Racism		
124.34. Continue its policy to combat racism and all forms of discrimination and racial intolerance and continue implementing affirmative actions for vulnerable groups;	Ecuador	Supported
124.35. Pursue its efforts in combating racism, in particular to guarantee an effective follow up to the outcome of the Durban Conference;	Morocco	Supported
124.36. To pursue their efforts in taking the necessary measures to reduce and prevent racial discrimination;	Palestine	Supported
124.37. Speed up the process to develop its National Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance;	Namibia	Supported
124.38. Reinforce its efforts to prevent and combat racism, racial discrimination, xenophobia and other related intolerance in particular against foreigners;	Islamic Republic of Iran	Supported
Trafficking in persons		
124.89. Enact the Prevention and Combating of Trafficking in Persons Bill as soon as possible;	Namibia	Supported ¹²
124.90. Continue efforts for the enactment of the Law against	Paraguay	Supported ¹³

¹⁰ All recommendations made to South Africa during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of South Africa" (9 July 2012), A/HRC/21/16, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>.

¹¹ South Africa's views and replies can be found in: *Addendum* (18 September 2012), A/HRC/21/16/Add.1, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>.

¹² *Addendum, Annex A*: "The Prevention and Combating of Trafficking in Persons Bill is before the second house of Parliament for consideration and adoption. Trafficking in human beings has been acknowledged as a universal challenge requiring international".

Trafficking in Persons, being sure that its approval will be a precious instrument in the fight against this scourge;		
124.91. Expedite the adoption of the Prevention and Combating of Trafficking in Persons Bill as a mechanism to assist victims in accordance with international humanitarian and human rights standards and to prosecute the perpetrators;	Thailand	Supported
124.92. Pass the “Combating and Prevention of Trafficking in Persons Bill” currently under deliberation in the National Assembly, and move swiftly to implement it once passed;	United States of America	Supported
Xenophobia		
124.32 Strengthen its policies and measures to consolidate the State of Law, as well as social cohesion, tolerance and non-discrimination in the country;	Vietnam	Supported
124.39. Continue multiplying measures that guarantee the full protection of the human rights of foreigners in South Africa;	Paraguay	Supported
124.40. Continue combating acts of xenophobia against migrants, refugees and asylum-seekers;	Djibouti	Supported
124.41. Continue its best efforts to combat xenophobia and prevent any violence against foreigners;	Thailand	Supported
124.42. Strengthen measures to combat the phenomena of xenophobia;	Iraq	Supported
124.43. Take all necessary steps to address the evil of xenophobia through legislation and greater public awareness programmes;	Ireland	Supported
124.44. Reinforce measures to combat and prevent xenophobia and related violence;	Republic of Korea	Supported
124.45. To continue the discouragement of any manifestation of xenophobia;	Mozambique	Supported
124.46. Step up its measures to mitigate the scourges of xenophobia, which include, among others, visible policing, community awareness	Indonesia	Supported

13 **Addendum, Annex A:** “The Prevention and Combating of Trafficking in Persons Bill is before the second house of Parliament for consideration and adoption. Trafficking in human beings has been acknowledged as a universal challenge requiring international cooperation for its effective combating. South Africa is extremely supportive of the Vienna based programs in the framework of the Commission on Crime Prevention and Criminal Justice which, among others, seek to develop global regulatory framework for the combating of Human Trafficking. Access to justice is entrenched in the Constitution of South Africa, national legislation, policies and programmes. Several measures have been put in place to particularly ensure women’s access to justice e.g. National Access to Justice Week held during women’s month (August) every year, 16 Days of Activism of No Violence against Women and Children, Multi-disciplinary care-centres for victims of sexual offences and crime (Thuthuzela care centres). The primary purposes of these programmes are to ensure maximum protection of victims, provision of adequate remedies to victims including combating impunity with the view to ensuring non-recurrence.”

programmes, promotion of tolerance and cultural diversity;		
SGBV		
124.62. Put in place stronger mechanisms to protect women and girls against gender-based violence and provide redress to victims (Austria);	Austria	Supported
124.63. Take increased measures to protect and provide redress to women subjected to gender-based violence;	Czech Republic	Supported
124.64. Take concrete measures to improve the protection of women against gender-based violence and to ensure that perpetrators are held accountable;	Norway	Supported
124.73. Step up efforts against sexual violence and improve social support services to victims;	Italy	Supported
124.74. Rigorously apply the legislation against gender violence and sexual violence, especially against girls and boys;	Spain	Supported
124.75. Conduct comprehensive public awareness campaigns and enhance the investigation and prosecution of violent crimes perpetrated on grounds of ethnicity, nationality, religion, sexual orientation or gender identity;	Slovenia	Supported
124.76. Establish national policies aimed at putting an end to violence and crimes motivated by race nationality, religion ethnicity, sexual orientation or identity, through the approval of laws that explicitly criminalize violence against people or property;	Uruguay	Supported
124.77. Implement training programs for the security forces so that crimes motivated by race nationality, religion ethnicity, sexual orientation or identity, are adequately investigated;	Uruguay	Supported
124.78. Continue its efforts in the fight against violence and discrimination based on sexual orientation and gender identity;	Argentina	Supported
124.80. Ensure that law enforcement officials and other relevant actors are adequately trained to investigate and prosecute hate crimes on the basis of sexual orientation and gender identity, including through the promotion of awareness-raising and sensitization campaigns;	Denmark	Supported
Birth registration		
124.150. Carry out the necessary measures to eliminate the barriers that impede the birth registration of all persons born in South African territory, including migrants and refugees (Mexico);	Mexico	Supported ¹⁴

¹⁴ **Addendum, Annex A:** “All children born in South Africa are registered at birth and not later than the first 30 days of birth. This is a requirement of national law. Registration allows all children to access all social benefits in the country”.

124.151. Ensure that all children are issued with a birth certificate in order to access various social services, with particular focus on children of migrants.	Slovakia	Supported
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II. Treaty Bodies

Committee on the Elimination of Discrimination against Women

Concluding Observations (27 April 2016), [CCPR/C/ZAF/CO/1](#)

Racism and xenophobia

14. The Committee is concerned about numerous manifestations of racism and xenophobia, including violent attacks against foreign nationals and migrants, refugees and asylum seekers, resulting in deaths, injuries, displacement and the destruction of property. The Committee is also concerned about the inability of the authorities to prevent and address racist and xenophobic attacks and to hold perpetrators accountable (arts. 2, 6, 7, 9, 17, 20 and 26).

15. The State party should redouble its efforts to prevent and eradicate all manifestations of racism and xenophobia, protect all communities in South Africa against racist and xenophobic attacks, and improve policing responses to violence against non-nationals. Effective investigations into alleged racist and xenophobic attacks and other hate crimes should be conducted systematically, perpetrators should be prosecuted and, if convicted, punished with appropriate sanctions, and victims should be provided with adequate remedies. The State party should also pass appropriate legislation explicitly prohibiting hate crimes and hate speech as soon as possible.

Harmful cultural traditions and practices

18. The Committee is concerned at the persistence of harmful traditional or cultural practices such as *ukuthwala*, virginity testing and witchcraft, and about reports suggesting that death and injury resulting from the practice of initiation are prevalent. The Committee is also concerned at the existence in law and in practice of polygamous customary marriages in the State party, which undermine the principle of non-discrimination, as provided under the Covenant in the field of marriage and family relations (arts. 2, 3, 6, 7, 17, 24 and 26).

19. The State party should amend the Children’s Act with the aim of prohibiting virginity tests for children, irrespective of their age, and undertake effective measures, including education campaigns, designed to combat harmful traditional, customary or religious practices. It should also take adequate measures to reduce the incidence of polygamy, with a view to bringing about its abolition. Initiation schools should be strictly regulated and monitored throughout the territory.

Violence based on sex, gender, sexual orientation and gender identity

20. While acknowledging the considerable efforts invested by the State party in this field, the Committee is concerned that gender-based and domestic violence remains a serious problem

in the State party, that the conviction rate for such acts is low and that there is a lack of disaggregated data on the phenomenon. It is also concerned about the persistence of stigma against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity, and that such persons are subject to harassment, acts of discrimination and sexual and physical violence (arts. 2, 3, 6, 7 and 26).

21. The State party should redouble its efforts to prevent and combat sexual, gender-based and domestic violence and to eradicate discrimination and violence against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity, including through implementation of the National Intervention Strategy. The State party should also facilitate reporting, and collecting data on, sexual and gender-based crimes and ensure that all such crimes are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to full reparation and means of protection, including access to shelters or centres run by the State and non-governmental organizations throughout the State party's territory. The State party should also ensure adequate training for law enforcement and health service personnel regarding domestic and gender-based violence, and violence based on sexual orientation and gender identity.

Human trafficking and labour exploitation

32. While taking note of the progress made with regard to combating trafficking in persons, the Committee is concerned that the State party still lacks proper identification and referral mechanisms for victims of trafficking in persons. The Committee welcomes the adoption of the Labour Relations Amendment Act, 2014 (Act No. 6 of 2014), which provides greater protection for workers placed in temporary employment, but it remains concerned at reports that migrant workers employed through labour brokers' services in the mining industry are victims of exploitative labour conditions (arts. 7 and 8).

33. The State party should continue its efforts to prevent and eradicate trafficking in persons and take the measures necessary to outlaw and hold responsible labour brokers involved in the exploitation of workers in violation of articles 7 and 8 of the Covenant. It should also step up its efforts to identify and protect persons who may be vulnerable to human trafficking and establish a nationwide identification and referral system for victims of trafficking.

Access to a refugee status determination procedure

34. The Committee is concerned at the increase in difficulties encountered in gaining access to a refugee status determination procedure due to the closure of several urban refugee reception offices, and at the reports of inadequate safeguards in such a process. The Committee is concerned about allegations that some immigration officers refuse to provide asylum seekers with transit permits at the port of entry, putting them at risk of immediate arrest or deportation. The Committee is concerned about allegations that these obstacles have resulted in the development of corrupt practices and have increased the vulnerability of migrants, especially children, by rendering them undocumented and stateless (arts. 6, 7 and 13).

35. The State party should facilitate access to documentation and fair procedures for asylum seekers, including translation services and, where the interests of justice so

require, access to legal representation. It should ensure that asylum applications are processed expeditiously and that the principle of non-refoulement is respected under all circumstances.

Committee on the Elimination of Discrimination against Women

Concluding Observations, (5 April 2011), [CEDAW/C/ZAF/CO/4](#)

Stereotypes and harmful practices

20. The Committee is concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society. It notes that such discriminatory attitudes and stereotypes constitute serious obstacles to women's enjoyment of their human rights and the fulfilment of the rights enshrined in the Convention. The Committee is thus concerned about the inadequate implementation of effective and comprehensive measures to modify or eliminate stereotypes and negative traditional values and practices in South Africa. The Committee also expresses serious concern about the persistence of entrenched harmful cultural norms and practices, including *ukuthwala* (forced marriages of women and girls to older men through abduction), polygamy and the killing of "witches". The Committee is also concerned about the continuing stereotypical portrayal of women in the media, which encourages discrimination and undermines the equality of women and men.

21. The Committee urges the State party to

a) Accelerate the implementation without delay of a comprehensive strategy, including review and formulation of legislation and establishment of goals and timetables, to modify or eliminate harmful practices and stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention. Such measures should include efforts to raise awareness of this subject, targeting women and men at all levels of society, including traditional leaders, in collaboration with civil society;

b) More vigorously address harmful practices, such as *ukuthwala*, polygamy, the killing of "witches", and the practice of female genital mutilation (FGM) among certain populations;

c) Use innovative and effective measures to strengthen understanding of the equality of women and men, and work with the media to enhance a positive, non-stereotypical and non-discriminatory portrayal of women;

d) Undertake an assessment of the impact of these measures in order to identify shortcomings, and to improve them accordingly; and,

e) Report, in its next periodic report, on any developments regarding consultations on legislation to prohibit *ukuthwala*, which is being conducted by the South African Law Reform Commission.

22. The Committee expresses serious concern about a provision in the Children's Act of 2005, according to which virginity testing of girls above 16 years old is allowed if the girl has given her consent. The Committee is further concerned that the practice of virginity testing of girls as young as 3 years old is increasing in the State party without respecting the physical and mental integrity of girls, and exposing them to increased risks of sexual violence.

23. The Committee calls upon the State party to take the necessary actions to amend the Children's Act with the aim of prohibiting virginity tests for girl children, irrespective of their age, and to design and implement effective education campaigns to combat traditional and family pressures on girls and women in favour of this practice, in order to comply with its international obligations, including under the Committee's General recommendation No. 19 (1992) and article 19 of the Convention on the Rights of the Child, which states that State parties shall take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse.

Violence against women

24. While noting that a number of policy, legislative, administrative, victims empowerment and other measures, based on a multi-sectoral approach at the operational level, have been put in place to combat violence against women in the country, the Committee expresses serious concern at the inordinately high prevalence of sexual violence against women and girls, and widespread domestic violence. The Committee is also concerned that such violence appears to be socially normalized, legitimized and accompanied by a culture of silence and impunity. It is further concerned at the low levels of prosecution and conviction, and at reports indicating that some police officers fine rape perpetrators in lieu of reporting the cases. The Committee regrets the lack of information on the impact of the measures and programmes in place to reduce incidences of all forms of violence against women and girls. The Committee is also concerned that social support services, including shelters, are inadequate due to inappropriate budgetary allocations.

25. The Committee calls upon the State party to:

a) Give priority attention to the results of the report of the study, commissioned by the Government and conducted by the Centre for the Study of Violence and Reconciliation, which addresses the prevalence, nature and causes of sexual violence in South Africa (released in November 2010), in order to review the State party's multi-sectoral action plan to combat violence against women, and expeditiously adopt comprehensive measures to better address such violence, in accordance with the Committee's General recommendation No. 19;

b) Raise public awareness, through the media and education programmes, on the fact that all forms of violence against women are a form of discrimination under the Convention, and therefore a violation of women's rights;

c) Put in place mechanisms of accountability to ensure the implementation of the provisions contained within policies and legislation, such as the Domestic Violence Act and the Sexual Offences Act, to combat violence against women;

d) Ensure the necessary budgetary allocations for the implementation of the various projects and programmes, including social support services for victims;

26. Moreover, the Committee requests the State party to provide in its next periodic report detailed information on the causes, scope and extent of all forms of violence against women, disaggregated by age, and urban and rural areas, and on the impact of measures taken to prevent such violence, investigate occurrences, prosecute and punish perpetrators, and provide protection, relief and remedies, including appropriate compensation, to victims and their families.

Trafficking and exploitation of prostitution

27. The Committee is concerned about the lack of information about the extent of the phenomenon of trafficking in women in the country, despite the acknowledgement on the part of the State party, in its report, that it was a country of origin, transit and destination of victims of trafficking. The Committee notes with concern that statistics on the number of women and girls who are victims of trafficking for sexual and economic exploitation are not available, in light of the fact that prostitution is criminalized. It is also concerned at the State party's failure to address the root causes of trafficking and prostitution, including poverty, which impedes the State party's efforts to address these issues in a serious way. In addition, the Committee regrets the lack of information provided on the existence and implementation of regional and bilateral memoranda of understanding and/or agreements with other countries on trafficking, and the inadequate information provided on prosecution and punishment of traffickers.

28. The Committee urges the State party:

a) **To expedite the adoption of the Prevention and Combating of Trafficking in Persons Bill in order to fully implement article 6 of the Convention, including through the effective implementation of this new legislation on trafficking, ensuring that perpetrators are prosecuted and punished and victims adequately protected and assisted;**

b) **That in all parts of the country information and training on how to identify and deal with trafficking victims and on anti-trafficking provisions in the domestic law be provided to the judiciary, law enforcement officials, border guards and social workers;**

c) **To conduct comparative studies on trafficking and prostitution and address their root causes, including poverty, in order to eliminate the vulnerability of girls and women to sexual exploitation and trafficking and to undertake efforts for the recovery and social integration of the victims;**

d) **To ensure systematic monitoring and periodic evaluation, including the collection and analysis of data on trafficking and exploitation of women in prostitution, and to include such data in its next periodic report;**

e) **To increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and to harmonize legal procedures aiming at prosecution of traffickers; and**

f) **To consider using the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) as a basis for their implementation.**

Sexual orientation

39. The Committee notes that the State party has in its Constitution the prohibition of discrimination based on the sexual orientation of individuals. However, the Committee expresses grave concern about reported sexual offences and murder committed against women on account of their sexual orientation. The Committee further expresses serious concern about the practice of so called "corrective rape" of lesbians.

40. The Committee calls on the State party to abide by its Constitutional provisions and to provide effective protection from violence and discrimination against women based

on their sexual orientation, in particular through the enactment of comprehensive anti-discrimination legislation that would include the prohibition of multiple forms of discrimination against women on all grounds, including on the grounds of sexual orientation. The Committee further recommends that the State party continue its sensitization campaign aimed at the general public, as well as provide appropriate training to law enforcement officials and other relevant actors.

III. Special Procedures

Report of the Special Rapporteur on the right to food

Mission to South Africa (13 January 2012) [A/HRC/19/59/Add.3](#)

VIII. Conclusions and recommendations

60. The Special Rapporteur recommends that the Government of South Africa:

(a) Ratify the International Covenant on Economic, Social and Cultural Rights;

(b) Improve and streamline the collection of data on food security, to monitor progress over time and inform policymaking;

(c) Strengthen existing strategies and policies that relate to food security, in particular the Outcomes Approach, by adopting a rights-based approach. This means that the setting of targets and the identification of the concrete measures to be adopted should be the result of meaningful public participation; that the authorities responsible for implementation should be held accountable for results; that the beneficiaries of all policies and programmes related to food security should be defined as rights holders, and that the indicators allowing the measurement of progress should be based on the normative components of the right to food, including non-discrimination. To ensure accountability, independent monitoring is required of the Government plans. This could be entrusted to the South African Human Rights Commission. Additionally, ring fencing of resources is required to ensure sustainable funding of these plans. Until these different conditions are met, the various strategies adopted by the Government may remain ineffective, since there will be no sanction associated with a failure to deliver;

(d) Pursue and accelerate the creation of comprehensive rural development policies, including agricultural policies, which would progressively improve the right to food of vulnerable groups. Priority should go to long-term structural changes supportive of poor households, rather than only to the satisfaction of immediate, short-term needs. In particular: