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HUMAN RIGHTS COUNCIL  
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Universal Periodic Review

SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 c) OF  
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1\*

### South Africa

The present report is a summary of eighteen stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The periodicity of the review for the first cycle being four years, the information reflected in this report mainly relates to events that occurred after 1 January 2004.

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\* The present document was not edited before being sent to the United Nations translation services.

## **I. BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

1. Human Rights Watch (HRW) indicated that South Africa has made strides in developing a legislative and institutional framework for social, economic and cultural rights, it has struggled to progressively implement these rights. It further noted that South Africa has yet to ratify the International Covenant on Economic Social and Cultural Rights<sup>2</sup>. In addition, the Centre on Housing Rights and Evictions (COHRE) reported that South Africa has neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and has not yet ratified the Convention on the Rights of Persons with Disabilities (CPD)<sup>3</sup>.

2. The national human rights institution, the South African Human Rights Commission (SAHRC), has called on the Government of South Africa to commit to the passage of comprehensive legislation criminalizing human trafficking<sup>4</sup>. The Community Law Centre (CLC) indicated that the South African Constitution guarantees a range of children's rights and a key success has been the finalisation of the Children's Act 38 of 2005. Nevertheless some practical challenges remain. According to the CLC<sup>5</sup>, although the promulgation of some parts of the Children's Act is still pending, there is considerable political will behind this endeavour. However, the same cannot be said of the Child Justice Bill 49 of 2002, another key child rights legislation, which continues to languish. The CLC recommended that South Africa take urgent steps to see the Children's Act promulgated in full and the Child Justice Bill 2002 and the Children's Amendment Bill of 2006 enacted into law and implemented speedily as possible<sup>6</sup>.

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Implementation of international human rights obligations**

#### **1. Equality and non-discrimination**

3. Although South Africa has taken concerted and successful steps towards eliminating racial discrimination in *de jure* terms, COHRE stated that there still exists *de facto* racism and racial discrimination, particularly related to the access to adequate housing, water and sanitation. Policies and politics of racial segregation prior to 1994 have left a legacy of inadequate and peripheral accommodation for the urban poor, including a substantial under-provision of decent housing opportunities for black people; and the segregation of black people in overcrowded townships and informal settlements on the periphery of the City far away from employment opportunities and facilities<sup>7</sup>. Furthermore, according to CLC, poverty in South Africa is stratified along gender lines, as indicated by, *inter alia*, the higher unemployment rate for women. Women, particularly black women, typically have lower incomes and less job security than men<sup>8</sup>.

4. According to HRW, while South Africa's constitution outlaws discrimination based on sexual orientation, and same-sex marriage has been legalized, gay and lesbian people remain vulnerable<sup>9</sup>.

## 2. Right to life, liberty and security of the person

5. The Centre for the Study of Violence and Reconciliation (CSVR) informed that allegations of torture and other assaults have continued to be reported by the Independent Complaints Directorate (*see table in the contribution*), suggesting that there continues to be a systemic problem of torture being used for the purposes of interrogation, and that steps taken in implementing the prevention of torture policy fall short of the type of measures necessary to ensure that torture is prohibited<sup>10</sup>.

6. According to CLC, South Africa has not yet criminalised the act of torture as required by Article 4 of CAT. While two earlier draft bills were circulated in 2005 for comment by the responsible department (Justice and Constitutional Development), there has been no reported progress to date (October 2007). The overall impression of CLC is that South Africa has made little progress in taking active steps to prevent and combat torture. Apart from a policy on the prevention of torture developed by the South African Police Service (SAPS), no other legislation, regulations or policies dealing with people deprived of their liberty, and especially prisoners, make mention of the absolute prohibition of torture<sup>11</sup>.

7. The CSVR reported that the South African Police Services (SAPS) Policy on the Prevention of Torture provides for prompt steps to be taken to ensure that complaints of torture are properly investigated. It also informed that the Independent Complaints Directorate (ICD) has a legal mandate to investigate offences allegedly committed by any member of the SAPS or municipal police agency. However, obstacles to the effectiveness of these mechanisms in relation to their impact in ensuring that instances of torture are properly investigated and in preventing torture, include: SAPS does not record data on reports of torture or on investigative or other steps which have been taken in relation to allegations of torture; while the ICD is obliged by law to investigate deaths in police custody and as a result of police action, cases of torture are not given particular priority and the ICD has not given any specific priority to ensuring its effectiveness in investigating such cases. ICD investigations are also not of a consistently high quality, even in high priority cases. Instances of lack of cooperation by the SAPS with ICD investigations have been reported. Prosecutors allocated to prosecuting cases of torture are also not necessarily of senior rank or properly experienced. The cumulative effect of the weaknesses on the part of the SAPS, ICD and the prosecution service is that torture cases have little chance of succeeding except in exceptional circumstances<sup>12</sup>. Furthermore, Amnesty International reported that the ICD is under-resourced in relation to the size of the police services whose conduct it monitors<sup>13</sup>.

8. AI reported that there is also an oversight body, the Judicial Inspectorate of Prisons, responsible for monitoring conditions in detention and complaints of ill-treatment and other abuses<sup>14</sup>. AI indicated that it continues to receive reports of torture and other forms of ill-treatment and misuse of excessive force against arrested crime suspects, prisoners awaiting trial or sentenced and community-based and other political activists involved in public demonstrations. Widespread public concern about high levels of violent crime and continuing police fatalities on duty have remained as continuing contexts for police misconduct and institutional weaknesses with internal and external accountability mechanisms<sup>15</sup>. According to AI, in October 2007, corroborated cases of torture have included the police use of dogs against prone and shackled crime suspects, suffocation and electric shock devices, as well as kicking and beating of suspects. In some cases injured detainees have been denied urgent

medical care. In several cases the detainees died as a result of the torture and denial of access to medical care<sup>16</sup>.

9. The Commonwealth Human Rights Initiative (CHRI) indicated that South Africa is considered to be a leader on human rights focused police transformation, particularly in Africa. It is also considered to be a good practice example of effective accountability and protection of human rights through civilian oversight. While advances have been made recently such as the development of a system of police performance monitoring by the Gauteng Department of Community Safety and a far more robust oversight role evident by the National Parliamentary Portfolio Committee on Safety and Security, more broadly the attention given to civilian oversight has not kept pace with developments in policing. Since the disbanding of the Anti Corruption Unit in 2000, the South African Police Services has yet to implement their Corruption and Fraud Prevention Strategy to any significant extent<sup>17</sup>. CLC recommended that, as a matter of urgency; that the Government should conduct a comprehensive independent judicial enquiry to investigate the immediate and underlying reasons for the persistent high number of unnatural deaths and assaults taking place in prisons with a view to develop recommendations for prevention; that, in compliance with Article 17 of the Optional Protocol to CAT (which it signed in June 2006), the Government should enact legislation designating the National Preventive Mechanisms, and in particular the mechanism applicable to the prison system<sup>18</sup>.

10. From 2004 police have had to respond to an increasing number of public protests, according to AI. In the majority of cases they have done so without resorting to the use of excessive force. However, throughout this period and as recently as September 2007, police units have in a number of incidents resorted to unlawful levels of force, including with prohibited sharp ammunition, precipitous use of rubber bullets – the weapon of “last resort” under South African Police Services regulations - the misuse of pepper spray against demonstrators already under police control and indiscriminate beatings against unarmed demonstrators notwithstanding their compliance with regulations governing public gatherings<sup>19</sup>.

11. According to CLC, the South African prison system faces a number of critical challenges, being overcrowding, a growing prison population, increasing sentence lengths, a rapid increase of prisoners serving life imprisonment, a high mortality rate amongst prisoners presumable due to HIV/AIDS, high levels of inter-prisoner violence, the assault of prisoners by officials often with fatal consequences, and an increasingly youthful prison population. Particular concern is expressed about deaths in custody and the assault of prisoners by officials<sup>20</sup>.

12. AI indicated that in November 2006 the government made public the report of the Jali Commission of Inquiry into corruption and other abuses within the prison system and recommended that all necessary measures be taken to implement the Commission’s recommendations<sup>21</sup>. The report drew attention to institutionalised corruption and maladministration, to the routine use by C-Max Super-Maximum security prison of solitary confinement, and that sexual violence was rife, with warders implicated in facilitating or covering-up incidents<sup>22</sup>. According to AI, impunity for abuses was fostered by management failure to institute hearings and follow up on criminal charges with the police service. Inhumane prison conditions persist due to severe overcrowding. Several deliberate and high profile incidents of *refoulement* have occurred, but they more routinely happen as a

consequence of systematic failures within the Department of Home Affairs which have led to breaches of the State's obligations<sup>23</sup>.

13. As reported by the CHRI, South Africa has been criticized for justifying its return of a non-resident to his home country on the grounds that it could not be certain that the victim *would* be tortured there. The absolute prohibition of torture would require the government to ascertain that the person will *not* be tortured. Once returned, the suspect had disappeared and had been allegedly tortured<sup>24</sup>.

14. The Masimanyane Women's Support Centre (MWSC) indicated that the South Africa's Anti-Rape Strategy was implemented in 2003, yet official rape statistics released from 2000 – 2005 indicate an overall national increase in reported rapes from 52,891 to 65,939<sup>25</sup>, and, according to Children Now (CN), around 50% of these are perpetrated against children<sup>26</sup>. CSVR noted that it represents one of the highest rape statistics in the world<sup>27</sup>. However, as noted by CSVR, a report by the South African Law Reform Commission (SALRC) found that in the year 2000, only 5% of adult rape cases and 9% of child rape cases reported to South African Police Services resulted in convictions. Respectively, 68% and 58% of cases reported to the police did not even make it to court. 15% and 18% of cases were withdrawn. Withdrawals included cases where the rape survivor was intimidated by the perpetrator, where the rape survivor was afraid of the possible reaction of unsupportive partners or parents; or because the police persuade the complainant to withdraw the charges where the evidence is weak. Progressive legislation does not guarantee the end to gender-based violence, but it is a step ahead. In this regard, an important piece of legislation is still languishing of the National Assembly<sup>28</sup>. CSVR indicated that the Criminal Law (Sexual Offences and Related Matters) Amendment Bill was passed by the National Assembly on 22 May 2007, but the hopes of the Bill finally becoming an Act in the year 2007 are fading, as it is now being revised at a very slow pace by the National Council of Provinces (NCOP). The Bill has been in the drafting for almost 10 years, denying victims of sexual violence access to justice and full exercise of their human rights<sup>29</sup>. According to HRW, rape continues to be under-reported and complaints frequently receive inadequate response by police officials. The Government has established 52 specialized sexual offenses courts (SOCs) throughout the country, which have had relative success in improving conviction rates. The Government has also established 10 Thuthuzela Care Centers (TCCs) in close proximity to these courts, where survivors of rape are able to report the crime, access specialist investigators and prosecutors, and obtain medical care and counseling<sup>30</sup>.

15. AI was informed by rape survivors and non-governmental service-providing organizations (SPOs) about cases of failed police response to these crimes, including by exhibiting gender-insensitive and prejudiced attitudes towards complainants, among them lesbian women; by delaying the complainants' access to urgent and appropriate medical examination and treatment; and by taking incomplete statements and conducting inadequate investigations. There are also examples, however, of improved police practice where strong cooperation between police, SPOs and healthcare providers has enhanced victims' access to health services and justice<sup>31</sup>.

16. The CSVR indicated that it is clear that the interest and dedication that police members have in domestic violence incidents is very low. Unless the offences committed amount to serious and violent crime, the South African Police Service has not proved its commitment and effectiveness in performing the positive duties imposed by the Domestic Violence Act

and the National Instruction 7/1999<sup>32</sup>. AI also reported that between July 2006 and June 2007, the police recorded a total of 88,784 incidents of “domestic violence”. During this period in about 38 percent of cases the complainants opened criminal cases against the perpetrators<sup>33</sup>.

17. Corporal punishment is lawful in the home as noted by the Global Initiative to End All Corporal Punishment of Children (GIEACPC)<sup>34</sup>. It noted that under common law, parents have the power “to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition” (*R v Janke and Janke* 1913 TPD 382). This power may be delegated to a person acting in the parent’s place, though not in the case of teachers. As noted by the GIEACPC corporal punishment is unlawful in schools, in the penal system and in alternative care settings<sup>35</sup>. Similar observation was made by HRW<sup>36</sup>. According to CLC, an attempt through the Children’s Amendment Bill of 2006 to ban, among others, domestic corporal punishment and remove the ‘reasonable chastisement’ defence was to be discussed by Parliament this year (2007) but has been deferred for next year (2008)<sup>37</sup>. Similar observation was made by CN and SAHRC<sup>38</sup>. Children Now recommended that the full prohibition of corporal punishment is prioritised in the second Children’s Act Amendment Bill, to be developed in 2008<sup>39</sup>. Similar recommendation was made by CLC, GIEACPC and HRW<sup>40</sup>.

18. According to the Joint Working Group (JWG), there is a high rate of hate crimes and violations targeted against Lesbian, Gay, Bi-Sexual and Transgender (LGBT) people, particularly black lesbians, in South Africa. These range from hate speech to physical abuse and assault, rape and other forms of sexual violence and murder. Sexual assault and even murder motivated by homophobic prejudice is a particularly common problem, especially for black lesbian and bisexual women<sup>41</sup>. HRW noted that a spate of homophobia-induced murders of lesbians prompted the South African Human Rights Commission to develop a program of action to combat escalating hate crimes and to determine whether South Africa needs legislation in this regard<sup>42</sup>.

19. Despite an apparent prioritisation of child labour issues, CN reported that a large numbers of children in South Africa are being used by adults in the commission of crime, and find themselves in situations of commercial sexual exploitation. In addition, significant numbers of children are allegedly being trafficked into, out of and around South Africa. Objective data on the numbers of such children is virtually non-existent, and very little research of sufficient quality has been undertaken in this area. Some estimates, though, put the number of children trafficked into South Africa from neighbouring countries as high as 30,000<sup>43</sup>.

### **3. Administration of justice and the rule of law**

20. The CSVR indicated that the provision of amnesty, including for torture, within the mandate of South Africa’s Truth and Reconciliation Commission (TRC), was justified on the grounds that the building of a new democratic order was a very difficult task and that this could not be achieved without a firm and generous commitment to reconciliation and national unity, which included a conditional amnesty. Those who did not apply for amnesty, or were denied amnesty by the TRC were to be prosecuted. However, after a few limited attempts at prosecutions for apartheid era crimes, the National Prosecuting Authority in February 2006, introduced amendments to its prosecution policy that creates a special dispensation for crimes

committed prior to 11 May 1994<sup>44</sup>. The amended policy authorizes the National Director of Public Prosecutions (NDPP) to take a decision not to prosecute on the basis of a full disclosure by a perpetrator of an offence committed prior to 11 May 1994 with a political objective. The policy requires the NDPP to exercise his prosecutorial discretion in a way which would amount to a rerun of the truth for amnesty procedure under the former TRC. The policy purports to confer powers, formerly exercised by the TRC's Amnesty Committee, upon the NDPP. It amounts to an improper attempt to perpetuate the TRC's legal regime in order to allow those who chose not to participate in the TRC a second bite at the amnesty cherry. No law will authorize the extension of such powers. It does so rather under the guise of prosecutorial discretion. In so doing the policy interferes with the independent exercise of the NDPP's discretion as to whether or not to prosecute<sup>45</sup>. According to CSVR<sup>46</sup>, the policy is both unconstitutional and a violation of South Africa's obligations under international law, including the ICCPR and the CAT, and is currently being challenged in the High Court in South Africa.

21. According to SAHRC, 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<sup>47</sup>. The SAHRC<sup>48</sup> called on the South Africa to commit to taking further measures to popularize these courts (Equality Courts) and ensuring that discrimination is redressed.

#### **4. Freedom of expression, association and peaceful assembly**

22. Reporters Without Borders (RSF) indicated that the press freedom situation in South Africa is satisfactory and comparable to that prevailing in most western European countries. The problems affecting the South African press stem for the most part from controversial court decisions, challenges to the principle of confidentiality of journalists' sources, or the acquisition of mass media by political or business leaders. Media diversity is real and press legislation is democratic in essence. Access to information is, however, still a problem in some provinces, where local governments are sometimes reluctant to provide the public with evidence of their mismanagement<sup>49</sup>. As reported by the CHRI, the Promotion of Access to Information Act (PAIA) was passed by the Parliament in 2000. The legislation is exemplary. Yet, according to CHRI, the implementation of this law raises a number of concerns. In the absence of an ad hoc body, the supervision and promotion of the PAIA is the responsibility of the SAHRC<sup>50</sup>. To fulfill these duties fully, much more active involvement of SAHRC is necessary. Similarly, under the Act no appeal bodies have been created and the applicants are therefore compelled to appeal to the High Court, an extremely expensive and lengthy process that is out of the reach of the vast majority of South Africans<sup>51</sup>.

#### **5. Right to work and to just and favourable conditions of work**

23. According to the International Federation for Human Rights (IFHR), documented and undocumented migrants are exposed to exploitation at work. Many of them are paid below the legal minimum wage (experienced foreign teachers, whether documented or undocumented, were paid between 600 and 800 rands per month, and one as little as 350 rands, when teachers in government schools often start at 2 000 rands per month or more), work for longer hours

than authorised by law, without obtaining necessary break and leave. Inspections conducted by the Department of labour remain rare and rarely lead to imposing penalties on the employer<sup>52</sup>.

## **6. Right to social security and to an adequate standard of living**

24. SAHRC reported that 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, according to SAHRC, 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 a new democracy, and is connected with many of other pressing social problems, including the extremely high levels of violence and the spread of HIV/AIDS. Indeed, some reports, including ones emanating from government sources, exist 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<sup>53</sup>. SAHRC called on the Government to continue prioritizing the creation of jobs and job programs<sup>54</sup>. Children Now recommended that the deep poverty in which so many South African children live be addressed via extending the Child Support Grant to all children, and that the means test be removed so that primary health care programmes are rolled out more widely<sup>55</sup>.

25. SAHRC was also 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<sup>56</sup>.

26. As reported by the COHRE, South African domestic law, particularly following extensive progressive jurisprudence developed by the Constitutional Court, includes extensive protections against forced eviction. These protections notwithstanding, according to COHRE's database of forced evictions, over 840,000 people were forcibly evicted in South Africa between 1995 and 2006, with over 5000 people being evicted in 2006<sup>57</sup>. CLC indicated that between 1995 and 2005, 826 679 people were reportedly evicted<sup>58</sup>. According to SAHRC, 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<sup>59</sup>. As reported by COHRE, another impediment facing South Africa in terms of its commitment to providing adequate housing is the critical shortage of rental public housing stock for low-income groups<sup>60</sup>. It stated that South Africa's water delivery and sanitation system has been criticised for having a number of weaknesses, including community non-engagement, lack of consumer education resulting in widespread refusal to pay for water and sanitation services, vandalism and water piracy<sup>61</sup>. CN indicated that adequate access to safe drinking water and sanitation is still denied to many South African children in 2005, only 54% of children had access to basic sanitation and only 58% had access to drinking water at their homes. Over 6 million children (35%) live in informal housing or traditional dwellings<sup>62</sup>.

27. SAHRC indicated that the government has placed a significant emphasis on the provision of services to rural areas. However, 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<sup>63</sup>. HRW recommended that a pro-poor public health care system must be developed, with upgraded public health care infrastructure, capacitated and trained staff, and increased funding<sup>64</sup>.

28. SAHRC noted that South Africa is to be commended for its attempts to make medical care available to all South Africans, in accordance with its Constitution. 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. There is an enormous disparity in South Africa between public and private health care that further fuels inequality<sup>65</sup>.

29. According to the CLC, gender-based violence (GBV) is a key factor in increasing women's risk of contracting HIV. South Africa also remains the country with the highest number of people living with HIV in sub-Saharan Africa. UNAIDS estimates that by the end of 2005, 5.5 million people were living with HIV in South Africa, 3.1 million of them women<sup>66</sup>. Concern was expressed by the SAHRC 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<sup>67</sup>. According to SAHRC, many rural residents lack even basic information about the cause and treatment of HIV/AIDS<sup>68</sup>.

30. HRW indicated that while the work of non-governmental AIDS organizations and civil society groups in South Africa has been widely commended, the Government's response has been criticized, both domestically and internationally. Much of this criticism has focused on the lack of access to antiretroviral treatment (ART) across the country<sup>69</sup>. AI noted that according to the government's Mid-Term Report on the Millennium Development Goals in May 2007, "a cumulative total of 303,788 patients" were in antiretroviral therapy treatment programs at 316 public sector healthcare sites across the country. However, health rights monitoring organizations observed at the time that this still represented less than half of those needing ART. While treatment is free in public health sector facilities, other factors operate to undermine the availability, accessibility and quality of health services for people living with HIV and AIDS. These include, from AI's field observations, a critical shortage of health personnel, particularly in rural and other under-served areas; delays by national and provincial departments of health in the "accreditation" of additional healthcare facilities to provide ART<sup>70</sup>.

31. MWSC noted that the State has attempted to address accessibility issues through the Choice on Termination of Pregnancy Amendment Bill but the legislation has faced major opposition from pro-life groups who successfully challenged the amendments in the Constitutional Court on procedural grounds. Government was given 18 months (until beginning of 2008) by the Constitutional Court to follow proper public consultative processes to have the Amendment Act passed, failing which it will be declared invalid. Reproductive and sexual health education and information targeting adolescent girls and boys are generally confined to HIV/AIDS education<sup>71</sup>. Although crucial it is necessary to broaden this approach to include practical and appropriate information on the prevention of pregnancy through various contraceptive and barrier methods, early pregnancy<sup>72</sup>.

## **7. Right to education and to participate in the cultural life of the community**

32. Serious concerns persist according to HRW regarding the quality of rural education: many farm schools are staffed by unqualified teachers, and lack resources and infrastructure. State schools are required to waive fees for families that are unable to afford them, yet some local administrators refuse to do so. This contributes to de facto discrimination against very poor children and those from families affected by HIV/AIDS, who may consequently be excluded from attending school. Sexual violence, corporal punishment, bullying, gang-related activities, and occasional murders continue to occur in some South African schools<sup>73</sup>. In September 2007 the South African Parliament proposed that legislation to curb violence in schools be included in the Education Laws Amendment Bill, currently under consideration. SAHRC recommended that the Government commit to prioritising this issue and taking innovative and interdisciplinary approaches to resolving it. SAHRC called also on the government of South Africa to commit to increasing its efforts to provide services to rural areas<sup>74</sup>.

## **8. Minorities and indigenous peoples**

32. Cultural Survival (CS) indicated that the South African government should officially recognize its indigenous peoples and should eliminate the legislative classification of its citizens into Black, White, and Colored categories in order to improve accountability for violations of their rights, and ensure that they are adequately represented within the government. The government must continue to denounce unjustified police violence and should take steps to eliminate police violence directed at Khoisan peoples. While the steps the Government has taken towards restitution of Khoisan lands are welcome, the Government needs to provide better resources to Khoisan indigenous communities, both during resettlement onto their lands and after they are resettled, to ensure proper sustainable development within these areas. Finally, for CS, South Africa must do more to preserve indigenous languages and promote Khoisan traditional history and culture<sup>75</sup>. According to Unrepresented Nations and Peoples Organization (UNPO), despite the progress of South Africa to ensure the protection of cultural heritage and the increasing participation of the different indigenous group in decision making, including the Vhavenda, the South African government needs to implement its laws incorporating the indigenous groups and providing access to the sacred sites of the latter<sup>76</sup>.

## **9. Migrants, refugees and asylum seekers**

33. According to IFHR, migrants, which represent around 500 000 persons for a population of 47 millions, are amongst the most exposed to human rights violations and have the least legal protection and support to defend their rights. Highest numbers come from neighbouring countries in recent years due to the political situation in their country<sup>77</sup>. According to recent studies, IFHR noted that there is a growing number of children entering South Africa through neighbouring countries border posts, both accompanied and unaccompanied; they seem to be staying in Gauteng and border areas, working on farms, in informal trade, etc. There are growing numbers of women and children amongst undocumented migrants<sup>78</sup>.

34. According to CSV, while the Refugees Act of 1998 (Act 30 of 1998) was a significant achievement, in that it separated out refugees and asylum seekers from other categories of migrants, and provided for non-refoulement, there are a few issues which require attention in

relation to the implementation of the Act. While the Act provides for the completion of an application for asylum of 180-days, in practice the Department of Home Affairs, which is tasked with this responsibility currently has a backlog of just over 110,000 applications that are in its system. According to CSVr, the latest backlog initiative was undertaken between June and October 2007. People wait on average 3-4 years to have their refugee status determined. While waiting for their applications to be decided, such asylum seekers are also harassed by police, who do not understand South Africa's refugee legislation, and are often inappropriately detained<sup>79</sup>. Zimbabwe refugees have borne the brunt of ill-informed officials, and government policy which did not identify Zimbabwe asylum seekers until 2004. Training on the rights of refugees and asylum seekers within various Governments is lacking, and refugees and asylum seekers continue to be victims of xenophobic attitudes<sup>80</sup>. Similar observation was made by HRW<sup>81</sup>.

35. According to IFHR, migrants, even documented, live in permanent insecurity. Police control and harassment is a common experience among foreign migrants. Interviews and reports indicate that ID controls are frequent and may come with police officers asking for bribes or sexual favours, extorting money or goods, inflicting verbal or physical abuse. Such migrants are also faced with hasty deportation at the country borders without adequate verification of their legal status, subjected to police violence, destruction of identity documents and properties, etc. Migrants also run the risk of being arrested (including wrongfully), detained (including for longer periods than authorised by law: in 2006 hundreds of suspected illegal immigrants detained at Lindela Repatriation Centre were unlawfully held beyond the period allowed under the Immigration Act (30 days or 120 days with a court warrant) and deported. These practices clearly contravene migrants rights to dignity, personal security and property<sup>82</sup>. Similar concerns were raised by the CSVr<sup>83</sup>.

## **10. Land redistribution**

36. SAHRC was 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 called 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<sup>84</sup>.

## **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

37. A best practice identified by CN is the development of a sophisticated model of costing, budgeting and implementation planning for child-related legislation<sup>85</sup>.

## **IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS**

38. [n/a]

## **V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE**

39. [n/a]

*Notes*

<sup>1/</sup> The following stakeholders have made a submission (all original submissions are available in full text on: [www.ohchr.org](http://www.ohchr.org)):

Civil Society:

JWG: Joint Working Group, UPR Submission, November 2007, Braamfontein;

CHR: Center for Human Rights, University of Pretoria, UPR Submission, November 2007, Pretoria;

Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein;

GIEACP: Global Initiative to End All Corporal Punishment of Children, UPR Submission, November 2007, London;

Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville;

HRW: Human Rights Watch, UPR Submission, November 2007, New York (USA)\*;

Voice of Wrongfully Imprisoned, UPR Submission, November 2007, Johannesburg;

Cultural Survival, UPR Submission, November 2007, Cambridge (USA)\*;

Unrepresented Nations and Peoples Organization, UPR Submission, November 2007, The Hague (the Netherlands);

Masimanyane Women's Support Centre, UPR Submission, November 2007, East London;

COHRE: Centre on Housing Rights and Evictions, UPR Submission, November 2007, Geneva (Switzerland)\*;

CHRI: Commonwealth Human Rights Initiative, UPR Submission, November 2007, New Delhi (India)\*;

RSF: Reporters Without Borders, UPR Submission, November 2007, Paris (France)\*;

IFHR: International Federation for Human Rights, UPR Submission, November 2007, Paris (France)\*;

Centre for the Study of AIDS, University of Pretoria, UPR Submission, November 2007, Pretoria;

AI: Amnesty International, UPR Submission, November 2007, London (UK)\*;

Children Now, Alliance of South African NGOs, UPR Submission, November 2007;

National Human Rights Institution: SAHRC: South African Human Rights Commission, UPR Submission, November 2007, Johannesburg\*\*.

NB: \* NGOs with ECOSOC status; \*\* National Human Rights Institution with A status.

<sup>2/</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 5.

<sup>3/</sup> Centre on Housing Rights and Evictions (COHRE), UPR Submission, November 2007, Geneva (Switzerland), page 5.

<sup>4/</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 14.

<sup>5/</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, page 6 and Human Rights Watch, UPR Submission, November 2007, New York (USA), para 27.

<sup>6/</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, p. 4. See also: Human Rights Watch, UPR Submission, November 2007, New York (USA), page 6 and para 28.

<sup>7/</sup> Centre on Housing Rights and Evictions (COHRE), UPR Submission, November 2007, Geneva (Switzerland), page 7.

<sup>8/</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, para 25.

<sup>9/</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 5.

<sup>10/</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 3.

<sup>11/</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, para 11 and 12.

<sup>12/</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 3.

<sup>13/</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.

<sup>14/</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.

<sup>15/</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.

<sup>16/</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.

<sup>17/</sup> Commonwealth Human Rights Initiative (CHRI), UPR Submission, November 2007, New Delhi (India), pages 3-4.

<sup>18/</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, page 3.

<sup>19/</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.

- <sup>20</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, para 9.
- <sup>21</sup> Amnesty International, UPR Submission, November 2007, London (UK), pages 4-5.
- <sup>22</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.
- <sup>23</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 4.
- <sup>24</sup> Commonwealth Human Rights Initiative (CHRI), UPR Submission, November 2007, New Delhi (India), page 4.
- <sup>25</sup> Masimanyane Women's Support Centre, UPR Submission, November 2007, East London, page 2-3.
- <sup>26</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 5.
- <sup>27</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 5.
- <sup>28</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 5.
- <sup>29</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 5.
- <sup>30</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 2.
- <sup>31</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 1.
- <sup>32</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 5.
- <sup>33</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 2.
- <sup>34</sup> Global Initiative to End All Corporal Punishment of Children, UPR Submission, November 2007, London, page 2
- <sup>35</sup> Global Initiative to End All Corporal Punishment of Children, UPR Submission, November 2007, London, page 2..
- <sup>36</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 7.
- <sup>37</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, para 30.
- <sup>38</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 1 and South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 15.
- <sup>39</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 6.
- <sup>40</sup> Global Initiative to End All Corporal Punishment of Children, UPR Submission, November 2007, London, page 1; Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, p. 6 and Human Rights Watch, UPR Submission, November 2007, New York (USA), page 7.
- <sup>41</sup> Joint Working Group, UPR Submission, November 2007, Braamfontein, page 4.
- <sup>42</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 5.
- <sup>43</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 2
- <sup>44</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, pages 1-2
- <sup>45</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 2
- <sup>46</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 2
- <sup>47</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 6.
- <sup>48</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 6.
- <sup>49</sup> Reporters Without Borders, UPR Submission, November 2007, Paris (France), page 1.
- <sup>50</sup> Commonwealth Human Rights Initiative (CHRI), UPR Submission, November 2007, New Delhi (India), page 3.
- <sup>51</sup> Commonwealth Human Rights Initiative (CHRI), UPR Submission, November 2007, New Delhi (India), page 3.
- <sup>52</sup> International Federation for Human Rights (IFHR), UPR Submission, November 2007, Paris (France), page 2.
- <sup>53</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, page 2.
- <sup>54</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, page 2.
- <sup>55</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 6.
- <sup>56</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 17
- <sup>57</sup> Centre on Housing Rights and Evictions (COHRE), UPR Submission, November 2007, Geneva (Switzerland), page 5-6.
- <sup>58</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, para 20.
- <sup>59</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 10.
- <sup>60</sup> Centre on Housing Rights and Evictions (COHRE), UPR Submission, November 2007, Geneva (Switzerland), page 7.
- <sup>61</sup> Centre on Housing Rights and Evictions (COHRE), UPR Submission, November 2007, Geneva (Switzerland), pages 8-9.
- <sup>62</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 3-4.
- <sup>63</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 8.
- <sup>64</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 7.

- <sup>65</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 11.
- <sup>66</sup> Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, November 2007, Bellville, para 23-24.
- <sup>67</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 12.
- <sup>68</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 12.
- <sup>69</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 6.
- <sup>70</sup> Amnesty International, UPR Submission, November 2007, London (UK), page 3.
- <sup>71</sup> Masimanyane Women's Support Centre, UPR Submission, November 2007, East London, page 5.
- <sup>72</sup> Masimanyane Women's Support Centre, UPR Submission, November 2007, East London, page 5.
- <sup>73</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), page 4.
- <sup>74</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 8.
- <sup>75</sup> Cultural Survival, UPR Submission, November 2007, Cambridge (USA), page 1.
- <sup>76</sup> Unrepresented Nations and Peoples Organization, UPR Submission, November 2007, The Hague (the Netherlands), page 1.
- <sup>77</sup> International Federation for Human Rights (IFHR), UPR Submission, November 2007, Paris (France), page 1-2.
- <sup>78</sup> International Federation for Human Rights (IFHR), UPR Submission, November 2007, Paris (France), page 3.
- <sup>79</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, pages 3-4.
- <sup>80</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 4.
- <sup>81</sup> Human Rights Watch, UPR Submission, November 2007, New York (USA), pages 2-4.
- <sup>82</sup> International Federation for Human Rights (IFHR), UPR Submission, November 2007, Paris (France), page 2.
- <sup>83</sup> Centre for the Study of Violence and Reconciliation, UPR Submission, November 2007, Braamfontein, page 3-4.
- <sup>84</sup> South African Human Rights Commission, UPR Submission, November 2007, Johannesburg, para 9.
- <sup>85</sup> Children Now, Alliance of South African NGOs, UPR Submission, November 2007, page 7.