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Working Group on the Universal Periodic Review

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### Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21

#### South Africa\*

The present report is a summary of 19 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations 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. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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

## **I. Information provided by the accredited national human rights institution of the State under review in full compliance with the Paris principles**

### **A. Background and framework**

1. The South African Human Rights Commission (SAHRC) noted that South Africa still needs to ratify ICESCR and its Optional Protocol; ICRMW and OP-CAT. It highlighted the need to designate an independent monitoring mechanism under CRPD, article 33.<sup>2</sup>

2. SAHRC noted that the National Development Plan, published in November 2011, was a major step forward and ambitious in its assertion that it will be possible to eradicate poverty by the year 2030.<sup>3</sup>

### **B. Cooperation with human rights mechanisms**

3. SAHRC informed that the following periodic reports remain outstanding: ICCPR initial report (overdue since March 2000); CRC 2<sup>nd</sup> and 3<sup>rd</sup> reports (overdue since 2002 and 2007), CRC-OPSC initial report (overdue since 2005) and CRC-OPAC initial report (overdue since October 2011); CAT 2<sup>nd</sup> report (overdue since 2009); CERD 4<sup>th</sup> report (overdue since 2010)<sup>4</sup> and CRPD initial report (overdue since May 2010).<sup>5</sup>

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

4. SAHRC noted that despite previous UPR recommendations, xenophobia remained a significant challenge and that measures taken to address xenophobia had failed.<sup>6</sup> SAHRC noted an increase in hate crimes perpetrated not only on grounds of race but also on the basis of nationality and sexual orientation. There was an urgent need to address hate crimes through legislation and adopt measures to raise public awareness about these crimes.<sup>7</sup>

5. SAHRC observed that the Draft Combating of Torture Bill had yet to be placed before Parliament, after many years.<sup>8</sup>

6. SAHRC welcomed the reinstatement of the specialised Family Violence, Child Protection and Sexual Offences Unit in 2011, but noted that measures to protect and provide redress to women at risk of, or subjected to gender-based violence needed to be strengthened. Perpetrators needed to be held to account and training be provided to police and the judiciary.<sup>9</sup>

7. SAHRC noted that the traditional cultural practice of ukuthwala, by which older men abduct young women for purposes of marriage, was the subject of serious concern. SAHRC considers that this practice should be strongly condemned and called on the Government to enact legislation to ensure that women, and particularly children, are protected from such practice. It also urged to eradicate the practice of killing “witches”. SAHRC further observed that the practice of polygamous marriages had been subject to considerable debate.<sup>10</sup>

8. SAHRC noted that in March 2010, the Prevention and Combating of Trafficking in Persons Bill had been tabled in Parliament. The Bill provides for the prosecution of persons involved in trafficking, prevention of trafficking and assistance to victims, as well as the

establishment of an inter-sectoral committee to develop a national policy framework and public awareness programmes. SAHRC encouraged Parliament to adopt the Bill.<sup>11</sup>

9. SAHRC highlighted the issue of widespread poverty, the difficult position of women in rural areas and continuing challenges with service delivery in rural parts of the country.<sup>12</sup>

10. SAHRC welcomed the launching in 2010 of the National Planning Commission (NPC), which is tasked with the development of long term strategies for development and growth. The Commission had acknowledged persisting widespread inequalities in the country and the existence of direct linkages between poverty and deprivations in health care, education and social infrastructure.<sup>13</sup>

11. SAHRC recommended the adoption of additional measures to ensure that all citizens have access to water and sanitation.<sup>14</sup> SAHRC noted the need to urgently address the impact of acid mine drainage on the right of access to water.<sup>15</sup>

12. SAHRC noted current trends suggesting that maternal mortality is increasing.<sup>16</sup> It recommended that South Africa determine and address the causes of maternal mortality.<sup>17</sup>

13. SAHRC noted progress in addressing HIV/AIDS, in line with UPR recommendations 12, 13 and 14. In April 2010, a new AIDS treatment policy and awareness campaign had been launched. As part of the campaign, 14 million people had been counselled and over 13.5 million tested for HIV, which represented a six-fold increase in the number of people tested over the previous year. Those found HIV-positive were referred for further support and care.<sup>18</sup> However, although South Africa had a large antiretroviral therapy (ARV) programme, access to treatment was still a challenge. At the end of 2009, an estimated 37 per cent of all infected persons were receiving treatment.<sup>19</sup>

14. SAHRC noted that poverty remained a significant barrier to education and that the quality of education was uneven, largely to the detriment of poor children. SAHRC highlighted the need for a comprehensive monitoring and evaluation system to track progress and areas of concern.<sup>20</sup> SAHRC urged the Government to ensure that all children with disabilities enjoy access to education.<sup>21</sup>

## **II. Information provided by other stakeholders**

### **A. Background and framework**

#### **1. Scope of international obligations<sup>22</sup>**

15. International Commission of Jurists (ICJ) recommended that South Africa become a party to ICESCR; OP-CAT; CED and ICRMW; and that it sign, with a view to ratification, the third Optional Protocol to CRC.<sup>23</sup>

16. Amnesty International (AI)<sup>24</sup>, the Community Law Centre (CLC)<sup>25</sup> and the Institute for Human Rights and Business (IHRB)<sup>26</sup> recommended ratification of ICESCR and its Optional Protocol.

17. CLC recommended ratification of OP-CAT as soon as possible.<sup>27</sup> AI recommended ratification of OP-CAT by 2012.<sup>28</sup>

18. CLC and IHRB recommended ratifying ICRMW.<sup>29</sup>

#### **2. Constitutional and legislative framework**

19. Human Rights Watch (HRW) indicated that South Africa continued to grapple with corruption, growing social and economic inequalities, and the weakening of state

institutions. In November 2011, Parliament had passed a controversial Protection of State Information Bill. Since the introduction of the bill in March 2010, it had been subject to serious criticism as being inconsistent with the Constitution and international human rights obligations. HRW noted that the law imposes penalties of up to 20 years imprisonment for publishing information deemed to threaten national security, and thus threatens and undermines legitimate activities of the media and government critics in exposing government malfeasance and corruption. According to HRW, the Bill has no public interest defence that would exempt from criminal sanction the publication of classified information which serves a compelling public interest.<sup>30</sup>

20. JS1 informed that the Children's Act had undergone a review in 2011, also to improve service delivery mechanisms. Amendments to the Social Assistance Act had expanded the definition of 'disability' to include children with temporary and moderate chronic disabilities.<sup>31</sup> JS1 commended the wide public consultations process for this review.<sup>32</sup>

21. JS1 urged the Government to streamline the review and development of child specific law and policy to expedite the processes of enacting child specific legislation, and to increase budget allocations to promote the rights of children.<sup>33</sup>

### **3. Institutional and human rights infrastructure, policy measures**

22. JS3 noted that the country's human rights mechanisms, including the South African Human Rights Commission (SAHRC), the Public Protector, the Commission for Gender Equality, and the Culture Religion Linguistic Commission, were not adequately supported by the Government.<sup>34</sup>

IHRB recommended the establishment of a business and human rights portfolio within the constitutional institutions.<sup>35</sup>

23. JS1 observed an increasing role of the South African Human Rights Commission (SAHRC) in the promotion and protection of children's rights. In 2011, SAHRC had nominated a dedicated commissioner to address children's rights.<sup>36</sup>

24. JS6 and AI reported that the Government was in the process of developing a National Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance. AI reported that an Inter-Ministerial Committee on xenophobia had been established in 2010.<sup>37</sup>

25. JS1 commended the Government for working with civil society to create a platform for children and youth to provide input into the new National Strategic Plan on HIV and AIDS (2012-2016). This addressed UPR recommendations made in 2008.<sup>38</sup>

## **B. Cooperation with human rights mechanisms**

26. HRW stated that South Africa had failed to clarify its position on the 22 recommendations made during the first UPR cycle in 2008, which had made an assessment of implementation problematic. South Africa should clearly communicate its responses and commitments on all recommendations to be made during the second UPR cycle.<sup>39</sup>

27. JS1 recommended that the Government establish a mechanism that will coordinate reporting about child rights to treaty bodies and the UPR. It encouraged the Government to establish and fund a formal machinery to promote the participation of many CSOs in consultations and to make reporting processes more participatory.<sup>40</sup> Ubuntu Centre South Africa (UC) noted that the initial report on CRPD was overdue since May 2010.<sup>41</sup>

28. ICJ recommended that South Africa accept visit requests by the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance.<sup>42</sup>

29. IHRB recommended that South Africa invite the UN Working Group on Business and Human Rights and enable it to perform an audit on the level of human rights protection from the actions of local and multinational business enterprises.<sup>43</sup>

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

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

30. AI indicated that despite South Africa's normative framework guaranteeing women's right to equality, discrimination against women and high levels of sexual and gender-based violence persist. Women's access to justice and to remedies provided for under progressive statutory law continued to be obstructed by lack of capacity and political will.<sup>44</sup>

31. JS6 noted that incidents of hate crimes against migrants and refugees continued to be reported in various parts of the country.<sup>45</sup>

32. JS1 noted an increase of instances in which undocumented children and children of migrants were denied access to social services because they do not possess a birth certificate or identity book. It urged the Government to carry out outreach for the provision of enabling documents and to ensure access to integrated quality social services for all children.<sup>46</sup>

33. AI noted the persistence of violent, targeted attacks against LGBT individuals.<sup>47</sup> It recommended that South Africa unambiguously denounce these crimes; conduct comprehensive public awareness campaigns on homophobia; and enhance the prevention, investigation and prosecution of crimes of violence on these grounds.<sup>48</sup>

34. AI indicated that the Department of Justice had begun in late 2010 a process of developing a legislative framework on 'hate crimes'.<sup>49</sup>

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

35. AI noted that since its previous UPR review, South Africa had not adopted any legislative measures to prevent, prosecute and punish acts of torture and other ill-treatment.<sup>50</sup> AI noted that the right to life and the right not to be subjected to torture continued to be violated by law enforcement officials at an increasing scale. The police oversight body, the Independent Complaints Directorate, had reported 860 deaths in custody "as a result of police action" between April 2009 and March 2010.<sup>51</sup> CLC noted that in the absence of a statutory crime of torture, perpetrator could not be prosecuted.<sup>52</sup>

36. AI recommended that South Africa bring a comprehensive 'criminalization of torture' bill before Parliament by 2012; publicly denounce acts of torture and extra-judicial executions; extradite or prosecute perpetrators of torture; educate its officials on the absolute prohibition of torture and ill-treatment; regularly review interrogation rules, instructions, and methods; promptly investigate cases in which there are reasonable grounds to suspect that torture may have taken place; and provide redress for victims.<sup>53</sup> IHRB recommended a strengthening of the constitutional prohibition of torture by providing a definition of torture in criminal law.<sup>54</sup>

37. Omega Research Foundation (ORF) was concerned that the Government had made provision for the use of electro-shock devices in correctional centres. ORF recommended

effective legislative, administrative, judicial or other measures to prevent the use of electro-shock belts and other body worn electro-shock devices.<sup>55</sup>

38. JS6 noted that between May and June 2011, notable incidents of hate crimes against migrants and refugees had included attacks on over 50 foreign-owned shops in Motherwell, Port Elizabeth, the stoning to death of a foreign man by a mob in Polokwane, Limpopo, and the murder of over 25 foreign shopkeepers around Cape Town.<sup>56</sup>

39. JS3 drew attention to the high rates of gender based violence, noting that many women do not receive adequate support after being raped.<sup>57</sup> ICJ similarly observed that sexual violence against women and girls remained a serious problem. Notwithstanding the progressive Bill of Rights and meritorious jurisprudence, the protection of women against sexual abuse remained in practice very limited and ineffective, and perpetrators continued to enjoy impunity. Meanwhile, incidences of sexual violence had reached alarming proportions.<sup>58</sup> CLC recommended stronger measures to protect and provide redress to women at risk of or subjected to gender-based violence.<sup>59</sup>

40. HRW noted that rapes and other violence against lesbians had reached alarming levels.<sup>60</sup> JS6 stated that harassment, intimidation and violence related to sexual orientation or gender identity continued. Lesbians from urban townships were affected by the heinous practice of “corrective” rapes, in which victims were targeted with the specific goal of “curing” them of homosexuality.<sup>61</sup> JS5 indicated that during 2011 there had been a number of brutal attacks on black lesbians.<sup>62</sup> ICJ recommended that the Government adopt a more effective approach to break the cycle of sexual violence.<sup>63</sup>

41. JS5 recommended that the Government address hate crime violence by introducing legislation that expressly criminalizes violence against individuals or property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity. Training should be given to law enforcement agencies so that such crimes are properly investigated.<sup>64</sup>

42. UC expressed deep concern about conditions in psychiatric institutions, where people are deprived of their liberty and therefore vulnerable to human rights abuses. It noted evidence supporting claims that human rights violations amounting to torture were commonplace in these institutions. Thus, it urged the Government to establish a National Preventative Mechanism to ensure monitoring and prevention of cruel, inhuman and degrading treatment in such institutions.<sup>65</sup>

43. SAPRA noted that over 40 people, including children, had been accused of 'witchcraft' and become victims of brutal violence in 2010 and 2011. SAPRA stated that its appeal for Government intervention had been ignored.<sup>66</sup>

44. JS7 highlighted that South Africa had been identified as a source, transit and destination country for the trafficking of children, especially for sexual purposes.<sup>67</sup> JS1 noted that although the Prevention and Combating of Trafficking in Persons Bill had been tabled in 2010 it had not yet been enacted.<sup>68</sup> JS1 recommended that the Government enact the Bill by the end of 2012.<sup>69</sup>

45. JS2 expressed concern at widespread violence against children and child abuse.<sup>70</sup> JS7 drew attention to extensive physical and sexual abuse, child trafficking, child prostitution and sexual exploitation, the entry of unaccompanied minors into the country and the growing tourism industry.<sup>71</sup> JS1 indicated that statistics for 2011 had also indicated an increase in rape and violence against children.<sup>72</sup> JS3 noted that child labour was a problem in the Limpopo Province, where children are subjected to work on commercial farms. In the Eastern Cape and Limpopo Provinces, children were used by adults as street beggars in the small towns.<sup>73</sup> JS1 encouraged the Government to continue to provide extensive training

on the prevention of child abuse to personnel in the Justice Administrative Structures; and to address this issue by 2013 through more coordinated programmes.<sup>74</sup>

46. Global Initiative to End All Corporal Punishment of Children (GIEACPC) was concerned that despite recommendations made during the UPR review in 2008, the legality of corporal punishment of children had not changed. While it was prohibited in schools, the penal system and alternative care settings, it continued to be lawful in the home.<sup>75</sup> JS1 recommended that the Government abolish corporal punishment in all settings by 2013 and put in place programmes promoting positive discipline and alternatives to corporal punishment.<sup>76</sup>

### **3. Administration of justice, including impunity, and the rule of law**

47. AI noted that the administration of justice remained overall robustly independent and resulted in jurisprudence which further promotes human rights. However, the circumstances surrounding the dismissal of the then National Director of Public Prosecutions had raised serious questions about the political manipulation of high level appointments within the justice system. Moreover, while the legal aid system did allow access to justice for indigent accused, access to the courts for adjudication of constitutional rights issues remained difficult for poorer communities, organizations and individuals.<sup>77</sup>

48. ICJ and AI noted that the Independent Complaints Directorate (ICD), responsible for investigating allegations of torture and unlawful killings by police, had now been re-established on the basis of its own independent legislation. However, AI was concerned that it was still not sufficiently independent and resourced.<sup>78</sup> AI further noted that a climate of impunity had been fostered by public statements by senior politicians and officials, including national commissioners of police over the last three years.<sup>79</sup> ICJ indicated that police abuses had rarely been investigated and few perpetrators effectively punished, leading to a state of near-impunity. As a result, victims often had little faith in the system.<sup>80</sup> AI recommended that the Government ensure that investigators involved in investigating alleged incidents of torture, extra-judicial executions and related abuses are able to conduct their work without intimidation and receive full co-operation from law enforcement officials.<sup>81</sup>

49. JS1 noted that the Child Justice Act enacted in 2009 had adopted a human rights approach to restorative justice processes involving children in conflict with the law. The Act provides that criminal cases involving children are undertaken through a child friendly process in Child Justice Courts.<sup>82</sup> JS7 noted insufficient resources to operationalise certain requirements of the Act. Orphans, abandoned children and refugee children faced obstacles in accessing legal documentation necessary to obtain related services.<sup>83</sup> JS7 recommended effective implementation of legislation for the protection of children throughout South Africa.<sup>84</sup>

### **4. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

50. JS6 noted that individuals within the 80,000-strong Jewish community had reported verbal threats, hate mails and occasional instances of desecration of synagogues and cemeteries. Some Hindu temples and statues had also been vandalized over the past decade, resulting in significant public and interfaith outcry in support of the vulnerable community.<sup>85</sup>

51. HRW noted that since 2010, concerns had arisen over attempts to limit freedom of expression and freedom of information.<sup>86</sup> JS4 expressed concern at four proposed new laws which were likely to contradict the Constitution and curtail freedom of expression. These were the Protection of State Information Bill, the Statutory Media Appeals Tribunal, the

Public Service Broadcasting Bill and the Independent Communications Authority of SA (CASA) Amendment Bill.<sup>87</sup>

52. According to HRW, the most worrying development was the approval in November 2011 of the Protection of State Information Bill.<sup>88</sup> The Bill criminalizes the possession or publication of classified information and provides for prison sentences from five to 25 years.<sup>89</sup> PEN International and South African PEN (PEN) stated that the introduction of the Bill would undermine Government transparency and accountability by establishing a broad classification system granting state organs the ability to protect information on the basis of a loose set of criteria. The Bill in its current form would punish whistleblowers, silence investigative journalists and criminalize editors who publish classified information.<sup>90</sup> HRW recommended that South Africa suspend the enactment of this Bill, and permit further consultations and amendments to ensure its conformity with ICCPR, in particular by removing excessive penalties for publication of classified information and the inclusion of a public interest defense.<sup>91</sup>

53. PEN noted with concern a trend toward bringing defamation and libel cases against authors and publishers, with potentially crippling court costs and legal fees. PEN noted that such suits could have a chilling effect upon writers and publishers and lead to self-censorship.<sup>92</sup>

54. AI noted increasing harassment or criminalization of the activities of human rights defenders and Government critics.<sup>93</sup> It recommended that human rights defenders be allowed to undertake their non-violent advocacy, campaigning, reporting and investigative work without fear of harassment, threats, raids, arbitrary arrest or criminalization of their activities.<sup>94</sup>

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

55. HRW acknowledged the existence of laws guaranteeing wages, benefits and safe working and housing conditions for workers and farm dwellers, but noted that the Government had largely failed to enforce the laws, leaving workers susceptible to abuse and exploitation by employers. IHRB and HRW noted various human rights violations in the Western Cape, such as exposure to harmful pesticides; an unsafe and unhealthy working environment, forced evictions by employers, poor housing conditions on farms; difficulties in forming or joining unions; and unfair labour conditions, such as pay below minimum wage.<sup>95</sup>

56. IHRB expressed concern at the lack of health and safety provisions in the mining industry. It recommended that the role of labour inspectors be strengthened through collaboration with environmental protection and law enforcement agencies.<sup>96</sup>

57. HRW recommended that the Department of Labour and the Department of Agriculture support persons facing evictions from farms, enforce compliance with existing labour and health protections; and protect the rights of foreign and other migrant farm workers to receive the benefits to which they are entitled.<sup>97</sup>

58. ICJ, referring to human rights abuses by corporate entities, recommended: (i) an increase in access to pro-bono legal services; (ii) the establishment of a public interest litigation group within the legal aid system, focusing on abuses by business enterprises; (iii) improved access to judicial and non-judicial remedies; and (iv) the adoption of legislation to enable registered companies to be held liable for violations of rights beyond South Africa's borders.<sup>98</sup>



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

59. JS2 noted that 36 per cent of children in South Africa did not have access to safe drinking water, 39 per cent lacked adequate sanitation at home, and 18 per cent suffered from hunger. The number of orphans stood at 3.7 million.<sup>99</sup>

60. JS2 expressed deep concern at the lack of health care and proper housing for children belonging to the poorest and most vulnerable communities.<sup>100</sup>

61. CLC noted the absence of a special housing policy and directives at the national and provincial levels.<sup>101</sup>

62. CLC noted that although a policy of free basic services for the poor, including water supply, sanitation, waste removal and electricity, had been adopted in 2001, service delivery at the local level remained a challenge. Delays in decisions about the upgrading of informal settlements had hindered access to improved basic services by vulnerable communities.<sup>102</sup> CLC recommended that the Government develop a national directive or special needs housing policy.<sup>103</sup>

63. CLC noted that municipalities continued to shirk their responsibility to provide “emergency housing” to communities facing emergency circumstances, including the threat of eviction and homelessness. Greater clarity on local government responsibilities with respect to socio-economic rights was urgently needed. Funding and authority to provide housing should be devolved to those municipalities that have the required capacity. National and provincial governments should take joint responsibility for corrective action in those municipalities that fail to deliver basic services.<sup>104</sup>

64. JS1 noted a backlog in the granting of foster care grants and recommended the adoption of a simplified policy on universal access to Child Support and Foster Care Grants.<sup>105</sup>

## 7. Right to health

65. JS2 noted continuing disparities in access to health services, noting that only persons with medical aid, which allows access to private health institutions, could afford proper medical care. Public health care lacked professional quality, equipment, infrastructure and medicines, and hospitals were overcrowded.<sup>106</sup> JS2 urged the Government to reduce persisting disparities in access to health care by providing adequate financial aid, an appropriate infrastructure and qualified medical staff.<sup>107</sup>

66. HRW noted an increasing maternal mortality ratio resulting from shortcomings in accountability and oversight mechanisms to monitor health care system performance, as well as abuses committed by health care personnel.<sup>108</sup>

67. JS2 was concerned at high rates of early pregnancy, which mainly affected the socially underprivileged segments of the society and often made girls drop out of school. It called for the development of awareness campaigns regarding early pregnancy.<sup>109</sup>

68. JS2 urged the Government to take measures aiming to reduce the high rate of suicide among youth, including the provision of counseling and adequate psychological support.<sup>110</sup>

69. HRW documented a pattern of specific abuses directed at female migrants and women living with HIV, including active discrimination and delayed or denied care. HRW indicated that in January 2011, the Minister of Health had published the National Health Amendment Bill to address health care gaps. However, it had yet to be introduced in Parliament.<sup>111</sup> HRW recommended that South Africa revise through a transparent and participatory process the current indicators for maternal health monitoring and bring them in line with the “United Nations Process Indicators” for availability and utilization of obstetric services.<sup>112</sup>

70. AI noted that substantial progress had been made to expand access to treatment for HIV/AIDS. However, physical and economic barriers regarding access to health services continued to affect poor and rural households. AI noted that rural women and girls continued to experience multiple forms of discrimination, which increased the risk of HIV infection and difficulties in accessing treatment.<sup>113</sup> AI recommended that all government departments be involved in developing and implementing plans aimed at reducing physical and cost barriers to access HIV-related health services in rural areas.<sup>114</sup>

71. JS1 noted with concern reports on the deteriorating quality of health services and infrastructure, and an increase in infant and maternal mortality rates. It was also concerned at the deteriorating health conditions of children, especially children living in poverty, many of whom were malnourished, did not receive meals at schools and had insufficient access to school health programmes.<sup>115</sup> World Vision South Africa (WV) noted that the number of deaths of children under the age of five had risen.<sup>116</sup> One in five children was stunted as a consequence of chronic nutritional deprivation.<sup>117</sup> WV recommended improved efforts in realizing the MDG of reducing child mortality by 2015.<sup>118</sup> JS1 recommended that the Government increase the health budget, prioritising maternal and child health and ensuring that all children have access to adequate nutritious foods, clean drinking water and sanitation.<sup>119</sup>

## **8. Right to education**

72. JS3 noted that schools located in rural areas often lack proper building infrastructure and sanitation.<sup>120</sup>

73. JS2 noted that due to the *apartheid* background, public education was not yet equal. Schools in colored and black areas had much poorer infrastructures. They also had problems of attendance and a higher repetition rate.<sup>121</sup> JS2 indicated that as a result of the movement to create “no school fee schools”, a certain number of schools in the poorest areas provide free education. However, the number of these schools was still insufficient and their academic standard was low.<sup>122</sup>

74. JS1 noted that the Government had introduced State-subsidised Early Childhood Development (ECD) programmes and services to promote a holistic physical, mental and cognitive development of children. However, ECD centres were very few and often fell short of reaching children living in poverty.<sup>123</sup> JS1 recommended that the Government ensure access to quality education and implement measures to increase school attendance by 2013, in addition to constructing schools within reasonable proximity.<sup>124</sup>

## **9. Persons with disabilities**

75. CLC recommended that the Department of Basic Education investigate the domestication of the CRPD in relation to the right to education for children with disabilities.<sup>125</sup> UC recommended that South Africa designate and establish an independent monitoring mechanism as stated in article 33 (2) of CRPD.<sup>126</sup> JS1 noted that the Education Laws Act had been amended to incorporate the State’s commitments towards ensuring reasonable accommodation for children with disabilities. However, limited implementation had contributed to further exclusion of children with disabilities. The Government should enable all children with disabilities to be integrated into mainstream schools by 2014.<sup>127</sup>

## **10. Migrants, refugees and asylum-seekers**

76. AI stated that foreign nationals, whether refugees, asylum-seekers or ordinary migrants, continued to be victims of human rights abuses since the large-scale violence in 2008.<sup>128</sup> ICJ noted that violations included physical attacks and attacks on property as well as administrative barriers. While victims of those violations usually struggled to access

justice and adequate remedies, perpetrators were often not held accountable. While the Victim Empowerment Programme's Policy Guidelines identified victims of 'hate victimization' as a priority group and provided for compensation and restitution, its provisions were rarely applied to victims of xenophobic violence.<sup>129</sup>

77. CLC recommended that the Government review its migration and asylum policies, fight impunity, eradicate corruption and foster social cohesion within communities in order to combat xenophobia. The Government should refrain from returning or extraditing persons to another country where there may be tortured.<sup>130</sup>

78. AI stated that the policy of the authorities on access to asylum determination procedures appeared to become more restrictive.<sup>131</sup> JS5 noted that the closures of the metropolitan refugee reception centres remained a major concern. The State had not carried out any consultation with the affected populations nor made available any contingency plans.<sup>132</sup> AI recommended to urgently reconsider plans to close the majority of refugee reception offices, as such closures would substantially reduce access to asylum determination in South Africa.<sup>133</sup>

79. HRW noted that in 2010 South Africa had moved to "regularize" the presence of Zimbabweans by ending the existing special dispensation for Zimbabwean nationals and resuming deportations of those without the new special permits.<sup>134</sup> JS5 noted that the current practice of systematic refusal of entry to all undocumented Zimbabwean asylum-seekers was as an affront to the underlying principles of international refugee law. It also noted cases where Somali asylum seekers had been refused entry. By denying undocumented asylum-seekers access to a proper procedure, persons who may have very real protection needs are forcibly returned to their country of origin or to a third country.<sup>135</sup>

80. HRW documented that migrants face serious discrimination in health care facilities, including verbal abuse, unlawful user fees and denial of basic and emergency health care services. Furthermore, in urban centers, refugees, asylum seekers and migrants were often placed in unsafe temporary shelters, resulting in increased risks of infectious disease transmission, interruption of treatment for chronic illness, and often inadequate nutrition.<sup>136</sup>

81. HRW recommended that South Africa ensure that asylum seekers, refugees, and Zimbabwean migrants are not subject to arbitrary or extra-legal arrest and deportation; ensure their timely access to healthcare service; and review national standards on deportation of people living with HIV.<sup>137</sup>

82. JS2 stated that children of refugees were affected by lack of registration at birth and were, as a result, usually not accepted at school.<sup>138</sup> JS1 noted that there had been increasing numbers of unaccompanied minors who cross the border on their own and are forced to take care of themselves.<sup>139</sup>

#### Notes:

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a national human rights institution with "A" status)

#### *Civil society*

AI	Amnesty International (London, United Kingdom);
CLC	Community Law Centre (Cape Town, South Africa);
GIEACPC	Global Initiative to End All Corporal Punishment of Children (London, United Kingdom);
HRW	Human Rights Watch (New York, USA);
ICJ	International Commission of Jurists (Geneva, Switzerland);
IHRB	Institute for Human Rights and Business (London, UK);

- JS1 Joint Submission 1 – Care Excellence Development Centre (CEDC) (Johannesburg, South Africa), Umthatha Child Abuse Resource Centre (UCARC) (Mthatha, South Africa), Save the Children Southern Africa Regional Office (SC SAF) (Pretoria, South Africa);
- JS2 Joint Submission 2 – Istituto Internazionale Maria Ausiliatrice IIMA, and International - International Volunteerism Organization for Women, Education, Development (VIDES);
- JS3 Joint Submission 3 - Human Rights Institute of South Africa (HURISA) (South Africa), People Opposing Women Abuse (POWA) (South Africa); Consortium for Refugees and Migrants in South Africa (CoRMSA) (South Africa), CIVICUS: Alliance for Citizen Participation (South Africa), Centre for Human Rights (CHR) (South Africa), Coalition of African Lesbians (CAL) (South Africa);
- JS4 Joint Submission 4 - Association for Progressive Communications (APC) (South Africa), Centre for Applied Legal Studies (CALs) - University of Witwatersrand (South Africa), CIVICUS: World Alliance for Citizen Participation (South Africa), Gender Links (South Africa), Highway Africa Chair in Media and Information Society, Rhodes University (South Africa), IDASA: An African Democracy Institute (South Africa), Open Democracy Advice Centre (ODAC) (South Africa), Right 2 Know Campaign (South Africa), Southern African NGO Network (SANGONeT) (South Africa), Section27 (South Africa) and Socio-Economic Rights Institute of South Africa (SERI) (South Africa);
- JS5 Joint Submission 5 - Lawyers for Human Rights (LHR) (South Africa) and the Consortium for Refugees and Migrants in South Africa (CoRMSA) (South Africa);
- JS6 Joint Submission 6 - Centre for Applied Psychology of the University of South Africa (South Africa), Consortium for Refugees and Migrants in South Africa (South Africa), Durban Lesbian and Gay Community Health Centre (South Africa), Forum for the Empowerment of Women (South Africa), Gay and Lesbian Memory in Action (South Africa), Gay and Lesbian Network (South Africa), Human Rights First (USA), Independent Projects Trust (South Africa), Scalabrini Centre of Cape Town (South Africa), Sonke Gender Justice (South Africa) and South African Jewish Board of Deputies (South Africa);
- JS7 Joint Submission 7 - Child Welfare South Africa CWSA (the national umbrella body of 267 member organisations) (Edenvale, South Africa);
- ORF Omega Research Foundation (Omega) (UK);
- PEN PEN International (London, UK), and South African PEN (South Africa);
- SAPRA South African Pagan Rights Alliance (George, Western Cape, South Africa);
- UC Ubuntu Centre, South Africa (South Africa);
- WVSA World Vision South Africa (South Africa);
- National Human Rights Institution*
- SAHRC South African Human Rights Commission (South Africa)\*
- <sup>2</sup> SAHRC, paras 2.1. to 2.4.
- <sup>3</sup> SAHRC, para 4.
- <sup>4</sup> SAHRC, para. 3.
- <sup>5</sup> SAHRC, para. 3.
- <sup>6</sup> SAHRC, para. 13.
- <sup>7</sup> SAHRC, para. 14.
- <sup>8</sup> SACHR, para. 2.3.
- <sup>9</sup> SAHRC, para. 12.
- <sup>10</sup> SAHRC, paras. 17-20.
- <sup>11</sup> SAHRC, para. 16.
- <sup>12</sup> SAHRC, para. 4.
- <sup>13</sup> SAHRC, para. 4.
- <sup>14</sup> SAHRC, para. 7.
- <sup>15</sup> SAHRC, para. 8.
- <sup>16</sup> SAHRC, para. 5.

17 SAHRC, para. 5.

18 SAHRC, para. 6.

19 SAHRC, para. 6.

20 SAHRC, para. 9.

21 SAHRC, para. 10.

22 The following abbreviations have been used for this document:

ICESCR International Covenant on Economic, Social and Cultural Rights Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

OP-CAT Optional Protocol to CAT;

CRC Convention on the Rights of the Child;

ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

CRPD Convention on the Rights of Persons with Disabilities;

CED International Convention for the Protection of All Persons from Enforced Disappearance;

23 ICJ, page 6. See also JS5, pages 3, 10 and 11.

24 AI, page 5.

25 CLC, para. 17.

26 IHRB, page 5.

27 CLC, para. 30.

28 AI, page 6.

29 CLC, paras. 13 and 14; IHRB, page 5.

30 HRW, page 1.

31 JS1, page 4.

32 JS1, page 4.

33 JS1, pages 1 and 4.

34 JS3, page 2.

35 IHRB, page 5.

36 JS1, page 1.

37 JS6, page 2; AI, page 1.

38 JS1, page 6. See also AI, page 2.

39 HRW, page 1.

40 JS1, paras 8-12.

41 UC, page 1. See also CLC, paras. 9-10 and ICJ, page 6. See SACR, para 3.

42 ICJ, page 6.

43 IHRB, page 4.

44 AI, page 1.

45 JS6, page 3.

46 JS1, page 5.

47 AI, pages 1 and 3.

48 AI, page 5.

49 AI, page 3.

50 AI, page 1.

51 AI, page 4.

52 CLC, paras 31-34.

53 AI, page 6.

54 IHRB, page 5.

55 ORF, para. 16.

56 JS6, page 3.

57 JS3, pages 2 and 3.

58 ICJ, paras. 15-17.

59 CLC, paras. 13 and 14.

60 HRW, pages 3 and 4.

61 JS6, page 4.

62 JS5, page 10.

- 63 ICJ, page 6.  
64 JS5, page 12. See also ICJ, page 6.  
65 UC, page 2.  
66 SAPRA, page 1 (para 1) and page 2 (para2.1.).  
67 JS7, pages 4 and 5.  
68 JS1, pages 7 and 8.  
69 JS1, page 8.  
70 JS2, paras. 25-28.  
71 JS7, pages 4 and 5.  
72 JS1, pages 7 and 8.  
73 JS3, page 6, para. 3.10.  
74 JS1, page 8.  
75 GIEACPC, page 2, paras 1.1 - 1.3.  
76 JS1, page 8. See also SACHR, para 11.  
77 AI, page 2.  
78 ICJ, para. 21; AI, pages 4 and 5.  
79 AI, pages 4 and 5.  
80 ICJ, para. 21.  
81 AI, page 6.  
82 JS1, pages 7 and 8.  
83 JS7, pages 4 and 5.  
84 JS7, page 10.  
85 JS6, page 5.  
86 HRW, page 1.  
87 JS4, pages 9 and 10.  
88 HRW, page 1.  
89 AI, page 5. See also SACHR, para. 15.  
90 PEN, paras. 4 and 5.  
91 HRW, page 4. See also SACHR, para. 15.  
92 PEN, para. 18.  
93 AI, page 5.  
94 AI, page 7. See also SAHRC, para. 13.  
95 HRW, page 3 ; IHRB, page 3.  
96 IHRB, page 3.  
97 HRW, page 5.  
98 ICJ, para. 21, pages 5 and 6.  
99 JS2, para. 6.  
100 JS2.  
101 CLC, paras. 11-14.  
102 CLC, paras. 22-23.  
103 CLC, paras. 13 and 14.  
104 CLC, paras. 24-26.  
105 JS1, pages 4 and 5.  
106 JS2, paras. 37-38.  
107 JS2, para. 42.  
108 HRW, page 2.  
109 JS2, para. 40.  
110 JS2, paras. 41, 42.  
111 HRW, page 2.  
112 HRW, page 4.  
113 AI, pages 1-3.  
114 AI, page 5. See also SAHRC, para. 6.  
115 JS1, pages 6 and 7.  
116 WV, para. 2.1.1.  
117 WV, para. 2.4.1.  
118 WV, paras. 3.1, 3.1.2 to 3.1.9.

- <sup>119</sup> JS1, pages 6 and 7.  
<sup>120</sup> JS3, para. 3.1.  
<sup>121</sup> JS2, para. 12.  
<sup>122</sup> JS2, para. 13.  
<sup>123</sup> JS1, pages 8 and 9.  
<sup>124</sup> JS1, page 8.  
<sup>125</sup> CLC, para. 7.  
<sup>126</sup> UC, page 1.  
<sup>127</sup> JS1, page 8.  
<sup>128</sup> AI, pages 3 and 4.  
<sup>129</sup> ICJ, paras. 18-20.  
<sup>130</sup> CLC, paras. 27-29.  
<sup>131</sup> AI, page 4.  
<sup>132</sup> JS5, pages 4 and 5.  
<sup>133</sup> AI, page 6.  
<sup>134</sup> HRW, pages 2 and 3.  
<sup>135</sup> JS5, pages 4 and 5.  
<sup>136</sup> HRW, pages 2 and 3.  
<sup>137</sup> HRW, page 4.  
<sup>138</sup> JS2, page 3.  
<sup>139</sup> JS1, pages. 7 and 8.
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